

**BOARD BILL NO. 280 CS**

**INTRODUCED BY ALDERMAN BOYD**

An Ordinance repealing Ordinance 69183 and making certain technical corrections, regulatory updates, and clarifications to The Firefighters' Retirement Plan of St. Louis, as set forth in Ordinance No. 69245, as amended by Ordinance No. 69353, and as codified in Chapter 4.19 of the Revised Code of the City of St. Louis.

**WHEREAS**, on July 28, 2012 the City adopted Ordinance 69245, establishing The Firefighters' Retirement Plan of St. Louis.

**WHEREAS**, pursuant to Section 4.19.160 of Ordinance 69245, the City reserved the right to amend The Firefighters' Retirement Plan of St. Louis at any time.

**WHEREAS**, on December 28, 2012 the City adopted Ordinance 69353, amending The Firefighters' Retirement Plan of St. Louis.

**WHEREAS**, the City wishes to further amend The Firefighters' Retirement Plan of St. Louis to make certain technical corrections, regulatory updates, and clarifications.

**BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:**

**Section One.** Ordinance No. 69183, which amended governance provisions of The Firemen's Retirement System, is hereby repealed.

**Section Two.** The last sentence of Subsection C of Section Two of Ordinance 69353 is hereby amended to read in its entirety as follows:

Sick leave accumulated before February 1, 2013, if any, shall be credited for purposes of the FRS to the extent applicable under the FRS without regard to this Ordinance.

**Section Three.** The fourth sentence of Subsection B of Section 4.19.010 of Ordinance 69245, as amended by Ordinance 69353, is hereby amended to read as follows:

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Except as expressly provided herein, the provisions of subsections 4.19.060(A) through (F), governing pension benefits of Grandfathered Participants, are independent of the provisions of subsections 4.19.050(A) through (G) relating to Participants hired on and after the Effective Date.

**Section Four.** Subsection B of Section 4.19.010 of Ordinance 69245, as amended by Ordinance 69353, is hereby amended by adding a new paragraph to the end of said subsection to read as follows:

Notwithstanding anything to the contrary, no participant of the FRP shall receive a pension or retirement allowance from any other pension or retirement system supported wholly or in part by the City or the state of Missouri because of years of service for which they are entitled to benefits under the FRS nor shall they be required to make contributions under any other pension or retirement system of the City or the state of Missouri.

**Section Five.** Subsection B of Section 4.19.020 of Ordinance 69245 is hereby repealed and replaced with the following:

B. Actuarial Equivalent. The actuarial equivalent amount for benefit form options and reduced retirements determined on the basis of the RP 2000 combined healthy mortality projected to 2015 (static table) Mortality Table and an assumed annual rate of investment return of 7.625%.

For all other actuarial equivalent calculations, the actuarial equivalent amount determined on the basis of the RP 2000 combined healthy mortality, projected to 2015 (static table) Mortality Table and an assumed annual rate of investment return of 7.625%, or on the basis of such mortality tables and interest

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rate as shall be adopted by the Board of Trustees upon recommendation of the Plan's Actuary and applied prospectively.

**Section Six.** Subsection F of Section 4.19.020 of Ordinance 69245 is hereby amended to read as follows:

F. Average Final Compensation or Average Final Earnings. The average final compensation, also referred to as the average final earnings, of the Participant during his last five years of Covered Employment; or if he has less than five years of such service, the average final compensation paid during his entire period of Covered Employment. The Final Average Compensation of a Grandfathered Participant shall be based on the last two years of Covered Employment, instead of the last five years. Compensation means the regular annual rate of compensation that a Participant would earn on the basis of the stated compensation for his rank or position.

**Section Seven.** Section 4.19.020 of Ordinance 69245, as amended by Ordinance 69353, is hereby amended by adding a new subsection K and by changing the designation of existing subsections K through CC to L through DD. The new subsection K shall read as follows:

K. Consumer Price Index. The consumer price index (United States Average Index) for urban consumers, or its successor index approved by the Board of Trustees, as defined and officially reported by the U.S. Department of Labor. The cost of living factor shall be the change in the specified CPI for the applicable 12 month period set by the Board of Trustees for the purpose of promoting consistency with the Consumer Price Index used by the Firemen's Retirement System of St. Louis, rounded to the nearest one-tenth of one percent.

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**Section Eight.** The following new paragraph is added to the end of former Subsection CC (now Subsection DD) of Section 4.19.020 of Ordinance 69245:

A domestic partner shall not be treated as a widow(er) for purposes of subsections 4.19.100(B) (required minimum distributions), 4.19.110(C) (domestic relations orders) and 4.19.110(D) (rollovers).

