

AMENDED AND RESTATED RETIREMENT PLAN FOR THE CITY OF
MOBILE POLICE AND FIREFIGHTERS

ARTICLE 1. DEFINITIONS. As used in this Plan, the following words and terms shall have meanings as follows:

1.01 ANNUITY STARTING DATE. The first day for which a benefit is payable as an annuity or any other form under 5.01.

1.02 BENEFICIARY. The person or persons named by a Member by written designation filed with the Board to receive payments under this plan after the Member's death. The Member may not change his or her Beneficiary after his or her annuity starting date. If no Beneficiary designation is in effect at the Member's death, or if no person so designated survives the Member, the Member's surviving spouse, if any, shall be deemed to be the Beneficiary; otherwise the Beneficiary shall be the Member's estate.

1.03 BOARD. The Police and Fire Pension Board as constituted under 7.01, or its delegate.

1.04 BREAK IN SERVICE. A period of absence which would constitute a break in the Member's service under the Mobile County Personnel Board rules; provided, however, that periods of leave and periods of service in the uniformed services of the United States determined in accordance with 3.02 of the plan, shall not constitute a break in service.

1.05 CITY. The City of Mobile, Alabama.

1.06 CODE. The Internal Revenue Code of 1986, as amended from time to time.

1.07 EQUIVALENT ACTUARIAL VALUE. The equivalent value when computed on the basis of the 1995 Buck Mortality Table (Male) for Members, the 1995 Buck Mortality Table (Female) for Beneficiaries and an interest rate of seven percent per year, compounded annually.

1.08 FINAL AVERAGE SALARY. For a Member who first became a uniformed officer prior to March 28, 1990, the average of the Member's highest salary for the 36 months of the previous ten years of service and for a Member who first became a uniformed officer on or after March 28, 1990, the average of the Member's highest salary for the 60 months of the previous ten years of service. For purposes of this definition, a uniformed officer who has a break in service exceeding one year shall be deemed to first become a uniformed officer on his or her first day of service after his or her last break in service. Notwithstanding anything to the contrary in this section, if a Member becomes

disabled under 4.02(a) prior to completing 36 or 60 months of service, as the case may be, his or her final average salary shall be the average of his or her salary for all months of service.

1.09 FUND. The assets of the plan held in trust by the board pursuant to 8.01 of the retirement plan.

1.10 HIGHLY COMPENSATED EMPLOYEE. An individual described in Section 414(q) of the Code.

1.11 LEAVE. A period of absence from work during which the Member is entitled to a leave under the provisions of the Family and Medical Leave Act of 1993 and its regulations (i) in order to care for the Member's child following the birth of the child, (ii) because of the placement of a child with the Member for adoption or foster care, (iii) because of a serious health condition that makes the Member unable to perform his or her duties as a uniformed officer, or (iv) for purposes of caring for his or her child, spouse, or parent having a serious health condition. See section 3.02 of the Plan for special rules related to military service.

1.12 MEMBER. Any person included in the membership of the plan, as provided in Article 2.

1.13 PLAN. The City of Mobile, Alabama Police and Firefighters Retirement Plan, as provided for herein.

1.14 PLAN YEAR. The 12-month period beginning on any October 1.

1.15 SALARY. A Member's salary as a uniformed officer determined in accordance with the pay plan for the Mobile County Personnel Board. Such term shall include base pay only. Salary shall not include such items as overtime and bonuses nor contributions made to a qualified transportation plan, within the meaning of Code Section 132(f) and before-tax or salary deferral contributions made under Code Section 125, 401(k) 402(g) (3), 457(b) or 414(h) to this Plan or any other plan maintained by the City.

(a) Notwithstanding the foregoing, for Plan Years beginning on or after January 1, 1994, the salary of any uniformed officer taken into account under the Plan shall not exceed the "OBRA '93 annual compensation limit". The "OBRA '93 annual compensation limit" is \$150,000 for determination periods beginning prior to January 1, 2002 and is \$200,000 for determination periods beginning on or after January 1, 2002, both as adjusted for increases in the cost of living in accordance with Section 401(a)(17) (B) of the Code.

(b) The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which Salary is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the "OBRA '93 annual compensation limit" will be multiplied by a fraction, the numerator of which is the number of months in the determination period and the denominator of which is 12.

(c) For Plan Years beginning on or after January 1, 1994, any reference in this Plan to the limitation under Section 401(a)(17) of the Code shall mean the "OBRA '93 annual compensation limit" set forth in this provision.

(d) If Salary for any prior determination period is taken into account in determining a Member's benefits accruing in the current Plan Year, the salary for that prior determination period is subject to the "OBRA '93 annual compensation limit" in effect for that prior determination period. For this purpose, for determination periods beginning before the first day of the first Plan year beginning on or after January 1, 1994, the "OBRA '93 annual compensation limit" is \$150,000.

1.16 SERVICE. Service recognized in accordance with the provisions of Article 3 for purposes of determining a Member's eligibility for a benefit under the plan and the amount of that benefit.

1.17 UNIFORMED OFFICER. A person employed by the City's police department or fire department as a police officer or firefighter, as the case may be, who (a) is certified as a police officer or firefighter by the State of Alabama, (b) is in training to be certified by the State of Alabama as a police officer or firefighter, (c) is employed by the City's police department or fire department other than as a certified police officer or firefighter and who was a participant in the Plan immediately preceding the date this Plan became effective in accordance with Section 10.10, or (d) is in the police or fire cadet program. However, notwithstanding anything to the contrary in this Section 1.17, any employee who elected not to participate in the plan in accordance with the provisions of the act of April 30, 1986, Act 86-475, Section 11 shall not be considered a uniformed officer for any purpose under the plan for any period prior to his election to again be covered by this plan. Upon making such an election the employee shall be considered a uniformed officer for periods beginning on and after his election is effective, but only if he otherwise meets the requirements of this Section 1.17. Any election by such a former uniformed officer to again be treated as a uniformed officer shall be made in a time and manner determined by the Board.

ARTICLE 2. MEMBERSHIP.

2.01 Membership Requirements.

Every uniformed officer shall be a Member in this Plan as of the date he or she first becomes a uniformed officer. Membership in this Plan shall be mandatory for all uniformed officers.

2.02 Events Affecting Membership.

A person's membership in the Plan shall end when he or she is no longer employed as a uniformed officer or, if he or she is entitled to benefits under the Plan, when those benefits have been distributed to him or her. Membership shall continue while on leave, or other leave of absence approved by the Board or during periods of service in the uniformed services of the United States, as defined in 3.02(c), but no service shall be counted for periods except as specifically provided in Article 3. A person's benefit shall be determined in accordance with the provisions of the Plan in effect on the date he or she ceases to be a uniformed officer.

