



**AMENDED PENSION PLAN**  
**FOR EMPLOYEES OF**  
**CITY OF NEWARK, DELAWARE**

**AMENDED PENSION PLAN**  
**FOR EMPLOYEES OF**  
**CITY OF NEWARK, DELAWARE**

EFFECTIVE DATE: JANUARY 1, 1969

AS AMENDED BY:

ORDINANCE 71-6, JANUARY 12, 1971  
ORDINANCE 75-17, APRIL 21, 1975  
ORDINANCE 76-14, MARCH 22, 1976  
ORDINANCE 77-19, MARCH 28, 1977  
ORDINANCE 78-34, SEPTEMBER 11, 1978  
ORDINANCE 80-22, MARCH 10, 1980  
ORDINANCE 86-7, FEBRUARY 10, 1986  
ORDINANCE 87-26, AUGUST 24, 1987  
ORDINANCE 89-33, AUGUST 28, 1989  
ORDINANCE 90-5, FEBRUARY 12, 1990  
ORDINANCE 90-9, MARCH 26, 1990  
ORDINANCE 91-19, MAY 13, 1991  
ORDINANCE 91-24, AUGUST 12, 1991  
ORDINANCE 94-7, APRIL 25, 1994  
ORDINANCE 95-10, MAY 8, 1995  
ORDINANCE 97-28, OCTOBER 13, 1997  
ORDINANCE 99-27, AUGUST 23, 1999  
ORDINANCE 99-40, DECEMBER 13, 1999  
ORDINANCE 00-22, JULY 10, 2000  
ORDINANCE 05-17, JULY 11, 2005  
RESOLUTION 07-D, FEBRUARY 12, 2007  
ORDINANCE 09-30, DECEMBER 14, 2009  
ORDINANCE 11-15, SEPTEMBER 26, 2011  
ORDINANCE 12-12, MARCH 26, 2012  
ORDINANCE 12-27, OCTOBER 8, 2012  
ORDINANCE 13-02, JANUARY 28, 2013  
ORDINANCE 14-07, MARCH 24, 2014  
ORDINANCE 15-08, MARCH 23, 2015  
ORDINANCE 17-09, FEBRUARY 27, 2017  
ORDINANCE 18-06, MARCH 26, 2018  
ORDINANCE 20-25, SEPTEMBER 14, 2020  
ORDINANCE 21-26, OCTOBER 11, 2021

**TABLE OF CONTENTS**

	<u>Page</u>
ARTICLE I	Name, Effective Date, Anniversary Date and Purpose ..... 1
ARTICLE II	Definitions..... 2
ARTICLE III	Membership in the Plan ..... 14
ARTICLE IV	Normal Retirement Pension..... 15
ARTICLE V	Retirement or Death After Normal Retirement Date..... 21
ARTICLE VI	Vested Deferred Early Retirement, Total and Permanent Disability or Spouse's and Children's Pension..... 22
ARTICLE VII	Reserved ..... 30
ARTICLE VIII	Termination of Employment ..... 31
ARTICLE IX	Other Provisions with Respect to the Payment of Benefits ..... 32
ARTICLE X	Administration of the Plan ..... 36
ARTICLE XI	Benefits Not Assignable..... 38
ARTICLE XII	Certain Rights and Obligations of the City ..... 40
ARTICLE XIII	Revocation of Membership..... 43
ARTICLE XIV	Miscellaneous ..... 44
ARTICLE XV	Pension Committee..... 46

**AMENDED PENSION PLAN  
FOR EMPLOYEES OF  
CITY OF NEWARK, DELAWARE**

CITY OF NEWARK, DELAWARE does hereby adopt an Amended Pension Plan for the benefit of its employees upon the terms and conditions described herein.

ARTICLE I

Name, Effective Date, Anniversary Date and Purpose

Section 1.1. Name. The name of the Plan is "The Amended Pension Plan for Employees of the City of Newark, Delaware."

Section 1.2. Effective Date and Anniversary. The effective date of the amended plan is January 1, 1969. The plan anniversary date shall be each January 1 thereafter.

Section 1.3. Purpose. The purpose of the plan is to provide a systematic program, on an actuarially sound basis, for the retirement of the employees of the City, and under the conditions set forth therein, to provide a pension upon the retirement of an employee, the amount of which takes into account the length of service and the compensation paid by the City of Newark to such employee.

## ARTICLE II

### Definitions

When used herein, the words and phrases defined hereinafter shall have the following meaning unless a different meaning is clearly required by the context of the Plan.

Section 2.1. "Plan" shall mean "The Amended Pension Plan for Employees of the City of Newark, Delaware."

Section 2.2. "Contributions" shall mean monies paid into the pension trust fund from any one of three sources:

- (a) The City of Newark, Delaware, as approved from time to time by the City Council.
- (b) The employees eligible for participation in plan.
- (c) The State of Delaware special tax on certain gross premiums of insurance companies for the exclusive purpose of providing pension benefits to City of Newark Police and Special Police employees under Chapter 424, Volume 55, of the Laws of Delaware.

Section 2.3. "Council" shall mean the duly elected members of the City of Newark, Delaware City Council.

Section 2.4. "Trustees" shall mean the trustees appointed by the City Council which is vested with the responsibility for administration of the plan.

Section 2.5. "Employee" shall mean any person, male or female, who on or after the effective date of the amended plan is employed by the City, except that the term "employee" shall not include:

- (a) a seasonal, part-time or casual worker whose actual employment is for less than twenty (20) hours in any week or for less than five (5) months in any calendar year, or
- (b) a City Council member unless the member is also an active employee, or
- (c) a consultant on retainer or other independent contractor, or
- (d) a person who is not in the active employ of the City even though receiving payments

for services previously rendered.

Section 2.6. "Member" shall mean an employee who has satisfied the plan eligibility requirements and has approved the payroll deduction of employee contributions from his compensation. There shall be six (6) classes of members as follows:

Employees Council, hired prior to January 1, 2014, except Roylene Hunter while assigned to the position of Parking Enforcement Officer (also referred to as "E.C.") (See Section 2.23)

Exempt Employees hired by the City prior to January 1, 2012, except Chief of Police (also referred to as "Exempt") (Defined in Section 2.24)

Local 1670 (also referred to as "1670") hired prior to April 1, 2014 (Defined in Section 2.20)

Local 3919 (also referred to as "3919") hired prior to April 1, 2014 (Defined in Section 2.21)

Police - F.O.P. (also referred to as "Police") (Defined in Section 2.22), hired prior to January 1, 2021, including any former F.O.P employee promoted to Deputy Chief of Police. All eligible members as of January 1, 2021, shall be provided a one-time, irrevocable election to participate in the New FOP Plan, as defined in Section 2.31, in writing to the City Manager's office on or before fourteen (14) days have elapsed after passage of amendments related to the "New FOP Plan" by City Council. Any police member who does not make an election, will receive benefits based on the "Old Plan" which shall be the plan for Police involving benefits not part of the New FOP Plan.

Chief of Police hired by the City prior to January 1, 2012 and Roylene Hunter while assigned to the position of Parking Enforcement Officer (also referred to as "Special Police") (Defined in Section 2.24)

A member's benefits, contributions and eligibility requirements shall be based upon his or her class of membership. In the event that a member qualifies for Police and more than one (1) other class of membership during a member's period of continuous service as an employee, the benefit with respect to credited service in each membership class shall be determined separately

based upon his credited service with respect to such membership class. Otherwise, the benefit will be based upon the membership class upon termination of employment. Unless specified otherwise, a member's eligibility for benefits and vesting percentage in any membership class shall be based on his continuous service in all membership classes.

**Leave this page blank otherwise it will through off the footnote on the next page.**



Section 2.7. "Compensation" shall mean the basic annual earnings defined as annual base and longevity rates of pay (excluding any bonus, commission, overtime or other special compensation)<sup>1</sup>. Compensation which an employee has elected to defer pursuant to a deferred compensation agreement or program with the City and any contributions picked up by the City pursuant to Section 2.17 of the Plan shall be considered earned in the year in which it would have been paid were it not for the deferred compensation agreement, program or pick up of employee contributions.

Compensation in excess of one hundred fifty thousand dollars (\$150,000) or such other amount provided in the Code shall be disregarded for all purposes. Such amount shall be adjusted for increases in the cost of living in accordance with Code Section 401(a)(17)(B), except that the dollar increase in effect on January 1 of any calendar year shall be effective for the Plan Year beginning with or within such calendar year. For any short Plan Year the Compensation limit shall be an amount equal to the Compensation limit for the calendar year in which the Plan Year begins multiplied by the ratio obtained by dividing the number of full months in the short Plan Year by twelve (12).