**Section Nine.** The first paragraph of Subsection B of Section 4.19.030 of Ordinance 69245, as amended by Ordinance 69353 is hereby amended to read as follows:

B. Employee Contributions. The Board of Trustees shall certify to the fire commissioner, and the fire commissioner shall cause to be deducted from the compensation of each Participant each pay period, and remitted to the Trustee, eight percent of the compensation of each Participant with at least twenty full Years of Service as of the Effective Date, and nine percent of the compensation of each Participant with fewer than twenty full Years of Service as of the Effective Date. Such contributions shall be credited to the Accumulated Contributions account of the Participant. Contributions by each Participant with fewer than twenty full Years of Service as of the Effective Date shall be treated as employer before-tax ("pick-up") contributions paid by the Employer in lieu of contributions by the Employee under Section 414(h)(2) of the Code solely for purposes of the Internal Revenue Code of 1986, as amended. Contributions by Participants with at least twenty full Years of Service as of the Effective Date shall be treated as after-tax employee contributions.

**Section Ten.** The first sentence of Subsection C of Section 4.19.040 of Ordinance 69245 is hereby amended to read as follows:

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C. Absence in Military Service. If, at any time since first becoming a Participant in the Plan, a Participant has performed qualified military service as defined by 26 U.S.C. § 414(u)(5) and has subsequently been reinstated as a firefighter within the period of time required by 38 U.S.C. § 4312(e), he shall be granted credit for such service as if his service in the Fire Department of the City had not been interrupted by his induction into the armed forces of the United States, and as if he had made the required contributions during such service.

**Section Eleven.** Subsection C of Section 4.19.040 of Ordinance 69245 is hereby amended by adding new paragraphs at the end of this subsection to read as follows:

In the case of a Participant who dies while performing qualified military service as defined in 26 U.S.C. § 414(u)(5), the survivors of the Participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) that would have been provided under the Plan had the Participant resumed employment and then terminated employment on account of death. In any event, a deceased member's period of qualified military service must be counted for vesting purposes.

Only to the extent required by Code Section 414(u)(12) and only in the event that the City elects to pay differential wage payments, an individual who receives differential wage payments (as defined under Code Section 3401(h)(2)) shall be treated as employed by the Fire Department of the City, and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under Code Section 415(c). This

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provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

**Section Twelve.** Section 4.19.040 of Ordinance 69245, as amended by Ordinance 69353, regarding service, is hereby amended by adding new subsections E and F at the end to read as follows:

E. Transfer of Creditable Service. The transfer of creditable service shall be in accordance with the provisions of Section 105.691 of the Missouri Revised Statutes, as amended, or as the same may from time to time be amended. The Board of Trustees may enter into cooperative agreements to transfer creditable service between the Plan and any other retirement plan established by the state of Missouri or any political subdivision or instrumentality of the state when a Participant who has been employed in a position covered by one plan is employed in a position covered by another plan.

F. Purchase of Creditable Service. A participant may contribute or have transferred to the fund an amount to be utilized to purchase an additional period of creditable service determined using the accepted actuarial methods of the Plan in accordance with the provisions of Section 105.691 of the Revised Statutes of Missouri, as amended, or as the same may from time to time be amended, and pursuant to policies adopted by the Board of Trustees, which are incorporated herein by reference. In addition, participants may purchase credible service for an amount determined using the actuarial methods of the plan pursuant to policies adopted by the Board of Trustees, which are incorporated by reference and may be amended from time to time.

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**Section Thirteen.** Subsection E of Section 4.19.050 of Ordinance 69245 is repealed and in lieu thereof a new subsection E of Section 4.19.050 is enacted to read as follows:

E. Cost of Living Increases. Following a Participant's Annuity Starting Date, benefits paid to such Participant pursuant to subsections (A) and (B) of this Section (but not any other provisions) shall be increased as of each October 1, with the first increase in the October following his retirement and subsequent increases in each October thereafter, by an amount equal to the lesser of three percent or the increase in the Consumer Price Index during the preceding twelve month period as designated by the Board of Trustees for the purpose of promoting consistency with the Consumer Price Index used by the Firemen's Retirement System of St. Louis; up to a maximum aggregate increase of twenty-five percent.

**Section Fourteen.** Section 4.19.050 of Ordinance 69245 is amended by adding a new subsection H at the end to read as follows:

H. Felony Bar. Participants found guilty of certain felony offenses shall be barred from obtaining benefits to the extent provided by the provisions of Section 105.669 of the Missouri Revised Statutes, as amended.

**Section Fifteen.** Subsection C of Section 4.19.060 of Ordinance 69245, as amended by Ordinance 69353, is hereby repealed and in lieu thereof a new subsection C of Section 4.19.060 is enacted to read as follows:

C. Grandfathered Normal Retirement Benefit. Subject to the conditions and limitations of the Plan, a Grandfathered Participant who incurs a Termination of Employment on or after his Normal Retirement Age of fifty-five

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years and after completing at least twenty Years of Service will be entitled to a monthly retirement income payable to the Participant for his lifetime commencing at his Normal Retirement Date in an amount equal to two percent of the Participant's Average Final Compensation for each Year of Service up to twenty-five years, and five percent of the Participant's Average Final Compensation for each Year of Service over twenty-five years, up to a maximum of seventy-five percent of Average Final Compensation. The monthly amount of the retirement income of such a Participant shall not be increased actuarially to reflect an Annuity Starting Date deferred beyond the Normal Retirement Age of the Participant.

