

**CITY OF WAUCHULA
PENSION PLAN**

(AS APPROVED BY EMERGENCY ORDINANCE 2014-03)

**CITY OF WAUCHULA
PENSION PLAN**

Table of Contents

<u>Article</u>	<u>Title</u>	<u>Page</u>
ARTICLE I	DEFINITIONS	I-1
ARTICLE II	AMENDMENT AND RESTATEMENT AND NAME OF THE PLAN	II-1
ARTICLE III	PURPOSE OF THE PLAN AND THE TRUST	III-1
ARTICLE IV	PLAN ADMINISTRATION	IV-1
ARTICLE V	PARTICIPATION	V-1
ARTICLE VI	CONTRIBUTIONS TO THE PLAN	VI-1
ARTICLE VII	BENEFITS UNDER THE PLAN	VII-1
ARTICLE VIII	TIME AND MANNER OF BENEFIT PAYMENTS	VIII-1
ARTICLE IX	MINIMUM BENEFITS FOR POLICE OFFICERS	IX-1
ARTICLE X	ESTABLISHMENT AND OPERATION OF PENSION FUND	X-1
ARTICLE XI	AMENDMENT AND TERMINATION	XI-1
ARTICLE XII	MISCELLANEOUS	XII-1
ARTICLE XIII	POLICE OFFICERS SHARED PLAN CONTRIBUTIONS	XIII-1

**CITY OF WAUCHULA
PENSION PLAN**

The Internal Revenue Service is requiring that the Plan be amended and restated for legislative changes. This amended and restated Plan document is intended to comply with the applicable provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA") and the applicable provisions of various administrative pronouncements promulgated by the Internal Revenue Service. This restated Plan document reflects the provisions of the Plan in effect as of April 4, 2013, pursuant to the application of Regulations issued under Code Section 401(b) and the favorable determination issued by the Internal Revenue Service on January 4, 2013, except as otherwise indicated herein.

W I T N E S S E T H:

WHEREAS, the Employer has previously adopted the City of Wauchula Pension Plan, a governmental defined benefit pension plan, which has been amended from time to time (as amended, the "Plan"); and

WHEREAS, the Employer is authorized and empowered to amend the Plan; and

WHEREAS, the Employer deems it necessary to restate the Plan to update the Plan for all required legislative changes as required by the law; and

WHEREAS, the Employer deems it advisable and in the best interests of the Participants to amend the Plan to comply with the tax qualification provisions of the Internal Revenue Code and make other desired changes.

NOW, THEREFORE, the Plan is hereby amended in its entirety to read as follows:

ARTICLE I

DEFINITIONS

(a) "**Accrued Benefit**" shall mean, as of a specified time, the retirement benefit set forth in Article VII.

(b) "**Actuarial Equivalent**" shall mean a benefit of equivalent current value to the benefit that would otherwise have been provided to the Participant, determined in accordance with the rules established by the Trustees and on the basis of appropriate actuarial methods and actuarial assumptions described in Appendix A.

(c) "**Advisory Committee**" shall mean the advisory committee described in Article IV.

(d) "**Annual Additions**" shall mean the sum of:

(1) the amount of Employer contributions allocated to the Participant during any Limitation Year under any defined contribution plan maintained by an Employer;

(2) the amount of the Employee's contributions (other than rollover contributions, if any) to any contributory defined contribution plan maintained by an Employer;

(3) any forfeitures allocated to the Participant under any defined contribution plan maintained by an Employer; or

(4) amounts allocated to an individual medical account, as defined in Section 415(l)(2) of the Code that is part of a pension or annuity plan maintained by an Employer, and amounts derived from contributions that are attributable to post-retirement medical benefits allocated to the separate account of a key employee (as defined in Section 419A(d)(3) of the Code) under a welfare benefit plan (as defined in Section 419(e) of the Code) maintained by an Employer; provided, however, the percentage limitation set forth in Section 415(c)(1)(B) of the Code shall not apply to: (A) any contribution for medical benefits (within the meaning of Section 419A(f)(2) of the Code) after separation from service which is otherwise treated as an "Annual Addition," or (2) any amount otherwise treated as an "Annual Addition" under Section 415(l)(1) of the Code.

(5) For purposes of determining a Participant's maximum annual additions, the portion of such Participant's benefits derived from contributions which are based on the balance of a separate Participant account shall be treated as a defined contribution plan and as a defined benefit plan with respect to the remaining portion of such Participant's benefits under the Plan.

(e) "**Average Monthly Compensation**" shall mean the Compensation received by a Participant during his three consecutive highest Years of Credited Service out of his last ten Years of Credited Service, ending with the date of termination, divided by thirty-six (36) (or, if

less, the product of 12 multiplied by the number of his Years of Credited Service). For purposes of determining a Participant's maximum benefit as required by Section 415 of the Code, a Participant's "Average Monthly Compensation" shall mean the Section 415 Compensation received by a Participant during the three (3) consecutive Limitation Years with respect to which the Participant receives the highest Section 415 Compensation, divided by 36 (or, if less, the aggregate number of his months of employment). Notwithstanding the foregoing, a Police Officer's Average Monthly Compensation shall mean the greater of: (1) the Average Monthly Compensation provided for under this paragraph (e); or (2) the Average Monthly Compensation described in paragraph (a) of Article IX.

(f) **"Beneficiary"** shall mean a person designated by the Participant (or by the Plan) to receive a benefit under the Plan upon the death of the Participant. If more than one person is designated as the Beneficiary and no respective interests are indicated on the Beneficiary form, then such Participant's Account shall be divided equally among the Beneficiaries named on the Beneficiary form.

(g) **"Code"** shall mean the Internal Revenue Code of 1986, as amended, or any successor statute. Reference to a specific section of the Code shall include a reference to any successor provision.

(h) **"Compensation"** shall mean

(1) The regular salaries, wages, overtime pay, leave pay, bonuses paid by the Employer, sick pay, incentive pay, lump sum payments of accrued sick leave paid upon retirement, Employee contributions designated as Employer contributions under Section 414(h) of the Code, and employee salary reduction contributions made pursuant to an arrangement described in Section 125 of the Code. Back pay, within the mean of Section 1.415(c)-2(g)(8) of the Code, shall be treated as compensation for the Limitation Year to which the back pay relates, to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

Compensation shall not include: clothing, car or meal allowances; qualified transportation fringe benefit; disability payments; indemnity benefits received pursuant to the Workers' Compensation law; relocation expense payments; benefits under this Plan; any amount contributed to any pension, employee welfare, life insurance or health insurance plan or arrangement (referred to a deemed Code Section 125 compensation), or any other fringe benefits, welfare benefits arrangement; a custodian account or other arrangement described in Section 403(b) of the Code; a Code Section 457 plan or Employer paid deferred compensation.

Post-severance compensation. Effective for the first Limitation Year beginning on or after July 1, 2007, Compensation includes compensation that is paid after an Employee severs employment with the Employer, provided the Compensation is paid by the later of: 2½ months after severance from employment with the Employer maintaining the Plan; or the end of the Limitation Year that includes the date of severance from employment with the Employer, provided those amounts would have been included as Compensation if they were paid prior to the Employee's severance

from employment. For this purpose, amounts that will be included in Compensation include:

(A) Compensation for services during the Employee's regular working hours, or Compensation for services outside the Employee's regular working hours (such as overtime), commissions, bonuses, or other similar payments and, absent a severance from employment, the payments would have been paid to the Employee while the Employee continued in employment with the Employer;

(B) Payment for unused accrued bona fide sick, vacation, or other leave, up to 600 hours, but only if the Employee would have been able to use the leave if employment had continued.

Other post-severance payments (such as severance pay, parachute payments within the meaning of Section 280G(b)(2) of the Code, or post-severance payments under a nonqualified deferred compensation plan are not included in the definition of Compensation, even if such amounts are paid within 2½ months after severance from employment.

(2) Compensation shall generally be based on the amount actually paid or made available to the eligible Employee during the Plan Year or Limitation Year. The annual Compensation of each Participant is taken into account for determining benefits provided under the Plan for any determination period shall not exceed the annual Compensation limit under Code Section 401(a)(17) as in effect on the first day of the determination period. This limit shall be adjusted by the Secretary of the Treasury to reflect increases in the cost of living, as provided in Code Section 401(a)(17)(B); provided, however, that the dollar increase in effect on January 1 of any calendar year is effective for determination periods beginning in such calendar year. If a Plan determines Compensation over a determination period that contains fewer than 12 calendar months (a "short determination period"), then the Compensation limit for such "short determination period" is equal to the Compensation limit for the calendar year in which the "short determination period" begins multiplied by the ratio obtained by dividing the number of full months in the "short determination period" by 12. Compensation paid in the first weeks of the next Limitation Year for services performed in the prior Limitation Year shall be taken into account in determining the current Limitation Year's compensation.

(3) The limitation on Compensation for an "eligible Employee" shall not be less than the amount which was allowed to be taken into account hereunder as in effect on July 1, 1993. "Eligible Employee" is an individual who was a Participant before the first Plan Year beginning after December 31, 1995.

(i) "**Effective Date**" of this amendment and restatement shall mean April 4, 2013, pursuant to the application of Regulations issued under Code Section 401(b) and the favorable determination issued by the Internal Revenue Service on January 4, 2013, except as otherwise noted herein. The original effective date of the Plan is December 13, 1983.

(j) "**Employee**" shall mean:

(1) Any person employed by the Employer on a regular full-time basis and the city clerk; provided, however, that the term "Employee" shall not include members of the city commission, the mayor, state certified police officers or any individual who is an independent contractor who performs services for the Employer under an agreement that identifies the individual as an independent contractor is excluded from the Plan even if a governmental agency retroactively reclassifies such individual as an Employee.

(2) The Advisory Committee shall have the right to determine from time to time which persons are employed on a regular full time basis for purposes of the Plan.

(k) "**Employer**" shall mean the City of Wauchula.

(l) "**Limitation Year**" shall mean the Plan Year.

