



Lufkin Firemen's Relief & Retirement Fund
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PLAN DOCUMENT

Restated 3-8, 2017

Lufkin Firemen's Relief & Retirement Fund

The Lufkin Firemen's Relief & Retirement Fund (hereinafter called the "Plan" or "Fund"), established pursuant to Article 6243e, Vernon's Annotated Texas Civil Statutes (known as the Texas Local Fire Fighters' Retirement Act, or the "Act") for the exclusive benefit of certain employees of the Fire Department of the City of Lufkin, Texas (the "City"), is hereby amended and restated in its entirety. Except as otherwise indicated, the provisions of this restated Plan shall be effective as of 3-8, 2017. Where appropriate, the masculine gender shall include the feminine and vice versa.

A. Basis for Determining Retirement Benefit

All references to "firefighters" shall include active participating members. A "participating member" will mean all civil service employees of the fire department of the City included within the coverage of the Plan if the person is younger than 36 years old on the date the person is certified under civil service as eligible for a beginning position with the department, and the Plan entry date is the date of employment. Except for the Fire Chief, membership is not authorized for employees of the department who are 36 years old or older at the time they become employees, but who first became fire fighters at an age younger than 36. Membership of the Fire Chief is optional, at the Fire Chief's option, at any age.

The amount of income payable upon retirement will depend upon the firefighter's age when he/she retires, upon his/her number of years of "Service" and upon his/her "Highest 60-Month Average Salary" as described below.

1. "Service" will be equal to the period of time during which a firefighter pays into and keeps on deposit in the fund the contributions required by this plan. If a firefighter's service is terminated and he/she withdraws his/her own contributions, he/she will be treated in the same manner as a new employee if he/she is later reemployed. If a firefighter's service is terminated, and he/she is reemployed later without having withdrawn his/her own contributions, his/her prior service will be reinstated. (However, once a member begins receiving a service retirement or vested termination benefit, he/she is not allowed to rejoin the plan.) No benefits will be payable during a period of reemployment, and benefits in such a case will be recomputed upon the member's subsequent retirement. No service credit will be given for a period during which the member is receiving disability or retirement benefits.

Absence from active service of the department by reason of leave of absence will not terminate a firefighter's service provided he/she returns to active employment prior to the expiration of his/her leave. Periods of leave of absence, determined by the policy of the City, shall be deemed continuous employment, but shall be excluded in determining the member's service, unless the member receives regular compensation during the leave of absence and makes the required contributions based on this compensation.

2. **"Highest 60-Month Average Salary"** will be equal to the average of the firefighter's total pay (including regular, longevity and overtime pay and excluding car allowances and lump-sum distributions for unused sick leave or vacation) for the 60 consecutive calendar months of service with the department during which his/her total pay was highest.

If at the time of death or disability the firefighter has less than 60 months of service, his/her average salary will be computed as though he/she had been employed for the previous 60 months. For the period prior to his/her employment the firefighter is deemed to have held the same rank at which he/she entered the department. His/her pay, based upon the rank mentioned above, is assumed to be the amount he/she would have received if he/she had been employed by the fire department during that period.

B. Service Retirement Benefit

1. **Eligibility for Service Retirement Benefit** - An active firefighter will be eligible for a service retirement after he/she meets both of the following requirements:
 - a. Attainment of age 50, and
 - b. Completion of 10 years of service.
- 1.1 For firefighters hired on or after September 1, 2005, an active firefighter will be eligible for a service retirement after he/she meets both of the following requirements:
 - a. Attainment of age 50, and
 - b. Completion of 15 years of service.
- 1.2 For firefighters hired on or after June 25, 2013, an active firefighter will be eligible for a service retirement after he/she meets both of the following requirements:
 - a. Attainment of age 52; and
 - b. Completion of 20 years of service
- 1.3 For firefighters hired on or after January 5, 2016, an active firefighter will be eligible for a service retirement after he/she meets both of the following requirements:
 - a. Attainment of age 55; and
 - b. Completion of 20 years of service
2. As of August 2009, a newly hired Fire Chief, if he elects to join the Fund, will be vested after 5 years of service.

