

ORDINANCE NO. 2614-05

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AMENDING AND RESTATING THE CITY OF WINTER PARK FIREFIGHTERS' PENSION PLAN, ADOPTED PURSUANT TO ORDINANCE NO. 2477-02, AS SUBSEQUENTLY AMENDED; PROVIDING FOR DEFINITIONS; PROVIDING FOR MEMBERSHIP; PROVIDING FOR A BOARD OF TRUSTEES; PROVIDING FOR FINANCES AND FUND MANAGEMENT; PROVIDING FOR CONTRIBUTIONS; PROVIDING FOR BENEFIT AMOUNTS AND ELIGIBILITY; PROVIDING FOR PRE-RETIREMENT DEATH BENEFITS; PROVIDING FOR DISABILITY BENEFITS; PROVIDING FOR VESTING OF BENEFITS; PROVIDING OPTIONAL FORMS OF BENEFITS; PROVIDING FOR BENEFICIARIES; PROVIDING CLAIMS PROCEDURES; PROVIDING FOR REPORTS TO THE DIVISION OF RETIREMENT; PROVIDING FOR A ROSTER OF RETIREES; PROVIDING FOR A MAXIMUM PENSION LIMITATION; PROVIDING FOR DISTRIBUTION OF BENEFITS; PROVIDING MISCELLANEOUS PROVISIONS; PROVIDING FOR REPEAL OR TERMINATION OF THE SYSTEM; PROVIDING FOR DOMESTIC RELATIONS ORDERS; RETIREE DIRECTED PAYMENTS; EXEMPTION FROM EXECUTION AND NON-ASSIGNABILITY; PROVIDING FOR PENSION VALIDITY; PROVIDING FOR FORFEITURE OF PENSION UNDER CERTAIN CIRCUMSTANCES; PROVIDING FOR CONVICTION AND FORFEITURE, FALSE, MISLEADING OR FRAUDULENT STATEMENTS; PROVIDING FOR INDEMNIFICATION AND DEFENSE OF CLAIMS; PROVIDING FOR DIRECT TRANSFERS OF ELIGIBLE ROLLOVER DISTRIBUTIONS; PROVIDING FOR THE PURCHASE OF CREDITED SERVICE FOR ABSENCES PURSUANT TO THE FAMILY AND MEDICAL LEAVE ACT; PROVIDING FOR A DEFERRED RETIREMENT OPTION PLAN; PROVIDING FOR PURCHASE OF CREDIT FOR MILITARY SERVICE PRIOR TO EMPLOYMENT; PROVIDING FOR THE PURCHASE OF CREDITED SERVICE FOR PRIOR FIRE SERVICE; PROVIDING FOR REEMPLOYMENT AFTER RETIREMENT; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY OF PROVISIONS; REPEALING ALL ORDINANCES IN CONFLICT HERewith AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Winter Park Firefighters are presently provided pension and certain other benefits under Ordinances of the City of Winter Park; and

WHEREAS, the City of Winter Park Firefighters' Pension Plan is a "local law plan" within the meaning of Section 175.032(11), Florida Statutes, and as described in Section 175.351, Florida Statutes; and

WHEREAS, the City Commission desires to clarify and restate the provisions of the Firefighters' Retirement Plan to consolidate all prior ordinances and Code provisions and to

incorporate Federal law and the provisions of Chapter 175, Florida Statutes, applicable to local law plans;

NOW, THEREFORE, BE IT ENACTED BY THE CITY OF WINTER PARK, FLORIDA, AS FOLLOWS;

SECTION 1: That the City of Winter Park Firefighters' Pension Plan, adopted pursuant to Ordinance No. 2477-02, as subsequently amended, is hereby amended and restated as set forth in the document designated **CITY OF WINTER PARK FIREFIGHTERS' PENSION PLAN**, attached hereto and made a part hereof.

SECTION 2: Specific authority is hereby granted to codify and incorporate this Ordinance in the existing Code of Ordinances of the City of Winter Park.

SECTION 3: All Ordinances or parts of Ordinances in conflict herewith be and the same are hereby repealed.

SECTION 4: If any section, subsection, sentence, clause, phrase of this ordinance, or the particular application thereof shall be held invalid by any court, administrative agency, or other body with appropriate jurisdiction, the remaining section, subsection, sentences, clauses, or phrases under application shall not be affected thereby.

SECTION 5: That this Ordinance shall become effective upon its adoption.

ADOPTED at a regular meeting of the City Commission of the City of Winter Park, Florida, held at City Hall, Winter Park, Florida, on the 26 day of January, 2005.

By: 

Kenneth Marchman, Mayor

Attest: 

Cynthia S. Bonham, City Clerk

**CITY OF WINTER PARK  
FIREFIGHTERS' PENSION PLAN**

**SECTION 1. DEFINITIONS.**

1. As used herein, unless otherwise defined or required by the context, the following words and phrases shall have the meaning indicated:

Accumulated Contributions means a Member's own contributions with interest, beginning October 1, 1992, at the rate of five percent (5%) per annum. For those Members who purchase Credited Service with interest or at no cost to the System, any payment representing the amount attributable to Member contributions based on the applicable Member contribution rate, and any payment representing interest and any required actuarially calculated payments for the purchase of such Credited Service, shall be included in Accumulated Contributions.

Actuarial Equivalent means a benefit or amount of equal value, based upon the 1983 Group Annuity Mortality Table and an interest rate of seven percent (7%) per annum.

Average Final Compensation means one-twelfth (1/12) of the average Salary of the five (5) best years of the last ten (10) years of Credited Service prior to Retirement, termination, or death, or the career average salary as a full-time Firefighter, whichever is greater. A year shall be twelve (12) consecutive months.

Beneficiary means the person or persons entitled to receive benefits hereunder at the death of a Member who has or have been designated in writing by the Member and filed with the Board. If no such designation is in effect, or if no person so designated is living, at the time of death of the Member, the Beneficiary shall be the estate of the Member.

Board means the Board of Trustees, which shall administer and manage the System herein provided and serve as trustees of the Fund.

City means City of Winter Park, Florida.

Code means the Internal Revenue Code of 1986, as amended from time to time.

Credited Service means the total number of years and fractional parts of years of service as a Firefighter with Member contributions, when required, omitting intervening years or fractional

parts of years when such Member was not employed by the City as a Firefighter. A Member may voluntarily leave his Accumulated Contributions in the Fund for a period of five (5) years after leaving the employ of the Fire Department pending the possibility of being reemployed as a Firefighter, without losing credit for the time that he was a Member of the System. If a vested Member leaves the employ of the Fire Department, his Accumulated Contributions will be returned only upon his written request. If a Member who is not vested is not reemployed as a Firefighter with the Fire Department within five (5) years, his Accumulated Contributions shall be returned. Upon return of a Member's Accumulated Contributions, all of his rights and benefits under the System are forfeited and terminated. Upon any reemployment, a Firefighter shall not receive credit for the years and fractional parts of years of service for which he has withdrawn his Accumulated Contributions from the Fund, unless the Firefighter repays into the Fund the contributions he has withdrawn, with interest, as determined by the Board, within ninety (90) days after his reemployment.

The years or fractional parts of a year that a Member serves in the military service of the Armed Forces of the United States, the United States Merchant Marine or the United States Coast Guard, voluntarily or involuntarily, after separation from employment as a Firefighter with the City to perform training or service, shall be added to his years of Credited Service for all purposes, including vesting, provided that:

- A. The Member must return to his employment as a Firefighter within one (1) year from the earlier of the date of his military discharge or his release from active service.
- B. The maximum credit for military service pursuant to this paragraph shall be five (5) years.
- C. The Member is entitled to reemployment under the provisions of the Uniformed Services Employment and Reemployment Rights Act (USERRA), (PL. 103-353).

Effective Date means October 1, 1992.

Firefighter means an actively employed full-time person employed by the City, including his initial probationary employment period, who is certified as a Firefighter as a condition of employment in accordance with the provisions of §633.35, Florida Statutes, and whose duty it is to extinguish fires, to protect life and to protect property.

Fund means the trust fund established herein as part of the System.

Member means an actively employed Firefighter who fulfills the prescribed membership requirements. Benefit improvements which, in the past, have been provided for by amendments to the System adopted by City ordinance, and any benefit improvements which might be made in the future shall apply prospectively and shall not apply to Members who terminate employment or who retire prior to the effective date of any ordinance adopting such benefit improvements, unless such ordinance specifically provides to the contrary.

Plan Year means the twelve (12) month period beginning October 1 and ending September 30 of the following year.

Retiree means a Member who has entered Retirement status.

Retirement means a Member's separation from City employment with eligibility for immediate receipt of benefits under the System or entry into the Deferred Retirement Option Plan.

Salary means the total compensation for services rendered to the City as a Firefighter, reported on the Member's W-2 form except compensation for special details, duty indirectly paid for by private parties and tuition reimbursement, but including all tax deferred items of income deferred pursuant to Sections 457 (employee contributions only) and 414(h) of the Code and tax exempt income exempt pursuant to Section 125 of the Code, and tax sheltered items of income derived from elective employee payroll deductions or salary reductions.

Compensation in excess of limitations set forth in Section 401(a)(17) of the Code shall be disregarded. 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 Member before the first Plan Year beginning after December 31, 1995.

Spouse means the lawful wife or husband of a Member or Retiree at the time benefits become payable.

System means the City of Winter Park Firefighters' Pension Plan as contained herein and all amendments thereto.

2. Masculine Gender.

The masculine gender, where used herein, unless the context specifically requires otherwise, shall include both the feminine and masculine genders.

**SECTION 2. MEMBERSHIP.**

1. Conditions of Eligibility.

All Firefighters as of the Effective Date, and all future new Firefighters, shall become Members of this System as a condition of employment.

2. Designation of Beneficiary.

Each Firefighter shall complete a form prescribed by the Board designating a Beneficiary or Beneficiaries.

**SECTION 3. BOARD OF TRUSTEES.**

1. The sole and exclusive administration of and responsibility for the proper operation of the System and for making effective the provisions of this ordinance ~~are~~ is hereby vested in a Board of Trustees. The Board is hereby designated as the plan administrator. The Board shall consist of five (5) Trustees, two (2) of whom, unless otherwise prohibited by law, shall be legal residents of the City, who shall be appointed by the Winter Park City Commission, and two (2) of whom shall be Members of the System, who shall be elected by a majority of the Firefighters who are Members of the System. The fifth Trustee shall be chosen by a majority of the previous four (4) Trustees as provided for herein, and such person's name shall be submitted to the Winter Park City Commission. Upon receipt of the fifth person's name, the Winter Park City Commission shall, as a ministerial duty, appoint such person to the Board as its fifth Trustee. The fifth Trustee shall have the same rights as each of the other four (4) Trustees appointed or elected as herein provided and shall serve a two (2) year term unless he sooner vacates the office. Each resident Trustee shall serve

as Trustee for a period of two (2) years, unless he sooner vacates the office or is sooner replaced by the Winter Park City Commission at whose pleasure he shall serve. Each Member Trustee shall serve as Trustee for a period of two (2) years, unless he sooner leaves the employment of the City as a Firefighter or otherwise vacates his office as Trustee, whereupon a successor shall be chosen in the same manner as the departing Trustee. Each Trustee may succeed himself in office. DROP participants can be elected as and vote for elected Trustees. The Board shall establish and administer the nominating and election procedures for each election. The Board shall meet at least quarterly each year. The Board shall be a legal entity with, in addition to other powers and responsibilities contained herein, the power to bring and defend lawsuits of every kind, nature, and description.

