

**DALLAS POLICE AND FIRE PENSION SYSTEM  
COMBINED PENSION PLAN**

**EXCESS BENEFIT PLAN AND TRUST**

**Adopted August 10, 2017**

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**DALLAS POLICE AND FIRE PENSION SYSTEM COMBINED PENSION PLAN  
EXCESS BENEFIT PLAN AND TRUST**

**ARTICLE I.**

**ESTABLISHMENT OF PLAN AND TRUST**

**1.01. Establishment of Plan and Trust.** The “Dallas Police and Fire Pension System Combined Pension Plan Excess Benefit Plan and Trust” (“this Plan”) was established effective as of August 10, 2017.

**1.02. Purpose.** The purpose of this Plan is solely to provide the part of a Participant's Retirement Benefit that would otherwise have been payable under the Dallas Police and Fire Pension System Combined Pension Plan (“Retirement Plan”), except for the limitations of Code Section 415(b). This Plan is intended to be a “qualified governmental excess benefit arrangement” within the meaning of Code Section 415(m)(3) and must be interpreted and construed consistently with that intent. This Plan is deemed a portion of the Retirement Plan solely to the extent required under, and within the meaning of, Code Section 415(m)(3) and Section 9.02 of the Retirement Plan.

This Plan is an “exempt governmental deferred compensation plan” described in Code Section 3121(v)(3). Code Sections 83, 402(b), 457(a) and 457(f)(1) do not apply to this Plan. With respect to Code Section 457(a), the maximum amount that may be deferred under this Plan on behalf of any Participant for the taxable year may exceed both the amount in Code Section 457(b)(2) (as adjusted for cost of living increases) and the percent of the Participant's includable compensation referred to in that Code Section. The Retirement Plan will not hold any assets or income under this Plan in trust for the exclusive benefit of Participants or their Beneficiaries.

## ARTICLE II.

### DEFINITIONS AND CONSTRUCTIONS

**2.01. Definitions.** When the initial letter of a word or phrase is capitalized herein, it has the same meaning as defined below:

(a) “**Administrator**” means the Dallas Police and Fire Pension System (also referred to as "DPFP" or "System") and its employees, including any individual or entity with whom DPFP contracts to provide services to this Plan.

(b) “**Beneficiary**” means an individual receiving a pension, an annuity, a retirement allowance, or other benefit provided under the Retirement Plan.

(c) “**Board**” means the Board of Trustees for DPFP as established by Sections 2.01(11) and 3.01 of the Retirement Plan.

(d) “**City**” means the City of Dallas.

(e) “**Code**” means the United States Internal Revenue Code of 1986, as amended, as applicable to a governmental plan, or corresponding provisions of any subsequent federal income tax law.

(f) “**Eligible Member**” means any person included in the membership of the Retirement Plan pursuant to Section 5.01 of the Retirement Plan who is entitled to receive a retirement benefit in excess of the limits imposed by 26 U.S.C. § 415.

(g) “**Excess Benefit**” means the benefit determined in accordance with Section 4.01 of this Plan.

(h) “**HB 3158**” means House Bill 3158 which was signed by Texas Governor Abbott on May 31, 2017 and amends the Retirement Plan effective as of September 1, 2017.

(i) **“Member”** means a person who became a member of the Retirement Plan in accordance with Section 5.01 of the Retirement Plan.

(j) **“Participant”** means a Member, Retiree, or Beneficiary who is entitled to benefits under this Plan in accordance with Section 9.02 of the Retirement Plan.

(k) **“Plan”** means the “Dallas Police and Fire Pension System Combined Pension Plan Excess Benefit Plan and Trust” established pursuant to Section 9.02 of the Retirement Plan and Section 8.2 of HB 3158.

(l) **“Plan Year”** means the calendar year, which is the limitation year for the Retirement Plan.

(m) **“Retiree”** means a Pensioner under Section 2.01(33) of the Retirement Plan who is receiving a Service Retirement benefit from DFPF under the Retirement Plan.

(n) **“Retirement Benefit”** means the amount of Service Retirement (as defined under Section 2.01(43) of the Retirement Plan) income payable to a Retiree under the Retirement Plan, or the benefit payable to a Beneficiary, without regard to any limitations on that retirement income or benefit under Code Section 415(b).

(o) **“Retirement Fund”** means the funds that collectively hold the assets of the System established under Section 2.01(24) for the exclusive benefit of Members and their beneficiaries in accordance with Section 9.01(b) of the Retirement Plan.