(m) "**Net Credit**" shall mean the amount standing to the credit of a Participant's share account as of the end of the preceding fiscal year.

(n) "**Participant**" shall mean any eligible Employee of the Employer who has commenced participation and is contributing under the Plan.

(o) "**Pension Fund**" shall mean the pension fund established pursuant to Article X.

(p) "**Plan**" shall mean the pension plan as herein set forth and as it may be amended from time to time. The Plan is a "governmental plan" within the meaning of Section 414(d) of the Code, and as such, is exempt from the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended.

(q) "**Plan Year**" shall mean the 12-month period ending on September 30.

(r) "**Police Officer**" means any person who is elected, appointed, or employed full time by any municipality, who is certified or required to be certified as a law enforcement officer in compliance with Section 943.1395 of the Florida Statutes, who is vested with authority to bear arms and make arrests, and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers, but does not include part-time law enforcement officers or auxiliary law enforcement officers as the same are defined in Section 943.10(6) and (8) of the Florida Statutes, respectively. "Police officer" also shall include a public safety officer who is responsible for performing both police and fire services. The police chief shall have an option to participate, or not, in the Plan.

(s) "**Retirement Benefit**" shall mean the monthly income payable to a retired Participant pursuant to the provisions of Article VII of this Plan.

(t) "**Section 415 Compensation**" shall mean all compensation as described in regulation Sections 1.415-2(d)(2) and 1.415-2(d)(3) of the Code. For Plan Years ending after December 31, 1997, "Section 415 Compensation" shall include deferrals under Sections 402(g), 125, 132(f)(4), 403(b), 402(e)(3), 402(h) and 457 of the Code.

(u) "**Trustee**" or "**Trustees**" shall mean the individual or individuals, as the context requires, designated as trustee pursuant to Article IV.

(v) "**Year of Credited Service**" shall mean the total number of years and fractional parts of years of service credited as an Employee of the Employer during periods of participation in the Plan, omitting intervening years or fractional parts of years when an Employee is not employed by the Employer (except as may otherwise be provided herein or in rules established by the Advisory Committee and approved by the Trustees). Notwithstanding the foregoing, a Police Officer's Years of Credited Service shall mean the greater of: (1) Year of Credited Service under this paragraph (v); or (2) Years of Credited Service as determined under paragraph (b) of Article IX.

ARTICLE II

AMENDMENT AND RESTATEMENT AND NAME OF THE PLAN

A pension plan is hereby amended and restated in accordance with the terms hereof and shall be known as the "**CITY OF WAUCHULA PENSION PLAN**".

ARTICLE III

PURPOSE OF THE PLAN AND THE TRUST

(a) **Exclusive Benefit.**

(1) This Plan is created for the sole purpose of providing benefits to the Participants. Except as otherwise permitted by law, in no event shall any part of the principal or income of the Pension Fund be paid to or reinvested in the Employer or be used for or diverted to any purpose whatsoever other than for the exclusive benefit of the Participants and their beneficiaries.

(2) Notwithstanding the foregoing provisions of subparagraph (1), any contribution made by an Employer to this Plan by a mistake of fact may be returned to such Employer within one year after the payment of the contribution.

(b) **Participants' Rights.** The establishment of this Plan shall not be considered as giving any Employee, or any other person, any legal or equitable right against the Employer, the Trustees, the Advisory Committee or the principal or the income of the Pension Fund, except to the extent otherwise provided by law. The establishment of this Plan shall not be considered as giving any Employee, or any other person, the right to be retained in the employ of the Employer.

(c) **Qualified Plan.** This Plan and the assets comprising the Pension Fund are intended to qualify under the Code as a tax-free employees' plan and trust, and the provisions of this Plan should be interpreted accordingly.

ARTICLE IV

PLAN ADMINISTRATION

(a) **Administration of the Plan.** The Trustees shall control and manage the operation and administration of the Plan.

(b) **Trustees.**

(1) Except as otherwise provided with respect to the Police Officers Shared Plan, the members of the city commission of the Employer shall serve as the Trustees.

(2) The city clerk of the Employer shall be the secretary for the Trustees and shall keep accurate and complete minutes of the Trustees' meetings and shall be custodian of all records and files for the Trustees.

(3) The Trustees shall meet as often as necessary, and special meetings may be called at any time upon the request of the city clerk or a majority of the Advisory Committee or the Trustees.

(4) Each Trustee shall be entitled to one vote. A majority of affirmative votes shall be necessary for any decision by the Trustees at any meeting. A Trustee shall have the right to recuse himself from voting as the result of a conflict of interest provided that Trustee states in writing the nature of the conflict.

(5) The Trustees shall not receive any compensation for service as a Trustee, but may be reimbursed expenses as provided by law; provided, however, that the Trustees may receive compensation for services as a member of the city commission.

(c) **Powers and Duties of Trustees.**

(1) The Trustees shall have final authority and control over the administration of the Plan herein embodied, with all powers necessary to enable them to carry out their duties in that respect. Not in limitation, but in amplification of the foregoing, the Trustees shall have the power and discretion to interpret or construe this Plan and to determine all questions that may arise as to the status and rights of the Participants and others hereunder.

(2) The Trustees may promulgate such policies and make such rules and regulations for the proper administration of the Plan as they deem necessary.

(d) **Advisory Committee.**

(1) There shall be an Advisory Committee composed of the following five Employee members:

(A) Four of the Advisory Committee members shall be elected by a majority vote of the group of Employees they represent and who participate in the Plan:

- two members shall be public works Employees;
- one shall be an Employee from the Finance Administration Department; and
- one shall be a Police Officer, as defined in Florida Statutes Section 185.02.

(B) The fifth Employee member shall be a representative of the Administration Department who shall be appointed by the City Manager.

(2) The fifth member shall have the same rights as each of the other four elected members.

(3) The term of office of each Advisory members shall be three years. An Advisory Committee members may only serve two consecutive terms on the Advisory Committee. However, an Employee may be re-elected or appointed after at least one three-year term has expired. As an Advisory Committee member's term expires, a new member shall be elected to the Advisory Committee on the first Monday in February of each year. An Advisory Committee member's term shall begin on the third day after election.

(4) Not less than thirty (30) days before each election, the Advisory Committee shall select and appoint a committee composed of five individuals from the active Employees participating in the Plan to conduct the election.

(5) Where a vacancy of an elected member of the Advisory Committee occurs, it shall be filled by a majority vote of all the active Employees in the group that member represents and who participates in the Plan.

(6) Each Advisory Committee member shall be entitled to one vote. Three affirmative votes shall be necessary for any decision by the Advisory Committee at any meeting. An Advisory Committee member shall have the right to recuse himself from voting as a result of a conflict of interest provided that the Advisory Committee member states in writing the nature of the conflict.

(7) Members of the Advisory Committee shall serve without compensation additional to that earned in their respective capacities as Employees.

(e) **Powers and Duties of the Advisory Committee.** The Advisory Committee members shall be responsible for:

(1) making recommendations to the Trustees on administrative issues with respect to the Plan. However, the Advisory Committee shall have no authority to modify any provisions of the Plan.

(2) reviewing and rendering decisions regarding a claim for (denial of a claim for) a benefit under the Plan. To enable the Advisory Committee to perform its functions, the Trustees shall provide all pertinent information the Advisory Committee may require.

(3) disseminating relevant information to the group they represent while serving as an Advisory Committee member.

(4) promulgating policies and procedures for the proper administration of the Plan as it deems necessary.

(f) **Conflict in Terms.** In the event of any conflict between the terms of this Plan and any explanatory booklet, this Plan shall control.

(g) **Nondiscrimination.** The Trustees shall not take any action that would result in unfairly benefiting one Participant or group of Participants because of such Participant(s) color, national origin, sex or marital status.

(h) **Final Authority.** Except to the extent otherwise required by law or by this Plan, the decision of the Trustees in matters within their jurisdiction shall be final, binding and conclusive upon the Employer, the Advisory Committee, each Employee and Beneficiary, and every other interested or concerned person or party.

(i) **Appointment of Advisors.** The Trustees may appoint such actuaries, accountants, professional investment counsel, legal counsel, specialists, third-party pension administrators and other persons that they deem necessary and desirable in connection with the administration of this Plan or to assist them in the performance of their duties as Trustees. The Trustees are authorized to pay for such services from the Pension Fund.

(j) **Police Officers Pension Board.** There shall be a separate Board of Trustees to oversee the Police Officers Shared Plan special fund as described in Article XIII(a). This Police Pension Board shall consist of and be operated in accordance with Florida Statutes Chapter 185.

(1) effective July 1, 2009, the Board of Trustees shall be subject to the fiduciary standards in ss. 112.656, 112.661, and 518.11 and the Code of Ethics in ss. 112.311-112.3187 of the Florida Statutes and shall have the power and authority granted under Florida law:

(A) To invest and reinvest the assets of the City of Wauchula Police Officers Fund, as provided by Florida law.

(B) To cause to be issued payments from the City of Wauchula Police Officers Fund pursuant to this act and rules and regulations prescribed by the Board. All such payments shall be made in the manner now provided by law for the disbursement of city funds. The Director of Finance shall maintain an accounting of payments made, and no money shall be otherwise drawn from the fund.

(C) To finally decide all claims to relief under this act and under the Board's rules and regulations.

(D) To convert into cash any securities of the fund.

(E) To keep a complete record of all receipts and disbursements and of the Board's acts and proceedings. Said records shall at all times be kept in the office of the Director of Finance of the City of Wauchula and be open to the public for inspection; and a statement and audit of the receipts and disbursements shall be made and a copy furnished to each contributor and each pensioner not less than annually.

(2) members of the Police Officers Pension Board shall identify and report, and sell, redeem, divest, or withdraw all publicly traded securities the member has in a "scrutinized company," as that term is used in Florida Statutes Chapter 185.06(7), by the later to occur of the following:

(A) the member's appointment

(B) September 10, 2010

(3) each member shall serve for a period of two years, unless prior to the expiration of that period

(A) a member appointed by the City Commission is replaced by the City Commission, or

(B) a member appointed due to the individual being a police officer ceases to be employed as a police officer, or

(C) a member resigns.

