

Chapter 32 RETIREMENT

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As to personnel generally, see Ch. 29 of this Code.

Article 32.04 In General

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32.04.010 Hospitalization insurance benefits for retirees

Section 32.04.010 Hospitalization insurance benefits for retirees

This section was repealed in 1998. (Ord. No. 1163 § 6)

Article 32.08 City of Dickinson Pension Plan and Trust

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Section 32.08.00E **Editor's note to Article 32.08**

For state law as to authority of city to adopt employee pension system by ordinance, see NDCC, § 40-05-01 (70).

Section 32.08.100 **Definitions.**

When used in this Plan, the following words will have the following meanings, unless the context clearly indicates otherwise:

1.1 Actuarial Equivalent or Actuarially Equivalent means a payment or a series of payments that has the same present value computed on the basis of the following interest rate and mortality assumptions:

- [i] Interest Rate: 8% pre-retirement and 6% post-retirement
- [ii] Mortality Table: 1983 IAM with six year setback
- [iii] Notwithstanding any other Plan provisions to the contrary, the applicable mortality table used for purposes of adjusting any benefit or limitation under Code Section 415(b)(2)(B), (C) or (D) and the applicable mortality table used for purposes of satisfying the requirements of Code Section 417(e) is the table described in Revenue Ruling 2001-62. For any distribution with an annuity starting date on or after the effective date of this Section and before the adoption date of this Section, if application of the amendment as of the annuity starting date would have caused a reduction in the amount of any distribution, such reduction is not reflected in any payment made before the adoption date of this section. However, the amount of any such reduction that is required under Code Section 415(b)(2) must be reflected actuarially over any remaining payments to the Participant.

1.2 Beneficiary means the person who, under this Plan becomes entitled to receive a Participant's interest upon the Participant's death.

1.3 Board of Trustees means the Board designated by the Plan in Article VII whose duties and responsibilities are specified in this Plan.

1.4 City means the City of Dickinson, North Dakota.

1.5 Code means the Internal Revenue Code of 1986, as it presently is constituted, as it may be amended, or any successor statute of similar purpose.

1.6 Compensation, for all pay received after December 31, 1999, means all pay received by an Employee during the calendar year, except special bonuses or severance upon separation, mileage or any other form of expense reimbursement. Compensation includes only compensation that is actually paid to the Participant during the calendar year.

Compensation, for all pay received on or before December 31, 1999, means the annual salary approved for each Employee in the city's annual budget for the calendar year. Compensation does not include longevity pay, overtime, mileage, or any other form of additional compensation. Compensation includes only compensation that is actually paid to the Participant during the calendar year.

Pursuant to Code Section 401(a)(17), Compensation taken into account for all purposes under this Plan shall not exceed [A] \$200,000 (as adjusted by the Secretary of the Treasury for cost of living increases each year) for any Plan Year ending prior to January 1, 1996, and [B] \$150,000 (as adjusted by the Secretary of the Treasury for cost of living increases each year) for any Plan Year beginning on or after January 1, 1996. If Compensation is determined for any period of fewer than 12 months, the Code Section 401(a)(17) limitation will be multiplied by a fraction, the numerator of which is the number of calendar months in the determination period and the denominator of which is 12.

Increase in limit. The annual compensation of each Participant taken into account in determining benefit accruals for any Plan Year beginning after December 31, 2001, shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with Code Section 401(a)(17)(B). Annual Compensation means Compensation during the Plan Year or such other consecutive 12-month period over which Compensation is otherwise determined under the Plan (the determination period). For purposes of determining benefit accruals in a Plan Year beginning after December 31, 2001, compensation for any prior determination period shall not exceed \$200,000 (as adjusted) for any Plan Year ending before January 1, 1996; \$150,000 for any determination period beginning in 1996; \$160,000 for any determination period beginning in 1997, 1998, or 1999; and \$170,000 for any determination period beginning in 2000 or 2001.

Cost-of-living adjustment. The \$200,000 limit on annual compensation in the preceding paragraph shall be adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Code. The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year.

If Compensation for any prior determination period is taken into account in determining a Participant's benefits for the current Plan Year, the Compensation for such prior determination period is subject to the applicable Annual Compensation Limit in effect for that prior period. For this purpose, in determining benefits in Plan Years beginning on or after January 1, 1989 and before January 1, 1996, the Annual Compensation Limit in effect for determination periods beginning before that date is \$200,000. For this purpose, in determining benefits in Plan Years beginning after January 1, 1996, the Annual Compensation Limit in effect for determination periods beginning before that date is \$150,000 as adjusted by the Secretary of the Treasury for increases in the cost of living in accordance with Code Section 401(a)(17)(B).

Unless otherwise provided under the Plan, the Accrued Benefit of each Section 401(a)(17) Employee under the Plan will be the sum of:

- [a] the Participant's Accrued Benefit as of December 31, 1995, frozen in accordance with Reg. ' 1.401(a)(4)-13, and
- [b] the Participant's Accrued Benefit determined under the benefit formula applicable for the Plan Year beginning on or after January 1, 1996, as applied to the Participant's Years of Benefit Service credited for Plan Years beginning on or after January 1, 1996, for purposes of benefit accruals.

A Section 401(a)(17) employee means an employee whose current accrued benefit as of a date on or after the first day of the first Plan Year beginning on or after January 1, 1996, is based on compensation for a year beginning prior to the first day of the first Plan Year beginning on or after January 1, 1996 that exceeded \$150,000.

For limitation years beginning after December 31, 1997, Compensation paid or made available during such limitation year shall include any elective deferral (as defined in Code section 402(g)(3)), and any amount which is contributed or deferred by the employer at the election of the employee and which is not includable in the gross income of the employee by reason of Code sections 125 or 457.

1.7 Earnings means for Employee contributions, [A] interest credited at the rate of 5% compounded annually from the date contributions are made to January 1, 2000 or, if earlier, to the date payment of benefits begins; and [B] interest compounded annually and credited at a rate that reflects the annualized net earnings realized on investments of the Plan assets from the later of January 1, 2000 or the date contributions are made to the date payment of benefits begin.

1.8 Effective Date means April 1, 1969. The effective date of this amended and restated Plan is January 1, 1989 for provisions required by law to be effective as of that date or as of the date required if an earlier effective date is required or as of the date specified for any provision for which a different effective date is specified.

1.9 Employee means every permanent and probationary regular full-time Employee of the City who is not a police department employee.

"Leased Employee" means any person (other than an Employee of the City) who has performed services of the City (or for the City and related persons as determined under Code Section 414(n)(6)) under an agreement between the City and the leasing organization on a substantially full-time basis for a period of at least one year, and, prior to 1997, such services were of a type historically performed by the Employees in the business field of the City, or, if after 1996, such services are performed under the primary direction or control by the City.

1.10 Final Average Compensation means the average of a Participant's Total Basic Compensation for the five years that will result in the highest average.

1.11 Normal Retirement Age means the date a Participant attains age 62 and has completed fifteen (15) years of Service or has completed thirty (30) years of service.

1.12 Plan Year means the 12-consecutive-month period commencing on January 1 and ending on December 31 of each year. The Plan Year will also be the fiscal (taxable) years of the Trust.

1.13 Retirement means the last day of the month in which a Participant attains either his Normal Retirement Age or Early Retirement Age and benefits under the Plan are immediately payable.

1.14 Surviving Children means the surviving issue of a Participant or a child or children legally adopted by a Participant.

1.15 Surviving Spouse means the Spouse to whom the Participant was married on the date of the Participant's termination of employment.

1.16 Total Basic Compensation means the annual salary approved for each Employee in the City's annual budget for the calendar year. Total Basic Compensation does not include longevity pay, overtime, mileage or any other form of additional compensation.

1.17 Total Disability means to become, while in the service of the city, mentally or physically, totally and permanently disabled from discharging his duties.

The question of Total and Permanent Disability shall be determined by the Trustees upon the concurring report of at least two out of three physicians designated by the Board of Trustees to make a complete physical examination of the Employee. The Trustees shall

have the power at any time to cause an Employee of the City, retired by reason of physical or mental Disability, to be brought before it and again examined by three physicians appointed by the Board of Trustees to discover whether such retired Employees shall be continued on the disability pension roll. Such Employees shall be entitled to reasonable notice that such examination will be made and to be present at the time of the taking of any testimony pertinent thereto.

Thereafter the City Employee shall submit to the Trustees annual notice of employment status and medical examination not later than October 1 of each year. Such annual notice shall include the employment status and medical status of Employee in such form as the Trustees shall determine.

Failure to comply with the requirements set forth shall result in suspension of any disability retirement benefit payments until such time as this section is complied with, or shall result in the termination of disability retirement benefits.

1.18 Trustee means the individuals or institution appointed by the Board of Trustees as Trustee(s).

1.19 Year of Service means each Plan Year and fractional year of employment with the City for which a Participant receives credit under the terms of this Plan.
(Ord. No. 1265 §1.; Ord. No. 1289 § 1.)

Section 32.08.210 Participation.

Except as otherwise provided in the special rules below, an Employee will become a Participant as of the date the Employee becomes an Employee. The following special rules apply:

- [a] If a Plan is amended, any Employee who is already a Participant on the date the amended and restated Plan is adopted will continue to participate.
- [b] If an Employee who is not a member of an eligible class of Employees becomes a member of an eligible class, the Employee will participate immediately.
- [c] Upon reemployment, or upon returning to employment in a category of Employees that is eligible to participate, a former Participant or former Employee will become a Participant immediately.

No individual who has not become a Participant prior to April 18, 2006, shall become a Participant after April 17, 2006. Notwithstanding the foregoing if an individual was a Participant in the City of Dickinson Police Employee's Pension Plan, such individual shall be eligible to become a Participant under this Plan if the individual meets the eligibility requirements of this Plan.

(Ord. No. 1265 §1; Ord. No. 1313 §1.)

Section 32.08.220 Transfer.

If an individual who has been employed by the City of Dickinson as a police department employee becomes an Employee and a Participant in this Plan, the benefit accrued by the Participant under the City of Dickinson Police Employees' Pension Plan will be transferred to this Plan. If a Participant in this Plan becomes a police department employee and a Participant in the City of Dickinson Police Employees' Pension Plan, the Participant's benefit accrued under this Plan shall be transferred to the City of Dickinson Police Employees' Pension Plan.

The employee shall be subject to the terms of the Pension Plan, including its obligations and benefits, in which the employee was enrolled at the time of retirement.
(Ord. No. 1265 §1; Ord. No. 1382 §1)

Section 32.08.230 Termination of Participation.

Participation will cease upon complete distribution of a Participant's vested Accrued Benefit and forfeiture of the Participant's non-vested Accrued Benefit. (Ord. No. 1265 §1.)

Section 32.08.240 City's Obligation.

Neither participation in the Plan nor the City's adoption and continuance of the Plan will be deemed to constitute a contract between the City and any Employee or Participant, nor to be a consideration for, or an inducement or condition of, the employment of any person. Nothing in this Plan will be deemed to give any Employee or Participant the right to be retained in the employ of the City, or to interfere with the right of the City to discharge any Employee or Participant at any time, nor will it be deemed to give the City the right to require the Employee or Participant to remain in its employ, nor will it interfere with the right of any Employee or Participant to terminate his employment at any time. In adopting this Plan, the City does not make any representation as to the amount of the contribution that it will make for any year other than as recommended by the actuary employed by the Plan. Except insofar as the City fails to make contributions to this Plan adequate to fund the Plan on a sound actuarial basis, the City assumes no liability or responsibility for direct payment of benefits. All benefits payable under this Plan will be paid or provided solely from the Trust Fund. (Ord. No. 1265 §1.)

Section 32.08.250 Uniformed Services Employment and Reemployment Rights Act, and Family Medical Leave Act.

Notwithstanding any provision of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with Code Section 414(u). Years of Service will be credited in accordance with the Family and Medical Leave Act of 1993. (Ord. No. 1265 §1.)

Section 32.08.310 City Contributions.

For each Plan Year, the City will pay to the Trustee the contribution determined by the City.

- [a] Cash: City Contributions must be paid in cash.
- [b] Employee Contributions: Each Employee shall be required to contribute to the Plan monthly by payroll deduction an amount equal to 5% of the Employee's monthly salary. The required Employee Contributions shall be paid by the city in lieu of payment by the Employee and therefore shall be picked up by the City and within the meaning of Code Section 414(h)(2) shall be treated as City Contributions. No Employee shall have the option of having Employee Contributions paid to the Employee instead of having the required Employee Contribution paid by the City to the Plan.
- [c] Forfeitures: City Contributions will be offset by any amounts forfeited under Section 6.5. Forfeitures will not be applied to increase benefits provided by the

Plan unless benefits are increased by appropriate amendments. Forfeitures arising under this Plan will only be applied to reduce the contributions of the City.

- [d] Actuarial Determination: For each Plan Year, the City will make contributions to the Plan in an amount adequate to fund the benefits provided in this Plan on a sound actuarial basis. The amount of contributions to the Plan will be recommended by the actuary employed by the Plan and determined by the City.
- [e] Time and Form of Payment: City and Employee Contributions for any Plan Year may be paid to the Trustee in one sum or in several installments on any date or dates the City elects.
- [f] Exclusive Benefit: This Plan and Trust has been established for the exclusive benefit of the Participants' and their Beneficiaries. The corpus or income of the Trust may not be diverted to or used for other than the exclusive benefit of the Participants or their Beneficiaries. All contributions by the City to the Plan are conditional upon the qualification of the Plan.

At the City's written request to the Trustee specifying the assets to be liquidated to make the payment, any contribution made by the City because of a mistake of fact may be returned to the City within one year of the contribution.

In the event that the Commissioner of Internal Revenue determines that the Plan is not initially qualified under the Internal Revenue Code, then at the City's written request to the Trustee specifying the assets to be liquidated to make the payment, any contribution made incident to that initial qualification by the City must be returned to the city within one year after the date the initial qualification is denied. (Ord. No. 1265 §1.)

Section 32.08.410 Years of Service.

Years of service will be credited as follows:

- [a] Years of Service will be credited for the period beginning on the date the Employee becomes an Employee and ending on the date the Employee terminates employment. Fractional Years of Service will be credited by counting 1/12 of a Year of Service for each complete calendar month of the fractional year.
- [b] Years of Service will be credited for period of military duty for participants covered by and who have complied with the Uniformed Services Employment and Reemployment Rights Act of 1994, as set forth in Chapter 43 of Title 38 United States Code, as currently set forth and as may hereafter be amended.
- [c] Except as otherwise provided in subsection [b], Service will not be credited for any period during which an Employee is on leave of absence. Service will be credited for periods of vacation or sick leave duly granted.
- [d] For purposes of vesting under Section 4.2, but not for purposes of benefit accrual under Section 6.1, Years of Service will be credited for any period during which an Employee or former Employer is employed by the City of Dickinson Police Department.
- [e] Service will not be credited for any period of employment for which the Employee received a distribution under Section 6.5.
- [f] For purposes of vesting and for purposes of determining eligibility for retirement but not for purposes of benefit accrual years of employment in an ineligible class of employees will be counted as Years of Service. (Ord. No. 1265 §1.)

Section 32.08.420 Vesting of Participants’ Benefits.

A Participant's Accrued Benefit will become fully vested and non-forfeitable if he attains Normal Retirement Age while employed by the City. A Participant's Employee contributions plus interest will be fully vested at all times. A Participant shall be vested in his Accrued Benefit attributable to Employer contributions in accordance with the following schedule:

<u>Completed</u>	<u>Percentage of Benefit</u>
<u>Years of Service</u>	<u>That is Vested</u>
Fewer than 4	0
4 or more but fewer than 5	25%
5 or more but fewer than 6	50%
6 or more but fewer than 7	75%
7 or more	100%

(Ord. No. 1265 §1.)

Section 32.08.430 Plan Termination.

Upon the termination or partial termination of this Plan, the rights of all affected Participants to the benefits accrued as of the date the termination or partial termination (to the extent funded as of such date) will be fully vested. (Ord. No. 1265 §1.)

Section 32.08.510 Limitations on Allocations Definitions.

For purposes of this section 5.1, the following terms will be defined as follows:

- [a] Annual Benefit: A retirement benefit under the Plan that is payable annually in the form of a straight life annuity. Except as provided below, a benefit payable in a form other than a straight life annuity must be adjusted to an Actuarially Equivalent straight life annuity before applying the limitations of this Article. The interest rate assumption used to determine Actuarial Equivalence will be the greater of the interest rate specified in the Plan for purposes of computing Actuarially Equivalent benefits or 5 percent. The Annual Benefit does not include any benefits attributable to Employee contributions or rollover contributions, or the assets transferred from a qualified plan that was not maintained by the City.
- [b] Compensation: Compensation shall mean all of a Participant's Wages paid by the City as defined in section 3401(a) for the purposes of income tax withholding at the source.
For purposes of applying the limitations in this Article V, Compensation for the Limitation Year is Compensation actually paid or includible in gross income during the Limitation Year.
- [c] Defined Benefit Dollar Limitation: Defined benefit dollar limitation. The “defined benefit dollar limitation” is \$160,000, as adjusted, effective January 1 of each year, under section 415(d) of the code in such manner as the Secretary shall prescribe, and payable in the form of a straight life annuity. A limitation as adjusted under section 415(d) will apply to limitation years ending with or within the calendar year for which the adjustment applies.
- [d] Limitation Year: The Plan Year.

