

# **SAN BENITO FIREMEN'S RELIEF AND RETIREMENT FUND**

## ***Plan Restated, Effective [August 1, 2021]***

The Board of Trustees (the "Board") of the San Benito Firemen's Relief and Retirement Fund (the "Fund" or the "Plan"), at its meeting of August 23, 2021 hereby amends and restates this Plan document in its entirety, effective [August 1, 2021], except as otherwise provided herein.

This Plan document restatement reflects (i) benefit changes previously adopted by the Board at its meeting of November 24, 2014, and approved by the participating members of the Fund and which were reflected in an amended and restated plan document effective August 1, 2019, (ii) a technical correction to identify that the interest rate and mortality tables used for purposes of determining the actuarial equivalence of the PLSO option under Section B(3) are those adopted by the Board and utilized in the most recently completed actuarial valuation, and (iii) a clarification of who constitutes a spouse for purposes of the death benefits under Section E. The changes described under (i) were approved by the Plan's Actuary and the participating members of the Fund through an election by secret ballot as required under Section 7 of Article 6243e, Vernon's Texas Civil Statutes, which may be cited as the Texas Local Fire Fighters' Retirement Act ("TLFFRA"), which was held on November 10-12, 2014. Neither of the changes described in (ii) or (iii) are considered a modification of benefits or eligibility requirements under the Plan and thus do not require a member vote under Section 7 of TLFFRA.

The following provisions are applicable to all current members of the Fund, effective as provided herein, and to those who enter the San Benito Fire Department thereafter. When appropriate, the masculine gender shall include the feminine and vice versa.

### **A. *BASIS FOR DETERMINING RETIREMENT BENEFIT***

The amount of income payable upon retirement will depend upon the firefighter's age when he retires and upon his number of years of "Service" as described below.

1. ***"Service"*** is defined by the following:
  - a. For the period prior to January 1, 1990, service will be equal to the number of years and months of continuous employment determined from the records of the Fire Department of the City of San Benito, Texas. Only those periods employed by the San Benito Fire Department will be included as service.
  - b. For the period after January 1, 1990, service is credited for each month in which a firefighter holds a position in the Fire Department of the City of San Benito, Texas and for which the contributions required by this plan are made by the firefighter and the City of San Benito. Beginning June 1, 1999, periods during the firefighter's continuous employment where the firefighter did not receive pay from the City of San Benito and the firefighter and the city did not make a contribution to the fund will not be credited as service.

If a firefighter's service is terminated after January 1, 1990, he will be treated in the same manner as a new employee if he is later reemployed. Periods of leave of absence, determined by the policy of the City of San Benito, shall be deemed continuous employment. Absence from the active service of the department by reason of leave of absence, including a leave of absence due to active military service by a participant reservist called to duty during national emergencies, will not terminate a firefighter's service provided he returns to active employment prior to the expiration of his leave except that if he withdraws his contributions from the San Benito Firemen's Relief and Retirement Fund, he will be treated in the same manner as though his service had been terminated even though he returns to active employment prior to the expiration of his leave.

2. **"Highest 60-Month Average Salary"** will be equal to average biweekly pay multiplied by 2.167. Average biweekly pay is the average of the firefighter's total pay, with the exception of pay received as a lump sum distribution for unused sick leave or vacation at termination of employment, for the 130 biweekly pay periods with the department during which his total biweekly pay was highest. If a firefighter's total biweekly pay has been offset (reduced) by workmen's compensation benefits, then total biweekly pay shall also include the amount by which his total biweekly pay was offset (reduced) as required by Section 504.051 of the Texas Labor Code. In accordance with the Internal Revenue Code ("IRC" or the "Code"), the annual total pay used in determining the "Highest 60-Month Average Salary" will be limited by the IRC 401(a)(17) limitations. For 2019, the 401(a)(17) limitation is \$280,000.

If at the time of death or disability the firefighter has been paid for less than 130 biweekly pay periods, his average salary will be computed as though he had been employed for the 130 biweekly pay periods immediately preceding his death or disability. For the period prior to his employment the firefighter is deemed to have held the same rank at which he entered the department. His pay, based upon the rank mentioned above, is assumed to be the amount he would have received if he had been employed by the fire department during that period.