Under these circumstances, the member's replacement will be appointed in the same manner as the original member was appointed. Each member may succeed himself or herself in office.

ARTICLE V

PARTICIPATION

(a) **Participation.** Unless otherwise provided herein, all Employees of the Employer shall be required to make the contributions specified in Article VI and shall be required to participate in the Plan.

(b) **Reemployment.**

(1) If a Participant terminates employment with the Employer and is subsequently reemployed within the 5 year period following his termination of employment, the former Participant shall again be eligible to participate in the Plan and his credited service shall be based on all periods of employment, provided he

(A) again satisfies the definition of "Employee" set forth in Article I,
and

(B) repays the amount described in paragraph (c)(4) of Article VII.

(2) Notwithstanding the foregoing, an Employee who is reemployed after his benefits have commenced under the Plan (other than disability benefits pursuant to paragraph (b) of Article VII) shall not be eligible to participate in the Plan upon his subsequent reemployment.

ARTICLE VI

CONTRIBUTIONS TO THE PLAN

(a) **Employee Contributions.**

(1) For each Plan Year, an Employee required to participate in the Plan shall make regular contributions to the Plan in an amount equal to 10% of Compensation. Employee contributions withheld by the Employer on behalf of the Employee shall be deposited in the Trust as soon as administratively feasible following the pay period in which the contributions were withheld.

(2) The contributions made by each Employee under the Plan shall be designated as Employer contributions pursuant to Section 414(h) of the Code. Such designation is contingent upon the contributions being excluded from the Employees' gross income for federal income tax purposes. For all other purposes of the Plan, such contributions shall be considered Employee contributions.

(b) **Employer Contributions.** For each Plan Year, the Employer shall make contributions to the Plan in an amount equal to 10% of the Compensation of all Employees participating in the Plan, plus such additional amounts as may be required to satisfy the Plan's funding requirements for the Plan Year and the cost of administering the Plan, as determined by the actuary employed by the Trustees. Employer contributions shall be deposited in the Trust as required by law.

(c) **Police Officer Shared Plan Contributions.** Police Officer Shared Plan contributions shall be made to eligible participants' accounts as provided in Article XIII.

(d) **Form and Timing of Contributions.** Payments on account of the contributions due from the Employer for any Plan Year shall be made in cash. Such payments may be made by the Employer in accordance with the requirements of applicable Florida Statutes.

(e) **Forfeitures.** Any amount forfeited pursuant to the provisions of this Plan shall be used in accordance with regulation Section 1.401-7(a) of the Code.

ARTICLE VII

BENEFITS UNDER THE PLAN

(a) **Retirement Benefit.**

(1) Effective for Plan Years beginning on and after October 1, 2003, a Participant shall be entitled to full benefits in accordance with the schedule set forth in paragraph (a)(2) of this Article upon termination of employment after attaining age 50 and completing at least ten (10) years of Credited Service. A Participant shall have attained his Normal Retirement Age upon attaining age 60 and completing thirty (30) years of Credited Service. Effective May 17, 2010, the above references to ten (10) and thirty (30) years of Credited Service shall be replaced with references to six (6) years of Credited Service.

(2) Upon attaining age 50 and completing ten (10) years of Credited Service (or, effective May 17, 2010, six (6) years of Credited Service) or completing thirty (30) years of Credited Service regardless of age, a Participant shall be fully vested in his Accrued Benefit and shall be entitled to receive, at the time and in the manner described in Article VIII (and, if applicable, Article IX), his benefit under the Plan. A Participant's benefit shall be a monthly income, paid in accordance with the normal form of benefit described below, that is equal to the product of (A), (B), (C) and (D), where:

(A) is 2.50%

(B) is the Participant's Average Monthly Compensation

(C) is the Participant's Years of Credited Service

(D) is the benefit factor determined from the benefit factor table in (E) following:

(E) Benefit Factor Table, effective May 17, 2010

Age at Retirement	50	51	52	53	54	55	56	57	58	59	60 and Higher	30 YEARS OF SERVICE
Benefit Factor	0.85	0.87	0.89	0.91	0.93	0.95	0.96	0.97	0.98	0.99	1.00	1.00

(3) The normal form of benefit shall be an annuity paid monthly for the life of the Participant, with a 50% survivor annuity paid monthly for life to the Participant's spouse. Notwithstanding the foregoing, the normal form of benefit for Police Officers is set forth in Article IX.

(4) In the event that a Participant does not begin to receive his benefit at the time he first becomes eligible, such Participant shall be entitled to a deferred benefit equal to the benefit he was entitled to receive at the time he became eligible, adjusted to take into account his Average Monthly Compensation and Years of Credited Service as of his actual date of termination.

(5) Not more often than biennially, the Trustees may periodically authorize by ordinance, cost-of-living increases in the benefits paid to Employees retiring pursuant to the Plan. Any such increase shall be not greater than one-half of the percentage by which the Consumer Price Index increased since July 1, 1988, or since the date of the last prior cost-of-living increase which was granted pursuant to this subparagraph (or the comparable provision of the prior pension ordinance); and such increase shall in no event be greater than three percent (3%). As used herein, "Consumer Price Index" shall mean the United States Department of Labor's Bureau of Labor Statistics, Consumer Price Index, Wage Earners & Clerical Workers, All Items, U.S. City Average (1967 equals 100) or the successor to that index. No such increase may be authorized unless an enrolled actuary certifies the increase in benefits can be funded on a sound actuarial basis without increasing levels of contributions to the Plan.

(6) Effective for Plan Years beginning October 1, 2003, upon attaining Normal Retirement Age, or, effective May 17, 2010, upon attaining thirty (30) Years of Credited Service regardless of age, a Participant shall be entitled to receive at the time and in the manner described in Article VIII (and, if applicable, Article IX), his benefit under the Plan while continuing his employment with the City.

(A) This distribution shall be known as an "In-service Distribution".

(B) Electing to receive an In-service Distribution shall be equivalent to a termination of employment for the purposes of the Plan.

(i) Individuals receiving In-service Distributions shall be considered to have retired for purposes of the Plan and shall not accrue any additional benefits under the Plan.

(ii) Individuals electing In-service Distributions shall be considered to be retirees and any amendments to the Plan following the Participant's election for In-service Distributions that apply to retirees shall apply to those Participants. Any amendments applicable only to active Participants and not to retirees shall not apply to Participant's who elect In-service Distributions.

(iii) Participants electing In-service Distributions shall cease making employee contributions under Article VI(a) of the Plan, effective as of the first day of the first payroll period following the date of distribution.

(iv) The Compensation earned from employment with the City by Participants electing In-service Distributions that is earned for the time period following their elections to receive In-service Distributions shall be subject to Social Security taxes (subject to approval by the State of Florida and the Social Security Administration).

(b) **Disability Benefit.**

(1) (A) A Participant who terminates employment by reason of his disability shall be entitled to receive, at the time and in the manner described in Article VIII, a disability benefit equal to the greater of: (i) his Accrued Benefit as of the date of termination of his employment; or (ii) the amount described in subparagraph (2) below. Notwithstanding the foregoing, a Police Officer shall be entitled to a disability benefit equal to the greater of: (1) an amount calculated under this paragraph (b); or (2) an amount calculated in accordance with paragraph (c) of Article IX.

(B) No disability benefit shall be paid under the Plan until a Participant has received all accrued vacation pay and accrued sick leave pay.

(2) (A) The monthly amount of the disability benefit payable to a Participant who is deemed by the Advisory Committee and the Trustees to be disabled by reason of an injury suffered or an illness contracted in the line of duty shall not be less than 50% of such Participant's Average Monthly Compensation.

(B) The monthly amount of the disability benefit payable to a Participant who is deemed by the Advisory Committee and the Trustee to be disabled by reason of an injury suffered or an illness contracted other than in the line of duty shall not be less than 25% of such Participant's Average Monthly Compensation.

(3) (A) The provisions of this paragraph (b) shall apply to Participants who are employed on or after January 1, 1996 and are determined by the Advisory Committee and Trustees to be disabled on or after such date.

(B) The disability benefit of Participants who were employed prior to January 1, 1996 shall be determined in accordance with the terms of the Plan as in effect prior to the January 1, 1996.

(4) A Participant (other than a Police Officer) shall be considered disabled for purposes of the Plan if, in the opinion of the Advisory Committee and the Trustees, the Participant is disabled due to sickness or injury, such disability is likely to be continuous and permanent from a cause other than specified in subparagraph (5) below, and such disability renders the Participant unable to perform any useful, meaningful and necessary work for the Employer in an available position for which the Participant is reasonably qualified or for

which the Participant may be reasonably trained to perform, subject to the limitations below. A Police Officer shall be considered disabled if he meets the requirements set forth in Article IX.

(A) If a Participant employed in a position other than a Police Officer is disabled to the extent that he can not reasonably continue to perform the functions of his specific position, but remains capable of performing useful, meaningful and necessary work, he may be assigned to an alternate position with the Employer in lieu of receiving disability benefits under the Plan. For this purpose, the Participant may be assigned to any other position with the Employer that is available for which the Participant has the skill and knowledge to perform or for which the Participant can reasonably be trained to perform, such assignment to be with no loss of base pay regardless of whether the assignment to such position is at an equal or lower level.

(B) For purposes of this paragraph (b)(4), the term "base pay" shall be defined as Compensation at the rate prescribed for the particular job class in the Employer's pay schedule.

(5) Each Participant who is claiming disability benefits shall establish, to the satisfaction of the Advisory Committee and the Trustees that such disability was not occasioned primarily by:

(A) excessive or habitual use of any drugs, intoxicants, or narcotics;

(B) injury or disease sustained while willfully and illegally participating in fights, riots or civil insurrections;

(C) injury or disease sustained while committing a crime;

(D) injury or disease sustained while serving in any branch of the Armed Forces;

(E) injury or disease sustained after his employment as an Employee with the Employer shall have terminated; or

(F) injury or disease sustained by the Participant while working for anyone other than the Employer and arising out of such employment.