2. The Trustees shall, by a majority vote, elect a Chairman, Vice-Chairman and a Secretary. The Secretary of the Board shall keep a complete minute book of the actions, proceedings, or hearings of the Board. The Trustees shall not receive any compensation as such, but may receive expenses and per diem as provided by law.

3. Each Trustee shall be entitled to one vote on the Board. Three (3) affirmative votes shall be necessary for any decision by the Trustees at any meeting of the Board. A Trustee shall ~~have the right to~~ abstain from voting as the result of a conflict of interest ~~provided that Trustee complies and shall comply~~ with the provisions of Section 112.3143, Florida Statutes.

4. The Board shall engage such actuarial, accounting, legal, and other services as shall be required to transact the business of the System. The compensation of all persons engaged by the Board and all other expenses of the Board necessary for the operation of the System shall be paid from the Fund at such rates and in such amounts as the Board shall agree. In the event the Board chooses to use the City's legal counsel, actuary or other professional, technical or other advisors, it shall do so only under terms and conditions acceptable to the Board.

5. The duties and responsibilities of the Board shall include, but not necessarily be limited to, the following:

- A. To construe the provisions of the System and determine all questions arising thereunder.
- B. To determine all questions relating to eligibility and membership.
- C. To determine and certify the amount of all retirement allowances or other benefits hereunder.
- D. To establish uniform rules and procedures to be followed for administrative purposes, benefit applications and all matters required to administer the System.
- E. To distribute to Members, at regular intervals, information concerning the System.
- F. To receive and process all applications for benefits.
- G. To authorize all payments whatsoever from the Fund, and to notify the disbursing agent, in writing, of approved benefit payments and other expenditures arising through operation of the System and Fund.
- H. To have performed actuarial studies and valuations, at least as often as required by law, and make recommendations regarding any and all changes in the provisions of the System.
- I. To perform such other duties as are required to prudently administer the System.

#### **SECTION 4. FINANCES AND FUND MANAGEMENT.**

##### **Establishment and Operation of Fund.**

1. As part of the System, there exists the Fund, into which shall be deposited all of the contributions and assets whatsoever attributable to the System.
2. The actual custody and supervision of the Fund (and assets thereof) shall be vested in the Board. Payment of benefits and disbursements from the Fund shall be made by the disbursing agent but only upon written authorization from the Board.



3. All funds of the Firefighters' Pension Plan may be deposited by the Board with the Finance Director of the City, 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 City. However, any funds so deposited with the Finance Director of the City shall be kept in a separate fund by the Finance Director or clearly identified as such funds of the Firefighters' Pension Plan. In lieu thereof, the Board shall deposit the funds of the Firefighters' Pension Plan in a qualified public depository as defined in §280.02, Florida Statutes, which depository with regard to such funds shall conform to and be bound by all of the provisions of Chapter 280, Florida Statutes. In order to fulfill its investment responsibilities as set forth herein, the Board may 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 Board, in the investment of all Fund assets.

4. All funds and securities of the System may be commingled in the Fund, provided that accurate records are maintained at all times reflecting the financial composition of the Fund, including accurate current accounts and entries as regards the following:

- A. Current amounts of Accumulated Contributions of Members on both an individual and aggregate account basis, and
- B. Receipts and disbursements, and
- C. Benefit payments, and
- D. Current amounts clearly reflecting all monies, funds and assets whatsoever attributable to contributions and deposits from the City, and
- E. All interest, dividends and gains (or losses) whatsoever, and
- F. Such other entries as may be properly required so as to reflect a clear and complete financial report of the Fund.

5. An audit shall be performed annually by a certified public accountant for the most recent fiscal year of the System showing a detailed listing of assets and a statement of all income and

disbursements during the year. Such income and disbursements must be reconciled with the assets at the beginning and end of the year. Such report shall reflect a complete evaluation of assets on both a cost and market basis, as well as other items normally included in a certified audit.

6. The Board shall have the following investment powers and authority:

A. The Board shall be vested with full legal title to said Fund, subject, however, and in any event to the authority and power of the Winter Park City Commission to amend or terminate this Fund, provided that no amendment or Fund termination shall ever result in the use of any assets of this Fund except for the payment of regular expenses and benefits under this System, except as otherwise provided herein. All contributions from time to time paid into the Fund, and the income thereof, without distinction between principal and income, shall be held and administered by the Board or its agent in the Fund and the Board shall not be required to segregate or invest separately any portion of the Fund.

B. All monies paid into or held in the Fund shall be invested and reinvested by the Board and the investment of all or any part of such funds shall be limited to:

(1) Annuity and life insurance contracts with life insurance companies in amounts sufficient to provide, in whole or in part, the benefits to which all of the Members in the Fund shall be entitled under the provisions of this System and pay the initial and subsequent premium thereon.

(2) Time or savings accounts of a national bank, a state bank insured by the Bank Insurance Fund or a savings/building and loan association insured by the Savings Association Insurance Fund which is administered by the Federal Deposit Insurance Corporation or a state

or federal chartered Credit Union whose share accounts are insured by the National Credit Union Share Insurance Fund.

- (3) Obligations of the United States or obligations guaranteed as to principal and interest by the government of the United States or by an agency of the government of the United States.
- (4) Bonds issued by the State of Israel.
- (5) Stocks, commingled funds administered by national or state banks, mutual funds and bonds or other evidences of indebtedness, provided that:
  - (a) Except as provided in subparagraph (b), all individually held securities and all securities in a commingled or mutual fund must be 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.
  - (b) Up to ten percent (10%) of the assets of the Fund may be invested in foreign securities.
  - (c) The Board shall not invest more than five percent (5%) of its assets in the common stock, capital stock or convertible securities of any one issuing company, nor shall the aggregate investment in any one issuing company exceed five percent (5%) of the outstanding capital stock of that company; nor shall the aggregate of its investments in common stock, capital stock and convertible securities at market exceed sixty-five percent (65%) of the assets of the Fund.
- (6) Real Estate, provided the Board shall not invest more than thirty percent (30%) at cost in real property or real estate.

- C. At least once every three (3) years, and more often as determined by the Board, the Board shall retain a professionally qualified independent consultant, as defined in Section 175.071, Florida Statutes, to evaluate the performance of all current investment managers and make recommendations regarding the retention of all such investment managers. These recommendations shall be considered by the Board at its next regularly scheduled meeting.
- D. The Board may retain in cash and keep unproductive of income such amount of the Fund as it may deem advisable, having regard for the cash requirements of the System.
- E. Neither the Board nor any Trustee shall be liable for the making, retention or sale of any investment or reinvestment made as herein provided, nor for any loss or diminishment of the Fund, except that due to his or its own negligence, willful misconduct or lack of good faith.
- F. The Board may cause any investment in securities held by it 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 Fund.
- G. The Board is empowered, but is not required, to vote upon any stocks, bonds, or securities of any corporation, association, or trust and to give general or specific proxies or powers of attorney with or without power of substitution; to participate in mergers, reorganizations, recapitalizations, consolidations, and similar transactions with respect to such securities; to deposit such stock or other securities in any voting trust or any protective or like committee with the Trustees or with depositories designated thereby; to amortize or fail to amortize any part or all of the premium or discount resulting from the

acquisition or disposition of assets; and generally to exercise any of the powers of an owner with respect to stocks, bonds, or other investments comprising the Fund which it may deem to be to the best interest of the Fund to exercise.

- H. The Board shall not be required to make any inventory or appraisal or report to any court, nor to secure any order of court for the exercise of any power contained herein.
- I. Where any action which the Board is required to take or any duty or function which it is required to perform either under the terms herein or under the general law applicable to it as Trustee under this ordinance, can reasonably be taken or performed only after receipt by it from a Member, the City, or any other entity, of specific information, certification, direction or instructions, the Board 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.
- J. Any overpayments or underpayments from the Fund to a Member, Retiree or Beneficiary caused by errors of computation shall be adjusted with interest at a rate per annum approved by the Board in such a manner that the Actuarial Equivalent of the benefit to which the Member, Retiree or Beneficiary was correctly entitled, shall be paid. Overpayments shall be charged against payments next succeeding the correction or collected in another manner if prudent. Underpayments shall be made up from the Fund in a prudent manner.
- K. The Board shall sustain no liability whatsoever for the sufficiency of the Fund to meet the payments and benefits provided for herein.
- L. In any application to or proceeding or action in the courts, only the Board shall be a necessary party, and no Member or other person having an interest

in the Fund shall be entitled to any notice or service of process. Any judgment entered in such a proceeding or action shall be conclusive upon all persons.

- M. Any of the foregoing powers and functions reposed in the Board may be performed or carried out by the Board through duly authorized agents, provided that the Board at all times maintains continuous supervision over the acts of any such agent; provided further, that legal title to said Fund shall always remain in the Board.

#### **SECTION 5. CONTRIBUTIONS.**

##### **1. Member Contributions.**

- A. Amount. Each Member of the System shall be required to make regular contributions to the Fund in the amount of six percent (6%) of his Salary. Member contributions withheld by the City on behalf of the Member shall be deposited with the Board immediately after each pay period. The contributions made by each Member to the Fund shall be designated as employer contributions pursuant to §414(h) of the Code. Such designation is contingent upon the contributions being excluded from the Members' gross income for Federal Income Tax purposes. For all other purposes of the System, such contributions shall be considered to be Member contributions.

- B. Method. Such contributions shall be made by payroll deduction.

##### **2. State Contributions.**

Any monies received or receivable by reason of laws of the State of Florida, for the express purpose of funding and paying for retirement benefits for Firefighters of the City shall be deposited in the Fund comprising part of this System immediately and under no circumstances more than five (5) days after receipt by the City.

3. City Contributions.

So long as this System is in effect, the City shall make quarterly contributions to the Fund in an amount equal to the difference in each year, between the total aggregate Member contributions for the year, plus state contributions for such year, and the total cost for the year, as shown by the most recent actuarial valuation of the System. The total cost for any year shall be defined as the total normal cost plus the additional amount sufficient to amortize the unfunded past service liability as provided in Part VII of Chapter 112, Florida Statutes.