[e] Maximum Permissible Amount: : The “maximum permissible benefit” is the lesser of the defined benefit dollar limitation or the defined benefit compensation limitation (both adjusted where required, as provided in [1], and, if applicable, in [2] or [3] below.

[1] The Defined Benefit Dollar Limitation.

[2] If the Participant has fewer than 10 years of participation in the Plan, the defined benefit dollar limitation 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. In the case of a Participant who has fewer than 10 years of service with the Company, the defined benefit compensation limitation shall be multiplied by a fraction, (i) the numerator of which is the number of years (or part thereof) of service with the Company and (ii) the denominator of which is 10.

[3] If the benefit of a Participant begins prior to age 62, the defined benefit dollar limitation applicable to the Participant at such earlier age is an annual benefit payable in the form of a straight life annuity beginning at the earlier age that is the actuarial equivalent of the defined benefit dollar limitation applicable to the Participant at age 62 (adjusted under [2] above, if required). The defined benefit dollar limitation applicable at an age prior to age 62 is determined as the lesser of (i) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using the interest rate and mortality table (or other tabular factor) specified in section 1.1 of the Plan and (ii) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using a 5 percent interest rate and the applicable mortality table as defined in section 1.1 of the Plan. Any decrease in the defined benefit dollar limitation determined in accordance with this paragraph [3] shall not reflect a mortality decrement if benefits are not forfeited upon the death of the Participant. If any benefits are forfeited upon death, the full mortality decrement is taken into account.

[4] If the benefit of a Participant begins after the Participant attains age 65, the defined benefit dollar limitation applicable to the Participant at the later age is the annual benefit payable in the form of a straight life annuity beginning at the later age that is actuarially equivalent to the defined benefit dollar limitation applicable to the Participant at age 65 adjusted under [2] above, if required). The actuarial equivalent of the defined benefit dollar limitation applicable at an age after age 65 is determined as (i) the lesser of the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using the interest rate and mortality table (or other tabular factor) specified in section 1.1 of the Plan and (ii) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using a 5 percent interest rate assumption and the applicable mortality table as defined in section 1.1 of the Plan. For these purposes, mortality between age 65 and the age at which benefits commence shall be ignored. Benefit increases resulting from the increase in the limitations of section 415(b) of the Code shall be provided to all employees participating in the Plan who have one hour of service on or after the first day of the first limitation year ending after December 31, 2001.

[5] Sections 5.1[e][3] and 5.1[e][4] shall not apply in the case of a "qualified participant" as defined in Section 415(b)(2)(H). For purposes of this Section 5.1[e] only, "qualified participant" means a participant in the Plan with respect to when the Years of Service used to determine the amount of benefit under the Plan includes at least 15 years of service of the Participant as either [x] a full-time employee of a police or fire department or [y] as a member of the United States Armed Forces.

[f] Year of Participation: The Participant shall be credited with a Year of Participation (computed to fractional parts of a year) for each accrual computation period for which the following conditions are met: (1) The Participant is credited with a Year of Service, and (2) the Participant is included as a Participant under the eligibility provisions of the Plan for at least one day of the accrual computation period. If these two conditions are met, the portion of a Year of Participation credited to the Participant shall equal the amount of benefit accrual service credited to the Participant for that accrual computation period. A Participant who is permanently and totally disabled within the meaning of Code Section 415 (c) (3) (C) (i) for an accrual computation period shall receive a Year of Participation with respect to that period. In addition, for a Participant to receive a Year of Participation (or part thereof) for an accrual computation period, the Plan must be established no later than the last day of such accrual computation period. In no event will more than one Year of Participation be credited for any 12-month period.

[g] Effect on Participants: Benefit increases resulting from the increase in the limitations of section 415(b) of the Code will be provided only to active Participants who are credited with an hour of service on or after the first day of the first limitation year ending after December 31, 2001. (Ord. No. 1265 §1.)

Section 32.08.520 Limitations of Benefits.

This section applies regardless of whether any Participant is or has ever been a Participant in another qualified plan maintained by the City. The Annual Benefit otherwise payable to a Participant at any time will not exceed the maximum Permissible Amount. If the benefit of the Participant would otherwise accrue in a Limitation year would produce an Annual Benefit in excess of the Maximum Permissible Amount, the rate of accrual will be reduced so that the Annual Benefit will equal the Maximum Permissible Amount. If a Participant has made nondeductible Participant contributions under the Plan, the amount of those contributions is treated as an Annual Addition to a qualified defined contribution plan, for purposes of this Article. The limitation in this section is deemed satisfied if the Annual Benefit payable to a Participant is not more than \$1,000 multiplied by the Participant's number of Years of Service or parts of Years of Service (not to exceed 10) with the City. (Ord. No. 1265 §1.)

Section 32.08.530 Combined Limitations.

This section applies if any Participant is covered, or has been covered, by another qualified plan, which provides an Annual Addition and which is maintained by the City. For purposes of this Section, Allocated Earnings and Employee Contributions to this Plan are deemed to be contributions to a defined contribution plan which provides an Annual Addition.

[a] Defined Benefit Plan. If a Participant is, or ever has been, covered under more than one defined benefit plan maintained by the City, the sum of the

Participant's Annual Benefits from all plans may not exceed the Maximum Permissible Amount.

[b] Defined Contribution Plan. The sum of the Participant's Defined Contribution Fraction and Defined Benefit Fraction will not exceed 1.0 in any Limitation Year, and the Annual Benefit otherwise payable to the Participant under this Plan will be limited as required to comply with this limitation.

[c] Protection of Prior Benefits. In the case of an individual who was a Participant in one or more defined benefit plans of the City as of the first day of the first Limitation Year beginning after December 31, 1986, the application of the limitations of this Article shall not cause the maximum permissible amount for such individual under all such defined benefit plans to be less than the individual's current accrued benefit. The preceding sentence applies only if such defined benefit plans met the requirements of Code Section 415, for all Limitation Years beginning before January 1, 1987. (Ord. No. 1265 §1.)

Section 32.08.610 Accrued Benefit.

[a] Accrued Benefit of a Participant Retiring On Or After January 1, 2000. The Accrued Benefit of a Participant retiring on or after January 1, 2000 will be an annual benefit payable in monthly payments and commencing at Normal Retirement Age and payable for the life of the Participant that is computed as follows, or if greater, the Accrued Benefit calculated under [b] below:

[1] [2.3] percent of Final Average Compensation multiplied by the number of full and remaining fractional Years of Service completed by the Participant; plus

[2] Any Benefit Accrued by the Participant under and transferred to the Plan from the City of Dickinson Police Employees' Pension Plan and Trust.

[b] Accrued Benefit of a Participant Retiring On Or After November 1, 1992 and before January 1, 2000: The Accrued Benefit of a Participant retiring on or after November 1, 1992 and before January 1, 2000, will be a monthly benefit commencing at Normal Retirement Age and payable for the life of the Participant that is computed as follows:

[1] For each full Year and completed month of Service a Participant will be credited with a monthly benefit equal to one-twelfth of three and seven-tenths percent of his Total Basic Compensation applicable to the period; plus

[2] Any Benefit Accrued by the Participant under and transferred to the Plan from the City of Dickinson Police Employees' Pension Plan and Trust.

[c] Accrued Benefit of A Participant Retiring Before November 1, 1992: The accrued benefit of a Participant who retired before November 1, 1992 will be increased as of November 1, 1992 to a monthly benefit commencing at the later of November 1, 1992 or Normal Retirement Age and payable for the life of the Participant that is computed as follows:

[1] For each full Year and completed month of Service before April 1, 1969 a Participant will be credited with a monthly benefit equal to one-twelfth of one and eighty-five one hundredths percent of his basic salary rate effective January 1, 1986 or, if earlier, the date the Participant terminated employment; plus

[2] For each full Year and completed month of Service after April 1, 1969 a Participant will be credited with a monthly benefit equal to one-twelfth of three

and three-tenths percent of his Total Basic Compensation applicable to the period.
(Ord. No. 1265 §1.)

Section 32.08.620 Retirement Benefits.

- [a] General Rules: A Participant's Accrued Benefit will be distributable upon death, Total Disability, Retirement, Termination of Employment, or at the Required Beginning Date.
- [b] Normal Retirement: On the last day of the month in which a Participant attains his Normal Retirement Age, he may retire voluntarily or continue working subject to any mandatory retirement policy of the City otherwise permitted by law. Any Termination of Employment on or after the Participant attains Normal Retirement Age will be deemed to be a retirement. Until actual retirement a Participant may continue to participate in the Plan. Normal Retirement Benefit payments will begin as of the later of the Participant's Normal Retirement Age or the date the Employee retires but not later than the Required Beginning Date. There will be no actuarial adjustment for late commencement of payment for benefits commencing later than Normal Retirement Age.
- [c] Early Retirement: An Employee who terminates employment with the City after completing at least 15 Years of Service may elect Early Retirement benefits. Payment of the Actuarial Equivalent of the Participant's Accrued Benefit payable at Normal Retirement Age may commence as of the date of the Participant's Early Retirement. Alternatively, the Participant may elect in writing filed with the Board of Trustees not later than the Participant's Early Retirement Date, to defer the commencement of Actuarially Equivalent benefit payments to a date later than the date of the Participant's retirement but not later than the Participant's Normal Retirement Date.
- [d] Disability: An Employee who terminates employment with the City because of Total and Permanent Disability before attaining Early or Normal Retirement Age shall be paid Disability Retirement Benefits commencing as of the date of termination of employment. Disability Retirement Benefits shall be equal to the benefit accrued as of the date of disability retirement payable at Normal Retirement Age without actuarial reduction for the commencement of payment before Normal Retirement Age and without accrual of any additional benefit or Years of Service after the date of disability retirement but shall not be less than \$50 per month. Any Disability Retirement Benefit payable under this Plan shall be reduced by the amount of any payment from the Workmen's Compensation Bureau made to the Employee because of the Total and Permanent Disability.
- If the benefits received from the Workmen's Compensation Bureau exceed the Benefit the Employee would be entitled to under the Plan, no pension shall be paid from the Plan to the Employee during the time the Workmen's Compensation payments are being made. If settlement of State Workmen's Compensation payment shall be in a lump sum, such sum shall be apportioned in accordance with the determination of the State Workmen's Compensation Bureau over a period of years for purposes of the offset against Plan benefits.
- Payment of Disability Retirement Benefits will cease upon determination by the Board of Trustees that the Total and Permanent Disability has terminated. Any Normal or Early Retirement benefits that subsequently become payable will be reduced by the actuarial value of the Disability Retirement Benefit actually paid.

- [e] Required Beginning Date: The Required Beginning Date is the April 1 of the calendar year following the calendar year in which occurs the later of [1] the date the Participant attains age 70 ½, or [2] the date the Participant retires from employment with the Employer.
- [f] Minimum Benefit. The benefits paid under this Section 6.2 will not in any event be less than the total amount of the Participant's Employee contributions plus Earnings. (Ord. No. 1265 §1.)

Section 32.08.630 Form of Benefit.

The normal form of benefit under this Plan is a single life annuity for the life of the Participant. Effective for all Participants who commence benefits prior to August 1, 2010, the optional forms of benefit under this Plan are [a] a single sum cash payment that is the Actuarial Equivalent of the normal form of benefit; [b] the Actuarial Equivalent 100 percent benefit for both the Participant and surviving spouse; and [c] single life annuity for the life of the participant with 120 payments guaranteed. Effective for all Participants who commence benefits on or after August 1, 2010, the optional forms of benefit under this Plan are [a] the Actuarial Equivalent of the normal form of benefit, paid in 9 equal annual installments; [b] the Actuarial Equivalent 100 percent benefit for both the Participant and the surviving spouse; and [c] a single life annuity for the life of the Participant with 120 payments guaranteed. The value of the amounts payable to the Participant and all beneficiaries in the ten-year certain form shall be the actuarial equivalent of the amounts payable to the Participant in the normal form. A Participant's Allocated Earnings Account balance shall be distributable as of the valuation date next following termination of employment in a single sum cash payment. (Ord. No. 1265 §1; Ord. No. 1279 § 1; Ord No. 1384 §5)

Section 32.08.640 Required Distributions.

- [a] All distributions required under this section will be determined and made in accordance with the proposed Regulations under Code Section 401 (a) (9), including the minimum distribution incidental benefit requirement of Section 1.401 (a) (9)-2 of the proposed regulations.
- [b] The vested Accrued Benefits of a Participant must be distributed or begin to be distributed no later than the Participant's Required Beginning Date.
- [c] As of the first Distribution Calendar Year, distributions shall be made in the form of an annuity for the life of the Participant.
- [d] Payments under the annuity must satisfy the following requirements:
 - [1] the annuity distributions must be paid in periodic payments made at intervals not longer than one year:
 - [2] the distribution period must be over a Life described in Section 401(a) (9) (A) (ii);
 - [3] the Life Expectancy for purposes of determining the period certain shall be determined without recalculation of Life Expectancy; and
 - [4] payments must either be non-increasing or increase only to provide cash refunds of employee contributions upon the Participant's death; or because of an increase in benefits under the Plan.
- [e] The "Life Expectancy" is calculated using the attained age of the Participant (or Designated Beneficiary) as of the Participant's (or Designated Beneficiary's) birthday in

the applicable calendar year. The applicable calendar year will be the first distribution calendar year. If annuity payments commence before the Required Beginning Date, the applicable calendar year is the year such payments commence. Life Expectancy and Joint and Last Survivor Expectancy are computed by use of the expected return multiples in Tables V and VI of Section 1.72-9 of the Income Tax Regulations. (Ord. No. 1265 §1.)

Section 32.08.650 Termination of Employment.

A Participant with no vested interest in Accrued Benefits attributable to City Contributions who terminates employment for any reason other than death or Total Disability before qualifying for immediate Early or Normal Retirement Benefits will receive a refund of Employee Contributions made and not previously distributed plus Earnings. Payment shall be made in a single sum within 90 days after the date the Participant terminates employment.

A Participant with a vested interest in Accrued Benefits attributable to City Contributions who terminates employment for any reason other than death or Total Disability before qualifying for immediate Early or Normal Retirement Benefits will receive payment of benefits as follows:

- [a] If the present value of the Participant's vested Accrued Benefit attributable to Employee Contributions and city Contributions is \$10,000 or less, the present value of the vested Accrued Benefit will be paid in a single sum cash payment as soon as administratively feasible after the Participant's termination of employment.
- [b] If the present value of the Participant's vested Accrued Benefit attributable to Employee Contributions and City Contributions exceeds \$10,000 and the Participant terminates employment prior to August 1, 2010, the Accrued Benefit will be paid under section 6.2 commencing as of the last day of the month in which the Participant attains age 62, or if the Participant so elects in writing within 30 days after the Participant's termination of employment, the present value of the Participant's vested Accrued Benefit will be paid in a single sum cash payment as soon as administratively feasible after the Participant's termination of employment.
- [c] If the present value of the Participant's vested Accrued Benefit attributable to Employee Contributions and City Contributions exceeds \$10,000 and the Participant terminates employment on or after August 1, 2010, the Accrued Benefit will be paid under Section 620 commencing as of the last day of the month in which the Participant attains age 55.

The present value of the Participant's vested Accrued Benefits payable under this paragraph shall not be less than the Employee Contributions made by the Participant plus Earnings.

The Participant's non-vested Accrued Benefit will be forfeitable upon the distribution of the Participant's vested Accrued Benefit or upon refund of the Participant's Employee Contributions plus interest if the Participant has no vested Accrued Benefit attributable to City Contributions or, if there is no distribution before Early or Normal Retirement Age, then upon the Participant's termination of employment. (Ord. No. 1265 §1; Ord. No. 1309 § 1. Ord. No. 1384 §6)

Section 32.08.660 Death Benefits.