(6) (A) A Participant shall not become eligible for disability benefits until and unless he undergoes a physical examination by a qualified physician or physicians, who shall be selected by the Advisory Committee and the Trustees for that purpose.

(B) (i) Any former Participant receiving disability benefits under provisions of this Plan may be periodically re-examined by a qualified physician or physicians who shall be selected by the Advisory Committee and Trustees to determine if such disability has ceased to exist or if the former Participant may be employed in an available position for which the Participant is reasonably qualified in accordance with the provisions in paragraph (b)(4) above. If the Advisory Committee and Trustees find that the former Participant is no longer disabled or is capable of performing service for the Employer in accordance with the provisions of paragraph (b)(4) above, the Advisory Committee and Trustees may request the former Participant to return to the employ of the Employer. If the former Participant returns to the performance of duty as an Employee, he shall again be eligible to participate in the Plan. In the event a former Participant is no longer disabled or is deemed capable of returning to employment with the Employer in accordance with the provisions of subparagraph (b)(4) above, and he does not return to employment with the Employer pursuant to the Advisory Committee's and Trustees' request, he shall forfeit the right to his disability benefit; provided further, that if an Employee accepts employment with another employer in an occupation or line of work similar to the occupation that resulted in the Employee being eligible for a disability benefit or a line of work that is deemed by the Advisory Committee and Trustees to be medically inconsistent with the determination of the Participant's disability hereunder, he shall forfeit the right to his disability benefit.

(ii) A Participant who returns to employment with the Employer and recommences participation in the Plan shall not receive credited service for the period during which he received disability benefits under the Plan.

(C) The cost of the physical examination and/or re-examination of the Employee claiming and/or receiving disability benefits shall be borne by the Plan. All other reasonable costs as determined by the Advisory Committee and Trustees incident to the physical examination, such as, but not limited to, transportation and meals, shall be borne by the Plan.

(D) The Advisory Committee and Trustees may establish such other rules and procedures as it deems necessary to implement the provisions of this paragraph (b).

(7) If a Participant receives a disability benefit under the Plan and workers' compensation benefits pursuant to Florida Statute Chapter 440 for the same disability, and the total monthly benefits received from both exceed 100% of the Participant's average monthly wage, as defined in Chapter 440, Florida Statutes, excluding overtime, the disability benefit shall be reduced so that the total monthly amount received by the Participant does not exceed 100% of such wage. The amount of any lump sum workers' compensation payment shall be

converted to an equivalent monthly benefit payable for ten years certain by dividing the lump sum amount by 83.9692.

(c) **Termination of Employment Benefit.**

(1) (A) In the event a Participant's employment with his Employer is terminated for reasons other than retirement, disability or death, such Participant shall be entitled to receive, at the time and in the manner described in Article VIII, a termination of employment benefit that is equal to the Participant's vested interest in his Accrued Benefit as of the date of his termination of employment.

(B) If a Participant separates from service before attaining age 50, but after completing 10 Years of Credited Service, or 6, effective May 17, 2010), the Participant will be entitled to a distribution of his vested benefit under the Plan upon attaining age 50.

(2) A Participant's vested interest in his Accrued Benefit shall be the following percentage of his Accrued Benefit, based upon such Participant's full Years of Credited Service as of the date of his termination of employment:

<u>TOTAL NUMBER OF FULL YEARS OF CREDITED SERVICE</u>	<u>VESTED INTEREST</u>
Less than 10 Years of Credited Service	0%
Less than 6 Years of Credited Service (effective May 17, 2010)	0%
10 years or more	100%
6 years or more (effective May 17, 2010)	100%

(3) (A) A vested Participant who terminates employment with the Employer prior to his attaining age 50 may elect to receive the total contributions he has made to the Plan. Upon making such election, the Participant's interest in his Accrued Benefit shall be forfeited.

(B) A Participant who is not vested in his Accrued Benefit as of his termination of employment shall receive the total contributions he has made to the Plan.

(4) If a Participant terminates employment prior to attaining age 50 and completing ten (10) (or six (6), effective May 17, 2010) Years of Credited Service and receives a distribution of his contributions and is subsequently reemployed and again becomes a Participant in this Plan, his Credited Service

for purposes of vesting and benefit accruals shall not include any periods of employment prior to his reemployment date unless he repays to the Pension Fund the actuarial present value of the Accrued Benefit previously forfeited. Such repayment must be made no later than the fourth anniversary of the Participant's reemployment. If a Participant repays the foregoing amount to the Pension Fund within the prescribed time period, the interest of the Participant in his Accrued Benefit previously forfeited under subparagraph (3) above shall be restored in full and the Participant's Credited Service shall be based on all periods of employment.

(d) **Death Benefit.**

(1) (A) In the event of the death of a Participant who is vested in his Accrued Benefit prior to his termination of employment, his spouse shall be entitled to receive a death benefit at the time and in the manner described in Article VIII. Said death benefit shall be in an amount equal to 50% of the Participant's Accrued Benefit as of the date of his death. Notwithstanding the foregoing, a Police Officer shall be entitled to a death benefit equal to the greater of: (1) an amount calculated under this paragraph (d)(1)(A); or (2) a death benefit calculated in accordance with paragraph (e) of Article IX, whichever is greater.

(i) The Participant's spouse may elect to receive, in lieu of the death benefit under the Plan, the total contributions made by the Participant to the Plan. Upon making such election, the Participant's spouse shall forfeit any right to a death benefit under the Plan.

(ii) If the Participant does not have a spouse, the total contributions made by the Participant to the Plan shall be paid to the Participant's estate.

(B) In the event of the death of a Participant who is not vested in his Accrued Benefit prior to his termination of employment, his spouse (or, if there is no spouse, his estate) shall be entitled to receive the total contributions made by the Participant to the Plan.

(2) If the total contributions made by the Participant to the Plan exceed the value of the death benefit paid under the Plan, the amount by which such contributions exceed the value of the death benefit paid under the Plan shall be paid to the Participant's estate.

(e) **Supplemental Retirement Benefit and Death Benefit.**

(1) Upon attaining age 50 and completing ten (10) (or six (6), effective May 17, 2010) Years of Credited Service, a Participant shall be entitled to receive, at the time and in the manner described in Article VIII, a supplemental

retirement benefit. The supplemental retirement benefit shall be a monthly income, payable for the Participant's life, equal to \$100.

(2) (A) In the event of the death of a Participant, his Beneficiary (as described below) shall be entitled to receive a supplemental death benefit at the time and in the manner described in Article VIII. The amount of the supplemental death benefit shall be \$25,000, which amount shall be reduced by 10% for each year by which the Participant's full Years of Credited Service as of the date of his death and less than ten (10) for Employees employed on or after January 1, 1996.

(B) The supplemental death benefit shall be payable to the Beneficiary designated by the Participant on the Beneficiary designation form prescribed by the Employer. If there is no Beneficiary designation filed with the Employer, the Participant's surviving spouse shall be deemed to be the Beneficiary designated to receive the supplemental death benefit payable under the Plan and, if none, then his estate.

(f) **Limitations on Amount of Benefits.**

(1) (A) Notwithstanding any other provision of this Article VII to the contrary, for plan years ending after December 31, 2006, the projected benefit for a Participant (under this Plan and under all other defined benefit plans maintained by the Employer, whether or not terminated) when expressed as a benefit payable annually in the form of a straight life annuity, in accordance with such regulations as may be issued by the Secretary of the Treasury, without regard to the death benefit or any other ancillary benefit, shall not at any time within the Limitation Year exceed the limits prescribed in Section 415 of the Code, as adjusted under such regulations as may be issued by the Secretary of Treasury, which is hereby incorporated by reference.

(B) Notwithstanding the foregoing, the benefit payable with respect to a Participant shall be deemed not to exceed the limitations set forth in subparagraph (1) if the benefit payable with respect to such Participant under this Plan and under all other defined benefit pension plans to which the Employer contributes, does not exceed \$10,000 for the applicable Plan Year and for any Plan Year and the Employer has not at any time maintained a defined contribution plan in which the Participant participated.

(C) The limitations in subparagraph (1)(A) and (1)(B) above, shall be multiplied by a fraction (not in excess of one), the numerator of which is the number of the Participant's years of participation in the Plan (in the case of the dollar limitation set forth in subparagraph (1)(A) or the number of the Participant's Years of Credited Service (in the case of the

limitation set forth in (1)(B)) and the denominator of which, in either case, is ten (10).

(D) As of January 1 of each calendar year, the limitation set forth in subparagraph (1)(A) above, shall be adjusted as and if permitted by the Secretary of the Treasury, and any such adjusted limitation shall become effective as the maximum dollar limitation under the Plan for that calendar year. The maximum dollar limitation for a calendar year, as so adjusted, shall apply to Limitation Years ending with or within such calendar year.

(E) (i) (a) In the event the Participant's retirement benefits become payable before age 62, the limitation set forth in subparagraph (1)(A) above shall be reduced in accordance with regulations issued by the Secretary of the Treasury, but not below \$75,000.

(b) In the event the Participant's retirement benefits become payable before age 55, the limitation set forth in subparagraph (1)(A) above shall be reduced in accordance with regulations issued by the Secretary of the Treasury, but not below the actuarial equivalent of \$75,000 at age 55.

(c) In no event shall the limitation set forth in subparagraph (1)(A) above be reduced to an amount less than \$50,000 (indexed in accordance with the Internal Revenue Code) in the case of police officers who are qualified participants as defined in Section 415(b)(2)(H) of the Internal Revenue Code.

(ii) If the Participant's retirement benefit becomes payable after age 65, for purposes of determining whether the benefit meets the limitation set forth in subparagraph (1)(A) above, such benefit shall be adjusted so that it is actuarially equivalent to the benefit beginning at age 65. This adjustment shall be made in accordance with regulations promulgated by the Secretary of the Treasury.