2.03 Membership Upon Reemployment.

If a uniformed officer's membership in the Plan ends and he or she again becomes a uniformed officer, he or she shall again become a Member on the date he or she again becomes a uniformed officer.

ARTICLE 3. SERVICE.

3.01 Service.

Except as otherwise provided in this article, a Member's service shall be his or her period of service as a uniformed officer as determined in accordance with the Mobile County Personnel Board Rules. Service performed other than as a uniformed officer shall not be included in a member's service except as provided in 3.02.

3.02 Military Service.

(a) If a member shall have been absent from service as a uniformed officer because of service in the uniformed services of the United States and if he or she shall

have returned to service as a uniformed officer having applied to return while his or her reemployment rights were protected by law, that absence shall not count as a break in service.

(b) If the member who returns to service as a uniformed officer in accordance with paragraph (a) above makes the contributions that would have been required by 6.03 had he or she not been in the uniformed services, his or her period of service in the uniformed services shall be counted as service. The member may make those contributions at any time within a period beginning on his or her return to service as a uniformed officer which is equal to three times his or her period of service in the uniformed services, but not longer than five years. For purposes of determining the amount of the member's contributions that would have been required by 6.03, a member's salary during his or her period of service in the uniformed services shall be deemed to be the salary he or she would have received for that period had he or she remained employed as a uniformed officer or, if that salary is not reasonably certain, his or her average salary for the 12-month period immediately preceding his or her service in the uniformed services.

(c) For purposes of 3.02, the terms "service in the uniformed services of the United States" and "uniformed services" shall have the meanings given to those terms in Sections 4303(13) and 4303(16) of the Uniformed Services Employment and Reemployment Rights Act of 1994, respectively.

3.03 Restoration of Retired Member or Other Former Member to Service.

(a) If a member entitled to a benefit under 4.01, 4.02, or 4.03(a) of the plan is restored to service as a uniformed officer, any benefit he or she may be receiving under Article 4 shall cease and any election of an optional benefit in effect shall be void.

- (1) If he or she is restored to service as a uniformed officer before he or she has a break in service exceeding one year, any service to which he or she was entitled when he or she retired or terminated service shall be restored to him or her, and upon his or her later retirement or termination, his or her benefit shall be based on the benefit formula then in effect and his or her salary and service before and after his or her break in service, reduced by an amount that is of equivalent actuarial value to the benefits he or she received under 4.01 or 4.03(a), if any, before his or her restoration to service.
- (2) If he or she is restored to service as a uniformed officer after having a break in service exceeding one year, his or her service prior to the break in service shall be restored to him or her. Upon his or her later retirement or

termination, the benefit he or she received under 4.01 or 4.03(a), if any, prior to his or her break in service shall recommence plus he or she shall receive an additional amount determined under the provisions of Article 4 based on his or her service and his or her salary after his or her break in service. However, the member shall not be entitled to an additional benefit under 4.01 or 4.03(a) unless he or she has at least 10 years of service after he or she is restored to service, and the last 10 years of the service are without a break in service exceeding one year.

(b) If a member who has received a distribution of his contributions to the plan under Section 4.03(b) is restored to service as a uniformed officer and he or she repays the amount he or she received under Section 4.03(b) of the plan plus 10 percent interest per annum, his or her period of service as a uniformed officer prior to his or her termination of employment shall be restored to him or her and shall be counted as service. The member may repay the amount at any time within a period beginning upon his return to service as a uniformed officer which is equal to three times his or her period of service prior to his or her termination of employment, but not longer than five years. Upon his or her subsequent retirement or termination of employment, his or her benefit shall be based on his or her service both before and after his or her initial termination of employment. However, the member shall not be entitled to any benefit under this plan after he or she is restored to service as a uniformed officer unless he or she has at least 10 years of service without a break in service exceeding one year after he or she is restored to service.

(c) If a member who has received a distribution of his or her contributions to prior versions of this plan of September 2, 1964, is restored to service as a uniformed officer and he or she repays the amount he or she received plus 10 percent interest per annum, his or her period of service as a uniformed officer prior to his or her termination of employment shall be restored to him or her and shall be counted as service. Provided, however, that any member desiring to purchase service under this Section 3.03(b) shall repay the amount not later than five years from the effective date of this act. Upon his or her subsequent retirement or termination of employment, his or her benefit shall be based on his or her service both before and after his or her initial termination of employment. However, the member shall not be entitled to any benefit under this plan after he or she is restored to service as a uniformed officer unless he or she has at least 10 years of service without a break in service exceeding one year after he or she is restored to service.

ARTICLE 4. ELIGIBILITY FOR AND AMOUNT OF BENEFITS.

4.01 Retirement.

(a) Except as provided in 4.07, a member who first became a uniformed officer prior to March 28, 1990, and who terminates his or her employment as a uniformed officer on or after he or she has 20 years of service, the last 10 years of service being without a break in service exceeding one year, shall have a nonforfeitable right to receive an annual benefit beginning on the first day following the later of his or her termination of employment as a uniformed officer or his or her 50th birthday. His or her annual benefit shall be equal to two and one-half percent of his or her final average salary multiplied by his or her years of service, but shall not be less than 50 percent, nor more than 75 percent, of his or her final average salary.

(b) Except as provided in 4.07, a member who first became a uniformed officer on or after March 28, 1990, and who terminates his or her employment as a uniformed officer on or after he or she has 20 years of service, the last 10 years of service being without a break in service exceeding one year, shall have a nonforfeitable right to receive an annual benefit beginning on the first day following the later of his or her termination of employment as a uniformed officer or his or her 55th birthday. His or her annual benefit shall be equal to the sum of (i) two and one-half percent of his or her final average salary multiplied by his or her years of service not in excess of 20 years, plus (ii) two and one-fourth percent of his or her final average salary multiplied by his or her years of service in excess of 20 years, but not less than 50 percent, nor more than 72 1/2 percent, of his or her final average salary.

(c) For purposes of 4.01, a uniformed officer who has a break in service exceeding one year shall be deemed to first become a uniformed officer on his or her first day of service after his or her last break in service.

4.02 Disability.

(a) *Non-Service Connected Benefit.* If a member who has at least 15 years of service becomes permanently physically or mentally disabled other than while performing his or her duties as a uniformed officer by reason of a disability not described in Section 4.02(b)(2), he or she shall receive a monthly disability benefit equal to two and one-half percent of his or her final salary multiplied by his or her years of service, but not more than 60 percent of his or her final salary.

(b) *Service Connected Benefit.* If: (1) any member becomes permanently physically or mentally disabled while performing his or her duties as a uniformed officer other than due to causes specified in 4.02(b)(2) below; or (2) any member who has completed 3 years of service as a uniformed officer becomes permanently physically or mentally disabled due to:

- (A) hypertension,
- (B) heart disease,
- (C) respiratory disease,
- (D) AIDS,
- (E) hepatitis, or
- (F) cancer

then the member shall receive a monthly disability benefit equal to 45 percent of the member's final salary at the time the member became disabled; provided, however, any member who can demonstrate to the board that he or she is totally disabled from any gainful employment, shall receive a benefit equal to 60 percent of the member's final salary at the time the member became disabled.