(p) **“State”** means the State of Texas.

(q) **“Trust Fund”** means the trust fund established pursuant to Section 9.02 of the Retirement Plan and Article VI of this Plan which is separate from the Retirement Fund and which constitutes a valid trust under the law of the State.

(r) **“Trustees”** mean the members of the Board.

**2.02. Construction.**

(a) Words used in this Plan in the masculine gender include the feminine gender where appropriate, and words used in this Plan in the singular or plural include the plural or singular where appropriate.

(b) Whenever any actuarial present value or actuarial equivalency is to be determined under the Plan to establish a benefit, it will be based on reasonable actuarial assumptions approved by the State Treasurer through a delegation from the Board, made in the State Treasurer's sole discretion, and determined in a uniform manner for all similarly situated Participants.

**ARTICLE III.**

**PARTICIPATION**

All Members, Retirees, and Beneficiaries of the Retirement Plan are eligible to participate in this Plan if their Retirement Benefits from DPF for a Plan Year would exceed the limitation imposed by Code Section 415(b). The Administrator determines for each Plan Year which Members, Retirees, and Beneficiaries are eligible to participate in the Plan. Participation in the Plan begins each Plan Year once a Member, Retiree, or Beneficiary has an Excess Benefit in that Plan Year. Participation in the Plan ends for any Plan Year in which the Retirement Benefit of a Member, Retiree, or Beneficiary is not limited by Code Section 415(b) or when all benefit obligations under the Plan to the Member, Retiree, or Beneficiary have been satisfied.

**ARTICLE IV.**

**PAYMENT OF BENEFITS**

**4.01. Benefit Amount.** A Participant in the Plan will receive a benefit equal to the amount of Retirement Benefit that would have been payable to, or with respect to, a Participant

by the Retirement Plan that could not be paid because of the application of the limitations on his or her Retirement Benefit under Code Section 415(b). An Excess Benefit under the Plan will be paid only if and to the extent the Participant is receiving Retirement Benefits from the Retirement Fund.

**4.02. Time for Payment; Form of Benefit.** The Administrator will compute and pay the Excess Benefit in the same form, at the same time, and to the same persons as such benefits would have otherwise been paid as a monthly pension under the Retirement Plan, except for the Code Section 415 limitations. No election is provided at any time to the Participant, directly or indirectly, to defer compensation under this Plan.

## **ARTICLE V.**

### **CONTRIBUTIONS AND FUNDING**

**5.01. Funding.** The Plan is, and will remain, unfunded and the rights, if any, of any person to any benefits under the Plan are limited to those specified in the Plan. The Plan constitutes a mere unsecured promise by the City to make benefit payments in the future.

**5.02. Contributions.**

(a) Based upon information provided by the Board of the Retirement Plan, the Administrator will determine the amount necessary to pay the Excess Benefit under the Plan for each Plan Year. The required contribution will be the aggregate of the Excess Benefits payable to all Participants for the Plan Year and an amount determined by the Administrator to be a necessary and reasonable expense of administering the Plan. Contributions will not be accumulated under the Plan to pay future Excess Benefits. Instead, each payment of contributions by the City that would otherwise be made to the Retirement Fund will be reduced by the amount necessary to pay the required Excess Benefit, and these contributions will be



deposited in the Trust Fund. The City contributions otherwise required under the terms of the Retirement Plan will be divided into those contributions required to pay Excess Benefits hereunder, and those contributions paid into and accumulated in the Retirement Fund to pay the maximum benefits permitted. Under no circumstances will City contributions to fund the Excess Benefits be credited to or commingled with contributions paid into and accumulated in the Retirement Fund. Amounts deducted from City contributions and deposited into the Trust Fund will not increase the amount of City contributions required under the Retirement Fund. Any contributions not used to pay the Excess Benefit for a current Plan Year, together with any income accruing to the Trust Fund, will be used, as determined by the Administrator to pay the administrative expenses of the Plan for the Plan Year. Any contributions not used to pay the Excess Benefit for the current Plan Year that remain after paying administrative expenses of the Plan for the Plan Year will be used to fund administrative expenses or benefits of Participants in future Plan Years.

(b) DFPF will account separately for the amounts the Administrator determines to be necessary to provide the Excess Benefit under the Plan for each Participant. But, this separate accounting will not be deemed to set aside these amounts for the benefit of a Participant. Benefits under this Plan will be paid from the Trust Fund.

