



CITY COUNCIL AGENDA ITEM

Date: April 4, 2016

To: Brian Kischnick, City Manager

From: Thomas Darling, Director of Financial Services
Dave Roberts, Fire Chief

Subject: Resolution to Approve Volunteer Firefighter Incentive Plan and Trust and to Transfer available funding to the Trust (***Introduced by: Thomas Darling, Director of Financial Services, Presented by: Michael VanOverbeke, Special Counsel***)

History

The Volunteer Firefighter Incentive Program (VFIP), established in the late 1970's, has a long history of providing incentives to attract and maintain a volunteer firefighter force that is second to none in the nation.

The City also has a long history of reviewing, on a periodic basis, the parameters of the program including the legal platform, vesting of benefits and the amount of those benefits to ascertain that the objectives of the program are being accomplished.

In August of 2014 (Resolution# 2014-08-110), as a result of a Special Study Session and lengthy discussion, City Council adopted the City of Troy Incentive Plan and Irrevocable Trust for Volunteer Firefighters as drafted by specialized legal counsel Michael VanOverbeke. The Plan and Trust had been drafted as an essential government function trust, based on Section 115 of the Internal Revenue Code of 1986, as amended (MCL 38.1132 et, seq.); was intended to qualify the incentive benefits to volunteers under a length of service plan as contractual benefits protected and guaranteed by Article IX, Section 24 of the State of Michigan constitution.

Based on the unique features of the Plan and Trust as drafted under Section 115 of the Internal Revenue Code of 1986, both the City of Troy and the Troy Volunteer Fire Department members desired an official determination from the Internal Revenue Service confirming the tax exempt status of the City of Troy Incentive Plan and Irrevocable Trust for Volunteer Firefighters.

Accordingly, City Council authorized City Administration to submit the City of Troy Incentive Plan and Irrevocable Trust for Volunteer Firefighters to the IRS for its review and approval, and if required or recommended by the IRS, submit any subsequent revisions to City Council for its review at the earliest opportunity.

Based on comments generated by the Internal Revenue Service review, certain revisions to the original City of Troy Incentive Plan and Irrevocable Trust for Volunteer Firefighters have been incorporated by specialized legal counsel Michael VanOverbeke and are presented for City Council review and approval.



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There are two significant revisions to the original submission, and several other minor modifications. First, the original document has been separated into two documents: the incentive “plan” and the “trust”. Second, both the plan and the trust had to be modified to specifically include a “risk of forfeiture,” which allows the City to exceed the \$3,000 annual benefit limit in IRC section 457(e)(11)(B)(ii). Anything exceeding \$3,000, without a potential risk of forfeiture, would need to be included in the volunteer’s gross annual income for tax purposes- and not just at the time the benefits were paid. The current plan provides a 25 year volunteer firefighter retiring after July 1, 2015 with \$17,025 annually.

The volunteer firefighters were apprised of the necessity of this modification, and in order to provide additional protection, the station representatives asked for additional notification procedures to be added in the very unlikely event that economic conditions required the City to terminate the trust at a future date for all new firefighters. This new notification procedure has been included in the revised documents.

Other revisions to the Plan include providing additional clarity to the issue of service credit and eligibility for benefit payments to Deferred Former Participants. These revisions center on members who have a substantial break in service (typically greater than one (1) year) and subsequently return as an active member.

We believe that the revised Plan and revised Trust documents accomplish the primary objectives as originally intended by:

1. Recognizing the valuable contributions that the Volunteer Firefighters provide to the City’s essential services.
2. Encourage participation and retention of Troy Volunteer Fire Department members.
3. Provide an additional but not absolute layer of security of benefits to Volunteer Firefighters in that the assets placed in the Trust are for the sole purpose of providing benefits to Volunteer Firefighters in accordance with the Plan document.
4. Allow the assets accumulated in the Trust to be invested in a manner similar to other retirement benefits sponsored by the City.

Financial

Based on the latest available investment statement (February 29, 2016), the current value of reserves held by the City for Volunteer Firefighter Incentive Plan payments is approximately \$7,724,980.

The City will officially transfer the reserve amounts to the trust once the final document is approved.



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Recommendation

It is recommended that City Council approve the attached amended City of Troy Incentive Plan for Volunteer Firefighters and the attached City of Troy Incentive Trust for Volunteer Firefighters.

It is also recommended that City Council direct management to transfer funds currently held by the City for benefit payments to Volunteer Firefighters to the City of Troy Incentive Trust for Volunteer Firefighters.

City Attorney's Review as to Form and Legality

Lori Grigg Bluhm, City Attorney

Date

TD/AGENDA ITEMS\08.25.14 – Resolution to Approve Volunteer Firefighter Incentive and Year of Service Benefit Multiplier Schedule and Transfer Money for Benefit of Volunteer Firefighter Retirement

CITY OF TROY

INCENTIVE TRUST FOR VOLUNTEER FIREFIGHTERS

Chapter 1. GENERAL PROVISIONS

1:100. Establishment and Purpose.

The City of Troy Incentive Trust for Volunteer Firefighters (the “Trust”) is hereby established to allow the City of Troy to fund the benefits as provided pursuant to the provisions of the City of Troy Incentive Plan for Volunteer Firefighters, an essential government function.

1:101. Short Title.

This Trust may be known and cited as the City of Troy Incentive Trust for Volunteer Firefighters (“Trust”).

1:102. Definitions.

For the purposes of this Trust, the following words shall have the meanings respectively ascribed to them by this section:

- (1) *Annual Benefit Amount* means the annual dollar amount of the length of service incentive benefits which may be payable from the Plan to eligible Former Participants, as amended from time to time by City Council via a budget appropriations resolution.
- (2) *City* means the City of Troy, Michigan.
- (3) *City Council* means the City Council of the City of Troy, Michigan.
- (4) *Code* means the Internal Revenue Code of 1986, as amended. Reference to any section or subsection of the Code includes reference to any comparable or succeeding provision of any legislation which amends or replaces such section or subsection and any regulations thereto.
- (5) *Contribution(s)* means the payments made to the Trust by the City for the purpose of providing length of service based incentive benefits to Former Participants and beneficiaries covered by the Plan.
- (6) *Incentive Service Credit* means personal service rendered to the City as a volunteer firefighter and credited to a Participant in accordance with the Plan.
- (7) *Plan* means the City of Troy Incentive Plan for Volunteer Firefighters established by Ordinance as provided herein. A description of the incentive benefits provided to eligible Former Participants, spouses and dependents under the Plan is maintained by the Plan Administrator.

- (8) *Plan Administrator* means the person, persons, firm, corporation or insurance company or companies, appointed by the City to administer the Plan. The Plan Administrator shall be responsible for the day-to-day operations of the Plan and shall carry out the directives of the City and the Board of Trustees.
- (9) *Plan Beneficiary* means a Participant, Former Participant, Deferred Former Participant, spouse, or beneficiary as defined in the Plan.
- (10) *Trust* means the City of Troy Incentive Trust for Volunteer Firefighters as established pursuant to the declaration of trust approved by the City Council and as may be amended from time to time.
- (11) *Trustee(s) or Board* means the Board of Trustees of the Trust or a member of the Board of Trustees of the Trust as provided for in the Trust.
- (12) *Voluntary Incentive Committee* means a committee comprised of representatives selected by each of the six fire stations in the City.

1:103. Interpretation and law; Construction.

- (1) The Trust is hereby established and shall be administered consistent with applicable Federal and Michigan law, including, but not limited to the Public Employee Retirement System Investment Act, Public Act 314 of 1965, as amended (MCL §38.1132 et seq.).
- (2) The Trust shall constitute a grantor governmental trust pursuant to Section 115 of the Code, as amended and shall be construed, enforced and administered and the validity thereof determined in accordance with the Code and the laws of the State of Michigan. If any provision of the Trust is held to violate the Code or to be illegal or invalid for any other reason, that provision shall be deemed to be null and void, but the invalidation of that provision shall not otherwise affect the Trust.
- (3) Neither the establishment of the Trust, nor any modification thereof, nor the creation of any fund or account, nor the payment of any benefits to the Plan, shall be construed as giving to any person, any legal or equitable right against the City, its elected or appointed officials or employees, the Trustees or any individual Trustee, except as may otherwise be provided in the Trust.
- (4) The headings and subheadings in this Trust are inserted for convenience of reference only and are not to be considered in the construction of any provision of the Trust.
- (5) Words herein in the masculine gender shall be construed to include the feminine gender where appropriate, and words used herein in the singular or plural shall be construed as being in the plural or singular where appropriate.
- (6) In resolving any conflict among provisions of this Trust or any uncertainty as to the meaning or intention of any provision of this Trust, the interpretation that causes both the Trust to be exempt from tax and the Trust to comply with all applicable requirements of the Code shall prevail over any different interpretation.

1:104. Notice.

Notice given to all interested parties shall, unless otherwise specified in this Trust, be sufficient if in writing and delivered or sent by prepaid first class mail. Except as otherwise noted, the distribution or delivery of any statements or documents required under the Trust shall be sufficient if delivered in person or prepaid first class mail.

1:105. Amendments.

The provisions of the Trust may be amended at any time by the Troy City Council in accordance with applicable law. The Voluntary Incentive Committee will be notified at least thirty (30) days in advance that a proposed amendment or revision will be submitted to the Troy City Council for consideration. The City Council shall hold a public hearing prior to taking any formal action to amend or terminate the Trust.

Chapter 2.

INCENTIVE TRUST FOR VOLUNTEER FIREFIGHTERS

1:200. Irrevocable Trust, Established.

The Trust, established by the City in accordance with Section 115 of the Code shall be an irrevocable grantor trust administered consistent with applicable federal and Michigan law, and shall constitute a governmental trust under Section 115 of the Code, as amended, Revenue Rulings 77-261 and 90-74, and other relevant guidance. The Trust is intended to fund the City's volunteer firefighter incentive benefits under the Plan pursuant to applicable provisions of the Internal Revenue Code, the regulations promulgated under each, and applicable federal and Michigan law. The Trust shall conform to all applicable sections of the Internal Revenue Code, the statement of purpose in this Trust, and all statutes, ordinances, rules, administrative regulations, arbitrators' awards and judicial decisions interpreting the foregoing provisions.

The Trust shall consist of City Contributions pursuant to the provisions of a City administrative regulation, all investments made or held under Trust, and all income therefrom, both received and accrued, and any other property, which may be received or held by reason of this Trust.

The income accruing to the Trust shall be excluded from gross income as such trust income is derived from the exercise of an essential governmental function as provided for under Section 115(1) of the Code, as amended, Revenue Rulings 77-261 and 90-74, and other relevant guidance.

1:201. Use of Trust Assets.

- (1) The Trust assets shall not be used for or diverted to purposes other than to provide the benefits contemplated under the Plan or to pay for reasonable and necessary services, costs and expenses related to assisting the Trustees in the operation of the Trust. Plan beneficiaries shall have no preferred claim on, or any beneficial ownership interest in, any assets of the Trust.

- (2) All income, profits, recoveries, contributions, forfeitures and any and all monies, securities and properties of any kind at any time received or held by the Trustees hereunder, shall become part of the Trust when received, and shall be held for the use and purposes hereof.
- (3) Any assets held by the Trust shall be subject to the claims of the City's general creditors in the event of the City's insolvency.

1:202. Funding.

- (1) For the purpose of creating and maintaining a fund for the payment of incentive benefits payable as provided in the Plan, the City will pay to the Trust an amount consistent with the actuarial valuations and calculations made by the Actuary for the Trust to result in a pre-funded plan. Such contributions shall also be made in accordance with any regulations of the Board of Trustees as are not inconsistent with the authority stated in the Plan or this Trust document, or under applicable law.
- (2) Subject to the tax provisions of applicable ordinances, resolutions and state law, the Trustees may, to the extent matters are not set forth in the Trust, in their discretion decide the manner and means of payments, the procedures to be followed in making the payments, and the forms required to accompany the payments to the Trust. Upon determination by the Trustees of these matters, the Trustees shall provide written notice to the City and will provide for payments by the City to be made pursuant to the rules and regulations of the Trust.
- (3) Time is of the essence in making and processing all payments to the Trust. The parties recognize that the regular and timely payments of Contributions are essential to the operation of the Trust and the providing of benefits under the Plan.

1:203. Trust Liabilities.

- (1) Neither the City, nor any Trustee, Former Trustee, or Plan beneficiary shall be liable for any debts, liabilities or obligations of the Trust except as provided herein. Neither the City, nor any Plan beneficiary shall have any right to the return of any money properly paid into the Trust, except as otherwise specifically provided in this Trust, or to money improperly paid which has already been invested or distributed.
- (2) No part of the Trust or any assets payable therefrom shall be subject to alienation, sale, transfer, assignment, pledge, or encumbrance charge by any person. No Plan beneficiary shall be entitled to receive any part of the Contributions made by the City or payments required to be made by the Trust, in lieu of such benefits provided under the Plan as determined by the Trustees in accordance with the Trust.