(c) *Disability Standards.* A member shall be permanently physically or mentally disabled if:

- (1) There is no other job or service within his or her merit system classification that he or she is capable of performing; and
- (2) Upon entering service as a uniformed officer he or she successfully passed a board-approved physical examination, whether or not such examination was required to enter service as a uniformed officer, which failed to reveal any evidence of a condition which could cause his or her disability.

(d) *Disputes.* Any dispute as to whether a job or service is within the member's merit system classification shall be determined solely by the Mobile County Personnel Board in accordance with its rules and regulations governing such matters.

(e) *Presumption.* If a member is disabled within the meaning of 4.02(b)(2) due to hypertension, heart disease, respiratory disease, AIDS, hepatitis or cancer, his or her disability shall be deemed to have occurred while performing his or her duties as a uniformed officer if:

- (1) He or she has completed three years of service as a uniformed officer;
- (2) The AIDS, hepatitis, or cancer manifests itself no later than the end of the tenth year following the member's retirement from service, regardless of the member's annuity starting date; and
- (3) The city fails to prove by a preponderance of the evidence that the hypertension, heart disease, respiratory disease, AIDS, hepatitis or cancer

was caused by some other means or not caused while performing his or her duties as a uniformed officer.

(f) *Reduction in Amount.* The disability benefit paid under this article to any member shall be reduced prior to:

- (1) his or her 50th birthday in the case of a member who first became a uniformed officer prior to March 28, 1990, or
- (2) his or her 55th birthday in the case of a member who first became a uniformed officer on or after March 28, 1990, to the extent necessary to prevent the sum of the member's disability benefit plus any earnings, as defined in Section 203(f)(5) of the Social Security Act, received by the member from exceeding 150 percent of the member's rate of salary determined immediately prior to his or her disability. Any member to whom this paragraph (f) applies shall submit by June 1 of each year a true and correct copy of his or her federal and state income tax returns for the preceding year or other evidence of income as the board may determine.

(g) *Commencement.* A member eligible to receive a disability benefit under this article shall begin to receive the benefit on the first day following the date the board approves his or her application for a disability benefit and he or she shall continue to receive the benefit only until the earlier of the date he or she ceases to be disabled as provided in 4.02(h) or his or her death. If a member receiving a disability benefit under 4.02 is found to be no longer disabled, he or she shall be entitled to receive a benefit under 4.01 if he or she met the requirements for such a benefit prior to the date he or she first became disabled.

(h) *Proof of Disability.* Members shall submit annually, and at such other times as ordered by the board, such statements or other evidence of his or her disability as may be required by the board, including the results of an examination by physicians or other health professionals selected by the board. Any member applying for or in receipt of any disability benefits under this section who refuses to provide the evidence of disability or to allow the examination shall not receive any disability benefits from this plan until he or she complies with the board's request.

(i) *Notice; Hearing; Benefit Termination.* If the board has reasonable cause to believe that a member receiving a disability benefit is no longer disabled, the board shall, upon notice, conduct a hearing to determine the member's continued eligibility for the benefit and to ascertain whether the member has received any payments for which the member was ineligible. If the board finds that the member is no longer disabled, the board shall discontinue the member's benefit payments. The board may also file suit in the

circuit court to recover any payments made to any member who has been found to be ineligible to receive those payments. If the board is the prevailing party in the action, it may also recover its reasonable attorney's fees for bringing the suit.

4.03 Termination of Employment.

(a) A member who terminates his or her employment as a uniformed officer, other than by reason of death or disability, after he or she has 15 years of service, the last 10 years of service being without a break in service exceeding one year, but before he or she is eligible to receive a benefit under 4.01 of the plan, shall receive a benefit equal to the benefit he or she would otherwise receive under 4.01. The benefit shall be payable in accordance with the provisions of Article 5 beginning on the first day following the later of his or her termination of employment as a uniformed officer or his or her 65th birthday.

(b) If a member who does not have at least 15 years of service, the last 10 years of service being without a break in service exceeding one year, terminates his or her employment as a uniformed officer before becoming eligible for a retirement benefit under 4.01 for any reason other than death or disability, he or she shall receive a single sum equal to his or her contributions to the plan under 6.03 as soon as practicable following his or her termination of employment.

4.04 Death.

(a) If a member eligible for a retirement benefit under 4.01 or a member eligible for a benefit under 4.03(a) dies prior to his or her annuity starting date, his or her eligible family members shall receive a benefit equal to the greater of:

- (1) the benefit they would have received had the member met the requirements of 4.01 or 4.03(a) of the plan, as the case may be, retired, or terminated employment on the day preceding his or her death and begun to receive his or her benefit in accordance with the 50 percent survivor's benefit in Option 2 of 5.02 or
- (2) a single sum equal to the lesser of (A) twice the member's contributions to the plan under 6.03 or (B) the sum of the member's contributions to the plan under 6.03 plus five thousand dollars (\$5,000).

(b) The benefit in clause 4.04(a)(1) shall be converted to a single sum of equivalent actuarial value for purposes of determining the greater benefit.

(c) Solely for purposes of 4.04(a), a member's eligible family members shall be

his or her spouse if he or she is married at the date of his or her death or, if he or she is not married, his or her children under the age of 18.

(d) Benefits under clause 404 (a)(1) will be paid for the eligible family member's life in the case of a spouse or until the children reach age 18; provided, however, if an unmarried child is mentally or physically disabled and depends on another person for his or her support, payments shall continue until the earlier of the date the child ceases to be dependent on another person for support, the child's marriage, or the child's death.

(e) If benefits are paid to a member's children under 4.04(a), for purposes of determining the amount to be paid to each child, each child will be treated as a joint annuitant, each child will receive a benefit until he or she reaches age 18 or dies, if earlier, and each child will receive a benefit of equivalent actuarial value.

(f) If a member described in 4.04(a) who is not survived by an eligible family member or any other member not described in 4.04(a), dies prior to receiving a benefit under 4.01 or 4.03 of this plan, as the case may be, an amount equal to the lesser of (i) twice the member's contributions to the plan under 6.03 or (ii) the sum of the member's contributions to the plan under 6.03 plus five thousand dollars (\$5,000) shall be paid to the member's beneficiary.

(g) Any benefits paid under 4.04 shall be paid as soon as practicable following the member's death.

(h) If a member dies after his or her annuity starting date, his or her beneficiary shall receive the benefits, if any, provided by the form in which his or her benefit is paid.