(2) This subparagraph (2) shall apply to the amount of Benefit (as such term is described below) under this Plan for any Participant who is considered a Restricted Participant (as such term is described below). Such Benefit shall be limited to an amount equal to the payments that would have been made on behalf of the Restricted Participant under a life annuity form of payment that is the Actuarial Equivalent of the Restricted Participant's Accrued Benefit under the Plan.

(A) For purposes of this subparagraph (2), the term "Benefit" shall include retirement income provided by the Plan, plus loans in

excess of the amounts set forth in Section 72(p)(2)(A) of the Code, any periodic income, any withdrawal values payable to a living Participant and any death benefits not provided for by insurance on the Participant's life.

(B) For purposes of this subparagraph (2), the term "Restricted Participant" shall mean all highly compensated employees as defined in Section 414(q) of the Code. In any one Plan Year, the total number of Participants whose benefits are subject to restriction under this subparagraph (2) shall be limited by the Plan to a group of not less than 25 highly compensated employees with the greatest Compensation.

(C) Notwithstanding the foregoing, the limitations set forth in this subparagraph (2) shall not restrict the current payment of the full amount of retirement income provided by the Plan if:

(i) after payment to a Restricted Participant of all of the Benefit described above, the value of Plan assets equals or exceeds 100% of the value of current liabilities, as defined in Section 412(1)(7) of the Code, or

(ii) the value of the Benefit described above for a Restricted Participant is less than 1% of the value of current liabilities, as defined in Section 412(1)(7) of the Code.

ARTICLE VIII

TIME AND MANNER OF BENEFIT PAYMENTS

(a) Time for Distribution of Benefits.

(1) Except as otherwise provided under this Article VIII and Article IX:

(A) (i) The amount of the benefit to which a Participant is entitled under paragraph (a) of Article VII shall commence as of the first of the month that next follows the month in which the Participant terminates employment on or after attaining age 50 and completing ten (10) Years of Credited Service, or, effective May 17, 2010, six (6) Years of Credited Service or completion of thirty (30) Years of Credited Service regardless of age, continuing as of the first day of each month thereafter during his lifetime and the lifetime of his spouse, if any.

(ii) No payment shall be made with respect to the month in which the Participant terminates employment on or after attaining age 50 and completing ten (10) years of Credited Service or, effective May 17, 2010 after completing thirty (30) years of Credited Service regardless of age; provided, however, that a full monthly payment will be made for the month in which the Participant or his spouse dies.

(B) (i) The amount of the disability benefit to which a Participant is entitled under paragraph (b) of Article VII shall commence as of the first of the month that next follows the later of: (I) the month in which a determination is made as to the Participant's disability; or (II) the month in which occurs the six month anniversary of the Participant's termination of employment, continuing as of the first day of each month thereafter during his lifetime and the lifetime of his spouse, if any.

(ii) No payment shall be made with respect to the month in which a determination is made as to the Participant's disability or the month in which occurs the six month anniversary of the Participant's termination of employment; provided, however, that a full monthly payment will be made for the month in which the Participant or his spouse dies.

(C) (i) The amount of the termination of employment benefit to which a Participant is entitled under paragraph (c) of Article VII shall commence on the first of the month that next follows the month in which the Participant attains age 50, continuing as of the first day of each month thereafter during his lifetime and the lifetime of his spouse, if any.

(ii) No payment shall be made with respect to the month in which the Participant attains age 50, provided, however, that a full

monthly payment will be made for the month in which the Participant or his spouse dies.

(D) (i) The death benefit payable to a Participant's spouse under paragraph (d) of Article VII shall commence as of the earlier of: (I) the first of the month that next follows the month in which the Participant would have attained age 50 if he had continued in the employ of the Employer until he attained age 50; or (II) the end of the month that next follows the month in which the Participant would have attained age 50 if he had continued in the employ of the Employer until his continuing as of the first day of each month thereafter during the lifetime of his spouse.

(ii) No payment shall be made with respect to the month in which the Participant would have attained age 50 and completes ten (10) or (effective May 17, 2010) six (6), years of Credited Service if he had continued in the employ of the Employer provided, however, that a full monthly payment will be made for the month in which the spouse dies.

(E) (i) The supplemental retirement benefit payable to a Participant under paragraph (e)(1) of Article VII shall commence as of the earlier of: (1) the first of the month that next follows the month in which the Participant terminates employment and attains age 50 and completes ten (10) or (effective May 17, 2010) six (6) years of Credited Service; or (2) would have attained age 50 and completes ten (10) years of Credited Service if he had continued in the employ of the Employer until he attained age 50 and completes ten (10) years of Credited Service continuing as of the first day of each month thereafter during his lifetime.

(ii) No payment of the supplemental retirement benefit shall be made with respect to the month in which the Participant terminates employment on or after he attains age 50 and completes ten (10) or (effective May 17, 2010) six (6) years of Credited Service; provided, however, that a full monthly payment will be made for the month in which the Participant dies.

(F) The amount of the supplemental death benefit payable to a Participant's Beneficiary under paragraph (e)(2) of Article VII shall be paid as soon as practicable following the Participant's death.

(2) Notwithstanding anything contained herein to the contrary, any distribution paid to a Participant (or, in the case of a death benefit, to his Beneficiary or beneficiaries) pursuant to subparagraph (1) shall commence not later than the last to occur of:

(A) April 1 of the year following the calendar year in which the Participant terminates employment on or after attaining age 50 and completing six (6) years of Credited Service; or

(B) April 1 of the year following the calendar year in which the participant terminates employment on or after completing thirty (30) years of Credited Service regardless of age; or

(C) April 1 of the year immediately following the calendar year in which the Participant reaches age 70½, or terminates employment, whichever is later.

(b) **Manner of Payment.**

(1) (A) The manner of payment of a Participant's retirement, disability or termination of employment benefit shall be the normal form of payment described in paragraph (a)(3) of Article VII. Notwithstanding the foregoing, Police Officer's normal form of benefit will be the normal form of benefit described in paragraph (d) of Article IX. See Article XIII for the normal benefits from the Police Officers Shared Plan.

(B) The manner of payment of a Participant's death benefit shall be the normal form of annuity payment described in paragraph (a)(3) of Article VII and if applicable paragraph (d) of Article IX.

(C) The manner of payment of a Participant's supplemental retirement benefit shall be a life annuity.

(D) The manner of payment of a Participant's supplemental death benefit shall be a lump sum.

(2) (A) In lieu of the normal form of payment described in subparagraph (1)(A) above, a Participant's retirement, disability or termination of employment benefit may be paid in one of the following optional forms as elected by the Participant. In addition, Police Officers who terminate employment due to a disability, may elect to receive their benefit in one of the following optional forms. The optional forms, which shall be the Actuarial Equivalent of the benefit that would otherwise be paid to the Participant, are as follows:

(i) Monthly income payments for the life of the Participant.

(ii) Monthly income payments for a ten (10) years certain and life thereafter, under which the Participant receives payments during his lifetime and, if he dies after he has begun to receive payments but before he has received 120 payments, the

remaining payments shall be made to his designated Beneficiary; provided, further, that if the designated Beneficiary predeceases the Participant, the Participant may designate a new Beneficiary to receive any payments due after his death. If the Participant does not designate a new Beneficiary, the payments required under this option following the Participant's death shall be paid to the Participant's estate. If the designated Beneficiary begins to receive payments under this option and such designated Beneficiary dies before the end of the 10-year period, the remaining payments shall be paid to the designated Beneficiary's estate.

(iii) an annuity paid for the life a Participant with a 50% survivor annuity paid monthly for life to the Participant's spouse.

(iv) A lump sum payment.

(B) Each Participant shall have the right to designate a Beneficiary for purposes of the optional form of benefit payment described in subparagraph (2)(A)(iv) above and to revoke any such designation. Each designation or revocation shall be evidenced by written instrument filed with the Employer and shall be effective upon filing with the Employer.

(3) In the case of a retirement, disability or termination of employment benefit, in no event shall payment extend beyond the life or life expectancy of the Participant or the joint lives or life expectancies of the Participant and his designated Beneficiary. If the Participant dies before receiving the entire amount payable to him, the balance shall be distributed to his designated Beneficiary at least as rapidly as under the method being used prior to the Participant's death.

(4) In the case of a death benefit, payment

(A) to the designated Beneficiary shall begin within one year following the Participant's death (unless the designated Beneficiary is the Participant's spouse, in which case such benefit shall begin no later than the date the Participant would have reached 70½) and shall not, in any event, extend beyond the life or life expectancy of the designated Beneficiary; or

(B) to any other Beneficiary shall be totally distributed within five years from the date of the Participant's death.

(5) The Participant (or his spouse) shall not be permitted to elect whether life expectancies will be recalculated for purposes of distributions hereunder.

(6) Notwithstanding the foregoing, any payments under the Plan, including the options described in this paragraph shall satisfy the incidental death benefit requirements and all other applicable provisions of Section 401(a)(9) of the Code, the regulations issued thereunder and such other rules thereunder as may be prescribed by the Secretary of the Treasury.

(7) The Trustees may purchase and distribute a nontransferable and nonrefundable annuity contract to provide any benefit under the Plan paid in the form of an annuity.

(c) **Lump Sum Payment.** Notwithstanding anything contained in this Plan to the contrary, any benefit payable under the Plan, the actuarial lump sum present value of which is \$1,000 or less, as determined under Code Section 417(e), shall be paid in a lump sum as soon as practicable following the Participant's termination of employment.

(d) **No Payment Unless Sufficient Funds.** No benefits shall be paid under this Plan unless at the time of such benefit payment the Pension Fund has sufficient assets to pay such benefits; provided, that in the event the assets in the Pension Fund are not sufficient to pay the benefit amounts due under the Plan, the Employer shall make additional contributions to the Plan pursuant to paragraph (b) of Article VI.

(e) **Direct Rollovers.**

(1) Notwithstanding any provisions of the Plan to the contrary that would otherwise limit a distributee's (as defined below) election under this paragraph, a distributee or the distributee spouse may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an eligible rollover distribution (as defined below) paid directly to an eligible retirement plan (as defined below) specified by the distributee in a direct rollover (as defined below).