3. ***Amount of Service Retirement Benefit*** - A firefighter who qualifies for a service retirement benefit and elects to retire on or after September 1, 2003 will receive a monthly retirement income equal to the sum of:
 - a. A standard monthly benefit equal to 3.35% of his/her "Highest 60 Month Average Salary", multiplied by the lesser of (i) his/her years of service (including fractions) or (ii) 20 years;
 - plus
 - b. An additional service benefit in an amount equal to \$66 for each whole year of service in excess of 20 years of service. A partial year of service will be given partial credit based in number of months completed in excess of whole years.

Example: FF has 22 years of service. The longevity benefit would be \$66.00 times 2 years = \$132.00 additional added to the service benefit.

C. **Disability Retirement Benefit**

1. ***Eligibility for Disability Retirement Benefit*** - An active firefighter who has completed his/her probationary period will qualify for a disability benefit if he/she becomes disabled from any cause whatsoever for either physical or mental reasons to such an extent as being unable to perform the duties of a firefighter. A firefighter may not apply for a disability benefit if he/she is eligible for a service retirement benefit.
2. ***Commencement and Duration of Disability Retirement Benefits*** - The disability benefit will commence after the firefighter's regular salary has ceased as the result of his/her disability or after 90 days, whichever is later. For this purpose, regular salary includes (i) any accumulated vacation and/or sick leave pay, and (ii) any pay due during the year following the firefighter's termination required under Civil Service law. Further, disability payments may not begin as long as the firefighter is receiving a Worker's Compensation benefit which is equal to or larger than 60% of his/her "Highest 60-Month Average Salary". For this purpose, "Worker's Compensation benefit" shall mean only those payments intended to replace lost income, and not those intended to reimburse for medical expenses.

Disability benefits will continue thereafter as long as the firefighter is alive and remains eligible as further described in this Section C.

3. ***Amount of Disability Retirement Benefit.*** The disability benefit paid shall be equal to the \$100 monthly benefit as defined in the TLFRA statute.

In addition to the benefits already described, the Fund shall provide educational assistance to disabled firefighters. This will include assistance in applying for grants, scholarships, etc. This will also include payment of tuition and purchase of books for college or vocational school in order to retrain for another career. The

total amount of such financial assistance shall not exceed \$1,000 per year, and such payments shall be made for a maximum of four years as long as the firefighter remains disabled and continues in good standing with the school. The four year limit shall apply even if the firefighter becomes disabled on more than one occasion.

4. *Determination of and Recovery from Disability*

- a. To be eligible for a disability benefit, the firefighter must make written application and must present a written statement from his/her personal doctor verifying that he or she is disabled to the extent that he or she is unable to perform the duties of a firefighter. If requested by the Board of Trustees, the firefighter shall submit to a second examination by a second doctor (chosen by the firefighter from a list of three doctors supplied by the Board of Trustees). If the two doctors disagree on the disability of the firefighter, the Board may choose to have the firefighter examined by a third doctor. In all cases, at least two doctors must agree that the firefighter qualifies for the disability before payments will be made. The firefighter shall pay for the examination made by his/her personal doctor, and the Fund shall pay for any other examinations.
- b. After 2 ½ years of receiving disability benefits, a member will be eligible to continue to receive disability benefits if the member is unable to perform any occupation to which he or she is reasonably suited by education, training and experience. The Board of Trustees may require the member to be reevaluated by a physician from time to time in order to determine whether he/she remains disabled under the standard described in this Section C.4.b. Such examinations will be made at the Fund's expense. The Board of Trustees may, at its discretion, suspend all disability benefits if the member fails to submit to such an examination or provide requested medical documentation.
- c. If a physician determines that a member is no longer eligible to continue to receive disability benefits under the standard described in Section C.4.b., the Board of Trustees may terminate disability benefits. The Board of Trustees shall have the power to reinstate any disability benefit which has been previously terminated provided the disabled member's condition has worsened due to the same cause for which he/she was originally disabled.
- d. If a disabled member recovers to the extent that his/her disability benefit is terminated and does not return to the employ of the Fire Department, then an amount equal to the excess, if any, of the member's own contributions (without interest) over the amount of payments which have been made on his/her behalf will be paid to him/her in a lump-sum payment.
- e. If a disabled member recovers to the extent that his/her disability benefit is terminated and does return to the employ of the Fire Department, all disability benefits will cease, and service and eligibility for all benefits will be restored.