3. **"Maximum Service Retirement Benefit"** - Benefits for paid firefighters retiring or terminating on or after May 1, 1996 are subject to a maximum amount of the greater of (a) the maximum benefit permitted by Section 415 of the Code, or (b) the vested accrued benefit determined as of the day prior to May 1, 1996 according to the provisions of the plan effective January 1, 1990.

The benefits subject to the Section 415 limits must be adjusted if the payments are made in a form other than a life annuity or a qualified joint and survivor benefit. Solely for purposes of determining the maximum benefit, the adjustments for optional forms of payments other than a life annuity or a qualified joint and survivor benefit will be the greater adjustment based on either an interest rate of 6.5% and the UP-1994 male mortality table with no age adjustment or projection or an interest rate of 5% and the gender neutral 1994 GAR mortality table projected to 2002.

The maximum benefit permitted by Section 415 of the IRC is the sum of the maximum employer financed benefit and the employee financed benefit. The maximum employer financed benefit is \$225,000 in 2019 for firefighters retiring at age 65 and younger with 15 or more years of service. The Section 415 limit is adjusted for older ages at retirement. Solely for purposes of determining the maximum benefit, the adjustments to the Section 415 limit for older ages at retirement will be based on an interest rate of 5% and the gender neutral 1994 GAR mortality table projected to 2002. The Section 415 limit is adjusted annually, on a rounded basis per IRC rules, for changes in the Consumer Price Index.

The employee financed benefit is the monthly benefit annuitized from the employee's after-tax accumulated contributions. Solely for purposes of determining the maximum benefit, the conversion of the employee after-tax accumulated contributions to a life annuity will be based on the interest rate on 30-year Treasury securities as specified by the IRC using a plan year stability period and a look back month of the fourth calendar month preceding the first day of the stability period. The mortality used in the employee contribution conversion will be the IRC specified gender neutral 1994 GAR mortality table projected to 2002.

Solely for the purpose of determining a maximum benefit, the total amount available for a lump sum distribution from a PLSO election will be converted to an actuarially equivalent annual benefit based on the greater adjustment of either an interest rate of 6.5% and the UP-1994 male mortality table with no age adjustment or projection or the applicable IRC 417(e) interest rate and the IRC specified gender neutral 1994 GAR mortality table projected to 2002. This annual benefit, which is actuarially equivalent to the lump sum, will be added to the annual equivalent of the monthly benefit the firefighter will receive after retirement. This combined amount will be subject to the maximum benefit limitation described above in this subsection.

If the United States Congress and/or the Internal Revenue Service later amend laws and regulations pertaining to Section 415 in order to permit higher benefits, then for any retired firefighter or beneficiary who had previously had a benefit reduced because of Section 415 benefit limitations, the plan will be amended again to cause the Board to recalculate the benefit to be the smaller of (a) the unreduced benefit based on the plan's benefit formula in effect on the date of retirement, or (b) the maximum permissible benefit calculated under revised Section 415 laws and regulations. The Board shall pay the pensioner in a single payment an amount equal to the difference between the adjusted higher monthly benefit and the reduced benefit for the number of months the pensioner has received the reduced benefit.

Notwithstanding any other plan provisions to the contrary, the applicable mortality table used for purposes of adjusting any benefit or limitation under Section 415(b)(2)(B), (C), or (D) of the IRC, is the table prescribed in Rev. Rul. 2001-62.

## B. ***SERVICE RETIREMENT BENEFIT***

1. ***Eligibility for Service Retirement Benefit*** - A firefighter will be eligible for a service retirement benefit after he meets both of the following requirements:
  - a. attainment of age 52 and
  - b. completion of 20 years of service.
2. ***Amount of Normal Service Retirement Benefit*** – Effective December 1, 2014, a firefighter who qualifies for a service retirement benefit will receive a monthly retirement benefit for as long as the firefighter remains alive equal to the sum of:
  - a. a standard monthly benefit equal to 45.00% of the "Highest 60-Month Average Salary"

*plus*

- b. an additional benefit in an amount equal to \$70.00 per month for each whole year of service in excess of 20 years of service. A partial year of service will be given partial credit based on number of months and days completed in excess of whole years.

Payment of the monthly service retirement benefit will begin on the last day of the calendar month following the month in which the firefighter terminates employment with the city. In addition, for the month in which a firefighter terminates employment, a partial monthly retirement benefit will also be paid following employment termination. This partial benefit is equal to the benefit described above multiplied by the number of days from the date of employment termination to the end of the month divided by the total number of days in the month of employment termination.