For Plan Years beginning after December 31, 1996, for purposes of determining Compensation, the family member aggregation rules of Code Section 401(a)(17) and Code Section 414(q)(6) (as in effect prior to the Small Business Job Protection Act of 1996) are eliminated.

The Compensation of each participant taken into account in determining benefit accruals in any Plan Year beginning after December 31, 2001 shall not exceed two hundred thousand dollars (\$200,000). The two hundred thousand dollars (\$200,000) limit on Compensation shall be adjusted for cost-of-living increases in accordance with Section 401(a)(17)(B) of the Code.

---

1. The trustees have formally interpreted "basic annual earnings" to be defined as annual base and longevity rates of pay. See City Council meeting minutes - September 13, 1999.

Section 2.8. "Final Average Compensation" shall mean:

- (a) for Police employees the average of a member's compensation during thirty-six (36) month period preceding actual retirement date or earlier termination of employment, or
  - (i) for members of the Old Plan, the average of a member's compensation during thirty-six (36) month period preceding actual retirement date or earlier termination of employment: or
  - (ii) for members of the New FOP Plan, as defined in the State Plan at the time the employee terminates service, or
- (b) for Special Police and Exempt employees, the average of a member's compensation during their sixty (60) highest paid consecutive months of employment with the City.
- (c) for Local 1670, Local 3919, and Employees' Council members, the average of a member's compensation during their thirty-six (36) highest paid consecutive months of employment with the City.

In determining a member's final average compensation, all years as a member, including years as a member in other membership classes, shall be considered unless specifically excluded.

Section 2.9. "Participant" shall mean an employee who has satisfied requirements for eligibility and has approved the deduction or reduction of employee contributions from his compensation by the City except that a Police or Special Police employee for whom the State of Delaware contributions are being made shall automatically be a participant regardless of whether he has approved the deduction or reduction of employee contributions from his compensation.

Section 2.10. "Continuous Service" shall mean service as an employee of the City of Newark, Delaware, since the date of the last employment thereby. Service shall be deemed to have been continuous even though the same shall have been interrupted by an absence from employment provided that such absence shall have been due to leave of absence approved in writing, temporary layoff on account of lack of work, military service, maternity, sickness or disability, and provided that no such absence, except for military service or unpaid job-related disability, shall have been

continuous for more than one (1) year. The decision of the Pension Committee with respect to the continuous service of an employee shall be final and conclusive.

Section 2.11. "Credited Service" shall mean years and months of continuous service computed from the first day of the month coincident with or next following his date of employment. In no event shall "credited service" include the period of any approved absence which exceeds thirty (30) days, except an unpaid job-related disability, even though such absence does not interrupt continuity of service. Nor shall "credited service", include any period, except an unpaid job-related disability, during which an employee refused to contribute to the plan. Notwithstanding any provision of this plan to the contrary, accrual of benefits and service credits with respect to qualified military service will be provided in accordance with Section 414(u) of the Internal Revenue Code. This definition notwithstanding, credited service for a police member of the New FOP Plan shall be as defined in the State Plan, which may include the purchase of previous service credit with a police department of another employer. The lump sum payment referred to in the State Plan to purchase this service can consist of a combination of an after-tax payment or a direct rollover of an eligible rollover distribution from:

- (a) A qualified plan described in Code section 401(a);
- (b) An annuity contract described in Code section 403(b);
- (c) An eligible plan under Code section 457(b);
- (d) An individual retirement account or annuity described in Code section 408 that is eligible to be rollover.

Section 2.12. "Age" shall mean attained age, not age at nearest birthday.

Section 2.13. "Normal Retirement Date" shall mean the first day of the month coincident with or next following:

- (a) for a member other than a Police member or Special Police member, the later of the sixty-fifth (65th) birthday or the fifth (5th) anniversary of the member's date of participation in the Plan;

- (b) for a Special Police member, the later of the fiftieth (50th) birthday or the fifth (5th) anniversary of the member's date of participation in the Plan;
- (c) for a Police member of the Old Plan, hired prior to January 1, 1989, the earlier of (i) the later of the fiftieth (50th) birthday or the fifth (5th) anniversary of the member's date of participation in the Plan or (ii) completion of twenty (20) years of Credited Service as a contributing Police member;
- (d) for a Police member of the Old Plan, hired on or after January 1, 1989, the completion of twenty (20) years of Credited Service as a contributing Police member.
- (e) for a Police member of the New FOP Plan, the normal retirement date shall be as defined in the State Plan.

A member who is employed by the City on his Normal Retirement Date shall be 100% vested in his accrued benefit. Members with a deferred pension shall be vested in accordance with the schedule in Section 6.2 of the Plan.

Section 2.14. "Actuarial Equivalent" or "Equivalent Actuarial Value" shall mean a benefit of equal value when computed in accordance with the actuarial tables last adopted by the trustees and approved by the actuary for the plan. Effective January 1, 1986, actuarial equivalence shall be determined by using a unisex mortality table for all participants based upon ninety percent (90%) of the 1983 Group Annuity Mortality Table Male Rates and ten percent (10%) of the 1983 Group Annuity Mortality Table Female Rates, a unisex mortality table for beneficiaries based upon ten percent (10%) of the 1983 Group Annuity Mortality Table Male Rates and ninety percent (90%) of the 1983 Group Annuity Table Female Rates, and assuming the rate of investment return of eight percent (8%) compounded annually.

Section 2.15. "Actuarial Reserve Factor" shall mean the factor, based on such interest and mortality tables as the trustees shall adopt upon the advice of the Actuary for the plan, which when multiplied by the amount of the monthly pension entitlement shall determine the actuarial reserve for said pension amount beginning as of the then attained age.

Section 2.16. "Actuarial Reserve" shall mean the lump sum value, based on such interest and mortality tables as the trustees shall adopt upon the advice of the Actuary for the plan of a monthly pension payable in accordance with the provision of the plan.

Section 2.17. "Employee Contribution" shall mean a percent of a member's compensation earned by him as defined in Section 2.7 and picked up and paid by the City. The Employee Contribution shall embrace the period of time between his date of eligibility and participation, and his actual date of retirement and shall be:

- (a) for Local 1670 employees, 2.5% after June 1, 1991;
- (b) for Local 3919 employees, 2.5% after June 1, 1991;
- (c) for Employees Council members, and Exempt employees, 3.5% after April 1, 2018; 4.5% after January 1, 2019.
- (d) for Special Police members, 3.5%; after April 1, 2018; 4.5% after January 1, 2019.
- (e) for Police members of the Old Plan:
  - 1) From March 1, 1994 to June 30, 1994 - 5%.
  - 2) From July 1, 1994 to December 31, 1994 - 4.5%.
  - 3) The contribution rate during any calendar year beginning after December 31, 1994 shall be equal to the previous calendar year's actuarially recommended employer contribution rate for police employees provided that it shall not exceed six percent (6%) and that it shall not be increased or decreased by more than two percent (2%) from the previous year.
  - 4) The contribution rate during any calendar year beginning after December 31, 2006 shall be equal to the previous calendar year's actuarially recommended employer contribution rate for police employees provided that it shall not exceed seven percent (7%) and that it shall not be increased or decreased by more than two percent (2%) from the previous year.
  - 5) Effective January 1, 2007, a Police member who has accumulated a sixty-seven

and one-half percent (67.5%) Normal Retirement Pension benefit shall be allowed to cease making employee contributions. Effective April 1, 2014 each Police member who accumulates a sixty-seven-point five percent (67.5%) benefit shall make one of two irrevocable choices:

- a. Elect to freeze final average compensation and pension calculation without regard to any subsequent contractual pay increases and not remit the pension contribution, OR
- b. Elect continued final average compensation accruals and annually contribute the current employee pension contribution rate on the growth in the Police member's compensation at the time the Police member achieved the sixty-seven-point five percent (67.5%) threshold.
- c. Employees who have exceeded the sixty-seven-point five (67.5%) as of April 1, 2014 shall have a ninety (90) day period afterward to elect either Option 2.17(e)(5)(a) or Option 2.17(e)(5)(b) above. Their election shall be based on the Police member's compensation as of April 1, 2014 and the Police member's compensation when initially achieved sixty-seven-point five percent (67.5%).