- [a] Surviving Spouse and Children: Upon the death of an active Employee or of a retired Participant benefits shall be paid to the Surviving Spouse or surviving children, if any, as follows:
- [i] If a retired Participant has elected the normal form of benefit upon retirement, a monthly benefit shall be paid to the Surviving Spouse for life in an amount equal to 2/3 of the Participant's accrued benefit as of the date of death but such benefit shall not be less than \$50 per month.
 - [ii] If a retired Participant has elected the optional form of benefit of the Actuarial Equivalent 100 percent for both Participant and Surviving Spouse at retirement, a monthly benefit will be paid to the Surviving Spouse of 100% of the benefit payable continuing for the remaining life of the survivor.
 - [iii] A monthly benefit will be paid to the Surviving Spouse of an active Employee for life in an amount equal to the monthly benefit that would have been paid to the Surviving Spouse if the Participant had retired the day before his death with actuarially equivalent benefits payable in the form of an annuity for the joint life expectancy of the Participant and the Participant's spouse with 100% of the benefit payable during their joint lives continuing for the remaining life of the survivor. Alternatively, a Surviving Spouse of an active Employee who dies prior to August 1, 2010 may elect in writing within 90 days after the Participant's death to have the benefit payable under this subsection [iii] payable in an actuarially equivalent single sum payment. Any benefit payable under this subsection [iii] shall be reduced by the actuarially equivalent value of any benefits paid to the Participant before death under Section 6.2, 6.3, or 6.5.
 - [iv] The Surviving Spouse of a retired Participant shall receive the form of benefit as selected by the Participant upon Retirement. If the retired Participant elected at retirement the single sum cash payment, no benefit will be due the Surviving Spouse.
 - [v] A benefit of \$10 per month shall be paid on behalf of each surviving child until he child attains the age of 18 to the parent of the surviving child or if no parent is surviving then to the guardian of the surviving child.
 - [vi] If a retired participant has elected the optional form of benefit of the single life annuity with 120 payments guaranteed, the guaranteed monthly benefit will be paid to the participant's beneficiary for the remainder of the 120 month payment term.
 - [vii] If a retired participant has elected to receive 9 equal annual installments, and such participant dies before receiving all 9 payments, any remaining annual installment payments will be paid to the participant's beneficiary.
- [b] Minimum Benefit: The benefits paid under this Section 6.6 to a Participant's Surviving Spouse and Children will not be less than the total amount of the Participant's Employee Contributions plus Earnings, reduced by any benefits paid to the Participant under Section 6.2 or Section 6.5. Any remainder payable under this subsection will be

paid to the estate of the Participant. (Ord. No. 1265 §1; Ord. No. 1279 § ; Ord. No. 1384 §3 & 7 & 8)

Section 32.08.670 Designation of Beneficiary.

Each Participant will designate a Beneficiary to receive any aggregate minimum benefits payable under section 6.8 upon his death on the form prescribed by and delivered to the Board of Trustees. The Participant will have the right to change or revoke a designation at any time by filing a new designation or notice of revocation with the Board of Trustees.

If a Participant fails to designate a Beneficiary before his death, or if no Designated Beneficiary survives the Participant, the Board of Trustees will direct the Trustee to pay any benefit first to his Surviving Spouse, if any, or if none, then to his personal representative. If no personal representative has been appointed, and if the benefit does not exceed the minimum amount for which an estate or inheritance tax release or appointment of a personal representative is required under applicable state law the Board of Trustees may direct the Trustee to pay the benefit to such person as may be entitled to it under the laws of the state in which the Participant was domiciled at the date of his death. The Board of Trustees may require such proof of right or identity as he may deem necessary. If the benefit exceeds the minimum amount for which an estate or inheritance tax release or appointment of a personal representative is required under applicable state law, the Board of Trustees may direct the Trustee to hold the benefits in a segregated account until such time as the Trustee is notified that a personnel representative has been appointed. (Ord. No. 1265 §1.)

Section 32.08.680 Minimum Aggregate Benefits.

In no event shall the total benefits payable under this Plan in respect to a given Participant be less than the total contributions made by such Participant plus Earnings. If the total aggregate benefit paid to the Participant and to his eligible Surviving Spouse and/or Children would otherwise be less than the total contributions made by the Participant, the difference shall be paid to the Participant's named beneficiary or if none then to the Participant's estate. (Ord. No. 1265 §1.)

Section 32.08.690 Other Distribution Rules.

[a] Spendthrift Trust Provisions: Except for benefits payable under Section 7.5 in accordance with the applicable requirements of a Qualified Domestic Relations Order, all amounts payable by the Plan will be paid only to the person entitled to them, all such payments will be paid directly to such person and not to any other person or corporation and no benefit or interest under this Plan will be subject to assignment or alienation, either voluntarily or involuntarily. Payments will not be subject to the claim of any creditor of a Participant, nor may payments be taken in execution by attachment or garnishment or by any other legal or equitable proceedings. No person will have any right to alienate, anticipate, commute, pledge, encumber, or assign any payments or benefits that he may expect to receive, contingently or otherwise, under this Plan, except the right to designate a Beneficiary or Beneficiaries.

[b] Participant Or Beneficiary Whose Whereabouts Are Unknown: In the case of any Participant or Beneficiary whose whereabouts are unknown, the Board of Trustees will notify the Participant or Beneficiary at his last known address by certified mail with return receipt requested advising him of his right to a pending distribution. If the

Participant or Beneficiary cannot be located in this manner, the Board of Trustees may direct the Trustee to forfeit the Accrued Benefit. If a claim for forfeited Accrued Benefits is subsequently made by the Participant or Beneficiary, the amount forfeited, unadjusted for earnings or interest, will be restored.

[c] Minors or Persons of Unsound Mind. If the person designated to receive payments is a minor or a person of unsound mind, whether formally so adjudicated or not, the Trustee, upon receipt of instructions from the Board of Trustees, may make payment to the person's legal representative or legal guardian, and the receipt by any such person will be a full and complete discharge of the Plan for any sums paid.

[d] Suspension of Benefit Payments: If a retired Participant is re-employed by the City for the performance of light duty, payment of benefits under this Plan will be suspended until the Participant terminates employment provided, however, that the President of the Board of City Commissioners may assign any Employee of the City, other than policemen, retired under the provisions of this Article, to the performance of light duties in the City. The salary received by any such person so assigned for light duty plus the pension received under the terms and provisions of this Article shall not exceed the regular pay for such duties.

[e] Withdrawals: No Participant may withdraw any part of his Accrued Benefit while employed. (Ord. No. 1265 §1.)

Section 32.08.692 Eligible Rollover Distributions.

This Section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election, a Distributee may elect, at the time and in the manner prescribed by the Plan 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.

[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:

[1] 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 years or more; or

[2] any distribution to the extent such distributions is required under Code Section 401(a)(9); and

[3] the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to Employer securities).

[4] Modification of definition of eligible rollover distribution to include after-tax employee contributions. For purposes of the direct rollover provisions in section 6.10 of the Plan, 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 includable in gross income. However,

such portion may be paid 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.

[b] Eligible Retirement Plan: An Eligible Retirement Plan is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), or a qualified trust described in Code Section 401(a) that accepts the Distributee's Eligible Rollover Distribution. However, in the case of an Eligible Rollover Distribution to the Surviving Spouse, an Eligible Retirement Plan is an individual retirement account or individual retirement annuity.

[1] Modification of definition of eligible retirement plan: For purposes of the direct rollover provisions in section 6.10 of the Plan, an eligible retirement plan shall also mean an annuity contract described in section 403(b) of the Code and an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in section 414(p) of the Code.

[c] 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 Code Section 414(p), are Distributees with regard to the interest of the spouse or former spouse.

[d] Direct Rollover: A Direct Rollover is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee. (Ord. No. 1265 §1.)

Section 32.08.694 Retiree Benefits.

As of January 1, 2000, the monthly retirement benefit payable to each Eligible Retiree will be increased by 6%. For purposes of this paragraph only, an Eligible Retiree is a Participant or the surviving spouse of a Participant who is receiving as of January 1, 2000 monthly retirement benefits from this Plan. (Ord. No. 1265 §1.)

Section 32.08.710 Appointment of Board Trustees.

The Board of Trustees for management of the City Employees' Pension Plan shall consist of the President of the Board of City Commissioners, the City Administrator, two persons elected by and from the City Employees who are currently participating and one person elected by and

from the Park District Employees who are currently participating. No Employee shall be eligible for election until he or she has completed eight Years of Service. The election shall be held on the second Tuesday in September . Each elected member shall serve for a term of four years; with one member being elected at each biennial election The term of elected members shall commence on January 1 of the year following the election of said member. The President of the Board of City Commissioners shall be the President and the City Administrator shall be the Treasurer of the Board. The faithful performance of the duties of the Treasurer shall be secured by his official bond as the City Administrator. Such trustees shall receive no compensation for the services as members of the Board. Such Board shall have such powers and perform such duties as may now or hereafter be provided by law and by the Plan. (Ord. No. 1265 §1.)

Section 32.08.720 Information to be made available to Board of Trustees.

The City will provide the Board of Trustees with access to information the Board of Trustees requires. If required information is not available from the City's records, the Board of Trustees may obtain the information from the Participants. The Board of Trustees and the City may rely on and will not be liable for any information that an Employee provides either directly or indirectly. (Ord. No. 1265 §1.)

Section 32.08.730 Duties and Powers of Board of Trustees.

- [a] General: The Board of Trustees will have full discretionary authority to decide all questions arising in the administration, interpretation, and application of the Plan and Trust, including all questions relating to eligibility and distributions, except as may be reserved under this Plan to the City. The Board of Trustees from time to time will direct the Trustee concerning the payments to be made out of the Plan assets pursuant to this Plan.
- [b] Employment of Advisers and Persons To Carry Out Responsibilities: The Board of Trustees may employ one or more persons to render advice with regard to any responsibility the Board of Trustees has under the Plan and may employ one or more persons (including the Trustee) to carry out any of its responsibilities under the Plan.
- [c] Keeping of Records: The Board of Trustees will keep such records as may be necessary or advisable in his judgment for the administration of this Plan and Trust. (Ord. No. 1265 §1.)

Section 32.08.740 Notices from Participants.

Whenever provision is made in the Plan that a Participant may exercise any option or election or designate any Beneficiary, the action of the Participant will be evidenced in writing on the forms provided by the Board of Trustees, if a form is provided, signed by the Participant and delivered to the Board of Trustees in person or by mail. Written notice will not be effective until received by the Board of Trustees. (Ord. No. 1265 §1.)

Section 32.08.750 Qualified Domestic Relations Orders.

- [a] Definitions:

[1] Alternate Payee means any Spouse, former Spouse, child, or other dependent of a Participant who is recognized by a Qualified Domestic Relations Order as having a right to receive all, or a portion of, the benefits payable under a Plan with respect to the Participant.

[2] Earliest Retirement Age means, for purposes of this section only, the earlier of [i] the date the Participant is entitled to a distribution under the Plan or [ii] the later of the date the Participant attains age 50 or the earliest date on which the Participant could begin receiving benefits under the Plan if the Participant separated from service.

[3] Qualified Domestic Relations Order means an order that creates or recognizes the existence of an Alternate Payee's right to, or assigns to an Alternate Payee the right to, receive all or a portion of the benefits otherwise payable to a Participant under the Plan. A Qualified Domestic Relations Order includes any judgment, decree, or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or marital property rights to a Spouse, Former Spouse, child, or other dependent of a Participant, and is made pursuant to a State domestic relations law (including a community property law). To qualify, the domestic relations order must:

[A] clearly state the name and last known mailing address of the Participant and the name and mailing address of each Alternative Payee covered by the order;

[B] clearly state the amount or percentage of the Participant's benefits to be paid by the Plan to each Alternate Payee, or the manner in which the amount or percentage is to be determined;

[C] clearly state the number of payments or period to which the order applies;

[D] identify each Plan to which the order applies;

[E] not require the Plan to provide any type or form of benefits, or any option, not otherwise provided under the Plan;

[F] not require the Plan to provide increased benefits (determined on the basis of actuarial value); and

[G] not require the payment of benefits to an Alternate Payee that are required to be paid to another Alternate Payee under another order previously determined to be a Qualified Domestic Relations Order.

[b] Payment of Benefits Under A Qualified Domestic Relations Order: Section 6.10[a] will not apply to prevent payment of benefits to an Alternate Payee under the terms of a Qualified Domestic Relations Order. In the case of any distribution before a Participant has separated from service, a Qualified Domestic Relations Order will not fail to meet the requirements of subparagraph [E] above solely because the Order requires that payment of benefits be made to an alternate payee [A] on or after the date the Participant attains the Earliest Retirement Age, [B] as if the Participant had retired on the date on which such payment is to begin under the Order, and [C] in any form in which benefits may be paid under the Plan to the Participant (other than in the form of a Qualified Joint and survivor Annuity with respect to the Alternate Payee and his

subsequent spouse. A person who is an Alternate Payee under a Qualified Domestic Relations Order will be considered a Beneficiary under the Plan.

- [c] Procedures: The Board of Trustees will establish reasonable procedures for determining the qualified status of a domestic relations order. The procedures:
- [1] will be in writing;
 - [2] will provide that each person specified in a Domestic Relations Order as entitled to payment of Plan benefits will be notified of the procedures promptly upon receipt of the Order by the Plan; and
 - [3] will permit an Alternate Payee to designate a representative for receipt of copies of notices that are sent to the Alternate Payee. Within a reasonable period of time after receipt of an order, the Board of Trustees will determine whether the order is a Qualified Domestic Relations Order and notify the Participant and each Alternate Payee of the determination. During any period in which the issue of whether a domestic relations order is a Qualified Domestic Relations Order is being determined, the Board of Trustees will segregate, in a separate account, any otherwise distributable amounts that would have been payable to the Alternate Payee during the period if the order had been determined to be a Qualified Domestic Relations Order. If, within 18 months the order is determined not to be a Qualified Domestic Relations Order or the issue as to whether the order is a Qualified Domestic Relations Order is not resolved, then the Board of Trustees may pay the segregated amounts to the person or persons who would have been entitled to those amounts if there had been no order. If a plan fiduciary acts in accordance with the fiduciary responsibility provisions of the Plan, then the Plan's obligation to the Participant and each Alternate Payee is discharged to the extent of any payment made. (Ord. No. 1265 §1.)

Section 32.08.810 Investment of Plan Assets.

The duty of the Trustee is to hold in trust the funds it receives. The Trustee in accordance with the instructions of the Board of Trustees, will have exclusive authority and discretion to manage and control the assets of the Plan and to manage, invest, and reinvest the Trust Fund and the income from it under this Article, without distinction between principal and income. The Trustee will make payments and distributions from the Trust Fund in accordance with the terms of this Plan and instructions of the Board of Trustees. The Trustee will be responsible only for sums that it actually receives as Trustee plus net gains on such amounts. The Trustee will have no duty to collect any sums from the Board of Trustees, City, or from a Participant. (Ord. No. 1265 §1.)

Section 32.08.820 Records.

The Trustee will keep full records of its administration of the Plan assets. (Ord. No. 1265 §1.)

Section 32.08.830 Administrative Powers of the Trustee.

Subject to the requirements imposed by law, the Trustee will have all powers necessary or advisable to carry out the provisions of this Plan and Trust and all inherent, implied, and

statutory powers now or subsequently provided by law, including specifically the power to do any of the following:

- [a] to invest or reinvest any and all money or property of any description at any time held by the Trustee and constituting assets of the Plan, without previous application to, or subsequent ratification of, any court, tribunal or commission, or any federal or state governmental agency, in real property and all interests in real property, in bonds, notes, debentures, mortgages, commercial paper, preferred stocks, common stocks, or other securities, rights, obligations, or property, real or personal, including shares or certificates of participation issued by regulated investment companies or regulated investment trusts, shares or units of participation in qualified common Trust Funds, in qualified pooled funds, including Common Trust Funds or pooled funds maintained by the Trustee, or in pooled investment funds of an insurance Company qualified to do business in the state, group annuity contracts and with any federally insured bank or savings and loan association, and if the Trustee is a bank or similar financial institution supervised by the United States or a state, in its own deposits, savings accounts, and certificates of deposit;
- [b] to cause any securities or other property to be registered and held in its name as Trustee, or in the name of one or more of its nominees, without disclosing the fiduciary capacity, or to keep the same in unregistered form payable to bearer;
- [c] to sell, grant options to sell, exchange, pledge, encumber, mortgage, deed in trust, or use any other form of hypothecation, or otherwise dispose of the whole or any part of the Trust Fund on such terms and for such property or cash, or part cash and credit, as it may deem best; to retain, hold, maintain, or continue any securities or investments that it may hold as part of the Trust Fund for as long as it deems advisable; and generally, in all respects, to do all things and exercise each and every right, power, and privilege in connection with and in relation to the Trust Fund as could be done, exercised, or executed by an individual holding and owning such property in absolute and unconditional ownership;
- [d] to abandon, compromise, contest, and arbitrate claims and demands; to institute, compromise, and defend actions at law (but without obligation to do so); in connection with such powers, to employ counsel the Trustee deems advisable; and to exercise such powers all at the risk and expense of the Trust Fund;
- [e] to borrow money for this Trust on the terms and conditions the Trustee deems advisable, and to secure repayment by the mortgage or pledge of any assets of the Trust Fund except insurance contracts;
- [f] to vote in person or by proxy any shares of stock or rights held in the Trust Fund; to participate in and to exchange securities or other property in reorganization, liquidation, or dissolution of any corporation, the securities of which are held in the Trust Fund;
- [g] to pay any amount due on any loan or advance made to the Trust Fund, to charge against and pay from the Trust Fund all taxes of any nature levied, assessed, or imposed upon the trust fund, and to pay all reasonable expenses and attorney fees necessarily incurred by the Trustee with respect to any of the foregoing matters; and

[h] to act pursuant to written blanket settlement authorization given by the City or the Participant on any transaction executed by the designated broker. The Trustee is authorized to honor all trade confirmations received according to the terms of the instructions relating to the conduct of business in the plan as previously provided to the designated broker. (Ord. No. 1265 §1.)

Section 32.08.840 Allocated Earnings Account.