The monthly retirement benefit shall not exceed the "Maximum Service Retirement Benefit".

3. ***Partial Lump Sum Option (PLSO)*** – A firefighter eligible for normal service retirement and who is also at least age 55 with at least 23 years of service can elect the PLSO at termination of employment (retirement). This option will provide the firefighter with a PLSO lump sum amount and a PLSO monthly benefit. The firefighter will elect the number of months to be included in the lump sum from 1 to 24. The PLSO lump sum amount will be equal to the elected number of months multiplied by the monthly Normal Service Retirement benefit.

The PLSO monthly benefit will be determined by multiplying the monthly Normal Service Retirement benefit by a percentage that is determined on an actuarially equivalent basis (using the interest rate and mortality table as adopted by the Board and utilized in the most recently completed actuarial valuation at the time of the determination of the benefit) and based on the firefighter's age at retirement (completed years of age only) and the number of months included in the PLSO lump sum elected by

the retiring firefighter. The PLSO monthly benefit is determined such that the actuarial present value of the Normal Service Retirement monthly benefit equals the combined actuarial present value of the PLSO lump sum and the PLSO monthly benefit.

The monthly benefit will begin on the last day of the calendar month following the month in which the firefighter terminates employment with the city. For the month in which the firefighter terminates employment, a partial monthly retirement benefit will also be paid. This partial benefit is equal to the benefit described above multiplied by the number of days from the date of employment termination to the end of the month divided by the total number of days in the month of employment termination.

To the extent permissible under federal tax laws, payment of the PLSO lump sum amount determined in this Section B(3) can be made in one of the following two forms:

- a. a lump sum distribution of the total amount payable at the end of the first full month after a Benefit Distribution Form has been received or accepted by the fund's administrator, or
- b. a maximum of five payments as needed by the firefighter electing the PLSO within 36 months of the firefighter's date of termination of employment.

### **C. *DISABILITY RETIREMENT BENEFIT***

1. ***Eligibility for Disability Retirement Benefit*** - An active firefighter will qualify for a disability benefit if he becomes disabled from any cause whatsoever for either physical or mental reasons. The firefighter need only be disabled to the extent of being unable to perform the duties of a position offered to him in the fire department providing the firefighter with pay that is greater than or equal to the pay the disabled firefighter would have been receiving had his disability not occurred and he continued in his former position with the fire department to be entitled to benefits for the first 2 and 1/2 years; thereafter, he must be unable to perform the duties of any occupation for which he is reasonably suited by education, training and experience.
2. ***Amount of Disability Retirement Benefit*** - The disability benefit will commence after the firefighter's regular salary, including vacation and sick leave pay, has ceased as the result of his disability and will continue thereafter as long as the firefighter remains alive and is eligible under Section C(1) above; provided, however, that if the retiring firefighter receives a lump sum of accumulated sick leave pay from the City of San Benito, his disability retirement benefit will not commence until a period of time has elapsed equal to the period of time that would have passed had the firefighter received his accumulated sick leave pay in regular biweekly payments instead of a lump sum.

For the month in which the disability benefit begins payment, a partial monthly disability benefit will also be paid for that month. This partial benefit is equal to the benefit described below multiplied by the number of days from the date the benefit is to begin to the end of the month divided by the total number of days in the month. The first full monthly disability benefit will commence on the last day of the next calendar month.

- a. ***After Duty-Related Disability*** – Effective December 1, 2014, the monthly disability benefit payable following a duty-related disability will equal the sum of:
    - i) a standard monthly benefit equal to 45.00% of the "Highest 60-Month Average Salary"