(i) A member who dies during a period of Qualified Military Service as defined in accordance with the Heroes Earnings Assistance and Relief Tax Act ("HEART Act") shall be treated as having returned to employment as a Uniformed Officer on the day before his death and died the next day for purposes of the survivor benefits payable under this section and any accelerated vesting. Such member shall receive service for vesting purposes for such period of Qualified Military Service but shall not receive service for purposes of accruing benefits for such period of Qualified Military Service.

4.05 Cost-of-Living Increases.

The board, after consultation with its actuary and other advisors, may from time to time grant such cost-of-living increases in the benefits being paid to all retired members, or certain classes of retired members, as the board deems prudent, but only if such

increases would have no material adverse impact on the funded status of the plan.

4.06 Maximum Benefit Limitation.

(a) Notwithstanding any provision of the plan to the contrary, the maximum annual benefit paid to a member shall not exceed the limitations imposed by Section 415 of the Code and any regulations issued thereunder ("maximum permissible amount"). The mortality table prescribed by the Secretary of the Treasury under Section 417(e)(3)(A)(ii) (I) of the Code for the plan year in which the annuity starting date for the benefit occurs shall be used to the extent necessary to determine if the benefit exceeds the limitations imposed by Section 415 of the Code. For purposes of 4.06, the limitation year shall be the plan year. To the extent this plan has to be combined with any other plan of the city, the State of Alabama, or any other employer for purposes of Section 415 of the Code, any reductions in benefits required to comply with the provisions of Section 415 of the Code shall be made first in the benefits provided under this plan and second in the benefits provided under such other plans in the order specified in such other plans.

(b) For purposes of this section "maximum permissible amount" means \$160,000, as adjusted automatically as determined by the Commissioner of Internal Revenue for each calendar year, with the new limitation to apply to limitation years ending within the calendar year of the date of the adjustment.

(c) If the annual benefit commences before age 62 and after age 65, the maximum permissible amount shall be determined under Code Section 415 and Regulations and rulings thereunder. If the annual benefit commences when the member has less than 10 years of participation in this plan or any predecessor plan to this plan, the \$160,000 figure defined above shall be reduced by one-tenth for each year less than 10 in accordance with applicable regulations.

(d) The limits described in this section shall be applied under the terms of Code Section 415 and the regulations thereunder, all of which are incorporated herein by reference. For purposes of applying such limitations, the term "Compensation" shall mean a member's earned income, wages, salaries, and fees for professional services, and other amounts received for personal services actually rendered in the course of employment with the city (including, but not limited to, commissions paid sales representatives, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips and bonuses), and excluding the following:

- (1) Employer contributions to a plan of deferred compensation that are not included in the employee's gross income for the taxable year in which contributed or employer contributions under a simplified employee pension

plan to the extent such contributions are deductible by the employee, or any distribution from a plan of deferred compensation.

- (2) Other amounts which receive special tax benefits; and
- (3) Amounts that do not satisfy the timing rules set forth in the regulations under Code Section 415.

Compensation for any limitation year is the compensation actually paid or includable in gross income during such year.

Notwithstanding the foregoing, compensation shall include any elective deferral (as defined in Code Section 402(g)(3)) and any amount that is contributed or deferred by the city at the election of the employee and which is not includable in the gross income of the employee by reason of Code Section 125 or 457. In addition, compensation shall be increased by the amount by which the member's compensation is reduced by salary reduction or similar arrangement under Code Section 132(f)(4) (i.e., a qualified transportation fringe benefit program).

The annual compensation taken into account shall not exceed the limitations of Code Section 401(a)(17) in effect as of the beginning of the plan year in which it is paid.

(e) Amounts that would otherwise constitute "compensation" above but are paid from a nonqualified unfunded deferred compensation plan sponsored by the city nevertheless shall constitute "compensation" for purposes of the limitations in Code Section 415 in the year in which such amounts are actually received by the member, but only to the extent such amounts are includable in the member's gross income.

(f) The following amounts also shall constitute "compensation" under (d) above if (i) the amounts are paid by the later of 2 ½ months after the member's severance from employment with the city or the end of the limitation year that includes the date of the member's severance from employment, and (ii) the amounts would have constituted compensation under (d) above if they were paid prior to the members severance from employment with the city:

- (1) payment for unused accrued bona fide sick, vacation or other leave, but only if the member would have been able to use the leave if employment had continued; and

- (2) amounts received by a member pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid to the member at the same time if the member had continued in employment with the city and only to the extent that the payment is includable in the member's gross income.

4.07 Forfeiture for Cause.

Notwithstanding anything in the plan to the contrary, if a member shall at any time be convicted of a Class A felony or of an offense under any local, state, or federal law that would result in the conviction of a Class A felony in the State of Alabama, all benefits that would otherwise be payable to him or her under the plan shall be forfeited. However, he or she shall be treated under the plan as if he or she had died on the date immediately preceding the conviction for purposes of determining the benefit, if any, payable to his or her eligible family members under 4.04 if he or she is convicted before his or her annuity starting date or to his or her beneficiary under 5.02 if he or she is convicted after his or her annuity starting date. For purposes of this section, a Class A felony shall be a Class A felony as defined by the Title 13A of the Code of Alabama 1975, as in effect on the plan's effective date.

ARTICLE 5. PAYMENT OF BENEFITS.

5.01 Payment of Benefits.

(a) Benefits payable to a member under 4.01, 4.02, or 4.03(a) shall be payable in monthly installments beginning on the first day after the latest of (1) the day the member retires or terminates his or her employment, (2) the board approves the member's benefit or (3) the member has elected an optional form of benefit in accordance with 5.03; however, if a member's benefit had not commenced by the later of the first day following his or her termination of employment as a uniformed officer or the April 1 following the calendar year in which he or she attains age 70 1/2, he or she shall begin to receive his or her benefit on such date in accordance with Option 1 in 5.02 if he or she is not married on such date or in accordance with the 50 percent survivor benefit in Option 2 of 5.02 with his or her spouse as his or her beneficiary if he or she is married on such date. Once a member elects an optional form of benefit, any benefits which would otherwise have been paid to him or her had he or she elected the optional form of benefit when he or she was first eligible to do so shall be paid to him or her in a lump sum, without interest and without any actuarial adjustment for the delay in payment.

(b) If a member entitled to a benefit under 4.01, 4.02, or 4.03(a) dies prior to

his or her benefit commencing under this section, a death benefit shall be paid on his or her behalf under the provisions of 4.04(a) if he or she is survived by an eligible family member or under the provisions of 4.04(b) if he or she is not survived by an eligible family member.

5.02 Optional Forms of Payment.

Any member entitled to a benefit under 4.01, 4.02, or 4.03(a) may elect to receive the benefit payable to him or her in one of the following optional forms:

Option 1. A pension payable during the member's life only with no benefits payable upon his or her death.