- (f) for Police members of the New FOP Plan, the contribution shall be as defined in the State Plan.

For purposes of this Section, compensation shall be determined as the sum of the employee's current annual base salary and longevity pay rates. Notwithstanding the above, for Police members of the New FOP Plan, compensation shall be as defined in the State Plan.

The City shall pick up under the provision of Section 414(h) (2) of the Internal Revenue Code of 1986 and pay the contribution which the employee is required by law to make to the Plan for all compensation earned after the effective date of this section. Although the contributions shall be

treated as contributions being paid by the City in lieu of contributions by the employee in determining tax treatment under the Internal Revenue Code of 1986 and such picked up contributions shall not be includable in the gross income of the employee until such amounts are distributed or made available to the employee or his beneficiary. The employee by the terms of this Plan shall not have any option while employed to choose to receive the contributions so picked up directly and the picked-up contributions must be paid by the City to the Plan.

Employee contributions which are picked up shall be treated in the same manner and to the same extent as employee contributions made prior to the date on which employee contributions were picked up by the City.

The City shall pay the employee contributions from the same source of funds used in paying salary to the employee, by effecting an equal cash reduction in gross salary of the employee.

Section 2.18. "Credited Interest" shall be equal to four percent (4%) compound interest credited to employee contributions starting with the January 1 following the date on which they were made and ending on the first of the month coincident with or immediately preceding the date of the member's retirement, resignation, death or total and permanent disablement.

Notwithstanding the above, for Police members of the New FOP Plan, effective January 1, 2021, credited interest shall be equal to five percent (5%), or the rate applicable in the State Plan, compound interest credited to employee contributions starting with the January 1 following the date on which they were made and ending on the first of the month coincident with or immediately preceding the date of the member's commencement of benefits.

Section 2.19. The masculine pronoun, wherever used, shall include the feminine pronoun and the singular number shall include the plural number unless the context of the plan requires otherwise.

Section 2.20. "Local 1670" hereafter known as "1670", is that category of employees who hold positions in the collective bargaining unit defined and recognized by the Delaware State Department of Labor and Industrial Relations in Case No. 9 of December, 1965, and Case No. 15 of

March, 1966, as subsequently added to, subtracted from, or otherwise modified only by mutual agreement of the City of Newark and the certified exclusive bargaining unit representative which is currently the AFSCME Local 1670.

Section 2.21. "Local 3919.", hereafter known as "3919", is that category of employees who hold positions in the collective bargaining unit defined and recognized by the Delaware State Department of Labor and Industrial Relations in Case No. 9 of December, 1965, and Case No. 15 of March, 1966, as subsequently added to, subtracted from, or otherwise modified only by mutual agreement of the City of Newark and the certified exclusive bargaining unit representative which is currently the AFSCME Local 3919.

Section 2.22. "Police-F.O.P.", hereafter known as "Police", is that category of employees who hold positions in the collective bargaining unit defined and recognized by the Delaware State Department of Labor and Industrial Relations (Case No. 64) in February, 1969, as subsequently added to, subtracted from or otherwise modified only by mutual agreement of the City of Newark and the certified exclusive bargaining unit representative which is currently the Fraternal Order of Police Lodge No. 4.

Section 2.23. "Employees Council, Except Roylene Hunter While Assigned to the Position of Parking Enforcement Officers", hereafter known as "E.C.," is that category of employees who hold positions in the collective bargaining unit defined and recognized by the Delaware State Department of Labor and Industrial Relations (Case No. 104) in January, 1972, as subsequently added to, subtracted from, or otherwise modified only by mutual agreement of the City of Newark and the certified exclusive bargaining unit representative which is currently the Employees Council.

Section 2.24. "Exempt Employees, Except the Chief of Police", hereafter known as "Exempt", is that category of employees who hold positions which are not in any collective bargaining unit defined and recognized by the Delaware State Department of Labor and Industrial Relations.

Section 2.25. "Chief of Police and Roylene Hunter While Assigned to the Position of Parking Enforcement Officers", hereafter known as "Special Police", is the category of employees specifically



excluded from Section 2.22 and Section 2.23 being the Chief of Police and Roylene Hunter, while assigned to the position of Parking Enforcement Officer.

Section 2.26. “Code” shall mean the Internal Revenue Code of 1986, as amended from time to time.

Section 2.27. “Spouse (or spouse)” shall mean a person to whom a Member is legally married on the earlier of (a) the date on which the Member’s benefit commences, or (b) the date of the Member’s death. To the extent provided under a qualified domestic relations order as defined in Section 414(p) of the Code, an alternate payee shall be treated as a Spouse. Effective January 1, 2012, should a Member enter into a civil union recognized by the State of Delaware, the non-member party to said civil union shall be treated as a Spouse for all purposes under the Plan except for the purposes of Direct Rollovers as defined in Section 9.5 of the Plan or where explicitly pre-empted by Federal law.

Section 2.28. “Primary survivor” shall mean a person in the following order of priority, unless the priority is changed by the member on a form prescribed by the Trustees on file with the Trustees at the time of the member’s death:

- a. The surviving spouse, or
- b. If there is no eligible surviving spouse, a dependent child (or with the survivor’s pension divided among them in equal shares, all such children, including and resulting from a pregnancy prior to the member’s death), or
- c. If there is no eligible surviving spouse, or eligible dependent child, a dependent parent (or, with the survivor’s pension divided between them in equal shares, both such parents).
- d. If the primary survivor is the surviving spouse, such person must have been married to the deceased member:
  - (1) Prior to retirement; or
  - (2) For at least 1 year before the date of death, unless the death was the result

of an accident. Notwithstanding, the above, if the Member dies while in service or in the line of duty, the married primary survivor is not required to be married for at least a year to receive survivor benefits under Section 6.5.

Section 2.29. "Dependent" shall mean a dependent child or dependent parent for purposes of determining the primary survivor. A dependent child is a person who is unmarried and either has not attained age 18, or has attained age 18 but not age 22 and is attending school on a full-time basis, or has attained age 18 and is permanently disabled as the result of a disability which began before the dependent attained age 18. A dependent parent is the parent of a member who was receiving at least one half of the support from the member at the time of the member's death.

Section 2.30. "Mandatory Retirement Age." For a Police member who has elected to join the New FOP Plan, mandatory retirement shall be as defined in the collective bargaining agreement between the City of Newark and Fraternal Order of Police Lodge #4.

Section 2.31. "New FOP Plan." The pension plan to which a Police member, hired prior to January 1, 2021, elected to join, in writing, pursuant to the terms of Section 2.6. The terms of the New FOP Plan shall mirror those found in the Delaware County and Municipal Police/Firefighter Pension Plan (11 *Del C.* Ch. 88, as amended), referred to herein as the "State Plan", except as mutually agreed by the parties. Where the terms and benefits between the New FOP Plan and the State Plan may differ, the terms and benefits of the State Plan shall prevail, except where a term obviously does not apply, or the City makes a reasonable interpretation for administrative purposes.

## ARTICLE III

### Membership in the Plan

Section 3.1. Eligibility. Each employee on the payroll of the City of Newark shall be eligible to participate in the Plan.

An employee who is disabled or whose death is a result of his activities in the discharge of his official duties prior to becoming a member shall be considered to have been a member of the Plan from his date of employment.

Section 3.2. Duties of a Member of the Plan. An employee eligible to join the plan shall file an application on such form as is prescribed by the trustees authorizing the payroll deduction or reduction of his employee contributions and shall submit such statistical information with respect to his birthday, age, date of employment and years of service as the trustees shall request, and shall furnish such other data and sign such other documents as the trustees deem necessary or advisable.

Section 3.3. Duties of the City. The City shall notify each employee who has the right to join the plan and shall explain the rights and duties of a member of the plan. The City expects to pay the cost of the plan not paid by employee contributions or State of Delaware contributions at the time and in the manner described hereinafter.

## ARTICLE IV

### Normal Retirement Pension

Section 4.1. "New FOP Plan Retirement Pension." For Police members of the New FOP Plan, the normal retirement pension shall be as defined in the State Plan as to an ordinary service pension including the ordinary survivor's pension. Sections 4.2, 4.3 and 4.4 apply to other membership classes or Police members of the Old Plan, as applicable.

Section 4.2. Eligibility. A normal retirement pension shall be granted to each member of the plan (with the exception of any member who has not contributed to the plan but is entitled to a benefit based upon State contributions) and who retires upon attainment of normal retirement date.