1:204. Termination of the Trust.

- (1) The Trust shall continue during such period of time as may be necessary to carry out the provisions of the Plan and for a period of time sufficient to wind up the affairs of the Trust.
- (2) Provided there are no longer any Plan beneficiaries eligible for benefits or who may yet become eligible to receive benefits from the Plan and all benefit obligations to Plan

beneficiaries have been satisfied, the Trust may thereafter be terminated at any time by the Trustees so long as the termination is consistent with any then existing City decisions. It shall not be necessary for the City to execute such an agreement for the Trust to terminate.

- (3) If the Trust terminates, the remaining funds available after providing for all the outstanding obligations shall be returned to the City.

Chapter 3. **BOARD OF TRUSTEES**

1:301. Board of Trustees.

- (1) The Board of Trustees of the City of Troy Incentive Plan and Trust for Volunteer Firefighters shall consist of the following seven (7) members:
 - (a) The City Manager or his/her designee;
 - (b) The City Financial Services Director or his/her designee, who shall serve as Chair of the Board;
 - (c) Two active volunteer firefighters appointed by the Voluntary Incentive Committee;
 - (d) One member of the Troy City Council as selected by the City Council; and
 - (e) One citizen of the City of Troy, appointed by the Mayor,
 - (f) One retiree representative, appointed by the Voluntary Incentive Committee.
- (2) The general administration, management and responsibility for the proper operation of the Trust and for making effective and construing the provisions of the Trust shall be vested in the Board of Trustees established by this Section, consistent with applicable state and federal laws and regulations. The Board of Trustees shall be the investment fiduciary of the Trust. A Trustee shall discharge his or her duties with the care, skill, and caution under the circumstances then prevailing which a prudent person, acting in a like capacity and familiar with those matters, would use in the conduct of an activity of like character and purpose.

1:302. Trustees' Terms of Office.

- (1) The regular terms of office of the Voluntary Incentive Committee and Citizen appointed Trustees shall be three years.
- (2) Each Trustee shall serve until the expiration of his or her term of office or until his or her death, incapacity, resignation or removal.
- (3) In the event a Voluntary Incentive Committee appointed Trustee resigns or is removed as a volunteer firefighter, he or she shall be considered to have resigned from the Board. The Board shall, by resolution, declare his or her office of Trustee vacated as of the date of such resolution. Any vacancy occurring in the office of Trustee shall be filled within sixty (60) days following the date of the vacancy, for the unexpired portion of the term, in the same manner in which the office was previously filled.
- (4) If a Trustee as provided in 1:401(a) shall fail to attend scheduled meetings of the Board for three consecutive meetings, unless in each case excused for cause by the remaining

Trustees attending such meetings, the Trustee shall be considered to have resigned from the Board, and the Board shall, by resolution, declare the office of the Trustee vacated as of the date of adoption of such resolution. Any vacancy occurring in the office of Trustee shall be filled within sixty (60) days following the date of the vacancy, for the unexpired portion of the term, in the same manner in which the office was previously filled.

- (5) A vacancy or vacancies in the office of the Trustees shall not impair the powers of the remaining Trustees to administer the affairs of the Trust, provided there are sufficient Trustees to constitute a quorum. If a vacancy occurs on the Board of Trustees, it shall be filled as soon as practically possible.
- (6) Each successor Trustee, upon accepting such appointment, shall have and enjoy all the powers, both discretionary and ministerial, and shall be charged with all of the duties and responsibilities herein conferred upon his predecessor.

1:303. Officers and Administration.

- (1) At its first meeting in the calendar year, the Trustees shall elect a chairperson pro-tem. The chairperson pro-tem shall serve a term of one year or until a new chairperson pro tem is elected.
- (2) The Board of Trustees shall designate a member or other individual to serve as secretary of the Board of Trustees. The secretary's term shall be at the pleasure of the Board of Trustees.
- (3) The City Treasurer shall serve as the Treasurer of the Trust. Any reimbursement for the City Treasurer's service shall be in accordance with the provisions of 1:403 (5).
- (4) The Board of Trustees may employ such other clerical staff or administrative staff to perform whatever administrative activities are required in the proper performance of the Trust. In addition thereto, the Trustees may, if they desire, utilize other staff to perform such clerical and administrative duties as they may, in their sole discretion, determine is reasonably and prudently necessary to carry out the Trust's activities and purposes. Under no circumstances shall said staff have control or authority with respect to the management of the Trust or its assets. The said staff shall not be clothed with any type of authority or power which will constitute the staff as a fiduciary. Said staff will not have the power or authority to act as an investment counselor or manager and will not be authorized to furnish investment advice. Said staff shall also not have the power or authority to render the staff a fiduciary to the Trust.
- (5) The Board of Trustees may request to utilize City staff for such functions as personnel administration, accounting, banking, purchasing, or other services necessary for the proper administration of the Plan or Trust. On an annual basis, the City will provide the Board with a cost allocation for the City employees who are qualified to perform the required duties. If the parties mutually agree that these functions will be performed by City employees, then the City will notify the Board of the cost of performing the assigned duties, and such costs will be reimbursed from the assets of the Trust. There must be compliance with all established City control procedures and policies related to these services.

- (6) The Board of Trustees shall employ an investment manager or investment managers to manage some or all of the assets of the Trust. Each investment manager must be registered under the Investment Advisor's Act of 1940, as amended, (15 USC 80b-1) and must meet any applicable state and federal requirements to act as an investment manager. The Trustees may, if they deem proper in their discretion, or if the circumstances require it, appoint such investment manager, managers, banks or insurance companies as fiduciaries and enter into an agreement with such institutions, naming it a fiduciary and conveying to such fiduciary all or a portion of the assets of the Trust, so that said fiduciary may handle, manage and hold those assets conveyed to it. All assets conveyed to said fiduciary shall be subject to the provision of the agreement or agreements between the Trustees and the fiduciary.
- (7) The City Attorney shall serve as legal counsel to the Board of Trustees. Any reimbursement for the City Attorney's service shall be in accordance with the provisions of 1:403(5).
- (8) The Board of Trustees shall appoint an Actuary who shall advise the Trustees on the actuarial operation of the Trust. The Trustees shall, from time to time, adopt such mortality and other tables of experience and a rate or rates of regular interest as are necessary in the operation of the Trust on an actuarial basis.

1:304. Board Meetings.

- (1) The Trustees shall meet at least once quarterly. The Trustees shall determine the time for the regular meetings of the Trustees and the place or places where such meetings shall be held. The Secretary or his or her designee shall be responsible for giving notice of the time and place of such meetings to the other Trustees.
- (2) Notice and conduct of all meetings of the Trustees, both regular and special, shall be given in accordance with applicable law including the Michigan Open Meetings Act (MCL §15.261 et seq.).
- (3) The Board of Trustees shall adopt its own rules of procedure and shall keep a record of its proceedings. Four (4) Trustees shall constitute a quorum at any meeting of the Board of Trustees. Each Trustee shall be entitled to one vote on each question before the Board of Trustees and at least four (4) concurring votes shall be necessary for a decision of the Board.

1:305. Compensation.

All Trustees shall serve without compensation as members of the Board of Trustees. Trustees may be reimbursed by the Trust for reasonable and necessary costs and expenses of the Trustees in performing their duties as Trustees as related to the operation of the Plan or Trust.

1:306. Trustees' Powers and Responsibilities.

The Trustees shall hold all the powers that are necessary to carry out the purposes of the Trust and are generally available to Trustees under the laws of the State of Michigan, except as limited by the Trust and by Federal law and regulations. It is intended that the Trust shall be tax exempt and shall qualify under the Code and any amendments of the Code applicable to plans of this

type. The Trustees shall have the continuing duty to propose to the City, amendments to the Trust to the extent it becomes necessary to qualify the Trust under the Code and to continue the tax exempt status of the Trust. The Trustees shall take no action nor make any determination inconsistent with any qualification or ruling of the Internal Revenue Service, an arbitrator or the courts with respect to the Trust. In the case of amendments to the Code or changes of regulations by the Internal Revenue Service or the Labor Department, the Trustees are empowered to take all necessary action authorized by the Plan and the Trust, Federal and state law and regulations, to continue the qualification of the Trust as a qualified Trust. In carrying out the purposes of the Trust, the Trustees shall have the following powers and duties:

- (1) The Trustees shall, in order to effectuate the purposes of the Trust, be bound by the terms of the Plan, the Trust, and any applicable administrative regulations.
- (2) Consistent with applicable state and Federal laws and regulations, the Trustees shall have the power to promulgate rules and regulations for the day-to-day management of the Trust, the investment of monies held by the Trust, to determine all questions regarding the interpretation of the Trust, and such other Trust related subjects as shall be deemed necessary and proper by the Trustees. If any rule or regulation of the Trust or part thereof is found to be in conflict with any law, statute, judicial decision, arbitration decision or any other competent body or tribunal, such rule or regulation or part thereof shall be deemed void and all other rules and regulations of the Trust shall remain in effect.
- (3) Whenever the signature of a Trustee is required on any document, two signatures of the individuals authorized by the Board of Trustees shall be required.

1:307. Investment of Trust Assets.

- (1) The Trustees shall be authorized to invest the assets of the Trust in accordance with the provisions of the Public Employee Retirement System Investment Act, Public Act 314 of 1965, as amended (MCL §38.1132 et seq.).
- (2) The Board shall invest and reinvest the principal and income of the Trust, without distinction between principal and income, in its sole discretion. The Board in its sole discretion may keep such portion of the Trust in cash or cash balances as the Board may from time to time deem to be in the best interests of the Trust.
- (3) To the extent permitted by law, the Board may commingle the investment of the Trust with other funds that it administers.

1:308. Board Liabilities.

- (1) The Board's responsibilities and liabilities shall be subject to the following limitations and other limitations as set forth in the Trust:
 - (a) The Board shall have no duties other than those expressly set forth in this Trust and those imposed on the Board by applicable laws.
 - (b) The Board shall be responsible only for money and property actually received by the Board, and then to the extent described in this Trust.

(c) The Board shall not be responsible for the correctness of any determination of payments or disbursements from the Trust.

(d) The Board shall have no liability for the acts or omissions of any predecessor or successor in office.

(e) The Board shall have no liability for the acts or omissions of any (a) Investment Manager or Managers; (b) insurance company; (c) investment fund; or (d) contractor.

(f) In the event of any suit brought against the Trustees arising out of the acts within the scope and powers and duties of the Trustees, or in the event of any lawsuit brought by the Trustees, the cost of defense or prosecution of such lawsuit shall be charged to the Trust, and shall be paid directly from the Trust, provided such costs are not incurred by reason of bad faith, gross negligence, or breach of a fiduciary obligation to the Trust or to the beneficiaries thereof.

(g) The Board may authorize the purchase of insurance for the Trust and for the Trustees to cover liability or losses occurring for any reason, including, but not limited to, an act or omission (errors or omissions) of a fiduciary, including the Trustees; provided however, that such insurance policy permits recourse by the insured against the fiduciary, including the Trustee or Trustees involved, in case of breach of fiduciary obligation by the fiduciary.

1.309. Reports.

(1) The Trustees, or their respective designees, shall establish a uniform system for the timely transmission of required reports and contributions.

(2) The Trustees shall maintain, or cause to be maintained, proper books of accounts and records of and for the administration of the Trust, including the minutes of all meetings, make them available for inspection during reasonable business hours by the City, or any Plan beneficiary.

(3) The financial records of the Trust shall be subject to the annual audit of the City. The Trustees shall fully comply with all applicable statutory and municipal budgetary and accounting procedures and provide access to or documentation of all assets and liabilities of the Trust and a resume of the operations of the Trust for the preceding year together with such other data as may be required by law or as part of the City's annual financial report.

IN WITNESS WHEREOF, this document has been signed and sealed on behalf of the City of Troy by its duly authorized officers, on this ____ day of _____, 2016.

CITY OF TROY

BY: _____

ITS: _____

BY: _____

ITS: _____

CITY OF TROY INCENTIVE TRUST FOR VOLUNTEER FIREFIGHTERS

Chapter 1. GENERAL PROVISIONS

1:100. Establishment and Purpose.

The City of Troy Incentive Trust for Volunteer Firefighters (the "Trust") is hereby established to allow the City of Troy to fund the benefits as provided pursuant to the provisions of the City of Troy Incentive Plan for Volunteer Firefighters, an essential government function.