Option 2. A modified pension of equivalent actuarial value to his or her benefit determined under Option 1, payable during the member's life, and after his or her death payable at 50 percent or 100 percent, as the member may elect, of the rate of his or her modified pension during the life of, and to, his or her beneficiary.

Option 3. A modified pension of equivalent actuarial value to his or her benefit determined under Option 1, payable during the member's life, and after his or her death payable at 50 percent or 100 percent, as the member may elect, of the rate of his or her modified pension during the life of, and to, his or her beneficiary; provided, however, if the member's beneficiary predeceases the member, the member shall thereafter receive 100 percent of his or her pension for the remainder of his or her life and no benefits shall be payable upon the member's death.

If a member dies after his or her benefit payments have commenced, any payments continuing on to his or her beneficiary shall be distributed at least as rapidly as under the method of distribution being used as of the member's date of death.

5.03 Election of Options.

(a) An election under 5.02 shall be made in a time and manner determined by the board and shall be signed by the member and witnessed by a notary.

(b) An election of an option under 5.02 may be revoked and subsequent elections and revocations may be made, in a time and manner determined by the board, prior to the member's annuity starting date. An election of an optional benefit shall be effective on the member's annuity starting date and may not be modified or revoked after his or her annuity starting date. A revocation of any election shall be effective when the completed form is filed with the board. If a member who has elected an optional benefit

dies before his or her annuity starting date, the election shall be void. If the beneficiary designated under an option dies before the date the election of the option becomes effective, the election shall be void.

5.04 Distribution Limitation.

(a) Distributions from this Plan will be made in accordance with Internal Revenue Service regulations under Code Section 401(a)(9). Notwithstanding any other provisions of the Plan to the contrary, the provisions of Code Section 401(a)(9) shall override any distribution options in the Plan which are inconsistent with Code Section 401(a)(9). Furthermore, any distributions required under the incidental death benefit requirements of Code Section 401(a) shall be treated as a distribution required under Code Section 401(a)(9).

(b) *Additional Before-Death Distribution Rules.* The Retirement Income to a member shall be distributed, beginning not later than the date set forth in Subsection 5.04(b), over the life of such member or over the lives of such member and a designated beneficiary, or over a period not extending beyond the life expectancy of such member or the life expectancy of such member and a designated beneficiary.

(c) *After-Death Distribution Rules.*

- (1) If unpaid amounts remain at the death of a member receiving benefits in accordance with Subsection 5.05(a) hereof, such remaining amounts will be distributed at least as rapidly as under the method of distribution being used under Subsection 5.05(a) as of the date of his or her death.
- (2) In the case in which distributions have not commenced to a member or former member prior to the member's death, the entire interest of the member will be distributed within five years after the death of such member. However, such five-year rule will not apply if any portion of the member's interest is payable to a designated beneficiary where such portion will be distributed over the life of such designated beneficiary or over a period not extending beyond the life expectancy of such beneficiary beginning not later than one year after the date of the member's death or such later date as the Secretary of the Treasury may by regulations prescribe. If the designated beneficiary is the surviving Eligible Spouse of the member, the date on which the distributions would be required to begin shall not be earlier than the member's annuity starting date. If the surviving Eligible Spouse dies before payments are required to commence, the five-year rule shall be applied as if the surviving Eligible Spouse were

the Employee.

(d) The limitations of Subsections 5.05(a) and 5.05(b) are incorporated into the Plan in order to conform to the distribution limitation rules imposed under the Deficit Reduction Act of 1984. To the extent that such limitations become modified or eliminated by further legal or governmental actions, such modifications or eliminations shall be deemed to be incorporated into this Plan to the extent that Subsections 5.05(a) and 5.05(b) would otherwise restrict methods of benefit payment allowable under the Plan.

(e) Notwithstanding the foregoing, with respect to distributions under the Plan made for calendar years after 2001, the board will apply the minimum distribution requirements of Section 401(a)(9) of the Code in accordance with the regulations under Section 401(a)(9) that were proposed on January 17, 2001 on a good faith basis.

(f) A member or beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code Section 401(a)(9) (H) shall not receive those distributions for 2009 unless the member or beneficiary chooses to receive such distributions. Notwithstanding any other provision of this plan to the contrary, any required minimum distribution made in 2009 may be treated as eligible rollover distribution.

5.05 Direct Rollover of Certain Distributions.

(a) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this section 5.6, a distributee may elect, at the time and in the manner prescribed by the Board, to have any portion of an Eligible Rollover Distribution that is equal to at least \$500 paid directly to an Eligible Retirement Plan specified by the distributee in a Direct Rollover.

(b) Definitions:

- (1) *Eligible Rollover Distribution.* An Eligible Rollover Distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an Eligible Rollover Distribution does not include: any distribution that is one of a series of substantially equal period 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 10 years or more; any distribution to the extent such distribution

is required under section 401(a)(9) of the Code; the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); any other distribution that is reasonably expected to total less than \$200 during a year; and, effective January 1, 1999, a hardship withdrawal, as such term is defined in Code Section 401(k)(2)(B)(i)(IV) which is attributable to the member's elective contributions under Treasury regulations section 1.401(k)-1(d)(2)(ii).

- (2) *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 plan described in section 401(a) of the Code that accepts the distributee's Eligible Rollover Distribution. Notwithstanding the foregoing, effective for distributions made after December 31, 2001, an Eligible Retirement Plan shall also mean 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. Notwithstanding the foregoing, effective for distributions made after December 31, 2007, an Eligible Retirement Plan shall also mean a Roth IRA described in section 408A(b) of the Code provided that effective for tax years beginning prior to January 1, 2010, the restrictions that previously applied to rollovers from an individual retirement account as described in section 408(a) of the Code to a Roth IRA as described in section 408A(b) of the Code will also apply to rollovers from this Plan to such a Roth IRA. In the case of an Eligible Rollover Distribution to a surviving spouse prior to January 1, 2002, an Eligible Retirement Plan is an individual retirement account or individual retirement annuity. In the case of an Eligible Rollover Distribution to a surviving spouse after December 31, 2001, an Eligible Retirement Plan is as defined herein with respect to a member. Effective for distribution after December 31, 2006, in the case of an Eligible Rollover Distribution to a surviving beneficiary other than a spouse, an Eligible Retirement Plan is an individual retirement account or individual retirement annuity that is treated as an inherited individual retirement account or annuity.
- (3) *Distributee.* A distributee includes a member, a former member and the member or former member's surviving spouse. For distributions on and

after January 1, 2007, "Distributee" shall include a non-spouse beneficiary of an eligible rollover distribution to the extent permitted by Code section 402(c)(11).

- (4) *Direct Rollover.* A Direct Rollover is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

ARTICLE 6. CONTRIBUTIONS.

6.01 Fines.

The city shall pay into the fund monthly an amount equal to five percent of all fines and moneys, except costs of court, paid as a result of prosecutions for violations of ordinances or laws of the city during the prior month.