D. Vested Termination Benefit

If a fire fighter, depending on his/her Eligibility for Service Retirement Benefit (see Section B 1 to 1.3) has served for the required number of years, but has not attained the age of 50, 52 or 55 (as applicable) at the time of termination of his/her service, he/she will be entitled to receive a deferred retirement income commencing at the end of the month in which he/she attains age 50, 52 or 55 (as applicable) in an amount equal to the retirement benefit in Section (B) above, determined by applying pay prior to termination of service and including the additional service benefit as applicable. To be entitled to receive this vested termination benefit, the firefighter is not required to make additional contributions between his/her date of termination of employment and the date he/she begins receiving benefits. Effective, May 13, 2015, all participating members and those qualifying for a vested termination benefit under this Section D are subject to PensionEZ projection estimates.

E. Death Benefits

1. The firefighter's spouse will receive a monthly benefit, beginning on the first day of the month following the firefighter's death, for as long as the spouse is alive and does not remarry, or remarries and subsequently divorces, under the conditions and in the amounts described below:
 - a. If the firefighter's death occurred while he/she was an employee of the Fire Department, two-thirds of the service retirement benefit based on his/her current service, but not less than 44.67% of his/her "Highest 60-Month Average Salary";
 - b. If the firefighter's death occurred while receiving a service retirement, or vested termination benefit, two-thirds of the amount being received;
 - c. If the firefighter's death occurred while receiving a disability benefit, the amount being received by the firefighter at time of death, unless the spouse would otherwise qualify for a benefit under Section E.1.d;
 - d. If (i) the firefighter's death occurred after termination of employment and after serving for the required number of years, depending on his/her Eligibility for Service Retirement Benefit (see Section B 1 to 1.3), (ii) the firefighter had not attained the age of 50, 52 or 55 (as applicable) at the time of his/her death, and (iii) the firefighter left his/her contributions on deposit with the fund, two-thirds of the amount to which he/she would have been entitled to at age 50, 52 or 55, whichever is applicable. Spousal benefits will begin on the first of the month following the deceased firefighter's 50th, 52nd or 55th birthday, whichever is applicable.
2. The child's benefit payable upon the death of a firefighter who was an employee of the Fire Department or who began receiving service retirement benefits or who terminated employment with 10 or more years of service or for new hires on or

after September 1, 2005, 15 or more years of service or for new hires on or after June 25, 2013, 20 or more years of service is as follows:

- a. Each unmarried child will receive a monthly benefit of 11.17% of the firefighter's "Highest 60-Month Average Salary" until age 18;
- b. If the spouse dies or remarries after being entitled to his/her allowance or if there is no spouse, each unmarried child will receive a monthly benefit of two-thirds of the service retirement benefit, but not more than 44.67% of the firefighter's "Highest 60-Month Average Salary" until age 18. For total benefit disbursement refers to Section E.5.a.

3. The child's benefit payable upon the death of a firefighter while receiving disability retirement benefits is as follows:

- a. Each unmarried child with a living parent will receive a monthly benefit of 10.00% of the firefighter's "Highest 60-Month Average Salary" until age 18;
- b. Each unmarried child without a living parent will receive a monthly benefit of 20.00% of the firefighter's "Highest 60-Month Average Salary" until age 18.

The benefits described in sections (2) and (3) above are payable from age 18 to age 22 as long as the child remains a full-time student between these ages, or after age 17 and for as long as the child remains totally disabled from a physical or mental illness, injury or mental retardation.

For purposes of the benefits described in sections (2) and (3) above, a child shall be defined as the unmarried, dependent offspring, either natural-born or adopted, of the firefighter.

4. If no spouse or child is entitled to a benefit under (1) or (2) or (3) above at the time of the firefighter's death, the amount the spouse would have received will be paid to the firefighter's legally dependent parents.

