

Introduced By: Council Member Chris Hoffman
1st Reading: November 4, 2019
2nd Reading: November 18, 2019

ORDINANCE NO. 2019-8128

AN ORDINANCE OF THE CITY OF JACKSONVILLE BEACH, FLORIDA, AMENDING AND RESTATING IN ITS ENTIRETY CHAPTER 2, ARTICLE V, DIVISION 7, FIREFIGHTERS' RETIREMENT SYSTEM, OF THE CITY OF JACKSONVILLE BEACH CODE OF ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Ordinance No. 2000-7783 restated the Firefighters' Retirement System; and

WHEREAS, since its original adoption, the Retirement System has been amended by several subsequent ordinances; and

WHEREAS, the trustees of the City of Jacksonville Beach Firefighters' Retirement System have requested and approved such restatement as being in the best interests of the participants and beneficiaries as well as improving the administration of the plan, and

WHEREAS, the City Council desires to restate the provisions of the Retirement System in order to facilitate the administration thereof by the Board of Trustees; and

WHEREAS, the City Council has received, reviewed and considered an actuarial impact statement describing the actual impact of the amendments provided for herein

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF JACKSONVILLE BEACH, FLORIDA:

SECTION 1. That Chapter 2, Administration, Article V, Employee Benefits, Division 7, Firefighters' Retirement System, of the Code of Ordinances of the City of

Jacksonville Beach, Florida, restated by Ordinance No. 2000-7783, and subsequently amended by Ordinance No. 2000-7799, Ordinance No. 2000-7802, Ordinance No. 2001-7812, Ordinance No. 2002-7835, Ordinance No. 2002-7844, Ordinance No. 2004-7885, Ordinance No. 2004-7887, Ordinance No. 2006-7922, Ordinance No. 2007-7942, Ordinance No. 2007-7943, Ordinance No. 2009-7974, Ordinance No. 2009-7982, Ordinance No. 2009-7985, Ordinance No. 2012-8020, Ordinance No. 2012-8022, Ordinance No. 2013-8038, Ordinance No. 2014-8046, Ordinance No. 2014-8049, Ordinance No. 2014-8057 is hereby amended and restated in its entirety as set forth in Attachment A.

SECTION 2. That all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 3. That this Ordinance shall become effective immediately upon adoption in accordance with the Charter of the City of Jacksonville Beach, except as otherwise specified above.

SECTION 4. That this Ordinance was adopted on the second reading at a regular meeting of the City Council on the 18th day of November, 2019.



William C. Latham, Mayor



Laurie Scott, City Clerk

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Division 7. – FIREFIGHTERS’ RETIREMENT SYSTEM

Sec. 2-164.1. - Name, establishment; effective date.

The City of Jacksonville Beach Firefighters' Retirement System established effective November 1, 1951, is continued for the purpose of providing retirement income to qualifying employees and former employees, and survivor income to their qualifying beneficiaries. The effective date of the Retirement System is November 1, 1951.

Sec. 2-164.1.A. – Interlocal Agreement with City of Jacksonville; member election; System Closed to new members.

(a) The City of Jacksonville Beach entered into an Interlocal Agreement with the City of Jacksonville, effective November 23, 2019. All City of Jacksonville Beach firefighters shall become employees of the City of Jacksonville on November 23, 2019.

(b) All City of Jacksonville Beach firefighters who are members of this Retirement System on November 23, 2019, shall be given an opportunity to individually elect to continue participating in this Retirement System, or join the City of Jacksonville defined contribution retirement plan, as follows:

1. Those firefighters who elect to continue participating in this Retirement System shall continue to participate in, make legally required contributions to, and accrue service and benefits under this Retirement System for as long as they are employed as certified firefighters by the City of Jacksonville. Firefighters who elect to continue participating in this Retirement System shall also continue to have Social Security coverage and make legally required Social Security contributions for as long as they are employed as certified firefighters by the City of Jacksonville and members of this Retirement System.
2. Those firefighters who elect to join the City of Jacksonville defined contribution retirement plan shall receive a refund of their accumulated member contributions (with interest) from this Retirement System or may roll over such contributions and interest to an IRA or other qualified plan in accordance with federal law. Notwithstanding the preceding sentence, Jacksonville Beach Firefighters with ten (10) or more years of credited service in this Retirement System on November 23, 2019 who elect to join the City of Jacksonville defined contribution retirement plan may keep their accumulated member contributions in this Retirement System, and shall be eligible to receive a deferred pension benefit, based on their credited service and average final compensation on the day before November 23, 2019, payable upon attaining the age and service requirements for normal retirement under this Retirement System and separation from employment by the City of Jacksonville. Firefighters who elect to join the City of Jacksonville defined contribution retirement plan shall not be eligible for social security coverage.

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(e) This Retirement System shall be closed to new members on November 23, 2019.

Sec. 2-164.2. - Definitions.

As used in this division:

Accumulated Member Contributions^[1] means the sum of all amounts credited to a Member's individual account in the reserve for Member contributions, including the interest applied thereto in accordance with Section 2-164.34.

Actuarially Equivalent^[2] means, for a specified date of reference, the equivalence of the present values of different forms of payment of a benefit, using such actuarial assumptions as shall from time to time be recommended by the Retirement System's actuary and adopted by the board of trustees.

Beneficiary means an individual who is being paid, or who may become eligible to be paid, a Pension on account of the death of a Member.

City^[3] means the City of Jacksonville Beach, Florida. City also means the City of Jacksonville, Florida, for the purpose of identifying the employer of members of this Retirement System on and after November 23, 2019.

Compensation^[4] means base pay, incentive pay, and longevity pay, provided:

- (1) For Service prior to July 21, 2014, Compensation shall also include overtime pay; shift differentials; pay for periods of absence from work by reason of vacation, holiday and sickness; and deferred compensation amounts under deferred compensation programs recognized by the board of trustees;
- (3) Compensation shall not include any remuneration or reimbursement not specifically included above, such as, but not limited to, allowances for clothing, equipment, cleaning, and travel; reimbursement of expenses; bonuses; termination of pay; severance pay; payments in consideration of unused vacation or sick leave; and the value of fringe benefits.
- (4) A Member's annual Compensation in excess of the limitations set forth in Section 401(a)(17) of the Internal Revenue Code shall be disregarded. However, for those Members who commenced participation in the Retirement System prior to the first Plan Year beginning after December 31, 1995, the limitation on Compensation shall not be less than the amount that was allowed to be taken into account under the Retirement System as in effect on July 1, 1993.

Final Average Compensation means one-fifth of the aggregate amount of a Member's Compensation during the five (5) years of the Member's last ten (10) years of credited service in which the aggregate amount of Compensation is greatest. For this purpose, a year of credited service shall mean each consecutive twelve-month period counting

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backward from the Member's last day of employment. If the Member has less than five (5) years of credited service, "Final Average Compensation" means the aggregate amount of the Member's Compensation divided by the Member's credited service.

Firefighter means any person employed solely by the City, who is certified as a firefighter as a condition of employment in accordance with the provisions of Sections 175.032(11)(a) and 633.408, Florida Statutes and whose duty it is to extinguish fires, to protect life, or to protect property.

Member^[5] means an individual who is rendering Service to the City; an individual who has separated from Service to the City, other than by death or retirement, and who has Accumulated Member Contributions in the Retirement System; a Retiree.

Pension means the death and retirement benefits provided herein. Payment may be for a temporary period or throughout the future life of a Retiree or Beneficiary.

Plan Year means the 12 month period from October 1 through September 30.

Retiree means an individual who is being paid a Pension on account of the individual's membership in the Retirement System.

Retirement System means the City of Jacksonville Beach Firefighters' Retirement System.

Service means personal service rendered to the City in a position included in Section 2-164.3(a), and qualifying military service pursuant to section 2-164.5. For firefighters who elect to continue participating in this Retirement System in accordance with section 2-164.1.A, Service shall include personal service in a position of full-time firefighter rendered to the City of Jacksonville on and after November 23, 2019.

Vested Member^[6] means a Member who: has ten (10) or more years of credited service; or had at least five (5) years of credited service on June 23, 2014; or has reached normal retirement age as defined in Section 2-164.9. For the purposes of determining a Member's vested status and benefit eligibility (but not the amount of a Member's benefit), the Member shall receive credited service for all years with respect to which the member has earned credited service in any other retirement plan of the City.

Sec. 2-164.3. – Membership of Firefighters' Retirement System.

- (a) An individual who is employed by the City in a position of full-time Firefighter shall be a Member of the Retirement System, unless employed in an excluded position described in subsection (b) of this section.
- (b) Excluded positions are:
 - (1) Reserve Firefighters;
 - (2) Firefighters employed temporarily during an emergency.
 - (3) Firefighters who elect to participate in the City of Jacksonville defined contribution retirement plan in accordance with section 2-164.1.A, other than those firefighters with ten (10) or more years of credited service in this Retirement System on

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November 23, 2019 who elect to join the City of Jacksonville defined contribution retirement plan and keep their accumulated member contributions in this Retirement System.

- (c) An individual shall continue to be a Member until the earlier of the following: the date upon which all Accumulated Member Contributions have been refunded to the Member following termination of Service in accordance with Sections 2-164.1.A or 2-164.7; the date upon which the entirety of the Member's accrued benefit has been paid; the date of the Member's death.[7]

Sec. 2-164.4. - Credited service.

- (a) Service rendered by the Member shall be credited to the Member's individual credited service account in accordance with rules the board of trustees shall from time to time prescribe. Service shall be credited to the nearest day[8] and in no case shall more than one (1) year of credited service be credited on account of all Service rendered by a Member in any one (1) Plan Year.
- (b) Except as provided in Subsection (c) below, credited service shall not include any year (and/or fraction thereof) of Service with regard to which a Member has received a refund of his Accumulated Member Contributions pursuant to Section 2-164.7.[9]
- (c) A former Member who has received a refund of his or her Accumulated Member Contributions as provided in Subsection 2-164.7, and who subsequently recommences Service **with the City before November 23, 2019**, may restore his or her previous credited service for which he or she received a refund, if the effective date of recommencement of Service is within five (5) years of the effective date of the termination of Service. Credited service shall be restored by paying to the Retirement System, within ninety (90) days following the effective date of recommencement of Service, the total amount of the refund of Accumulated Member Contributions that the Member received, plus interest compounded monthly from the date of the refund to the date of repayment at the Retirement System's assumed rate(s) of return in effect for the period to which the interest applies, as calculated by the Retirement System's actuary.[10] Notwithstanding any other provision of this section, a Member who becomes an employee of the City of Jacksonville as provided in section 2-164.1.A and subsequently separates from employment as a City of Jacksonville firefighter shall not thereafter be eligible to participate in this Retirement System.