4. Other.

Private donations, gifts and contributions may be deposited to the Fund, but such deposits must be accounted for separately and kept on a segregated bookkeeping basis. Funds arising from these sources may be used only for additional benefits for Members, as determined by the Board, and may not be used to reduce what would have otherwise been required City contributions.

**SECTION 6. BENEFIT AMOUNTS AND ELIGIBILITY.**

1. Normal Retirement Date.

A Member's normal retirement date shall be the first day of the month coincident with, or next following the earlier of the attainment of age fifty-five (55) and the completion of ten (10) years of Credited Service or the completion of twenty (20) years of Credited Service, regardless of age. A Member may retire on his normal retirement date or on the first day of any month thereafter, and each Member shall become one hundred percent (100%) vested in his accrued benefit on the Member's normal retirement date. Normal retirement under the System is Retirement from employment with the City on or after the normal retirement date.

2. Normal Retirement Benefit.

A Member retiring hereunder on or after his normal retirement date shall receive a monthly benefit which shall commence on the first day of the month coincident with or next following his Retirement and be continued thereafter during Member's lifetime, ceasing upon death, but with one hundred twenty (120) monthly payments guaranteed in any event. The monthly

retirement benefits shall equal three percent (3%) of Average Final Compensation, for each year of Credited Service.

3. Early Retirement Date.

A Member may retire on his early retirement date which shall be the first day of any month coincident with or next following the attainment of age fifty (50) and the completion of ten (10) years of Credited Service. Early retirement under the System is Retirement from employment with the City on or after the early retirement date and prior to the normal retirement date.

4. Early Retirement Benefit.

A Member retiring hereunder on his early retirement date may receive either a deferred or an immediate monthly retirement benefit payable in the same form as for normal retirement as follows:

- A. A deferred monthly retirement benefit which shall commence on what would have been his normal retirement date had he remained a Firefighter and shall be continued on the first day of each month thereafter. The amount of each such deferred monthly retirement benefit shall be determined in the same manner as for retirement on his normal retirement date except that Credited Service and Average Final Compensation shall be determined as of his early retirement date; or
- B. An immediate monthly retirement benefit which shall commence on his early retirement date and shall be continued on the first day of each month thereafter. The benefit payable shall be as determined in Paragraph A above, reduced by three percent (3%) for each year by which the commencement of benefits precedes the normal retirement date.

5. Cost-of-Living Adjustment.

- A. This subsection shall apply to those Member retiring on or after October 1, 2002 or those persons who are vested and terminate their employment on or after that date. Beginning on the first day of the month following the date on



which a Retiree reaches age sixty (60), and annually on the same date in each subsequent year, the monthly benefit of each Retiree, Beneficiary, joint annuitant or terminated vested person who retires or otherwise terminates employment on or after the effective date of the ordinance adopting this subsection, shall be increased by three percent (3%). Beneficiaries and joint annuitants of deceased Retirees shall receive adjustments as provided for herein based on the age of the deceased Retiree.

- B. Beginning October 1, 2003 and on each subsequent October 1st, the benefit recipients described in A. above shall, after receiving their first benefit increase on the first day of the month following their sixtieth birthday, receive their three percent (3%) annual adjustment on each October 1st thereafter. The October 1, 2003 increase for those currently receiving benefits, and the first October 1st following the sixtieth birthday increase, for those who begin benefits after October 1, 2003, shall be prorated according to the number of months since the immediately preceding increase was received.

#### **SECTION 7. PRE-RETIREMENT DEATH.**

##### **1. Benefits for Death In-Line of Duty.**

If any Member shall lose his life as a direct result of the performance of his duties, his Spouse shall receive a monthly benefit equal to the greater of i) thirty percent (30%) of the average monthly Salary of the Member over the previous twelve (12) month period, or ii) the Member's accrued benefit calculated as three percent (3%) of Average Final Compensation for each year of Credited Service, subject to the limitations set forth in Section 16 of Ordinance No. 2205. This payment shall be paid to the surviving Spouse until his or her death.

##### **2. Benefits for Death Not-in-Line of Duty.**

- A. If any Member shall die from a condition that was not directly caused by the performance of his duties, and who had less than ten (10) years of Credited

Service, his Beneficiary shall receive a refund of one hundred percent (100%) of the Member's Accumulated Contributions.

- B. If any Member shall die from a condition that was not directly caused by the performance of his duties, but who had ten (10) or more years of Credited Service, his Beneficiary shall receive an immediate benefit and the benefit payable to the Beneficiary shall be that monthly amount which would have been payable had the deceased employee retired under normal retirement payable for ten (10) years and then ceasing.

3. The Board shall determine whether death was in-line of duty or not-in-line of duty.

#### **SECTION 8. DISABILITY.**

1. Disability Benefits In-Line Of Duty.

Any Member who shall become totally and permanently disabled to the extent that he is unable, by reason of a medically determinable physical or mental impairment, to render useful and efficient service as a Firefighter, which disability was directly caused by the performance of his duty as a Firefighter, shall, upon establishing the same to the satisfaction of the Board, be entitled to a monthly pension equal to three percent (3%) of his Average Final Compensation multiplied by the total years of Credited Service, but in any event, the minimum amount paid to the Member shall be forty-two percent (42%) of the Average Final Compensation of the Member. Terminated persons, either vested or non-vested, are not eligible for disability benefits, except that those terminated by the City for medical reasons may apply for a disability within thirty (30) days after termination.

2. In-Line of Duty Presumptions.

- A. Presumption. Any condition or impairment of health of a Member caused by hypertension or heart disease shall be presumed to have been suffered in line of duty unless the contrary is shown by competent evidence, provided that such Member shall have successfully passed a physical examination upon entering into such service, which examination failed to reveal any evidence of such condition; and provided further, that such presumption shall not apply

to benefits payable or granted in a policy of life insurance or disability insurance.

B. Additional Presumption. The presumption provided for in this subparagraph B. shall apply only to those conditions described in this subparagraph B. that are diagnosed on or after January 1, 1996.

(1) Definitions. As used in this subsection 2.B., the following definitions apply:

(a) "Body fluids" means blood and body fluids containing visible blood and other body fluids to which universal precautions for prevention of occupational transmission of blood-borne pathogens, as established by the Centers for Disease Control, apply. For purposes of potential transmission of meningococcal meningitis or tuberculosis, the term "body fluids" includes respiratory, salivary, and sinus fluids, including droplets, sputum, and saliva, mucous, and other fluids through which infectious airborne organisms can be transmitted between persons.

(b) "Emergency rescue or public safety Member" means any Member employed full time by the City as a firefighter, paramedic, emergency medical technician, law enforcement officer, or correctional officer who, in the course of employment, runs a high risk of occupational exposure to hepatitis, meningococcal meningitis, or tuberculosis and who is not employed elsewhere in a similar capacity. However, the term "emergency rescue or public safety Member" does not include any person employed by a public hospital licensed

under Chapter 395, Florida Statutes, or any person employed by a subsidiary thereof.

- (c) "Hepatitis" means hepatitis A, hepatitis B, hepatitis non-A, hepatitis non-B, hepatitis C, or any other strain of hepatitis generally recognized by the medical community.
- (d) "High risk of occupational exposure" means that risk that is incurred because a person subject to the provisions of this subsection, in performing the basic duties associated with his employment:
  - i. Provides emergency medical treatment in a non-health-care setting where there is a potential for transfer of body fluids between persons;
  - ii. At the site of an accident, fire, or other rescue or public safety operation, or in an emergency rescue or public safety vehicle, handles body fluids in or out of containers or works with or otherwise handles needles or other sharp instruments exposed to body fluids;
  - iii. Engages in the pursuit, apprehension, and arrest of law violators or suspected law violators and, in performing such duties, may be exposed to body fluids; or
  - iv. Is responsible for the custody, and physical restraint when necessary, of prisoners or inmates within a prison, jail, or other criminal detention facility, while on work detail outside the facility, or while being transported and, in performing such duties, may be exposed to body fluids.

- (e) "Occupational exposure," in the case of hepatitis, meningococcal meningitis, or tuberculosis, means an exposure that occurs during the performance of job duties that may place a worker at risk of infection.
- (2) Presumption. Any emergency rescue or public safety Member who suffers a condition or impairment of health that is caused by hepatitis, meningococcal meningitis, or tuberculosis, that requires medical treatment, and that results in total or partial disability or death shall be presumed to have a disability suffered in the line of duty, unless the contrary is shown by competent evidence; however, in order to be entitled to the presumption, the Member must, by written affidavit as provided in Section 92.50, Florida Statutes, verify by written declaration that, to the best of his knowledge and belief:
- (a) In the case of a medical condition caused by or derived from hepatitis, he has not:
    - i. Been exposed, through transfer of bodily fluids, to any person known to have sickness or medical conditions derived from hepatitis, outside the scope of his employment;
    - ii. Had a transfusion of blood or blood components, other than a transfusion arising out of an accident or injury happening in connection with his present employment, or received any blood products for the treatment of a coagulation disorder since last undergoing medical tests for hepatitis, which tests failed to indicate the presence of hepatitis;

- iii. Engaged in unsafe sexual practices or other high-risk behavior, as identified by the Centers for Disease Control or the Surgeon General of the United States or had sexual relations with a person known to him to have engaged in such unsafe sexual practices or other high-risk behavior; or
  - iv. Used intravenous drugs not prescribed by a physician.
- ( b) In the case of meningococcal meningitis, in the 10 days immediately preceding diagnosis he was not exposed, outside the scope of his employment, to any person known to have meningococcal meningitis or known to be an asymptomatic carrier of the disease.
- ( c) In the case of tuberculosis, in the period of time since the Member's last negative tuberculosis skin test, he has not been exposed, outside the scope of his employment, to any person known by him to have tuberculosis.
- (3) Immunization. Whenever any standard, medically recognized vaccine or other form of immunization or prophylaxis exists for the prevention of a communicable disease for which a presumption is granted under this section, if medically indicated in the given circumstances pursuant to immunization policies established by the Advisory Committee on Immunization Practices of the U.S. Public Health Service, an emergency rescue or public safety Member may be required by the City to undergo the immunization or prophylaxis unless the Member's physician determines in writing that the immunization or other prophylaxis would pose a significant risk to the Member's health. Absent such written declaration, failure or

refusal by an emergency rescue or public safety Member to undergo such immunization or prophylaxis disqualifies the Member from the benefits of the presumption.

(4) Record of Exposures. The City shall maintain a record of any known or reasonably suspected exposure of an emergency rescue or public safety Member in its employ to the disease described in this section and shall immediately notify the Member of such exposure. An emergency rescue or public safety Member shall file an incident or accident report with the City of each instance of known or suspected occupational exposure to hepatitis infection, meningococcal meningitis, or tuberculosis.