Deleted: PLAN AND

Deleted: This City of Troy Incentive Plan for Volunteer Firefighters (the "Plan") is hereby restated, as amended, for the purpose of providing length of service incentive benefits for the City of Troy volunteer firefighters.

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1:101. Short Title.

This Trust may be known and cited as the City of Troy Incentive Trust for Volunteer Firefighters ("Trust").

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Deleted: Plan and

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1:102. Definitions.

For the purposes of this Trust, the following words shall have the meanings respectively ascribed to them by this section:

Deleted: Plan and

(1) *Annual Benefit Amount* means the annual dollar amount of the length of service incentive benefits which may be payable from the Plan to eligible Former Participants, as amended from time to time by City Council via a budget appropriations resolution.

(2) *City* means the City of Troy, Michigan.

(3) *City Council* means the City Council of the City of Troy, Michigan.

(4) *Code* means the Internal Revenue Code of 1986, as amended. Reference to any section or subsection of the Code includes reference to any comparable or succeeding provision of any legislation which amends or replaces such section or subsection and any regulations thereto.

(5) *Contribution(s)* means the payments made to the Trust by the City for the purpose of providing length of service based incentive benefits to Former Participants and beneficiaries covered by the Plan.

Deleted: payment required to be

Deleted: (6) *Former Participant* means an individual who is (a) an active volunteer firefighter, who upon attaining eligibility, elected to commence receipt of incentive benefits and is therefore no longer entitled to further benefit accruals under the provisions of this Plan; (b) a former volunteer firefighter, who upon termination of volunteer service was eligible for, and elected to commence receipt, of incentive benefits from the Plan; or (c) a Former Vested Participant, who upon attaining eligibility, elected to commence receipt of incentive benefits from the Plan;

(6) *Incentive Service Credit* means personal service rendered to the City as a volunteer firefighter and credited to a Participant in accordance with the Plan.

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Moved (insertion) [1]

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(8) *Participant* means an individual who is an active volunteer firefighter entitled to benefit accruals under the provisions of the Plan and who has not elected to commence receipt of benefits under the terms of the Plan. ¶

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(9

(7) *Plan* means the City of Troy Incentive Plan for Volunteer Firefighters established by Ordinance as provided herein. A description of the incentive benefits provided to eligible Former Participants, spouses and dependents under the Plan is maintained by the Plan Administrator.

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Deleted: Retired Volunteer Firefighters

~~(8)~~ *Plan Administrator* means the person, persons, firm, corporation or insurance company or companies, appointed by the City to administer the Plan. The Plan Administrator shall be responsible for the day-to-day operations of the Plan and shall carry out the directives of the City and the Board of Trustees.

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~~(9)~~ *Plan Beneficiary* means a Participant, Former Participant, Deferred Former Participant, spouse, or beneficiary as defined in the Plan.

Deleted: (11) . *Spouse* means a Participant's, Former Participant's or Vested Former Participant's spouse by legal marriage who is the Participant's spouse on the earlier of the date the Participant terminates from volunteering with the City or elects to commence receipt of incentive benefits from the Plan. ¶
(12)

~~(10)~~ *Trust* means the City of Troy Incentive Trust for Volunteer Firefighters as established pursuant to the declaration of trust approved by the City Council and as may be amended from time to time.

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~~(11)~~ *Trustee(s) or Board* means the Board of Trustees of the Trust or a member of the Board of Trustees of the Trust as provided for in the Trust.

Deleted: (14) *Vested Former Participant* means a former volunteer firefighter and Participant who has ten (10) or more years of incentive service as a volunteer firefighter for the City, but has not reached the requisite age requirement for commencement of benefits from the Plan. ¶

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(15)

~~(12)~~ *Voluntary Incentive Committee* means a committee comprised of representatives selected by each of the six fire stations in the City.

Deleted: Plan

Deleted:).

1:103. Interpretation and law; Construction.

(1) The Trust is hereby established and shall be administered consistent with applicable Federal and Michigan law, including, but not limited to the Public Employee Retirement System Investment Act, Public Act 314 of 1965, as amended (MCL §38.1132 et seq.).

Deleted: Plan or

(2) The Trust shall constitute a grantor governmental trust pursuant to Section 115 of the Code, as amended and shall be construed, enforced and administered and the validity thereof determined in accordance with the Code and the laws of the State of Michigan. If any provision of the Trust is held to violate the Code or to be illegal or invalid for any other reason, that provision shall be deemed to be null and void, but the invalidation of that provision shall not otherwise affect the Trust.

Deleted: Plan or

(3) Neither the establishment of the Trust, nor any modification thereof, nor the creation of any fund or account, nor the payment of any benefits to the Plan, shall be construed as giving to any person, any legal or equitable right against the City, its elected or appointed officials or employees, the Trustees or any individual Trustee, except as may otherwise be provided in the Trust.

Deleted: The City intends the incentive benefits provided by this Plan to be considered a contractual benefit protected and guaranteed by Article IX, Section 24 of the State of Michigan Constitution. ¶

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(4)

Deleted: the Plan or

(4) The headings and subheadings in this Trust are inserted for convenience of reference only and are not to be considered in the construction of any provision of the Trust.

Deleted: person covered under the Plan, or any other

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(5) Words herein in the masculine gender shall be construed to include the feminine gender where appropriate, and words used herein in the singular or plural shall be construed as being in the plural or singular where appropriate.

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(6) In resolving any conflict among provisions of this Trust or any uncertainty as to the meaning or intention of any provision of this Trust, the interpretation that causes both the Trust to be exempt from tax and the Trust to comply with all applicable requirements of the Code shall prevail over any different interpretation.

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(8) This Plan and Trust shall be binding upon all Participants, Former Participants and Vested Former Participants under the Plan, or their applicable heirs, executors, administrators, successors, and assigns.

1:104. Notice.

Notice given to all interested parties shall, unless otherwise specified in this Trust, be sufficient if in writing and delivered or sent by prepaid first class mail. Except as otherwise noted, the distribution or delivery of any statements or documents required under the Trust shall be sufficient if delivered in person or prepaid first class mail. **The City Council shall hold a public hearing prior to taking any formal action to amend or terminate the Trust.**

1:105. Amendments.

The provisions of the Trust may be amended at any time by the Troy City Council in accordance with applicable law. The Voluntary Incentive Committee will be notified at least thirty (30) days in advance that a proposed amendment or revision will be submitted to the Troy City Council for consideration.

Chapter 2.

INCENTIVE TRUST FOR VOLUNTEER FIREFIGHTERS

1:200. Irrevocable Trust, Established.

The Trust, established by the City in accordance with Section 115 of the Code shall be an irrevocable grantor trust administered consistent with applicable federal and Michigan law, and shall constitute a governmental trust under Section 115 of the Code, as amended, Revenue Rulings 77-261 and 90-74, and other relevant guidance. The Trust is intended to fund the City's volunteer firefighter incentive benefits under the Plan pursuant to applicable provisions of the Internal Revenue Code, the regulations promulgated under each, and applicable federal and Michigan law. The Trust shall conform to all applicable sections of the Internal Revenue Code, the statement of purpose in this Trust, and all statutes, ordinances, rules, administrative regulations, arbitrators' awards and judicial decisions interpreting the foregoing provisions.

The Trust shall consist of City Contributions pursuant to the provisions of a City administrative regulation, all investments made or held under Trust, and all income therefrom, both received and accrued, and any other property, which may be received or held by reason of this Trust.

The income accruing to the Trust shall be excluded from gross income as such trust income is derived from the exercise of an essential governmental function as provided for under Section 115(1) of the Code, as amended, Revenue Rulings 77-261 and 90-74, and other relevant guidance.

1:201. Use of Trust Assets.

- (1) The Trust assets shall not be used for or diverted to purposes other than to provide the benefits contemplated under the Plan or to pay for reasonable and necessary services, costs and expenses related to assisting the Trustees in the operation of the Trust. Plan beneficiaries shall have no preferred claim on, or any beneficial ownership interest in, any assets of the Trust.

Deleted: Administrative Regulations.

The provisions of this Plan are subject to relevant provisions of any administrative regulations that the City may have for volunteer firefighters and any volunteer service contracts between the City and an individual Participant, if any. The provisions of any administrative regulations or service contracts for volunteer firefighters relative to incentive benefits are controlling in the event of a conflict between the terms of the administrative regulations or applicable service contract and the Plan.

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Deleted: 106. Reporting and Disclosure.

The Plan Administrator shall complete and provide to Participants, Former Participants, Vested Former Participants, Spouses and Dependents and to the appropriate government agencies any reports as may be required by the Code, applicable federal, state or local law.

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1:200. Participation.

(1) Each active volunteer firefighter of the City shall be a Participant in the Plan.

(2) Participation shall terminate upon the earlier of termination of duties as a volunteer firefighter or commencement of incentive benefits under the provisions of this Plan.

1:201. Service Credit.

(1) A Participant shall be credited with one month of service credit for each complete calendar month the Participant is a volunteer firefighter and meets or exceeds the attendance requirements as identified in the Troy Fire Department Policy Directive 103.07. Service shall be totaled in years and months.

(2) Service credit shall be forfeited five years after the date an individual ceases to be an active volunteer firefighter and a Participant in the Plan unless the individual is a Former Participant, a Vested Former Participant or returns to active duty as a volunteer firefighter for ten consecutive years.

1:202. Benefits.

(1) An eligible Participant or Vested Former Participant, upon written application filed with the Board of Trustees, shall be paid incentive benefits pursuant to the provisions of this Plan. The incentive benefits due an eligible Participant or Vested Former Participant shall be determined at the time he or she terminates participation, as provided in the Plan.

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(2) All income, profits, recoveries, contributions, forfeitures and any and all monies, securities and properties of any kind at any time received or held by the Trustees hereunder, shall become part of the Trust when received, and shall be held for the use and purposes hereof.

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(3) Any assets held by the Trust shall be subject to the claims of the City's general creditors in the event of the City's insolvency.

I:202. Funding.

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(1) For the purpose of creating and maintaining a fund for the payment of incentive benefits payable as provided in the Plan, the City will pay to the Trust an amount consistent with the actuarial valuations and calculations made by the Actuary for the Trust to result in a pre-funded plan. Such contributions shall also be made in accordance with any regulations of the Board of Trustees as are not inconsistent with the authority stated in the Plan or this Trust document, or under applicable law.

(2) Subject to the tax provisions of applicable ordinances, resolutions and state law, the Trustees may, to the extent matters are not set forth in the Trust, in their discretion decide the manner and means of payments, the procedures to be followed in making the payments, and the forms required to accompany the payments to the Trust. Upon determination by the Trustees of these matters, the Trustees shall provide written notice to the City and will provide for payments by the City to be made pursuant to the rules and regulations of the Trust.

(3) Time is of the essence in making and processing all payments to the Trust. The parties recognize that the regular and timely payments of Contributions are essential to the operation of the Trust and the providing of benefits under the Plan.

I:203. Trust Liabilities

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(1) Neither the City, nor any Trustee, Former Trustee, or Plan beneficiary shall be liable for any debts, liabilities or obligations of the Trust except as provided herein. Neither the City, nor any Plan beneficiary shall have any right to the return of any money properly paid into the Trust, except as otherwise specifically provided in this Trust, or to money improperly paid which has already been invested or distributed.

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(2) No part of the Trust or any assets payable therefrom shall be subject to alienation, sale, transfer, assignment, pledge, or encumbrance charge by any person. No Plan beneficiary shall be entitled to receive any part of the Contributions made by the City or payments required to be made by the Trust, in lieu of such benefits provided under the Plan as determined by the Trustees in accordance with the Trust.

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I:204. Termination of the Trust.

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(1) The Trust shall continue during such period of time as may be necessary to carry out the provisions of the Plan and for a period of time sufficient to wind up the affairs of the Trust.

Deleted: In the event of termination or partial termination of the Plan, a Participant's vested interest is a contractual obligation under Article IX, Section 24 of the State of Michigan Constitution.

(2) Provided there are no longer any Plan beneficiaries eligible for benefits or who may yet become eligible to receive benefits from the Plan and all benefit obligations to Plan beneficiaries have been satisfied, the Trust may thereafter be terminated at any time by the Trustees so long as the termination is consistent with any then existing City decisions. It shall not be necessary for the City to execute such an agreement for the Trust to terminate.

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Deleted: Participants, Former Participants, Vested Former Participants, and their respective

(3) If the Trust terminates, the remaining funds available after providing for all the outstanding obligations shall be returned to the City.

Chapter 3.
BOARD OF TRUSTEES

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I:301. Board of Trustees.