Sec. 2-164.5. - Intervening military service.

A Member whose Service is terminated for the purpose of entering any armed service of the United States shall be entitled to credited service for periods of active duty, without payment of employee contributions for such period, subject to the following conditions:

- (1) The individual becomes a Member within the time periods provided in the Uniformed Service Employment and Reemployment Rights Act (USERRA) and F.S. § 175.032.

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- (2) The Member pays the Retirement System the total amount of any Accumulated Member Contributions withdrawn at the time of, or subsequent to, the termination of Service to enter armed service, in accordance with the provisions of USERRA.
- (3) No more than five (5) years of credited service shall be granted a Member under the provisions of this section. Credited service shall not be granted for periods of armed service which are or could be used for obtaining or increasing a benefit from another retirement system.

Sec. 2-164.6. - Benefit group Firefighter.

- (a) The benefit group "Firefighter" is designated for the purpose of determining benefit conditions, benefit amounts, and Member contribution rates applicable to Members of the Retirement System.
- (b) Except as provided in Section 2-164.8, benefit eligibility conditions shall be those applicable to the Member at the time of death or retirement, whichever is earlier.
- (c) Pension amounts shall be separately determined for each retirement system for which a Member has credited service, and, except as provided in Section 2-164.8 (or its equivalent in any other retirement system), shall be calculated using Retirement System provisions in effect at the time of retirement or death, whichever is earlier.

Sec. 2-164.7[11] Refund of Accumulated Member Contributions.

- (a) A non-Vested Member who ceases Service for the City for any reason except retirement or death, shall, upon written request of the Member, receive a refund of his or her Accumulated Member Contributions. The Member's credited service in the plan shall be nullified as of the end of the five (5) year period beginning on the effective date of the termination of Service, or the date upon which the member receives a refund of his or her contributions, whichever is earlier.[12]
- (b) If an individual dies and no Pension becomes or will become payable by the Retirement System on account of the death, the deceased individual's Accumulated Member Contributions shall be paid to such individual or individuals as the deceased individual shall have named by written designation duly executed and filed with the Retirement System. If there is no such named individual surviving the deceased individual, the Accumulated Member Contributions shall be paid to the deceased individual's estate.

Sec. 2-164.8. - Vested termination of membership.

The rights of a Vested Member whose Service terminated prior to November 18, 2019, shall be determined in accordance with the plan provisions in effect on the date of the termination of Service.

A Vested Member whose Service is terminated on or after November 18, 2019 and prior to the normal retirement age in effect on the date of the termination of service, shall become eligible for deferred vested benefits upon attainment of the early or normal

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retirement age in effect on the date of the termination of Service, and any in case upon attainment of age 50 (in which case the benefit shall be actuarially reduced). Deferred vested benefits shall be calculated and payable in accordance with the provisions for early or normal retirement, whichever applies, in effect on the date of the termination of Service, including Sections 2-164.11 and 2-164.18 relating respectively to the form and to the commencement of benefit payments. In the event that any such Vested Member shall die from any cause before the Member receives a deferred benefit in accordance with this Section and before satisfaction of the requirements for normal retirement under 2-164.9, then a pre-retirement death pension shall be payable to the deceased Vested Member's surviving Beneficiary(ies) as provided in Section 164.12.[13]

Sec. 2-164.9. – Early and Normal Retirement conditions.

- (a) An individual may retire upon satisfaction of each of the following requirements:
- (1) A written application for retirement, in the form established by the board of trustees, has been filed with the Retirement System.
 - (2) Service is terminated prior to the date of retirement.
 - (3) The individual reaches his/her early or normal retirement age.
- (b) Normal retirement age means:[14]
- (1) For any Member retiring on or after July 21, 2014, who on said date had ten (10) or more years of credited service or had attained the age and/or service requirements in Subparagraph (A), (B), or (C) below, the date upon which the Member attains or attained-
 - (A) Age fifty-five (55) or older with five (5) or more years of credited service; or
 - (B) Age fifty-two (52) or older with twenty-five or more years of credited service; or
 - (C) Thirty (30) or more years of credited service without regard to age.
 - (2) For any Member retiring on or after July 21, 2014, who on said date was a Vested Member, had fewer than ten (10) years of credited service, and had not attained the age and Service requirements under Paragraph (1)(A), (1)(B), or (1)(C) above, the date upon which the Member attains-
 - (A) Age sixty-five (65) or older with five (5) or more years of credited service;
 - (B) Age fifty-five (55) or older with ten (10) or more years of credited service;
 - (C) Age fifty-two (52) or older with twenty-five or more years of credited service;
 - (D) Thirty (30) or more years of credited service without regard to age.

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- (3) For all other Members retiring on or after July 21, 2014, the date upon which the Member attains-
- (A) Age fifty-five (55) or older with ten (10) or more years of credited service;
 - (B) Age fifty-two (52) or older with twenty-five or more years of credited service;
 - (C) Thirty (30) or more years of credited service without regard to age.
- (c) Early retirement age means the date upon which the Member attains age fifty (50) with ten (10) years of credited service, or completes 20 years of credited service regardless of age, provided that only Members who met said age and/or credited service requirements on or before July 21, 2014 shall be eligible for early retirement.
- (d) The amount of a Member's retirement benefits under this Section shall be determined in accordance with Section 2-164.10. Benefits shall be payable in a form set forth in Section 2-164.11 and shall commence as set forth in Section 2-164.18.[15]
- (e) Notwithstanding any other provision hereunder, a Member's accrued benefit under the plan shall become non-forfeitable upon his/her normal retirement age.

Sec. 2-164.10-- - Amount of a Pension.

- (a) (1) The Accumulated Member Contribution Guarantee under Section 2-164.19 shall apply to all benefits provided under this Section.[16]
- (2) The amount of Pension under optional form of payment I pursuant to section 2-164.11 shall be equal to the sum of separate amounts determined in accordance with the benefit formula applicable to each retirement system for which the retiring individual has credited service in force.
- (3) The amount of Pension attributable to credited service under a particular retirement system shall be equal to a fraction of the amount of Pension determined as if the individual's total credited services were under the retirement system. The fraction shall be the individual's credited service under the retirement system over the individual's total credited service.
- (b) The benefit formula is:
- (1) For Normal Retirement:
 - a. For retirements with an effective date prior to October 1, 1990, two and one-half (2 1/2) percent of Final Average Compensation multiplied by credited service, to a maximum of seventy-five (75) percent of Final Average Compensation.
 - b. For retirements with an effective date after September 30, 1990 (except as provided in Subparagraphs c and d below), three (3) percent of Final Average Compensation multiplied by credited service, to a maximum of thirty (30) years, and two (2) percent of Final Average Compensation multiplied by all years of credited service in excess of 30, subject to the limitations of F.S. §112.65.

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- c. For retirements on or after July 21, 2014 with regard to Members who were not eligible for normal retirement on said date, three (3) percent of Final Average Compensation multiplied by credited service, for all years of credited service earned on and after July 21, 2014, subject to the maximum benefit provided in Subparagraph d below. Such individuals shall retain their accrued benefits based on credited service earned prior to July 21, 2014.
- d. For retirements on or after July 21, 2014, the maximum benefit shall be ninety (90) percent of Final Average Compensation or ninety thousand dollars (\$90,000.00) annually, whichever is less; provided, any Member who has an accrued benefit percentage in excess of ninety (90) percent or an annual benefit of more than ninety thousand dollars (\$90,000.00) on July 21, 2014 shall retain that accrued benefit, but shall not accrue any additional benefit after that date.
- e. A minimum monthly benefit amount shall apply to Retirees who have been retired for thirty (30) or more years or who have accumulated ten (10) or more years of credited service, as periodically established by the City. Such monthly benefit shall be reduced by the applicable survivor benefit as elected by the Retiree pursuant to section 2-164.11. The City shall make deposits into the Firefighters' Retirement System equal to the full annual cost of such increase in benefit payments to achieve said minimum monthly benefit.

(2) For Early Retirement:

A Member retiring on or after his or her early retirement age but before the Member's normal retirement age shall receive the monthly benefit level provided in Paragraph (1) above relating to normal retirement, reduced to take into account the Member's younger age and the earlier commencement of income payments. Such reduction shall not exceed (3) percent per year for the years and fractional parts of years that the early retirement date precedes the normal retirement date. The early retirement benefit shall commence in accordance with Section 2-164.18 and no sooner than the Member's early retirement age. Benefits shall be payable in a form set forth in Section 2-164.11.

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[18](c) Cost of living adjustment. There shall be a cost of living adjustment (COLA) to the monthly benefit of each member employed on July 21, 2014 and who was employed by the city on the day prior to retirement from the city and is receiving benefits under this plan as follows:

(1) Effective October 1, 2009, the monthly benefit of each individual who retired prior to January 1, 2009, shall be increased by two (2) percent as a one-time benefit adjustment.

(2) The monthly benefit of all individuals who retire on or after January 1, 2009, shall be increased by two (2) percent on the second anniversary date of their retirement and each anniversary date thereafter. This annual benefit increase shall

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also be paid to annuitants and beneficiaries of deceased firefighters or deceased retired firefighters, based on the date of the deceased firefighter's or deceased retired firefighter's retirement.

(3) Except as provided herein, for all individuals who are employed on July 21, 2014 and who retire on or after that date, the monthly benefit based on credited service earned prior to July 21, 2014, shall be increased by two (2) percent on the second anniversary date of their retirement and each anniversary date thereafter. The monthly benefit based on credited service earned on or after July 21, 2014, shall be increased by one (1) percent on the second anniversary date of their retirement and each anniversary date thereafter. The provisions of this paragraph (3) shall not apply to members who, as of July 21, 2014, had attained age fifty-two (52) with twenty-five (25) years of credited service, age fifty-five (55) with five (5) years of credited service, or thirty (30) years of credited service regardless of age.

(4) Members hired on or after July 21, 2014, shall not be eligible for a cost of living adjustment.

Sec. 2-164.11. - Forms of payment of a Pension.