(5) Required medical tests; preemployment physical. In order to be entitled to the presumption provided by this section:

(a) An emergency rescue or public safety Member must, prior to diagnosis, have undergone standard, medically acceptable tests for evidence of the communicable disease for which the presumption is sought, or evidence of medical conditions derived therefrom, which tests fail to indicate the presence of infection. This paragraph does not apply in the case of meningococcal meningitis.

(b) On or after June 15, 1995, an emergency rescue or public safety Member may be required to undergo a preemployment physical examination that tests for and fails to reveal any evidence of hepatitis or tuberculosis.

3. Disability Benefits Not-in-Line of Duty.

Any Member with ten (10) years or more Credited Service who shall become totally and permanently disabled to the extent that he is unable, by reason of a medically determinable

physical or mental impairment, to render useful and efficient service as a Firefighter, which disability is not directly caused by the performance of his duties as a Firefighter shall, upon establishing the same to the satisfaction of the Board, be entitled to a monthly pension equal to three percent (3%) of his Average Final Compensation multiplied by the total years of Credited Service. Terminated persons, either vested or non-vested, are not eligible for disability benefits, except that those terminated by the City for medical reasons may apply for a disability within thirty (30) days after termination.

4. Conditions Disqualifying Disability Benefits.

Each Member who is claiming disability benefits shall establish, to the satisfaction of the Board, 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 or while committing a crime.
- C. Injury or disease sustained while serving in any branch of the Armed Forces.
- D. Injury or disease sustained after his employment as a Firefighter with the City of Winter Park shall have terminated.

5. Physical Examination Requirement.

A Member shall not become eligible for disability benefits until and unless he undergoes a physical examination by a qualified physician or physicians and/or surgeon or surgeons, who shall be selected by the Board for that purpose. The Board shall not select the Member's treating physician or surgeon for this purpose except in an unusual case where the Board determines it would be reasonable and prudent to do so.

Any Retiree receiving disability benefits under provisions of this ordinance may be required by the Board to submit sworn statements of his condition accompanied by a physician's statement (provided at the Retiree's expense) to the Board annually and may be required by the Board to undergo additional periodic re-examinations by a qualified physician or physicians and/or surgeon or surgeons who shall be selected by the Board, to determine if such disability has ceased to exist.



If the Board finds that the Retiree is no longer permanently and totally disabled to the extent that he is unable to render useful and efficient service as a Firefighter, the Board shall recommend to the City that the Retiree be returned to performance of duty as a Firefighter, and the Retiree so returned shall enjoy the same rights that he had at the time he was placed upon pension. In the ~~even~~ event the Retiree so ordered to return shall refuse to comply with the order within thirty (30) days from the issuance thereof, he shall forfeit the right to his pension.

The cost of the physical examination and/or re-examination of the Member claiming or the Retiree receiving disability benefits shall be borne by the Fund. All other reasonable costs as determined by the Board incident to the physical examination, such as, but not limited to, transportation, meals and hotel accommodations, shall be borne by the Fund.

If the Retiree recovers from disability and reenters the service of the City as a Firefighter, his service will be deemed to have been continuous, but the period beginning with the first month for which he received a disability retirement income payment and ending with the date he reentered the service of the City will not be considered as Credited Service for the purposes of the System.

The Board shall have the power and authority to make the final decisions regarding all disability claims.

6. Disability Payment.

The monthly benefit to which a Member is entitled in the event of the Member's disability retirement shall be payable on the first day of the first month after the Board determines such entitlement. However, the monthly retirement income shall be payable as of the date the Board determined such entitlement, and any portion due for a partial month shall be paid together with the first payment. The last payment will be:

- A. If the Retiree recovers from the disability prior to his normal retirement date, the payment due next preceding the date of such recovery, or

- B. If the Retiree dies without recovering from disability or attains his normal retirement date while still disabled, the payment due next preceding his death or the 120th monthly payment, whichever is later.

Provided, however, the disability Retiree may select, at any time prior to the date on which benefit payments begin, an optional form of benefit payment as described in Section 10, subsection 1.A. or 1.B., which shall be the Actuarial Equivalent of the normal form of benefit.

#### **SECTION 9. VESTING.**

If a Member terminates his employment as a Firefighter, either voluntarily or by discharge, and is not eligible for any other benefits under this System, Member shall be entitled to the following:

1. If the Member has less than ten (10) years of Credited Service upon termination, the Member shall be entitled to a refund of his Accumulated Contributions or the Member may leave it deposited with the Fund.

2. If the Member has ten (10) or more years of Credited Service upon termination, the Member shall be entitled to a monthly retirement benefit, determined in the same manner as for normal or early retirement and based upon the Member's Credited Service, Average Final Compensation and the benefit accrual rate as of the date of termination, payable to him commencing at the Member's otherwise normal or early retirement date, determined as if he had remained employed, provided he does not elect to withdraw his Accumulated Contributions and provided the Member survives to his otherwise normal or early retirement date. If the Member does not withdraw his Accumulated Contributions and does not survive to his otherwise normal or early retirement date, his designated Beneficiary shall be entitled to a benefit as provided herein for a deceased Member, who has ten (10) or more years of Credited Service and who dies from a condition that was not-in-line of duty as provided under Pre-Retirement Death.

~~3. Any vested Member of the System whose position is terminated, for whatever reason, but who remains employed by the City in some other capacity, shall have all retirement benefits accrued up to the date of such termination under this System preserved, provided he does not elect~~

~~to withdraw his Accumulated Contributions from this System. Such accrued retirement benefits shall be payable at his otherwise early (reduced as for early retirement) or normal retirement date hereunder, or later, in accordance with the provisions of this System.~~

#### **SECTION 10. OPTIONAL FORMS OF BENEFITS.**

1. In lieu of the amount and form of retirement income payable in the event of normal or early retirement as specified herein, a Member, upon written request to the Board, may elect to receive a retirement income or benefit of equivalent actuarial value payable in accordance with one of the following options:

- A. A retirement income of a monthly amount, payable to the Retiree for his lifetime only.
- B. A retirement income of a modified monthly amount, payable to the Retiree during the lifetime of the Retiree and following the death of the Retiree, one hundred percent (100%), seventy-five percent (75%), sixty-six and two-thirds percent (66-2/3%), or fifty percent (50%) of such monthly amount payable to a joint pensioner for his lifetime. The present value of payments to the Retiree shall not be less than fifty percent (50%) of the total present value of payments to the Retiree and his joint pensioner.
- C. If a Member retires prior to the time at which social security benefits are payable, he may elect to receive an increased retirement benefit until such time as social security benefits shall be assumed to commence and a reduced benefit thereafter in order to provide, to as great an extent as possible, a more level retirement allowance during the entire period of Retirement. The amounts payable shall be as recommended by the actuaries for the System, based upon the social security law in effect at the time of the Member's Retirement.
- D. For any Member who does not participate in the DROP pursuant to Section 26, a lump sum payment payable to the Retiree equal to twenty percent (20%)

of the present value of the Retiree's accrued benefit at the date of retirement with the remaining eighty percent (80%) payable to the Retiree in a form selected by the Retiree and provided for in A. or B. above or in the normal form (10 year certain and life). A Retiree who is a participant in the Deferred Retirement Option Plan shall not be eligible to select this partial lump sum option.

2. The Member, upon electing any option of this Section, will designate the joint pensioner (subsection 1.B., above) or Beneficiary (or Beneficiaries) to receive the benefit, if any, payable under the System in the event of Member's death, and will have the power to change such designation from time to time. Such designation will name a joint pensioner or one or more primary Beneficiaries where applicable. A Member may change his Beneficiary at any time. If a Member has elected an option with a joint pensioner and the Member's retirement income benefits have commenced, the Member may thereafter change his designated Beneficiary at any time, but may only change his joint pensioner twice. Subject to the restriction in the previous sentence, a Member may substitute a new joint pensioner for a deceased joint pensioner.

3. The consent of a Member's or Retiree's joint pensioner or Beneficiary to any such change shall not be required. The rights of all previously-designated Beneficiaries to receive benefits under the System shall thereupon cease.

4. Upon change of a Retiree's joint pensioner in accordance with this Section, the amount of the retirement income payable to the Retiree shall be actuarially redetermined to take into account the age of the former joint pensioner, the new joint pensioner and the Retiree and to ensure that the benefit paid is the Actuarial Equivalent of the present value of the Retiree's then current benefit at the time of the change. Any such Retiree shall pay the actuarial recalculation expenses. Each request for a change will be made in writing on a form prepared by the Board and on completion will be filed with the Board. In the event that no designated Beneficiary survives the Retiree, such benefits as are payable in the event of the death of the Retiree subsequent to his Retirement shall be paid as provided in Section 11.

5. Retirement income payments shall be made under the option elected in accordance with the provisions of this Section and shall be subject to the following limitations:

- A. If a Member dies prior to his normal retirement date or early retirement date, whichever first occurs, no retirement benefit will be payable under the option to any person, but the benefits, if any, will be determined under Section 7.
- B. If the designated Beneficiary (or Beneficiaries) or joint pensioner dies before the Member's Retirement under the System, the option elected will be canceled automatically and a retirement income of the normal form and amount will be payable to the Member upon his Retirement as if the election had not been made, unless a new election is made in accordance with the provisions of this Section or a new Beneficiary is designated by the Member prior to his Retirement.
- C. If both the Retiree and the Beneficiary (or Beneficiaries) designated by Member or Retiree die before the full payment has been effected under any option providing for payments for a period certain and life thereafter, made pursuant to the provisions of subsection 1, the Board may, in its discretion, direct that the commuted value of the remaining payments be paid in a lump sum and in accordance with Section 11.
- D. If a Member continues beyond his normal retirement date pursuant to the provisions of Section 6, subsection 1, and dies prior to his actual retirement and while an option made pursuant to the provisions of this Section is in effect, monthly retirement income payments will be made, or a retirement benefit will be paid, under the option to a Beneficiary (or Beneficiaries) designated by the Member in the amount or amounts computed as if the Member had retired under the option on the date on which his death occurred.

6. A Retiree may not change his retirement option after the date of cashing or depositing his first retirement check.

7. Notwithstanding anything herein to the contrary, the Board in its discretion, may elect to make a lump sum payment to a Member or a Member's Beneficiary in the event that the monthly benefit amount is less than one hundred dollars (\$100.00) or the total commuted value of the remaining monthly income payments to be paid do not exceed five thousand dollars (\$5,000.00). Any such payment made to any person pursuant to the power and discretion conferred upon the Board by the preceding sentence shall operate as a complete discharge of all obligations under the System with regard to such Member and shall not be subject to review by anyone, but shall be final, binding and conclusive on all persons.