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(1) The Board of Trustees of the City of Troy Incentive Plan and Trust for Volunteer Firefighters shall consist of the following seven (7) members:

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- (a) The City Manager or his/her designee;
- (b) The City Financial Services Director or his/her designee, who shall serve as Chair of the Board;
- (c) Two active volunteer firefighters appointed by the Voluntary Incentive Committee;
- (d) One member of the Troy City Council as selected by the City Council; and
- (e) One citizen of the City of Troy, appointed by the Mayor,
- (f) One retiree representative, appointed by the Voluntary Incentive Committee.

(2) The general administration, management and responsibility for the proper operation of the Trust and for making effective and construing the provisions of the Trust shall be vested in the Board of Trustees established by this Section, consistent with applicable state and federal laws and regulations. The Board of Trustees shall be the investment fiduciary of the Trust. A Trustee shall discharge his or her duties with the care, skill, and caution under the circumstances then prevailing which a prudent person, acting in a like capacity and familiar with those matters, would use in the conduct of an activity of like character and purpose.

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I:302. Trustees' Terms of Office.

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(1) The regular terms of office of the Voluntary Incentive Committee and Citizen appointed Trustees shall be three years.

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(2) Each Trustee shall serve until the expiration of his or her term of office or until his or her death, incapacity, resignation or removal.

(3) In the event a Voluntary Incentive Committee appointed Trustee resigns or is removed as a volunteer firefighter, he or she shall be considered to have resigned from the Board. The Board shall, by resolution, declare his or her office of Trustee vacated as of the date of such resolution. Any vacancy occurring in the office of Trustee shall be filled within sixty (60) days following the date of the vacancy, for the unexpired portion of the term, in the same manner in which the office was previously filled.

Deleted: Participant elected

- (4) If a Trustee as provided in 1:401(a) shall fail to attend scheduled meetings of the Board for three consecutive meetings, unless in each case excused for cause by the remaining Trustees attending such meetings, the Trustee shall be considered to have resigned from the Board, and the Board shall, by resolution, declare the office of the Trustee vacated as of the date of adoption of such resolution. Any vacancy occurring in the office of Trustee shall be filled within sixty (60) days following the date of the vacancy, for the unexpired portion of the term, in the same manner in which the office was previously filled.
- (5) A vacancy or vacancies in the office of the Trustees shall not impair the powers of the remaining Trustees to administer the affairs of the Trust, provided there are sufficient Trustees to constitute a quorum. If a vacancy occurs on the Board of Trustees, it shall be filled as soon as practically possible.
- (6) Each successor Trustee, upon accepting such appointment, shall have and enjoy all the powers, both discretionary and ministerial, and shall be charged with all of the duties and responsibilities herein conferred upon his predecessor.

1:303. Officers and Administration.

- (1) At its first meeting in the calendar year, the Trustees shall elect a chairperson pro-tem. The chairperson pro-tem shall serve a term of one year or until a new chairperson pro tem is elected.
- (2) The Board of Trustees shall designate a member or other individual to serve as secretary of the Board of Trustees. The secretary's term shall be at the pleasure of the Board of Trustees.
- (3) The City Treasurer shall serve as the Treasurer of the Trust. Any reimbursement for the City Treasurer's service shall be in accordance with the provisions of 1:403 (5).
- (4) The Board of Trustees may employ such other clerical staff or administrative staff to perform whatever administrative activities are required in the proper performance of the Trust. In addition thereto, the Trustees may, if they desire, utilize other staff to perform such clerical and administrative duties as they may, in their sole discretion, determine is reasonably and prudently necessary to carry out the Trust's activities and purposes. Under no circumstances shall said staff have control or authority with respect to the management of the Trust or its assets. The said staff shall not be clothed with any type of authority or power which will constitute the staff as a fiduciary. Said staff will not have the power or authority to act as an investment counselor or manager and will not be authorized to furnish investment advice. Said staff shall also not have the power or authority to render the staff a fiduciary to the Trust.
- (5) The Board of Trustees may request to utilize City staff for such functions as personnel administration, accounting, banking, purchasing, or other services necessary for the proper administration of the Plan or Trust. On an annual basis, the City will provide the Board with a cost allocation for the City employees who are qualified to perform the required duties. If the parties mutually agree that these functions will be performed by City employees, then the City will notify the Board of the cost of performing the assigned duties, and such costs will be reimbursed from the assets of the Trust. There must be

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compliance with all established City control procedures and policies related to these services.

- (6) The Board of Trustees shall employ an investment manager or investment managers to manage some or all of the assets of the Trust. Each investment manager must be registered under the Investment Advisor's Act of 1940, as amended, (15 USC 80b-1) and must meet any applicable state and federal requirements to act as an investment manager. The Trustees may, if they deem proper in their discretion, or if the circumstances require it, appoint such investment manager, managers, banks or insurance companies as fiduciaries and enter into an agreement with such institutions, naming it a fiduciary and conveying to such fiduciary all or a portion of the assets of the Trust, so that said fiduciary may handle, manage and hold those assets conveyed to it. All assets conveyed to said fiduciary shall be subject to the provision of the agreement or agreements between the Trustees and the fiduciary.
- (7) The City Attorney shall serve as legal counsel to the Board of Trustees. Any reimbursement for the City Attorney's service shall be in accordance with the provisions of 1:403(5).
- (8) The Board of Trustees shall appoint an Actuary who shall advise the Trustees on the actuarial operation of the Trust. The Trustees shall, from time to time, adopt such mortality and other tables of experience and a rate or rates of regular interest as are necessary in the operation of the Trust on an actuarial basis.

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1:304. Board Meetings.

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- (1) The Trustees shall meet at least once quarterly. The Trustees shall determine the time for the regular meetings of the Trustees and the place or places where such meetings shall be held. The Secretary or his or her designee shall be responsible for giving notice of the time and place of such meetings to the other Trustees.
- (2) Notice and conduct of all meetings of the Trustees, both regular and special, shall be given in accordance with applicable law including the Michigan Open Meetings Act (MCL §15.261 et seq.).
- (3) The Board of Trustees shall adopt its own rules of procedure and shall keep a record of its proceedings. Four (4) Trustees shall constitute a quorum at any meeting of the Board of Trustees. Each Trustee shall be entitled to one vote on each question before the Board of Trustees and at least four (4) concurring votes shall be necessary for a decision of the Board.

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1:305. Compensation.

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All Trustees shall serve without compensation as members of the Board of Trustees. Trustees may be reimbursed by the Trust for reasonable and necessary costs and expenses of the Trustees in performing their duties as Trustees as related to the operation of the Plan or Trust.

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1:306. Trustees' Powers and Responsibilities.

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The Trustees shall hold all the powers that are necessary to carry out the purposes of the Trust and are generally available to Trustees under the laws of the State of Michigan, except as limited by the Trust and by Federal law and regulations. It is intended that the Trust shall be tax exempt and shall qualify under the Code and any amendments of the Code applicable to plans of this type. The Trustees shall have the continuing duty to propose, to the City, amendments to ~~the Trust~~ to the extent it becomes necessary to qualify ~~the Trust~~ under the Code and to continue the tax exempt status of the Trust. The Trustees shall take no action nor make any determination inconsistent with any qualification or ruling of the Internal Revenue Service, an arbitrator or the courts with respect to the Trust. In the case of amendments to the Code or changes of regulations by the Internal Revenue Service or the Labor Department, the Trustees are empowered to take all necessary action authorized by the Plan and the Trust, Federal and state law and regulations, to continue the qualification of the Trust as a qualified Trust. In carrying out the purposes of the Trust, the Trustees shall have the following powers and duties:

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- (1) The Trustees shall, in order to effectuate the purposes of the Trust, be bound by the terms of the Plan, ~~the Trust~~, and any applicable administrative regulations.
- (2) Consistent with applicable state and Federal laws and regulations, the Trustees shall have the power to promulgate rules and regulations for the day-to-day management of the Trust, the investment of monies held by the Trust, to determine all questions regarding the interpretation of the Trust, and such other Trust related subjects as shall be deemed necessary and proper by the Trustees. If any rule or regulation of the Trust or part thereof is found to be in conflict with any law, statute, judicial decision, arbitration decision or any other competent body or tribunal, such rule or regulation or part thereof shall be deemed void and all other rules and regulations of the Trust shall remain in effect.
- (3) Whenever the signature of a Trustee is required on any document, two signatures of the individuals authorized by the Board of Trustees shall be required.

~~I:307.~~ Investment of Trust Assets.

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- (1) The Trustees shall be authorized to invest the assets of the Trust in accordance with the provisions of the Public Employee Retirement System Investment Act, Public Act 314 of 1965, as amended (MCL §38.1132 et seq.).
- (2) The Board shall invest and reinvest the principal and income of the Trust, without distinction between principal and income, in its sole discretion. The Board in its sole discretion may keep such portion of the Trust in cash or cash balances as the Board may from time to time deem to be in the best interests of the Trust.
- (3) To the extent permitted by law, the Board may commingle the investment of the Trust with other funds that it administers.

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~~I:308.~~ Board Liabilities.

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- (1) The Board's responsibilities and liabilities shall be subject to the following limitations and other limitations as set forth in the Trust:
 - (a) The Board shall have no duties other than those expressly set forth in this Trust and those imposed on the Board by applicable laws.

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(b) The Board shall be responsible only for money and property actually received by the Board, and then to the extent described in this Trust.

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(c) The Board shall not be responsible for the correctness of any determination of payments or disbursements from the Trust.

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(d) The Board shall have no liability for the acts or omissions of any predecessor or successor in office.

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(e) The Board shall have no liability for the acts or omissions of any (a) Investment Manager or Managers; (b) insurance company; (c) investment fund; or (d) contractor.

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(f) In the event of any suit brought against the Trustees arising out of the acts within the scope and powers and duties of the Trustees, or in the event of any lawsuit brought by the Trustees, the cost of defense or prosecution of such lawsuit shall be charged to the Trust, and shall be paid directly from the Trust, provided such costs are not incurred by reason of bad faith, gross negligence, or breach of a fiduciary obligation to the Trust or to the beneficiaries thereof.

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(g) The Board may authorize the purchase of insurance for the Trust and for the Trustees to cover liability or losses occurring for any reason, including, but not limited to, an act or omission (errors or omissions) of a fiduciary, including the Trustees; provided however, that such insurance policy permits recourse by the insured against the fiduciary, including the Trustee or Trustees involved, in case of breach of fiduciary obligation by the fiduciary.

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1.309. Reports.

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- (1) The Trustees, or their respective designees, shall establish a uniform system for the timely transmission of required reports and contributions.
- (2) The Trustees shall maintain, or cause to be maintained, proper books of accounts and records of and for the administration of the Trust, including the minutes of all meetings, make them available for inspection during reasonable business hours by the City, or any Plan beneficiary.
- (3) The financial records of the Trust shall be subject to the annual audit of the City. The Trustees shall fully comply with all applicable statutory and municipal budgetary and accounting procedures and provide access to or documentation of all assets and liabilities of the Trust and a resume of the operations of the Trust for the preceding year together with such other data as may be required by law or as part of the City's annual financial report.

Deleted: Participant, Former Participant or Vested Former Participant covered by the Trust

IN WITNESS WHEREOF, this document has been signed and sealed on behalf of the City of Troy by its duly authorized officers, on this ____ day of _____, ~~2014~~, 2015.

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CITY OF TROY

BY: _____

ITS: _____

BY: _____

ITS: _____

INCENTIVE PLAN FOR VOLUNTEER FIREFIGHTERS***1:200. Participation.***

- (1) Each active volunteer firefighter of the City shall be a Participant in the Plan.
- (2) Participation shall terminate upon the earlier of termination of duties as a volunteer firefighter or commencement of incentive benefits under the provisions of this Plan.

1:201. Service Credit.

- (1) A Participant shall be credited with one month of service credit for each complete calendar month the Participant is a volunteer firefighter and meets or exceeds the attendance requirements as identified in the Troy Fire Department Policy Directive 103.07. Service shall be totaled in years and months.
- (2) Service credit shall be forfeited five years after the date an individual ceases to be an active volunteer firefighter and a Participant in the Plan unless the individual is a Former Participant, a Vested Former Participant or returns to active duty as a volunteer firefighter for ten consecutive years

1:202. Benefits.

- (1) An eligible Participant or Vested Former Participant, upon written application filed with the Board of Trustees, shall be paid incentive benefits pursuant to the provisions of this Plan. The incentive benefits due an eligible Participant or Vested Former Participant shall be determined at the time he or she terminates participation, as provided in the Plan.
- (2) A Participant shall be eligible for incentive benefit payments upon his termination of Participation in the Plan and satisfaction of the following eligibility criteria as may be amended from time to time by resolution of City Council:
 - (a) Ten (10) years of service and age fifty-five (55);
 - (b) Twenty-five (25) or more years of service and has attained fifty (50) years of age; or
 - (c) A Participant having attained thirty (30) years of service regardless of age.
 - (d) For Vested Former Participants, Ten (10) years of service and age sixty (60).
- (3) Incentive benefits shall be made in monthly installments on the last day of each month during the life of the Former Participant.
- (4) The amount of each annual incentive benefit shall be equal to Six Hundred Forty Two dollars (\$642.00) multiplied by the years of credited service. The annual benefit amount

may be indexed for inflation and/or amended from time to time by a City Council budget appropriations resolution.