5. The sum of all benefits being paid or payable at any point in time shall not exceed:

- a. If the firefighter's death occurred while he/she was an employee of the Fire Department, the service retirement benefit as described in (B), based on his/her current service, but not more than 67% of his/her "Highest 60-Month Average Salary";
- b. If the firefighter's death occurred while receiving a service retirement or vested termination benefit, the amount being received;
- c. If the firefighter's death occurred while receiving a disability benefit, the aggregate amount of the benefits provided under Section E.1.C and E.3; or

- d. If the firefighter's death occurred after termination of employment with 10 years or more, or for new hires on or after September 1, 2005, with 15 or more years of service, but before reaching age 50, the amount to which he/she would have been entitled to at age 50. For new hires on or after June 25, 2013, with 20 or more years of service, but before reaching age 52, the amount to which he/she would have been entitled to at age 52. For new hires on or after January 1, 2016, with 20 or more years of service, but before reaching age 55, the amount to which he/she would have been entitled to age at 55.

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 pro-rata share of those benefits if the sum of the benefits still exceeds the above-mentioned limit.

6. If no spouse, child or dependent parent is entitled to an allowance under (1), (2), (3), (4) or (5) above, no further benefits will be paid on behalf of the deceased firefighter. However, the estate of a deceased firefighter may withdraw all of the deceased's member's accumulated contributions if a survivor or alternative monthly benefit is not payable as a result of death.
7. If the firefighter's spouse remarries, no further monthly payments will be made to his/her spouse after the date of his/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 payments which have been made on behalf of the firefighter, spouse and children may be paid to his/her spouse in a lump-sum payment. Notwithstanding any other provision to the contrary, if a settlement is made to the spouse under this paragraph, such spouse shall not be entitled to any benefits upon subsequent divorce.
8. To be eligible to receive benefits as a surviving spouse of a deceased retiree, a person also must have married the deceased before the deceased's retirement. To be eligible to receive benefits as a surviving spouse of a deceased member who had terminated employment with or otherwise discontinued service for the fire department, a person also must have married the deceased before the termination or discontinuance.

F. Return of Firefighter's Own Contributions

If a firefighter terminates his/her service and he/she is not entitled to a benefit as described above, he/she will receive an amount equal to the excess of his/her own contributions (including a reemployed firefighter's buy back payments described in Section (G) below) to the fund over the amount of benefits which he/she has previously

received from the fund. A firefighter whose service is terminated after 10 years of service or 15 years for a firefighter hired on or after September, 1 2005, or 20 years of service for a firefighter hired on or after June 25, 2013, may elect to receive, at the time of his/her termination, his/her own contributions to the Fund; however, if he/she makes such an election, he/she will forfeit his/her right to all benefits which he/she otherwise would have been entitled to receive.

Members eligible for service retirement or receiving disability benefits are not permitted to withdraw their contributions. The amount refunded (1) shall not include any interest accumulated on the account of the firefighter's contributions; (2) shall not include the City's contribution; and (3) will be less any tax required to be withheld.

G. Buy Back of Previous Employment Service Credit

If a firefighter's service was terminated and he/she withdrew his/her own contributions, upon rehire he/she will be allowed to purchase credit for his/her prior employment service. Purchase will be allowed in full years and completed months.

A reemployed firefighter must decide whether or not to buy back prior service within the first six months of reemployment by making written application for purchasing his/her prior employment service.

The Board of Trustees shall adopt from time to time the cost factors used to determine the payment required for purchasing prior employment service. The cost factors will be based on the plan's benefit levels and actuarial assumptions used by the Fund's actuary.

A reemployed firefighter may elect to pay for the prior employment service using either of the following two methods:

- a. A single lump-sum payment may be made to the Fund at any time within the first year of reemployment; or
- b. A series of level percentage of pay payments coinciding with each of the next 26 pay checks.

H. Deferred Retirement Option Provision (DROP)

If a firefighter is eligible for a service retirement as described in Section (B) (1); (1.1); and (1.2) above, he/she may elect an alternative form of retirement known as the Deferred Retirement Option Provision ("DROP"). Election of the DROP will preclude the election of the Reverse DROP in Section (I) or the payment of the regular service retirement benefit in Section (B).

Under the DROP, a firefighter is treated by the Fund as if he/she has retired. His/her "Highest 60-Month Average Salary" is calculated, and his/her monthly pension is determined according to the provisions of Section (B) (1); (1.1); (1.2); and (1.3) above, based on pay and service to the date he/she elected to participate in the DROP. The

firefighter may participate in the DROP for a period of time, up to a maximum of six years (the "DROP Period"). During the DROP Period, he/she continues to work for the Fire Department in his/her regular capacity. An bookkeeping account of his/her contributions to the Fund will be kept in his/her name. The amount of the monthly pension that the firefighter would have received if retired from the Fire Department ,as calculated above, are credited to the account in his/her name. His/her monthly contributions to the Fund for the DROP Period are also credited to the firefighter's account.