A separate account shall be maintained by the Trustee for Allocated Earnings of each Participant to whom earnings were allocated under plan provisions in effect prior to January 1, 1992. The assets of the trust will be valued annually at fair market value as of the last day of the Plan Year and at any other dates determined by the Board of Trustees to be appropriate. On each valuation date, the earnings and losses of the trust attributable to the Allocated Earnings Accounts will be allocated to each Participant's Allocated Earnings Account in the ratio that each Participant's Allocated Earnings Account balance bears to all such Account balances. (Ord. No. 1265 §1.)

Section 32.08.850 Organization and Operation of Office of Trustee.

The Trustee(s) may adopt the procedures deemed desirable for the conduct of its affairs and may appoint agents any of whom may be an officer or Employee of the City. Any person dealing with the Trustee(s) may rely on a certificate or memorandum signed by the Trustee, or by any one Trustee if more than one Trustee is appointed, as evidence of any action taken by the Trustee(s). (Ord. No. 1265 §1.)

Section 32.08.860 Advice of Counsel.

The Trustee may consult with legal counsel, who may be counsel for the City or Trustee's own counsel, with respect to the meaning or construction of the Plan and Trust or Trustee's obligation or duties. The cost of any consultation will be an expense of the Plan and will be paid by the Plan unless paid by the City. The Trustee will be protected from any responsibility with respect to any action taken or omitted by it in good faith pursuant to the advice of counsel, to the extent permitted by law. (Ord. No. 1265 §1.)

Section 32.08.870 Appointment, resignation, removal and substitution of Trustee.

The City will appoint a Trustee or Trustees, each of which will hold office until resignation or removal by the City. The Trustee may resign at any time upon 30 days' written notice to the City. The Trustee may be removed at any time by the City upon 30 days' written notice to the Trustee with or without cause. Upon resignation or removal of the Trustee, the City will appoint a successor Trustee that will have the same powers and duties as are conferred upon the Trustee appointed under this Plan. The resigning or removed Trustee will deliver to its successor Trustee all property of the Trust Fund, less a reasonable amount necessary to provide for its compensation, expenses, and any taxes or advances chargeable or payable out of the Trust Fund. If the Trustee is an individual, death will be treated as a resignation, effective

immediately. If any corporate Trustee at any time is merged, or consolidated with, or sells or transfers substantially all of its assets and business to another corporation, whether state or federal, or is reorganized or reincorporated in any manner, then the resulting or acquiring corporation will be substituted for the corporate Trustee without the execution of any instrument and without any action on the part of the City, any Participant or Beneficiary, or any other person having or claiming to have an interest in the Trust Fund or under the Plan. (Ord. No. 1265 §1.)

Section 32.08.910 Amendments to Plan and Trust.

At any time the City may amend the Plan. An amendment will be effective as of the date specified by the City, or if no date is specified, then on the first day of the Plan Year during which it is adopted. Except as may be permitted by regulations, no amendment to the Plan (including a change in the actuarial basis for determining optional or early retirement benefits) will be effective to the extent that it has the effect of decreasing a Participant's Accrued Benefit. (Ord. No. 1265 §1.)

Section 32.08.920 Termination of Plan and Trust.

The City expects to continue this Plan and Trust indefinitely, but the continuance of the Plan and Trust is not assumed as a contractual obligation by the City and the right is reserved to the City to terminate this Plan and Trust in whole or part at any time. Termination of the Plan and Trust will take effect as of the date specified by the City's written notice of the termination which shall be given by the City to the Trustee and the Sponsor. At any time after termination of the Plan and Trust, but not before receipt of instructions from the Board of Trustees, the Trustee may distribute the interest of any Participant to him under Article VII. The Board of Trustees will file such terminal reports as are required. The Board of Trustees may request appropriate rulings as to qualification upon termination. Termination of this Plan and Trust by the City will not re-vest any part of the Trust Fund in the City; provided, however, that any assets that remain after the Plan is terminated and all Accrued Benefits have been paid will be returned to the City upon written notice by the City to the Trustee. (Ord. No. 1265 §1.)

Section 32.08.930 Merger, Consolidation, or Transfer of Assets or Liabilities of the Plan.

The City may merge or consolidate this Plan with any other plan and may transfer all or part of the assets or liabilities of the Plan to, or to this Plan from, any other plan. (Ord. No. 1265 §1.)

Section 32.08.940. Distribution Upon Termination of Trust.

If the Plan Trust is terminated Accrued Benefits to the extent funded will be distributed in accordance with the provisions of Article VI. (Ord. No. 1265 §1.)

Section 32.08.1010 Text to Control.

The headings of articles and sections are included solely for convenience of reference. If any conflict between any heading and the text of this Plan and Trust exists,, the text will control. (Ord. No. 1265 §1.)

Section 32.08.1020 Severability.

If any provision of this Plan and Trust is illegal or invalid for any reason, such illegality or invalidity will not affect the remaining provisions. On the contrary, the remaining provisions will be fully severable, and this Plan and Trust will be construed and enforced as if the illegal or invalid provisions never had been inserted in this agreement. (Ord. No. 1265 §1.)

Section 32.08.1030 Jurisdiction.

This Plan will be construed and administered under the laws of the State of North Dakota when the laws of that jurisdiction are not in conflict with federal substantive law. (Ord. No. 1265 §1.)

Section 32.08.1040 Forum Selection.

Any claims or disputes involving the Plan shall be litigated only in North Dakota and to the extent not preempted by federal law, North Dakota statutory and common law shall control during litigation. The litigants expressly waive any right they have to institute or conduct litigation in any other forum or location. (Ord. No. 1265 §1.)

Section 32.08.1050 Expenses.

The expenses of the Plan and Trust shall be paid from Plan assets unless, in its discretion the City elects to pay some or all of the Plan expenses. (Ord. No. 1265 §1.)

Section 32.08.1060 Rules of Construction.

The masculine gender will include the feminine, and the singular will include the plural. (Ord. No. 1265 §1.)

Article 32.12 City of Dickinson Police Employee's Pension Plan and Trust

Sections:

32.12.00E	Editor's note to Article 32.12
32.12.100	Definitions.
32.12.210	Participation.
32.12.220	Transfers.
32.12.230	Termination of Participation.
32.12.240	City's Obligations.
32.12.250	Uniformed Services Employment and Reemployment Rights Act and Family Medical Leave Act.
32.12.310	City Contributions.
32.12.410	Years of Service.
32.12.420	Vesting of Participants' Benefits.
32.12.430	Plan Termination.
32.12.510	Limitation on Allocations Definitions.
32.12.520	Limitations on Benefits.
32.12.610	Accrued Benefit.
32.12.620	Retirement Benefits.
32.12.630	Form of Benefit.
32.12.640	Required Distributions.
32.12.650	Termination of Employment.
32.12.660	Death Benefits.
32.12.670	Designation of Beneficiary.
32.12.680	Minimum Aggregate Benefits.
32.12.690	Other Distribution Rules.
32.12.692	Eligible Rollover Distributions.
32.12.694	Retiree Benefits.
32.12.710	Appointment of Board of Trustees.
32.12.720	Information to be made available to Board of Trustees.
32.12.730	Duties and Powers of Board of Trustees.
32.12.740	Notices from Participants.
32.12.750	Qualified Domestic Relations Orders.
32.12.810	Investment of Plan Assets.
32.12.820	Records.
32.12.830	Administrative Powers of the Trustee.
32.12.840	Allocated Earnings Account.
32.12.850	Organization and Operation of Office of Office of Trustee.
32.12.860	Advice of Counsel.
32.12.870	Appointment, Resignation, Removal, and Substitution of Trustee.
32.12.910	Amendments to Plan and Trust.
32.12.920	Termination of Plan and Trust.
32.12.930	Merger, Consolidation or Transfer of Assets or Liabilities of the Plan.
32.12.940	Distribution Upon Termination of Trust.
32.12.1010	Test to Control.
32.12.1020	Severability.

- 32.12.1030** **Jurisdiction.**
- 32.12.1040** **Forum Selection.**
- 32.12.1050** **Expenses.**
- 32.12.1060** **Rules of Construction.**

Section 32.12.00E Editor's note to Article 32.12

For state law as to authority of city to adopt an employee pension system by ordinance, see NDCC, § 40-05-01 (70).

Section 32.12.100 Definitions

When used in this Plan, the following words will have the following meanings, unless the context clearly indicates otherwise:

- 1.1 Actuarial Equivalent or Actuarially Equivalent means a payment or a series of payments that has the same present value computed on the basis of the following interest rate and mortality assumptions:
 - [i] Interest Rate: 8% pre-retirement and 6% post-retirement
 - [ii] Mortality Table: 1983 IAM with six year setback
 - [iii] Notwithstanding any other Plan provisions to the contrary, the applicable mortality table used for purposes of adjusting any benefit or limitation under Code Section 415(b)(2)(B), (C) or (D) and the applicable mortality table used for purposes of satisfying the requirements of Code Section 417(e) is the table described in Revenue Ruling 2001-62. For any distribution with an annuity starting date on or after the effective date of this Section and before the adoption date of this Section, if application of the amendment as of the annuity starting date would have caused a reduction in the amount of any distribution, such reduction is not reflected in any payment made before the adoption date of this section. However, the amount of any such reduction that is required under Code Section 415(b)(2) must be reflected actuarially over any remaining payments to the Participant.
- 1.2 Beneficiary means the person who, under this Plan becomes entitled to receive a Participant's interest upon the Participant's death.
- 1.3 Board of Trustees means the Board designated by the Plan in Article VII whose duties and responsibilities are specified in this Plan.
- 1.4 City means the City of Dickinson, North Dakota.
- 1.5 Code means the Internal Revenue Code of 1986, as it presently is constituted, as it may be amended, or any successor statute of similar purpose.
- 1.6 Compensation, for all pay received after December 31, 1999, means all pay received by an Employee during the calendar year, except special bonuses or severance upon separation, mileage or any other form of expense reimbursement. Compensation includes only compensation that is actually paid to the Participant during the calendar year.

Compensation, for all pay received on or before December 31, 1999, means the annual salary approved for each Employee in the city's annual budget for the calendar year. Compensation does not include longevity pay, overtime, mileage, or

any other form of additional compensation. Compensation includes only compensation that is actually paid to the Participant during the calendar year.

Pursuant to Code Section 401(a)(17), Compensation taken into account for all purposes under this Plan shall not exceed [A] \$200,000 (as adjusted by the Secretary of the Treasury for cost of living increases each year) for any Plan Year ending prior to January 1, 1996, and [B] \$150,000 (as adjusted by the Secretary of the Treasury for cost of living increases each year) for any Plan Year beginning on or after January 1, 1996. If Compensation is determined for any period of fewer than 12 months, the Code Section 401(a)(17) limitation will be multiplied by a fraction, the numerator of which is the number of calendar months in the determination period and the denominator of which is 12.

Increase in limit. The annual compensation of each Participant taken into account in determining benefit accruals for any Plan Year beginning after December 31, 2001, shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with Code Section 401(a)(17)(B). Annual Compensation means Compensation during the Plan Year or such other consecutive 12-month period over which Compensation is otherwise determined under the Plan (the determination period). For purposes of determining benefit accruals in a Plan Year beginning after December 31, 2001, compensation for any prior determination period shall not exceed \$200,000 (as adjusted) for any Plan Year ending before January 1, 1996; \$150,000 for any determination period beginning in 1996; \$160,000 for any determination period beginning in 1997, 1998, or 1999; and \$170,000 for any determination period beginning in 2000 or 2001.

Cost-of-living adjustment. The \$200,000 limit on annual compensation in the preceding paragraph shall be adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Code. The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year.

If Compensation for any prior determination period is taken into account in determining a Participant's benefits for the current Plan Year, the Compensation for such prior determination period is subject to the applicable Annual Compensation Limit in effect for that prior period. For this purpose, in determining benefits in Plan Years beginning on or after January 1, 1989 and before January 1, 1996, the Annual Compensation Limit in effect for determination periods beginning before that date is \$200,000. For this purpose, in determining benefits in Plan Years beginning after January 1, 1996, the Annual Compensation Limit in effect for determination periods beginning before that date is \$150,000 as adjusted by the Secretary of the Treasury for increases in the cost of living in accordance with Code Section 401(a)(17)(B).

Unless otherwise provided under the Plan, the Accrued Benefit of each Section 401(a)(17) Employee under the Plan will be the sum of:

- [a] the Participant's Accrued Benefit as of December 31, 1995, frozen in accordance with Reg. ' 1.401(a)(4)-13, and
- [b] the Participant's Accrued Benefit determined under the benefit formula applicable for the Plan Year beginning on or after January 1, 1996, as applied to the Participant's Years of Benefit Service credited

for Plan Years beginning on or after January 1, 1996, for purposes of benefit accruals.

A Section 401(a)(17) employee means an employee whose current accrued benefit as of a date on or after the first day of the first Plan Year beginning on or after January 1, 1996, is based on compensation for a year beginning prior to the first day of the first Plan Year beginning on or after January 1, 1996 that exceeded \$150,000.

For limitation years beginning after December 31, 1997, Compensation paid or made available during such limitation year shall include any elective deferral (as defined in Code section 402(g) (3)), and any amount which is contributed or deferred by the employer at the election of the employee and which is not includable in the gross income of the employee by reason of Code sections 125 or 457.

For limitation years beginning on and after January 1, 2001, Compensation paid or made available during such limitation year shall include elective amounts that are not includable in the gross income of the employee by reason of Code Section 132(f)(4) (qualified transportation benefits).

1.7 Earnings means for Employee contributions, [A] interest credited at the rate of 5% compounded annually from the date contributions are made to January 1, 2000, or, if earlier, to the date payment of benefits begins; and [B] interest compounded annually and credited at a rate that reflects the annual net earnings amount realized on investment of the Plan assets from the later of January 1, 2000 or the date contributions are made to the date payment of benefits begin.

1.8 Effective Date means April 1, 1969. The effective date of this amended and restated Plan is January 1, 1989 for provisions required by law to be effective as of that date or as of the date required if an earlier effective date is required or as of the date specified for any provision for which a different effective date is specified.

1.9 Employee means every permanent and probationary regular full-time Employee who is a police department employee.

“Leased Employee” means any person (other than an Employee of the City) who has performed services of the City (or for the City and related persons as determined under Code Section 414(n)(6)) under an agreement between the City and the leasing organization on a substantially full-time basis for a period of at least one year, and, prior to 1997, such services were of a type historically performed by the Employees in the business field of the City, or, if after 1996, such services are performed under the primary direction or control by the City.

1.10 Final Average Compensation means the average of a Participant's Total Basic Compensation for five years that will result in the highest average.

1.11 Normal Retirement Age means the date a Participant attains age 55 and has completed fifteen (15) years of Service, or has completed thirty (30) years of service.

1.12 Plan Year means the 12-consecutive-month period commencing on January 1 and ending on December 31 of each year. The Plan Year will also be the fiscal (taxable) years of the Trust.

1.13 Retirement means the last day of the month in which a Participant attains either his Normal Retirement Age or Early Retirement Age and benefits under the Plan are immediately payable.

- 1.14 Surviving Children means the surviving issue of a Participant or a child or children legally adopted by a Participant.
- 1.15 Surviving Spouse means the Spouse to whom the Participant was married on the date of the participant's termination of employment.
- 1.16 Total Basic Compensation means the annual salary approved for each Employee in the City's annual budget for the Plan Year. Total Basic Compensation does not include longevity pay, overtime, mileage or any other form of additional compensation.
- 1.17 Total Disability means to become, while in the service of the City, mentally or physically, totally and permanently disabled from discharging his duties.
The question of Total and Permanent Disability shall be determined by the Trustees upon the concurring report of at least two out of three physicians designated by the Board of Trustees to make a complete physical examination of the Employee. The Trustees shall have the power at any time to cause an Employee of the police department, retired by reason of physical or mental Disability, to be brought before it and again examined by three physicians appointed by the Board of Trustees to discover whether such retired Employees shall be continued on the disability pension roll. Such Employees shall be entitled to reasonable notice that such examination will be made and to be present at the time of the taking of any testimony pertinent thereto.
Thereafter the police department shall submit to the Trustees annual notice of employment status and medical examination not later than October 1 of each year. Such annual notice shall include the employment status and medical status of Employee in such form as the Trustees shall determine.
Failure to comply with the requirements set forth shall result in suspension on any disability retirement benefit payments until such time as this section is complied with, or shall result in the termination of disability retirement benefits.
- 1.18 Trustee means the individual(s) or institution appointed by the Board of Trustees as Trustee(s).
- 1.19 Year of Service means each Plan Year and fractional year of employment with the City for which a Participant receives credit under the terms of this Plan. (Ord. No. 1266, § 1.; Ord. No. 1290 § 1.)

Section 32.12.210 Participation.

Except as otherwise provided in the special rules below, an Employee will become a Participant as of the date the Employee becomes an Employee. The following special rules apply:

- [a] If a Plan is amended, any Employee who is already a Participant on the date this amended and restated Plan is adopted will continue to participate.
- [b] If an Employee who is not a member of an eligible class of Employees becomes a member of an eligible class, the Employee will participate immediately.
- [c] Upon reemployment, or upon returning to employment in a category of Employees that is eligible to participate, a former Participant or former Employee will become a Participant immediately.