- (5) Prior to the date of his first incentive benefits, but not thereafter, an eligible Former Participant may elect to receive his incentive benefits payable throughout his life, or receive his incentive benefits in a reduced amount payable throughout his life, and nominate a beneficiary, in accordance with the provisions of the Options as set forth below:

Option A: 100% Joint and Survivor: Upon the death of a Former Participant, who elected Option A, his reduced incentive payment shall be continued throughout the life of and paid to such person having an insurable interest in his life, as he shall have nominated; or

Option B: 50% Joint and Survivor: Upon the death of a Former Participant, who elected Option B, one-half of his reduced incentive benefits shall be continued throughout the life of and paid to such person, having an insurable interest in his life, as he shall have nominated.

Option C: 100 % Joint and Survivor Pension w/ Pop-up (Pop-up Option A): Upon the death of a Former Participant who elected Option C, his reduced incentive benefits shall be continued through the life and paid to such person having an insurable interest in his life, as he shall have nominated. If the selected beneficiary predeceases the Former Participant, the incentive benefits shall revert to a straight-life payment payable throughout the remainder of the Former Participant's life.

Option D: 50% Modified Joint and Survivor Pension with Pop-up (Pop-up Option B): Upon the death of a Former Participant who elected Option D, one-half of his reduced incentive benefits shall be continued throughout the life of and paid to such person having an insurable interest in his life, as he shall have nominated. If the selected beneficiary predeceases the Former Participant, the incentive benefits shall revert to a straight-life payment payable throughout the remainder of the Former Participant's life.

- (6) In the event a Participant dies who has ten or more years of incentive service, his Spouse shall receive an incentive benefit computed in the same manner in all respects as if the Participant had terminated Participation on the day preceding his death, elected Option A, and nominated his Spouse as beneficiary.

1:203. Miscellaneous.

- (1) Each Participant, Former Participant and Vested Former Participant shall be deemed to have assented to the terms and conditions of the Plan. An individual may not sell, assign or hypothecate, in any manner, all or any part of the individual's potential payments under the Plan.

- (2) Nothing in this Plan shall in any way affect the rights of the City or a Participant to terminate the volunteer firefighter relationship between them.

Chapter 3.

CITY OF TROY

INCENTIVE PLAN FOR VOLUNTEER FIREFIGHTERS

Chapter 1. GENERAL PROVISIONS

1:100. Establishment and Purpose.

This City of Troy Incentive Plan for Volunteer Firefighters is hereby restated, as amended, for the purpose of providing length of service incentive benefits for the City of Troy volunteer firefighters.

1:101. Short Title.

This Plan may be known and cited as the City of Troy Incentive Plan for Volunteer Firefighters (“Plan”).

1:102. Definitions.

For the purposes of this Plan, the following words shall have the meanings respectively ascribed to them by this section:

- (1) *Annual Benefit Amount* means the annual dollar amount of the length of service incentive benefits which may be payable from the Plan to eligible Former Participants, as amended from time to time by City Council via a budget appropriations resolution.
- (2) *Break in service* shall mean an unapproved leave of absence or termination of service as a volunteer firefighter lasting more than one (1) year.
- (3) *City* means the City of Troy, Michigan.
- (4) *City Council* means the City Council of the City of Troy, Michigan.
- (5) *Code* means the Internal Revenue Code of 1986, as amended. Reference to any section or subsection of the Code includes reference to any comparable or succeeding provision of any legislation which amends or replaces such section or subsection and any regulations thereto.
- (6) *Contribution(s)* means the payments made to the Trust by the City for the purpose of providing length of service based incentive benefits to Former Participants and beneficiaries covered by the Plan.
- (7) *Deferred Former Participant* means a former volunteer firefighter and Former Participant who has ten (10) or more years of incentive service as a volunteer firefighter for the City, but has not reached the requisite age requirement for commencement of benefits from the Plan.

- (8) *Eligible Former Participant* means an individual who is (a) an active volunteer firefighter, who upon attaining eligibility, elected to commence receipt of incentive benefits and is therefore no longer entitled to further benefit accruals under the provisions of this Plan; (b) a former volunteer firefighter, who upon termination of volunteer service was eligible for, and elected to commence receipt, of incentive benefits from the Plan; (c) a former volunteer firefighter, who is eligible for incentive benefits from the Plan but has not yet elected to commence receipt of incentive benefits from the Plan; or (d) a Deferred Former Participant.
- (9) *Incentive Service Credit* means personal service rendered to the City as a volunteer firefighter and credited to a Participant in accordance with the Plan.
- (10) *Ineligible Former Participant* shall mean an individual who ceases to be an active volunteer firefighter prior to attainment of eligibility for incentive benefits under the provisions of this Plan.
- (11) *Participant* means an individual who is an active volunteer firefighter eligible for benefit accruals under the provisions of the Plan and who has not elected to commence receipt of benefits under the terms of the Plan.
- (12) *Plan* means the City of Troy Incentive Plan for Volunteer Firefighters established by Ordinance as provided herein. A description of the incentive benefits provided to Eligible Former Participants, spouses and dependents under the Plan is maintained by the Plan Administrator.
- (13) *Plan Administrator* means the person, persons, firm, corporation or insurance company or companies, appointed by the City to administer the Plan. The Plan Administrator shall be responsible for the day-to-day operations of the Plan and shall carry out the directives of the City and the Board of Trustees.
- (14) *Service* shall mean personal service rendered to the City of Troy as a volunteer firefighter.
- (15) *Spouse* means a Participant's or Eligible Former Participant's spouse by legal marriage who is the Participant's or Eligible Former Participant's spouse on the earlier of the date the Participant terminates from volunteering with the City or elects to commence receipt of incentive benefits from the Plan.
- (16) *Trust* means the City of Troy Incentive Trust for Volunteer Firefighters as established pursuant to the declaration of trust approved by the City Council and as may be amended from time to time.
- (17) *Trustee(s) or Board* means the Board of Trustees of the Trust or a member of the Board of Trustees of the Trust as provided for in the Trust.
- (18) *Voluntary Incentive Committee* means a committee comprised of representatives selected by each of the six fire stations in the City.

1:103. Interpretation and law; Construction.

- (1) The Plan is hereby established and shall be administered consistent with applicable Federal and Michigan law, including, but not limited to the Public Employee Retirement System Investment Act, Public Act 314 of 1965, as amended (MCL §38.1132 et seq.).
- (2) The establishment of this Plan, any modification thereof, the creation of any fund or account, or the payment of any benefits, shall not be construed as giving to any person covered under the Plan, or any other person, any legal or equitable right against the City, its elected or appointed officials or employees, the Trustees or any individual Trustee, except as may otherwise be provided in this Plan document.
- (3) The headings and subheadings in this Plan are inserted for convenience of reference only and are not to be considered in the construction of any provision of the Plan.
- (4) Words herein in the masculine gender shall be construed to include the feminine gender where appropriate, and words used herein in the singular or plural shall be construed as being in the plural or singular where appropriate.
- (5) In resolving any conflict among provisions of this Plan or any uncertainty as to the meaning or intention of any provision of this Plan, the interpretation that causes both the Trust to be exempt from tax and the Trust to comply with all applicable requirements of the Code shall prevail over any different interpretation.
- (6) This Plan shall be binding upon all Participants and Eligible Former Participants under the Plan, or their applicable heirs, executors, administrators, successors, and assigns.

1:104. Administrative Regulations.

The provisions of this Plan are subject to relevant provisions of any administrative regulations that the City may have for volunteer firefighters and any volunteer service contracts between the City and an individual Participant, if any. The provisions of any administrative regulations or service contracts for volunteer firefighters relative to incentive benefits are controlling in the event of a conflict between the terms of the administrative regulations or applicable service contract and the Plan.

1:105. Notice.

Notice given to all interested parties shall, unless otherwise specified in this Plan, be sufficient if in writing and delivered or sent by prepaid first class mail. Except as otherwise noted, the distribution or delivery of any statements or documents required under the Plan shall be sufficient if delivered in person or prepaid first class mail.

1:106. Reporting and Disclosure.

The Plan Administrator shall complete and provide to Participants, Eligible Former Participants, Spouses and Dependents, and to the appropriate government agencies any reports as may be required by the Code, applicable federal, state or local law.

1:107. Amendment and Termination.

- (1) The provisions of the Plan may be amended at any time by the City Council in accordance with applicable law. The Voluntary Incentive Committee will be notified at least thirty (30) days in advance that a proposed amendment or revision will be submitted to the City Council for consideration. The City Council shall hold a public hearing prior to any action to reduce Plan benefits or terminate the Plan.
- (2) The City reserves the right to modify or terminate the Plan and/or the benefits payable under the Plan at any time in its sole discretion after the requisite public hearing. Such a termination shall not affect the amount of any incentive payments made prior to the effective date of termination of the Plan or incentive payments otherwise payable at the time of such termination for which assets remain in the Trust. The Voluntary Incentive Committee will be notified at least ninety (90) days in advance that a proposed Plan termination will be submitted to the City Council for consideration.

Chapter 2.
INCENTIVE PLAN FOR VOLUNTEER FIREFIGHTERS

1:200. Participation.

- (1) Except as otherwise provided herein, each active volunteer firefighter of the City shall be a Participant in the Plan.
- (2) Participation shall terminate upon the earlier of termination of duties as a volunteer firefighter or commencement of incentive benefits under the provisions of this Plan.

1:201. Service Credit.

- (1) A Participant shall be credited with one month of incentive service credit for each complete calendar month the Participant is an active volunteer firefighter and meets or exceeds the attendance requirements as identified in the Troy Fire Department Policy Directive 103.07. Service shall be totaled in years and months.
- (2) Should any Participant cease to be an active volunteer firefighter prior to attaining ten (10) or more years of continuous service as a volunteer firefighter, he or she shall immediately cease to be a Participant in this Plan and all incentive service credit shall be forfeited, unless otherwise provided herein.
- (3) Incentive service credit shall be restored to an Ineligible Former Participant upon returning to active duty as a volunteer firefighter within five (5) years from the date he or she ceased to be an active volunteer firefighter, and so long as he/she remains an active volunteer firefighter and a Participant in the Plan for five (5) consecutive years after returning to active service. In the event an Ineligible Former Participant returns to service as an active volunteer firefighter after a break in service lasting five (5) or more years, incentive service credit shall be restored upon remaining an active volunteer firefighter and a Participant in the Plan for ten (10) consecutive years after returning to service.

- (4) In the event a Deferred Former Participant returns to service as an active volunteer firefighter, prior incentive service credit shall not be combined with new incentive service credit until after returning for five (5) consecutive years of active service as a volunteer firefighter. Payments will be in accordance with Section 1:202.

1:202. Benefits.

- (1) An eligible Participant or Eligible Former Participant, upon written application filed with the Board of Trustees and the receipt of approval, shall be paid incentive benefits pursuant to the provisions of this Plan. The incentive benefits due an eligible Participant or Eligible Former Participant shall be determined at the time he or she terminates participation, as provided in the Plan. Credited service under Section 1.201 shall be combined for benefit eligibility purposes only after a Participant's return to active service as a volunteer firefighter for five (5) consecutive years.
- (2) Except as otherwise set forth in the Plan, a Participant shall be eligible for incentive benefit payments upon his termination of Participation in the Plan and satisfaction of the following eligibility criteria as may be amended from time to time by resolution of City Council:
 - (a) Ten (10) years of incentive service credit with at least five consecutive years as a participant after returning (if applicable), and is at least age fifty-five (55);
 - (b) Twenty-five (25) or more years of incentive service credit as a volunteer firefighter with at least five consecutive years as a participant after returning (if applicable) and has attained fifty (50) years of age; or
 - (c) A Participant having attained thirty (30) years of incentive service credit as a volunteer firefighter regardless of age, with at least five consecutive years as a participant after returning (if applicable).
- (3) Eligible Former Participants with ten (10) or more years of service as a volunteer firefighter, but who separated from volunteer service prior to meeting the foregoing age requirements, are eligible to commence receipt of incentive benefit payments from the Plan upon attainment of age sixty (60).
- (4) Incentive benefits shall be made in monthly installments on the last day of each month during the life of the Eligible Former Participant.
- (5) The amount of each annual incentive benefit shall be equal to Six Hundred Eighty one dollars (\$681.00) multiplied by the years of incentive service credit. The annual benefit amount may be indexed for inflation and/or amended from time to time by a City Council budget appropriations resolution. In the event a Deferred Former Participant separates from service as an active volunteer firefighter prior to attaining immediate eligibility for incentive benefit payments under this Plan, he or she shall be entitled to an annual incentive benefit calculated in accordance with the provisions of this Plan in effect at the time of said Deferred Former Participant's separation from service as an active volunteer firefighter.