6.02 Insurance Premiums.

(a) On or before the first day of March of each year, each insurance company writing fire insurance on property within the city limits and its police jurisdiction shall pay to the city an amount equal to four percent of its gross premiums, including all renewal premiums, less return premiums, collected by the company on such policies in effect during the preceding year in the city and its police jurisdiction. The city shall credit one-half of this amount to the fund within 30 days of its receipt by the city. The remaining one-half shall be retained by the city and credited against the insurance companies' business license obligations.

(b) Each such insurance company shall, on or before the due date of such payment, file with the city finance director a sworn, written statement showing the gross amount of premiums, including all renewal premiums, less return premiums, received on such policies during the preceding year. Any insurance company failing to file such statement shall forfeit to the city one thousand dollars (\$1,000), to be recovered against such insurance company or its agents by suit brought in the name of the city. All such forfeitures and penalties shall be credited to the fund within 30 days of their receipt by the city.

(c) If any insurance company fails to pay the fees required by this section within 30 days from the date the fees are due, the fees shall be increased by 15 percent for the first 30 days, or fraction thereof, that they are delinquent, plus interest at the rate of one percent per month; and shall be increased by an additional 15 percent for a delinquency of 60 or more days, plus interest at the rate of one percent per month.

Nothing in this paragraph (c) however, shall be construed as authorizing any delay in payment, and the board or the city may file suit to recover the fees, penalties, and interest imposed by this section, with all such sums recovered becoming part of the fund.

(d) For purposes of this section, "fire insurance" means any line which insures property against the risk of loss by fire, including homeowners' and vehicle policies. Where a policy issued has more than one type of coverage, the company shall pay only on that portion of the premium attributable to the fire coverage.

(e) The contributions required by this section are separate and apart from any fees or taxes levied or assessed by the city and shall be in addition to any such fees or taxes. The city shall be responsible for collecting the fees required by this section.

6.03 Member Contributions.

Eight percent of the salary of every uniformed officer with less than 30 years of service shall be deducted from his or her pay and shall be transferred to the fund on a monthly basis. No amounts shall be deducted from the pay of a uniformed officer who has at least 30 years of service. Records shall be kept by the board showing the amount contributed by each uniformed officer. The uniformed officers' contributions required by 6.03 are mandatory. The contributions under 6.03 are designated as member contributions; however, the contributions shall be "picked up" by the city and shall be treated as paid by the city in lieu of contributions by members in accordance with Section 414(h)(2) of the Code. The member does not have the option to receive any amounts contributed by the city under 6.03 in cash. If the city's contribution to the plan under 6.05 is zero for a plan year, the board may decrease the contributions by the members under 6.03 pro rata during that plan year as determined by the actuary designated by the board under 6.05 provided the sum of the amounts contributed under 6.01, 6.02, 6.03, and 6.04 shall be at least equal to the annual actuarial cost as determined under 6.05(c) for such plan year and the board finds the proposed reduction will not have a material adverse impact on the funding of the plan.

6.04 Donations.

Any person, firm, association, or corporation may donate money to the fund and the board may take by gift, grant, devise, or bequest any money, personal property, real estate, or any interest therein or any right of property for the benefit of the fund. Any gift, grant, devise, or bequest may be absolute or in fee simple or upon condition that only the rents, income, and profits arising therefrom shall be applied to the purposes for which the fund is created. Any money or property donated to the fund pursuant to 6.04 which is a gift, grant, devise, or bequest for which absolute ownership is granted to the fund shall be

added to the fund to be administered by the board in its capacity as trustee. If any money or property donated to the fund pursuant to 6.04 is not a grant of absolute ownership, then the board shall take such steps which are necessary to preserve its interest in such money or property, including the appointment of a trustee who may be paid from the income or corpus of the money or property.

6.05 City Contributions.

(a) The city shall contribute to the fund an amount equal to the excess, if any, of (i) the annual actuarial cost for the plan determined as of each October 1 over (ii) all amounts contributed to the fund under 6.01, 6.02, and 6.03 during the plan year beginning on the date the annual actuarial cost is determined. The city's contribution under 6.05 shall be paid to the fund no later than 18 months following the date as of which such annual actuarial cost is determined.

(b) The city may make such additional contributions to the fund as it deems advisable to insure the fiscal integrity of the fund.

(c) For purposes of 6.05, "annual actuarial cost" means the annual cost of the plan as determined by the enrolled actuary, as defined in Section 7701(a)(35) of the Code, designated by the board using reasonable actuarial assumptions and methods which would meet the requirements of Section 412 of the Code, where such annual cost is the sum of:

- (1) The annual actuarial normal cost;
- (2) The increasing annual payment required to amortize the unfunded actuarial accrued liability as of October 1, 1996, within 30 years of that date, where each subsequent annual payment increases by four percent;
- (3) For determinations made on or after October 1, 1997, the level-dollar annual payment required to amortize the change in the unfunded actuarial accrued liability due to plan changes within 30 years of the October 1 coincident with or next following the effective date of the plan change;
- (4) For determinations made on or after October 1, 1997, the level-dollar annual payment required to amortize the change in the unfunded actuarial accrued liability due to assumption or method changes within 10 years of the October 1 coincident with or next following the effective date of the assumption or method change; and
- (5) For determinations made on or after October 1, 1997, the level-dollar

annual payment required to amortize the change in the unfunded actuarial accrued liability due to plan experience gains and losses within five years of the October 1 coincident with or next following the date as of which such experience gain or loss is determined, and further provided that such experience gains and losses shall be determined at least annually.

6.06 Return of Contributions.

The city may recover without interest the amount of its contributions to the plan made on account of a mistake in fact, reduced by any investment loss attributable to those contributions, if recovery is made within one year after the date of those contributions.

ARTICLE 7. ADMINISTRATION OF PLAN.

7.01 Appointment of Board.

(a) The board is responsible for the general administration of the plan and for carrying out the provisions of the plan. Beginning in 2005, the board shall consist of:

- (1) two members to be elected from the uniformed officers in the city's police department by the uniformed officers in that department;
- (2) two members to be elected from the uniformed officers in the city's fire department by the uniformed officers in that department;
- (3) one member elected by the non-uniformed, retired police officers;
- (4) one member elected by the non-uniformed, retired firefighters; and
- (5) two persons, who must be city residents, at least age 21 and not receiving any salary from the city for services as an employee of the city and not related beyond the limits of the nepotism law for state service as prescribed in Section 41-1-5 of the Code of Alabama 1975, to any active employee of the city fire department or police department, appointed by the city council or like governing body of the city; and
- (6) the city's finance director.

(b) All board members, except the finance director, shall serve three year terms. The person serving as finance director shall serve as a board member as long as he or she remains in that position. Any member of the board may resign by delivering his or

her written resignation to the secretary of the board.