No individual who has become a Participant prior to April 18, 2006, shall become a Participant after April 17, 2006. Notwithstanding the foregoing if an individual was a Participant in the City of Dickinson Pension Plan, such individual shall be eligible to become a Participant under this Plan if the individual meets the eligibility requirements of this Plan.

(Ord. No. 1266, § 1; Ord. No. 1313 §2.)

Section 32.12.220 Transfers.

If an individual who has been employed by the City of Dickinson becomes an Employee of the police department and a Participant in this Plan, the benefit accrued by the Participant under the City of Dickinson Pension Plan will be transferred to this Plan. If a Participant in this Plan becomes a City of Dickinson employee and ceases to be a police department employee and becomes a Participant in the City of Dickinson Pension Plan, the Participant's benefit accrued under this Plan shall be transferred to the City of Dickinson Pension Plan.

The employee shall be subject to the terms of the Pension Plan, including its obligations and benefits, in which the employee was enrolled at the time of retirement. (Ord. No. 1266, § 1; Ord. No. 1382 §2)

Section 32.12.230 Termination of Participation.

Participation will cease upon complete distribution of a Participant's vested Accrued Benefit and forfeiture of the Participant's non-vested Accrued Benefit. (Ord. No. 1266, § 1.)

Section 32.12.240 City's Obligations.

Neither participation in the Plan nor the City's adoption and continuance of the Plan will be deemed to constitute a contract between the City and any Employee or Participant, nor to be a consideration for, or an inducement or condition of, the employment of any person. Nothing in this Plan will be deemed to give any Employee or Participant the right to be retained in the employ of the City, or to interfere with the right of the City to discharge any Employee or Participant at any time, nor will it be deemed to give the City the right to require the Employee or Participant to remain in its employ, nor will it interfere with the right of any Employee or Participant to terminate his employment at any time. In adopting this Plan, the City does not make any representation as to the amount of the contribution that it will make for any year other than as recommended by the actuary employed by the Plan. Except insofar as the City fails to make contributions to this Plan adequate to fund the Plan on a sound actuarial basis, the City assumes no liability or responsibility for direct payment of benefits. All benefits payable under this Plan will be paid or provided solely from the Trust Fund. (Ord. No. 1266, § 1.)

Section 32.12.250 Uniformed Services Employment and Reemployment Rights Act and Family Medical Leave Act.

Notwithstanding any provision of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with Code Section 414(u). Years of Service will be credited in accordance with the Family and Medical Leave Act of 1993. (Ord. No. 1266, § 1.)

Section 32.12.310 City Contributions.

For each Plan Year, the City will pay to the Trustee the contribution determined by the City.

- [a] Cash: City Contributions must be paid in cash.
- [b] Employee Contributions: Each Employee shall be required to contribute to the Plan monthly by payroll deduction an amount equal to 5% of the Employee's monthly salary. The required Employee Contributions shall be paid by the City in lieu of payment by the Employee and therefore shall be picked up by the City and within the meaning of Code Section 414(h)(2) shall be treated as City Contributions. No Employee shall have the option of having Employee Contributions paid to the Employee instead of having the required Employee Contribution paid by the City to the Plan.
- [c] Forfeitures: City Contributions will be offset by any amounts forfeited under Section 6.5. Forfeitures will not be applied to increase benefits provided by the Plan unless benefits are increased by appropriate amendments. Forfeitures arising under this Plan will only be applied to reduce the contributions of the City.
- [d] Actuarial Determination: For each Plan Year, the City will make contributions to the Plan in an amount adequate to fund the benefits provided in this Plan on a sound actuarial basis. The amount of contributions to the Plan will be recommended by the actuary employed by the Plan and determined by the City.
- [e] Time and Form of Payment: City and Employee Contributions for any Plan Year may be paid to the Trustee in one sum or in several installments on any date or dates the City elects.
- [f] Exclusive Benefit: This Plan and Trust has been established for the exclusive benefit of the Participants and their Beneficiaries. The corpus or income of the Trust may not be diverted to or used for other than the exclusive benefit of the Participants or their Beneficiaries. All contributions by the City to the Plan are conditional upon the qualification of the Plan.

At the City's written request to the Trustee specifying the assets to be liquidated to make the payment, any contribution made by the City because of a mistake of fact may be returned to the City within one year of the contribution.

In the event that the Commissioner of Internal Revenue determines that the Plan is not initially qualified under the Internal Revenue Code, then at the City's written request to the Trustee specifying the assets to be liquidated to make the payment, any contribution made incident to that initial qualification by the City must be returned to the City within one year after the date the initial qualification is denied. (Ord. No. 1266, § 1.)

Section 32.12.410 Years of Service.

Years of Service will be credited as follows:

- [a] Years of Service will be credited for the period beginning on the date the Employee becomes an Employee and ending on the date the Employee terminates employment. Fractional Years of Service will be credited by counting 1/12 of a Year of Service for each complete calendar month of the fractional year.
- [b] Years of Service will be credited for period of military duty for participants covered by and who have complied with the Uniformed Services Employment and Reemployment Rights Act of 1994, as set forth in Chapter 43 of Title 38 United States Code, as currently set forth and as may hereafter be amended.
- [c] Except as otherwise provided in subsection [b], Service will not be credited for any period during which an Employee is on leave of absence. Service will be credited for periods of vacation or sick leave duly granted.
- [d] For purposes of vesting under Section 4.2 but not for purposes of benefit accrual under Section 6.1 Years of Service will be credited for any period during which an Employee or former Employee is employed by the City of Dickinson but is not a police department employee.
- [e] Service will not be credited for any period of employment for which the Employee received a distribution under Section 6.5.
- [f] For purposes of vesting and for purposes of determining eligibility for retirement but not for purposes of benefit accrual years of employment in an eligible class of employees will be counted as Years of service. (Ord. No. 1266, § 1.)

Section 32.12.420 Vesting of Participants’ Benefits.

A Participant’ s Accrued Benefit will become fully vested and non-forfeitable if he attains Normal Retirement Age while employed by the City. A Participant’ s Employee contributions plus interest will be fully vested at all times. A Participant shall be vested in his Accrued Benefit attributable to Employer contributions in accordance with the following schedule:

Completed	Percentage of Benefit
Years of Service	That is Vested
Fewer than 4	0%
4 or more but fewer than 5	25%
5 or more but fewer than 6	50%
6 or more but fewer than 7	75%
7 or more	100%

(Ord. No. 1266, § 1.)

Section 32.12.430 Plan Termination.

Upon the termination or partial termination of this Plan, the rights of all affected Participants to the benefits accrued as of the date the termination or partial termination (to the extent funded as of such date) will be fully vested. (Ord. No. 1266, § 1.)

Section 32.12.510 Limitation on Allocations Definitions.

For purposes of this section 5.1, the following terms will be defined as follows:

- [a] Annual Benefit: A retirement benefit under the Plan that is payable annually in the form of a straight life annuity. Except as provided below, a benefit payable in a form other than a straight life annuity must be adjusted to an Actuarially Equivalent straight life annuity before applying the limitations of this Article. The interest rate assumption used to determine Actuarial Equivalence will be the greater of the interest rate specified in the Plan for purposes of computing Actuarially Equivalent benefits or five percent. The Annual Benefit does not include any benefits attributable to Employee contributions or rollover contributions, or the assets transferred from a qualified plan that was not maintained by the City.
- [b] Compensation: Compensation shall mean all of a Participant's Wages paid by the City as defined in section 3401(a) for the purposes of income tax withholding at the source.
For purposes of applying the limitations in this Article V, Compensation for the Limitation Year is Compensation actually paid or includible in gross income during the Limitation Year.
- [c] Defined Benefit Dollar Limitation: The "defined benefit dollar limitation" is \$160,000, as adjusted, effective January 1 of each year, under section 415(d) of the code in such manner as the Secretary shall prescribe, and payable in the form of a straight life annuity. A limitation as adjusted under section 415(d) will apply to limitation years ending with or within the calendar year for which the adjustment applies.
- [d] Limitation Year: The Plan Year.
- [e] Maximum Permissible Amount: : The "maximum permissible benefit" is the lesser of the defined benefit dollar limitation or the defined benefit compensation limitation (both adjusted where required, as provided in [1], and, if applicable, in [2] or [3] below.
- [1] The Defined Benefit Dollar Limitation.
- [2] If the Participant has fewer than 10 years of participation in the Plan, the defined benefit dollar limitation 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. In the case of a Participant who has fewer than 10 years of service with the Company, the defined benefit compensation limitation shall be multiplied by a fraction, (i) the numerator of which is the number of years (or part thereof) of service with the Company and (ii) the denominator of which is 10.
- [3] If the benefit of a Participant begins prior to age 62, the defined benefit dollar limitation applicable to the Participant at such earlier age is an annual benefit payable in the form of a straight life annuity beginning at the earlier age that is the actuarial equivalent of the defined benefit dollar limitation applicable to the Participant at age 62 (adjusted under [2] above, if required). The defined benefit dollar limitation applicable at an age prior to age 62 is determined as the lesser of (i) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using the interest rate and mortality table (or other tabular factor) specified in section 1.1 of

the Plan and (ii) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using a 5 percent interest rate and the applicable mortality table as defined in section 1.1 of the Plan. Any decrease in the defined benefit dollar limitation determined in accordance with this paragraph [3] shall not reflect a mortality decrement if benefits are not forfeited upon the death of the Participant. If any benefits are forfeited upon death, the full mortality decrement is taken into account.

[4] If the benefit of a Participant begins after the Participant attains age 65, the defined benefit dollar limitation applicable to the Participant at the later age is the annual benefit payable in the form of a straight life annuity beginning at the later age that is actuarially equivalent to the defined benefit dollar limitation applicable to the Participant at age 65 adjusted under [2] above, if required). The actuarial equivalent of the defined benefit dollar limitation applicable at an age after age 65 is determined as (i) the lesser of the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using the interest rate and mortality table (or other tabular factor) specified in section 1.1 of the Plan and (ii) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using a 5 percent interest rate assumption and the applicable mortality table as defined in section 1.1 of the Plan. For these purposes, mortality between age 65 and the age at which benefits commence shall be ignored. Benefit increases resulting from the increase in the limitations of section 415(b) of the Code shall be provided to all employees participating in the Plan who have one hour of service on or after the first day of the first limitation year ending after December 31, 2001.

Sections 5.1[e][3] and 5.1[e][4] shall not apply in the case of a "qualified participant" as defined in Section 415(b)(2)(H). For purposes of this Section 5.1[e] only, "qualified participant" means a participant in the Plan with respect to when the Years of Service used to determine the amount of benefit under the Plan includes at least 15 years of service of the Participant as either [x] a full-time employee of a police or fire department or [y] as a member of the United States Armed Forces.

[f] Year of Participation: The Participant shall be credited with a Year of Participation (computed to fractional parts of a year) for each accrual computation period for which the following conditions are met: (1) The Participant is credited with a Year of Service, and (2) the Participant is included as a Participant under the eligibility provisions of the Plan for at least one day of the accrual computation period. If these two conditions are met, the portion of a Year of Participation credited to the Participant shall equal the amount of benefit accrual service credited to the Participant for that accrual computation period. A Participant who is permanently and totally disabled within the meaning of Code Section 415(c)(3)(C)(i) for an accrual computation period shall receive a Year of Participation with respect to that period. In addition, for a Participant to receive a Year of Participation (or part thereof) for an accrual computation period, the Plan must be established no later than the last day of such accrual computation period.

In no event will more than one Year of Participation be credited for any 12-month period.

- [g] Effect on Participants: Benefit increases resulting from the increase in the limitations of section 415(b) of the Code will be provided only to active Participants who are credited with an hour of service on or after the first day of the first limitation year ending after December 31, 2001. (Ord. No. 1266, § 1.)

Section 32.12.520 Limitations on Benefits.

This section applies regardless of whether any Participant is or has ever been a Participant in another qualified plan maintained by the City. The Annual Benefit otherwise payable to a Participant at any time will not exceed the Maximum Permissible Amount. If the benefit of the Participant would otherwise accrue in a Limitation Year would produce an Annual Benefit in excess of the Maximum Permissible Amount, the rate of accrual will be reduced so that the Annual Benefit will equal the Maximum Permissible Amount. If a Participant has made nondeductible Participant contributions under the Plan, the amount of those contributions is treated as an Annual Addition to a qualified defined contribution plan, for purposes of this Article. The limitation in this section is deemed satisfied if the Annual Benefit payable to a Participant is not more than \$1,000 multiplied by the Participant's number of Years of Service or parts of Years of Service (not to exceed 10) with the City. (Ord. No. 1266, § 1.)

Section 32.12.610 Accrued Benefit.

- [a] Accrued Benefit of a Participant Retiring On Or After January 1, 2000. The Accrued Benefit of a Participant retiring on or after January 1, 2000 will be an annual benefit payable in monthly payments and commencing at Normal Retirement Age and payable for the life of the Participant that is computed as follows, or, if greater, the Accrued Benefit, calculated under (b) below:
- [1] 2.3 percent of Final Average Compensation multiplied by the number of full and remaining fractional Years of Service completed by the Participant; plus
 - [2] Any Benefit Accrued by the Participant under and transferred to the Plan from the City of Dickinson Pension Plan and Trust.
- [b] Accrued Benefit of a Participant Retiring On Or After November 1, 1992 and before January 1, 2000: The Accrued Benefit of a Participant retiring on or after November 1, 1992 and before January 1, 2000, will be a monthly benefit commencing at Normal Retirement Age and payable for the life of the Participant that is computed as follows:
- [1] For each full Year and completed month of Service a Participant will be credited with a monthly benefit equal to one-twelfth of three and seven-tenths percent of his Total Basic Compensation applicable to the period; plus
 - [2] Any Benefit Accrued by the Participant under and transferred to the Plan from the City of Dickinson Pension Plan and Trust.
- [c] Accrued Benefit of A Participant Retiring Before November 1, 1992: The accrued benefit of a Participant who retired before November 1, 1992 will be increased as of November 1, 1992 to a monthly benefit commencing at the later of November 1, 1992

or Normal Retirement Age and payable for the life of the Participant that is computed as follows:

- [1] For each full Year and completed month of Service before April 1, 1969 a Participant will be credited with a monthly benefit equal to one-twelfth of one and eighty-five one hundredths percent of his basic salary rate effective January 1, 1986 or, if earlier, the date the Participant terminated employment; plus
- [2] For each full Year and completed month of Service after April 1, 1969 a Participant will be credited with a monthly benefit equal to one-twelfth of three and three-tenths percent of his Total Basic Compensation applicable to the period. (Ord. No. 1266, § 1.)

Section 32.12.620 Retirement Benefits.

- [a] General Rules: A Participant's Accrued Benefit will be distributable upon death, Total Disability, Retirement, Termination of Employment, or at the Required Beginning Date.
- [b] Normal Retirement: On the last day of the month in which a Participant attains his Normal Retirement Age, he may retire voluntarily or continue working subject to any mandatory retirement policy of the City otherwise permitted by law. Any Termination of Employment on or after the Participant attains Normal Retirement Age will be deemed to be a retirement. Until actual retirement a Participant may continue to participate in the Plan. Normal Retirement Benefit payments will begin as of the later of the Participant's Normal Retirement Age or the date the Employee retires but not later than the Required Beginning Date. There will be no actuarial adjustment for late commencement of payment for benefits commencing later than Normal Retirement Age.
- [c] Early Retirement: An Employee who terminates employment with the City after completing at least 15 Years of Service may elect Early Retirement benefits. Payment of the Actuarial Equivalent of the Participant's Accrued Benefit payable at Normal Retirement Age may commence as of the date of the Participant's Early Retirement. Alternatively, the Participant may elect in writing filed with the Board of Trustees not later than the Participant's Early Retirement Date, to defer the commencement of Actuarially Equivalent benefit payments to a date later than the date of the Participant's retirement but not later than the Participant's Normal Retirement Date.
- [d] Disability: An Employee who terminates employment with the City because of Total and Permanent Disability before attaining Early or Normal Retirement Age shall be paid Disability Retirement Benefits commencing as of the date of termination of employment. Disability Retirement Benefits shall be equal to the benefit accrued as of the date of disability retirement payable at Normal Retirement Age without actuarial reduction for the commencement of payment before Normal Retirement Age and without accrual of any additional benefit or Years of Service after the date of disability retirement but shall not be less than \$50 per month. Any Disability Retirement Benefit payable under this Plan shall be reduced by the amount of any payment from the Workers Compensation Bureau made to the Employee because of the Total and Permanent Disability.

If the benefits received from the Workers Compensation Bureau exceed the Benefit the Employee would be entitled to under the Plan, no pension shall be paid from

the Plan to the Employee during the time the Workers Compensation payments are being made. If settlement of State Workers Compensation payment shall be in a lump sum, such sum shall be apportioned in accordance with the determination of the State Workers Compensation Bureau over a period of years for purposes of the offset against Plan benefits.

Payment of Disability Retirement Benefits will cease upon determination by the Board of Trustees that the Total and Permanent Disability has terminated. Any Normal or Early Retirement benefits that subsequently become payable will be reduced by the actuarial value of the Disability Retirement Benefit actually paid.