(6) In the event a Participant has one or more breaks in service, incentive benefits payable under this Plan shall be calculated in accordance with the provisions of the Plan in effect at the time of each separation of service as an active volunteer firefighter.

(7) Prior to the date of the first incentive benefit payment, but not thereafter, a Participant or an Eligible Former Participant may elect to receive his incentive benefits payable throughout his life, or receive his incentive benefits in a reduced amount payable throughout his life, and nominate a beneficiary, in accordance with one of the Options as set forth below:

Option A: 100% Joint and Survivor: Upon the death of an Eligible Former Participant, who elected Option A, his reduced incentive payment shall be continued throughout the life of and paid to such person having an insurable interest in his life, as he shall have nominated; or

Option B: 50% Joint and Survivor: Upon the death of an Eligible Former Participant, who elected Option B, one-half of his reduced incentive benefits shall be continued throughout the life of and paid to such person, having an insurable interest in his life, as he shall have nominated.

Option C: 100 % Joint and Survivor Pension w/ Pop-up (Pop-up Option A): Upon the death of an Eligible Former Participant who elected Option C, his reduced incentive benefits shall be continued through the life and paid to such person having an insurable interest in his life, as he shall have nominated. If the selected beneficiary predeceases the Eligible Former Participant, the incentive benefits shall revert to a straight-life payment payable throughout the remainder of the Eligible Former Participant's life.

Option D: 50% Modified Joint and Survivor Pension with Pop-up (Pop-up Option B): Upon the death of an Eligible Former Participant who elected Option D, one-half of his reduced incentive benefits shall be continued throughout the life of and paid to such person having an insurable interest in his life, as he shall have nominated. If the selected beneficiary predeceases the Eligible Former Participant, the incentive benefits shall revert to a straight-life payment payable throughout the remainder of the Eligible Former Participant's life.

(8) In the event a Participant dies who has ten or more years of incentive service, his Spouse shall receive an incentive benefit computed in the same manner in all respects as if the Participant had terminated Participation on the day preceding his death, elected Option A, and nominated his Spouse as beneficiary. In the event there is no surviving Spouse and the Participant is survived by one or more legally recognized children, a lump sum equal to 60% of the actuarial present value of the accrued annual incentive benefit shall be payable to the Participant's designated legal representative or his/her estate if no legal representative has been designated.

1:203. Miscellaneous.

- (1) Each Participant and Eligible Former Participant shall be deemed to have assented to the terms and conditions of the Plan. An individual may not sell, assign or hypothecate, in any manner, all or any part of the individual's potential payments under the Plan.
- (2) Nothing in this Plan shall in any way affect the rights of the City or a Participant to terminate the volunteer firefighter relationship between them.

IN WITNESS WHEREOF, this document has been signed and sealed on behalf of the City of Troy by its duly authorized officers, on this ____ day of _____, 2016.

CITY OF TROY

BY: _____

ITS: _____

BY: _____

ITS: _____

CITY OF TROY INCENTIVE PLAN FOR VOLUNTEER FIREFIGHTERS

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Chapter 1. GENERAL PROVISIONS

1:100. Establishment and Purpose.

This City of Troy Incentive Plan for Volunteer Firefighters is hereby restated, as amended, for the purpose of providing length of service incentive benefits for the City of Troy volunteer firefighters.

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Deleted: The City of Troy Incentive Trust for Volunteer Firefighters (the "Trust") is hereby established to allow the City of Troy to fund the required benefits as provided pursuant to the Plan provisions, an essential government function.

1:101. Short Title.

This Plan may be known and cited as the City of Troy Incentive Plan for Volunteer Firefighters ("Plan").

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1:102. Definitions.

For the purposes of this Plan, the following words shall have the meanings respectively ascribed to them by this section:

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- (1) *Annual Benefit Amount* means the annual dollar amount of the length of service incentive benefits which may be payable from the Plan to eligible Former Participants, as amended from time to time by City Council via a budget appropriations resolution.
- (2) *Break in service* shall mean an unapproved leave of absence or termination of service as a volunteer firefighter lasting more than one (1) year.
- (3) *City* means the City of Troy, Michigan.
- (4) *City Council* means the City Council of the City of Troy, Michigan.
- (5) *Code* means the Internal Revenue Code of 1986, as amended. Reference to any section or subsection of the Code includes reference to any comparable or succeeding provision of any legislation which amends or replaces such section or subsection and any regulations thereto.
- (6) *Contribution(s)* means the payments made to the Trust by the City for the purpose of providing length of service based incentive benefits to Former Participants and beneficiaries covered by the Plan.
- (7) *Deferred Former Participant* means a former volunteer firefighter and Former Participant who has ten (10) or more years of incentive service as a volunteer firefighter for the City, but has not reached the requisite age requirement for commencement of benefits from the Plan.

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(8) Eligible Former Participant means an individual who is (a) an active volunteer firefighter, who upon attaining eligibility, elected to commence receipt of incentive benefits and is therefore no longer entitled to further benefit accruals under the provisions of this Plan; (b) a former volunteer firefighter, who upon termination of volunteer service was eligible for, and elected to commence receipt, of incentive benefits from the Plan; (c) a former volunteer firefighter, who is eligible for incentive benefits from the Plan but has not yet elected to commence receipt of incentive benefits from the Plan; or (d) a Deferred Former Participant.

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(9) Incentive Service Credit means personal service rendered to the City as a volunteer firefighter and credited to a Participant in accordance with the Plan.

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(10) Ineligible Former Participant shall mean an individual who ceases to be an active volunteer firefighter prior to attainment of eligibility for incentive benefits under the provisions of this Plan.

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(11) Participant means an individual who is an active volunteer firefighter eligible for benefit accruals under the provisions of the Plan and who has not elected to commence receipt of benefits under the terms of the Plan.

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(12) Plan means the City of Troy Incentive Plan for Volunteer Firefighters established by Ordinance as provided herein. A description of the incentive benefits provided to Eligible Former Participants, spouses and dependents under the Plan is maintained by the Plan Administrator.

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(13) Plan Administrator means the person, persons, firm, corporation or insurance company or companies, appointed by the City to administer the Plan. The Plan Administrator shall be responsible for the day-to-day operations of the Plan and shall carry out the directives of the City and the Board of Trustees.

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(14) Service shall mean personal service rendered to the City of Troy as a volunteer firefighter.

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(15) Spouse means a Participant's or Eligible Former Participant's spouse by legal marriage who is the Participant's or Eligible Former Participant's spouse on the earlier of the date the Participant terminates from volunteering with the City or elects to commence receipt of incentive benefits from the Plan.

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(16) Trust means the City of Troy Incentive Trust for Volunteer Firefighters as established pursuant to the declaration of trust approved by the City Council and as may be amended from time to time.

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(17) Trustee(s) or Board means the Board of Trustees of the Trust or a member of the Board of Trustees of the Trust as provided for in the Trust.

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(18) Voluntary Incentive Committee means a committee comprised of representatives selected by each of the six fire stations in the City.

Deleted: (14) : Vested Former Participant means a former volunteer firefighter and Participant who has ten (10) or more years of incentive service as a volunteer firefighter for the City, but has not reached the requisite age requirement for commencement of benefits from the Plan.¶

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1:103. Interpretation and law; Construction.

- (1) The Plan is hereby established and shall be administered consistent with applicable Federal and Michigan law, including, but not limited to the Public Employee Retirement System Investment Act, Public Act 314 of 1965, as amended (MCL §38.1132 et seq.).
- (2) The establishment of this Plan, any modification thereof, the creation of any fund or account, or the payment of any benefits, shall not be construed as giving to any person covered under the Plan, or any other person, any legal or equitable right against the City, its elected or appointed officials or employees, the Trustees or any individual Trustee, except as may otherwise be provided in this Plan document.
- (3) The headings and subheadings in this Plan are inserted for convenience of reference only and are not to be considered in the construction of any provision of the Plan.
- (4) Words herein in the masculine gender shall be construed to include the feminine gender where appropriate, and words used herein in the singular or plural shall be construed as being in the plural or singular where appropriate.
- (5) In resolving any conflict among provisions of this Plan or any uncertainty as to the meaning or intention of any provision of this Plan, the interpretation that causes both the Trust to be exempt from tax and the Trust to comply with all applicable requirements of the Code shall prevail over any different interpretation.
- (6) This Plan shall be binding upon all Participants and Eligible Former Participants under the Plan, or their applicable heirs, executors, administrators, successors, and assigns.

1:104. Administrative Regulations.

The provisions of this Plan are subject to relevant provisions of any administrative regulations that the City may have for volunteer firefighters and any volunteer service contracts between the City and an individual Participant, if any. The provisions of any administrative regulations or service contracts for volunteer firefighters relative to incentive benefits are controlling in the event of a conflict between the terms of the administrative regulations or applicable service contract and the Plan.

1:105. Notice.

Notice given to all interested parties shall, unless otherwise specified in this Plan, be sufficient if in writing and delivered or sent by prepaid first class mail. Except as otherwise noted, the distribution or delivery of any statements or documents required under the Plan shall be sufficient if delivered in person or prepaid first class mail.

1:106. Reporting and Disclosure.

The Plan Administrator shall complete and provide to Participants, Eligible Former Participants, Spouses and Dependents, and to the appropriate government agencies any reports as may be required by the Code, applicable federal, state or local law.

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Deleted: Trust shall constitute a grantor governmental trust pursuant to Section 115 of the Code, as amended and shall be construed, enforced and administered and the validity thereof determined in accordance with the Code and the laws of the State of Michigan. If any provision of the Plan or Trust is held to violate the Code or to be illegal or invalid for any other reason, that provision shall be deemed to be null and void, but the invalidation of that provision shall not otherwise affect the Plan or Trust. ¶

Deleted: The City intends the incentive benefits provided by this Plan to be considered a contractual benefit protected and guaranteed by Article IX, Section 24 of the State of Michigan Constitution. ¶

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1:107. Amendment and Termination.

(1) The provisions of the Plan may be amended at any time by the ~~Troy~~ City Council in accordance with applicable law. The Voluntary Incentive Committee will be notified at least thirty (30) days in advance that a proposed amendment or revision will be submitted to the ~~Troy~~ City Council for consideration. The City Council shall hold a public hearing prior to any action to reduce Plan benefits or terminate the Plan.

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(2) The City reserves the right to modify or terminate the Plan and/or the benefits payable under the Plan at any time in its sole discretion after the requisite public hearing. Such a termination shall not affect the amount of any incentive payments made prior to the effective date of termination of the Plan or incentive payments otherwise payable at the time of such termination for which assets remain in the Trust. The Voluntary Incentive Committee will be notified at least ninety (90) days in advance that a proposed Plan termination will be submitted to the ~~Troy~~ City Council for consideration.

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Chapter 2.
INCENTIVE PLAN FOR VOLUNTEER FIREFIGHTERS

1:200. *Participation.*

(1) Except as otherwise provided herein, each active volunteer firefighter of the City shall be a Participant in the Plan.

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(2) Participation shall terminate upon the earlier of termination of duties as a volunteer firefighter or commencement of incentive benefits under the provisions of this Plan.

1:201. *Service Credit.*

(1) A Participant shall be credited with one month of incentive service credit for each complete calendar month the Participant is an active volunteer firefighter and meets or exceeds the attendance requirements as identified in the Troy Fire Department Policy Directive 103.07. Service shall be totaled in years and months.

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(2) Should any Participant cease to be an active volunteer firefighter prior to attaining ten (10) or more years of continuous service as a volunteer firefighter, he or she shall immediately cease to be a Participant in this Plan and all incentive service credit shall be forfeited, unless otherwise provided herein.

(3) Incentive service credit shall be restored to an Ineligible Former Participant upon returning to active duty as a volunteer firefighter within five (5) years from the date he or she ceased to be an active volunteer firefighter, and so long as he/she remains an active volunteer firefighter and a Participant in the Plan for five (5) consecutive years after returning to active service. In the event an Ineligible Former Participant returns to service as an active volunteer firefighter after a break in service lasting five (5) or more years, incentive service credit shall be restored upon remaining an active volunteer firefighter and a Participant in the Plan for ten (10) consecutive years after returning to service.

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(4) In the event a Deferred Former Participant returns to service as an active volunteer firefighter, prior incentive service credit shall not be combined with new incentive service credit until after returning for five (5) consecutive years of active service as a volunteer firefighter. Payments will be in accordance with Section 1:202.