*plus*

    - ii) an additional service benefit in an amount equal to \$70.00 per month for each whole year of service in excess of 20 years of service. A partial year of service will be given partial credit based on number of months completed in excess of whole years.
  - b. ***After Not Duty-Related Disability*** - The monthly disability benefit payable following a not duty-related disability will be equal to 5% of the amount that would have been computed in Section C(2)(a) above for each year of service, including completed months, with a minimum of 5% for firefighters with less than one year of service. In no event shall the not duty-related benefit exceed that which would have been payable under Section C(2)(a) above.
3. ***Termination, Reduction or Reinstatement of Disability Benefit*** - The Board shall have the power to continue, to terminate, to reduce or to reinstate a firefighter's disability benefits subject to the following constraints:
- a. During the first 2 and 1/2 years the Board may terminate the firefighter's disability benefit if the firefighter recovers to the extent that he is able to perform the duties of a position offered to him in the fire department providing the firefighter with pay that is greater than or equal to the pay the disabled firefighter would have been receiving had his disability not occurred and he continued in his former position with the fire department.
  - b. After the disabled firefighter has received disability benefits from the fund for at least 2 and 1/2 years, the Board may terminate the firefighter's disability benefit if the firefighter has recovered to the extent that he is able to perform the duties of a job outside the fire department and he is able to earn at least as much money in his new job as he would have as a member of the fire department.
  - c. After the disabled firefighter has received disability benefits from the fund for at least 2 and 1/2 years, the Board may review the situation of the disabled firefighter to determine the status of his disability. If the firefighter has recovered to the extent that he is able to perform the duties of a job outside the fire department, but he is not able to earn as much money in his new job as he would have as a member of the fire department, then the Board may, at their discretion,

- i) continue to pay a full disability benefit to the disabled firefighter; or
  - ii) elect to pay the disabled firefighter a partial disability benefit equal to one half (1/2) of the original disability benefit.
- d. The Board shall have the power to reinstate any disability benefit which has been previously terminated or reduced provided the disabled firefighter's condition has worsened due to the same cause for which he was originally disabled.

**4. *Recovery from Disability***

- a. Prior to completion of 10 years of service, if a disabled firefighter recovers to the extent that his disability allowance is terminated and he does not return to the employ of the fire department, then an amount equal to the excess, if any, of the firefighter's own contributions (without interest) over the amount of payments which have been made on his behalf will be paid to him in a lump sum payment.
- b. After completion of 10 years of service a disabled firefighter will become eligible for the vested termination benefit described in Section D below if he recovers to the extent that his disability allowance would otherwise be terminated or reduced and does not return to the employ of the fire department.
- c. After both attainment of age 52 and completion of 20 years of service a full disability allowance will be paid if the firefighter recovers to the extent that his disability allowance would otherwise be terminated or reduced.

- 5. *Determination of Recovery from Disability and Continued Eligibility for Disability*** - In determining the extent to which a disabled firefighter has recovered from his disability, if any, and whether the disabled firefighter continues to be eligible for disability benefits hereunder, the Board may require the firefighter to undergo periodic medical examination and vocational rehabilitation examinations, and to provide periodic financial information, including tax returns.

Any disabled firefighter receiving disability benefits must fully cooperate with the Board and must comply with examinations required by the Board and must provide all financial and medical information as requested by the Board in order to establish continued eligibility for disability benefits. Failure to do so will result in termination or suspension of the firefighter's disability benefits.

**D. *VESTED TERMINATION BENEFIT***

If a firefighter has completed at least 10 years of service but has not attained his normal retirement age at the time of termination of his service, he will receive a deferred retirement income commencing at the end of the month in which he attains his normal retirement age.

A firefighter's normal retirement age is the age at which the firefighter will be at least age 52 and would have had at least 20 years of service had he not terminated employment.

The amount of the firefighter's deferred retirement income is equal to his vested accrued benefit. The vested accrued benefit is equal to the percentage vested of the normal service retirement benefit in Section B(2) above, determined as if he had retired on the day he terminated employment, according to the following schedule:

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

The firefighter's percentage vested will be based on completed years and months of service at the date of employment termination. It will be determined by interpolation between the Vesting Percentage for the Completed Years of Service and the Vesting Percentage for the Completed Years of Service plus one year.

This benefit is payable only to firefighters who terminate employment on or after May 1, 1996. To be entitled to receive this vested termination benefit, the firefighter is required to leave his accumulated contributions in the fund but is not required to make additional contributions between his date of termination of employment and the date he begins receiving benefits.