#### **SECTION 11. BENEFICIARIES.**

1. Each Member or Retiree may, on a form provided for that purpose, signed and filed with the Board, designate a Beneficiary (or Beneficiaries) to receive the benefit, if any, which may be payable in the event of his death. Each designation may be revoked or changed by such Member or Retiree by signing and filing with the Board a new designation-of-beneficiary form. Upon such change, the rights of all previously designated Beneficiaries to receive any benefits under the System shall cease.

2. If a deceased Member or Retiree failed to name a Beneficiary in the manner prescribed in subsection 1, or if the Beneficiary (or Beneficiaries) named by a deceased Member or Retiree predeceases the Member or Retiree, the death benefit, if any, which may be payable under the System with respect to such deceased Member or Retiree, shall be paid to the estate of the Member or Retiree and the Board, in its discretion, may direct that the commuted value of the remaining monthly income benefits be paid in a lump sum.

3. Any payment made to any person pursuant to this Section shall operate as a complete discharge of all obligations under the System with regard to the deceased Member and any other persons with rights under the System and shall not be subject to review by anyone but shall be final, binding and conclusive on all persons ever interested hereunder.

## **SECTION 12. CLAIMS PROCEDURES.**

1. The Board shall establish administrative claims procedures to be utilized in processing written requests ("claims"), on matters which affect the substantial rights of any person ("Claimant"), including Members, Retirees, Beneficiaries, or any person affected by a decision of the Board.

2. The Board shall have the power to subpoena and require the attendance of witnesses and the production of documents for discovery prior to and at any proceedings provided for in the Board's claims procedures. The Claimant may request in writing the issuance of subpoenas by the Board. A reasonable fee may be charged for the issuance of any subpoenas not to exceed the fees set forth in Florida Statutes.

## **SECTION 13. REPORTS TO DIVISION OF RETIREMENT.**

Each year and no later than March 15th, the Board shall file an Annual Report with the Division of Retirement containing the documents and information required by Section 175.261, Florida Statutes.

## **SECTION 14. ROSTER OF RETIREES.**

The Secretary of the Board shall keep a record of all persons enjoying a pension under the provisions of this ordinance in which it shall be noted the time when the pension is allowed and when the same shall cease to be paid. Additionally, the Secretary shall keep a record of all Members in such a manner as to show the name, address, date of employment and date of termination of employment.

## **SECTION 15. MAXIMUM PENSION.**

### **1. Basic Limitation.**

Subject to the adjustments hereinafter set forth, the maximum amount of annual retirement income payable with respect to a Member under this System shall not exceed one hundred sixty thousand dollars (\$160,000).

For purposes of applying the above limitation, benefits payable in any form other than a straight life annuity with no ancillary benefits shall be adjusted, as provided by Treasury

Regulations, so that such benefits are the Actuarial Equivalent of a straight life annuity. For purposes of this Section, the following benefits shall not be taken into account:

- (1) Any ancillary benefit which is not directly related to retirement income benefits;
- (2) Any other benefit not required under §415(b)(2) of the Code and Regulations thereunder to be taken into account for purposes of the limitation of §415(b)(1) of the Code.

2. Participation in Other Defined Benefit Plans.

The limitation of this Section with respect to any Member who at any time has been a member in any other defined benefit plan (as defined in §414(j) of the Code) maintained by the City shall apply as if the total benefits payable under all defined benefit plans in which the Member has been a member were payable from one plan.

3. Adjustments in Limitations.

- A. In the event the Member's retirement benefits become payable before age sixty-two (62), the one hundred sixty thousand dollar (\$160,000) limitation prescribed by this Section shall be reduced in accordance with regulations issued by the Secretary of the Treasury pursuant to the provisions of §415(b) of the Code, so that such limitation (as so reduced) equals an annual benefit (beginning when such retirement income benefit begins) which is equivalent to a one hundred sixty thousand dollar (\$160,000) annual benefit beginning at age sixty-two (62).
- B. In the event the Member's benefit is based on at least fifteen (15) years of Credited Service, the adjustments provided for in A. above shall not apply.
- C. The reductions provided for in A. above shall not be applicable to disability benefits paid pursuant to Section 8, or pre-retirement death benefits paid pursuant to Section 7.



D. In the event the Member's retirement benefit becomes payable after age sixty-five (65), for purposes of determining whether this benefit meets the limitation set forth in subsection 1 herein, such benefit shall be adjusted so that it is actuarially equivalent to the benefit beginning at age sixty-five (65). This adjustment shall be made in accordance with regulations promulgated by the Secretary of the Treasury or his delegate.

4. Less than Ten (10) Years of Service.

The maximum retirement benefits payable under this Section to any Member who has completed less than ten (10) years of Credited Service with the City shall be the amount determined under subsection 1 of this Section multiplied by a fraction, the numerator of which is the number of the Member's years of Credited Service and the denominator of which is ten (10). The reduction provided for in this subsection shall not be applicable to disability benefits paid pursuant to Section 8, or pre-retirement death benefits paid pursuant to Section 7.

5. Ten Thousand Dollar (\$10,000) Limit.

Notwithstanding the foregoing, the retirement benefit payable with respect to a Member shall be deemed not to exceed the limitations set forth in this Section if the benefits payable, with respect to such Member under this System and under all other qualified defined benefit pension plans to which the City contributes, do not exceed ten thousand dollars (\$10,000) for the applicable Plan Year and for any prior Plan Year and the City has not at any time maintained a qualified defined contribution plan in which the Member participated.

6. Reduction of Benefits.

Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the Member's benefit under any defined benefit plans in which Member participated, such reduction to be made first with respect to the plan in which Member most recently accrued benefits and thereafter in such priority as shall be determined by the Board and the plan administrator of such other plans, and next, by reducing or allocating excess forfeitures for defined contribution plans in which the Member participated, such reduction to be made first with

respect to the plan in which Member most recently accrued benefits and thereafter in such priority as shall be established by the Board and the plan administrator for such other plans provided, however, that necessary reductions may be made in a different manner and priority pursuant to the agreement of the Board and the plan administrator of all other plans covering such Member.

7. Cost-of-Living Adjustments.

The limitations as stated in subsections 1, 2 and 3 herein shall be adjusted to the time payment of a benefit begins in accordance with any cost-of-living adjustments prescribed by the Secretary of the Treasury pursuant to §415(d) of the Code.

8. Additional Limitation on Pension Benefits.

Notwithstanding anything herein to the contrary:

- A. No Member of the System shall be allowed to receive a retirement benefit or pension that exceeds one hundred percent (100%) of his Average Final Compensation. However nothing contained in this Section shall apply to supplemental retirement benefits or to pension increases attributable to cost-of-living increases or adjustments.
- B. No Member of the System shall be allowed to receive a retirement benefit or pension which is in part or in whole based upon any service with respect to which the Member is already receiving, or will receive in the future, a retirement benefit or pension from a different employer's retirement system or plan. This restriction does not apply to social security benefits or federal benefits under Chapter 67, Title 10, U.S. Code.

**SECTION 16. DISTRIBUTION OF BENEFITS.**

Notwithstanding any other provision of this System to the contrary, a form of retirement income payable from this System after the Effective Date, shall satisfy the following conditions:

- 1. If the retirement income is payable before the Member's death,
  - A. It shall either be distributed or commence to the Member not later than April 1 of the calendar year following the later of the calendar year in which the

Member attains age seventy and one-half (70-1/2), or the calendar year in which Member retires,

- B. The distribution shall commence not later than the calendar year defined above; and a), shall be paid over the life of the Member or over the lifetimes of the Member and Spouse, issue or dependent, or b), shall be paid over the period extending not beyond the life expectancy of the Member and Spouse, issue or dependent.

Where a form of retirement income payment has commenced in accordance with the preceding paragraphs and the Member dies before his entire interest in the System has been distributed, the remaining portion of such interest in the System shall be distributed no less rapidly than under the form of distribution in effect at the time of the Member's death.

2. If the Member's death occurs before the distribution of his interest in the System has commenced, the Member's entire interest in the System shall be distributed within five (5) years of the Member's death, unless it is to be distributed in accordance with ~~he~~ the following rules:

- A. The Member's remaining interest in the System is payable to his Spouse, issue or dependent;
- B. The remaining interest is to be distributed over the life of the Spouse, issue or dependent or over a period not extending beyond the life expectancy of the Spouse, issue or dependent; and
- C. Such distribution begins within one year of the Member's death unless the Member's Spouse shall receive the remaining interest in which case the distribution need not begin before the date on which the Member would have attained age seventy and one-half (70-1/2) and if the Spouse dies before the distribution to the Spouse begins, this Section shall be applied as if the Spouse were the Member.

## **SECTION 17. MISCELLANEOUS PROVISIONS.**

### **1. Interest of Members in System.**

At no time prior to the satisfaction of all liabilities under the System with respect to Retirees and Members and their Spouses or Beneficiaries, shall any part of the corpus or income of the Fund be used for or diverted to any purpose other than for their exclusive benefit.

### **2. No Reduction of Accrued Benefit.**

No amendment or ordinance shall be adopted by the City Commission of the City of Winter Park which shall have the effect of reducing the then vested accrued benefits of Members or a Member's Beneficiaries.

### **3. Qualification of System.**

It is intended that the System will constitute a qualified public pension plan under the applicable provisions of the Code, as now in effect or hereafter amended. Any modification or amendment of the System may be made retroactively, if necessary or appropriate, to qualify or maintain the System as a Plan meeting the requirements of the applicable provisions of the Code as now in effect or hereafter amended, or any other applicable provisions of the U.S. federal tax laws, as now in effect or hereafter amended or adopted, and the regulations issued thereunder.

### **4. Use of Forfeitures.**

Forfeitures arising from terminations of service of Members shall serve only to reduce future City contributions.

### **5. Compliance with Chapter 175, Florida Statutes.**

It is intended that the System will continue to qualify for funding under Section 175.101, Florida Statutes. Accordingly, unless otherwise required by law, any provision of the System which would disqualify the System from funding under Section 175.101, Florida Statutes, as amended from time to time, shall be superseded by and administered in accordance with the requirements of such chapter applicable to local law plans.

## **SECTION 18. REPEAL OR TERMINATION OF SYSTEM.**

1. The ordinance establishing the System and Fund, and subsequent ordinances pertaining to said System and Fund, may be modified, terminated, or amended, in whole or in part; provided that if this or any subsequent ordinance shall be amended or repealed in its application to any person benefiting hereunder, the amount of benefits which at the time of any such alteration, amendment, or repeal shall have accrued to the Member or Beneficiary shall not be affected thereby, except to the extent that the assets of the Fund may be determined to be inadequate.