(2) For purposes of this paragraph, the following terms shall have the following meanings:

(A) 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 years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9), any hardship withdrawal, and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities) and any distribution made to satisfy Code Section 415 or Code Section 401(a)(9).

(B) An "*eligible retirement plan*" is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), an annuity Contract described in Code Section 403(b), an eligible plan under Code Section 457 that agrees to separately account for such transferred amounts and which is maintained by a state, political subdivision of a state or an agency or instrumentality of a state or political subdivision of a state or a qualified trust described in Code Section 401(a) that accepts the distributee's "eligible rollover distribution." For distributions made after December 31, 2007, an eligible retirement plan shall include a Roth IRA as defined under Code Section 408A.

(C) A "*direct rollover*" is a payment made directly by the Plan to the eligible retirement plan specified by the distributee.

(D) A "*Distributee*" means a Participant or the Participants' spouse. Effective for distributions made on or after January 1, 2009, a non-spouse Beneficiary (as defined in Section 401(a)(9)(E) of the Code) may elect to directly rollover an eligible rollover distribution to an individual retirement account under Section 408(a) of the Code or an individual retirement annuity under Section 408(b) of the Code. A non-spouse rollover will not be subject to the direct rollover requirements of Section 401(a)(31) of the Code, the notice requirements of Section 402(f) of the Code or the mandatory withholding requirements of Section 3405(c) of the Code.

ARTICLE IX

MINIMUM BENEFITS FOR POLICE OFFICERS

(a) **Average Monthly Compensation** shall mean the Compensation received by a participating Police Officer during his five best years out of his last ten (10) years of Credited Service, ending with date of termination, divided by 60 (or, if less, the product of 12 multiplied by the number of his years of Credited Service). For purposes of determining a participating Police Officer's maximum benefit as required by Section 415 of the Code, a Participant's "Average Monthly Compensation" shall mean the Section 415 Compensation received by a Participant during the five (5) Limitation Years out of the last ten (10) with respect to which the Participant receives the highest Section 415 Compensation, divided by 60 (or if less, the aggregate number of his months of employment).

(b) **Years of Credited Service.** Notwithstanding anything in this Plan to the contrary, year of Credited Service shall mean the total number of years and fractional parts of years of service credited as an Employee of the Employer during periods of participation in the Plan, omitting intervening years or fractional parts of years when an Employee is not employed by the Employer (except as may otherwise be provided herein or in rules established by the Advisory Committee and approved by the Trustees). Years of Credited Service should include up to five (5) years of military service; provided that:

- (1) a Police Officer is employed by the Employer and leaves employer to serve in the military;
- (2) such Police Officer is entitled to reemployment under the Uniformed Services Employment and Reemployment act; and
- (3) the Police Officer returns to employment within one year from the date of his release from the military.

(c) **Disability Benefit.**

(1) A Police Officer will be considered disabled, if in the opinion of the Board, he is wholly prevented from rendering useful and efficient service as a Police Officer; and a Police Officer will be considered permanently disabled, if in the opinion of the Board, such Police Officer is likely to remain so disabled continuously and permanently from a cause other than those specified in subparagraph (b)(5) of Article VII.

(2) Notwithstanding anything in this Plan to the contrary, if a Police Officer's disability occurs in the line of duty, his monthly benefit shall not be less than 42% of his Average Monthly Compensation as of the Police Officer's disability retirement date.

(3) Further, if a Police Officer's disability does not occur in the line of duty, his monthly benefit shall not be less than 25% of his Average Monthly Compensation as of the Police Officer's disability retirement date.

(d) **Normal Form of Benefit.** Notwithstanding anything in this Plan to the contrary, unless an optional form of benefits is elected, the normal form of benefit for Police Officers will be monthly payments over the life of the Participant but not less than ten (10) years, if this form of benefit produces a greater benefit than the normal form of benefit in paragraph (a)(3) of Article VII.

(e) **Death Benefit.**

(1) If a Police Officer dies before being eligible for a Retirement Benefit, his Beneficiary shall be entitled to a refund of 100%, without interest, of the Participant's total contributions made to the Plan.

(2) If a Police Officer having at least 10 or (effective May 17, 2010) 6 Years of Credited Service, dies prior to retirement, his Beneficiary shall be entitled to the greater of the Retirement Benefit otherwise payable to the Police Officer upon attaining age 50, or the benefit payable under paragraph (d)(1)(A) of Article VII.

(3) Notwithstanding any provisions of Plan to the contrary, a retired Police Officer may change his or her designation of joint annuitant or beneficiary up to two times, as provided in Section 185.341, Florida Statutes, without the approval of the Board of Trustees or the current joint annuitant or beneficiary. The retiree is not required to provide proof of the good health of the joint annuitant or beneficiary being removed, and the joint annuitant or beneficiary being removed need not be living. However, in the absence of proof of good health of the joint annuitant or beneficiary being replaced, the actuary will assume that the joint annuitant or beneficiary has deceased for purposes of calculating the new payment. Additional changes may only be made with approval of the Board of Trustees.

(f) **Minimum Benefits.** The benefits for a Police Officer as described in this Article IX are the minimum benefits to be provided to Police Officers. In the event that other provisions in this Plan would provide a higher level of benefit to the Police Officer, those provisions will apply.

ARTICLE X

ESTABLISHMENT AND OPERATION OF PENSION FUND

(a) **Establishment of Pension Fund.**

(1) As part of the Plan, there is hereby established the Pension Fund, into which shall be deposited all of the contributions and assets whatsoever attributable to the Plan. However, for contributions described in Article XIII, a special fund will be established for the Police Officers ("Police Fund"). The Pension fund and the special fund shall establish individual accounts for each Participant in their respective fund, and the amount to which each Participant is entitled shall be credited to his account as soon as the monies are received.

(2) The Pension Fund shall be held in trust by the Trustees and the Trustees shall be vested with full legal title to the Pension Fund; provided, further, that the actual custody and supervision of the Pension Fund shall be vested in the Trustees.

(3) The assets of the Pension Fund may be deposited by the Trustees with an official designated by the Employer, acting in a ministerial capacity only, who shall be liable in the same manner and to the same extent as he is liable for the safekeeping of funds for the Employer. However, any assets so deposited with the designated official of the Employer shall be kept in a separate fund or clearly identified as assets of the Pension Fund. In lieu thereof, the Trustees may deposit the funds of the Pension Fund in a qualified public depository as defined in Section 280.02, Florida Statutes, which depository with regard to such assets shall conform to and be bound by all of the provisions of Chapter 280, Florida Statutes.

(b) **Records.** All assets attributable to the Plan may be commingled in the Pension Fund, provided that accurate records are maintained at all times reflecting the financial composition of the Pension Fund, including accurate current accounts and entries as regards the following:

- (1) current amounts of accumulated contributions of Employees on an individual basis;
- (2) receipts and disbursements;
- (3) benefit payments;
- (4) all interest, dividends and gains (or losses); and
- (5) such other entries as may be properly required so as to reflect a clear and complete financial report of the Pension Fund.

(c) **Powers and Duties of Trustees.** The Trustees may:

(1) Invest and reinvest the assets of the Pension Fund in annuity (including group annuity contracts of the pension investment type) and life insurance contracts of legal reserve life insurance companies licensed to do business in the State of Florida, in amounts sufficient to provide, in whole or in part, benefits to which all of the Participants shall be or become entitled under the provisions of the Plan, and pay the initial and subsequent premiums thereon.

(2) Invest and reinvest the assets of the Pension Fund in:

(A) Time or savings accounts of a national bank, a state bank, financial institution doing business in Hardee County, Florida or a savings, building and loan association insured by the Federal Deposit Insurance Corporation. However, for Police Officers benefits invested in any such savings account shall not be greater than the amount of insurance coverage for such accounts.

(B) Obligations of the United States Treasury and agencies allied with or related to the United States Treasury.

(C) County bonds containing a pledge of the full faith and credit of the county involved, bonds of the Florida development commission, or of any other state agency, which have been approved as to legal and fiscal sufficiency by the state board of administration.

(D) Obligations of any municipal authority issued pursuant to the laws of this state; provided, however, that for each of the five years next preceding the date of investment, the income of such authority available for fixed charges shall have been not less than one and one-half (1-1/2) times its average annual fixed charge requirements over the life of its obligations.

(E) Common stocks, preferred stocks and bonds and other evidence of indebtedness issued or guaranteed by a corporation organized under the laws of the United States, any state, or organized territory of the United States or the District of Columbia or any corporation international in character engaged in international business and trade, provided:

(i) the corporation is listed on any one or more of the recognized national stock exchanges;

(ii) all corporate bonds shall carry a AA rating as established either by Standard & Poor's, Moody's or Fitch; and

(iii) not more than three percent (3%) of the assets of the Pension Fund shall be invested in the common stock or capital stock of any one issuing company nor shall the aggregate investment any one issuing company exceed one per cent (1%) of the outstanding capital stock of that company; nor shall the aggregate of the investments under this subparagraph at cost exceed fifty percent (50%) of the Pension Fund's assets.

(3) Cause any Pension Fund investment in securities to be registered in or transferred into its name as Trustee or into the name of such nominee as it may direct, or it may retain them unregistered and in form permitting transferability, but the books and records shall at all times show that all investments are part of the Pension Fund.

(4) Vote upon any stocks, bonds, or securities of any corporation, association, or trust and give general or specific proxies or powers of attorney with or without power of substitution; participate in mergers, reorganizations, recapitalizations, consolidations, and similar transactions with respect to such securities; deposit such stock or other securities in any voting trust or any protective or like committee with the Trustees or with depositories designated thereby; amortize or fail to amortize any part or all of the premium or discount resulting from the acquisition or disposition of assets; and generally exercise any of the powers of an owner with respect to stocks, bonds, or other investments comprising the Pension Fund which it may deem to be to the best interest of the Pension Fund to exercise.

(5) Retain in cash and keep unproductive of income such amount of the Pension Fund as it may deem advisable, having regard for the cash requirements of the Plan.