By electing a DROP, the firefighter is in effect agreeing to retire from the Fire Department at the end of the DROP period. If the firefighter fails to retire from the Fire Department at the end of the DROP Period, (1) no more amounts will be credited to the firefighter's DROP Account, and the firefighter will not be entitled to receive the monthly annuity amount or have access to his/her DROP account while in active service, (2) the firefighter will continue to make contributions to the Fund, but will receive no service for periods following the DROP Period, and (3) the firefighter will not be entitled to the refund of any contributions made following the DROP Period.

The marriage or remarriage by the firefighter after he/she elects the DROP will not cause benefits to accrue to the spouse. For these purposes, the effective date of retirement is date DROP begins.

The firefighter may leave the DROP at any time within the six year period by retiring from active duty with the Fire Department. At the time that the firefighter does leave the DROP, he/she/she is entitled to receive the amount which has accumulated in the fund under his/her account, by making an irrevocable decision in accordance with the provisions of Section J below. The Fund must be given a 90-day notice for a member to withdraw funds from his/her DROP account.

He/she is also entitled to begin receiving his/her monthly pension that was previously being credited monthly into his/her DROP account upon leaving the DROP.

If the firefighter dies while he/she is participating in the DROP, the spouse's monthly death benefit will be determined based on pay and service to the date the firefighter entered the DROP and the provisions of Section E above.

I. Reverse Deferred Retirement Option Provision (Reverse DROP)

A firefighter who has reached the age of 50 and has completed 20 years of service, and completed additional months of service (up to 36 months), may elect an alternative form of retirement known as the Reverse Deferred Retirement Option Provision ("Reverse DROP").

A firefighter, hired on or after June 25, 2013, who has reached the age of 52 and has completed 20 years of service and completed additional months of service (up to 36 months), may also elect the Reverse DROP.

A firefighter, hired on or after January 5, 2016, who has reached the age of 55 and has completed 20 years of service and completed additional months of service (up to 36 months), may also elect the Reverse DROP.

Election of the Reverse DROP will preclude the election of the DROP in Section (H) or the payment of the regular service retirement benefit in Section (B). The firefighter may request those additional months of service be applied to the Reverse DROP - however, these months may not exceed 36 months.

Example: Firefighter is 54 years and 6 months in age; and has 22 years 6 months of service. He/she can request the Reverse DROP; back to age 52, with 2 years and 6 months of service applied to his/her reverse DROP.

The monthly pension under the Reverse DROP is determined according to the provisions of Section (B), based on his/her "Highest 60-Month Average Salary" and service to the date for up to three years prior to when he/she elected to participate in the Reverse DROP. A special account/record is established within the Fund in the member's name, and, as of the election date, it will equal up to 36 of the calculated monthly pension payments plus the member's own contributions during such elected period.

The firefighter will retire upon making the election for the Reverse DROP. Upon retirement, he/she is entitled to receive the amount contributed, by making an irrevocable decision in accordance with the provisions of Section J below.

If the firefighter dies after electing the Reverse DROP, the spouse's monthly death benefit will be determined as two-thirds of the monthly pension he/she was entitled to receive.

J. Payment of Special Accounts for DROP Participants

A firefighter who elected either the DROP or Reverse DROP must make an irrevocable decision to request payment of the accumulation of his/her contributions as follows:

Early payment of the entire account in a lump-sum, prior to the DROP maturity date, must give a 90 day notice of Fund withdrawal,

If the firefighter dies while he/she is participating in the DROP or after electing the Reverse DROP, his/her spouse will be entitled to receive a lump-sum equal to the remaining accumulation in his/her special account.

K. Contributions

1. Effective January 6, 2016, each active Lufkin firefighter will make contributions of 14.2% of his/her total pay (including regular, longevity, and overtime pay, but excluding lump-sum distributions for unused sick leave or vacation and car allowances). Each Lufkin firefighter who elects the DROP will make contributions of 14.2% of his/her total pay (including regular, longevity and

overtime pay and lump-sum distributions for unused sick leave or vacation, but excluding car allowances).