A Member may elect to have Pension payments made under any one (1) of the following forms of payment and name a survivor Beneficiary. The election and naming of a survivor Beneficiary shall be in writing and filed with the Retirement System prior to the date the first Pension payment is made. An election of form of payment may not be changed on or after the date the first Pension payment is made. A named survivor Beneficiary may be changed on or after the date the first Pension payment is made up to two (2) times as provided in § 175.333, Florida Statutes, without the approval of the board of trustees or the current survivor beneficiary. The Member need not provide proof of the good health of the survivor Beneficiary being removed, and the joint annuitant or Beneficiary being removed need not be living. After any such change in joint survivor or Beneficiary, the Member's Pension benefit will be recalculated accordingly by the actuary and the retirement income payable to the Member shall be based on the recalculation. If the Member chooses not to provide proof of good health of the survivor Beneficiary being removed, the actuarial calculation shall assume that the Retiree and new survivor Beneficiary are five (5) years older than their actual age. A named survivor Beneficiary may be more than one (1) person if Form of Payment I is elected. Payment shall be made under Form of Payment I if there is not a timely election of form of payment. The amount of Pension under Forms of Payment II, III and IV, shall be Actuarially Equivalent, computed as of the date of retirement (and, if applicable, as of the effective date of any change of Beneficiary as permitted above), to the amount of Pension under Form of Payment I.

(1) *Form of Payment I (Life with Period Certain Guarantee).* Under Form of Payment I, the Retiree is paid a Pension for life. Upon the death of the Retiree during the guaranteed period, the named survivor Beneficiary is paid the full amount of the

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Form of Payment I Pension for the remainder of the guaranteed period. The guaranteed period is one hundred twenty (120) months. If both the Retiree and the named survivor Beneficiary die during the guaranteed period, the actuarial present value of the remaining guaranteed Pension payments shall be paid in lump-sum to the estate of the one who survived the other.

- (2) *Form of Payment II (Life with Full Continuation to Survivor Beneficiary).* Under Form of Payment II, the Retiree is paid a reduced Pension until the Retiree dies. Upon the death of the Retiree during the lifetime of the named survivor Beneficiary, the named survivor Beneficiary is paid the full amount of the reduced Form of Payment II Pension over the named survivor Beneficiary's remaining life.
- (3) *Form of Payment III (Life with Reduced Continuation to Survivor Beneficiary).* Under Form of Payment III, the Retiree is paid a reduced Pension until the Retiree dies. Upon the death of the Retiree during the lifetime of the named survivor Beneficiary, the named survivor Beneficiary is paid one-half ($\frac{1}{2}$), two-thirds ($\frac{2}{3}$) or three-fourths ($\frac{3}{4}$) of the amount of the reduced Form of Payment III Pension over the named survivor Beneficiary's remaining life.
- (4) *Form of Payment IV (Straight Life or Lifetime Annuity).* A retirement income of larger monthly amount, payable to the Retiree for his or her lifetime only.
- (5) POP-UP Protection for Forms of Payment II and III. If a Member who retired on or after October 1, 2009 and who elected Form of Payment II or III is predeceased by his or her designated Beneficiary after benefit payments have commenced, then the Retiree's benefit shall be recalculated and automatically revert to the Form of Payment I as of the date of death of the named survivor Beneficiary. Said "pop-up" protection shall be included in determining actuarial equivalence with the Form of Payment I.
- (6) *Back-DROP.*^[19] Effective July 21, 2014, and subject to the provisions of this section, eligible Members may elect to participate in the Back-DROP in accordance with this Paragraph (6).
 - a. *Eligibility of Member to participate in the Back-DROP.* A Member who was employed and not participating in DROP on July 21, 2014, and who continues employment beyond the normal retirement age, and any Member who reaches normal retirement eligibility on or after July 21, 2014, and continues employment beyond the normal retirement age, is eligible to elect the Back-DROP. The Member shall advise the City and the Retirement System in writing of their Back-DROP election prior to separation from employment. A Member may elect the Back-DROP only once.
 - b. *Back-DROP date.* A Member's Back-DROP date shall be a date selected by the Member that is on or after the Member's normal retirement age but no more than thirty-six (36) months prior to their separation date.
 - c. *Maximum Back-DROP Period.* An eligible Member may elect the Back-DROP for a period equal to the number of months the Member has been

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employed beyond the normal retirement age, up to a maximum period of thirty-six (36) months.

- d. *Benefits payable under the Back-DROP.* A Member who elects the Back-DROP shall be entitled to a monthly Pension determined as of the Member's Back-DROP date, plus a lump sum payment equal to the Pension benefits the Member would have received had he/she retired on the Back-DROP date, with interest at the annual rate of three (3) percent compounded monthly^[20]. The Member's monthly benefit will be actuarially adjusted to reflect the lump sum payment. The lump sum Back-DROP benefit, less applicable withholding taxes, shall be distributed to the Member within sixty (60) days following separation from employment. Alternatively, a Member may elect to rollover some or all of the lump sum Back-DROP benefit into an eligible retirement plan in accordance with Sec. 2-164.36(d) hereof.
- e. *Forfeiture of retirement benefits.* Nothing in this subsection shall be construed to remove Back-DROP participants from the scope of Section 8(d), Art. II of the State Constitution, and F.S. § 112.3173. Back-DROP participants who commit a specified offense while employed will be subject to forfeiture of all retirement benefits, including Back-DROP benefits, pursuant to those provisions of law.
- f. *Administration of program.* The board of trustees shall make such rules as are necessary for the effective and efficient administration of this subsection. The Retirement System shall not be required to advise Members of the federal tax consequences of an election related to the Back-DROP, but may advise Members to seek independent advice.

Sec. 2-164.12. Pre-Retirement Death Pension.^[21]

- (a) In the event of the death of a Vested Member^[22] prior to retirement, a pre-retirement death pension shall be paid, as provided below, to the surviving Beneficiary(ies) of the Vested Member, which Pension shall be equal to the Vested Member's accrued benefit on that date, and shall be subject to the Accumulated Member Contributions Guarantee under Section 2-164.19. Benefits shall commence as set forth in Section 2-164.18.
- (b) Except as otherwise provided in Subsection (e) below, the pre-retirement death pension shall be paid to:
 - (1) the surviving spouse of the deceased Vested Member for life; or, if none,
 - (2) each surviving child of the deceased Vested Member, who is unmarried and has not attained age eighteen (18).
- (c) For the purposes of this Section, surviving spouse means the person to whom the Member is married at the time of death.
- (d) A surviving child's Pension shall terminate at the end of the calendar month in which occurs the child's eighteenth (18th) birthday, marriage, or death. The amount of a

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surviving child's Pension shall be an equal share of the deceased Vested Member's accrued Pension. A child's share shall be recomputed each time there is a change in the number of surviving children eligible for payment of a Pension.

- (e) A Member may at any time designate a person(s) to receive the pre-retirement death pension provided herein in place of the surviving spouse, if the spouse consents to such election in writing bearing the notarized signature of the spouse. Such consent shall be valid only with regard to a benefit otherwise payable to the consenting person as the surviving spouse.
- (f) (1) A deceased Vested Member's accrued Pension shall be computed under the following presumptions:
 - a. The deceased Vested Member shall be presumed to have retired under the normal retirement provisions of Section 2-164.9 on the day preceding the Member's death.
 - b. The deceased Member shall be presumed to have elected Form of Payment I, if the pre-retirement death pension is to be paid to a surviving spouse or an eligible child. If there is no surviving spouse or eligible child, or if the surviving spouse has consented to the payment of the benefit to a Beneficiary designated under Subsection (e) above, then the deceased Vested Member shall be presumed to have elected Form of Payment II and named the designated Beneficiary(ies) as survivor Beneficiary(ies).
- (2) The spouse may designate a beneficiary to receive any remainder benefit due in the event of his or her death before the end of the benefit certain period.
- (3) In the case of a Member who dies on or after January 1, 2007, while performing "Qualified Military Service" under Title 38, United States Code, Chapter 43, Uniformed Services Employment and Reemployment Rights Act ("USERRA") within the meaning of Section 414(u) of the Internal Revenue Code, any "additional benefits" (as defined by Section 401(a)(37) of the Internal Revenue Code) provided under the plan that are contingent upon a Member's termination of employment due to death shall be determined as though the Member had resumed employment immediately prior to his death. With respect to any such "additional benefits," for vesting purposes only, credit shall be given for the period of the Member's absence from covered employment during "Qualified Military Service."

Sec. 2-164.13. - Special conditions applicable to death in line of duty.

In the event the death of a Member is found by the board of trustees to be the natural and proximate result, independent of all other causes, of a personal injury or disease arising out of and in the course of the Member's actual performance of duty with the City, the following additional provisions shall apply to section 2-164.12:

- (1) The Member's eligibility shall be determined without regard to the vesting requirement specified in Section 2-164.12.

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- (2) The amount of Pension paid a surviving spouse shall not be less than thirty-five (35) percent of the deceased Member's Final Average Compensation.
- (3) The amount of Pension paid a surviving child shall not be less than an equal share of fifty (50) percent of the deceased Member's Final Average Compensation.

Sec. 2-164.14. - Disability retirement—General conditions.

- (a) The board of trustees may retire a Member who becomes incapacitated for continued employment by the City if each of the following conditions is met:
 - (1) Application for disability retirement is filed with the Retirement System by the Member. In the event that a Member's employment with the City is administratively terminated prior to the Member's filing of a disability application, the Member must file his/her application no later than ninety (90) days following the effective date of the termination of the Member's employment.[23]
 - (2) The Member has ten (10) or more years of credited service.
 - (3) The Member undergoes the medical examinations and tests ordered by the Retirement System.
 - (4) The medical advisor certifies to the board of trustees that the Member is incapacitated, that the incapacity is likely to be permanent, and that the Member should be retired, and the Member is wholly incapacitated from rendering useful and efficient Service as a Firefighter.
- (b) The amount of disability Pension shall be computed in accordance with the rules for normal retirement under Section 2-164.10 based upon the Member's years of credited service on the date of separation from Service, and the disability Retiree shall have the right to elect a Form of Payment provided in Section 2-164.11. However, in no event shall such benefit be less than twenty-five (25) percent of the Member's Final Average Compensation. The disability Pension shall be subject to the Accumulated Member Contributions Guarantee under Section 2-164.19. Benefits shall commence as set forth in Section 2-164.18[24]

Sec. 2-164.15. - Same—Special conditions applicable to duty disability.