(6) Notwithstanding the investment provisions set forth in subparagraph (2) above, retain the services of a custodian bank, an investment advisor registered under Investment Advisors Act of 1940 or otherwise exempt from such required registration, an insurance company, or a combination of these, for the purposes of investment decisions and management. Such investment manager shall have discretion, subject to any guidelines as prescribed by the Trustees, in the investment of all Pension Fund assets.

(d) **Prudent Man Rule.** The Trustees of this Plan and all other persons occupying a fiduciary position under this Plan in the administration of this Plan and in investing and reinvesting assets of the Pension Fund shall utilize and be governed by the prudent man rule.

(e) **Receipt of Information.** Where any action which the Trustees are required to take or any duty or function which they are required to perform either under the terms herein or under the general law applicable to the Trustees under this Plan can reasonably be taken or performed only after receipt by the Trustees from a Participant, the Employer, or any other entity, of specific information, certification, direction or instructions, the Trustees shall be free

of liability in failing to take such action or perform such duty or function until such information, certification, direction or instruction has been received by it.

(f) **Overpayments and Underpayments.** Any overpayments or underpayments from the Pension Fund to a Participant or Beneficiary caused by errors of computation shall be adjusted with interest at the rate used to determine the Actuarial Equivalent under the Plan. Overpayment shall be charged against payments next succeeding the correction. Underpayments shall be made up from the Pension Fund.

(g) **Appointment of Agents.** Any of the foregoing powers and functions reposed in the Trustees may be performed or carried out by the Trustees through duly authorized agents, provided that the Trustees at all times maintain continuous supervision over the acts of any such agent; provided further, that legal title to the Pension Fund shall always remain in the Trustees.

(h) **Independent Audit.** An independent audit shall be performed annually by a certified public accountant for the most recent fiscal year of the Employer. Such report shall reflect items normally included in a certified audit.

(i) **Expenses of Administration.**

(1) (A) The assets of the Pension Fund may be used to pay all expenses of the administration of the Plan and the Pension Fund, including the compensation of any investment manager, the expense incurred by the Trustees or the Advisory Committee in discharging its duties, all income or other taxes of any kind whatsoever that may be levied or assessed under existing or future laws upon or in respect of the Pension Fund, and any interest that may be payable on money borrowed by the Trustees for the purpose of the Pension Fund, as well as any settlements or judgments entered with respect to the Plan.

(B) The Employer may pay the expenses of the Plan and the Pension Fund. Any such payment by the Employer shall not be deemed a contribution to this Plan.

(2) Notwithstanding anything contained herein to the contrary, no excise tax or other liability imposed upon the Trustees or any other person for failure to comply with the provisions of any federal law shall be subject to payment or reimbursement from the assets of the Pension Fund.

(3) No individual Trustee or Advisory Committee member shall be entitled to compensation from the Trust (except for the reimbursement of expenses properly and actually incurred).

(j) **Limitations on Life Insurance and Annuity Contracts for Participant's Benefit.** No ordinary life insurance contract shall be purchased which would, alone or combined with other such contracts insuring the life of a Participant, cause the pre-retirement

death benefit in this Plan to exceed 100 times the monthly pension payable to the insured Participant under the Plan.

ARTICLE XI

AMENDMENT AND TERMINATION

(a) **Amendment of Plan.** The Employer shall have continuous power to amend this Plan in whole or in part; provided, however, that no such amendment, except as permitted by law:

(1) shall have the effect of vesting in the Employer, directly or indirectly any interest, ownership or control in any of the present or subsequent assets held in the Pension Fund;

(2) shall cause or permit any property held subject to the terms of the Pension Fund to be diverted for purposes other than the exclusive benefit of the Participants and their beneficiaries;

(3) shall reduce the then vested Accrued Benefit of any Participant; or

(4) reduce or eliminate any benefit in pay status prior to the Effective Date of the Plan (except as otherwise provided under the terms of the Plan prior to the Effective Date of this amendment and restatement).

(b) **Termination of Plan; Discontinuance of Contributions.**

(1) This Plan may be terminated in whole or in part at any time by the Employer.

(2) If this Plan is terminated, or if contributions to the Plan are discontinued, the Trustees shall continue to administer the Plan in accordance with the provisions of the Plan, for the sole benefit of the Participants and their beneficiaries. In the event of termination, or if contributions to the Plan are discontinued, there shall be full vesting of benefits accrued to the date of termination and the assets of the Plan shall be allocated in an equitable manner to provide benefits on a proportionate basis to the persons so entitled in accordance with the provisions thereof.

(3) The following shall be the order of priority for purposes of allocating the assets of the Plan as of the date of termination or the discontinuance of contributions, with the date of such discontinuance being determined by the Trustees.

(A) Apportionment shall first be made with respect to each Employee receiving a benefit hereunder on such date, each person receiving a benefit on such date on account of a deceased Employee, and each Employee who has, by such date, become eligible for a Retirement Benefit but has not yet retired, in an amount which is the actuarial equivalent of such benefit, based upon the actuarial assumptions in use for purposes of the most recent actuarial valuation, provided that, if such asset value is less than the aggregate of such amounts,

such amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such asset value.

(B) If there is any asset value remaining after the apportionment under subparagraph (3)(A), apportionment shall next be made with respect to each Employee in the service of the Employer on such date who has completed at least ten Years of Credited Service and who is not entitled to an apportionment under subparagraph (3)(A), in the amount required to provide the actuarial equivalent, as described in subparagraph (3)(A) above, of the accrued Retirement Benefit, based on the credited service and Average Monthly Compensation as of such date, or if greater, the amount of the Employee's accumulated contributions and each vested former Participant then entitled to a deferred benefit who has not, by such date, begun receiving benefit payments, in the amount required to provide said actuarial equivalent of the accrued Retirement Benefit, or if greater, the amount of the Employee's accumulated contributions, provided that, if such remaining asset value is less than the aggregate of the amounts apportioned hereunder, such latter amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.

(C) If there is any asset value after the apportionments under subparagraphs (3)(A) and (3)(B), apportionment shall be made with respect to each Employee in the service of the Employer on such date who is not entitled to an apportionment under subparagraphs (3)(A) and (3)(B) in an amount equal to Participant's accumulated contributions, provided that, if such remaining asset value is less than the aggregate of the amounts apportioned hereunder such latter amount shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.

(D) If there is any asset value remaining after the apportionments under subparagraphs (3)(A), (3)(B), and (3)(C), apportionment shall lastly be made with respect of each Employee included in subparagraph (3)(C) above to the extent of the actuarial equivalent, as described in subparagraph (3)(A) above, of the accrued Retirement Benefit, less the amount apportioned in subparagraph (3)(C), based on the credited service and Average Monthly Compensation as of such date, provided that, if such remaining asset value is less than the aggregate of the amounts apportioned hereunder, such amounts shall be reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.

(E) In the event there is asset value remaining after the full apportionment specified in subparagraphs (3)(A), (3)(B), (3)(C) and (3)(D), such excess shall be returned to the Employer.

(4) The allocation provided in subparagraph (3) above may, as decided by the Trustees, be carried out through the purchase of insurance company contracts to

provide the benefits determined in accordance with this subparagraph (3). The Pension Fund may be distributed in one sum to the persons entitled to said benefits or the distribution may be carried out in such other equitable manner as the Trustees may direct. The Pension Fund may be continued in existence for purposes of subsequent distributions.

(5) After all the vested Accrued Benefits provided hereunder have been paid and after all other liabilities have been satisfied, then and only then shall any remaining amounts of the Pension Fund revert to the Employer.

(c) **Termination of Plan; Benefits for Police Officers**

(1) Notwithstanding any Plan provisions to the contrary, effective July 1, 2009, benefits for Police Officers other than those described in Article XIII, shall be determined in accordance with this section upon Plan termination.

(2) Upon termination of the Plan for any reason, or upon written notice to the Board of Trustees that contributions thereunder are being permanently discontinued, the rights of all police officers to benefits accrued to the date of such termination and the amounts credited to a police officer's account, if applicable, are nonforfeitable. The Plan assets attributable to Police Officers shall be distributed in accordance with the following procedures:

(A) The Board of Trustees shall determine the date of distribution and the asset value required to fund all the nonforfeitable benefits after taking into account the expenses of such distribution. The Board shall inform the City if additional assets are required, in which event the City shall continue to fund those benefits until all nonforfeitable benefits have been funded.

(B) The Board of Trustees shall determine the method of distribution of the asset value, whether distribution shall be by payment in cash, by the maintenance of another or substituted trust fund, by the purchase of insured annuities, or otherwise, for each Police Officer entitled to benefits under the Plan as specified in subsection (C).

(C) The Board of Trustees shall distribute the asset value as of the date of termination in the manner set forth in this subsection, on the basis that the amount required to provide any given retirement income is the actuarially computed single-sum value of such retirement income, except that if the method of distribution determined under subsection (2) involves the purchase of an insured annuity, the amount required to provide the given retirement income is the single premium payable for such annuity. The actuarial single-sum value may not be less than the police officer's accumulated contributions to the Plan, with interest if provided by the Plan, less the value of any benefits previously paid to the Police Officer from the Plan.

(D) If there is asset value remaining after the full distribution specified in subsection (C), and after the payment of any expenses incurred with such distribution, such excess shall be returned to the City, less return to the State of the state's contributions, provided that, if the excess is less than the total contributions made by the City and the State to date of termination of the Plan, such excess shall be divided proportionately to the total contributions made by the City and the State.

(E) The Board of Trustees shall distribute, in accordance with subsection (B), the amounts determined under subsection (C).

If, after 24 months after the date the Plan terminated or the date the Board received written notice that the contributions thereunder were being permanently discontinued, the City or the Board of Trustees of the Plan has not complied with all the provisions in this section, the Department of Management Services shall effect the termination of the Plan in accordance with Chapter 185.37 of the Florida Statutes.