(c) The consultants, independent auditors, attorneys, and actuaries performing services for the Administrator or DFPF may also perform services for this Plan; but, any fees attributable to services performed with respect to this Plan will be payable solely by the City or from the Trust Fund.

**ARTICLE VI.**

**TRUST FUND**

**6.01. Establishment of Trust Fund.** In accordance with Section 9.02 of the Retirement Plan, the Trust Fund is established as a valid trust under the laws of the State, separate from the Retirement Fund, to hold contributions of the City. Contributions to this Trust Fund will be held separate and apart from the funds comprising the Retirement Fund and will not be commingled with assets of the Retirement Fund, and must be accounted for separately.

**6.02. Trust Fund Purpose.** The Trust Fund is maintained solely to provide benefits under a qualified governmental excess benefit arrangement within the meaning of Code Section 415(m), and pay administrative expenses of this arrangement.

**6.03. Trust Fund Assets.** All assets held by the Trust Fund to assist in meeting the City's obligations under the Plan, including all amounts of City contributions made under the Plan, all property and rights acquired or purchased with these amounts and all income attributable to these amounts, will be held separate and apart from other funds of the City and will be used exclusively for the uses and purposes of Participants and general creditors as set forth in this Plan. Participants have no preferred claim on, or any beneficial interest in, any assets of the Trust Fund. Any rights created under the Plan are unsecured contractual rights of Participants against the City. Any assets held by the Trust Fund are subject to the claims of the City's general creditors under federal and state law in the event of insolvency.

**6.04. Grantor Trust.** The Trust Fund is intended to be a grantor trust, of which the City is the grantor, within the meaning of subpart E, part I, subchapter J, chapter 1, subtitle A of the Code, and will be construed accordingly. This provision will not be construed to create an irrevocable trust of any kind.

**6.05. Trust Fund Income.** Income accruing to the Trust Fund under the Plan constitutes income derived from the exercise of an essential governmental function upon which the Trust is exempt from tax under Code Section 115, as well as Code Section 415(m)(1).

## **ARTICLE VII.**

### **ADMINISTRATION**

**7.01. Administrative Authority.** The Board and the Administrator, respectively, depending on which duties are delegated, have the exclusive authority to control and manage the operation and administration of the Plan. In accordance with Section 9.02 of the Retirement Plan, the Board and the Administrator, respectively, have the same rights, duties and responsibilities respecting the Plan as they have with respect to the Retirement Plan. To the extent applicable, the Administrator has the authority to take management and administrative actions on behalf of the Board with respect to the implementation and administration of this Excess Benefit Plan and Trust.

(a) Through the delegation from the Board, the Administrator has the power and authority (including discretion with respect to the exercise of that power and authority) necessary, advisable, desirable or convenient to enable the Administrator:

- (1) to adopt the agreement for the Plan;
- (2) to establish procedures to administer the Plan not inconsistent with the Plan and the Code, and to amend or rescind these procedures;
- (3) to determine, consistent with the Plan, applicable law, rules or regulations, all questions of law or fact that may arise as to eligibility for participation in the Plan and

eligibility for distribution of benefits from the Plan, and the status of any person claiming benefits under the Plan;

(4) to make payments from the Trust Fund to Participants pursuant to Article IV of the Plan,

(5) to contract with a third party to perform designated administrative services under this Plan; and

(6) to construe and interpret the Plan as to administrative issues and to correct any defect, supply any omission or reconcile any inconsistency in the Plan with respect to same, subject to and consistent with the Code.

(b) Any action by the Board that is not found to be an abuse of discretion will be final, conclusive and binding on all individuals affected thereby. The Board may take any such action in such manner and to such extent as the Board in its discretion may deem expedient, and the Board will be the sole and final judge of such expediency.

(c) The Board may delegate any of its authority to the Administrator with respect to the Trust Fund.

(d) The Board, and/or the Administrator, will seek appropriate rulings from the Internal Revenue Service with regard to the status of the Plan under the Code.

**7.02. Advice.** The Board, and/or the Administrator, may employ one or more persons to render advice with regard to its responsibilities under the Plan.

**7.03. Payment of Benefits.** If in doubt concerning the correctness of any action in making a payment of a benefit, the Administrator may suspend payment until satisfied as to the correctness of the payment or the person to receive the payment.

**7.04. Delegation by Administrator.** The Administrator will handle the day-to-day operation of the Plan and may delegate certain functions to a third party.