If the board of trustees finds that the Member's disability is the natural and proximate result of a personal injury or disease arising out of and in the course of the Member's actual performance of duty in the employ of the City, the following additional provisions shall apply to section 2-164.14:

- (1) The Member's eligibility shall be determined without regard to the credited service requirement in Section 2-164.14.
- (2) A Member who is retired on account of duty disability shall be paid a duty disability Pension during the Member's duty disability benefit period. A Member's duty disability benefit period begins on the first day of the first month after the board

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of trustees determines entitlement, provided that the monthly retirement income shall be effective as of the date the board of trustees determines such entitlement. A Member's duty disability benefit period ends on the first to occur of the following dates: the date the Pension is terminated as provided in section 2-164.16 or the date the Pension has been paid for the maximum disability benefit period. The maximum disability benefit period is

Member's Age When Duty Disability Benefit Period Begins	Maximum Benefit Period
Less than age 50	To age 55
Age 50 and over	60 months

- a. The amount of a duty disability Pension is the larger of the Member's accrued Pension calculated as provided in section 2-164.14 and fifty (50) percent of the Member's Final Average Compensation.
 - b. Upon termination of the Member's duty disability benefit period, the Member's credited service shall be increased by the Member's duty disability benefit period.
 - c. The duty disability Pension shall be subject to the provisions of sections 2-164.16 and 2-164.17.
- (3) A Member may elect to continue to be covered by the duty disability, in lieu of the benefit provided in subsection (2) of this section. The election shall be made in accordance with procedures established by the board. A Member who so elects shall thereby be precluded from claiming age discrimination with respect to the duty disability benefit.

Sec. 2-164.16. - Same—Effect on gainful employment.

- (a) The provisions of this section shall apply during the period, if any, between the effective date of disability retirement and the date the disability Retiree first satisfies the age and/or Service requirement for normal retirement pursuant to subsection 2-164.9. Application of the limitation shall be to the amount of Pension under Form of Payment I. The effect of an election of any other form of payment shall be taken into account after application of the provisions of this section.
- (b) The amount of Pension shall not exceed the difference between one hundred ten (110) percent of the disability Retiree's Final Average Compensation and the amount of the disability Retiree's considered income, however, in no event shall such disability retirement benefit be reduced below the minimums required in F.S.

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§175.191. A disability Retiree's considered income is the annual amount of remuneration for personal services rendered in any gainful employment. Gainful employment existing at the time of disability retirement, other than with the City, shall not be considered to the extent of the amount of remuneration in the last calendar year preceding retirement.

- (c) The Retirement System shall periodically request substantiated income information from disability Retirees subject to the provisions of this section. Failure to provide requested information within ninety (90) days of the request shall cause suspension of payment of the Pension until the information is received.

Sec. 2-164.17. - Same—Continuation subject to reexamination; return to employment.

- (a) The board of trustees may require a disability Retiree to undergo periodic medical examination, by or under the direction of a medical advisor selected by the board of trustees, if the disability Retiree has not satisfied the age and/or Service requirement for normal retirement pursuant to subsection 2-164.9. If a disability Retiree refuses to submit to a medical examination, payment of the Pension may be suspended by the board of trustees until withdrawal of the refusal. The terminated disability Retiree may be restored to active employment with the City. A disability Pension shall be discontinued if, following medical examination, the medical advisor certifies that the disability Retiree is mentally and physically able and capable of resuming employment as a Firefighter with the City, and the board of trustees concurs in the certification of the medical advisor. The City shall be allowed reasonable latitude in placing the terminated disability Retiree in a position commensurate with the position held at the time of disability retirement.
- (b) The membership status of a disability Retiree who has been restored to employment with the City as provided in subsection (a) of this section shall be governed by section 2-164.3. The disability Retiree's years of credited service as of the date of disability retirement shall be retained. Service shall be credited for the period the disability Retiree was being paid a disability Pension if the provisions of section 2-164.15 were applicable; otherwise, credited service shall not be given for the period of disability retirement.
- (c) A terminated disability Retiree who does not return to Service for the City, and who had ten (10) or more years of credited service at the time of disability retirement, shall be entitled to deferred retirement as provided in section 2-164.8.

Sec. 2-164.18. - Commencement and termination dates of Pensions.

Deferred vested benefits under Section 2-164.8 and early and normal retirement benefits under Section 2-164.9 (except as provided for BACK-DROP under Paragraph (6) of Section 2-164.11) shall be payable effective the later of the first day of the calendar month coincident with or next following the Member's early or normal retirement age, whichever applies, and the first day of the calendar month coincident with or next following the approval of the application by the Board of Trustees. A pre-retirement death Pension

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pursuant to section 2-164.12, or 2-164.13 shall be payable effective the first day of the calendar month in which occurs the death causing payment of the Pension. A post-retirement survivor Pension pursuant to section 2-164.11 shall be payable effective the first day of the calendar month next following the death causing payment of the Pension. Disability retirement benefits under Section 2-164.14 shall be payable effective the first day of the calendar month coincident with or next following the date of approval of the application by the Board of Trustees. Disability retirement benefits under Section 2-164.15 shall be payable effective as of the date of approval of the application by the Board of Trustees.

Once commenced, benefit payments shall be made on the first business day of each calendar month until termination, which shall occur at the end of the month in which occurs the event causing termination. Payment shall be made for the full month of termination. A change in the amount of a Pension shall occur on the first day of the calendar month next following the month in which occurs the event causing the change.

Sec. 2-164.19. - Accumulated Member Contribution guarantee.

In the event all Pension payments provided in Sections 2-164.10, 2-164.12, 2-164.13, 2-164.14, 2-164.15, terminate before there has been paid an aggregate amount equal to the Retiree's Accumulated Member Contributions at the date of retirement, the difference between the Retiree's Accumulated Member Contributions and the aggregate amount of Pension payments made shall be paid to such person or persons as the Retiree shall have designated in writing and filed with the Retirement System. If there be no such individual surviving the Retiree, the difference shall be paid to the estate of the last survivor among the Retiree and the designated person or persons.

Sec. 2-164.20. - Member contributions.

Member contributions to the Retirement System shall be 7.95 percent of Compensation. For the period February 5, 2001, through July 20, 2014, Member contributions were 6.45 percent of Compensation.

Sec. 2-164.21. - City pickup of Member contributions for Federal Income Tax purposes.

The City shall pick up the Member contributions required of Members on account of Compensation earned after the effective date specified in the resolution of the City Council activating the provisions of this section. The picked-up contributions shall be treated as City contributions for the purposes of determining tax treatment under the United States Internal Revenue Code. The specified effective date shall not be prior to ninety (90) days after the Retirement System has received notification from the United States Internal Revenue Service that, pursuant to Section 414(h) of the United States Internal Revenue Code, the Member contributions picked up shall not be included in gross income for income tax purposes until such time as the picked-up contributions are distributed by refund or Pension payments. The City shall pick up the Member contributions from funds designated as Member contributions and paid to the Retirement

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System. Member contributions picked up pursuant to this section shall be treated for all other purposes, in the same manner, and to the same extent, as Member contributions made prior to the specified effective date.

Sec. 2-164.22. - Procedure if claim for benefits denied.

In the event a claim for benefits is denied by the board of trustees, the claimant shall be notified of the denial, in writing, within thirty (30) days of the board's action. The notification shall set forth the reasons for the denial. The claimant may appeal the denial and request a hearing before the board. The appeal shall be in writing to the City Clerk and filed within ninety (90) days of the board's denial. The request shall contain a written statement of the claimant's position regarding the claim. The board of trustees shall schedule a hearing within ninety (90) days of receipt of the appeal.

Sec. 2-164.23. - Board of trustees—Responsibilities and compensation.

- (a) The Retirement System is created, established, and maintained as an irrevocable trust pursuant to §§ 112.66(8), and 175.041 Florida Statutes. The board of trustees shall receive, hold, manage, control, and administer the Retirement System for the purpose of providing such benefits as now are, or hereafter may be, authorized or permitted by law, for Members and beneficiaries of the Retirement System and for paying the reasonable expenses of administering the system. No portion of the assets of the Retirement System shall revert to or be the property of the City of Jacksonville Beach, Florida.
- (b) The board of trustees shall consist of the following five (5) individuals:
 - (1) Two (2) members appointed by the City Council, who shall be residents of the City.
 - (2) Two (2) Firefighters who shall be elected by active Firefighters of the City.
 - (3) A fifth member selected by the other four (4) members and appointed, as a ministerial act, by the City Council.
- (c) Elections of member trustees shall be conducted in accordance with rules adopted by the board of trustees.
- (d) The board of trustees shall adopt its own rules of procedure and shall keep a record of its proceedings in accordance with § 175.061, Florida Statutes. Three (3) trustees shall constitute a quorum at any meeting of the board, and at least three (3) concurring votes shall be necessary for a decision. Each trustee shall be entitled to one (1) vote on each question before the board.
- (e) The City, any Member, or Beneficiary, shall not have any right, title, or interest in or to the Retirement System or any part thereof other than vesting and other than a Pension or other benefit for which a Member or Beneficiary is entitled under the terms and conditions set forth herein. There shall be no pro rata or other distribution of any of the assets of the Retirement System as a result of any group of Members and/or

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beneficiaries, ceasing their participation in the Retirement System for any purpose or reason, except as required by law.

Sec. 2-164.24. - Same—Term of office; oath of office; vacancies.

- (a) The term of office of Member-elected trustees shall be two (2) years. The City Council trustees shall serve two-year terms at the pleasure of the City Council. The fifth member shall serve for a two-year term.
- (b) Each trustee shall, before assuming the duties of trustee, qualify by taking an oath of office to be administered by the City Clerk.
- (c) A vacancy shall occur on the board of trustees if a Member-elected trustee ceases to be employed by the City, if an appointed trustee resigns or is removed from office by the appointing body, or if the fifth trustee resigns. In the event a vacancy occurs on the board of trustees, the vacancy shall be filled within ninety (90) days for the unexpired term, in the same manner as the position was previously filled.

Sec. 2-164.25. - Same—Officers; administrative services.

- (a) The officers of the Retirement System shall be:
 - (1) *Chairperson.* The board of trustees shall annually elect a chairperson and a chairperson pro tem from its members.
 - (2) *Secretary.* The board of trustees shall annually elect a secretary from its members.
 - (3) *Legal advisor.* The City Attorney may be legal advisor to the board of trustees. However, the board of trustees is authorized to retain independent legal counsel.
- (b) The board of trustees is authorized and empowered to employ such professional and other services as are required for the proper discharge of their responsibilities.