2. Effective October 29, 2014, the City will make contributions of each active firefighter's total pay (including regular, longevity, and overtime pay, but excluding lump-sum distribution for unused sick leave or vacation and car allowances,) at a contribution rate equal to (a) the current contribution rate paid by the City to the Texas Municipal Retirement System (TMRS), including any portion of such rate relating to the TMRS Supplemental Death Benefit plus (b) 6.2% to reflect Social Security contributions not made by the City on behalf of firefighters. The City will make contributions at the rate described above for each firefighter who elects the DROP on total pay (including regular, longevity and overtime pay and lump-sum distributions for unused sick leave or vacation, but excluding car allowances.) Notwithstanding the above, in no event shall the City's contribution rate be less than is required by the Act.

L. Qualified Domestic Relations Order

Any member whose benefits may be affected by a domestic relations order must submit a Qualified Domestic Relations Order (QDRO) to the Chairman of the Board. Such QDRO shall comply with Chapter 804 of the Texas Government Code, as amended and related regulations. Any expense incurred by the Board to confirm compliance with the Texas Government Code, as amended, and related regulations, including legal Fees, shall be paid by the member or the affected spouse in advance

M. Plan Effective Date

In witness whereof, this Plan has been executed and to be effective 3-8-17, except as otherwise provided herein. Provisions of the Act shall govern where not superseded herein.

N. Qualification Under Federal Tax Law

1. Qualified Plan. All assets contributed to the Fund will be held in trust, separate from the assets of the City, and maintained and administered by the Board of Trustees 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 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 Internal Revenue Code of 1986, as amended (the "Code"), be exempt from federal income taxes under Section 501(a) of the Code, 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 N. is subject to more than one construction, one of which will permit the qualification of the Fund, that

construction that will permit the Fund to qualify and conform will prevail. At no time shall any part of the assets of the Fund revert back to the City unless the reversion is due to a good faith mistake of fact. The Plan intends to satisfy IRC Section 401(a) by meeting the requirements of Section 414(d).

2. *Code Section 415 Limits.* IRC Section 415 and the regulations are hereby incorporated by reference, including the definition of annual additions. The IRC Section 415 dollar limit is not reduced prior to age 62 as provided under IRC 415(b)(2)(G). For IRC Section 415 purposes, any repayment of contributions and earnings which were previously refunded due to a forfeiture of service credit under IRC Section 415(k)(3) are not taken into account.

A member or beneficiary of a member of the Fund may not accrue a benefit, in excess of the benefit limits applicable to the Fund under Section 415 of the Code. The Board shall reduce the amount of any benefit that exceeds those limits by the amount of the excess. If the total benefits under this Fund and the benefits and contributions to which any member is entitled under any other qualified defined benefit plan maintained by the City that employs the member would otherwise exceed the applicable limits under Section 415 of the Code, the benefits the member would otherwise receive from the Fund shall be reduced to the extent necessary to enable the benefits to comply with Section 415 of the Code.

For purposes of determining applicable benefit limitations under Code Section 415, the limitation year shall be the calendar year.

3. *Required Minimum Distributions.* The member's entire interest under the Fund shall be distributed, or begin to be distributed, by the required beginning date, and any distribution under the Fund shall at all times comply with and conform to the requirements of Section 401(a)(9) of the Code and Treasury Regulations §§1.401(a)(9)-1 through 1.401(a)(9)-9 (the "401(a)(9) Requirements"). A member's required beginning date shall be April 1 of the year after the later of the year in which the member leaves active service with the Fire Department or the year in which the member attains age 70½. Any distribution required under the incidental death benefits requirements of Code Section 401(a) shall be treated as a distribution required by the 401(a)(9) Requirements. The provisions of this Section N.3. shall override any distribution options inconsistent with the 401(a)(9) Requirements.
4. *Rollovers.* Any member or eligible beneficiary who is entitled to receive any distribution that is an eligible rollover distribution is entitled to have that distribution transferred directly to another eligible retirement plan of the member's or eligible beneficiary's choice on providing direction to the Fund regarding that transfer in accordance with procedures established by the Board. In addition, if the amount of an eligible rollover distribution is greater than \$1000.00 and is not being distributed to a surviving spouse, beneficiary or

alternate payee under pursuant to Section L, such amount may not be distributed without written consent. For purposes of this Section N.4., the following terms shall be defined as provided below:

- a. 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 beneficiary, or for a specified period of ten years or more; any amount that is distributed on account of hardship or unforeseeable emergency; any distribution to the extent such distribution is required under Code section 401(a)(9); the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities described in Code section 402(e)(4)); and other amounts determined to not be eligible rollover distributions under applicable law, including the Code and regulations issued pursuant to the Code (see, Regulation § 1.402(c)-2, Q&A-4).
- b. An “eligible retirement plan” is an individual retirement account described in Code section 408(a), an individual retirement annuity (other than an endowment contract) described in Code section 408(b), that accepts the distributee’s eligible rollover distribution, a qualified retirement plan described in section 401(a) or section 403(a), of the Code, a tax sheltered annuity plan 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. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in section 414(p) of the Code; provided, however, if the distributee is a beneficiary of a deceased member who is not a surviving spouse, 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. A “distributee” includes a member, the spouse or beneficiary of a deceased member to the extent permitted in Code Section 402(c)(11), and member’s spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code section 414(p).

- d. A "direct rollover" is a payment by the Fund to the eligible retirement plan specified by the distributee. The Fund shall be responsible for providing, within a reasonable period of time prior to making an eligible rollover distribution, an explanation to a member of his or her right to elect a direct rollover and the income tax withholding consequences of not electing a direct rollover.
5. *Normal Retirement Age.* The normal retirement age for a member shall be as described in Section B 1 to 1.2 The retirement benefit earned by a member shall become nonforfeitable upon attainment of normal retirement age. In addition, the retirement benefit earned by a member 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 to the Fund.
6. *Forfeitures.* Amounts representing forfeited non-vested benefits of terminated members may not be used to increase benefits payable from the Fund but may be used to reduce contributions for future plan years.
7. *Code Section 401(a)(17) Limits.* The total compensation taken into account for any purpose for any member of the Fund may not exceed that annual compensation limit under Code Section 401(a)(17), as shall be periodically adjusted in accordance with guidelines provided by the United States Secretary of the Treasury. For 2016, such annual compensation limit is \$265,000.
8. *Fund Implementation.* The Board shall implement this Fund in a manner that preserves the tax qualification of the Fund under the Code and may amend this Plan document or adopt any rule, policy or procedure to the extent necessary to retain tax qualification.
9. *USERRA and HEART Act.* Notwithstanding any provision in the Fund to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Code Section 414(u) and 401(a)(37), including, without limitation, in accordance with the provisions set forth below.
 - a. *Definitions.* For purposes of this Section 9, the following terms shall be defined as provided below:
 - (1) *Differential Wage Payment.* The term "Differential Wage Payments" means any payment as defined in Code §3401(h) which is made by the City for a pay period after December 31, 2008, and that (a) is made to a member with respect to any period during which a member is performing Qualified Military Service; and (b) represents all or a portion of the remuneration such member would have received from the City if the individual was performing services for the department.

(2) **Qualified Military Service.** 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 member if such member is entitled to USERRA Reemployment Rights under such chapter with respect to such service.

(3) **USERRA Reemployment Rights.** The term “USERRA Reemployment Rights” means the rights and benefits to which a member covered under USERRA is entitled upon his or her return from Qualified Military Service. A member will not be entitled to USERRA Reemployment Rights if (a) such member did not provide advance notice of his or her military service to the department; or (b) such individual had more than five years of cumulative Qualified Military Service measured from his or her date of hire to his or her date of return to employment with the department.

b. Death Benefits.

(1) **Deemed Reemployment Date.** A member who dies on or after January 1, 2007, while performing Qualified Military Service (an “Eligible Deceased Member”) will be deemed (a) to have resumed employment with the department as of the day preceding the date of his or her death (the “Deemed Reemployment Date” for purposes of this Section); and (b) to have terminated service on the date of his or her death.

(2) **Additional Benefits.** To the extent the Fund provides for any benefits that are contingent upon the member’s death, then an Eligible Deceased Member will be provided with such benefits. Such benefits must be provided to all similarly-situated individuals in a uniform, non-discriminatory manner.