Solely for purposes of computing such Grandfathered Benefit, sick leave accumulated under the FRS shall be credited as Years of Service and added to no more than a total of thirty Years of Service for purposes of vesting and to allow such a Participant to receive a monthly retirement income benefit in excess of seventy-five percent of Average Final Compensation. Notwithstanding anything to the contrary herein, sick leave of a Participant who is participating in DROP shall be subject to the provisions of subsection 4.19.060(E).

A Grandfathered Participant who receives such a retirement income benefit shall receive a refund of his contributions to this Plan, without interest; provided that contributions to the Plan made on and after the Effective Date by a Participant who had fewer than twenty full Years of Service as of the Effective Date are not refundable. All refundable contributions are payable at the time of his pension commencement date.

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**Section Sixteen.** Subsection D of Section 4.19.060 of Ordinance 69245, as amended by Ordinance 69353, is hereby repealed and in lieu thereof a new Subsection D of Section 4.19.060 is enacted to read as follows:

D. Early Retirement Benefit. A Grandfathered Participant who incurs a Termination of Employment after completing twenty Years of Service, but before attaining his Normal Retirement Age of fifty-five years, shall be entitled to a monthly retirement income payable to the Participant for his lifetime commencing on the first day of the month after he attains fifty-five years of age, calculated as for normal retirement in accordance with the preceding subsection, based on his Average Final Compensation and his Years of Service as of his Termination of Employment. In lieu of a deferred retirement income commencing at age fifty-five, such a Participant may elect to receive his retirement income beginning on his Termination of Employment; or on the first day of any month thereafter prior to age fifty-five. The monthly amount otherwise payable at age fifty-five that is attributable to Years of Service after the Effective Date shall be actuarially reduced from age fifty-five to the pension commencement date in accordance with subsection 4.19.020(B) for a Participant with fewer than twenty full Years of Service as of the Effective Date. The monthly amount otherwise payable at age fifty-five to a Participant with more than twenty full Years of Service as of the Effective Date shall be unreduced.

Solely for purposes of computing such Grandfathered Benefit, sick leave accumulated under the FRS shall be credited as Years of Service and added to no more than a total of thirty Years of Service for purposes of vesting and to allow

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such a Participant to receive a monthly retirement income benefit in excess of seventy-five percent of Average Final Compensation. Notwithstanding anything to the contrary herein, sick leave of a Participant who is participating in DROP shall be subject to the provisions of subsection 4.19.060(E).

A Grandfathered Participant who receives such a retirement income benefit shall receive a refund of his contributions to this Plan, without interest; provided that contributions to the Plan made on and after the Effective Date by a Participant with fewer than twenty Years of Service as of the Effective Date are not refundable. All refundable contributions are payable at the time of his pension commencement date.

For example, a Participant with ten Years of Service on the Effective Date, who retires ten years after the Effective Date, at age fifty with a total of twenty Years of Service, with annualized Average Final Compensation of \$80,000 for the last two years before retirement, would be entitled to a deferred pension benefit of \$32,000 (40% of \$80,000) per year beginning at age fifty-five, or an immediate pension beginning at age fifty of \$26,272. (The \$16,000 attributable to the ten Years of Service before the Effective Date is unreduced; the \$16,000 attributable to the ten Years of Service after the Effective Date is actuarially reduced from \$16,000 to \$10,272.) Such amount is subject to the offset for the Prior Plan benefit as provided in Section 4.19.060(G).

A Grandfathered Participant who incurs a Termination of Employment before completing twenty Years of Service shall receive a refund of his Accumulated Contributions with Interest in lieu of any pension benefit.

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**Section Seventeen.** Subsection E of Section 4.19.060 of Ordinance 69245 is hereby amended to read in its entirety as follows:

E. DROP. Grandfathered Participants who have completed at least twenty Years of Service may elect to continue active employment and defer receipt of the retirement benefit for a period not to exceed five years. Any Grandfathered Participant who has at least twenty Years of Service may elect in writing before retirement to participate in the deferred retirement option program ("DROP"). A Grandfathered Participant electing to participate in the DROP program shall continue in active employment and shall not receive any direct retirement benefit payments during the time of participation. Upon the start of participation in the DROP program, the Grandfathered Participant shall make contributions at the rate of one percent of compensation, instead of the contribution rate required by subsection B of Section 4.19.030. During the period of participation in the DROP program, the amount that the Grandfathered Participant would have received as a monthly retirement income benefit (Normal Retirement Benefit under subsection C or reduced Early Retirement Benefit under subsection D, whichever is applicable) shall accumulate for the Grandfathered Participant until the Grandfathered Participant retires. Years of Service earned during the period of participation in the DROP program shall not be credited and shall not be counted in determination of any service-based retirement benefit.