(c) The mayor or like governing body of the city shall appoint, subject to the merit system of the city and subject to the approval of the board, an executive secretary to the board. The secretary shall be responsible for maintaining all records required by this plan, shall keep and maintain records of retired members containing a full and complete history and record of the board's action in retiring the members, including the member's name, dates of entering service in the city's police or fire departments, periods of employment, written requests from members desiring retirement, dates of retirement, the reasons for such retirements and other such information as the board may require, and shall perform such other duties as may be prescribed by the board. The mayor or like governing body of the city may appoint from time to time, subject to the merit system of the city, an assistant to the executive secretary. The city shall pay the salary of the secretary and any assistant to the secretary appointed pursuant to this section.

7.02 Elections.

All elections of uniformed officers to the board shall be by secret ballot and shall be administered by the city clerk. Elections shall be held no more than six weeks and no less than two weeks prior to the expiration date for the term of any elected member of the board, as the city clerk shall determine. Ballots shall be distributed along with the uniformed officer's salary warrants and the election shall be conducted in accordance with such other rules as the city clerk deems necessary to insure a fair and honest election. In the event elections are delayed, the term of the incumbent board member shall expire on schedule and the position on the board shall remain vacant until an election is held to fill the vacant position.

7.03 Vacancies.

Vacancies among the elected members of the board shall be filled by special election to be called by the city clerk not later than 30 days after the vacancy occurs. Vacancies among the appointed members of the board shall be filled by appointment as soon as practicable after such vacancy occurs.

7.04 Duties of Board.

(a) The members of the board shall elect a chair from their number; may appoint from their number such subcommittees with such powers as they shall determine; may authorize one or more of their number or any agent to execute or deliver any

instrument or make any payment on their behalf; may retain counsel, employ agents and provide for such clerical, accounting, actuarial, financial, and consulting services as they may require in carrying out the provisions of the plan; and may allocate among themselves or delegate to other persons all or such portion of their duties under the plan as they, in their sole discretion, shall decide.

(b) The board shall have full power to invest and reinvest the fund in such investments as the board may from time to time approve and to hold, purchase, sell, assign, transfer, and dispose of any such investments in which the fund shall have been invested.

7.05 Establishment of Rules.

Subject to the limitations of the plan, the board from time to time shall establish rules for the administration of the plan and the transaction of its business. The board shall have discretionary authority to interpret the plan and to make factual determinations, including, but not limited to, determination of an individual's eligibility for plan participation, the right and amount of any benefit payable under the plan and the date on which any individual ceases to be a member. The determination of the board as to the interpretation of the plan or any disputed question shall be conclusive and final to the extent permitted by applicable law.

7.06 Meetings.

(a) The board shall meet not less than once each month and at such other times as may be considered necessary by the chair of the board. All meetings shall be upon such notice, at such place or places, and at such time or times as the board may from time to time determine. Five members of the board shall constitute a quorum for the transaction of business. Board members must be present to vote; no proxies shall be allowed. Each board member shall have one vote. Action shall be taken by a majority of the votes cast.

(b) The board shall keep separate and adequate records of all its meetings and proceedings. The records shall be public and shall be subject to inspection during normal business hours to the extent required by Alabama law.

7.07 Compensation and Bonding.

No board member shall receive any compensation from the plan for his or her services as such; however, board members may be reimbursed for any actual expenses they incur on board business. No bond or other security shall be required of any board member in that capacity.

7.08 Prudent Conduct.

The members of the board shall use that degree of care, skill, prudence, and diligence that a prudent person acting in a like capacity and familiar with such matters would use in a similar situation.

7.09 Maintenance of Accounts.

The board shall maintain accounts showing the fiscal transactions of the plan and shall keep in convenient form such data as may be necessary for actuarial valuations of the plan.

7.10 Service in More than One Fiduciary Capacity.

Any individual, entity, or group of persons may serve in more than one fiduciary capacity with respect to the plan and/or the fund.

7.11 Limitation of Liability.

The city, the board, the members of the board, and any officer, employee, or agent of the city shall not incur any liability individually or on behalf of any other individuals or on behalf of the city for any act, or failure to act, made in good faith in relation to the plan or the fund.

7.12 Indemnification.

The members of the board and the officers, employees, and agents of the city shall be indemnified against any and all liabilities arising by reason of any act, or failure to act, in relation to the plan or the fund, including, without limitation, expenses reasonably incurred in the defense of any claim relating to the plan or the fund, and amounts paid in any compromise or settlement relating to the plan or the fund, except for actions or failures to act made in bad faith. The foregoing indemnification shall be from the fund to the extent of those funds and to the extent permitted under applicable law; otherwise, from the assets of the city.

7.13 City Attorney to Represent Board.

It shall be the duty of the city attorney to give advice to the board in all matters

pertaining to the duties of the board whenever requested to do so; to represent and defend the board and its individual members in all suits and actions at law or in equity that may be brought against the board, its individual members or the city in connection with this plan; and to bring all suits and actions in the board's behalf that may be approved by the board, other than suits against the city and its agencies. However, nothing in 7.13 shall in any way limit the board's authority to employ such outside legal counsel as it may see fit in any matter relating to its duties under this plan and to pay reasonable attorney's fees out of the fund.

7.14 Expenses of Administration.

Except as may be otherwise specified in this plan, all expenses that arise in connection with the administration of the plan, including, but not limited to, the compensation and other expenses and charges of any counsel, accountant, specialist, or other person who has been retained by the board in connection with the administration of the plan, shall be paid from the fund to the extent not paid by the city.

7.15 Deferred Retirement Option Plan ("DROP Plan").

The board may create and administer a deferred retirement option plan ("DROP Plan") on such terms and conditions as the board may prescribe; however, any DROP Plan created by the board shall be at no cost and with no liability to the city. The plan's actuary shall certify to the city, at or before the adoption of the DROP Plan and at or before the adoption of any amendment to the DROP Plan, that its terms do not create any cost or liability to the city. Any member who elects to enter the DROP Plan shall have no recourse against the city for any claims with respect to the DROP Plan or payments under the DROP Plan.

ARTICLE 8. MANAGEMENT OF FUNDS.

8.01 Trustee.

All the funds of the plan shall be held by the board as trustee of the plan. In addition to the powers granted to the board by the plan, the board shall have all powers granted to trustees under any Alabama statute or regulation which are necessary or desirable for it to fulfill its duties with respect to the plan, which powers are specifically incorporated by reference into this plan. The city shall have no liability for the payment of benefits under the plan nor for the administration of the funds paid over to the board.

8.02 Exclusive Benefit Rule.

Except as otherwise provided in the plan, no part of the corpus or income of the fund shall be used for, or diverted to, purposes other than for the exclusive benefit of members and beneficiaries entitled to benefits under the plan and paying plan expenses not otherwise paid by the city, before the satisfaction of all liabilities with respect to such members and beneficiaries. No person shall have any interest in or right to any part of the earnings of the fund, or any right in, or to, any part of the assets held under the plan, except as and to the extent expressly provided in the plan.