Section 4.3. Amount of Annual Normal Retirement Pension. For 'Exempt' and 'E.C.' Members making employee contributions after March 31, 1995, unless an optional method of payment is elected as described in Section 4.4, the Annual Normal Retirement Pension payable monthly shall equal two and one-tenth percent (2.1%) of final average compensation multiplied by total number of years and months of Credited Service accumulated.

For a Local 3919 and Local 1670 Member making employee contributions after March 31, 1995, unless an optional method of payment is elected as described in Section 4.4, the Annual Normal Retirement Pension payable monthly shall equal two and one-tenth percent (2.1%) of final average compensation multiplied by total number of years and months of Credited Service accumulated.

Each Exempt, Local 3919 and Local 1670 Member making employee contributions shall be allowed to accrue additional credited service in lieu of the receipt of other non-pension fringe benefits. Such additional credited service shall be accrued in accordance with the provisions of Section 14.4 of this Plan.

For Special Police Members making employee contributions after March 31, 1995, unless an

optional method of payment is elected as described in Section 4.4, the annual Normal Retirement Pension payable monthly to a Special Police member shall equal two and one-tenth percent (2.1%) of final average compensation multiplied by the total number of years and months of Credited Service accumulated. For Police Members making employee contributions, unless an optional method of payment is elected as described in Section 4.4, the annual Normal Retirement Pension payable monthly to a Police member who retires at Normal Retirement Date shall equal the sum (a), (b), (c) and (d) where (a) is two and two-tenths percent (2.2%) of final average compensation multiplied by the total number of years and months of Credited Service accumulated prior to January 1, 1978, where (b) is two and one-quarter percent (2.25%) of final average compensation multiplied by the total number of years and months of Credited Service accumulated between January 1, 1978 and December 31, 1987, where (c) is two and one-half percent (2.5%) of final average compensation multiplied by the total number of years and months of Credited Service accumulated after December 31, 1987, and where (d) is one percent (1.0%) of final average compensation multiplied by the total number of years and months of Credited Service, in excess of twenty (20) years of Credited Service, accumulated after December 31, 2006. Effective January 1, 2007, the Normal Retirement Pension of each employee shall not be allowed to exceed sixty-seven and one-half percent (67.5%). Each employee who has accumulated more than sixty-seven and one-half percent (67.5%) as of that date shall cease to accumulate additional pension credit. Each employee who accumulates a sixty-seven and one-half percent (67.5%) benefit after that date shall cease to accrue additional pension credit.

In the event that a Police member retires prior to his fifty-fifth (55th) birthday and is also entitled to an additional pension based on a separate membership class, such member shall also be entitled to receive such separate pension commencing at the same date but reduced to the benefit of actuarial equivalent value to the benefit otherwise payable at age sixty-five (65), subject to a maximum reduction of five percent (5%) for each year which his benefit commencement date precedes his sixty-fifth (65th) birthday.

For Police and Special Police members who prior to January 1, 2009, elected not to make

employee contributions, and unless an optional method of payment is elected, as described in Section 4.4, the normal retirement pension (payable monthly) to a member who retires at normal retirement date shall equal that amount, actuarially determined, which can be provided based on the member's accumulated State of Delaware contributions plus credited interest thereon.

For non-police employees who retired prior to January 1, 1969, their annual normal retirement pension payable monthly shall not be less than one thousand three hundred fifty dollars (\$1,350) plus ninety dollars (\$90) for each year of credited service in excess of fifteen (15) years (provided the member has accumulated at least fifteen (15) years of credited service).

Monthly pension benefits shall commence on the normal retirement date of the member and shall continue until the first of the month in which the retired member dies. If he has not received in pension benefits an amount equal to his employee contributions plus credited interest thereon, and presuming no optional method of payment is in effect, the balance shall be paid to the member's designated beneficiary, or in the absence thereof, his estate. For Police/Special Police members who terminate employment on or after May 14, 2019, a monthly survivor's pension shall be payable to the primary survivor equal to 50% of such person's monthly benefit upon the member's death subject to any optional method of payment elected as described in Section 4.3. If there are no primary survivors a lump sum death benefit equal to the excess, if any, of the member's employee contributions plus credited interest thereon less the aggregate benefits paid to the member and all primary survivors, shall be paid the member's designated beneficiary, or in the absence thereof, his estate.

Section 4.4. Optional Methods of Payment. In lieu of the normal retirement pension payable for the life of the member, subject to the refund of employee contributions, a member may elect, at the time and in the manner prescribed by the Trustees, to receive:

- (a) a joint and survivor pension of equivalent actuarial value in accordance with any one of the following options:
  - 1) a reduced pension payable to, and during the lifetime of, the retired member with the provision that after his death such reduced pension shall continue to

be paid to, and during the lifetime of, the spouse of the member.

- 2) a reduced pension payable to, and during the lifetime of, the retired member with the provision that after his death a pension at the rate of three-fourths ( $3/4$ ), two-thirds ( $2/3$ ) or one-half ( $1/2$ ) of his reduced pension shall then be paid to, and during the lifetime of, the spouse of the member.

Such election must be in writing and must be filed with the Trustees by the member at least one (1) year prior to the date on which the payments are to begin, except that if the member can furnish evidence satisfactory to the Trustees of his good health, such election may be made at any time prior to actual retirement. In any event of the death of the member prior to normal retirement date and prior to the date when such reduced payments commence, the election will be null and void and no payments will be made to the spouse.

In the event of the death of a member subsequent to his normal retirement date but prior to the date of actual retirement, the provisions of Section 4.3 shall govern. If the spouse should die after the election of an option, but before pension payments have actually commenced for the member, the election will be null and void and the member's normal pension will be paid to him as though he had made no election. If the spouse should die prior to the member but after the reduced pension payments have commenced, only the reduced pension shall continue to be paid to the member. Once an election has been made and accepted by the Trustees, it cannot be rescinded or changed without written consent of the Trustees in accordance with rules of uniform application to all members similarly situated.

- (b) a pension payable in accordance with any other option which is the actuarial equivalent of the normal retirement pension to which the member was entitled at normal retirement date, provided that such option is approved by the Trustees and the actuary for the plan. In any event such option shall provide for a benefit where at least fifty percent (50%) of the actuarial value of the total benefits is used to provide the member with a benefit payable while living.
- (c) For Police/Special Police members who terminate employment on or after May 14,

2019, a member may elect, at the time and in the manner prescribed by the Trustees and shall be irrevocable, to receive:

- (1) A member may elect to have his or her service or disability pension reduced by 2% thereby providing a survivor's pension equal to 2/3 of such reduced amount to the primary survivor at the time of the member's death.
- (2) A member may elect to have his or her service or disability pension reduced by 3% thereby providing a survivor's pension equal to 75% of such reduced amount to the primary survivor at the time of the member's death.
- (3) A member may elect to have his or her service or disability pension reduced by 6% thereby providing a survivor's pension equal to 100% of such reduced amount to the primary survivor at the time of the member's death.

For a member receiving a disability pension in accordance with Section 6.4, the applicable survivor percentage applies to the benefit the member would receive if not for his death, absent the elimination of any reduction in the benefit from the City's long-term disability insurance program.

A survivor's pension shall begin with the month following the month in which the member or retired member dies. If payable to a surviving spouse who dies or remarries, it shall become payable in the following month to the next primary survivor as defined in Section 2.27 or cease with that month in the absence of the eligible dependents. If payable to a child who dies or fails to meet the conditions of eligibility in Section 2.28, it shall become payable in the following month to a dependent parent or cease with that month in the absence of eligible parents. If payable to a parent, it shall cease with the month in which the parent dies. If there are no more primary survivors, a lump sum death benefit equal to the excess, if any, of the member's employee contributions plus credited interest thereon less the aggregate benefits paid to the member and all primary survivors, shall be paid the member's designated beneficiary, or in the absence thereof, his estate.

Section 4.5. Limitations on Benefits. Pursuant to Treasury Regulation Section 1.415(a)-1(d)(3) ("Section 415 Regulations"), effective for Plan Years beginning on or after January 1, 1976, the limitations on benefits under Section 415 of the Code and the Section 415 Regulations



applicable to governmental plans as defined in Section 414(d) of the Code are hereby incorporated by reference. For purposes of the application of the limitations under Section 415 of the Code, a member's compensation shall be as determined in Treasury Regulation Section 1.415(c)(2)(b) and (c).

Section 4.6. Military Service. Effective December 12, 1994, 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 Section 414(u) of the Code.”