[e] Required Beginning Date. The Required Beginning Date is the April 1 of the calendar year following the calendar year in which occurs the later of [1] the date the Participant attains age 70 1/2, or [2] the date the Participant retires from employment with the Employer.

[f] Minimum Benefit: The benefits paid under this Section 6.2 will not in any event be less than the total amount of the Participant's Employee contributions plus Earnings. (Ord. No. 1266, § 1.)

Section 32.12.630 Form of Benefit.

The normal form of benefit under this Plan is a single life annuity for the life of the Participant. Effective for all Participants who commence benefits prior to August 1, 2010, the optional forms of benefit under this Plan are [a] a single sum cash payment that is the Actuarial Equivalent of the normal form of benefit; [b] the Actuarial Equivalent 100 percent benefit for both the Participant and surviving spouse, and [c] single life annuity for the life of the participant with 120 payments guaranteed. Effective for all Participants who commence benefits on or after August 1, 2010, the optional forms of benefit under this Plan are [a] the Actuarial Equivalent of the normal form of benefit, paid in 9 equal annual installments; [b] the Actuarial Equivalent 100 percent benefit for both the Participant and surviving spouse, and [c] single life annuity for the life of the participant with 120 payments guaranteed. The value of the amounts payable to the Participant and all beneficiaries in the ten-year certain form shall be the actuarial equivalent of the amounts payable to the Participant in the normal form. A Participant's Allocated Earnings Account balance shall be distributable as of the valuation date next following termination of employment in a single sum cash payment. (Ord. No. 1266, § 1; Ord. No. 1280 § 1, Ord. No. 1384 § 5)

Section 32.12.640 Required Distributions.

[a] All distributions required under this section will be determined and made in accordance with the proposed Regulations under Code Section 401(a)(9), including the minimum distribution incidental benefit requirement of Section 1.401(a)(9)-2 of the proposed regulations.

[b] The vested Accrued Benefits of a Participant must be distributed or begin to be distributed no later than the Participant's Required Beginning Date.

[c] As of the first Distribution Calendar Year, distributions, shall be made in the form of an annuity for the life of the Participant.

[d] Payments under the annuity must satisfy the following requirements:

- [1] the annuity distributions must be paid in periodic payments made at intervals not longer than one year:
 - [2] the distribution period must be over a Life described in Section 401(a)(9)(A)(ii);
 - [3] the Life Expectancy for purposes of determining the period certain shall be determined without recalculation of Life Expectancy; and
 - [4] payments must either be non-increasing or increase only to provide cash refunds of employee contributions upon the Participant's death; or because of an increase in benefits under the Plan.
- [e] The "Life Expectancy" is calculated using the attained age of the Participant (or Designated Beneficiary) as of the Participant's (or Designated Beneficiary's) birthday in the applicable calendar year. The applicable calendar year will be the first distribution calendar year. If annuity payments commence before the Required Beginning Date, the applicable calendar year is the year such payments commence. Life Expectancy and Joint and Last Survivor Expectancy are computed by use of the expected return multiples in Tables V and VI of Section 1.72-9 of the Income Tax Regulations. (Ord. No. 1266, § 1.)

Section 32.12.650 Termination of Employment.

A Participant with no vested interest in Accrued Benefits attributable to City Contributions who terminates employment for any reason other than death or Total Disability before qualifying for immediate Early or Normal Retirement Benefits will receive a refund of Employee Contributions made and not previously distributed plus Earnings. Payment shall be made in a single sum within 90 days after the date the Participant terminates employment.

A Participant with a vested interest in Accrued Benefits attributable to City Contributions who terminates employment for any reason other than death or Total Disability before qualifying for immediate Early or Normal Retirement Benefits will receive payment of benefits as follows:

- [a] If the present value of the Participant's vested Accrued Benefit attributable to Employee Contributions and city Contributions is \$10,000 or less, the present value of the vested Accrued Benefit will be paid in a single sum cash payment as soon as administratively feasible after the Participant's termination of employment.
- [b] If the present value of the Participant's vested Accrued Benefit attributable to Employee Contributions and City Contributions exceeds \$10,000 and the Participant terminates employment prior to August 1, 2010, the Accrued Benefit will be paid under section 6.2 commencing as of the last day of the month in which the Participant attains age 55, or if the Participant so elects in writing within 30 days after the Participant's termination of employment, the present value of the Participant's vested Accrued Benefit will be paid in a single sum cash payment as soon as administratively feasible after the Participant's termination of employment.

The present value of the Participant's vested Accrued Benefits payable under this paragraph shall not be less than the Employee Contributions made by the Participant plus Earnings.

The Participant's non-vested Accrued Benefit will be forfeitable upon the distribution of the Participant's vested Accrued Benefit or upon refund of the

Participant's Employee Contributions plus interest if the Participant has no vested Accrued Benefit attributable to City Contributions or, if there is no distribution before Early or Normal Retirement Age, then upon the Participant's termination of employment.

- [c] If the present value of the Participant's vested Accrued Benefit attributable to Employee Contributions and City Contributions exceeds \$10,000 and the Participant terminates employment on or after August 1, 2010, the Accrued Benefit will be paid under Section 620 commencing as of the last day of the month in which the Participant attains age 55. (Ord. No. 1266, § 1; Ord. No. 1309 § 2, Ord. No. 1384 § 6)

Section 32.12.660 Death Benefits.

- [a] **Surviving Spouse and Children:** Upon the death of an active Employee or of a retired Participant benefits shall be paid to the Surviving Spouse or surviving children, if any, as follows:
 - [i] If a retired Participant has elected the normal form of benefit upon retirement, a monthly benefit shall be paid to the Surviving Spouse for life in an amount equal to 2/3 of the Participant's accrued benefit as of the date of death but such benefit shall not be less than \$50 per month.
 - [ii] If a retired Participant has elected the optional form of benefit of the Actuarial Equivalent 100 percent for both Participant and Surviving Spouse at retirement, a monthly benefit will be paid to the Surviving Spouse of 100% of the benefit payable continuing for the remaining life of the survivor.
 - [iii] A monthly benefit will be paid to the Surviving Spouse of an active Employee for life in an amount equal to the monthly benefit that would have been paid to the Surviving Spouse if the Participant had retired the day before his death with actuarially equivalent benefits payable in the form of an annuity for the joint life expectancy of the Participant and the Participant's spouse with 100% of the benefit payable during their joint lives continuing for the remaining life of the survivor. Alternatively, a Surviving Spouse of an active Employee who dies prior to August 1, 2010, may elect in writing within 90 days after the Participant's death to have the benefit payable under this subsection [iii] payable in an actuarially equivalent single sum payment. Any benefit payable under this subsection [iii] shall be reduced by the actuarially equivalent value of any benefits paid to the Participant before death under Section 6.2, 6.3, or 6.5.
 - [iv] The Surviving Spouse of a retired Participant shall receive the form of benefit as selected by the Participant upon Retirement. If the retired Participant elected at retirement the single sum cash payment, no benefit will be due the Surviving Spouse.
 - [v] A benefit of \$10 per month shall be paid on behalf of each surviving child until the child attains the age of 18 to the parent of the surviving child or if no parent is surviving then to the guardian of the surviving child.
 - [vi] If a retired participant has elected the optional form of benefit of the single life annuity with 120 payments guaranteed, the guaranteed monthly benefit will be paid to the participant's beneficiary for the remainder of the 120 month payment term.

[vii] If a retired participant has elected to receive 9 equal annual installments, and such participant dies before receiving all 9 payments, any remaining annual installment payments will be paid to the participant's beneficiary

[b] Minimum Benefit: The benefits paid under this Section 6.6 to a Participant's Surviving Spouse and Children will not be less than the total amount of the Participant's Employee Contributions plus Earnings, reduced by any benefits paid to the Participant under Section 6.2 or Section 6.5. Any remainder payable under this subsection will be paid to the estate of the Participant. (Ord. No. 1266, § 1; Ord. No. 1280 § 2, Ord. No. 1384 § 7.)

Section 32.12.670 Designation of Beneficiary.

Each Participant will designate a Beneficiary to receive any aggregate minimum benefits payable under section 6.8 upon his death on the form prescribed by and delivered to the Board of Trustees. The Participant will have the right to change or revoke a designation at any time by filing a new designation or notice of revocation with the Board of Trustees.

If a Participant fails to designate a Beneficiary before his death, or if no Designated Beneficiary survives the Participant, the Board of Trustees will direct the Trustee to pay any benefit first to his Surviving Spouse, if any, or if none, then to his personal representative. If no personal representative has been appointed, and if the benefit does not exceed the minimum amount for which an estate or inheritance tax release or appointment of a personal representative is required under applicable state law the Board of Trustees may direct the Trustee to pay the benefit to such person as may be entitled to it under the laws of the state in which the Participant was domiciled at the date of his death. The Board of Trustees may require such proof of right or identity as he may deem necessary. If the benefit exceeds the minimum amount for which an estate or inheritance tax release or appointment of a personal representative is required under applicable state law, the Board of Trustees may direct the Trustee to hold the benefits in a segregated account until such time as the Trustee is notified that a personnel representative has been appointed. (Ord. No. 1266, § 1.)

Section 32.12.680 Minimum Aggregate Benefits.

In no event shall the total benefits payable under this Plan in respect to a given Participant be less than the total contributions made by such Participant plus Earnings. If the total aggregate benefit paid to the Participant and to his eligible Surviving Spouse and/or Children would otherwise be less than the total contributions made by the Participant, the difference shall be paid to the Participant's named beneficiary or if none then to the Participant's estate. (Ord. No. 1266, § 1.)

Section 32.12.690 Other Distribution Rules.

[a] Spendthrift Trust Provisions: Except for benefits payable under Section 7.5 in accordance with the applicable requirements of a Qualified Domestic Relations Order, all amounts payable by the Plan will be paid only to the person entitled to them, all such payments will be paid directly to such person and not to any other person or corporation and no benefit or interest under this Plan will be subject to assignment or alienation, either voluntarily or involuntarily. Payments will not be subject to the claim of any

creditor of a Participant, nor may payments be taken in execution by attachment or garnishment or by any other legal or equitable proceedings. No person will have any right to alienate, anticipate, commute, pledge, encumber, or assign any payments or benefits that he may expect to receive, contingently or otherwise, under this Plan, except the right to designate a Beneficiary or Beneficiaries.

[b] Participant Or Beneficiary Whose Whereabouts Are Unknown: In the case of any Participant or Beneficiary whose whereabouts are unknown, the Board of Trustees will notify the Participant or Beneficiary at his last known address by certified mail with return receipt requested advising him of his right to a pending distribution. If the Participant or Beneficiary cannot be located in this manner, the Board of Trustees may direct the Trustee to forfeit the Accrued Benefit. If a claim for forfeited Accrued Benefits is subsequently made by the Participant or Beneficiary, the amount forfeited, unadjusted for earnings or interest, will be restored.

[c] Minors or Persons of Unsound Mind. If the person designated to receive payments is a minor or a person of unsound mind, whether formally so adjudicated or not, the Trustee, upon receipt of instructions from the Board of Trustees, may make payment to the person's legal representative or legal guardian, and the receipt by any such person will be a full and complete discharge of the Plan for any sums paid.

[d] Suspension of Benefit Payments: If a retired Participant is re-employed by the City for the performance of light duty, payment of benefits under this Plan will be suspended until the Participant terminates employment, provided, however, that the President of the Board of City Commissioners may assign any Employee of the Police Department, retired under the provisions of this Article, to the performance of light duties in the City. The salary received by any such person so assigned for light duty plus the pension received under the terms and provisions of this Article shall not exceed the regular pay for such duties.

[e] Withdrawals: No Participant may withdraw any part of his Accrued Benefit while employed.

(Ord. No. 1266, § 1.)

Section 32.12.692 Eligible Rollover Distributions.

This Section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election, a Distributee may elect, at the time and in the manner prescribed by the Plan 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.

[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:

[1] 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 years or more; or

[2] any distribution to the extent such distributions is required under Code Section 401(a)(9); and

- [3] 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).
- [4] Modification of definition of eligible rollover distribution to include after-tax employee contributions. For purposes of the direct rollover provisions in section 6.10 of the Plan, 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 paid 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.

[b] **Eligible Retirement Plan:** An Eligible Retirement Plan is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), or a qualified trust described in Code Section 401(a) that accepts the Distributee's Eligible Rollover Distribution. However, in the case of an Eligible Rollover Distribution to the Surviving Spouse, an Eligible Retirement Plan is an individual retirement account or individual retirement annuity.

- [1] Modification of definition of eligible retirement plan. For purposes of the direct rollover provisions in section 6.10 of the Plan, an eligible retirement plan shall also mean an annuity contract described in section 403(b) of the Code and an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in section 414(p) of the Code.

[c] **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 Code Section 414(p), are Distributees with regard to the interest of the spouse or former spouse.

[d] **Direct Rollover:** A Direct Rollover is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee. (Ord. No. 1266, § 1.)

Section 32.12.694 Retiree Benefits.

As of January 1, 2000, the monthly retirement benefit payable to each Eligible Retiree will be increased by 6%. For purposes of this paragraph only, an Eligible Retiree is a Participant or the surviving spouse of a Participant who is receiving as of January 1, 2000 monthly retirement benefits from this Plan. (Ord. No. 1266, § 1.)

Section 32.12.710 Appointment of Board of Trustees.

The Board of Trustees for management of the Police Employees' Pension Plan shall consist of the Chief of Police, the City Administrator, the President of the Board of City Commissioners and two persons elected by and from the Police Department Employees who are currently participating. No Employee shall be eligible for election until he or she has completed eight Years of Service. The election shall be held on the second Tuesday in September. Each elected member shall serve for a term of four years; with one member being elected at each biennial election. The term of elected members shall commence on January 1 of the year following the election of said member. The President of the Board of City Commissioners shall be the President and the City Administrator shall be the Treasurer of the Board. The faithful performance of the duties of the Treasurer shall be secured by his official bond as the City Administrator. Such trustees shall receive no compensation for the services as members of the Board. Such Board shall have such powers and perform such duties as may now or hereafter be provided by law and by the Plan. (Ord. No. 1266, § 1.)

Section 32.12.720 Information to be made available to Board of Trustees.

The City will provide the Board of Trustees with access to information the Board of Trustees requires. If required information is not available from the City's records, the Board of Trustees may obtain the information from the Participants. The Board of Trustees and the City may rely on and will not be liable for any information that an Employee provides either directly or indirectly. (Ord. No. 1266, § 1.)

Section 32.12.730 Duties and Powers of Board of Trustees.

[a] General: The Board of Trustees will have full discretionary authority to decide all questions arising in the administration, interpretation, and application of the Plan and Trust, including all questions relating to eligibility and distributions, except as may be reserved under this Plan to the City. The Board of Trustees from time to time will direct the Trustee concerning the payments to be made out of the Plan assets pursuant to this Plan.

[b] Employment of Advisers and Persons To Carry Out Responsibilities: The Board of Trustees may employ one or more persons to render advice with regard to any responsibility the Board of Trustees has under the Plan and may employ one or more persons (including the Trustee) to carry out any of its responsibilities under the Plan.

[c] Keeping of Records: The Board of Trustees will keep such records as may be necessary or advisable in his judgment for the administration of this Plan and Trust. (Ord. No. 1266, § 1.)

Section 32.12.740 Notices from Participants.

Whenever provision is made in the Plan that a Participant may exercise any option or election or designate any Beneficiary, the action of the Participant will be evidenced in writing on the forms provided by the Board of Trustees, if a form is provided, signed by the Participant and delivered to the Board of Trustees in person or by mail. Written notice will not be effective until received by the Board of Trustees. (Ord. No. 1266, § 1.)

Section 32.12.750 Qualified Domestic Relations Orders.

[a] Definitions:

- [1] Alternate Payee means any Spouse, former Spouse, child, or other dependent of a Participant who is recognized by a Qualified Domestic Relations Order as having a right to receive all, or a portion of, the benefits payable under a Plan with respect to the Participant.
- [2] Earliest Retirement Age means, for purposes of this section only, the earlier of [i] the date the Participant is entitled to a distribution under the Plan or [ii] the later of the date the Participant attains age 50 or the earliest date on which the Participant could begin receiving benefits under the Plan if the Participant separated from service.
- [3] Qualified Domestic Relations Order means an order that creates or recognizes the existence of an Alternate Payee's right to, or assigns to an Alternate Payee the right to, receive all or a portion of the benefits otherwise payable to a Participant under the Plan. A Qualified Domestic Relations Order includes any judgement, decree, or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or marital property rights to a Spouse, Former Spouse, child, or other dependent of a Participant, and is made pursuant to a State domestic relations law (including a community property law). To qualify, the domestic relations order must:
 - [A] clearly state the name and last known mailing address of the Participant and the name and mailing address of each Alternative Payee covered by the order;
 - [B] clearly state the amount or percentage of the Participant's benefits to be paid by the Plan to each Alternate Payee, or the manner in which the amount or percentage is to be determined;
 - [C] clearly state the number of payments or period to which the order applies;
 - [D] identify each Plan to which the order applies;
 - [E] not require the Plan to provide any type or form of benefits, or any option, not otherwise provided under the Plan;
 - [F] not require the Plan to provide increased benefits (determined on the basis of actuarial value); and
 - [G] not require the payment of benefits to an Alternate Payee that are required to be paid to another Alternate Payee under another order previously determined to be a Qualified Domestic Relations Order.