ARTICLE 9. AMENDMENT, MERGER, AND TERMINATION.

9.01 Amendment of Plan.

(a) The board, with approval by a majority vote of the city council or like governing body of the city, reserves the right at any time and from time to time, and retroactively if deemed necessary or appropriate, to amend in whole or in part any or all of the provisions of the plan. However, no amendment shall make it possible for any part of the fund to be used for, or diverted to, purposes other than for the exclusive benefit of persons entitled to benefits under the plan, before the satisfaction of all liabilities with respect to such persons. The board's actions in amending the plan shall be effective without the approval of, or action by, any other governmental entity other than the city council as described in 9.01(a). Nothing in this section shall be construed as preventing a uniformed officer from requesting the Alabama Legislature to amend any provision of the plan.

(b) Notwithstanding the provisions of 9.01(a), any plan amendment which will affect the plan's funding or the members' benefits shall require the approval of the Alabama Legislature.

9.02 Termination of Plan.

The city may terminate the plan with the consent of the majority of the plan's members at the time of the termination, for any reason at any time. In case of termination of the plan, the rights of members to their benefits as of the date of the termination, to the extent then funded or protected by law, if greater, shall be nonforfeitable. The fund shall be used for the exclusive benefit of persons entitled to benefits under the plan as of the date of termination, except as provided in 6.06. However, any funds not required to satisfy

all liabilities of the plan for benefits because of erroneous actuarial computation shall be returned to the city. In the event of a partial termination of the plan, the provisions of this section shall be applicable to the members affected by that partial termination.

ARTICLE 10. GENERAL PROVISIONS.

10.01 Nonalienation.

Except as required by any applicable law, no benefit under the plan shall in any manner be anticipated, assigned, or alienated, and any attempt to do so shall be void.

10.02 Conditions of Employment Not Affected by Plan.

The establishment of the plan shall not confer any legal rights upon any uniformed officer or other person for a continuation of employment, nor shall it interfere with the right of the city, which right is hereby reserved, to discharge any uniformed officer and to treat him or her without regard to the effect which that treatment might have upon him or her as a member or potential member of the plan.

10.03 Facility of Payment.

If the board shall find that a member or other person entitled to a benefit is unable to care for his or her affairs because of illness or accident or because he or she is a minor, the board may direct that any benefit due him or her, unless claim shall have been made for the benefit by a duly appointed legal representative, be paid to his or her spouse, a child, a parent or other blood relative, or to a person with whom he or she resides. Any payment so made shall be a complete discharge of the liabilities of the plan for that benefit.

10.04 Information.

Each member or other person entitled to a benefit, before any benefit shall be payable to him or her or on his or her account under the plan, shall file with the board the information that it shall require to establish his or her rights and benefits under the plan.

10.05 Appeals From Board Decisions.

(a) Within 10 days after any final decision of the board, the city or any person aggrieved at the decision of the board may appeal the decision to the Circuit Court of Mobile County by filing a notice and request for an appeal with the clerk of the circuit

court and serving notice of the appeal upon any member of the board. The appeal shall be heard at the earliest possible date by a judge sitting without a jury. It shall not be necessary to enter exceptions to the rulings of the board and no bond shall be required for such an appeal.

(b) The circuit court appeal shall not constitute a proceeding de novo; instead, the court shall review the board's decision using the same standard of review the court uses in deciding common law writs of certiorari.

(c) An appeal may be taken from any decision of the circuit court to the court of appeals or the Supreme Court as now provided by law, under the same standard of review applicable to the trial court.

10.06 Prevention of Escheat.

If the board cannot ascertain the whereabouts of any person to whom a payment is due under the plan, the board may, after such payment is due and prior to the funds escheating to the city or the State of Alabama under any applicable escheat laws, mail a notice of such due and owing payment to the last known address of such person as shown on the records of the board or the city. If such person has not made written claim therefor within three months of the date of the mailing, the board may, if it so elects and upon receiving advice from counsel to the plan, direct that such payment and all remaining payments otherwise due such person be canceled on the records of the plan and the amount thereof applied to reduce the contributions of the city. Upon such cancellation, the plan shall have no further liability therefore except that, in the event such person or his or her beneficiary later notifies the board of his or her whereabouts and requests the payment or payments due to him or her under the plan, the amount so applied shall be paid to him or her in accordance with the provisions of the plan.

10.07 Severability.

The provisions of this plan are severable. If any part of the plan is declared invalid or unconstitutional, such declaration shall not affect the remaining provisions of the plan.

10.08 Construction.

(a) The plan shall be construed, regulated, and administered under the laws of the State of Alabama, except where the provisions of the Code or other applicable federal statutes control.

(b) The titles and headings of the articles and sections in this plan are for convenience only. In case of ambiguity or inconsistency, the text rather than the titles or headings shall control.

10.09 Effective Date.

This Plan shall be in full force and effect on and after its adoption by the Board and approval of the City Council and shall be retroactively effective as of October 1, 2010.

Adopted this 23RD day of MARCH, 201~~2~~¹

Attest: Mary Berg
Mary Berg, Pension Coordinator

Approved by the Mobile City Council on the 3 day of July, 2012 pursuant to Resolution # 60-255

Attest: Lisa Coleman
City Clerk

- Ms. Cochran presented the following resolution for the Board's approval:

**CITY OF MOBILE, ALABAMA POLICE AND FIREFIGHTERS'
RETIREMENT PLAN BOARD**

RESOLUTION

Whereas, the Article 7 of Act 97-689, 1997 Ala. Acts designates the Board as the administrative authority for a retirement plan established for the benefit of the police officers and firefighters for the City of Mobile, Alabama (the "Plan");

Whereas, the Plan received a favorable determination from the Internal Revenue Service in March 1998 entitling the Plan to certain favorable tax treatment;

Whereas, on January 28, 2011 a proposed revised plan was submitted to the Internal Revenue Service for consideration;

Whereas, by letter dated March 7, 2011 to the Board's General Counsel the IRS requested that the proposed amendments be signed and dated;

NOW, THEREFORE, BE IT RESOLVED by the City of Mobile Police and Firefighters' Retirement Plan Board:

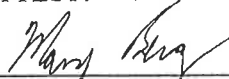
1. That the Chairman and Secretary are hereby authorized and directed to execute and attest, respectively, for and on behalf of the Board the attached proposed plan amendments for transmittal to the IRS.

Done This 25th Day of March, 2011



Terry Lilley
Chairman

ATTEST:



Mary Berg, Executive Secretary

Deputy Chief Barber motioned to accept the resolution as written for the chairman's and executive secretary's signature. Ms. Collier seconded the motion and the motion carried.