A Grandfathered Participant who elects to stop participation in the DROP program shall make contributions at the rate of eight percent of the compensation of each Participant with at least twenty full Years of Service as of the Effective

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Date, and nine percent of the compensation of each Participant with fewer than twenty full Years of Service as of the Effective Date. Service rendered after restoration of the Grandfathered Participant to non-DROP participation status shall be counted as Years of Service. No Grandfathered Participant ending participation in the DROP program and returning to non-DROP participation status shall make any withdrawal from his or her DROP accumulation until after Termination of Employment. If after return to non-DROP participation status, a Grandfathered Participant retires, the Grandfathered Participant's retirement benefit shall be computed on the combination of the Grandfathered Participant's pre-DROP retirement benefit (based on Average Final Compensation at the beginning of the DROP period and any applicable reduction for commencement before age fifty-five) plus an additional benefit earned by the Grandfathered Participant after returning to non-DROP participation status. Post-DROP Years of Service shall be the only years used in computing the additional benefit; however, total Years of Service shall be used to determine the appropriate accrual level of additional benefit, two percent or five percent, for each year of post-DROP service. Upon retirement the Grandfathered Participant shall receive retirement income benefits plus the amount of his or her DROP accumulation. The Grandfathered Participant's DROP accumulation shall be payable, at the Grandfathered Participant's option, either as a lump sum payment or as a series of quarterly payments of reasonably equal amounts using the declining balance method over a period of fewer than ten years as selected by the Grandfathered

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Participant, subject to the minimum distribution rules of subsection B of Section 4.19.100.

If a Grandfathered Participant dies before Termination of Employment while participating in the DROP program, his or her DROP accumulation shall be payable to the Grandfathered Participant's designated beneficiary under either of the following options:

(1) A lump sum payment equal to the Grandfathered Participant's DROP accumulation shall be paid to the Grandfathered Participant's beneficiary or the Grandfathered Participant's estate. The death benefits for the beneficiary under the provisions of Section 4.19.080 shall be based on the Grandfathered Participant's compensation and Years of Service before the Grandfathered Participant's participation in the DROP program.

or

(2) The beneficiary may waive any claim to the Grandfathered Participant's DROP accumulation, in which case any death benefits payable to the beneficiary under the provisions of Section 4.19.080 shall be calculated as if the Grandfathered Participant had continued as an employee and had not participated in the DROP program. Any DROP accumulation which has been waived as provided in this paragraph shall become funds of the Plan.

If a Grandfathered Participant who has elected to participate in the DROP program subsequently applies for and receives benefits for a disability benefit

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under the provisions of Section 4.19.070, the Grandfathered Participant shall forfeit all rights, claims or interest in his DROP accumulation and the Grandfathered Participant's benefits shall be calculated as if the Grandfathered Participant had continued in employment and had not elected to participate in the DROP program. Any DROP accumulation which has been forfeited as provided in this Plan shall become funds of the Plan.

The balance of a Grandfathered Participant's DROP accumulation shall be credited with interest for each Plan Year under one of the following two options, as elected by the Grandfathered Participant upon entering DROP: (1) the rate of return of the Trust Fund's investment portfolio, as certified annually by the actuary in the yearly evaluation report, for the preceding Plan Year, as approved by the Trustees, subject to a minimum rate of return of 0%; or (2) the rate of return equal to the yield on the ten-year treasury bond as of the end of the preceding Plan Year, subject to a minimum rate of return of 0%.

Interest shall be credited annually to the Grandfathered Participant's DROP accumulation beginning with the start of the second Plan Year of participation, based on the balance at the beginning of the Plan Year. If a withdrawal occurs during a Plan Year, interest will be determined pro rata for each partial Plan Year before and after the withdrawal.

No Participant may elect to participate in the DROP program more than once.

Notwithstanding anything to the contrary in this Chapter, a Grandfathered Participant who is participating in the DROP program may elect upon

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Termination of Employment to have added to his or her DROP accumulation a dollar amount equal to the number of his sick leave hours accumulated under the FRS multiplied by his or her hourly rate of pay at the time of Termination of Employment, net of the amount, if any, required to be withheld as taxes by the applicable governmental authorities; or to add one-half of such dollar amount in the Grandfathered Participant's DROP accumulation, to add one quarter of such dollar amount to the aggregate total of the Grandfathered Participant's monthly compensation for the period used in calculating the Grandfathered Participant's Average Final Compensation, and to have the remaining one-fourth of such sick leave remain as time and added to the Grandfathered Participant's Years of Service before the Effective Date. A Grandfathered Participant may make such an election to have sick leave hours converted to a combination of DROP accumulation, Years of Service and Average Final Compensation only if the Participant made a comparable election under The Firemen's Retirement System of St. Louis; and a Grandfathered Participant who made such an election under The Firemen's Retirement System of St. Louis shall be deemed to have made such an election under this Plan; so that the DROP benefit payable from this Plan shall be paid in the same form as the benefit payable under The Firemen's Retirement System of St. Louis.

**Section Eighteen.** Subsection F of Section 4.19.060 of Ordinance 69245 is hereby amended to read as follows:

F. Cost of Living Increases. The grandfathered benefit payable in accordance with subsections (C), (D), and (E) of this Section shall be increased

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annually, as approved by the Board of Trustees beginning with the first increase in the October following retirement of the Participant and subsequent increases in each October thereafter, at the rates designated as follows:

(1) One and one-half percent per year, compounded each year, up to age sixty for those retiring with at least twenty Years of Service but less than twenty-five Years of Service,

(2) Two and one-fourth percent per year, compounded each year, up to age sixty for those retiring with at least twenty-five Years of Service but less than thirty Years of Service,

(3) Three percent per year, compounded each year, up to age sixty for those retiring with thirty or more Years of Service,

(4) After age sixty, five percent per year for five years or until a total maximum increase of twenty-five percent is reached.