[b] Payment of Benefits Under A Qualified Domestic Relations Order: Section 6.10[a] will not apply to prevent payment of benefits to an Alternate Payee under the terms of a Qualified Domestic Relations Order. In the case of any distribution before a Participant has separated from service, a Qualified Domestic Relations Order will not fail to meet the requirements of subparagraph [E] above solely because the Order requires that payment of benefits be made to an alternate payee [A] on or after the date the Participant attains the Earliest Retirement Age, [B] as if the Participant had retired on the date on which such payment is to begin under the order, and [C] in any form in which benefits may be paid under the Plan to the Participant (other than in the form of a Qualified Joint and Survivor Annuity with respect to the Alternate Payee and his

subsequent spouse). A person who is an Alternate Payee under a Qualified Domestic Relations Order will be considered a Beneficiary under the Plan.

[c] Procedures: The Board of Trustees will establish reasonable procedures for determining the qualified status of a domestic relations order. The procedures:

- [1] will be in writing;
- [2] will provide that each person specified in a Domestic Relations Order as entitled to payment of Plan benefits will be notified of the procedures promptly upon receipt of the Order by the Plan; and
- [3] will permit an Alternate Payee to designate a representative for receipt of copies of notices that are sent to the Alternate Payee. Within a reasonable period of time after receipt of an order, the Board of Trustees will determine whether the order is a Qualified Domestic Relations Order and notify the Participant and each Alternate Payee of the determination. During any period in which the issue of whether a domestic relations order is a Qualified Domestic Relations order is being determined, the Board of Trustees will segregate, in a separate account, any otherwise distributable amounts that would have been payable to the Alternate Payee during the period if the order had been determined to be a Qualified Domestic Relations Order. If, within 18 months the order is determined not to be a Qualified Domestic Relations order or the issue as to whether the order is a Qualified Domestic Relations Order is not resolved, then the Board of Trustees may pay the segregated amounts to the person or persons who would have been entitled to those amounts if there had been no order. If a plan fiduciary acts in accordance with the fiduciary responsibility provisions of the Plan, then the Plan's obligation to the Participant and each Alternate Payee is discharged to the extent of any payment made. (Ord. No. 1266, § 1.)

Section 32.12.810 Investment of Plan Assets.

The duty of the Trustee is to hold in trust the funds it receives. The Trustee in accordance with the instructions of the Board of Trustees, will have exclusive authority and discretion to manage and control the assets of the Plan and to manage, invest, and reinvest the Trust Fund and the income from it under this Article, without distinction between principal and income. The Trustee will make payments and distributions from the Trust Fund in accordance with the terms of this Plan and instructions of the Board of Trustees. The Trustee will be responsible only for sums that it actually receives as Trustee plus net gains on such amounts. The Trustee will have no duty to collect any sums from the Board of Trustees, City, or from a Participant. (Ord. No. 1266, § 1.)

Section 32.12.820 Records.

The Trustee will keep full records of its administration of the Plan assets. (Ord. No. 1266, § 1.)

Section 32.12.830 Administrative Powers of the Trustee.

Subject to the requirements imposed by law, the Trustee will have all powers necessary or advisable to carry out the provisions of this Plan and Trust and all inherent, implied, and

statutory powers now or subsequently provided by law, including specifically the power to do any of the following:

- [a] to invest or reinvest any and all money or property of any description at any time held by the Trustee and constituting assets of the Plan, without previous application to, or subsequent ratification of, any court, tribunal or commission, or any federal or state governmental agency, in real property and all interests in real property, in bonds, notes, debentures, mortgages, commercial paper, preferred stocks, common stocks, or other securities, rights, obligations, or property, real or personal, including shares or certificates of participation issued by regulated investment companies or regulated investment trusts, shares or units of participation in qualified common Trust Funds, in qualified pooled funds, including Common Trust Funds or pooled funds maintained by the Trustee, or in pooled investment funds of an insurance Company qualified to do business in the state, group annuity contracts and with any federally insured bank or savings and loan association, and if the Trustee is a bank or similar financial institution supervised by the United States or a state, in its own deposits, savings accounts, and certificates of deposit;
- [b] to cause any securities or other property to be registered and held in its name as Trustee, or in the name of one or more of its nominees, without disclosing the fiduciary capacity, or to keep the same in unregistered form payable to bearer;
- [c] to sell, grant options to sell, exchange, pledge, encumber, mortgage, deed in trust, or use any other form of hypothecation, or otherwise dispose of the whole or any part of the Trust Fund on such terms and for such property or cash, or part cash and credit, as it may deem best; to retain, hold, maintain, or continue any securities or investments that it may hold as part of the Trust Fund for as long as it deems advisable; and generally, in all respects, to do all things and exercise each and every right, power, and privilege in connection with and in relation to the Trust Fund as could be done, exercised, or executed by an individual holding and owning such property in absolute and unconditional ownership;
- [d] to abandon, compromise, contest, and arbitrate claims and demands; to institute, compromise, and defend actions at law (but without obligation to do so); in connection with such powers, to employ counsel the Trustee deems advisable; and to exercise such powers all at the risk and expense of the Trust Fund;
- [e] to borrow money for this Trust on the terms and conditions the Trustee deems advisable, and to secure repayment by the mortgage or pledge of any assets of the Trust Fund except insurance contracts;
- [f] to vote in person or by proxy any shares of stock or rights held in the Trust Fund; to participate in and to exchange securities or other property in reorganization, liquidation, or dissolution of any corporation, the securities of which are held in the Trust Fund;
- [g] to pay any amount due on any loan or advance-made to the Trust Fund, to charge against and pay from the Trust Fund all taxes of any nature levied, assessed, or imposed upon the trust fund, and to pay all reasonable expenses and attorney fees necessarily incurred by the Trustee with respect to any of the foregoing matters; and

[h] to act pursuant to written blanket settlement authorization given by the City or the Participant on any transaction executed by the designated broker. The Trustee is authorized to honor all trade confirmations received according to the terms of the instructions relating to the conduct of business in the plan as previously provided to the designated broker. (Ord. No. 1266, § 1.)

Section 32.12.840 Allocated Earnings Account.

A separate account shall be maintained by the Trustee for Allocated Earnings of each Participant to whom earnings were allocated under plan provisions in effect prior to January 1, 1992. The assets of the trust will be valued annually at fair market value as of the last day of the Plan Year and at any other dates determined by the Board of Trustees to be appropriate. On each valuation date, the earnings and losses of the trust attributable to the Allocated Earnings Accounts will be allocated to each Participant's Allocated Earnings Account in the ratio that each Participant's Allocated Earnings Account balance bears to all such Account balances. (Ord. No. 1266, § 1.)

Section 32.12.850 Organization and Operation of Office of Office of Trustee.

The Trustee(s) may adopt the procedures deemed desirable for the conduct of its affairs and may appoint agents any of whom may be an officer or Employee of the City. Any person dealing with the Trustee(s) may rely on a certificate or memorandum signed by the Trustee, or by any one Trustee if more than one Trustee is appointed, as evidence of any action taken by the Trustee(s). (Ord. No. 1266, § 1.)

Section 32.12.860 Advice of Counsel.

The Trustee may consult with legal counsel, who may be counsel for the City or Trustee's own counsel, with respect to the meaning or construction of the Plan and Trust or Trustee's obligation or duties. The cost of any consultation will be an expense of the Plan and will be paid by the Plan unless paid by the City. The Trustee will be protected from any responsibility with respect to any action taken or omitted by it in good faith pursuant to the advice of counsel, to the extent permitted by law. (Ord. No. 1266, § 1.)

Section 32.12.870 Appointment, Resignation, Removal, and Substitution of Trustee.

The City will appoint a Trustee or Trustees, each of which will hold office until resignation or removal by the City. The Trustee may resign at any time upon 30 days' written notice to the City. The Trustee may be removed at any time by the City upon 30 days' written notice to the Trustee with or without cause. Upon resignation or removal of the Trustee, the City will appoint a successor Trustee that will have the same powers and duties as are conferred upon the Trustee appointed under this Plan. The resigning or removed Trustee will deliver to its successor Trustee all property of the Trust Fund, less a reasonable amount necessary to provide for its compensation, expenses, and any taxes or advances chargeable or payable out of the Trust Fund. If the Trustee is an individual, death will be treated as a resignation, effective

immediately. If any corporate Trustee at any time is merged, or consolidated with, or sells or transfers substantially all of its assets and business to another corporation, whether state or federal, or is reorganized or reincorporated in any manner, then the resulting or acquiring corporation will be substituted for the corporate Trustee without the execution of any instrument and without any action on the part of the City, any Participant or Beneficiary, or any other person having or claiming to have an interest in the Trust Fund or under the Plan. (Ord. No. 1266, § 1.)

Section 32.12.910 Amendments to Plan and Trust.

At any time the City may amend the Plan. An Amendment will be effective as of the date specified by the City, or if no date is specified, then on the first day of the Plan Year during which it is adopted. Except as may be permitted by regulations, no amendment to the Plan (including a change in the actuarial basis for determining optional or early retirement benefits) will be effective to the extent that it has the effect of decreasing a Participant's Accrued Benefit. (Ord. No. 1266, § 1.)

Section 32.12.920 Termination of Plan and Trust.

The City expects to continue this Plan and Trust indefinitely, but the continuance of the Plan and Trust is not assumed as a contractual obligation by the City and the right is reserved to the City to terminate this Plan and Trust in whole or part at any time. Termination of the Plan and Trust will take effect as of the date specified by the City's written notice of the termination which shall be given by the City to the Trustee and the Sponsor. At any time after termination of the Plan and Trust, but not before receipt of instructions from the Board of Trustees, the Trustee may distribute the interest of any Participant to him under Article VII. The Board of Trustees will file such terminal reports as are required. The Board of Trustees may request appropriate rulings as to qualification upon termination. Termination of this Plan and Trust by the City will not re-vest any part of the Trust Fund in the City; provided, however, that any assets that remain after the Plan is terminated and all Accrued Benefits have been paid will be returned to the City upon written notice by the City to the Trustee. (Ord. No. 1266, § 1.)

Section 32.12.930 Merger, Consolidation or Transfer of Assets or Liabilities of the Plan.

The City may merge or consolidate this Plan with any other plan and may transfer all or part of the assets or liabilities of the Plan to, or to this Plan from, any other plan. (Ord. No. 1266, § 1.)

Section 32.12.940 Distribution Upon Termination of Trust.

If the Plan Trust is terminated Accrued Benefits to the extent funded will be distributed in accordance with the provisions of Article VI. (Ord. No. 1266, § 1.)

Section 32.12.1010 Test to Control.

The headings of articles and sections are included solely for convenience of reference. If any conflict between any heading and the text of this Plan and Trust exists, the text will control. (Ord. No. 1266, § 1.)

Section 32.12.1020 Severability.

If any provision of this Plan and Trust is illegal or invalid for any reason, such illegality or invalidity will not affect the remaining provisions, on the contrary, the remaining provisions will be fully severable, and this Plan and Trust will be construed and enforced as if the illegal or invalid provisions never had been inserted in this agreement. (Ord. No. 1266, § 1.)

Section 32.12.1030 Jurisdiction.

This Plan will be construed and administered under the laws of the State of North Dakota when the laws of that jurisdiction are not in conflict with federal substantive law. (Ord. No. 1266, § 1.)

Section 32.12.1040 Forum Selection.

Any claims or disputes involving the Plan shall be litigated only in North Dakota and to the extent not preempted by federal law, North Dakota statutory and common law shall control during litigation. The litigants expressly waive any right they have to institute or conduct litigation in any other forum or location. (Ord. No. 1266, § 1.)

Section 32.12.1050 Expenses.

The expenses of the Plan and Trust shall be paid from Plan assets unless, in its discretion the City elects to pay some or all of the Plan expenses. (Ord. No. 1266, § 1.)

Section 32.12.1060 Rules of Construction.

The masculine gender will include the feminine, and the singular will include the plural. (Ord. No. 1266, § 1.)

Article 32.16 Volunteer Fire Department Pension Plan

Sections:

32.16.010	Dickinson Volunteer Fire Department Pension Plan created
32.16.020	Definitions
32.16.030	Contributions by city; pension fund and investment of same
32.16.040	Board of trustees
32.16.050	Plan interpretation and intent
32.16.060	Receipt of gifts, grants, devises or bequests
32.16.070	Actuarial valuations
32.16.080	Eligible membership in plan
32.16.090	Exemption of benefits from debts
32.16.100	Pension fund
32.16.110	Procedure for disbursement from fund
32.16.120	Fiscal year and annual reports
32.16.130	Accrued monthly pension benefits
32.16.140	Regular benefit payments under plan and vesting
32.16.150	Optional benefit payment under plan
32.16.160	Severability and inclusiveness
32.16.170	Uniformed Services Employment and Reemployment Rights Act
32.16.180	Required Distributions
32.16.190	Eligible Rollover Distribution
32.16.200	Limitation on Annual Addition Definitions
32.16.220	Exclusive Benefit

Section 32.16.010 Dickinson Volunteer Fire Department Pension Plan created

A pension plan for members of the Dickinson Volunteer Fire Department is hereby created to be effective on and after July 1, 1979. (Ord. No. 783, § 1.)

Section 32.16.020 Definitions

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

Actuarial Equivalent or Actuarially Equivalent means a payment or a series of payments that has the same present value computed on the basis of the following interest rate and mortality assumptions:

- (i) Interest Rate: 8% pre-retirement and 6% post-retirement.
- (ii) Mortality Table: 1983 IAM with six year setback.

Notwithstanding any other Plan provisions to the contrary, effective for any distribution with an annuity starting date on or after December 31, 2002, the applicable mortality table used for purposes of adjusting any benefit or limitation under Code Section 415(b) (2) (B), (C) or (D) and the applicable mortality table used for purposes of satisfying the requirements of Code Section 417(e) is the table described in Revenue Ruling 2001-62. For any distribution with an annuity starting date on or after the effective date of this Section and before the adoption date of this Section, if application of the amendment as of the annuity starting date would have caused a reduction in the amount of any distribution, such reduction is not reflected in any payment made

before the adoption date of this section. However, the amount of any such reduction that is required under Code Section 415(b) (2) must be reflected actuarially over any remaining payments to the Member.

Department. The Dickinson Volunteer Fire Department as created, established, maintained and improved by the city.

Member. Any person who is a member of the Dickinson Volunteer Fire Department as determined by written bylaws, regulations or rules of such department, which written bylaws, regulations or rules shall be approved by the board of city commissioners, and who have been certified to the city auditor by the chief of the Dickinson Fire Department as provided in section 32.16.080.

Normal Retirement Age means the date a member attains the age 60 or completes 30 certified years of service, whichever occurs first.

Plan or The Plan or This Plan. The Dickinson Volunteer Fire Department Pension Plan as created by the city and as thereafter may be amended by ordinance. This Plan is intended to qualify under Code Section 401(a) as a defined benefit pension plan. This Plan is also intended to be a governmental plan under Code Section 414(d).

A "qualifying year" shall mean a year in which the affected member of the Dickinson Volunteer Fire Department obtains at least 65% of the available points toward the Dickinson Volunteer Fire Department Retirement Program, as provided in the Dickinson Volunteer Fire Department Constitution and By-laws. (Ord. No. 783, § 1; Ord No. 1119 § 1; Ord. No. 1136 § 1; Ord. No. 1342 § 1; Ord No. 1375 §1)

Section 32.16.030 Contributions by city; pension fund and investment of same

The board of city commissioners shall annually appropriate sufficient funds to maintain the pension fund herein created in accordance with the most recent actuarial valuation. The proceeds of such fund shall be placed in a pension fund to be invested by the board of trustees. The funds may be invested in interest-bearing bonds of the United States or the state, bonds or warrants of any county, township or municipal corporation of the state which constitute the general obligations or contingent general obligations of the issuing tax authority or investments with any federally insured bank or savings and loan association. All securities in which monies belonging to the fund are invested shall be deposited with the treasurer of the board of trustees for safekeeping. The board may also invest all or part of such funds in other investments by selecting a funding agent and establishing an investment agreement contract regarding such funds. This contract shall authorize the funding agent to hold and invest such funds for the board, and such funds shall be placed for investment only with a firm whose primary endeavor is money management and only after a trust agreement or contract has been executed.

The board of trustees shall have the power, in selecting a funding agent or agents and establishing an investment agreement contract regarding such surplus fund, to delegate any such administrative functions necessary, including, but not limited to, funds established, issuance of checks and payments to retirees and establishing such custodial accounts as necessary in furtherance hereof. By delegation of such authority, the board of trustees in no way transfers such powers and such duties or responsibilities as may now or hereafter be provided by law which are nondelegable. (Ord. No. 783, § 1; Ord. No. 910, § 4.)