(3) **Service.** An Eligible Deceased Member shall receive service under the Fund for the period of the Qualified Military Service during which the member died for purposes of attaining eligibility to receive the benefits provided under the Fund, but shall not receive (i) service under the Fund for purposes of the calculation of the benefits, if and to the extent service is utilized in the calculation of such benefits or (ii) any other benefit accrual for such period.

c. Differential Wage Payments.

(1) **Employee Status.** Effective January 1, 2009, an individual receiving Differential Wage Payments from the City 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.

- (2) **Total Pay.** The term "total pay" as used in the Fund document for purposes of calculating benefits or determining contributions will not include any amounts paid by the City as a Differential Wage Payment, and Differential Wage Payments shall not be used in calculating any benefit to which a member is or may become entitled."

10. *Exemption of Benefits from Judicial Process, Assignment or Alienation.*

- a. Without limiting Section 5 of the TLFRA Act and subject to Section L herein, all assets held in trust under the Fund, and all rights and all accrued and accruing benefits of any member, may not be (A) held, seized, taken, subjected to, or detained or levied on by virtue of any execution, attachment, garnishment, injunction, or other writ, order, or decree, or any process or proceedings issued from or by any court for the payment or satisfaction, in whole or in part, of any debt, damage, claim, demands, or judgment against any member entitled to Benefits, or (B) assigned or otherwise alienated.
- b. The preceding provisions of this Section N. shall not preclude the withholding of Federal taxes from pension benefits, the recovery by the Trustees of overpayments of benefits previously made to any person, the direct deposit of benefit payments to an account in a bank, savings and loan association or credit union (provided such arrangement is not an alienation), or, pursuant to any policy adopted by the Board and uniformly applied to any voluntary arrangement for the withholding and direct payment of health care or life insurance premiums or similar payments from his or her monthly benefit payments. An attachment, garnishment, levy, execution or other legal process is not considered a voluntary arrangement.

11. *Definition of Highly Compensated Employee.* If the definition of "highly compensated employee" is ever used in this Plan or for purposes of its administration, such term shall only include the Fire Chief.

O. Miscellaneous

1. *Board Meetings.* The Board of Trustees will meet the second Wednesday of each month, but may change the meeting by a majority vote of a quorum if necessary.
2. *Entire Agreement.* This document and the provisions of the Act shall constitute the entire agreement concerning Plan matters among the parties involved. No person shall have any right to the principal of or any income of the Fund, which is held in trust, except as specifically provided under the Plan or the Act.
3. *No Right to Continued Employment.* Nothing in this Plan shall be construed to give any employee the right to remain an employee of the City or to change the terms of his / her employment.

4. *Processing of Benefit Applications.* Effective December 9, 2015, the Plan Administrator will have the authority to process all applications for benefits and present to the Board of Trustees such applications for its approval at its next scheduled meeting.
5. *Benefit Changes and Membership Vote.* Before any benefit change can be brought to the a vote of the participating members, which may have a net negative effect to the Plan/Fund, two regularly scheduled---concurrent---actuarial studies must be done and must be in agreement.
6. *Plan Administration.* In administering the Plan, the Board has full and absolute authority to (a) adopt written rules and guidelines for the administration of the Plan; (b) interpret and construe the Plan; (c) correct any defect, supply any omission, and reconcile any inconsistency in the terms of the Plan; and (d) determine all legal and factual questions pertaining to Plan administration and eligibility for membership, services, and benefits. The determination of any fact by the Board and the Board's interpretation of Plan are final and binding on any interested party.

Executed this day 8 of March, 2017.

**Board of Trustees,
Lufkin Firemen's Relief and Retirement Fund**

By: [Signature]
Printed Name: Rufus H. Durcens
Trustee

By: [Signature]
Printed Name: KEITH WRIGHT
Trustee

By: [Signature]
Printed Name: Jimmy Ragsdale
Trustee

By: [Signature]
Printed Name: William Grades
Trustee

By: [Signature]
Printed Name: Levi Cole
Trustee

By: [Signature]
Printed Name: Hilary H. Walker
Trustee

By: [Signature]
Printed Name: Tom Mannich
Trustee