2. If this ordinance shall be repealed, or if contributions to the System are discontinued or if there is a transfer, merger or consolidation of government units, services or functions as provided in Chapter 121, Florida Statutes, the Board shall continue to administer the System in accordance with the provisions of this ordinance, for the sole benefit of the then Members, any Beneficiaries then receiving retirement allowances, and any future persons entitled to receive benefits under one of the options provided for in this ordinance who are designated by any of said Members. In the event of repeal, discontinuance of contributions, or transfer merger or consolidation of government units, services or functions, there shall be full vesting (100%) of benefits accrued to date of repeal and the assets of the System 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 System as of the date of repeal of this ordinance, or if contributions to the System are discontinued with the date of such discontinuation being determined by the Board.

A. Apportionment shall first be made in respect of each Retiree receiving a retirement or disability benefit hereunder on such date, each person receiving a benefit on such date on account of a retired or disabled (but since deceased) Member, and each Member who has, by such date, become eligible for normal retirement but has not yet retired, an amount which is the Actuarial Equivalent of such benefit, provided that, if such asset value be 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 be any asset value remaining after the apportionment under paragraph A, apportionment shall next be made in respect of each Member in the service of the City on such date who is vested and who is not entitled to an apportionment under paragraph A, in the amount required to provide the Actuarial Equivalent of the vested portion of the accrued normal retirement benefit (but not less than Accumulated Contributions), based on the Credited Service and Average Final Compensation as of such date, and each vested former Member 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 vested portion of the accrued normal retirement benefit (but not less than Accumulated Contributions), provided that, if such remaining asset value be 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 be any asset value after the apportionments under paragraphs A and B, apportionment shall be made in respect of each Member in the service of the City on such date who is not entitled to an apportionment under paragraphs A and B in the amount equal to Member's Accumulated Contributions, provided that, if such remaining asset value be 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 be any asset value remaining after the apportionments under paragraphs A, B, and C, apportionment shall lastly be made in respect of each

Member included in paragraph C above to the extent of the Actuarial Equivalent of the non-vested accrued normal retirement benefit, less the amount apportioned in paragraph C, based on the Credited Service and Average Final Compensation as of such date, provided that, if such remaining asset value be 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 that there be asset value remaining after the full apportionment specified in paragraphs A, B, C, and D, such excess shall be returned to the City, less return of the State's contributions to the State, provided that, if the excess is less than the total contributions made by the City and the State to the date of termination such excess shall be divided proportionately to the total contributions made by the City and the State.

The allocation of the Fund provided for in this subsection may, as decided by the Board, be carried out through the purchase of insurance company contracts to provide the benefits determined in accordance with this subsection. The 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 Board may direct. The Fund may be continued in existence for purposes of subsequent distributions.

If, at any time during the first ten (10) years after the effective date of the ordinance originally establishing this System, the System shall be terminated or the full current costs of the System shall not have been met, anything in the System to the contrary notwithstanding, City contributions which may be used for the benefit of any one of the twenty-five (25) highest paid Members on the Effective Date, whose anticipated annual retirement allowance provided by the City's contributions at Member's normal retirement date would exceed one thousand five hundred dollars (\$1,500), shall not exceed the greater of either a) twenty thousand dollars (\$20,000), or b), an amount computed by multiplying the smaller of ten thousand dollars (\$10,000) or twenty percent

(20%) of such Member's average annual earnings during his last five (5) years of service by the number of years of service since the Effective Date. In the event that it shall hereafter be determined by statute, court decision, ruling by the Commissioner of Internal Revenue, or otherwise, that the provisions of this paragraph are not then necessary to qualify the System under the Code, this paragraph shall be ineffective without the necessity of further amendment of this ordinance.

4. After all the vested and accrued benefits provided hereunder have been paid and after all other liabilities have been satisfied, then and only then shall any remaining funds revert to the general fund of the City.

**SECTION 19. DOMESTIC RELATIONS ORDERS; RETIREE DIRECTED PAYMENTS; EXEMPTION FROM EXECUTION, NON-ASSIGNABILITY.**

1. Domestic Relations Orders.

A. Prior to the entry of any domestic relations order which affects or purports to affect the System's responsibility in connection with the payment of benefits of a Retiree, the Member or Retiree shall submit the proposed order to the Board for review to determine whether the System may legally honor the order.

B. If a domestic relations order is not submitted to the Board for review prior to entry of the order, and the System is ordered to take action that it may not legally take, and the System expends administrative or legal fees in resolving the matter, the Member or Retiree who submits such an order will be required to reimburse the System for its expenses in connection with the order.

2. Retiree Directed Payments.

The Board may, upon written request by a Retiree or by a dependent, when authorized by a Retiree or the Retiree's Beneficiary, authorize the System to withhold from the monthly retirement payment those funds that are necessary to pay for the benefits being received through the City, to pay the certified bargaining agent of the City, and to make any payments for child support or alimony.



3. Exemption from Execution, Non-Assignability.

Except as otherwise provided by law, the pensions, annuities, or any other benefits accrued or accruing to any person under the provisions of this ordinance and the Accumulated Contributions and the cash securities in the Fund created under this ordinance are hereby exempted from any state, county or municipal tax of the state and shall not be subject to execution, attachment, garnishment or any legal process whatsoever and shall be unassignable.

**SECTION 20. PENSION VALIDITY.**

The Board shall have the power to examine into the facts upon which any pension shall heretofore have been granted under any prior or existing law, or shall hereafter be granted or obtained erroneously, fraudulently or illegally for any reason. The Board is empowered to purge the pension rolls or correct the pension amount of any person heretofore granted a pension under prior or existing law or any person hereafter granted a pension under this ordinance if the same is found to be erroneous, fraudulent or illegal for any reason; and to reclassify any person who has heretofore under any prior or existing law been or who shall hereafter under this ordinance be erroneously, improperly or illegally classified. Any overpayments or underpayments shall be corrected and paid or repaid in a reasonable manner determined by the Board.

**SECTION 21. FORFEITURE OF PENSION.**

1. Any Member who is convicted of the following offenses committed prior to Retirement, or whose employment is terminated by reason of his admitted commission, aid or abetment of the following specified offenses, shall forfeit all rights and benefits under this System, except for the return of his Accumulated Contributions, but without interest, as of the date of termination. 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 employer;
- C. Bribery in connection with the employment of a public officer or employee;
- D. Any felony specified in Chapter 838, Florida Statutes.

- E. The committing of an impeachable offense.
- 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.

2. 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.

3. 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. Prior to forfeiture, the Board shall hold a hearing on which notice shall be given to the Member whose benefits are being considered for forfeiture. Said Member shall be afforded the right to have an attorney present. No formal rules of evidence shall apply, but the Member shall be afforded a full opportunity to present his case against forfeiture.

4. Any Member who has received benefits from the System in excess of his Accumulated Contributions after Member's rights were forfeited shall be required to pay back to the Fund the amount of the benefits received in excess of his Accumulated Contributions, but without interest. The Board may implement all legal action necessary to recover such funds.

## **SECTION 22. CONVICTION AND FORFEITURE; FALSE, MISLEADING OR FRAUDULENT STATEMENTS.**

1. It is unlawful for a person to willfully and knowingly make, or cause to be made, or to assist, conspire with, or urge another to make, or cause to be made, any false, fraudulent, or

misleading oral or written statement or withhold or conceal material information to obtain any benefit from the System.

2. A person who violates subsection 1 commits a misdemeanor of the first degree, punishable as provided in Section 775.082 or Section 775.083, Florida Statutes.

3. In addition to any applicable criminal penalty, upon conviction for a violation described in subsection 1, a Member or Beneficiary of the System may, in the discretion of the Board, be required to forfeit the right to receive any or all benefits to which the person would otherwise be entitled under the System. For purposes of this subsection, "conviction" means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld.

#### **SECTION 23. INDEMNIFICATION.**

1. To the extent not covered by insurance contracts in force from time to time, the City shall indemnify, defend and hold harmless members of the Board 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 members of the Board. The City 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, defend and hold harmless any members of the Board from the judgment, execution, or levy thereon.

2. This Section 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 Section waive any provision of law affording the City immunity from any suit in whole or part, or waive any other substantive or procedural rights the City may have.

3. This Section shall not apply nor shall the City be responsible in any manner to defend or pay for claims arising out of acts or omissions of members of the Board which constitute felonies or gross malfeasance or gross misfeasance in office.

**SECTION 24. DIRECT TRANSFERS OF ELIGIBLE ROLLOVER DISTRIBUTIONS.**

1. Rollover Distributions.

A. General. This Section applies to distributions made on or after January 1, 2002. Notwithstanding any provision of the System to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the Board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

B. Definitions.

- (1) Eligible Rollover Distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include the following: (i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated Beneficiary, or for a specified period of ten (10) years or more; (ii) any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; and (iii) the portion of any distribution that is not includible in gross income. Any portion of any distribution which would be includible in gross income will be an eligible rollover distribution if the distribution is made to an individual retirement account described in Section 408(a), to an individual retirement annuity described in Section 408(b) or to a qualified defined contribution plan described in Section 401(a) or 403(a) that agrees to separately account for amounts so transferred,

including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

2. **Eligible Retirement Plan:** An eligible retirement plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, an eligible deferred compensation plan described in Section 457(b) of the Code which is maintained by an eligible employer described in Section 457(e)(1)(A) of the Code and which agrees to separately account for amounts transferred into such plan from this plan, an annuity contract described in Section 403(b) of the Code, or a qualified trust described in Section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. This definition shall also apply in the case of an eligible rollover distribution to the surviving Spouse.
3. **Distributee:** A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving Spouse is a distributee with regard to the interest of the Spouse.
4. **Direct Rollover:** A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

2. **Rollovers or Transfers into the Fund.**

On or after January 1, 2002, the System will accept, solely for the purpose of purchasing Credited Service as provided herein, permissible Member requested transfers of funds from other retirement or pension plans, Member rollover cash contributions and/or direct cash rollovers of distributions made on or after January 1, 2002, as follows:

- A. Transfers and Direct Rollovers or Member Rollover Contributions from Other Plans. The System will accept either a direct rollover of an eligible rollover distribution or a Member contribution of an eligible rollover distribution from a qualified plan described in section 401(a) or 403(a) of the Code, from an annuity contract described in section 403(b) of the Code or from an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state. The System will also accept legally permissible Member requested transfers of funds from other retirement or pension plans.
- B. Member Rollover Contributions from IRAs. The system will accept a Member rollover contribution of the portion of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the Code that is eligible to be rolled over and would otherwise be includible in gross income.