Each increase, however, is subject to a determination by the Board of Trustees that the consumer price index shows an increase of not less than the approved rate during the preceding twelve month period as designated by the Board of Trustees for the purpose of promoting consistency with the Consumer Price Index used by the Firemen's Retirement System of St. Louis. If the increase is in excess of the approved rate for any year, the excess shall be accumulated as to any retired Participant and increases granted in subsequent years subject to the maximum allowed for each full year from October following his retirement but not to exceed a total increase of twenty-five percent. If the Board of Trustees determines that the index has decreased for any year, the benefits of any retired Participant that have been increased shall be decreased but not below his

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initial benefit. No annual increase shall be made of less than one percent and no decrease of less than three percent except that any decrease shall be limited by the initial benefit.

In addition to the above, Grandfathered Participants may share in ad hoc COLAs, if any, to which they would be entitled in accordance with the terms and conditions of the Prior Plan as if such terms and conditions were included in this Plan.

**Section Nineteen.** Subsection G of Section 4.19.060 of Ordinance 69245, as amended by Ordinance 69353, is hereby repealed and in lieu thereof a new Subsection G of Section 4.19.060 is enacted to read as follows:

G. Prior Plan Benefit Offset — No Duplication Rule. Subsections 4.19.050(F) and (G) shall apply to all benefits, including grandfathered benefits. Notwithstanding anything in this Plan to the contrary, the retirement income benefit payable under this Plan shall be offset by the amount of retirement income payable under The Firemen's Retirement System of St. Louis (and any other defined benefit plan maintained by the City of St. Louis that is qualified under Section 401 of the Code) to the extent that the benefit under such other plan or plans is based on Years of Service used as the multiplier (times a percent of compensation) for purposes of determining the retirement income benefit under this Plan, so that the benefit accrued under this Plan is earned only because of years of service after the Effective Date, although vesting, eligibility for retirement and the rate of accrual for benefits attributable to years of service after the Effective Date is based on total years of service. The retirement income benefit offset shall be computed as if the Participant had received his retirement

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income under the offset plan in the form of a single life annuity commencing on the day benefits commence to be paid under this Plan.

The benefit of a Participant who enters DROP on or after February 1, 2013 shall be determined under this Plan, based on all service, including Prior Plan service, but the benefit of such a Participant shall be offset by the benefit payable under The Firemen's Retirement System of St. Louis, so that the benefit accrued under this Plan is earned only because of years of service after the Effective Date. No member has accrued any sick leave benefits under this Plan. The benefit under this Plan of a Grandfathered Participant who elects to have sick leave hours converted shall be adjusted so that the aggregated total of each of such benefits payable by both this Plan and the offset plan mirrors but does not exceed the amount of such benefits to which the Participant would have received under this Plan if all such service and compensation had been taken into account only by this Plan.

Notwithstanding anything in this Plan to the contrary, there shall be no duplication of any benefit under this Plan of a benefit payable from The Firemen's Retirement System of St. Louis that is attributable to years of service for which a Participant is entitled to an accrued benefit under The Firemen's Retirement System of St. Louis, no duplication of any death or disability benefit paid under The Firemen's Retirement System of St. Louis, and no duplication of any benefit under this Plan attributable to accumulated sick pay, DROP, or any other factor credited under The Firemen's Retirement System of St. Louis.

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**Section Twenty.** The last two sentences of paragraph (1) of Subsection B of Section 4.19.070 of Ordinance 69245 shall be amended to read as follows:

A disability shall be presumed to have been incurred while engaged in the actual performance of duty as a firefighter in response to an emergency call to the extent the disability is caused by a disease specified by state pension law applicable to this Plan as establishing such a presumption, including but not limited to, Section 87.006 of the Revised Statutes of Missouri, as may be amended. Such presumption may be rebutted by evidence to the contrary, such as habitual smoking.

**Section Twenty-one.** The paragraph (2) of Subsection B of Section 4.19.070 of Ordinance 69245 shall be amended to read as follows:

- (2) A Participant who incurs a Termination of Employment because of a Total and Permanent Disability resulting from bodily injury incurred while engaged in the actual performance of duty as a firefighter in response to an emergency call that renders the Participant totally and permanently unable to continue his employment as a firefighter, but not other gainful employment as described in paragraph B(1) of this Section, shall receive a disability income while so disabled equal to twenty-five percent of his Average Final Compensation; plus an additional two and seventy-five one hundredth percent (2.75%) of Average Final Compensation for each Year of Service in excess of ten years, up to twenty-five Years of Service; plus an additional eleven and five-tenths (11.5%) percent of Average Final Compensation for the twenty-fifth Year of Service at the time of such a

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Termination of Employment; with a maximum benefit of seventy-five percent of Average Final Compensation. A disability shall be presumed to have been incurred while engaged in the actual performance of duty as a firefighter in response to an emergency call to the extent the disability is caused by a disease specified by state pension law applicable to this Plan as establishing such a presumption, including but not limited to, Section 87.006 of the Revised Statutes of Missouri, as may be amended. Such presumption may be rebutted by evidence to the contrary, such as habitual smoking.