## ARTICLE V

### Retirement or Death After Normal Retirement Date

Section 5.1. "New FOP Plan Late Retirement Pension." For Police members of the New FOP Plan, the late retirement pension shall be as defined in the State Plan as to an ordinary service pension including the ordinary survivor's pension. Sections 5.2 and 5.3 apply to other membership classes or Police members of the Old Plan, as applicable.

Section 5.2. Eligibility. A member of the Plan who has attained normal retirement date may continue to work. Benefit payments earned by such member shall be deferred to date of actual retirement from their current employment classification as defined in Section 2.6 of this Plan.

Section 5.3. Amount of Late Retirement Pension. Upon retirement of a member of the plan subsequent to his normal retirement date, a pension shall be paid to such retired member commencing with the month in which actual retirement occurs.

Where he has been making Employee Contributions, the amount of pension shall be computed in the same manner as the Normal Retirement Pension described in Section 4.3 based on his Credited Service and Final Average Compensation as of his Late Retirement Date.

Where a Police or Special Police member had not been making Employee Contributions, the amount of the pension shall equal that amount, actuarially determined, which can be provided based on the member's accumulated State of Delaware contributions plus credited interest thereon.

Members who postpone their retirement past their Normal Retirement Date shall be required to continue to make contributions until their actual retirement.

All optional methods of payment of the pension shall be made available to such member, irrespective of whether he had made Employee Contributions, in accordance with such terms and conditions as prescribed by the Trustees.

## ARTICLE VI

### Vested Deferred Early Retirement, Total and Permanent Disability or Spouse's and Children's Pension

Section 6.1. “New FOP Plan Vested Deferred, Early Retirement, Disability or Survivor’s Pension.” For Police members of the New FOP Plan, the applicable pension shall be as defined in the applicable section of the State Plan. Sections 6.2, 6.3, 6.4, 6.5 and 6.6 apply to other membership classes or Police members of the Old Plan, as applicable.

Section 6.2. Eligibility. Any member of the Plan not eligible for a Normal Retirement or Late Retirement pension who has completed five (5) years of Credited Service shall be eligible for a Vested Deferred Pension, pursuant to Section 6.2.

An Exempt, Employees Council, Local 1670, or Local 3919 Member who is age fifty-five (55) or more and has completed fifteen (15) or more years of credited service shall be eligible for a voluntary early retirement pension pursuant to Section 6.3.

A member who is found by the Trustees to be unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment which can be expected to result in death or be of a long continued and indefinite duration shall be eligible for a Total and Permanent Disability Pension pursuant to Section 6.5. For the purpose of this section, substantial gainful activity shall mean a position with the City with equal pay and equal benefits. If any actively employed member of the plan dies, the surviving spouse and/or children up to age eighteen (18) of the deceased member (if said spouse was legally married to the deceased at his death), or effective May 14, 2019, any actively employed Police/Special Police member, the primary survivor, shall be entitled to a spouse's and/or children's pension pursuant to Section 6.6. If any actively employed member of the plan dies without leaving a spouse or children eligible for a monthly pension, then the designated beneficiary (or in the absence of a beneficiary designation, the estate of the deceased) shall be eligible to receive the refund of his employee contributions plus credited interest.

A Police Member who has completed fifteen (15) or more years of credited service and who terminates employment no more than five (5) years prior to the member's Normal Retirement Date shall be eligible to receive a retirement pension benefit commencing on the first of the month following the member's Normal Retirement Date.

A Police Member who has completed five (5) or more years of credited service and who terminates employment before completing fifteen (15) years of credited service shall have the option to either: a) elect, in writing, that is duly submitted within ninety (90) days of their termination date, to receive a lump sum benefit of 100% of their contributions to the plan, plus interest; or b) if no such written election is timely submitted, such officer shall commence receiving retirement pension benefits on the first of the month coincident with or following that employee's 62<sup>nd</sup> birth date. The only exception would be if the monthly benefit at the time the employee leaves is less than \$20. In such case, the Trustees may elect options set forth in Section 9.3.

Section 6.3. Amount of Vested Deferred Pension. The amount of monthly Vested Deferred Pension commencing at Normal Retirement Date or Early Retirement Date shall be equal to the following percentages of the value of the member's accumulated pension credits in accordance with the provisions of Section 4.2:

<u>Total Years of Credited Service on Date of Resignation or Discharge</u>	<u>Vested Entitlement for Accumulated Pension Credit</u>
5	50%
6	60
7	70
8	80
9	90
10	100

The vested entitlement assumes that the member leaves all employee contributions he may have made to the plan in the plan. His voluntary withdrawal of these employee contributions shall result in his forfeiture of benefits except for those for Police employees and Special Police employees

attributable to State of Delaware contributions.

A member eligible to receive a vested deferred pension for life with the assurance that no less than the value of the employee contributions plus credited interest thereon will be paid, may elect to receive, in lieu thereof, a benefit of equivalent actuarial value in accordance with any option described in Section 4.3, provided such option is elected in accordance with the rules and regulations prescribed by the trustees. If the member dies prior to normal retirement date, a refund of the employee contributions plus credited interest thereon shall be made to the designated beneficiary, or in the absence of a beneficiary designation, to the estate of the deceased.

Within 90 days of termination of employment, the member may voluntarily elect a Lump Sum Equivalent Benefit in lieu of any other benefit paid by the Plan. The Lump Sum Equivalent Benefit may not be less than 150%, nor more than 300%, of the member's employee contributions plus interest credited thereon. Existing terminated members entitled to a benefit from this Section will be provided a 90-day window beginning March 1, 2017 and ending May 31, 2017. The Lump Sum Equivalent Benefit equals the present value of the member's vested deferred pension payable at Normal Retirement Date. The present value will be based on the interest and mortality factors, reflecting any projections for mortality improvement to the year of determination, used in the most recent actuarial valuation.

Section 6.4. Amount of Early Retirement Pension.

- (a) A monthly early retirement pension may commence to be paid on the first day of any month subsequent to the actual retirement of a member of the plan and prior to his normal retirement date. The amount of early retirement pension shall be equal to the value of the member's accumulated pension credits in accordance with the provisions of Section 4.3, but shall then be reduced for Exempt, E.C., Local 1670, and Local 3919 members in accordance with Exhibit A, to take into account the fact that payments commence prior to normal retirement date and accordingly can be expected to extend over a longer period of time.

EXHIBIT A

Percentage Factors for Voluntary  
Retirement Pension

Age When  
Benefits  
Commence

65 - 100%										
64 - 95	100%									
63 - 90	95	100%								
62 - 85	90	95	100%							
61 - 80	85	90	95	100%						
60 - 75	80	85	90	95	100%					
59 - 70	75	80	85	90	95	100%				
58 - 65	70	75	80	85	90	95	100%			
57 - 60	65	70	75	80	85	90	95	100%		
56 - 55	60	65	70	75	80	85	90	95	100%	
55 - 50	55	60	65	70	75	80	85	90	95	100%
15-20	21	22	23	24	25	26	27	28	29	30
SERVICE YEARS										

NOTE: After ten (10) years of service at age sixty-five (65), a participant will receive a one hundred percent (100%) factor.

For purposes of the preceding paragraph, total continuous service shall include service of other membership classes and both continuous service and age shall be measured in years and completed months. An optional method of payment will be permitted if elected in accordance with such rules and regulations as are prescribed by the trustees.

- (b) Limited Enhanced Early Retirement Option. For a period of 91 days beginning July 1, 2014 and ending September 29, 2014, an Exempt, E.C., 3919, or 1670 member of the

Plan who is at least 50 years old may terminate employment and have five (5) years added to his age for purposes of determining such member's Percentage Factor for Voluntary Retirement Pension under Exhibit A in Section 6.4(a) above if such Exempt, E.C., 3919 or 1670 member of the Plan commences his Early Retirement Benefit no later than the first day of the month following the date that such Exempt, E.C., 3919 or 1670 member of the Plan terminates his employment with the city. For example, if an individual who is 52 years of age and has 20 Service Years elects an Early Retirement Pension under the provision of this Section 6.4(b) and commences his Early Retirement Benefit no later than the first day of the month following his termination of employment, such individual shall be considered to be age 57 upon Early Retirement and shall have a 60% factor applied to determine his Early Retirement Pension.

Section 6.5. Disability Pension.