1:202. Benefits.

(1) An eligible Participant or Eligible Former Participant, upon written application filed with the Board of Trustees and the receipt of approval, shall be paid incentive benefits pursuant to the provisions of this Plan. The incentive benefits due an eligible Participant or Eligible Former Participant shall be determined at the time he or she terminates participation, as provided in the Plan. Credited service under Section 1.201 shall be combined for benefit eligibility purposes only after a Participant's return to active service as a volunteer firefighter for five (5) consecutive years.

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(2) Except as otherwise set forth in the Plan, a Participant shall be eligible for incentive benefit payments upon his termination of Participation in the Plan and satisfaction of the following eligibility criteria as may be amended from time to time by resolution of City Council:

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- (a) Ten (10) years of incentive service credit with at least five consecutive years as a participant after returning (if applicable), and is at least age fifty-five (55);
- (b) Twenty-five (25) or more years of incentive service credit as a volunteer firefighter with at least five consecutive years as a participant after returning (if applicable) and has attained fifty (50) years of age; or
- (c) A Participant having attained thirty (30) years of incentive service credit as a volunteer firefighter regardless of age, with at least five consecutive years as a participant after returning (if applicable).

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(3) Eligible Former Participants with ten (10) or more years of service credit as a volunteer firefighter, but who separated from volunteer service prior to meeting the foregoing age requirements, are eligible to commence receipt of incentive benefit payments from the Plan upon attainment of age sixty (60).

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(4) Incentive benefits shall be made in monthly installments on the last day of each month during the life of the Eligible Former Participant.

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(5) The amount of each annual incentive benefit shall be equal to Six Hundred Forty Two dollars (\$642.00) multiplied by the years of incentive service credit. The annual benefit amount may be indexed for inflation and/or amended from time to time by a City Council budget appropriations resolution. In the event a Deferred Former Participant separates from service as an active volunteer firefighter prior to attaining immediate eligibility for incentive benefit payments under this Plan, he or she shall be entitled to an annual incentive benefit calculated in accordance with the provisions of this Plan in effect at the time of said Deferred Former Participant's separation from service as an active volunteer firefighter.

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(6) In the event a Participant has one or more breaks in service, incentive benefits payable under this Plan shall be calculated in accordance with the provisions of the Plan in effect at the time of each separation of service as an active volunteer firefighter.

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(7) Prior to the date of the first incentive benefit payment, but not thereafter, a Participant or an Eligible Former Participant may elect to receive his incentive benefits payable throughout his life, or receive his incentive benefits in a reduced amount payable throughout his life, and nominate a beneficiary, in accordance with one of the Options as set forth below:

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Option A: 100% Joint and Survivor: Upon the death of an Eligible Former Participant, who elected Option A, his reduced incentive payment shall be continued throughout the life of and paid to such person having an insurable interest in his life, as he shall have nominated; or

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Option B: 50% Joint and Survivor: Upon the death of an Eligible Former Participant, who elected Option B, one-half of his reduced incentive benefits shall be continued throughout the life of and paid to such person, having an insurable interest in his life, as he shall have nominated.

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Option C: 100 % Joint and Survivor Pension w/ Pop-up (Pop-up Option A): Upon the death of an Eligible Former Participant who elected Option C, his reduced incentive benefits shall be continued through the life and paid to such person having an insurable interest in his life, as he shall have nominated. If the selected beneficiary predeceases the Eligible Former Participant, the incentive benefits shall revert to a straight-life payment payable throughout the remainder of the Eligible Former Participant's life.

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Option D: 50% Modified Joint and Survivor Pension with Pop-up (Pop-up Option B): Upon the death of an Eligible Former Participant who elected Option D, one-half of his reduced incentive benefits shall be continued throughout the life of and paid to such person having an insurable interest in his life, as he shall have nominated. If the selected beneficiary predeceases the Eligible Former Participant, the incentive benefits shall revert to a straight-life payment payable throughout the remainder of the Eligible Former Participant's life.

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(8) In the event a Participant dies who has ten or more years of incentive service, his Spouse shall receive an incentive benefit computed in the same manner in all respects as if the Participant had terminated Participation on the day preceding his death, elected Option A, and nominated his Spouse as beneficiary. In the event there is no surviving Spouse and the Participant is survived by one or more legally recognized children, a lump sum equal to 60% of the actuarial present value of the accrued annual incentive benefit shall be payable to the Participant's designated legal representative or his/her estate if no legal representative has been designated.

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1:203. Miscellaneous.

- (1) Each Participant and Eligible Former Participant shall be deemed to have assented to the terms and conditions of the Plan. An individual may not sell, assign or hypothecate, in any manner, all or any part of the individual's potential payments under the Plan.
- (2) Nothing in this Plan shall in any way affect the rights of the City or a Participant to terminate the volunteer firefighter relationship between them.

IN WITNESS WHEREOF, this document has been signed and sealed on behalf of the City of Troy by its duly authorized officers, on this ____ day of _____, 2015.

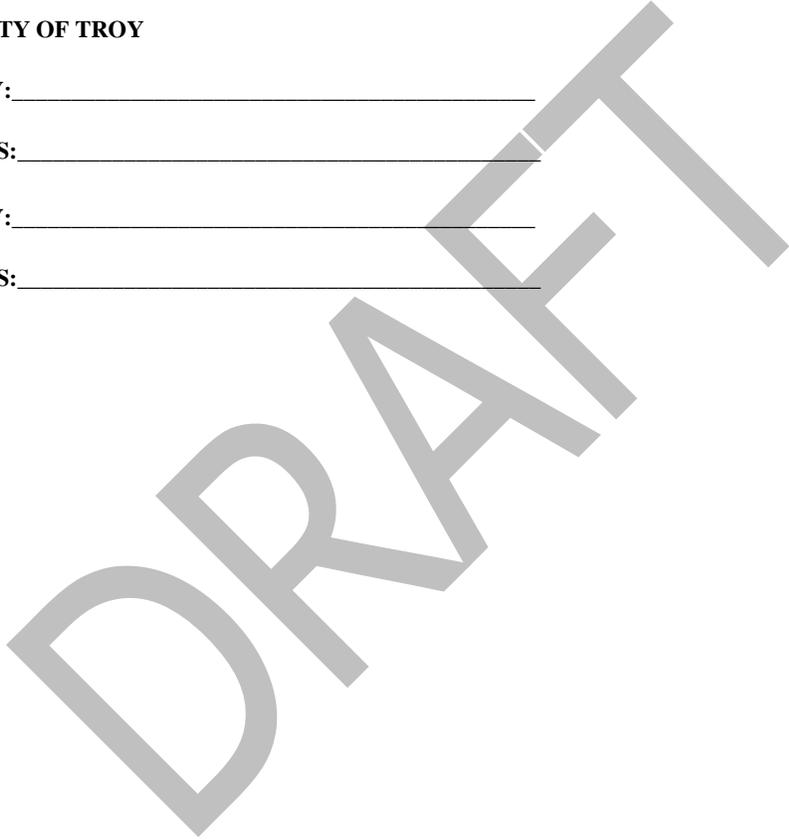
CITY OF TROY

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Chapter 3.¶

INCENTIVE TRUST FOR VOLUNTEER FIREFIGHTERS¶

1:300. Irrevocable Trust, Established.¶

The Trust, established by the City in accordance with Section 115 of the Code shall be an irrevocable grantor trust administered consistent with applicable federal and Michigan law, and shall constitute a governmental trust under Section 115 of the Code, as amended, Revenue Rulings 77-261 and 90-74, and other relevant guidance. The Trust is intended to fund the City's contractual obligation to provide incentive benefits under the Plan pursuant to applicable provisions of the Internal Revenue Code, the regulations promulgated under each, and applicable federal and Michigan law. The Trust shall conform to all applicable sections of the Internal Revenue Code, the statement of purpose in this Trust, and all statutes, ordinances, rules, administrative regulations, arbitrators' awards and judicial decisions interpreting the foregoing provisions.¶

The Trust shall consist of City Contributions pursuant to the provisions of a City administrative regulation, all investments made or held under Trust, and all income therefrom, both received and accrued, and any other property, which may be received or held by reason of this Trust. ¶

The income accruing to the Trust shall be excluded from gross income as such trust income is derived from the exercise of an essential governmental function as provided for under Section 115(1) of the Code, as amended, Revenue Rulings 77-261 and 90-74, and other relevant guidance. ¶

1:301. Use of Trust Assets.¶

(1) The Trust assets shall not be used for or diverted to purposes other than to provide the benefits contemplated under the Plan or to pay for reasonable and necessary services, costs and expenses related to assisting the Trustees in the operation of the Trust. Plan Participants, Former Participants, Vested Former Participants and their respective beneficiaries shall have no preferred claim on, or any beneficial ownership interest in, any assets of the Trust.¶

(2) All income, profits, recoveries, contributions, forfeitures and any and all monies, securities and properties of any kind at anytime received or held by the Trustees hereunder, shall become part of the Trust when received, and shall be held for the use and purposes hereof.¶

1:302. Funding.¶

(1) For the purpose of creating and maintaining a fund for the payment of incentive benefits payable as provided in the Plan, the City will pay to the Trust an amount consistent with the actuarial valuations and calculations made by the Actuary for the Trust to result in a pre-funded plan. Such contributions shall also be made in accordance with any regulations of the Board of Trustees as are not inconsistent with the authority stated in the Plan or this Trust document, or under applicable law. ¶

(2) Subject to the tax provisions of applicable ordinances, resolutions and state law, the Trustees may, to the extent matters are not set forth in the Trust, in their discretion decide the manner and means of payments, the procedures to be followed in making the payments, and the forms required to accompany the payments to the Trust. Upon determination by the Trustees of these matters, the Trustees shall provide written notice to the City and will provide... [1]

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the volunteer firefighter relationship between them.

Chapter 3.

INCENTIVE TRUST FOR VOLUNTEER FIREFIGHTERS

1:300. Irrevocable Trust, Established.

The Trust, established by the City in accordance with Section 115 of the Code shall be an irrevocable grantor trust administered consistent with applicable federal and Michigan law, and shall constitute a governmental trust under Section 115 of the Code, as amended, Revenue Rulings 77-261 and 90-74, and other relevant guidance. The Trust is intended to fund the City's contractual obligation to provide incentive benefits under the Plan pursuant to applicable provisions of the Internal Revenue Code, the regulations promulgated under each, and applicable federal and Michigan law. The Trust shall conform to all applicable sections of the Internal Revenue Code, the statement of purpose in this Trust, and all statutes, ordinances, rules, administrative regulations, arbitrators' awards and judicial decisions interpreting the foregoing provisions.

The Trust shall consist of City Contributions pursuant to the provisions of a City administrative regulation, all investments made or held under Trust, and all income therefrom, both received and accrued, and any other property, which may be received or held by reason of this Trust.

The income accruing to the Trust shall be excluded from gross income as such trust income is derived from the exercise of an essential governmental function as provided for under Section 115(1) of the Code, as amended, Revenue Rulings 77-261 and 90-74, and other relevant guidance.

1:301. Use of Trust Assets.

- (1) The Trust assets shall not be used for or diverted to purposes other than to provide the benefits contemplated under the Plan or to pay for reasonable and necessary services, costs and expenses related to assisting the Trustees in the operation of the Trust. Plan Participants, Former Participants, Vested Former Participants and their respective beneficiaries shall have no preferred claim on, or any beneficial ownership interest in, any assets of the Trust.
- (2) All income, profits, recoveries, contributions, forfeitures and any and all monies, securities and properties of any kind at anytime received or held by the Trustees hereunder, shall become part of the Trust when received, and shall be held for the use and purposes hereof.

1:302. Funding.

- (1) For the purpose of creating and maintaining a fund for the payment of incentive benefits payable as provided in the Plan, the City will pay to the Trust an amount consistent with the actuarial valuations and calculations made by the Actuary for the Trust to result in a pre-funded plan. Such contributions shall also be made in accordance with any regulations of the Board of Trustees as are not inconsistent with the authority stated in the Plan or this Trust document, or under applicable law.
- (2) Subject to the tax provisions of applicable ordinances, resolutions and state law, the Trustees may, to the extent matters are not set forth in the Trust, in their discretion decide the manner and means of payments, the procedures to be followed in making the payments, and the forms required to accompany the payments to the Trust. Upon determination by the Trustees of these matters, the Trustees shall provide written notice to the City and will provide for payments by the City to be made pursuant to the rules and regulations of the Trust.
- (3) Time is of the essence in making and processing all payments to the Trust. The parties recognize that the regular and timely payments of Contributions are essential to the operation of the Trust and the providing of benefits under the Plan.

1:303. Trust Liabilities.