## **ARTICLE VIII.**

### **PLAN AMENDMENTS**

The Board from time to time may amend, suspend, or terminate any or all of the provisions of this Plan as may be necessary to comply with Code Section 415(m) and to maintain the Plan's or the Retirement Fund's qualified status under the Code.

## **ARTICLE IX.**

### **NONASSIGNABILITY AND EXEMPTION FROM TAXATION AND EXECUTION**

The interests of Participants under this Plan are exempt from any state, county, municipal or local tax, and are not subject to execution, garnishment, attachment, or any other process of law whatsoever, and are unassignable and nontransferable, except as otherwise provided by Section VI or otherwise in the same manner as established under Section 9.03 of the Retirement Plan.

## **ARTICLE X.**

### **MISCELLANEOUS**

**10.01. Federal and State Taxes.** The State, the City, the Board, and the Administrator, if any, do not guarantee that any particular Federal or State income, payroll, or other tax consequence will occur because of participation in this Plan.

**10.02. Investment.** The Board may hold a portion of the Plan uninvested as it deems advisable for making distributions under the Plan, or may invest assets of the Plan pending the Excess Benefit payments in short-term investment grade instruments as otherwise permitted by law.

**10.03. Conflicts.** In resolving any conflict between provisions of the Plan, and in resolving any other uncertainty as to the meaning or intention of any provision of the Plan, the prevailing interpretation will be the one that (i) causes the Plan to constitute a qualified governmental excess benefit arrangement under the provisions of Code Section 415(m) and the Trust Fund to be exempt from tax under Code Sections 115 and 415(m), (ii) causes the Plan and DPFPP to comply with all applicable requirements of the Code, and (iii) causes the Plan and DPFPP to comply with all applicable State laws.

**10.04. Limitation on Rights.** Neither the establishment or maintenance of the Plan, nor any amendment to the Plan, nor any act or omission under the Plan (or resulting from the operation of the Plan) may be construed:

(a) as conferring upon any Participant or any other person a right or claim against the State, the City, Board, Trustees, or Administrator, if any, except to the extent that the right or claim is specifically expressed and provided in the Plan;

(b) as creating any responsibility or liability of the City for the validity or effect of the Plan;

(c) as a contract between the City and any Participant or other person;

(d) as being consideration for, or an inducement or condition of, employment of any Participant or other person, or as affecting or restricting in any manner or to any extent whatsoever the rights or obligations of the City or any Participant or other person to continue or terminate the employment relationship at any time; or

(e) as giving any Participant the right to be retained in the City's service or to interfere with the City's right to discharge any Participant or other person at any time.

**10.05. Erroneous Payments.** Any benefit payment that should not have been made, according to the terms of the Plan and the benefits provided hereunder, may be recovered as provided by law.

**10.06. Release.** Any payment to any Participant will, to the extent thereof, be in full satisfaction of the Participant's claim being paid thereby, and the Administrator may condition the payment on the delivery by the Participant of the duly executed receipt and release in a form determined by the Administrator.

**10.07. Liability.** The State, City, Board, Trustees, DPFP, or Administrator, if any, will not incur any liability in acting upon any paper or document or electronic transmission believed by the State, City, Board, Trustees, DPFP, or Administrator to be genuine or to be executed or sent by an authorized person.

No suit may be brought against any present, future, or former officers and employees of the State, the City, the Board, Trustees, DPFP or the Administrator for claims, demands, suits, actions, damages, judgments, costs, charges and expenses, including court costs and attorney's fees for liability, losses, and damages of any nature whatsoever that may be sustained by reason of any action taken relative to the establishment, modification, termination, administration or implementation of this Plan.

The Administrator may obtain insurance to provide coverage for any liabilities that may arise as described by this Section.

**10.08. Governing Laws.** The Code and the laws of the State apply in determining the construction and validity of this Plan.

**10.09. Necessary Parties to Disputes.** The only party necessary to any accounting, litigation or other proceedings relating to the Plan is the Administrator. The settlement or

judgment in any case in which the Administrator is duly served will be binding upon all affected Participants in the Plan, their beneficiaries, estates and upon all persons claiming by, through or under them.

**10.10. Severability.** If any provision of the Plan is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of the Plan will continue to be fully effective.

IN WITNESS WHEREOF, the undersigned has caused this Excess Benefit Plan and Trust to be executed as of this 10 day of August, 2017.

APPROVED BY THE BOARD OF TRUSTEES  
OF THE DALLAS POLICE AND FIRE PENSION  
SYSTEM COMBINED PENSION PLAN

By:                   [signature]                    
Kelly Gottschalk  
Executive Director