#### **SECTION 25. FAMILY AND MEDICAL LEAVE ACT.**

The fractional parts of the twelve (12) month period ending each March 1 that a Member is on leave without pay from the City pursuant to the Family and Medical Leave Act (FMLA), 29 U.S.C. §2611 et seq., shall be added to his Credited Service provided that:

1. The Member contributes to the Fund (i) the sum that he would have contributed, based on his Salary and the Member contribution rate in effect at the time that the Credited Service is requested, had he been a Member of the System for the fractional parts of the twelve (12) month period ending each March 1 for which he is requesting credit, plus (ii) an amount actuarially determined (using the actuarial assumptions that are used by this plan for purposes of its annual actuarial valuation) such that the crediting of service does not result in any cost to the Fund, plus (iii) payment of fees for all professional services rendered to the Board in connection with the Member's purchase of periods of Credited Service.

2. Credited Service shall not be issued unless (i) prior to that March 1, the Member files a written request for Credited Service for FMLA leave time during the twelve (12) month period that ends on that March 1; (ii) on or before the next following March 31, the member pays the fees for professional services described above, and (iii) on or before the next following April 30, the Member pays, in one lump sum, the sum described above and the actuarially determined amount described above. Credited Service shall not be issued until such payment is received.

3. Credited Service purchased pursuant to this Section shall count as Credited Service for all purposes of this System, including vesting and eligibility for retirement.

## **SECTION 26. DEFERRED RETIREMENT OPTION PLAN.**

### **1. Definitions.**

As used in this Section 26, the following definitions apply:"

A. "DROP" -- The City of Winter Park Firefighters' Deferred Retirement Option Plan.

B. "DROP Account" -- The account established for each DROP participant under subsection 3.

### **2. Participation.**

#### **A. Eligibility to Participate.**

In lieu of terminating his employment as a Firefighter, any Member who is eligible for normal retirement under the System may elect to defer receipt of such service retirement pension and to participate in the DROP.

#### **B. Election to Participate.**

A Member's election to participate in the DROP must be made in writing in a time and manner determined by the Board and shall be effective on the first day of the first calendar month which is at least fifteen (15) business days after it is received by the Board.

C. Period of Participation.

A Member who elects to participate in the DROP under subsection 2.B., shall participate in the DROP for a period not to exceed ~~sixty eighty-four (60) (84)~~ months beginning at the time his election to participate in the DROP first becomes effective. Any person who is currently in the DROP on the effective date of the ordinance extending the permissible DROP period provided for in this paragraph may extend his DROP participation as provided herein. An election to participate in the DROP shall constitute an irrevocable election to resign from the service of the City not later than the date provided for in the previous sentence. A Member may participate only once.

D. Termination of Participation.

- (1) A Member's participation in the DROP shall cease at the earlier of:
  - (a) the end of his permissible period of participation in the DROP as determined under subsection 2.C.; or
  - (b) termination of his employment as a Firefighter.
- (2) Upon the Member's termination of participation in the DROP pursuant to subsection (1)(a) above, all amounts provided for in subsection 3.B., including monthly benefits and investment earnings and losses or interest, shall cease to be transferred from the System to his DROP Account ~~under subsection 3.B., his DROP Account shall cease being credited with investment earnings and losses or interest under subsection 3.B.(2).~~ Any amounts remaining in his DROP Account shall be paid to him in accordance with the provisions of subsection 4. when he terminates his employment as a Firefighter.
- (3) A Member who terminates his participation in the DROP under this subsection 2.D. shall not be permitted to again become a participant in the DROP.



E. Effect of DROP Participation on the System.

- (1) A Member's Credited Service and his accrued benefit under the System shall be determined on the date his election to participate in the DROP first becomes effective. The Member shall not accrue any additional Credited Service or any additional benefits under the System (except for any additional benefits provided under any cost-of-living adjustment for Retirees in the System) while he is a participant in the DROP. After a Member commences participation, he shall not be permitted to again contribute to the System nor shall he be eligible for disability or pre-retirement death benefits, except as provided for in Section 29, Reemployment After Retirement.
- (2) No amounts shall be paid to a Member from the System while the Member is a participant in the DROP. Unless otherwise specified in the System, if a Member's participation in the DROP is terminated other than by terminating his employment as a Firefighter, no amounts shall be paid to him from the System until he terminates his employment as a Firefighter. Unless otherwise specified in the System, amounts transferred from the System to the Member's DROP Account shall be paid directly to the member only upon the termination of his employment as a Firefighter.

3. Funding.

A. Establishment of DROP Account.

A DROP Account shall be established for each Member participating in the DROP. A Member's DROP Account shall consist of amounts transferred to the DROP under subsection 3.B., and earnings or interest on those amounts.

B. Transfers From Retirement System.

- (1) As of the first day of each month of a Member's period of participation in the DROP, the monthly retirement benefit he would have received under the System had he terminated his employment as a Firefighter and elected to receive monthly benefit payments thereunder shall be transferred to his DROP Account, except as otherwise provided for in subsection 2.D.(2). A Member's period of participation in the DROP shall be determined in accordance with the provisions of subsections 2.C. and 2.D., but in no event shall it continue past the date he terminates his employment as a Firefighter.
- (2) Except as otherwise provided in subsection 2.D.(2), a Member's DROP Account under this subsection 3.B. shall be debited or credited after each fiscal year quarter with either:
  - (a) Interest at an effective rate of six and one-half percent ( $6\frac{1}{2}\%$ ) per annum compounded monthly on the prior month's ending balance; or
  - (b) Earnings, determined as follows:

The average daily balance in a Member's DROP Account shall be credited or debited at a rate equal to the net investment return realized by the System for that quarter. "Net investment return" for the purpose of this paragraph is the total return of the assets in which the Member's DROP Account is invested by the Board net of brokerage commissions, management fees and transaction costs.

Upon electing participation in the DROP, the Member shall elect to receive either interest or earnings on his account to be determined as provided above. The Member may, in writing, elect to change his

election only once during his DROP participation. An election to change must be made prior to the end of a quarter and shall be effective beginning the following quarter. This amendment to subsection 3.B.(2) shall apply to both current and future DROP participants.

- (3) A Member's DROP Account shall only be credited or debited with earnings or interest and monthly benefits while the Member is a participant in the DROP. A Member's final DROP account value for distribution to the Member upon termination of participation in the DROP shall be the value of the account at the end of the quarter immediately preceding termination of participation plus any monthly periodic additions made to the DROP account subsequent to the end of the previous quarter and prior to distribution. If a Member is ~~employed by the City Fire Department~~ fails to terminate employment after participating in the DROP for the permissible period of DROP participation, then beginning with the Member's first month of employment following the last month of the permissible period of DROP participation, the Member's DROP Account will no longer be credited or debited with earnings or interest, nor will monthly benefits be transferred to the DROP account. All such non-transferred amounts shall be forfeited and continue to be forfeited while the Member is employed by the Fire Department, and no cost-of-living adjustments shall be applied to the Member's credit during such period of continued employment. A Member employed by the Fire Department after the permissible period of DROP participation will ~~still not~~ be eligible for pre-retirement death ~~or~~ and disability benefits,

~~nor and will he~~ accrue additional Credited Service or benefits only as provided for in Section 29.

4. Distribution of DROP Accounts on Termination of Employment.

A. Eligibility for Benefits.

A Member shall receive the balance in his DROP Account in accordance with the provisions of this subsection 4. upon his termination of employment as a Firefighter. Except as provided in subsection 4.D., no amounts shall be paid to a Member from the DROP prior to his termination of employment as a Firefighter.

B. Form of Distribution.

- (1) Distribution of a Member's DROP Account shall be made in a cash lump sum.
- (2) Notwithstanding the preceding, if a Member dies before his benefits ~~commence is paid~~, his DROP Account shall be paid to his Beneficiary in such optional form as his Beneficiary may select. If no Beneficiary designation is made, the DROP Account shall be distributed to the Member's estate.

C. Date of Payment of Distribution.

- (1) Except as otherwise provided in this subsection 4., distribution of a Member's DROP Account shall ~~begin~~ be made as soon as administratively practicable following the Member's termination of employment.
- (2) In lieu of a distribution as described in paragraph (1) above, a Member may, in accordance with such procedures as the Board shall prescribe, elect to have the distribution of his DROP Account made as of the first day of any month coincident with or following his termination of employment as a Firefighter; provided, however,

payments shall be made before the distribution date elected by the Member to the extent necessary to comply with the provisions of subsections 4.D. and 4.F.

D. Age Seventy and One-Half (70-1/2) Required Distribution.

In no event shall the provisions of subsection 4. operate so as to allow the distribution of a Member's DROP Account to be later than the April 1 following the later of the calendar year in which he terminates his employment as a Firefighter or he attains age seventy and one-half (70-1/2). In the event a Member is required to receive payment while in service under the provisions of this subsection D., he shall receive one lump sum payment on or before his required beginning date equal to his entire DROP Account balance and annual lump sum payments thereafter of amounts credited to his DROP Account during each calendar year. Upon the Member's subsequent termination of employment, payment of his DROP Account shall be made in accordance with the provisions of subsection 4.B.

E. Proof of Death and Right of Beneficiary or Other Person.

The Board may require and rely upon such proof of death and such evidence of the right of any Beneficiary or other person to receive the value of a deceased Member's DROP Account as the Board may deem proper and its determination of the right of that Beneficiary or other person to receive payment shall be conclusive.

F. Distribution Limitation.

Notwithstanding any other provision of subsection 4., all distributions from the DROP shall conform to the regulations issued under Section 401(a)(9) of the Code, including the incidental death benefit provisions of Section 401(a)(9)(G) of the Code. Further, such regulations shall override any DROP provision that is inconsistent with Section 401(a)(9) of the Code.

G. Direct Rollover of Certain Distributions.

This subsection applies to distributions made on or after January 1, 2002.

Notwithstanding any provision of the DROP to the contrary ~~that would otherwise limit a distributee's election under this subsection,~~ a distributee may elect, ~~at the time and in the manner prescribed by the Board,~~ to have any portion of an eligible rollover distribution paid ~~directly by the DROP to an eligible retirement plan specified by the distributee~~ in a direct rollover as otherwise provided under the System in Section 24, Direct Transfers of Eligible Rollover Distributions, ~~herein incorporated by reference.~~

5. Administration of DROP.

A. Board Administers the DROP.

The general administration of the DROP, the responsibility for carrying out the provisions of the DROP and the responsibility of overseeing the investment of the DROP's assets shall be placed in the Board. The Members of the Board may appoint from their number such subcommittees with such powers as they shall determine; may adopt such administrative procedures and regulations as they deem desirable for the conduct of their affairs; may authorize one or more of their number or any agent to execute or deliver any instrument or make any payment on their behalf; may retain counsel, employ agents and provide for such clerical, accounting, actuarial and consulting services as they may require in carrying out the provisions of the DROP; and may allocate among themselves or delegate to other persons all or such portion of their duties under the DROP, other than those granted to them as trustee under any trust agreement adopted for use in implementing the DROP, as they, in their sole discretion, shall decide. A trustee shall not vote on any question relating exclusively to himself.