**E. DEATH BENEFITS**

1. If the firefighter's death occurred while an employee of the fire department and the death was duty-related, the surviving spouse will receive an immediate monthly benefit for as long as the spouse is alive and does not remarry under the conditions described below. Effective December 1, 2014, the amount of the monthly benefit will equal:
  - a. a standard death benefit equal to 30% of the "Highest 60-Month Average Salary";

*plus*



- b. an additional death benefit equal to two-thirds of any additional service benefit that the firefighter was receiving or was entitled to receive had he retired on his date of death.
2. If the firefighter's death occurred while an employee of the fire department and the death was not related to duties as a firefighter, the surviving spouse will receive an immediate monthly benefit for as long as the spouse is alive and does not remarry under the conditions described below. The amount of the monthly benefit will equal 5% of the amount the surviving spouse would have received in Section E(1) above for each year of service including completed months, with a minimum of 5% for firefighters with less than one year of service. In no event shall the benefit exceed that which would have been payable under Section E(1) above.
3. If the firefighter's death occurred after service retirement or disability retirement, and retirement was effective after June 1, 2004, the surviving spouse will receive a monthly death benefit for as long as the spouse is alive and does not remarry under the conditions described below. The monthly death benefit will equal two-thirds of the monthly retirement benefit the firefighter was receiving at the date of death.
4. If the firefighter's death occurred after termination of employment with 10 or more years of service and termination of employment was effective after June 1, 2004, and the firefighter did not elect a refund of contributions, the surviving spouse will receive a monthly death benefit. The benefit is payable immediately following the firefighter's death for as long as the spouse is alive and does not remarry under the conditions described below. The monthly death benefit will equal two-thirds of the vested termination benefit described in Section D above that the firefighter was receiving or would have received at his normal retirement date.

In order for a retired or terminated firefighter's spouse to qualify for the benefit in (1) through (4) above, the spouse must (i) be an individual to whom the firefighter was legally married under Subtitle A, Title 1, Texas Family Code, or a comparable law of another jurisdiction, provided that, in the case of an informal marriage in the State of Texas, the marriage must be evidenced by a declaration of informal marriage recorded in accordance with Subchapter E, Chapter 2, Texas Family Code and (ii) have been married to the firefighter before the date of termination of service.

5. If an eligible firefighter dies following June 1, 2004, a child(ren)'s benefit is payable. An eligible firefighter is an active, vested terminated, service or disability retired firefighter who was employed on or after the plan's inception date on January 1, 1990. The child's benefit payable is as follows:
  - a. if the spouse is also receiving a benefit, each unmarried child will receive a monthly benefit of 8.55% of the firefighter's "Highest 60-Month Average Salary" until age 18;

- b. if the spouse dies or remarries after being entitled to her allowance or if there is no spouse, each unmarried child will receive a monthly benefit of 17.1% of the firefighter's "Highest 60-Month Average Salary" until age 18;

The benefits described above are payable from age 18 to age 25 as long as the child remains a fulltime student between these ages. If the child becomes totally disabled as a result of a physical or mental illness, injury or retardation, the benefits described above are payable after age 17 and for as long as the child remains totally disabled. In order for a natural-born child to be eligible to receive a death benefit under this section, the child's date of birth must be no later than 10 months following the first to occur of the date the firefighter retires, dies or terminates his service with a vested benefit. In order for an adopted child to be eligible to receive a death benefit under this section, the child must have been adopted prior to the first to occur of the date the firefighter retires or terminates his service with a vested benefit.

For purposes of the benefits described above, a child shall be defined as the unmarried, dependent offspring, either natural-born or adopted, of a San Benito firefighter.

6. If no spouse or child is entitled to a benefit under (1) through (5) above at the time of the firefighter's death, the amount the spouse would have received will be paid to the firefighter's dependent parent. A firefighter's parent will be considered dependent if the parent was claimed as a dependent on the firefighter's Internal Revenue Code tax filing.
7. Payment of monthly benefits will begin on the last day of the calendar month following the month of the firefighter's death. A full monthly retirement benefit will be payable at the end of the month following the death of a retired firefighter. If the firefighter's death occurs prior to service or disability retirement, a partial monthly benefit will be paid on the last day of the calendar month of the firefighter's death. The partial benefit is equal to the benefit described above multiplied by the number of days from the date of death to the end of the month divided by the total number of days in the month of death.
8. The sum of all benefits being paid or payable at any point in time shall not exceed:
  - a. for a retired firefighter, the amount of service or disability retirement benefit the firefighter was receiving;
  - b. for a firefighter who was not retired but was eligible for service retirement at the time of death, the service retirement benefit the firefighter would have received had he retired on his date of death;
  - c. for a firefighter who was not retired and was not eligible for service retirement at the time of a duty-related death, the duty-related disability retirement benefit the firefighter would have received had he become disabled (duty-related) on the date of death; and

- d. for a firefighter who was not retired and was not eligible for service retirement at the time of a not duty-related death, the not duty-related disability retirement benefit the firefighter would have received had he become disabled (not duty-related) on the death of death.