Sec. 2-164.26. - Same—Annual report; data and tables.

- (a) The Retirement System shall prepare an annual report for each fiscal year. The report shall contain information regarding the financial, actuarial, and other activities of the Retirement System during the fiscal year. A copy of the report shall be furnished to the mayor and City Council no later than the February 1 following the end of the fiscal year covered by the report.
- (b) The Retirement System shall prepare and distribute other reports required by applicable laws of the State of Florida or the United States, as required by such laws.
- (c) The board of trustees shall adopt the experience tables, which are necessary for the operation of the retirement system on the actuarial basis specified in this act. Sufficient data and information shall be kept by the retirement system to facilitate the actuarial operation of the retirement system.

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Sec. 2-164.27. - Investment of Retirement System assets.

The board of trustees shall have full power and authority to invest and reinvest such moneys and assets, subject to all terms, conditions, limitations, and restrictions imposed by the State of Florida on the investments of public employee retirement systems, by investing on a market value basis up to sixty-five (65) percent of the Retirement System's assets in equities (common stocks or capital stocks) as well as allowing for the investment of up to twenty-five (25) percent of plan assets in foreign securities on a market-value basis. The board of trustees may invest up to ten (10) percent of the Retirement System's assets, on a market value basis, in real estate. The board of trustees shall invest and reinvest such moneys in those securities or in that property, real or personal, wherever situated, as the trustee shall deem advisable, including but not limited to, stocks, common or preferred, bonds, mortgages, trusts, and other evidences of indebtedness or ownership. The board of trustees shall identify and publicly report any direct or indirect holdings it may have in any scrutinized company, as defined in F.S. § 215.473, and proceed to sell, redeem, divest, or withdraw all publicly traded securities it may have in such company beginning January 1, 2010, and shall thereafter be prohibited from purchasing or holding such securities. The divestiture of any such security must be completed by September 30, 2010. In accordance with Ch. 2009-97, Laws of Florida, no person may bring any civil, criminal, or administrative action against the board or any employee, officer, director, or advisor of such board based upon the divestiture of any security pursuant to this paragraph. The board of trustees may employ investment managers to manage, invest, and reinvest the assets of the Retirement System. Such investment managers shall be a named fiduciary with respect to the Retirement System, provided the Retirement System's assets are in a separately managed account, and shall so acknowledge in writing. All moneys and assets of the Retirement System shall be held and invested for the sole purpose of meeting disbursements authorized in accordance with the provisions of this Retirement System and shall be used for no other purposes. The board of trustees may engage a custodian to hold the funds and securities of the Retirement System. Said custodian shall be a qualified public depository as defined in F.S. §280.02. In exercising its discretionary authority with respect to the management of the moneys and assets of the Retirement System, the board of trustees and the investment managers shall exercise care, skill, prudence, and diligence, under the circumstances then prevailing, that a person of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of like character with like aims.

Sec. 2-164.28. - Method of making payments.

All payments from moneys of the Retirement System shall be made according to procedures governing the disbursement of City general fund moneys. No payment shall be made unless it shall have been previously authorized by a specific or continuing resolution of the board of trustees.

Sec. 2-164.29. - Reserve for Accumulated Member Contributions.

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- (a) The reserve for Accumulated Member Contributions is the account in which is accumulated the contributions deducted from the Compensation of Members, or otherwise paid to the Retirement System by the Member or on the Member's behalf, and from which shall be made refunds and transfers of Accumulated Member Contributions.
- (b) The individual or individuals responsible for preparing the City payroll shall cause the contributions provided for in section 2-164.20 to be deducted from the Compensation of each Member on each and every payroll. The deducted contributions shall be paid to the Retirement System and shall be credited to the Members' individual accounts in the reserve for Accumulated Member Contributions. Members' contributions shall be made notwithstanding that the minimum compensation provided by law for any Member shall be changed thereby. Every Member shall be deemed to consent and agree to the deductions made and provided herein. Payment of Compensation, less the deduction, shall be a full and complete discharge and acquittance of all claims and demands whatsoever for services rendered by the Member during the period covered by such payment, except as to benefits provided by the Retirement System.
- (c) The accumulated contributions of a Member shall be transferred from the reserve for Accumulated Member Contributions to the reserve for Pension payments if a Pension is payable on account of a Member's retirement or death.

Sec. 2-164.30. - Reserve for Pension payments.

- (a) The reserve for Pension payments is the account to which is credited contributions made by the City to the Retirement System, all interest, dividends, and other income from the investment of Retirement System assets; all gifts and bequests received by the Retirement System; and all other moneys received by the Retirement System the disposition of which is not specifically provided for, and from which shall be paid all Pensions and refunds required by section 2.164.19.
- (b) A majority of the Firefighters having approved the placement of the income from Chapter 175, Florida Statutes, premium tax into the Retirement System for payments received by the City from the State of Florida pursuant to Chapter 175, Florida Statutes, such income shall therefore be paid to the Retirement System and credited to the reserve for pension payments. All moneys received pursuant to such chapter shall be used exclusively to finance the benefits of Members who are Firefighters as provided by such chapters. However, a local law plan in effect on October 1, 1998, shall be required to comply with the minimum benefits of Chapter 175, Florida Statutes, only to the extent that additional premium tax revenues become available to incrementally fund the cost of such compliance. Notwithstanding the foregoing, effective July 21, 2014, the City and International Association of Firefighters have agreed, and a majority of the Firefighters have approved the agreement, that all accumulated additional premium tax revenues as reflected in the October 1, 2012, actuarial valuation, shall be used to reduce the unfunded actuarial accrued liability of the Retirement System.

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- (c) The Retirement System shall be funded by the City in compliance with the requirements of Section 14, Art. X of the State Constitution, Chapter 112, Part VII, and Chapter 175, Florida Statutes, and effective November 23, 2019, by the City and City of Jacksonville in accordance the 2019 Interlocal Agreement between the City of Jacksonville Beach and the City of Jacksonville, for Advanced Life Support and Fire Services.

- (d) City contributions to the Retirement System each fiscal year which, together with the contributions made by Members during the fiscal year and moneys received pursuant to Chapter 185, Florida Statutes, shall be sufficient to fully fund the cost of benefits likely to be paid on account of Service rendered by Members during the year and to finance unfunded costs of benefits likely to be paid on account of Service rendered by Members prior to the current year over periods established by the trustees which shall not exceed the maximum periods specified in Part VII of Chapters 112 and 175, Florida Statutes. The contributions shall be computed by actuarial valuation as level percents of Member payroll in accordance with generally recognized actuarial principles. The City shall also contribute the anticipated cost of any other benefits provided Retirees and Beneficiaries through the Retirement System. The board of trustees shall annually certify to the City Council and the City Manager the contributions determined according to this section, and the City Council shall appropriate and pay to the Retirement System the contributions so certified, except as otherwise provided in the 2019 Interlocal Agreement between the City of Jacksonville Beach and the City of Jacksonville, for Advanced Life Support and Fire Services.

- (e) Should a disability Pension be terminated and the Retiree be returned to the employ of the City, the excess of the Retiree's Accumulated Member Contributions at the time of retirement over the aggregate amount of Pension paid shall be transferred from the reserve for Pension payments to the reserve for Accumulated Member Contributions.

Sec. 2-164.31. – Defined Contribution Supplemental Retirement Benefit.

In accordance with section 175.351(6), Florida Statutes, a defined contribution supplemental retirement benefit is hereby established as part of the defined benefit pension plan, to be funded exclusively with Chapter 175 premium tax revenues. However, the City and firefighters' union have mutually agreed that no Chapter 175 premium tax revenues will be allocated to the defined contribution supplemental retirement benefit at this time. The defined contribution supplemental retirement benefit shall not be activated until Chapter 175 premium tax revenues are allocated to the share plan.

Sec. 2-164.32. - Reserved.

Sec. 2-164.33. - Reserve for administrative expenses.

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The reserve for administrative expenses is the account from, which shall be paid the expenses of administering the Retirement System.

Sec. 2-164.34. - Interest credited to reserve accounts.

The board of trustees shall at least annually credit interest on the individual balances in the reserve for Accumulated Member Contributions. Interest shall accrue on the prior month's Accumulated Member Contributions ending balance at an annual rate determined by the board of trustees and compounded monthly[25].

Sec. 2-164.35. - Assets not segregated.

The description of the various reserves of the Retirement System shall be interpreted to refer to the accounting records of the system and not to the segregation of moneys or assets in the reserve accounts of the system.

Sec. 2-164.36. - Internal Revenue Code compliance.

(a) *Maximum amount of retirement income.*

- (1) The limitations of this subsection (a) shall apply in limitation years beginning on or after July 1, 2007, except as otherwise provided herein, and are intended to comply with the requirements of the Pension Protection Act of 2006 and shall be construed in accordance with said Act and guidance issued thereunder. The provisions of this subsection (a) shall supersede any provision of the plan to the extent such provision is inconsistent with this subsection.

The annual pension as defined in paragraph (2) below otherwise payable to a Member at any time shall not exceed the dollar limitation for the Member multiplied by a fraction whose value cannot exceed one (1), the numerator of which is the Member's number of years (or part thereof, but not less than one (1) year) of Service with the City and the denominator of which is ten (10). For this purpose, no more than one (1) year of Service may be credited for any Plan Year. If the benefit the Member would otherwise accrue in a limitation year would produce an annual pension in excess of the dollar limitation, the benefit shall be limited (or the rate of accrual reduced) to a benefit that does not exceed the dollar limitation.

- (2) "*Annual pension*" means the sum of all annual benefits, payable in the form of a straight life annuity. Benefits payable in any other form shall be adjusted to the larger of:
- (A) For limitation years beginning on or after July 1, 2007:
- (I) The straight life annuity (if any) payable to the Member under the plan commencing at the same annuity starting date as the Member's form of benefit, or

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- (II) The Actuarially Equivalent straight life annuity commencing at the same annuity starting date, computed using a five percent (5.00%) interest rate and the mortality basis prescribed in Code Section 415(b)(2)(E)(v).
- (B) For limitation years beginning before July 1, 2007
 - (I) The Actuarially Equivalent straight life annuity commencing at the same annuity starting date, computed using the interest rate and mortality basis specified by the board of trustees for determining actuarial equivalence under the plan for the particular form of payment, or
 - (II) The Actuarially Equivalent straight life annuity commencing at the same annuity starting date, computed using a five percent (5.00%) interest rate and the mortality basis prescribed in Code Section 415(b)(2)(E)(v).