Section 32.16.040 Board of trustees

The plan herein created shall be administered by a board of trustees which is hereby established. Such board shall be composed of the chief of the fire department, who shall be the president of the board, the president of the board of city commissioners or such other member of the board of city commissioners as appointed by said president, who shall be the vice-president of the board, the city administrator, or some other person from the city department of administration or finance as appointed by the board of city commissioners, who shall be the secretary and treasurer of the board, and one member elected from and by the membership of the Dickinson Volunteer Fire Department, who shall serve for a three year term and may serve consecutive terms thereafter. The City attorney and the Finance Director shall be ex-officio non-voting members of the board of trustees. The faithful performance of the duties of the treasurer shall be secured by the official bond of the city administrator. Such trustees shall receive no compensation for their services as members of the board and they shall have such powers and perform such duties as may now or hereafter be provided by law for trustees generally and specifically as provided in this chapter. The board of trustees shall meet at least annually and at such other times as called by the president. (Ord. No. 783, § 1; Ord. No. 1179 § 1.)

Section 32.16.050 Plan interpretation and intent

The board of trustees shall be authorized to adopt such regulations as may be deemed necessary, consistent with the terms and provisions of this plan, to aid in the interpretation or operation of the plan. (Ord. No. 783, § 1.)

Section 32.16.060 Receipt of gifts, grants, devises or bequests

The board of trustees may accept by gift, grant, devise or bequest any money or real or personal property or other thing of value for the benefit of this pension fund. When received, such property shall become a part of such fund. (Ord. No. 783, § 1.)

Section 32.16.070 Actuarial valuations

This pension plan shall have an actuarial valuation performed at intervals not to exceed five years. Such valuations shall be performed by an enrolled actuary within the context of the Employee Retirement Income Security Act of 1974 (ERISA). (Ord. No. 783, § 1.)

Section 32.16.080 Eligible membership in plan

Each regular volunteer member in good standing of the Dickinson Volunteer Fire Department shall be a member of the pension plan herein created and entitled to participate in the plan as provided in this chapter. The Dickinson Volunteer Fire Department shall provide and determine by written bylaws, rules or regulations approved by the board of city commissioners the various criteria for determining who shall be a member in good standing. Within fifteen days after December 31 of each year, the chief of the fire department shall certify to the city auditor the names of all persons who were members in good standing during the preceding fiscal year ending on December 31 of each year. During either the first year or the last year of membership, a period of seven months or more in good standing shall constitute sufficient credit for a full year. (Ord. No. 783, § 1; Ord. No. 1119, § 2.)

Section 32.16.090 Exemption of benefits from debts

All pensions paid under the provisions of this pension system shall not be subject to assignment and shall be exempt from liability for debts of the person to or on account of whom such pension is paid and shall not be subject to seizure upon execution or other process. (Ord. No. 783, § 1.)

Section 32.16.100 Pension fund

The pension fund established hereunder shall be used for the payment of benefits under this system and any related expenses of operation. No funds held hereunder shall inure to any other purpose. (Ord. No. 783, § 1.)

Section 32.16.110 Procedure for disbursement from fund

All benefits paid and all monies drawn from the pension fund shall be upon warrants authorized by the board of trustees and issued by the treasurer of such board. Such warrants shall designate the name of the payee and the purpose for which payment is made. (Ord. No. 783, § 1.)

Section 32.16.120 Fiscal year and annual reports

The first fiscal year shall be from January 1 to December 31. On or prior to January 31 of each year hereafter the treasurer shall prepare an annual report showing the receipts and disbursements for the preceding fiscal year and the present status of the funds invested. Such report shall be made to the board of trustees, the board of city commissioners and shall be filed in the office of the city auditor. (Ord. No. 783, § 1; Ord. No. 1119 § 3.)

Section 32.16.130 Accrued monthly pension benefits

At any time a member's accrued monthly pension benefit shall be equal to the sum of:

- (a) Three dollars multiplied times the number of completed qualifying years of service from first date of service through July 1, 1991.
- (b) Five dollars multiplied times the number of completed qualifying years of service from July 1, 1991 through December 31, 1998.
- (c) Ten dollars multiplied times the number of completed qualifying years of service from January 1, 1999 through December 31, 2006.
- (d) Fifteen dollars multiplied times the number of completed qualifying years of service after December 31, 2006. (Ord. No. 783, § 1; Ord. No. 1209, § 1; Ord. No. 1342 § 2.)

Section 32.16.140 Regular benefit payments under plan and vesting

Hired or Rehired on or after January 1, 2010. A member who is hired or rehired on or after January 1, 2010, and who is entitled to benefit under this plan will be eligible to receive a monthly pension for life commencing at normal retirement, or upon termination of the employment, if later, in an amount equal to such member's vested benefit determined as follows:

Vesting % Factor to be

<u>Completed Years of Employment</u>	<u>Multiplied times the Accrued Benefit to Determine the Vested Benefit</u>
Less than 5	0%
5	50%
6	60%
7	70%
8	80%
9	90%
10 or more	100%

If a member is employed until age sixty, such member will be one hundred percent vested in the accrued benefit regardless of the years of employment. It is the responsibility of a member or his authorized representative to make application to the board of trustees in order to initiate the payment of any benefit under this plan.

Notwithstanding anything to the contrary, upon the termination or partial termination of this Plan, the rights of all affected members to the benefits accrued as of the date the termination or partial termination (to the extent funded as of such date) will be fully (100%) vested.

Hired or Rehired Prior to January 1, 2010. A member who is hired or rehired prior to January 1, 2010, and who is entitled to benefit under this plan will be eligible to receive a monthly pension for life commencing at normal retirement age, or upon termination of employment, if later, in an amount equal to such member's vested benefit determined as follows:

<u>Completed Years of Employment</u>	<u>Vesting % Factor to be Multiplied times the Accrued Benefit to Determine the Vested Benefit</u>
Less than 1	0%
1	10%
2	20%
3	30%
4	40%
5	50%
6	60%
7	70%
8	80%
9	90%
10 or more	100%

If a member is employed until age sixty, such member will be one hundred percent vested in the accrued benefit regardless of the years of employment. It is the responsibility of a member or his authorized representative to make application to the board of trustees in order to initiate the payment of any benefit under this plan.

Notwithstanding anything to the contrary, upon the termination or partial termination of this Plan, the rights of all affected members to the benefits accrued as of the date the termination or partial termination (to the extent funded as of such date) will be fully (100%) vested.

(Ord. No. 783 § 1; Ord. No. 1119 § 4. Ord. No. 1377 §1)

Section 32.16.150 Optional benefit payment under plan

A member who terminates employment as a volunteer member of the Dickinson Fire Department will be entitled to a benefit determined in accordance with section 32.16.140. With the approval of the board of trustees, a member may waive rights to the regular benefit payments and elect instead an optional benefit which will be of actuarial equivalent value and may be of the following forms: (a) A single sum cash settlement, or (b) A monthly pension for life, commencing at an earlier age than normal retirement age. If a member has ten certified years of service or less, he shall receive a single sum cash settlement, as soon as administratively feasible after the member's termination of employment.

Upon the death of an active or of a retired member, benefits shall be paid to the surviving spouse or surviving children, if any, as follows:

- (1) A monthly benefit shall be paid to the surviving spouse for life in an amount equal to the member's accrued benefits as of the date of death.
- (2) A benefit of \$10 per month shall be paid on behalf of each surviving child until the child attains the age of 18 to the parent of the surviving child or if no parent is surviving then to the guardian of the surviving child. (Ord. No. 783, § 1; Ord. No. 1119 § 5; Ord. No. 1209, § 2.)

Section 32.16.160 Severability and inclusiveness

This article as created by Ordinance No. 783, and as may thereafter be amended by ordinance, shall constitute all of the provisions of the Dickinson Volunteer Fire Department Pension Plan. No other benefits, express or implied, shall be provided or allowed, except as expressly provided in this article by ordinance. In the event that any parts or sections of this article shall be declared to be invalid or unconstitutional, the remaining parts and sections of this article shall remain valid and in full force and effect. (Ord. No. 783, § 1.)

Section 32.16.170 Uniformed Services Employment and Reemployment Rights Act

Effective for veterans reemployed on or after December 12, 1994, and notwithstanding any provision of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with Code Section 414(u). (Ord. No. 1375 §4)

Section 32.16.180 Required Distributions

[a] The Required Beginning Date is the April 1 of the calendar year following the calendar year in which occurs the later of (1) the date the Participant attains age 70-1/2, or (2) the date the Participant retires from employment with the City.

[b] All distributions required under this section will be determined and made in accordance with the Regulations under Code Section 401(a)(9), including the minimum distribution incidental benefit requirement of Code Section 401(a)(9)(G). Effective with respect to distributions made on or after January 1, 2003 and prior to January 1, 2005, all required distributions under this Section were determined in accordance with a reasonable and good faith interpretation of the requirements of Code Section 401(a)(9).

Effective with respect to distributions made on or after January 1, 2005, all distributions required under this section will be made in accordance with the final Regulations under Code Section 401(a)(9) issued on April 17, 2002 and June 15, 2004, notwithstanding any provision to the contrary.

[c] The vested Accrued Benefits of a Member must be distributed or begin to be distributed no later than the Member's Required Beginning Date.

[d] As of the first Distribution Calendar Year, distributions shall be made in the form of an annuity for the life of the Member.

[e] Payments under the annuity must satisfy the following requirements:

(1) the annuity distributions must be paid in periodic payments made at intervals not longer than one year:

(2) the distribution period must be over a Life described in Section 401(a) (9) (A) (ii);

and

(3) payments must either be non-increasing or increase only to provide cash refunds of employee contributions upon the Member's death; or because of an increase in benefits under the Plan.

[f] The following rules shall apply to any distribution with an annuity starting date prior to January 1, 2005. The "Life Expectancy" is calculated using the attained age of the Member (or Designated Beneficiary) as of the Member's (or Designated Beneficiary's) birthday in the applicable calendar year. The applicable calendar year will be the first distribution calendar year. If annuity payments commence before the Required Beginning Date, the applicable calendar year is the year such payments commence. Life Expectancy and Joint and Last Survivor Expectancy are computed by use of the expected return multiples in Tables V and VI of Section 1.72-9 of the Income Tax Regulations.

The following rules shall apply to any distribution with an annuity starting date on or after January 1, 2005. Unless the Member's spouse is the sole Designated Beneficiary, the period certain for the single life annuity with 120 payments guaranteed commencing during the Member's lifetime may not exceed the applicable distribution period for the Member under the Uniform Table set forth in Section 1.401(a) (9) -9, Q&A-2 of the Regulations for the calendar year that contains the annuity starting date. If the annuity starting date precedes the calendar year in which the Member reaches age seventy (70), the applicable distribution period for the Member is the distribution period for age seventy (70) under the Uniform Table set forth in Section 1.401(a)(9)-9, Q&A-2 of the Regulations plus the excess of seventy (70) over the age of the Member as of the Member's birthday in the calendar year that contains the annuity starting date. If the Member's spouse is the Member's sole Designated Beneficiary, the period certain for the single life annuity with 120 payments guaranteed may not exceed the longer of the Member's applicable distribution period (determined as described in the preceding sentence) or the joint life and last survivor expectancy of the Member and the Member's spouse as determined under the Joint and Last Survivor Table set forth in section 1.401(a)(9)-9, Q&A-3 of the Regulations using the Member's and Spouse's attained ages as of the Member's and Spouse's birthdays in the calendar year that contains the annuity starting date.

[g] If a Member dies after distribution of the Member's interest begins in the form of an annuity meeting the requirements of this section, the remaining portion of the

Member's interest (if any) will continue to be distributed over the remaining period over which distributions commenced.

- [h] If a Member dies before distributions begin, the benefit provided to the Member's surviving spouse or surviving children pursuant to Section 32.16.150 shall begin by the December 31 of the calendar year immediately following the calendar year in which the Member died. (Ord No. 1375 §5)

Section 32.16.190 Eligible Rollover Distribution

This Section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election, a distributee may elect, at the time and in the manner prescribed by the Plan 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.

[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:

- [1] 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 years or more; or
- [2] any distribution to the extent such distributions is required under Code Section 401(a) (9); and
- [3] the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to Employer securities).

[b] Eligible Retirement Plan: An eligible retirement plan is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), or a qualified trust described in Code Section 401(a) that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse of a member, an eligible retirement plan is an individual retirement account or individual retirement annuity.

[c] Distributee: A distributee includes a member or former member. In addition, the member's or former member's surviving spouse and the member's or former member's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p), are distributees with regard to the interest of the spouse or former spouse.

[d] Direct Rollover: A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

Section 7: Paragraph (a) of Section 32.16.190 entitled "Eligible Rollover Distributions" is hereby amended and re-enacted as follows effective for Plan Years beginning on or after January 1, 2000 and prior to January 1, 2002:

[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:

- [1] 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 years or more; or
- [2] any distribution to the extent such distributions is required under Code Section 401(a)(9);
- [3] any hardship distribution described under Code Section 401(k)(2)(B)(i)(IV) that is made after December 31, 1999;
- [4] the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to Employer securities).

Section 8: Section 32.16.190 entitled "Eligible Rollover Distributions" is hereby amended and re-enacted as follows effective for Plan Years beginning on or after January 1, 2002: Section 32.16.190 Eligible Rollover Distributions.

This Section applies to distributions made on or after January 1, 2002. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election, a distributee may elect, at the time and in the manner prescribed by the Plan 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.

[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:

- [1] 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 years or more; or
- [2] any distribution to the extent such distributions is required under Code Section 401(a)(9);
- [3] any hardship distribution; and
- [4] the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).

[b] Employee After-Tax Contributions. For purposes of the direct rollover provisions in this section of the Plan, 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 includable in gross income. However, such portion may be paid 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 includable in gross income and the portion of such distribution which is not so includable.

[c] Eligible Retirement Plan: An Eligible Retirement Plan is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), a plan described in Code Section 403(a) or an annuity contract

described in Code Section 403(b), or a qualified trust described in Code Section 401(a) that accepts the distributee's eligible rollover distribution, or an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in Code Section 414(p).

[d] Distributee: A Distributee includes a member or former member. In addition, the member's or former member's surviving spouse and the member's or former member's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p), are distributees with regard to the interest of the spouse or former spouse.

[e] Direct Rollover: A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee. (Ord. No. 1375 §6)

Section 32.16.200 Limitation on Annual Addition Definitions

Section 32.16.220 Exclusive Benefit

Article 32.20 City of Dickinson Defined Contribution Plan

Sections:

32.20.100 Defined Contribution Plan

Section 32.20.100 Defined Contribution Plan

Effective as of April 18, 2006, the City establishes a new, tax qualified, defined contribution plan for the benefit of eligible employees. The details of the City of Dickinson Defined Contribution Plan are set forth in a Plan document entitled “City of Dickinson, North Dakota Defined Contribution Retirement Plan”, which is adopted herein by reference, together with its First Amendment of City of Dickinson, North Dakota, Retirement Savings Plan (2006 Statement), Second Amendment of City of Dickinson, North Dakota, Retirement Savings Plan (2006 Statement), and Third Amendment of City of Dickinson, North Dakota, Retirement Savings Plan (2006 Statement).

In general, the City of Dickinson Defined Contribution Plan provides as follows; provided, however, that in the event of any discrepancy between the following and the Plan document, the Plan document shall control:

[a] Each City employee who has never been a Participant in either the City of Dickinson Police Employee’s Pension Plan or the City of Dickinson Pension Plan shall be eligible to become a Participant in the new Defined Contribution Plan after meeting the eligibility requirements of the new Plan. Each such employee hired as regular, full-time, employee shall become a Participant as of April 18, 2006 or, if later, upon the employee’s hire. Each other such employee shall become a Participant after the employee has both: (i) completed 1,000 hours of service for the City in the year following the employee’s date of hire (or any subsequent Plan Year); and (ii) attained age 21.

[b] Upon commencement of participation, each such Participant, as a condition of employment with the City, shall contribute five percent (5%) of his or her Recognized Compensation to this Plan. These required contributions are designated employee contributions. Notwithstanding that designation, however, these employees contributions will be picked up by the Employer within the meaning of Code § 414(h) (2). Such required employee contributions for a calendar month shall be delivered to the Trustee for deposit in the Fund not later than fifteen (15) days after the end of that calendar month. No other Participant contributions will be required or permitted.

[c] In addition, the City shall contribute to the Trustee for deposit in the Fund and for crediting to the Participant’s Employer Contribution Account an amount which (when taken together with forfeitures, if any, to be reallocated as of the date of the contribution) will equal five (5%) of the Participant’s Recognized Compensation for the Plan Year.

[d] Participants will be fully (100%) vested in their own contributions (adjusted from time to time for earnings, gains and losses). Participants will vest in the City contributions (adjusted from time to time for earnings, gains and losses) after 3 years of service.

[e] Participants will be allowed, within limits, to direct the investment of their accounts in the Plan. Distributions will be made, upon proper application, in a single lump sum payment after severance from employment.

[f] A formal Plan document was adopted August 21, 2006 but is effective as of April 18, 2006. The terms used above are defined in the Plan document and the Plan document contains substantial, additional, necessary, rules and provisions. (Ord No. 1313 §3. Ord No. 1539 § 17).