- (1) Neither the City, nor any Participant, Former Trustee, Vested Former Participant or Trustee shall be liable for any debts, liabilities or obligations of the Trust except as provided herein. Neither the City, nor any Participant, Former Participant or Vested Former Participant shall have any right to the return of any money properly paid into the Trust, except as otherwise specifically provided in this Trust, or to money improperly paid which has already been invested or distributed.
- (2) No part of the Trust or any assets payable therefrom shall be subject to alienation, sale, transfer, assignment, pledge, or encumbrance charge by any person. No Participant, Former Participant or Vested Former Participant shall be entitled to receive any part of the Contributions made by the City or payments required to be made by the Trust, in lieu of such benefits provided under the Plan as determined by the Trustees in accordance with the Trust.

1:304. Termination of the Trust.

- (1) The Trust shall continue during such period of time as may be necessary to carry out the provisions of the Plan and for a period of time sufficient to wind up the affairs of the Trust. In the event of termination or partial termination of the Plan, a Participant's vested interest is a contractual obligation under Article IX, Section 24 of the State of Michigan Constitution.
- (2) Provided there are no longer any Participants (including those not yet vested), Former Participants or Vested Former Participants eligible for benefits or who may yet become eligible to receive benefits from the Plan and all benefit obligations to Participants,

Former Participants, Vested Former Participants, and their respective beneficiaries have been satisfied, the Trust may thereafter be terminated at any time by the Trustees so long as the termination is consistent with any then existing City decisions. It shall not be necessary for the City to execute such an agreement for the Trust to terminate.

- (3) If the Trust terminates, the remaining funds available after providing for all the outstanding obligations shall be returned to the City.

Chapter 4. **BOARD OF TRUSTEES**

1:401. Board of Trustees.

- (1) The Board of Trustees of the City of Troy Incentive Plan and Trust for Volunteer Firefighters shall consist of the following six (7) members:
 - (a) The City Manager or his/her designee;
 - (b) The City Financial Services Director or his/her designee, who shall serve as Chair of the Board;
 - (c) Two active volunteer firefighters appointed by the Voluntary Incentive Committee;
 - (d) One member of the Troy City Council as selected by the City Council; and
 - (e) One citizen of the City of Troy, appointed by the Mayor,
 - (f) One retiree representative, appointed by the Voluntary Incentive Committee.
- (2) The general administration, management and responsibility for the proper operation of the Plan and for making effective and construing the provisions of the Trust shall be vested in the Board of Trustees established by this Section, consistent with applicable state and federal laws and regulations. The Board of Trustees shall be the investment fiduciary of the Trust. A Trustee shall discharge his or her duties with the care, skill, and caution under the circumstances then prevailing which a prudent person, acting in a like capacity and familiar with those matters, would use in the conduct of an activity of like character and purpose.

1:402. Trustees' Terms of Office.

- (1) The regular terms of office of the Participant elected and Citizen Appointed Trustees shall be three years.
- (2) Each Trustee shall serve until the expiration of his or her term of office or until his or her death, incapacity, resignation or removal.
- (3) In the event a Participant elected Trustee resigns or is removed as a volunteer firefighter, he or she shall be considered to have resigned from the Board. The Board shall, by resolution, declare his or her office of Trustee vacated as of the date of such resolution. Any vacancy occurring in the office of Trustee shall be filled within sixty (60) days

following the date of the vacancy, for the unexpired portion of the term, in the same manner in which the office was previously filled.

- (4) If a Trustee as provided in 1:401(a) shall fail to attend scheduled meetings of the Board for three consecutive meetings, unless in each case excused for cause by the remaining Trustees attending such meetings, the Trustee shall be considered to have resigned from the Board, and the Board shall, by resolution, declare the office of the Trustee vacated as of the date of adoption of such resolution. Any vacancy occurring in the office of Trustee shall be filled within sixty (60) days following the date of the vacancy, for the unexpired portion of the term, in the same manner in which the office was previously filled.
- (5) A vacancy or vacancies in the office of the Trustees shall not impair the powers of the remaining Trustees to administer the affairs of the Trust, provided there are sufficient Trustees to constitute a quorum. If a vacancy occurs on the Board of Trustees, it shall be filled as soon as practically possible.
- (6) Each successor Trustee, upon accepting such appointment, shall have and enjoy all the powers, both discretionary and ministerial, and shall be charged with all of the duties and responsibilities herein conferred upon his predecessor.

1:403. Officers and Administration.

- (1) At its first meeting in the calendar year, the Trustees shall elect a chairperson and a chairperson pro-tem. The chairperson and chairperson pro-tem shall serve a term of one year or until a new chairperson and chairperson pro-tem are elected.
- (2) The Board of Trustees shall designate a member or other individual to serve as secretary of the Board of Trustees. The secretary's term shall be at the pleasure of the Board of Trustees.
- (3) The City Treasurer shall serve as the Treasurer of the Trust. Any reimbursement for the City Treasurer's service shall be in accordance with the provisions of 1:403 (5).
- (4) The Board of Trustees may employ such other clerical staff or administrative staff to perform whatever administrative activities are required in the proper performance of the Trust. In addition thereto, the Trustees may, if they desire, utilize other staff to perform such clerical and administrative duties as they may, in their sole discretion, determine is reasonably and prudently necessary to carry out the Trust's activities and purposes. Under no circumstances shall said staff have control or authority with respect to the management of the Trust or its assets. The said staff shall not be clothed with any type of authority or power which will constitute the staff as a fiduciary. Said staff will not have the power or authority to act as an investment counselor or manager and will not be authorized to furnish investment advice. Said staff shall also not have the power or authority to render the staff a fiduciary to the Trust.

- (5) The Board of Trustees may request to utilize City staff for such functions as personnel administration, accounting, banking, purchasing, or other services necessary for the proper administration of the Plan and Trust. On an annual basis, the City will provide the Board with a cost allocation for the City employees who are qualified to perform the required duties. If the parties mutually agree that these functions will be performed by City employees, then the City will notify the Board of the cost of performing the assigned duties, and such costs will be reimbursed from the assets of the Trust. There must be compliance with all established City control procedures and policies related to these services.
- (6) The Board of Trustees shall employ an investment manager or investment managers to manage some or all of the assets of the Trust. Each investment manager must be registered under the Investment Advisor's Act of 1940, as amended, (15 USC 80b-1) and must meet any applicable state and federal requirements to act as an investment manager. The Trustees may, if they deem proper in their discretion, or if the circumstances require it, appoint such investment manager, managers, banks or insurance companies as fiduciaries and enter into an agreement with such institutions, naming it a fiduciary and conveying to such fiduciary all or a portion of the assets of the Trust, so that said fiduciary may handle, manage and hold those assets conveyed to it. All assets conveyed to said fiduciary shall be subject to the provision of the agreement or agreements between the Trustees and the fiduciary.
- (7) The City Attorney shall serve as legal counsel to the Board of Trustees. Any reimbursement for the City Attorney's service shall be in accordance with the provisions of 1:403 (5).
- (8) The Board of Trustees shall appoint an Actuary who shall advise the Trustees on the actuarial operation of the Plan and Trust. The Trustees shall, from time to time, adopt such mortality and other tables of experience and a rate or rates of regular interest as are necessary in the operation of the Plan and Trust on an actuarial basis.

1:404. Board Meetings.

- (1) The Trustees shall meet at least once quarterly. The Trustees shall determine the time for the regular meetings of the Trustees and the place or places where such meetings shall be held. The Secretary or his or her designee shall be responsible for giving notice of the time and place of such meetings to the other Trustees.
- (2) Notice and conduct of all meetings of the Trustees, both regular and special, shall be given in accordance with applicable law including the Michigan Open Meetings Act (MCL §15.261 et seq.).
- (3) The Board of Trustees shall adopt its own rules of procedure and shall keep a record of its proceedings. Three (3) Trustees shall constitute a quorum at any meeting of the Board of Trustees. Each Trustee shall be entitled to one vote on each question before the Board

of Trustees and at least three (3) concurring votes shall be necessary for a decision of the Board.

1:405. Compensation.

All Trustees shall serve without compensation as members of the Board of Trustees. Trustees may be reimbursed by the Trust for reasonable and necessary costs and expenses of the Trustees in performing their duties as Trustees as related to the operation of the Plan and Trust.

1:406. Trustees' Powers and Responsibilities.

The Trustees shall hold all the powers that are necessary to carry out the purposes of the Trust and are generally available to Trustees under the laws of the State of Michigan, except as limited by the Trust and by Federal law and regulations. It is intended that the Trust shall be tax exempt and shall qualify under the Code and any amendments of the Code applicable to plans of this type. The Trustees shall have the continuing duty to propose, to the City, amendments to this Plan to the extent it becomes necessary to qualify said Plan under the Code and to continue the tax exempt status of the Trust. The Trustees shall take no action nor make any determination inconsistent with any qualification or ruling of the Internal Revenue Service, an arbitrator or the courts with respect to the Trust. In the case of amendments to the Code or changes of regulations by the Internal Revenue Service or the Labor Department, the Trustees are empowered to take all necessary action authorized by the Plan and the Trust, Federal and state law and regulations, to continue the qualification of the Trust as a qualified Trust. In carrying out the purposes of the Trust, the Trustees shall have the following powers and duties:

- (1) The Trustees shall, in order to effectuate the purposes of the Trust, be bound by the terms of the Plan and any applicable administrative regulations.
- (2) Consistent with applicable state and Federal laws and regulations, the Trustees shall have the power to promulgate rules and regulations for the day-to-day management of the Trust, the investment of monies held by the Trust, to determine all questions regarding the interpretation of the Trust, and such other Trust related subjects as shall be deemed necessary and proper by the Trustees. If any rule or regulation of the Trust or part thereof is found to be in conflict with any law, statute, judicial decision, arbitration decision or any other competent body or tribunal, such rule or regulation or part thereof shall be deemed void and all other rules and regulations of the Trust shall remain in effect.
- (3) Whenever the signature of a Trustee is required on any document, two signatures of the individuals authorized by the Board of Trustees shall be required.

1:407. Investment of Trust Assets.

- (1) The Trustees shall be authorized to invest the assets of the Trust in accordance with the provisions of the Public Employee Retirement System Investment Act, Public Act 314 of 1965, as amended (MCL §38.1132 et seq.).

- (2) The Board shall invest and reinvest the principal and income of the Trust, without distinction between principal and income, in its sole discretion. The Board in its sole discretion may keep such portion of the Trust in cash or cash balances as the Board may from time to time deem to be in the best interests of the Trust.
- (3) To the extent permitted by law, the Board may commingle the investment of the Trust with other funds that it administers.

1:408. Board Liabilities.

The Board's responsibilities and liabilities shall be subject to the following limitations and other limitations as set forth in the Trust:

- (1) The Board shall have no duties other than those expressly set forth in this Trust and those imposed on the Board by applicable laws.
- (2) The Board shall be responsible only for money and property actually received by the Board, and then to the extent described in this Trust.
- (3) The Board shall not be responsible for the correctness of any determination of payments or disbursements from the Trust.
- (4) The Board shall have no liability for the acts or omissions of any predecessor or successor in office.
- (5) The Board shall have no liability for the acts or omissions of any (a) Investment Manager or Managers; (b) insurance company; (c) investment fund; or (d) contractor.
- (6) In the event of any suit brought against the Trustees arising out of the acts within the scope and powers and duties of the Trustees, or in the event of any lawsuit brought by the Trustees, the cost of defense or prosecution of such lawsuit shall be charged to the Trust, and shall be paid directly from the Trust, provided such costs are not incurred by reason of bad faith, gross negligence, or breach of a fiduciary obligation to the Trust or to the beneficiaries thereof.
- (7) The Board may authorize the purchase of insurance for the Trust and for the Trustees to cover liability or losses occurring for any reason, including, but not limited to, an act or omission (errors or omissions) of a fiduciary, including the Trustees; provided however, that such insurance policy permits recourse by the insured against the fiduciary, including the Trustee or Trustees involved, in case of breach of fiduciary obligation by the fiduciary.

1.409. Reports.

- (1) The Trustees, or their respective designees, shall establish a uniform system for the timely transmission of required reports and contributions.
- (2) The Trustees shall maintain, or cause to be maintained, proper books of accounts and records of and for the administration of the Trust, including the minutes of all meetings, make them available for inspection during reasonable business hours by the City, or any Participant, Former Participant or Vested Former Participant covered by the Trust.
- (3) The financial records of the Trust shall be subject to the annual audit of the City. The Trustees shall fully comply with all applicable statutory and municipal budgetary and accounting procedures and provide access to or documentation of all assets and liabilities of the Trust and a resume of the operations of the Trust for the preceding year together with such other data as may be required by law or as part of the City's annual financial report.