No actuarial adjustment to the benefit shall be made for benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, and postretirement medical benefits); or the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to § 417(e)(3) of the Internal Revenue Code and would otherwise satisfy the limitations of this subsection (a), and the amount payable under the form of benefit in any limitation year shall not exceed the limits of this subsection (a) applicable at the annuity starting date, as increased in subsequent years pursuant to § 415(d) of the Code. For this purpose, an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

- (3) "*Dollar limitation*" means, effective for the first limitation year beginning after January 1, 2001, one hundred sixty thousand dollars (\$160,000.00), automatically adjusted under Code Section 415(d), effective January 1 of each year, as published in the Internal Revenue Bulletin, and payable in the form of a straight life annuity. The new limitation shall apply to limitation years ending with or within the calendar year of the date of the adjustment, but a Member's benefits shall not reflect the adjusted limit prior to January 1 of that calendar year. The dollar limitation shall be further adjusted based on the age of the Member when the benefit begins as follows:
 - (A) *For annuity starting dates in limitation years beginning on or after July 1, 2007:*
 - (I) If the annuity starting date for the Member's benefit is after age sixty-five (65):
 - (i) If the plan does not have an immediately commencing straight life annuity payable at both age sixty-five (65) and the age of benefit commencement

The dollar limitation at the Member's annuity starting date is the annual amount of a benefit payable in the form of a straight life

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annuity commencing at the Member's annuity starting date that is the actuarial equivalent of the dollar limitation with actuarial equivalence computed using a five percent (5.00%) interest rate assumption and the mortality basis prescribed in Code Section 415(b)(2)(E)(v) for that annuity starting date (and expressing the Member's age based on completed calendar months as of the annuity starting date).

- (ii) If the plan does have an immediately commencing straight life annuity payable at both age sixty-five (65) and the age of benefit commencement

The dollar limitation at the Member's annuity starting date is the lesser of (aa) the dollar limitation multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the plan at the Member's annuity starting date to the annual amount of the adjusted immediately commencing straight life annuity under the plan at age sixty-five (65), both determined without applying the limitations of this subsection (a), and (bb) the limitation determined under subparagraph (3)(A)(I)(i) of this subsection (a). For this purpose, the adjusted immediately commencing straight life annuity under the plan at the Member's annuity starting date is the annual amount of such annuity payable to the Member, computed disregarding the Member's accruals after age sixty-five (65) but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing straight life annuity under the plan at age sixty-five (65) is the annual amount of such annuity that would be payable under the plan to a hypothetical Member who is age sixty-five (65) and has the same accrued benefit as the Member.

- (II) Except with respect to a Member who is a "qualified member" as defined in Section 415(b)(2)(H) of the Code, for benefits (except survivor and disability benefits as defined in Section 415(b)(2)(I) of the Code), if the annuity starting date for the Member's benefit is before age sixty-two (62):

- (i) If the plan does not have an immediately commencing straight life annuity payable at both age sixty-two (62) and the age of benefit commencement

The dollar limitation at the Member's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Member's annuity starting date that is the actuarial equivalent of the dollar limitation with actuarial equivalence computed using a five percent (5.00%) interest rate assumption and the mortality basis prescribed in Code Section 415(b)(2)(E)(v) for that annuity starting date (and expressing the Member's age based on completed calendar months as of the annuity starting date).

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(ii) If the plan does have an immediately commencing straight life annuity payable at both age sixty-two (62) and the age of benefit commencement

The dollar limitation at the Member's annuity starting date is the lesser of (aa) the dollar limitation multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the plan at the Member's annuity starting date to the annual amount of the adjusted immediately commencing straight life annuity under the plan at age sixty-two (62), both determined without applying the limitations of this subsection (a), and (bb) the limitation determined under subparagraph (3)(A)(II)(i) of this subsection (a).

(B) *For annuity starting dates in limitation years beginning before July 1, 2007.*

Age as of Annuity Starting Date:	Adjustment of Dollar Limitation:
Over 65	The smaller of: (a) The actuarial equivalent of the limitation for age 65, computed using the interest rate and mortality basis specified by the board of trustees for determining actuarial equivalence under the plan, or
	(b) The actuarial equivalent of the limitation for age 65, computed using a 5.00% interest rate and the mortality basis prescribed in Code Section 415(b)(2)(E)(v).
	Any increase in the dollar limitation determined in accordance with this paragraph shall not reflect a mortality decrement between age 65 and the age at which benefits commence if benefits are not forfeited upon the death of the Member. If any benefits are forfeited upon death, the full mortality decrement is taken into account.
62 to 65	No adjustment.
Less than 62	The smaller of: (a) The actuarial equivalent of the limitation for age 62, computed using the interest rate and mortality basis specified by the board of trustees for determining actuarial equivalence under the plan, or

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	(b) The actuarial equivalent of the limitation for age 62, computed using a 5.00% interest rate and the mortality basis prescribed in Code Section 415(b)(2)(E)(v).
	This adjustment shall not apply to any "Qualified Member" as defined in Section 415(b)(2)(H), nor to survivor and disability benefits as defined in Section 415(b)(2)(I) of the Code.

- (4) With respect to clause (3)(A)(I)(i), clause (3)(A)(II)(i) and paragraph (3)(B) above, no adjustment shall be made to the dollar limitation to reflect the probability of a Member's death between the annuity starting date and age sixty-two (62), or between age sixty-five (65) and the annuity starting date, as applicable, if benefits are not forfeited upon the death of the Member prior to the annuity starting date. To the extent benefits are forfeited upon death before the annuity starting date, such an adjustment shall be made. For this purpose, no forfeiture shall be treated as occurring upon the Member's death if the plan does not charge Members for providing a qualified preretirement survivor annuity, as defined in Code Section 417(c), upon the Member's death.
- (5) The term "limitation year" is the 12-month period which is used for application of the limitations under Code Section 415 and shall be the calendar year.
- (6) The limitations set forth in this subsection (a) shall not apply if the annual pension does not exceed ten thousand dollars (\$10,000.00) provided the Member has never participated in a defined contribution plan maintained by the City.
- (7) Cost-of-living adjustments in the dollar limitation for benefits shall be limited to scheduled annual increases determined by the Secretary of the Treasury under Section Subsection 415(d) of the Code.
- (8) In the case of a Member who has fewer than ten (10) years of participation in the plan, the dollar limitation set forth in paragraph (3) of this subsection (a) shall be multiplied by a fraction (i) the numerator of which is the number of years (or part thereof) of participation in the plan, and (ii) the denominator of which is 10.
- (9) Any portion of a Member's benefit that is attributable to mandatory Member contributions (unless picked-up by the City) or rollover contributions shall be taken into account in the manner prescribed in the regulations under Section 415 of the Code.
- (10) Should any Member participate in more than one defined benefit plan maintained by the City, in any case in which the Member's benefits under all such defined benefit plans (determined as of the same age) would exceed the dollar limitation applicable at that age, the accrual of the Member's benefit under this plan shall be reduced so that the Member's combined benefits will equal the dollar limitation.

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- (11) For a Member who has or will have distributions commencing at more than one annuity starting date, the annual benefit shall be determined as of each such annuity starting date (and shall satisfy the limitations of this section as of each such date), actuarially adjusting for past and future distributions of benefits commencing at the other annuity starting dates. For this purpose, the determination of whether a new starting date has occurred shall be made without regard to § 1.401(a)-20, Q&A 10(d), and with regard to § 1.415(b)(1)(b)(1)(iii)(B) and (C) of the Income Tax Regulations.
- (12) The determination of the annual pension under paragraph (A)(1) of this subsection (a) shall take into account (in the manner prescribed by the regulations under Section 415 of the Code) social security supplements described in § 411(a)(9) of the Internal Revenue Code and benefits transferred from another defined benefit plan, other than transfers of distributable benefits pursuant § 1.411(d)-4, Q&A-3(c) of the Income Tax Regulations.
- (13) The above limitations are intended to comply with the provisions of Section 415 of the Code, as amended, so that the maximum benefits provided by plans of the City shall be exactly equal to the maximum amounts allowed under Section 415 of the Code and regulations thereunder. If there is any discrepancy between the provisions of this subsection (a) and the provisions of Section 415 of the Code and regulations thereunder, such discrepancy shall be resolved in such a way as to give full effect to the provisions of Section 415 of the Code. The value of any benefits forfeited as a result of the application of this subsection (a) shall be used to decrease future employer contributions.
- (14) For the purpose of applying the limitations set forth in Sections 401(a)(17) and 415 of the Internal Revenue Code, Compensation shall include any elective deferral (as defined in Code Section 402(g)(3) of the Internal Revenue Code), and any amount which is contributed or deferred by the employer at the election of the Member and which is not includible in the gross income of the Member by reason of Section 125 or 457 of the Internal Revenue Code. For limitation years beginning on and after January 1, 2001, for the purposes of applying the limitations described in this subsection (a), Compensation paid or made available during such limitation years shall include elective amounts that are not includible in the gross income of the Member by reason of Section 132(f)(4) of the Internal Revenue Code. For limitation years on or after July 1, 2007, Compensation shall include payments that otherwise qualify as Compensation and that are made by the later of: (a) two and one-half (2½) months after severance from employment with the employer, and (b) the end of the limitation year that includes the date of severance.
- (b) *Required beginning date.* Notwithstanding any other provision of the plan, payment of a participant's retirement benefits under the plan shall commence not later than the participant's required beginning date, which is defined as the later of:
- April 1 of the calendar year that next follows the calendar year in which the participant attains or will attain the age of seventy and one-half (70½) years; or

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- April 1 of the calendar year that next follows the calendar year in which the participant retires.

(c) *Required minimum distributions.*

- (1) *Required beginning date.* The participant's entire interest will be distributed, or begin to be distributed, to the participant no later than the participant's required beginning date as defined in subsection (b) of this section 2-164.36.

(2) *Death of participant before distributions begin.*

- (A) If the participant dies before distributions begin, the participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

- (i) If the participant's surviving spouse is the participant's sole designated Beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the participant died, or by December 31 of the calendar year in which the participant would have attained age seventy and one-half (70½), if later.

- (ii) If the participant's surviving spouse is not the participant's sole designated Beneficiary, then distributions to the designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the participant died.

- (iii) If there is no designated Beneficiary as of September 30 of the year following the year of the participant's death, the participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the participant's death.