ARTICLE XII

MISCELLANEOUS

(a) **Alienation.** No Participant or Beneficiary of a Participant shall have any right to assign, transfer, appropriate, encumber, commute, anticipate or otherwise alienate his interest in this Plan or the Pension Fund or any payments to be made thereunder; no benefits, payments, rights or interests of a Participant or Beneficiary of a Participant of any kind or nature shall be in any way subject to legal process to levy upon, garnish or attach the same for payment of any claim against the Participant or Beneficiary; and no Participant or Beneficiary of a Participant shall have any right of any kind whatsoever with respect to the Pension Fund, or any estate or interest therein, or with respect to any other property or right, other than the right to receive such distributions as are lawfully made out of the Pension Fund, as and when the same respectively are due and payable under the terms of this Plan.

(b) **Effect on Other Plans.** Nothing in this Plan shall be construed so as to abridge, alter or in any way affect any of the rights or liabilities of an Employee of the Employer under any other retirement plan in effect as of the Effective Date of this Plan.

(c) **Use of Electronic Media.** The Employer may use telephonic or electronic media to satisfy any notice requirements required by this Plan, to the extent permissible under the Code (or other generally applicable guidance). The Employer also may use telephonic or electronic media to conduct Plan transactions to the extent permissible under the Code (or other generally applicable guidance).

(d) **Forfeiture of Benefits for Certain Offenses.**

(1) Any Employee who is convicted of any of the following specified offenses committed prior to retirement, or whose employment is terminated by reason of his admitted commission, aid or abetment of any of the following specified offenses, shall forfeit all rights and benefits under this Pension Fund, except for the return of his accumulated contributions as of the date of termination.

(2) The specified offenses are as follows:

(A) The committing, aiding or abetting of an embezzlement of public funds;

(B) The committing, aiding or abetting of any theft by a public officer or Employee from the Employer;

(C) Bribery in connection with the employment of a public officer or Employee;

(D) Any felony specified in Florida Statutes, Chapter 838 (except §838.15 and §838.16);

(E) The committing of an impeachable offense; and

(F) The committing of any felony by a public officer or Employee who willfully and with intent to defraud the public or the public agency, for which he acts or in which he is employed, of the right to receive the faithful performance of his duty as a public officer or Employee, realizes or obtains, or attempts to obtain, a profit, gain, or advantage for himself or for some other person through the use or attempted use of the power, rights, privileges, duties or position of his public office or employment position;

(G) The committing on or after October 1, 2008, of any felony defined in Section 800.04, Florida Statutes, against a victim younger than sixteen (16) years of age, or any felony defined in Chapter 794, Florida Statutes, against a victim younger than eighteen (18) years of age, by a public officer or employee through the use or attempted use of power, rights, privileges, duties, or position of his or her public office or employment position.

(3) For purposes of this paragraph, "conviction" shall be defined as an adjudication of guilt by a court of competent jurisdiction; a plea of guilty or a nolo contendere; a jury verdict of guilty when adjudication of guilt is withheld and the accused is placed on probation; or a conviction by the Senate of an impeachable offense. For this purpose, "court" shall be defined as any state or federal court of competent jurisdiction which is exercising its jurisdiction to consider a proceeding involving the alleged commission of a specified offense.

(4) Prior to forfeiture, the Trustees shall hold a hearing in accordance with Florida Statutes, Chapter 120 on which notice shall be given to the Participant whose benefits are being considered for forfeiture.

(5) If a Participant whose benefits are forfeited pursuant to this paragraph has received benefits from the Plan in excess of his contributions without interest, such Participant shall be required to pay back to the Pension Fund the amount of the benefits received in excess of his contributions without interest. The Trustees may implement all legal action necessary to recover such funds.

(e) **Indemnification.**

(1) To the extent not covered by insurance contracts in force from time to time, the Employer shall indemnify and hold harmless the Trustees, the city clerk and members of the Advisory Committee from all personal liability for damages and costs, including court costs and attorneys' fees, arising out of claims, suits, litigation or threat of same, herein referred to as "claims", against these individuals because of acts or circumstances connected with or arising out of their official duty as Trustees, the city clerk or members of the Advisory Committee. The Employer reserves the right, in its sole discretion, to settle or not settle the claim at any time, and to appeal or to not appeal from any adverse judgment or ruling, and in either event will indemnify and

hold harmless any Trustees, the city clerk or members of the Advisory Committee from the judgment, execution, or levy thereon.

(2) This paragraph shall not be construed so as to relieve any insurance company or other entity liable to defend the claim or liable for payment of the judgment or claim, from any liability, nor does this paragraph waive any provision of law affording the Employer immunity from any suit in whole or part, or waive any other substantive or procedural rights the Employer may have.

(3) This paragraph shall not apply nor shall the Employer be responsible in any manner to defend or pay for claims arising out of acts or omissions of the Trustees, the city clerk or members of the Advisory Committee which constitute felonies or gross malfeasance or gross misfeasance in office.

(f) **Uniformed Service.**

(1) An Employee shall be credited with service for purposes of vesting and benefit accruals for his service in the uniformed service (as defined in the Uniformed Services Employment and Reemployment Rights Act of 1994 [the "Act"]) upon being granted leave by the Employer for such uniformed service and termination from employment as an Employee with the Employer, provided that:

(A) the Participant must return to his employment as an Employee with the Employer within the time periods prescribed by the Act; and

(B) the Employee complies with the Employee contribution requirements prescribed by Act.

(2) The maximum service credit for uniformed service shall be 5 years or such other time period as may be prescribed by the Act.

(3) The Plan shall comply with the provisions of the Heroes Earnings Assistance and Relief Tax Act of 2008 ("HEART") for purposes of determining a Participant death benefits and any other provisions of HEART as required by law.

ARTICLE XIII

POLICE OFFICERS SHARED PLAN CONTRIBUTIONS

(a) **Police Officer.** In accordance with provisions of Florida Statutes Chapter 185 and such other required authority, a Police Officer, who is a Participant, shall be entitled to one share in the Police Fund for each full year of service as a Police Officer of the City. The number of full years of service rendered by each Participant shall be determined and a record thereof shall be made on the Participant's service record and the Participant shall thereupon have as many share as full years rendered, and thereafter each full fiscal year of service as defined in Article I(m) hereof shall add one more share to the credit of each Participant.

The number of shares to which each and every Participant is entitled as at the close of each fiscal year shall be added together and the total number of shares thus determined shall be divided into the net amount of money available to be allocated and credited to the respective share accounts. The amount to be credited to the account of each Participant will then be obtained by multiplying the value determined for one (1) share by the total number of shares to which each Participant is entitled. No credits shall be made to an individual's account after he has been separated from service, whether by retirement, transfer to another city department, or in any manner whatsoever. Notwithstanding the change in the Plan's vesting schedule from 10 Years of Credited Service to 6 Years of Credited Service reflected in Article VII that is otherwise effective May 17, 2010, a Participant shall continue to be 0% vested in his share account until the completion of 10 Years of Credited Service, at which time he shall become 100% vested in such account.

(1) For purposes of this Section, the word, service, shall mean all time served as a regularly appointed or employed Police Officer of the City of Wauchula, for which regular Compensation is paid by the City of Wauchula and all time during which a Participant is absent on military leave. It shall include all leaves of absence with pay, but shall not include leaves of absence during which no regular Compensation is paid by the City of Wauchula, except military leave as herein provided.

(i) The Police Pension Board shall pay all costs and expenses of management and operation for the fiscal year last ended.

(ii) The Police Pension Board shall set aside as much of the income as it considers advisable as a reserve for expenses for the then current fiscal year.

(iii) After deducting the monies called for by paragraph (i) and (ii), the remaining monies shall be allocated and credited to the Accounts of the respective Participants.

(2) As soon as the monies are received, the value of each Participant's share shall be calculated and credited to his share account. Such calculation shall be

made and credits allocated to his share account only once in each fiscal year; and prorations shall not be made for a part of the year.

(3) Upon retirement, or, effective October 1, 2003, upon the Participant's election after attaining normal retirement age, notwithstanding that the Participant is still employed by the City of Wauchula, a Participant shall be paid the entire amount standing to his credit in the Police Fund at the date of his retirement, in such manner as he shall elect to receive it, either in a lump sum or in four quarterly installments. Settlement as provided herein shall be in full satisfaction of all claims of a Participant against the special fund, and he shall thereupon cease to be a Participant.

(b) **City responsibility with respect to special funds.** The City of Wauchula shall have no responsibility for the operation of the Police Funds except as specified in this Article and shall bear no expense in the operation of the special funds.

(c) **Effect of conflict of statutes.** If any provisions of this Article or the Plan hereby created shall conflict with the provisions of Florida Statutes Chapter 185, such conflict shall be resolved in favor of the statutory provisions which are intended to control.

IN WITNESS WHEREOF, this Plan has been executed this _____ day of _____, 2014.

**EMPLOYER:
City of Wauchula**

By: _____
City Manager

APPENDIX A

1. **Actuarial Equivalent for Benefit Calculations under the Plan**

Actuarial Equivalent shall mean a benefit of equivalent current value to the benefit that would otherwise have been provided to the Participant. At the time of calculation of the actuarially equivalent benefit, the calculation shall not include possible future benefit increases which have not been adopted by an Ordinance or Resolution and which are not in effect as of the calculation date. The calculations will be performed using the 1983 Group Mortality Table set back two years and the rate of interest that is specified in the preceding actuarial valuation used to fund the Plan.

2. **Actuarial Equivalent for Maximum Benefit Testing under IRS Code Section 415(b)**

Effective for plan years beginning on and after October 1, 2008, the Plan shall utilize the applicable mortality table under Section 417(e)(3) of the Code, and applicable guidance issued thereof.

For plan years prior to October 1, 2008, the applicable mortality table under Section 417(e)(3) is the fixed blend of 50% of the male mortality rate and 50% of the female mortality rate from the 94 GAR mortality table. The applicable interest rate will be determined using a look back period of 4 months and stability period of one calendar year. For the period allowed the applicable interest rate will be the rate as specified in the preceding sentence or 5.5% if higher as allowed under the Pension Funding Equity Act of 2004.