**Section Twenty-two.** The last Paragraph of Subsection B and the last paragraph of Subsection C of Section 4.19.070 of Ordinance 69245 are amended to read as follows:

Only Grandfathered Participants with at least twenty Years of Service as of the Effective Date who receive such a disability benefit shall receive a refund of his contributions to this Plan, without interest; contributions to this Plan made by Participants with fewer than twenty Years of Service as of the Effective Date who receive such a disability benefit are not refundable. All refundable contributions are payable at the time of his disability commencement date.

**Section Twenty-three.** Subsection D of Section 4.19.070 of Ordinance 69245, as amended by Ordinance 69353, is amended as follows:

D. Cost of Living Increases.

- (1) Following commencement of disability income payments to a Participant, benefits paid to such Participant pursuant to subsection (B) or subsection (C) of this Section shall be increased as of each

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October 1, with the first increase in the October following commencement of disability income payments and each October thereafter, by an amount equal to the lesser of three percent or the increase in the Consumer Price Index during the preceding twelve month period as designated by the Board of Trustees for the purpose of promoting consistency with the Consumer Price Index used by the Firemen's Retirement System of St. Louis; up to a maximum aggregate increase of twenty-five percent.

- (2) Notwithstanding the provisions of paragraph (2) of this subsection, in the case of a Participant who incurs a Termination of Employment because of a Total and Permanent Disability resulting from bodily injury incurred while the Participant was engaged in the actual performance of duty as a firefighter in response to an emergency call that renders the Participant totally and permanently unable to engage in any gainful employment in any occupation, following commencement of disability income payments to the Participant, benefits paid to such Participant pursuant to subsection (B) of this Section shall be increased as of each October 1, with the first increase in the October following commencement of disability income payments and each October thereafter, by three percent per year, compounded each year up to age sixty; and after age sixty by five percent per year for five years or until a total maximum increase of twenty-five percent is reached; provided that each such

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increase is subject to a determination by the Board of Trustees that the consumer price index shows an increase of not less than the approved rate during the preceding twelve month period as designated by the Board of Trustees for the purpose of promoting consistency with the Consumer Price Index used by the Firemen's Retirement System of St. Louis. If the increase is in excess of the approved rate for any year, the excess shall be accumulated as to any retired member and increases may be granted in subsequent years subject to the maximum allowed for each full year from October following his retirement but not to exceed a total increase of twenty-five percent. If the Board of Trustees determines that the index has decreased for any year, the benefits of any retired member that have been increased shall be decreased but not below his initial benefit. No annual increase shall be made of less than one percent and no decrease of less than three percent except that any decrease shall be limited by the initial benefit.

Notwithstanding anything to the contrary in the Plan, Grandfathered Participants may share in ad hoc COLAs, if any, to which they would be entitled in accordance with the terms and conditions of the Prior Plan.

**Section Twenty-four.** Subsection H of Section 4.19.070 of Ordinance 69245 is hereby repealed and replaced with the following:

H. Tuition Reimbursement.

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(1) Except for a disability described in paragraph B(1) or paragraph C of this Section, a Participant receiving disability benefits under this Section may receive reimbursement for educational tuition expenses for attending a college, university, community college, or vocational or technical school as a Full-Time Student upon proof of payment to such institution in an amount not to exceed the tuition for a state resident at the University of Missouri – St. Louis. A Participant receiving disability benefits shall apply for such tuition reimbursement no later than three years after the Participant first becomes entitled to a disability benefit under this Plan. Such right to reimbursement shall cease when the disabled Participant ceases to be a Full-Time Student, fails to provide verified proof of achievement of a grade point average of two on a four-point scale or the equivalent on another scale for each academic term, or if the disabled Participant is restored to active service as a firefighter, but in no event shall such education reimbursement be available after the end of the five-year period beginning when the Participant first becomes entitled to a disability benefit under this Plan.

(2) Notwithstanding anything to the contrary in Subsection 4.19.070(H)(1) above, the Board of Trustees shall be authorized and are directed to amend the Plan by deleting and removing Subsection 4.19.070(H)(1) in its entirety if the Internal Revenue Service determines that the terms contained in Subsection 4.19.070(H)(1) prevent the Plan from attaining qualified status.

**Section Twenty-five.** The second sentence of Subsection A of Section 4.19.080 of Ordinance 69245, as amended by Ordinance 69353, is hereby amended to read as follows:

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Any widow(er) who is receiving retirement benefits upon application to the Board of Trustees shall be made, constituted, appointed and employed by the Board as a special consultant on the problems of retirement, aging, and other state matters, during her or his widowhood, and upon request of the Board, give opinions, and be available to give opinions in writing, or orally, in response to such request, as may be required, and for such services shall be compensated monthly, in an amount, which when added to any monthly retirement benefits being received, shall not exceed fifty percent of the deceased Participant's average final compensation or two hundred dollars (\$200.00) whichever is greater.