- (B) The participant's entire interest shall be distributed as follows:

- (i) *Participant survived by designated Beneficiary.* If the participant dies before the date distribution of his or her interest begins and there is a designated Beneficiary, the participant's entire interest will be distributed, beginning no later than the time described in subparagraph (2)(A) above, over the life of the designated Beneficiary or over a period certain not exceeding:

- (I) Unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated Beneficiary determined using the Beneficiary's age as of the Beneficiary's birthday in the calendar year immediately following the calendar year of the participant's death; or

- (II) If the annuity starting date is before the first distribution calendar year, the life expectancy of the designated Beneficiary determined using the Beneficiary's age as of the Beneficiary's birthday in the calendar year that contains the annuity starting date.

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- (ii) *No designated Beneficiary.* If the participant dies before the date distributions begin and there is no designated Beneficiary as of September 30 of the year following the year of the participant's death, distribution of the participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the participant's death.
- (C) Death of surviving spouse before distributions to surviving spouse begin. In any case in which (i) the participant dies before the date distribution of his or her interest begins, (ii) the participant's surviving spouse is the participant's sole designated Beneficiary, and (iii) the surviving spouse dies before distributions to the surviving spouse begin, subparagraphs (2)(A) and (2)(B) above shall apply as though the surviving spouse were the participant.
- (3) *Requirements for annuity distributions that commence during participant's lifetime.*
 - (A) Joint life annuities where the Beneficiary is not the participant's spouse. If the participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the participant and a nonspousal Beneficiary, annuity payments to be made on or after the participant's required beginning date to the designated Beneficiary after the participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the participant using the table set forth in Q&A-2 of Section 1.401(a)(9)-6 of the Treasury regulations. If the form of distribution combines a joint and survivor annuity for the joint lives of the participant and a nonspousal Beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the designated Beneficiary after the expiration of the period certain.
 - (B) Period certain annuities. Unless the participant's spouse is the sole designated Beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the participant's lifetime may not exceed the applicable distribution period for the participant under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the participant reaches age seventy (70), the applicable distribution period for the participant is the distribution period for age seventy (70) under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations plus the excess of seventy (70) over the age of the participant as of the participant's birthday in the year that contains the annuity starting date. If the participant's spouse is the participant's sole designated Beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the participant's applicable distribution period, as determined under this subparagraph (3)(B), or the joint life and last survivor expectancy of the participant and the participant's spouse as

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determined under the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the participant's and spouse's attained ages as of the participant's and spouse's birthdays in the calendar year that contains the annuity starting date.

- (4) *Form of distribution.* Unless the participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with subparagraphs (4)(A), (4)(B) and (4)(C) below. If the participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the Code and the Treasury regulations. Any part of the participant's interest which is in the form of an individual account described in Section 414(k) of the Code will be distributed in a manner satisfying the requirements of Section 401(a)(9) of the Code and the Treasury regulations that apply to individual accounts.
- (A) *General annuity requirements.* If the participant's interest is paid in the form of annuity distributions under the plan, payments under the annuity will satisfy the following requirements:
- (i) The annuity distributions will be paid in periodic payments made at intervals not longer than one year;
 - (ii) The distribution period will be over a life (or lives) or over a period certain, not longer than the distribution period described in paragraphs (2) or (3) above, whichever is applicable, of this subsection (c);
 - (iii) Once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted;
 - (iv) Payments will either be non-increasing or increase only as follows:
 - (I) By an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the Bureau of Labor Statistics;
 - (II) To the extent of the reduction in the amount of the participant's payments to provide for a survivor benefit upon death, but only if the Beneficiary whose life was being used to determine the distribution period dies or is no longer the participant's Beneficiary pursuant to a qualified domestic relations order within the meaning of Section 414(p) of the Code;
 - (III) To provide cash refunds of employee contributions upon the participant's death; or
 - (IV) To pay increased benefits that result from a plan amendment.
- (B) *Amount required to be distributed by required beginning date.* The amount that must be distributed on or before the participant's required beginning date

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(or, if the participant dies before distributions begin, the date distributions are required to begin under subparagraph (2)(A)(i) or (2)(A)(ii), whichever is applicable) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the participant's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the participant's required beginning date.

- (C) *Additional accruals after first distribution calendar year.* Any additional benefits accruing to the participant in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.
- (5) *Beginning date.* For purposes of this subsection (c), distributions are considered to begin on the participant's required beginning date. If annuity payments irrevocably commence to the participant (or to the participant's surviving spouse) before the participant's required beginning date (or, if to the participant's surviving spouse, before the date distributions are required to begin in accordance with subparagraph (2)(A) above), the date distributions are considered to begin is the date distributions actually commence.
- (6) *Definitions.*
 - (A) *Designated Beneficiary.* The individual who is designated as the Beneficiary under the plan and is the designated Beneficiary under Section 401(a)(9) of the Code and Section 1.401(a)(9)-4 of the Treasury regulations.
 - (B) *Distribution calendar year.* A calendar year for which a minimum distribution is required. For distributions beginning before the participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the participant's required beginning date. For distributions beginning after the participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to paragraph (2) of this subsection (c).
 - (C) *Life expectancy.* Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury regulations.
- (d) (1) Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this section, a distributee may elect, at the time and in the manner prescribed by the administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.
- (2) *Definitions.* The following definitions apply to this section:

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- (A) *Eligible rollover distribution:* An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:
- (i) Any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated Beneficiary, or for a specified period of ten (10) years or more;
 - (ii) Any distribution to the extent such distribution is required under Section 401(a)(9) of the Code;
 - (iii) The portion of any distribution which is made upon hardship of the Member; and
 - (iv) The portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities), provided that a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.
- (3) **Eligible retirement plan:** An eligible retirement plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, an annuity contract described in Section 403(b) of the Code, a qualified trust described in Section 401 (a) of the Code, an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan, or, with respect to distributions on or after January 1, 2008, a Roth IRA (subject to the limitations of Code Section 408A(c)(3)) that accepts the distributee's eligible rollover distribution.
- (4) **Distributee:** A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse. Furthermore, effective January 1, 2007, a surviving designated Beneficiary as defined in Section 401(a)(9)(E) of the Code who is not the surviving spouse and who elects a direct rollover to an individual retirement account described in

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Section 408(a) of the Code or an individual retirement annuity described in Section 408(b) of the Code shall be considered a distributee.

- (5) Direct rollover: A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.
- (e) *Maximum mandatory distribution* Notwithstanding any other provision of this plan, the maximum amount of any mandatory distribution, as defined in Section 401(a)(31) of the Code, payable under the plan shall be one thousand dollars (\$1,000.00).
- (f) *Compensation limitations under 401(a)(17)*. In addition to other applicable limitations set forth in the plan, and notwithstanding any other provision of the plan to the contrary, the annual Compensation of each participant taken into account under the plan shall not exceed the EGTRRA annual Compensation limit for limitation years beginning after December 31, 2001. The EGTRRA annual Compensation limit is two hundred thousand dollars (\$200,000.00), as adjusted by the Commissioner for increases in the cost of living in accordance with Section 401(a)(17)(B) of the Code. The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding twelve (12) months, over which Compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than twelve (12) months, the EGTRRA annual Compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is twelve (12).
- Any reference in the plan to the limitation under Section 401(a)(17) of the Code shall mean the EGTRRA annual Compensation limit set forth in this provision.
- (g) At no time prior to the satisfaction of all liabilities under the plan with respect to Members and their spouses or beneficiaries, shall any part of the corpus or income of the fund be used for or diverted to any purpose other than for their exclusive benefit.

Sec. 2-164.37. - Assignments prohibited.

The right of an individual to a Pension, to the return of Accumulated Member Contributions, the Pension itself, any optional benefit, any other right accrued or accruing to any individual under the provisions of the Retirement System, and any moneys belonging to the Retirement System, shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency law, or any other process of law whatsoever, and shall be unassignable, except as is otherwise specifically provided herein, except the recipient of any monthly benefit may authorize the board of trustees to withhold from the monthly benefit those funds necessary to pay for the benefits being received through the City, to pay the certified bargaining agent, and to make any payments for child support or alimony. The board of trustees may, upon the written request of the Retiree of the pension plan, authorize the plan administrator to withhold from the retirement payment those funds that are necessary to pay for premiums for accident, health, and long-term care insurance for the Retiree and the Retiree's spouse and dependents. The Retirement System, and its board of trustees, shall not incur any liability for participation in this permissive program should its actions be taken in good

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faith. The City shall have the right to setoff for any claim arising from embezzlement by a fraud of a Member, Retiree, or Beneficiary as provided in F.S. § 175.195.

Sec. 2-164.38. - Subrogation.

- (a) The Retirement System has a right of subrogation against any third-party tortfeasor or insurance carriers representing such third-party tortfeasor, to the extent that the Retirement System becomes obligated to make any disability benefit payments to a Member as a result of injuries caused by the third-party tortfeasor.
- (b) A Member shall execute a subrogation agreement on a form provided by the Retirement System or such other documents, which may be necessary to document the Retirement System's subrogation rights. The Member shall notify the Retirement System of any claim or legal action asserted against any party or insurance carrier for such injuries and shall notify the Retirement System of the name and address of such party and any insurance carrier. The Member shall take no action inconsistent with the requirements of this section, nor settle any claim without obtaining the prior consent of the Retirement System.
- (c) The Retirement System's subrogation rights shall not be subject to equitable distribution or to any reduction for costs or attorneys' fees incurred by the Member in pursuit of his or her claim against a third-party tortfeasor or any insurance carrier. Further, the Retirement System's subrogation rights shall not be subject to reduction regardless of whether the Member recovers the full value of his or her claim against a third-party and/or any insurance carrier.
- (d) In the event that the Member fails to execute a subrogation agreement, or otherwise fails to comply with the terms of this section, then such shall be considered a breach of this Retirement System and disability Pension benefits may be denied and/or discontinued by the board of trustees upon a uniform and nondiscriminatory basis.

Sec. 2-164.39. - Correction of errors.

The Retirement System shall correct errors in the records of the Retirement System. The Retirement System shall seek to recover any overpayments, and shall make up any underpayments, which have been made. The recovery of overpayments may be accomplished by reducing the amount of future payments so that the actuarial present value of actual payments to the recipient is equal to the actuarial present value of the payments to which the recipient was correctly entitled.

Sec. 2-164.40. - Liability.