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

9. If no spouse, child or dependent parent is entitled to an allowance under (1) through (6) above, an amount equal to the excess, if any, of the firefighter's own contributions (without interest) over the amount of payments which have been made to the firefighter, spouse, child or dependent parent will be paid to the firefighter's estate.
10. If the firefighter's spouse remarries, no further monthly payments will be made to his spouse after the date of her remarriage and if no children's benefits are being paid at the time of the remarriage, an amount equal to the excess, if any, of the firefighter's own contributions (without interest) over the amount of monthly payments which have been made on behalf of the firefighter, spouse and children will be paid to his spouse in a lump sum payment.
11. All persons claiming spouses' death benefits must certify by February 1 of each year, in a form and manner acceptable to the Board, that said spouse has not remarried since the death of the participant, and is not married as of the time of said declaration. The failure to provide such certification as set out herein shall be grounds for discontinuance of benefits.

#### **F. RETURN OF FIREFIGHTER'S OWN CONTRIBUTIONS**

If a firefighter terminates his service and he is not entitled to a benefit as described above, he will receive an amount equal to the excess of his own contributions to the fund over the amount of benefits which he has previously received from the fund. A firefighter who retires or whose service is terminated may elect to receive, at the time of his retirement or termination, the excess of his own contributions to the fund over the amount of benefits which he has previously received from the fund; however, if he makes such an election, he will forfeit his right to all benefits which he otherwise would have been entitled to receive. The amount refunded shall not include any interest accumulated on account of the firefighter's contributions.

## **G. CONTRIBUTIONS**

1. Effective January 2008, each San Benito firefighter will make contributions of 12% of his total pay excluding lump sum distributions for unused sick leave or vacation at termination of employment. If a firefighter's total pay has been offset (reduced) by workers' compensation benefits, then total pay shall also include the amount by which the total pay was offset (reduced) as required by Section 504.051 of the Texas Labor Code. All contributions made by the San Benito firefighters to the Fund shall be picked up by the City of San Benito pursuant to Code Section 414(h)(2) and treated as employer contributions.
2. Effective January 2008, the City of San Benito will make contributions of 12% of each firefighter's total pay excluding lump sum distributions for unused sick leave or vacation at termination of employment to match the firefighter contribution rate. If a firefighter's total pay has been offset (reduced) by workers' compensation benefits, then total pay shall also include the amount by which the total pay was offset (reduced) as required by Section 504.051 of the Texas Labor Code.

## **H. PAYMENTS TO FORMER SPOUSES AND OTHER ALTERNATE PAYEES**

Notwithstanding the anti-alienation limits of Section 5 of the Texas Local Fire Fighters' Retirement Act (TLFFRA), withdrawn Employee Contributions, Retirement Benefits, Disability Benefits and Death Benefits under the Plan may be paid to a former spouse or other alternate payee under the terms of a domestic relations order, but only if the Board determines that the order constitutes a Qualified Domestic Relations Order within the meaning of Chapter 804 of the Texas Government Code (referred to here as a "QDRO"). The Board shall make such determination under the policies regarding Domestic Relations Orders and Qualified Domestic Relations Orders adopted by the Board. Benefit payments shall be made to alternate payees only when and to the extent permitted by the QDRO. The amount of any withdrawn employee contribution or benefit payment under the Plan made to an alternate payee under a QDRO shall reduce and offset the amount otherwise payable to the firefighter or other beneficiary under the provisions of the Plan. If a portion of a withdrawn employee contribution or benefit payment under the Plan exceeds the amount awarded by the QDRO, such excess portion will be distributed in accordance with the Plan provisions. Upon the death of an alternate payee under a QDRO, the interest of the alternate payee in the benefits under the Plan shall cease, and thereafter, remaining Plan benefits shall be paid as if the QDRO had not existed.

## **I. TRANSFERS OF ELIGIBLE ROLLOVER DISTRIBUTIONS**

1. This section applies to distributions made on or after January 1, 1993. 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 paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

## 2. *Definitions*

- a. *Eligible rollover distribution:* An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; and the portion of any distribution that is not includible in gross income.