- (a) Non-Job-Related Disability – A monthly disability pension benefit shall commence to be paid on the first day of the month following termination as an active member. The amount of a monthly disability pension benefit shall be calculated as (A) less (B), but not less than zero (0), where (A) is the amount determined in accordance with the applicable paragraph of Section 4.3 based on Credited Service as of the date of termination but not less than fifty percent (50%) of the member's Final Average Compensation plus five percent (5%) of Final Average Compensation for each dependent up to a maximum of twenty percent (20%), and (B) is the amount of any benefit that the member receives from the City's long-term disability insurance program. The additional five percent (5%) benefit for the member's spouse shall cease if the spouse and member are no longer married or if the spouse dies. The additional five percent (5%) benefit for each dependent child as defined in Section 2.29 shall cease for each respective dependent child upon the earlier of the child's death.

- (b) Police/Special Police Job-Related Disability – If a Police Member, or Special Police Member, becomes disabled as a result of the member’s activities in the discharge of his official duties, a monthly disability pension benefit shall commence to be paid on the first day of the month following termination as an active member. The amount of a monthly disability pension benefit shall be calculated as (A) less (B), but not less than zero (0), where (A) is seventy-five percent (75%) of the member’s Final Average Compensation plus ten percent (10%) of Final Average Compensation for each dependent up to a maximum of twenty-five percent (25%) and (B) is the amount of any benefit that the member receives from the City’s long-term disability insurance program. The additional ten percent (10%) benefit for the member’s spouse shall cease if the spouse and member are no longer married or if the spouse dies. The additional ten percent (10%) benefit for each dependent child as defined in Section 2.29 shall cease for each respective dependent upon the earlier of the dependent’s death.
- (c) If the disabled member dies while receiving a disability benefit, the surviving spouse and any dependent children, as defined in Section 2.29 shall receive a Survivor’s Pension benefit in accordance with Section 6.5 below. For Police/Special Police members who terminate employment on or after May 14, 2019, a monthly survivor’s pension shall be payable to the primary survivor equal to 50% of such person’s monthly benefit upon the member’s death subject to any optional method of payment elected as described in Section 4.3. If there are no more primary survivors, a lump sum death benefit equal to the excess, if any, of the member’s employee contributions plus credited interest thereon less the aggregate benefits paid to the member and all primary survivors, shall be paid the member’s designated beneficiary, or in the absence thereof, his estate.

Section 6.6. Survivor's Pension. A monthly Survivor's pension benefit for the spouse of the deceased member shall commence to be paid to the spouse of the deceased member on the first



day of the month subsequent to the death of the member and shall be equal to fifty percent (50%) of the member's Final Average Compensation. The benefit shall cease upon the spouse's death or remarriage. However, in the case of a Police/Special Police member, if death resulted from the member's activities in the discharge of his official duties, the Survivor's Pension shall be fifty percent (50%) of the deceased member's Final Average Compensation for the surviving spouse, plus ten percent (10%) of the deceased member's Final Average Compensation for each dependent child up to age eighteen (18), subject to a maximum of twenty-five percent (25%). The fifty percent (50%) benefit for the deceased member's spouse shall cease upon the spouse's death or remarriage. The additional ten percent (10%) benefit for each dependent child shall cease for each respective dependent upon the earlier of the dependent's death or when the dependent reaches eighteen (18) years of age. Effective May 14, 2019, the case of a Police/Special Police Member, upon the death of a member in service, a monthly survivor's pension shall be payable to his or her primary survivor equal to  $\frac{3}{4}$  of the service pension the employee would have been eligible to receive had the member elected the seventy-five (75%) survivor pension per Section 4.3(c)(2). Upon the death of a Police/Special Police employee in service, whose death occurred in the line of duty, a monthly survivor's pension shall be payable to the primary survivor equal to  $\frac{3}{4}$  of the member's compensation. A survivor's pension shall begin with the month following the month in which the member or retired member dies. If payable to a surviving spouse who dies or remarries, it shall become payable in the following month to the next primary survivor as defined in Section 2-27 or cease with that month in the absence of the eligible dependents. If payable to a child who dies or fails to meet the conditions of eligibility in Section 2-28, it shall become payable in the following month to a dependent parent or cease with that month in the absence of eligible parents. If payable to a parent, it shall cease with the month in which the parent dies.

Section 6.7. Recovery From Disability. In the event that a disabled member receiving payments under Section 6.5 recovers from disability prior to his normal retirement date, benefits under Section 6.5 shall cease. In the event the member recovers prior to the member's normal retirement date and is re-employed by the City, the member's continuous service and credited

service as of his date of disability shall be reinstated and the period of disability shall be ignored when calculating any benefits under this plan. In the event the member is not re-employed by the City following recovery prior to the member's normal retirement date, the member shall be considered to have terminated employment with the City on the date of the member's disability. In either case, a member's employee contributions plus credited interest account will not be credited with any additional interest during the member's period of disability. Furthermore, the member's employee contributions plus credited interest account shall be reduced by the amount of any disability retirement pension paid to the member. The trustees may verify by medical examination at any time whether a member who is receiving a disability retirement pension has ceased to be disabled. If any such member should refuse to permit such examination, such refusal shall be justification for the determination that the disability no longer exists.

Section 6.8. Required Minimum Distributions. The Required Minimum Distribution provisions of Section 401(a)(9) of the Code and Treasury Regulations Section 1.401(a)(9)-1 through Section 1.401(a)(9)-9 applicable to governmental plans as defined in Section 414(d) of the Code are hereby incorporated by reference. All distributions from the Plan shall be made in accordance with Treasury Regulations Section 1.401(a)(9)-1 through Section 1.401(a)(9)-9 and the provisions of Section 401(a)(9) override any distribution options in the Plan that are inconsistent with Section 401(a)(9). This incorporation by reference shall include the provisions of Section 401(a)(9)(G).

ARTICLE VII

Reserved

## ARTICLE VIII

### Termination of Employment

Section 8.1. General. If a member ceases to work for the City at any time and for any reason, including death disability, and involuntary termination prior to the date on which such member meets the age and service requirements essential for a normal retirement pension, a late retirement pension, an early retirement pension, a vested deferred pension, a total and permanent disability pension, or a spouse's or a children's pension, such terminated member shall have no rights whatsoever under the plan. The member shall, in any event, be assured of receiving a refund of his employee contributions plus credited interest thereon.

## ARTICLE IX

### Other Provisions With Respect to the Payment of Benefits

Section 9.1. Application Must Be Filed; Only One (1) Type of Benefit Payable. Any member who is entitled to benefits hereunder must file a written application therefore with the trustees on the form or forms prescribed by the trustees. Such application must be filed not earlier than eighteen (18) months prior to nor later than three (3) years from the date any benefit is first payable. No more than one (1) type of regular benefit (i.e., normal retirement, late retirement, vested deferred, early retirement, total and permanent disability, spouse's pension or children's pension) may be payable on behalf of one member's employment with the City.

Section 9.2. Permissible Purchase of Annuity Contracts. The trustees, in lieu of instructing the fiduciary trustee to pay the pension to which a member of this plan is entitled directly from the funds of the pension trust may instruct the fiduciary trustee to purchase from a triple A rated insurance company who provides immediate and/or deferred annuity contracts, an annuity contract which will provide pension benefits, or pay benefits without the purchase of an annuity contract, in an amount identical to that which the retirement member was entitled under this plan.

Section 9.3. Settlement of Small Pensions. In the event that the pension provided for any member of the plan is less than twenty dollars (\$20) per month, the trustees may, but shall not be required to, cause such pension to be satisfied by the payment to the member entitled thereto of a pension of equivalent actuarial value in quarterly, semi-annual or annual installments or in a lump sum which the trustees determine to be the actuarial equivalent of the pension to which the member is entitled.

Section 9.4. Forfeitures. Forfeitures, if any, must not be applied to increase the pension benefits any employee would otherwise receive under the plan.

Section 9.5. Direct Rollovers. This Section applies to refunds made on or after January 1, 1993 of employee contributions plus interest credited thereon. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Plan, 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: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary, or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; and 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). For distributions made after December 31, 2001, 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 Sections 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.