Payments made by the Retirement System to a Retiree or Beneficiary shall operate as a full discharge, release, and acquittance of the liability of the City and the Retirement System and there shall be no obligation on the part of the City or the Retirement System to assure that such payments are actually used and applied for the benefit of the Retiree or Beneficiary.

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Sec. 2-164.41. - Qualified retirement system.

The City intends the Retirement System to be a qualified pension plan under Section 401 of the Internal Revenue Code of 1986, as amended, or successor provisions of law and that the trust be an exempt organization in compliance with Section 501 of said code. The board of trustees may adopt such additional provisions to the Retirement System as are necessary to fulfill the intent of being a qualified pension plan.

Sec. 2-164.42. - Severability.

If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Sec. 2-164.43. - Merger and termination.

- (a) *Merger.* This Retirement System shall not merge or consolidate with any other retirement system or pension plan, nor transfer any assets or liabilities to any other retirement system or pension plan, unless each Member and Beneficiary of the Retirement System will receive a benefit immediately after such merger, consolidation, or transfer which is at least equal to the benefit the Member or Beneficiary was entitled to immediately before such merger, consolidation, or transfer.
- (b) *Termination.* In the event of termination of the Retirement System, the board of trustees shall follow the procedures contained in § 175.361, Florida Statutes and the Internal Revenue Code. A Member's accrued benefit shall become one hundred (100) percent fully vested (non-forfeitable) upon the termination of this plan.

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October 29, 2019

Board of Trustees
City of Jacksonville Beach Firefighters' Retirement System
c/o Duston Scott, Payroll/Benefits Administrator
11 North 3rd Street
Jacksonville Beach, FL 32250

*Re: Draft Ordinance Restatement for the City of Jacksonville Beach Firefighters'
Retirement System*

Dear Trustees:

It is with great pleasure that we present to you the enclosed draft ordinance restatement of the City of Jacksonville Beach Firefighters' Retirement System. We hope that you will find the new plan document to be clearer and easier to administer.

The restatement contains substantial changes, both as to form and to content.

As to the form of the document, you will notice that we have changed the order of many of the sections, in an effort to achieve a more logical sequence of provisions.

Concerning the wording in the document, we have made extensive changes in order to clarify the meaning of certain sections, to resolve certain conflicting provisions, and to ensure that key words are employed in a uniform manner throughout the document. This should make the document easier to use and to understand. The most noteworthy of these changes are as follows:

1. Section 2-164.2 – The current definition of “Accumulated Member Contributions” does not state that a member’s accumulated member contributions include the interest earned thereupon. We have added language to state clearly that a member’s accumulated member contributions include the interest earned on the contributions.
2. Section 2-164.2 – The current plan document does not contain a definition of the term “Actuarially Equivalent,” despite the provision in current Section 2-164.10 that optional forms of benefits shall be actuarially equivalent to the Life with Period Certain Guarantee

form. We have added a definition of the term "Actuarially Equivalent" in Section 2-164.2 in order to ensure a uniform application of Section 2-164.10.

3. Section 2-164.2 –The current plan document does not contain a definition of the term "City." We have added a definition of "City," according to which the term includes both the City of Jacksonville Beach, and, upon the effective date of the interlocal agreement, the City of Jacksonville.
4. Section 2-164.2 – As a result of several changes over the years to the types of pay included in "Compensation," the definition of that term in the current plan document is cumbersome. We have simplified the language, taking into consideration the changes that entered into effect on June 23, 2014.
5. Section 2-164.2 – The current plan document does not contain a definition of "Member," though that term is employed throughout the document. Furthermore, under the current document, an individual who is no longer employed by the City, but who still has his/her accumulated member contributions in the fund, is referred to as a "former member," which has led to significant confusion in the administration of the document. Since member is a term that is used throughout the document, we have added a definition of member in Section 2-164.2. That definition clarifies that the term member includes any individual whose contributions are still in the fund.
6. Section 2-164.2 – The current plan document does not contain a definition of "Vested Member." We have made vested member a defined term, as the right to benefits under the system is limited to vested members.
7. Subsection 2-164.3(c) –We have added a new Subsection (c) to this Section to clarify that even following termination of employment, membership in the System does not cease until the member has received a refund of his/her contributions, or has received all of his/her vested benefits. This addition is consistent with the new definition of "Member" under Section 2-164.2 (see item 5 above). In accordance with Section 2-164.4(b) (see item 9 below), a Member whose employment has been terminated may leave his/her contributions in the plan for a period of five years from the date of termination pending the possibility of being rehired in covered service.
8. Subsection 2-164.4(a) – The current subsection provides for crediting of service to the nearest 1/12th of a year. That does not accurately reflect the actual administrative practice, which is to credit service to the nearest day. We have therefore amended this subsection to provide for crediting service to the nearest day.
9. Subsection 2-164.4(b) – We have redrafted this Subsection to provide that a member is not entitled to credited service for years with respect to which he/she has received a refund of his/her member contributions, unless the contributions are repaid to the system as provided in Section 2-164.4(c). Also, we have moved to new Subsection 2-164.7 the provision of

this Subsection that allows individuals to leave their contributions in the plan for a period of 5 years following termination of service.

10. Subsection 2-164.4(c) – Consistent with current Subsection 2-164.4(b) (which allows individuals to leave their contributions in the plan for a period of 5 years following termination of service), we have added language to clarify that an individual may repurchase years for which he/she received a refund following a termination of service only if he/she returns to service within five years following the termination.
11. We have re-ordered current Sections 2-164.7 (Normal retirement conditions), 2-164.8 (Vested termination of membership), 2-164.19A (Early retirement conditions), and 2-164.22 (Refund of accumulated member contributions for non-vested employees) in order to achieve a logical progression in the document from refund of contributions for non-vested employees (new Section 2-164.7) to vested termination of employment (new Section 2-164.8) to conditions for early and normal retirement (combined in new Section 2-164.9).
12. Section 2-164.8 – Currently this section refers to individuals who have a vested interest in the system, but whose employment is terminated prior to retirement, as “vested former members.” Under the new definition of Member (see items 5 and 8 above), such individuals are still considered to be members of the plan, and also meet the new definition of “Vested Member”, which we have recommended adding to the plan (see item 6 above).
13. Section 2-164.8 – Under the current section, vested members whose employment has been terminated prior to retirement, must wait until the attainment of Normal Retirement Age to begin to receive deferred benefits. We have recommended amending this section to permit vested members whose employment terminates following the effective date of the restatement to begin to receive their deferred benefits upon the attainment of eligibility for Early Retirement.
14. New Section 2-164.9 (Current Section 2-164.7) – As a result of recent changes to the eligibility for normal retirement, the wording in the current section is cumbersome. We have simplified the wording, taking into consideration the changes that entered into effect on June 23, 2014. We have also moved the conditions for early retirement eligibility into the same section (from current Section 2-164.19A) in order to consolidate into a single section the conditions for early and normal retirement.
15. New Subsection 2-164.9(d) (Current Section 2-164.7) – The current language does not specify the effective beginning date of benefits. We have added language referencing Section 2-164.18 (current Section 2-164.19) which sets forth the benefit beginning date. We have also revised 2-164.18 (current Section 2-164.19) to clarify that the effective date shall not be earlier than the date upon which an application is filed and approved. In other words, if a member delays filing until after his/her normal retirement age, benefits **will not** be payable retroactively to normal retirement age (except as provided in BACK DROP).

16. New Section 2-164.10(a) (Current Subsection 2-164.9) – We have added language to state clearly that the accumulated member contribution guarantee (which guarantees that the total amount of benefits paid must equal or exceed the accumulated member contributions) applies to all benefits payable under this Section.
17. New Section 2-164.10 (Current Subsection 2-164.9(c)) – Current Subsection 2-164.9(c) requires the suspension of benefits if a retiree returns to employment with the City. If the Subsection were to be deleted, retirees who have attained normal retirement age could continue to receive their pension benefits while working for the City.
18. New Section 2-164.10 (Current Subsections 2-164.9(d) and 2-164.9(e)) – We have moved the current Subsection 2-164.9(d) (relating to compliance with IRC Section 415) to Section 2-164.36 (General IRC compliance). With regard to current Subsection 2-164.9(e), we have deleted all provisions relating to DROP, to reflect the fact that the DROP has been discontinued. Paragraph (6) of that Subsection, which relates to BACK DROP, has been retained and moved to new Section 2-164.11 (which sets forth the different forms of benefit payment) by adding a new paragraph (6).
19. New Subsection 2-164.11(6)d. (Current Section 2-164.9(e)(6)d.) – We have amended the language to clarify that interest on Back DROP benefits shall be compounded monthly.
20. We have combined current Sections 2-164.12 and 2-164.14 into a single section (new Section 2-164.12) regarding pre-retirement death benefits. Furthermore, under the current sections 2-164.12 and 2-164.14, survivor benefits must be paid to the member's spouse or children, if any. The new section would permit members to designate a beneficiary other than his/her spouse, upon the notarized consent of the spouse.
21. New Section 2-164.12 (Current Sections 2-164.12 and 2-164.14) – Current Sections 2-164.8, 2-164.12 and 2-164.14 create a disparity between terminated vested employees and current employees with regard to pre-retirement death benefits. Under the last sentence of current Section 2-164.8, survivors of terminated employees who are vested with 5 years of service are entitled to such benefits under current Section 2-164.12. Current employees, however, under current Sections 2-164.12 and 2-164.14, must have 10 years of service in order for their survivors to be entitled to survivor benefits. The new Section 2-164.12 eliminates the disparity by making the automatic survivor benefit available to all vested members. Also, we have added language referencing Section 2-164.18 which sets forth the benefit beginning date.
22. New Subsection 2-164.14(a)(1) (Current Subsection 2-164.15(a)(1)) – We have added language requiring that an application for disability be filed no later than 90 days following the administrative termination of a member as a result of disability.

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23. New Subsection 2-164.14(b) (Current Subsection 2-164.15(b)) – The current language does not specify the effective beginning date of disability benefits. We have added language referencing Section 2-164.18 which sets forth the benefit beginning date.
24. New Section 2-164.34 (Current Section 2-164.35) – We have added language to clarify that the interest that accrues on a member's accumulated contribution account shall be compounded monthly.

It is our sincere hope that the proposed restatement will facilitate your duties as trustees, as well as those of the administrator. We look forward to responding to any questions that you might have.

Sincerely,



DAVID E. ROBINSON

DER/jd

Enclosure