Effective with respect to distributions made after December 31, 2001, a portion of the distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax Employee Contributions which are not includible in gross income. However, such portion may be paid only 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 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 of such distribution which is not so includible.

- b. *Eligible retirement plan:* An eligible retirement plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, or a qualified trust described in Section 401(a) of the Code, that accepts the distributee's eligible rollover distribution, an annuity contract described in Section 403(b) of the Code, and an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan; provided, however, if the distributee is not a firefighter, former firefighter, or a surviving spouse of the firefighter, a direct rollover is only available to an individual retirement account described in Code Section 408(a) or an individual retirement annuity (other than an endowment contract) described in Code Section 408(b) that has been established on behalf of the beneficiary as an inherited IRA (within the meaning of Code Section 408(d)(3)(C)) and is subject to the requirements of Code Section 401(a)(9).
- c. *Distributee:* A distributee includes a firefighter or former firefighter. In addition, the firefighter's or former firefighter's surviving spouse and the firefighter's or former firefighter's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 804.003 of Title 8 of the

Texas Government Code, are distributees with regard to the interest of the spouse or former spouse.

- d. *Direct rollover:* A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

## J. **BENEFIT DISTRIBUTIONS AND FEDERAL REQUIREMENTS**

1. All benefit distributions must comply with Section 401(a)(9) of the Code. This section of the Code, together with the Regulations promulgated thereunder, are hereby incorporated by reference in this Plan. The requirements of Section 401(a)(9) of the Code and the Regulations shall supersede any distribution option in this Plan which is inconsistent with Section 401(a)(9) of the Code.
2. Notwithstanding any provision of this plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Section 401(a)(37) and 414(u) of the Code, including without limitation, the provisions set forth below.

A firefighter who dies on or after January 1, 2007, while performing qualified military service, will be deemed to have resumed employment with the Fire Department as of the day preceding the date of his or her death and to have terminated service on the date of his or her death.

An individual receiving differential wage payments for periods of qualified military service from the City of San Benito on or after January 1, 2009 will be treated as an active firefighter and will receive service under the Fund during such period for purposes of attaining eligibility to receive the benefits under the Fund, but will not receive service under the Fund for purposes of the calculation of benefits, if and to the extent service is utilized in the calculation of such benefits, except to the extent otherwise provided herein.


For purposes of this Section (J)(2), the term “qualified military service” means any service in the uniformed services (as defined in chapter 43 of title 38, United States Code) by any firefighter if such firefighter is otherwise entitled to reemployment rights under the Uniformed Services Employment and Reemployment Rights Act of 1994 with respect to such service.

3. All assets contributed to the Fund will be held in trust, separate from the assets of the City of San Benito and maintained and administered by the Board for the exclusive purpose and benefit of all members, retirees, and beneficiaries of the Fund. At no time before the termination of the Fund and the satisfaction of all liabilities with respect to members, retirees and their beneficiaries shall any part of the principal or interest of the assets of the Fund revert back to the City of San Benito (unless due to a good faith mistake of fact) or be used for or diverted to purposes other than the exclusive benefit of

members, retirees and their beneficiaries. The Fund and the assets held in trust thereunder are intended to qualify under Section 401 of the Code, be exempt from federal income taxes under Code Section 501(a), and conform at all times to applicable requirements of law, regulations, and orders of duly constituted federal governmental authorities. Accordingly, if any provision of this section is subject to more than one construction, one of which will permit the qualification of the Fund, the construction that will permit the Fund to qualify and conform will prevail. This Plan intends to satisfy certain applicable provisions of Code Section 401(a) through its status as a governmental plan under Code Section 414(d).

4. The normal retirement age for a firefighter shall be the attainment of age 52 and the completion of 20 years of service. The retirement benefit earned by a firefighter shall become nonforfeitable upon attainment of normal retirement age. In addition, the retirement benefit earned by a firefighter shall become nonforfeitable, to the extent funded (if not already nonforfeitable), upon the termination or partial termination of the Fund or the complete discontinuance of contributions from the City of San Benito to the Fund.

EXECUTED, this 23rd of August, 2021

  
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Board of Trustees  
San Benito Firemen's Relief and Retirement Fund