- (b) **Eligible Retirement Plan:** An Eligible Retirement Plan is an Individual Retirement Account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, a Roth Individual Retirement Account described in Section 408A of the Code, an annuity plan described in Section 403(a) of the Code, or a qualified trust described in Section 401(a) of the Code, 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. For distributions made after December 31, 2001, an Eligible Retirement Plan shall also mean an annuity contract described in Section 403(b) of the Code and an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of Eligible Retirement Plan shall also apply in the case of a distribution to a surviving 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 Section 414(p) of the Code, are Distributees with regard to the interest of the spouse or former spouse. For distributions made after December 31, 2001, Distributee shall include the designated beneficiary of a participant who is not the surviving spouse of a participant but only with respect to Eligible Rollover Distribution to an Individual Retirement Account described in Section 408(a) of the Code or an individual retirement annuity described in Section 408(b) of the Code. If the participant dies

before his or her required beginning date and the non-spouse beneficiary rolls over to an IRA the maximum amount eligible for rollover, the beneficiary may elect to use either the 5-year rule or the life expectancy rule, pursuant to Treas. Reg. §1.401(a)(9)-3, A-4(c), in determining the required minimum distributions from the IRA that receives the non-spouse beneficiary's distribution.

- (d) Direct Rollover: A Direct Rollover is a payment by the Plan to the eligible Retirement Plan specified by the Distributee.



## ARTICLE X

### Administration of the Plan

Section 10.1. Appointment of the Trustees. The administration of the plan, as provided herein, including the supervision of the payment of all benefits to retired members and their joint pensioners, shall be vested in and shall be the responsibility of the trustees which shall consist of such number of persons, not less than three (3), as shall from time to time be determined by the City Council. The trustees and their successors shall be appointed from time to time by said City Council and shall serve at their pleasure, without compensation, unless otherwise determined by said City Council.

Section 10.2. Conduct of Trustee Business. The trustees shall conduct their business and hold meetings as determined by them from time to time. A majority of the trustees shall have the power to act, and the concurrence of any member may be by telephone, wire, cablegram or letter. In the administration of the plan, the trustees may, from time to time, employ agents and may delegate to them ministerial and limited discretionary duties as it sees fit and may, from time to time, consult with counsel, who may be of counsel to the City.

Section 10.3. Officers, Subcommittees and Agents. The trustees shall elect a chairman who shall be a trustee, and a secretary who may or may not be a trustee and shall appoint such subcommittees as it shall deem appropriate, and may authorize one (1) or more of its number or any agent to execute or deliver any instrument on its behalf and to do any and all other things necessary and proper in the administration of the plan.

Section 10.4. Expenses of the Trustees. The expenses of administering the plan and the compensation of all employees, agents, or counsel of the trustees, including the actuary's fees, shall be paid by the trustee from employer contributions or by the City.

Section 10.5. Records of the Trustees. The trustees shall keep a record of all their proceedings, which shall be open to inspection by the members of the City Council. The trustees shall obtain from the fiduciary trustee and/or the insurance company not less often than annually a

report with respect to the cost and market value of the assets held in the trust fund and/or immediate participation guarantee fund in such form as is requested by the trustees.

Section 10.6. Trustees' Rights to Administer and Interpret the Plan. The trustees shall have the power and discretionary authority to administer and to interpret the plan and to adopt such rules and regulations as in the opinion of the trustees are necessary or advisable to implement, administer and interpret the plan, or to transact its business. Such rules and regulations as are adopted by the trustees shall be binding upon any persons having any interest in or under the plan.

Section 10.7. Liability of Trustees. The trustees shall use ordinary care and reasonable diligence in the performance of their duties, but no trustee shall be personally liable on account of any action taken on any contract, agreement, bond or other instrument made or executed by him or in his behalf as a trustee nor for any mistake in judgment made in good faith, nor for any loss, unless resulting from his own gross negligence or willful misconduct, and no trustee shall be liable for any neglect, omission or wrongdoing of any agent or counsel of the trustees, provided reasonable care shall have been exercised in their selection, nor for any neglect, omission or wrongdoing of the fiduciary trustee and/or insurance company. The trustees may rely and shall be fully protected in acting upon the advice of counsel, who may be of counsel to the City. The City expressly agrees to indemnify and reimburse the trustees for any out-of-pocket expenses incurred in the performance of their duties.

Section 10.8. Triennial Review of Retirement Pensions. The trustees shall conduct a triennial review of the possibility of increasing benefits payable to those members who have retired and are in receipt of benefits. The trustees, in their sole discretion, may increase retirement benefits currently being paid.

## ARTICLE XI

### Benefits Not Assignable

Section 11.1. General. Subject to the exceptions provided in Section 11.2 below, no benefit under the plan shall in any manner or to any extent be assignable or transferable by any member, retired member, former member, spouse or child (including its guardian) of a deceased member, or joint pensioner under the plan or subject to attachment, garnishment or other legal process. No attempted assignment or transfer of any benefit under the plan shall be recognized and, notwithstanding any provisions of the plan to the contrary as to benefits, the trustees shall, upon proof of any attempt on the part of any such member, retired member, former member, spouse or child (including its guardian) of a deceased member or joint pensioner to transfer or to assign his benefits, declare the pension of such member, retired member, former member, spouse or child (including its guardian) of a deceased member or joint pensioner to be forfeited; provided that the trustees shall give such member, retired member, former member, spouse or child (including its guardian) of a deceased member or joint pensioner notice in writing of the effect of the provisions of this Section upon his benefits and if prior to the time he shall cease to be an employee or within thirty (30) days after such notice, whichever is longer, as to such member, or within thirty (30) days after such notice as to such retired member, former member, spouse or child (including its guardian) of a deceased member or joint pensioner, valid cancellation of such attempted transfer or assignment shall have been effected and satisfactory proof thereof furnished to the trustees, then such member, retired member, former member, spouse or child (including its guardian) of a deceased member or joint pensioner shall be entitled to the same (but no greater) benefits under this plan as in the case he had not attempted to make any such assignment or transfer.

Section 11.2. Exception for Qualified Domestic Relations Orders. Section 11.1 shall not apply to a 'qualified domestic relations order' defined in Internal Revenue Code, Section 414(p), or against an amount that the member is ordered or required to pay the plan with respect to a judgment, order or decree issued, or a settlement entered into in accordance with Internal Revenue Code, Sections 401(a)(13)(C) and (D).

## ARTICLE XII

### Certain Rights and Obligations of the City

Section 12.1. Right to Amend or Terminate the Plan. It is the intention of the City to continue the plan indefinitely. The City expressly reserves the right, however, to terminate the plan at any time if the City Council shall determine that financial or other good causes make it necessary or desirable to do so; and the City, by resolution of its City Council, expressly reserves the right to amend the plan at any time and in any particular provided, however, that any such action shall not operate to deprive any member, retired member, former member, spouse or child of a deceased member or joint pensioner under the plan of any vested right which he may have hereunder. The City may not terminate the New FOP Plan unless the State Plan is terminated.

Section 12.2. Vesting and Distributions Upon Termination of the Plan. Upon termination of the plan or upon the complete (and permanent) discontinuance of contributions under the plan, the rights of all members not continuing in the employ of an employer superseding the City of Newark, Delaware, to benefits accrued to the date of such termination or discontinuance, to the extent then funded, shall be nonforfeitable, and upon the occurrence of either of such events the then assets of the fund with respect to said members shall be distributed to said discontinuing members, retired members, former members, spouses or children of deceased members and joint pensioners at such time or times and in such nondiscriminatory manner as is directed by the trustees.

Section 12.3. City Contributions. That portion of the entire cost of the pension plan described herein not paid by employee contributions or State of Delaware insurance tax proceeds will be paid by the City. Subject to its right to amend or terminate the plan, and acknowledging that State of Delaware contributions are for the exclusive benefit of Police employees, the City agrees to contribute from time to time to the trustee and/or the insurance company such sums as are required to provide the pensions described herein in accordance with generally accepted actuarial practices.

Section 12.4. Trust Funds Must Be Used for Exclusive Benefit of Members of the Plan and

Their Beneficiaries. It shall be impossible for any part of the corpus or income of the trust fund or insurance company contract to be used for, or diverted to purposes other than the exclusive benefit of the members, retired members, former members, spouses or children of deceased members and joint pensioners prior to the satisfaction of all liabilities under the plan with respect to such persons.