**Section Twenty-six.** Paragraph (4) of Subsection B of Section 4.19.080 of Ordinance 69245 is hereby repealed and replaced by the following:

(4) Wherever any dependent child designated by the Board of Trustees to receive benefits pursuant to this Section is in the care of the widow(er) of the deceased Participant, the child's benefits may be paid to the widow(er) for the child.

**Section Twenty-seven.** Subsection C of Section 4.19.080 of Ordinance 69245, as amended by Ordinance 69353, is hereby amended to read as follows:

C. Funeral Expenses. In addition to any other death benefit to which a Participant may be entitled, whenever an active or retired Participant shall die, the Board of Trustees shall pay from the Trust a sum of two thousand dollars to the widow(er) or beneficiary of the Participant for funeral expenses.

**Section Twenty-eight.** Section 4.19.090 of Ordinance 69245 is hereby repealed and in lieu thereof a new Section 4.19.090 is enacted to read as follows:

**4.19.090 Limitations of Benefits.** Notwithstanding any other provisions of the Plan to the contrary, the member contributions paid to and retirement benefits paid from the plan shall be limited to such extent as may be necessary to conform to the requirements of Section 415 of the Code for a qualified pension plan pursuant to policies adopted by the Board of Trustees, which are incorporated herein by reference.

**Section Twenty-nine.** The second paragraph of Subsection A of Section 4.19.100 of Ordinance 69245 is hereby amended to read as follows:

No pension or other benefit shall be payable until the Participant or beneficiary shall have filed a claim for benefits with the Board of Trustees or its designated representative. Such claim must be submitted in writing on a form provided by, or suitable to, the Board of Trustees at least thirty days but not more than ninety days prior to the date on which payments begin. Notwithstanding the foregoing sentence, the Administrator may permit a retroactive annuity starting date for commencement of monthly benefits payable to a Participant or beneficiary. The Board of Trustees may require any applicant to furnish it with such information or identification as may be reasonably necessary, including a copy of the Participant's death certificate, if applicable.

**Section Thirty.** Subsection D of Section 4.19.100 of Ordinance 69245 is hereby amended to read as follows:

D. Misstatement in Application for Pension. If any Participant or any beneficiary in his application for a pension or in response to a request of the Board of Trustees for information gives any material fact which is erroneous or

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omits any material fact or fails before receiving his first payment to correct any material fact that he previously incorrectly furnished, the amount of his annuity shall be corrected and/or adjusted on the basis of the correct information and the amount of any overpayment or underpayment theretofore made to such Participant shall be deducted from or added to his next succeeding payments as the Board of Trustees shall direct.

**Section Thirty-one.** Subsection D of Section 4.19.110 of Ordinance 69245 is hereby repealed and replaced with the following:

D. Direct Rollover of Eligible Rollover Distributions. For purposes of compliance with Section 401(a)(31) of the Code, notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the Board of Trustees, to have any portion of an eligible rollover distribution, if any, paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

*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:
- (a) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life expectancy) of the distributee or the joint lives (or joint life

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expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more;

(b) any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code;

(c) the portion of any distribution that is not includible in gross income; provided, however, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income, but such portion may be transferred only:

(I) to an individual retirement account or annuity described in Section 408(a) or (b) of the Code or to a qualified defined contribution plan described in Section 401(a) of the Code that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible;

(II) to a qualified defined benefit plan described in Section 401(a) of the Code or to an annuity contract described in Section 403(b) of the Code, that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible; or

(III) to a Roth IRA described in Section 408A of the Code; and

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(d) any other distribution which the Internal Revenue Service does not consider eligible for rollover treatment, such as certain corrective distributions necessary to comply with the provisions of section 415 of the Internal Revenue Code or any distribution that is reasonably expected to total less than \$200 during the year. The definition of eligible rollover distribution also includes a distribution to a surviving spouse.

(2) *Eligible retirement plan:* An eligible retirement plan is any of the following that accepts the distributee's eligible rollover distribution:

(a) an individual retirement account described in Section 408(a) of the Code,

(b) an individual retirement annuity described in Section 408(b) of the Code,

(c) an annuity plan described in Section 403(a) of the Code,

(d) a qualified trust described in Section 401(a) of the Code,

(e) an annuity contract described in Section 403(b) of the Code,

(f) a plan eligible under Section 457(b) of the Code that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from the retirement system,  
or

(g) a Roth IRA described in Section 408A of the Code.

(3) *Distributee:* A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the

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employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse. A distributee further includes a nonspouse beneficiary who is a designated beneficiary as defined by Section 401(a)(9)(E) of the Code. However, a nonspouse beneficiary may only make a direct rollover to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution, and the account or annuity shall be treated as an "inherited" individual retirement account or annuity.

- (4) *Direct rollover:* A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

**Section Thirty-two.** Section 4.19.110 of Ordinance 69245 is hereby amended by adding a new Subsection E to read as follows:

E. Anti-Assignment. Benefits provided under the plan may not be assigned or alienated except otherwise provided by law.

**Section Thirty-three.** Subsection A of Section 4.19.120 of Ordinance 69245 is hereby amended by adding a sentence at the end to read as follows:

The Trust Fund must not revert, and no contributions shall be permitted to be returned, to the City, except due to a mistake of fact as permitted by Revenue Ruling 91-4.