Section 12.5. Limitation on Benefits if Plan is In Effect for Less Than Ten (10) Years. Any provision of this plan to the contrary notwithstanding, the following restriction shall be placed upon the amount of retirement or other benefits (except a spouse or child pension) payable to any member of the plan in the event that "the full current costs" of the plan, as defined hereinafter, are not paid by the City to the trustee and/or insurance company during the first ten (10) years following the effective date of the plan. The restriction is as follows: If at any time prior to ten (10) years from the effective date of this plan, an amount equal to "the full current costs of the plan" as defined hereinafter, has not been paid by the City to the trustee, then the contributions of the City which may be used by the trustee or the fiduciary trustee to provide pension or other benefits for any of the twenty-five (25) highest paid employees on the payroll of the City as of the effective date of this plan, shall not exceed whichever of the following amounts is the greater: (1) twenty thousand dollars (\$20,000) or (2) an amount equal to twenty percent (20%) of the first fifty thousand dollars (\$50,000) of the employee's compensation multiplied by the number of years between establishment of the plan and the occurrence of the event causing such restriction.

The foregoing restriction shall not apply to that portion of benefits which would not have been restricted had the provisions of the predecessor plan remained in effect.

Nor shall the foregoing restriction apply in the case of a member covered by the plan whose pension payable from the trust fund does not exceed one thousand five hundred dollars (\$1,500) per year, nor shall the foregoing provisions restrict the amount of any pension payments to any member at any time when an amount equal to "the full current costs of the plan" as defined hereinafter, has been paid by the City to the trustee.

For purposes of the Section, "the full current costs of the plan" shall mean an amount equal

to the sum of the normal annual costs of the plan for each year following its adoption as defined in the Commissioner's regulations plus interest for such period on all unfunded past service liabilities under the plan.

If the benefits payable to a member covered by the plan are restricted at any time under the provisions of this Section, the funds so restricted shall continue to be held by the fiduciary trustee to provide additional benefits, in a nondiscriminatory manner, for all members who are not subject to the restrictions of this Section, as determined by the trustee.

## ARTICLE XIII

### Revocation of Membership

Section 13.1. Willful Act Harmful to the City. If the trustees after a hearing at which the former member who was retired or otherwise terminated shall be entitled to be present, shall find that he has, at any time, willfully engaged in any activity which is harmful to the interest of the City including, but not limited to, the theft or embezzlement of City funds or the commission of a fraudulent act, all rights of such former member to any payments under this plan shall be forthwith cancelled and, when he has previously made employee contributions, they shall be refunded with credited interest thereon. This section shall not apply to members of the New FOP Plan.

Section 13.2. Annual Registration Required For Participants Receiving Benefits From the Plan. The Finance Director shall require an annual certified registration of all retired employees, spouses of retired or deceased employees, and dependents of retired or deceased employees. An annual registration shall be on forms prescribed by the Finance Director.

Falsifying of the information supplied on the annual registration forms by a retired employee, the spouse of a retired or deceased employee or the dependents of a retired or deceased employee receiving benefits may result in the forfeiture of all rights to any payments under this plan.



ARTICLE XIV

Miscellaneous

Section 14.1. Titles are for Reference Only. The Titles are for reference only. In the event of a conflict between a title and the content of a Section, the content of the Section shall control.

Section 14.2. Employment Status of Members Unchanged by Plan. The establishment and existence of the Plan shall not be construed as a consideration for employment or continuance of employment or as conferring any legal rights as against the City upon any employee or member or any other person nor shall it interfere with the right of the City to discharge or lay off any employee or member or otherwise to sever or discontinue his employment or to treat him without regard to the existence of the Plan or the effect which such treatment might have upon him under the Plan.

Section 14.3. Delaware Law Governs. The provisions of the Plan shall be interpreted in accordance with the laws of the State of Delaware.

Section 14.4. Sick Leave/Retirement Incentive Benefit. Each Exempt and Local 1670/3919 member may make an irrevocable election to participate in this incentive benefit. Each current member shall have not less than thirty (30) calendar days nor more than ninety (90) calendar days after the adoption of this amendment to make an irrevocable election. Each newly hired member shall have not less than thirty (30) calendar days nor more than ninety (90) calendar days after the member's date of enrollment in the pension plan to make an irrevocable election.

Under this incentive benefit, a member making employee contributions shall receive, in lieu of payment for unused Sick Leave, additional credited service as follows:

- (a) Exempt members shall receive:
  - (1) One (1) month of additional credited service for each complete calendar year after 1996 in which the member uses no sick leave.
  - (2) One-half (1/2) month of additional credited service for each complete calendar year after 1996 in which the member uses no more than fifteen (15) hours of sick leave.
  - (3) At termination of employment, one-half (1/2) month of additional credited service for each twenty (20) days of unused sick leave.
- (b) Local 1670/3919 members shall receive:
  - (1) One (1) month of additional credited service for each complete calendar year after 1996 in which the member uses no more than sixteen (16) hours of sick leave.
  - (2) One-half (1/2) month of additional credited service for each complete calendar year after 1996 in which the member uses more than sixteen (16) and up to forty (40) hours of sick leave.
  - (3) At termination of employment, one-half (1/2) month of additional credited service for each twenty (20) days of unused sick leave.

Each Local 1670/3919 member hired between January 1, 1992 and December 31, 1996 may make an irrevocable election to participate in this incentive benefit retroactive to the first of January immediately following the member's date of hire.

Sick leave shall be defined in accordance with either the agreement between the City and Local 1670/3919 or the city ordinance covering exempt employees in effect at the time the sick leave is accrued.

ARTICLE XV  
Pension Committee

Section 15.1. Establishment. The Pension Committee is hereby created as established by Council through Section 2-98.4 of the Code of the City of Newark, Delaware.

Section 15.2. Duties. The Pension Committee is responsible for carrying out the following duties:

- (a) Advise and assist Council in meeting its mandate with respect to the plan.
- (b) Recommend, document the selection process for, and monitor external advisors to Council including, but not limited to Pension Counsel, the Third Party Administration Provider, Actuary, Investment Managers and Trustee/Custodian. The selection process for said external advisors, when applicable, will be in accordance with the City of Newark's Policy for Selection of professional service contracts. Said external advisors shall report to the Pension Committee.
- (c) Review the objectives, mission statement and design of the Plan on at least a triennial basis.
- (d) Ensure that all documents related to the Plan are consistent and compliant with all applicable legislation and guidelines.
- (e) Prepare and present an annual report to Council and the City's Independent Auditors that includes the following:
  - (1) Confirmation that the required reports have been filed and the required disclosure information has been provided to the plan members.
  - (2) Confirmation that the Plan has been administered in accordance with the applicable legislation and guidelines.
- (f) Present to Council any recommended administrative clarification amendments.
- (g) Review procedures in place at least once every two years for handling Plan

member terminations, retirements and deaths; procedures in place for payments from the fund; and samples of employee communication material including annual member statements.

- (h) Draft the Statement of Investment Policy, Objectives and Guidelines (SIPO&G) for Council approval.
- (i) Establish a recommended funding policy for the Plan in conjunction with the Actuary.
- (j) Review the annual actuarial report and the recommended funding level and make necessary changes, in conjunction with the Actuary, prior to the presentation of the report to Council.
- (k) Review the annual audit of the financial statements of the Plan conducted by the City's Independent Auditors.
- (l) Review the Investment Managers' performance to ensure compliance with the applicable legislation and the SIPO&G via quarterly measurement reports.
- (m) Conduct an investment review meeting at least annually with the Investment Managers and the Actuary and prepare an annual report for Council that includes the following:
  - (1) Financial statements of the Plan.
  - (2) Summary reports that the Committee has received from the Investment Manager measuring the pension fund performance in relation to the SIPO&G.
  - (3) Confirmation that the SIPO&G has been reviewed, any required amendments have been made and this review has been reported to the regulators.
- (n) Engage internal staff, including but not limited to the Deputy City Manager and/or the Director of Finance, to carry out or delegate the following functions:

- (1) Identifying two or more individuals who will have the authority to sign the authorizations of payments from the fund.
- (2) Establishing and maintaining the written agreements with the external advisors approved by Council that will outline the services they will provide, the fees associated with such services, privacy policies that are in place and performance measurement criteria.
- (3) Supervising the handling of communications from and to Plan members.
- (4) Ensuring quality control and compliance from internal staff and external advisors regarding communications provided to Plan members.
- (5) Recommending selected actuarial methods and assumptions for the valuation of the Plan, in conjunction with the Actuary.
- (6) Reviewing the financial statements prepared by the custodian, at least quarterly, to ensure that contributions are being made according to the Plan documents, funding policy and actuarial report and are remitted in a timely manner in compliance with applicable law.
- (7) Validating all payments from the fund are in accordance with the authorization of payments.
- (8) Ensuring that payments are permissible distributions in accordance with the Plan and applicable legislation and ensure Plan's investments and funding are in accordance with the SIPO&G.