**Section Thirty-four.** The second paragraph of Subsection B of Section 4.19.120 of Ordinance 69245, as amended by Ordinance 69353, is hereby amended to read as follows:

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The Actuary shall use the entry age normal method, amortizing the unfunded accrued liability as a level percent of payroll over a closed thirty year period. If the Board of Trustees fails to provide the actuarial valuation on or before the deadline for a Plan Year, the amount of the contribution for such year shall be determined by an Actuary retained by the City.

**Section Thirty-five.** Subsection D of Section 4.19.120 of Ordinance 69245 is hereby amended by changing the word “may” to “must.”

**Section Thirty-six.** The second paragraph of Subsection B of Section 4.19.130 of Ordinance 69245 is hereby amended to read as follows:

The selection of investment managers shall be based solely on sound investment principles in the best interest of the Trust Fund for the best interests of the Plan Participants and beneficiaries. No member of the Board of Trustees shall have any personal interest in the selection of an investment manager, except benefits from an interest in investments common to all Participants in the Plan. The Board of Trustees shall keep a record of the process for the selection of investment managers, which shall be open to public inspection except as provided by law.

**Section Thirty-seven.** Paragraph (2) of Subsection D of Section 4.19.130 of Ordinance 69245, as amended by Ordinance 69353, is hereby repealed and replaced with the following:

(2) The Comptroller of the City or Comptroller's designee, ex officio.

The Comptroller's designee must be an active, full-time employee of the City Comptroller's office;

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**Section Thirty-eight.** Paragraph (4) of Subsection D of Section 4.19.130 of Ordinance 69245, as amended by Ordinance 69353, is hereby repealed and replaced with the following:

(4) Two members to be elected by actively employed Participants in the Plan for a term of three years who shall hold office while Participants in the Plan. Notwithstanding the foregoing sentence, the member elected by the actively employed Participants in the Plan with the highest percentage of votes at the first election held after the Effective Date shall hold office for an initial term of four years, and shall hold office for three year terms thereafter;

**Section Thirty-nine.** The title of Section 4.19.140 of Ordinance 69245, is hereby repealed and replaced with the following title: Administration – Powers and Duties of Trustees

**Section Forty.** Subsection B of Section 4.19.140 of Ordinance 69245, as amended by Ordinance 69353, is hereby amended by adding a new paragraph to read as follows:

(7) Correction of Errors: The Board of Trustees may correct and/or adjust the benefits of any person who shall make any false statement, or shall falsify or permit to be falsified any record or records. Should any change or error in records result in any Participant or beneficiary receiving from the retirement system more or less than he or she should have been entitled to receive had the records been correct, the Board of Trustees shall correct the error, and as far as practicable, shall adjust the payments in such a manner that the actuarial equivalent of the benefit to which the Participant or beneficiary was correctly entitled, shall be paid.

**Section Forty-one.** Section 4.19.140 of Ordinance 69245, as amended by Ordinance 69353, is hereby amended as follows: The term “fiscal year” as it appears in subsection B(6) of

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Section 4.19.140 is hereby changed to “Plan Year.” The term "Participants," each place it appears in Subsection E of Section 4.19.140 is hereby changed to "members."

**Section Forty-two.** Section 4.19.160 of Ordinance 69245, as amended by Ordinance 69353, is hereby repealed in its entirety and replaced with the following:

The City reserves the right at any time, and from time to time, to modify or amend the Plan in whole or in part by duly adopting an Ordinance, provided that the obligation of the City to make contributions to the Plan, as provided in subsection 4.19.120(A), and the provisions relating to the enforcement of that obligation, may not be diminished.

No Employee shall have a contractual right to any benefits relating to, or based upon, service rendered or compensation paid after the effective date of an amendment that reduces future benefits.

In the event of a full or partial termination of, or a complete discontinuance of Employer contributions to, the Plan, the accrued benefits of the affected Participants under the Plan shall be one hundred percent vested and nonforfeitable to the extent funded and to the extent required by federal law.

**Section Forty-three.** Subsection B of Section 4.19.170 of Ordinance 69245 is hereby repealed in its entirety and replaced with the following:

B. Prohibited Transactions. The Board of Trustees may not engage in a transaction prohibited by Section 503(b) of the Code.

**Section Forty-four.** The first sentence of the second paragraph of Subsection E of Section 4.19.170 of Ordinance 69245 is amended as follows: the phrase “this ordinance” shall be replaced with the phrase “the ordinances governing FRP.”

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**Section Forty-five.** The last paragraph of Ordinance 69353 is hereby repealed and replaced with the following:

If any provision of this Ordinance or any other Ordinance governing FRP shall be held illegal or invalid, the remaining provisions of the Ordinances governing FRP shall be construed as if such provision has never been included and such remaining provisions shall remain valid and operative. The provisions of the most recently enacted Ordinance shall supersede any other ordinance or part of an ordinance to the extent such other ordinance or part of an ordinance conflicts herewith.