B. Individual Accounts, Records and Reports.

The Board shall maintain, ~~or cause to be maintained,~~ records showing the operation and condition of the DROP, including records showing the individual balances in each Member's DROP Account, and the Board shall keep, ~~or cause to be kept,~~ in convenient form such data as may be necessary for the valuation of the assets and liabilities of the DROP. The Board shall prepare ~~or cause to be prepared~~ and distributed to Members participating in the DROP and other individuals or filed with the appropriate governmental agencies, as the case may be, all necessary descriptions, reports, information returns, and data required to be distributed or filed for the DROP pursuant to the Code, ~~the applicable portions of the Act~~ and any other applicable laws.

C. Establishment of Rules.

Subject to the limitations of the DROP, the Board from time to time shall establish rules for the administration of the DROP and the transaction of its business. The Board shall have discretionary authority to construe and interpret the DROP (including but not limited to determination of an individual's eligibility for DROP participation, the right and amount of any benefit payable under the DROP and the date on which any individual ceases to be a participant in the DROP). The determination of the Board as to the interpretation of the DROP or its determination of any disputed questions shall be conclusive and final to the extent permitted by applicable law. ~~The Board shall also oversee the investment of the DROP'S assets.~~

D. Limitation of Liability.

- (1) The trustees shall not incur any liability individually or on behalf of any other individuals for any act or failure to act, made in good faith in relation to the DROP or the funds of the DROP.

- (2) Neither the Board nor any trustee of the Board shall be responsible for any reports furnished by any expert retained or employed by the Board, but they shall be entitled to rely thereon as well as on certificates furnished by an accountant or an actuary, and on all opinions of counsel. The Board shall be fully protected with respect to any action taken or suffered by it in good faith in reliance upon such expert, accountant, actuary or counsel, and all actions taken or suffered in such reliance shall be conclusive upon any person with any interest in the DROP.

E. Expenses.

To compensate the System for the expenses of administering and operating the DROP, each Member's DROP Account shall be charged an annual administrative fee which shall be reviewed and subject to increase or decrease annually. The initial expense charge of three-quarters of one percent (0.75%) of the account balance, shall be deducted from the Member's DROP Account after each fiscal year quarter at the rate of 0.1875% of the account's average daily balance during that quarter.

6. General Provisions.

A. Amendment of DROP.

The DROP may be amended by an ordinance of the City at any time and from time to time, and retroactively if deemed necessary or appropriate, to amend in whole or in part any or all of the provisions of the DROP. However, except as otherwise provided by law, no amendment shall make it possible for any part of the DROP's funds to be used for, or diverted to, purposes other than for the exclusive benefit of persons entitled to benefits under the DROP. No amendment shall be made which has the effect of decreasing the balance of the DROP Account of any Member.



B. Facility of Payment.

If ~~the Board shall find that~~ a Member or other person entitled to a benefit under the DROP is unable to care for his affairs because of illness or accident or is a minor, the Board ~~may~~ shall direct that any benefit due him, ~~unless claim shall have been~~ be made for the benefit by only to a duly appointed legal representative, ~~be paid to his Spouse, a child, a parent or other blood relative, or to a person with whom he resides.~~ Any payment so made shall be a complete discharge of the liabilities of the DROP for that benefit.

C. Information.

Each Member, Beneficiary or other person entitled to a benefit, before any benefit shall be payable to him or on his account under the DROP, shall file with the Board the information that it shall require to establish his rights and benefits under the DROP.

D. Prevention of Escheat.

If the Board cannot ascertain the whereabouts of any person to whom a payment is due under the DROP, the Board may, no earlier than five (5) years from the date such payment is due, mail a notice of such due and owing payment to the last known address of such person, as shown on the records of the Board or the City. If such person has not made written claim therefor within three (3) months of the date of the mailing, the Board may, if it so elects and upon receiving advice from counsel to the DROP, direct that such payment and all remaining payments otherwise due such person be canceled on the records of the DROP. Upon such cancellation, the DROP shall have no further liability therefor except that, in the event such person or his Beneficiary later notifies the Board of his whereabouts and requests the

payment or payments due to him under the DROP, the amount so applied shall be paid to him in accordance with the provisions of the DROP.

E. Written Elections, Notification.

(1) Any elections, notifications or designations made by a Member pursuant to the provisions of the DROP shall be made in writing and filed with the Board in a time and manner determined by the Board under rules uniformly applicable to all employees similarly situated. The Board reserves the right to change from time to time and manner for making notifications, elections or designations by Members under the DROP if it determines after due deliberation that such action is justified in that it improves the administration of the DROP. In the event of a conflict between the provisions for making an election, notification or designation set forth in the DROP and such new administrative procedures, those new administrative procedures shall prevail.

(2) Each Member or Retiree who has a DROP Account shall be responsible for furnishing the Board with his current address and any subsequent changes in his address. Any notice required to be given to a Member or Retiree hereunder shall be deemed given if directed to him at the last such address given to the Board and mailed by registered or certified United States mail. If any check mailed by registered or certified United States mail to such address is returned, mailing of checks will be suspended until such time as the Member or Retiree notifies the Board of his address.

F. Benefits Not Guaranteed.

All benefits payable to a Member from the DROP shall be paid only from the assets of the Member's DROP Account and neither the City nor the Board

shall have any duty or liability to furnish the DROP with any funds, securities or other assets except to the extent required by any applicable law.

G. Construction.

- (1) The DROP shall be construed, regulated and administered under the laws of Florida, except where other applicable law controls.
- (2) The titles and headings of the subsections in this Section 26 are for convenience only. In the case of ambiguity or inconsistency, the text rather than the titles or headings shall control.

H. Forfeiture of Retirement Benefits.

Nothing in this Section shall be construed to remove DROP participants from the application of any forfeiture provisions applicable to the System. DROP participants shall be subject to forfeiture of all retirement benefits, including DROP benefits.

I. Effect of DROP Participation on Employment.

Participation in the DROP is not a guarantee of employment and DROP participants shall be subject to the same employment standards and policies that are applicable to employees who are not DROP participants.

**SECTION 27. MILITARY SERVICE PRIOR TO EMPLOYMENT.**

The years or fractional parts of years that a ~~Firefighter~~ Member serves or has served on active duty in the military service of the Armed Forces of the United States, the United States Merchant Marine or the United States Coast Guard, voluntarily or involuntarily and honorably or under honorable conditions, prior to first and initial employment with the City Fire Department shall be added to his years of Credited Service provided that:

1. The Member contributes to the Fund the sum that he would have contributed, based on his Salary and the Member contribution rate in effect at the time that the Credited Service is requested, had he been a Member of the System for the years or fractional parts of years for which he is requesting credit plus amounts actuarially determined such that the crediting of service does

not result in any cost to the Fund plus payment of costs for all professional services rendered to the Board in connection with the purchase of years of Credited Service.

2. Multiple requests to purchase Credited Service pursuant to this Section may be made at any time prior to Retirement.

3. Payment by the Member of the required amount shall be made within six (6) months of his request for credit, but not later than the retirement date, and shall be made in one (1) lump sum payment upon receipt of which Credited Service shall be given.

4. The maximum credit under this Section shall be four (4) years.

5. Credited Service purchased pursuant to this Section shall not count toward vesting or eligibility for not-in-line of duty disability benefits..

#### **SECTION 28. PRIOR FIRE SERVICE.**

Unless otherwise prohibited by law, and except as provided for in Section 1, the years or fractional parts of years that a Member previously served as a Firefighter with the City during a period of previous employment and for which period Accumulated Contributions were withdrawn from the Fund, or the years and fractional parts of years that a Member served as a Firefighter for any other municipal, county or special district fire department in the State of Florida shall be added to his years of Credited Service provided that:

1. The Member contributes to the Fund the sum that he would have contributed, based on his Salary and the Member contribution rate in effect at the time that the Credited Service is requested, had he been a Member of the System for the years or fractional parts of years for which he is requesting credit plus amounts actuarially determined such that the crediting of service does not result in any cost to the Fund plus payment of costs for all professional services rendered to the Board in connection with the purchase of years of Credited Service.

2. Multiple requests to purchase Credited Service pursuant to this Section may be made at any time prior to Retirement.

3. Payment by the Member of the required amount shall be made within six (6) months of his request for credit, but not later than the retirement date, and shall be made in one (1) lump sum payment upon receipt of which Credited Service shall be given.

4. The maximum credit under this Section for service other than with the City of Winter Park shall be five (5) years of Credited Service and shall count for all purposes, except vesting and eligibility for not-in-line of duty disability benefits. There shall be no maximum purchase of credit for prior service with the City of Winter Park and such credit shall count for all purposes, including vesting.

5. In no event, however, may Credited Service be purchased pursuant to this Section for prior service with any other municipal, county or special district fire department, if such prior service forms or will form the basis of a retirement benefit or pension from a different employer's retirement system or plan as set forth in Section 15, subsection 8.B.

#### **SECTION 29. REEMPLOYMENT AFTER RETIREMENT.**

1. Any ~~Member who is retired~~ Retiree under this System, except for disability retirement as previously provided for, may be reemployed by any public or private employer, except the City, and may receive compensation from that employment without limiting or restricting in any way the retirement benefits payable under this System.. Reemployment by the City shall be subject to the limitations set forth in this Section.

~~2. No city employee shall, prior to or upon the retirement of any Member, agree either orally or in writing, to reemploy any retiring Member at any specified time following the retirement of the Member.~~

~~3~~ 2. After Normal Retirement. Any ~~Member~~ Retiree who is retired under normal (or early) retirement pursuant to this System and who is reemployed as a Firefighter and, by virtue of that reemployment, is eligible to participate in this System, shall upon being reemployed, discontinue receipt of benefits. Upon reemployment, the Member shall be deemed to be fully vested and the additional Credited Service accrued ~~after reemployment~~ during the subsequent employment period shall be used in computing a second benefit amount attributable to the ~~reemployment~~ subsequent

employment period, which benefit amount shall be added to the benefit determined upon the initial retirement to determine the total benefit payable upon final Retirement. Calculations of benefits upon Retirement shall be based upon the benefit accrual rate, Average Final Compensation, and Credited Service (and early retirement reduction factor, if applicable) as of that date and the retirement benefit amount for any subsequent employment period shall be based upon the benefit accrual rate, Average Final Compensation (based only on the subsequent employment period and not including any period of DROP participation), and Credited Service (and early retirement reduction factor, if applicable) as of the date of subsequent retirement. The amount of any death or disability benefit received during a subsequent period of employment shall be reduced by the amount of accrued benefit eligible to be paid for a prior period of employment. The optional form of benefit and any joint pensioner selected upon initial retirement shall not be subject to change upon subsequent retirement except as otherwise provided herein, but the Retiree may select a different optional form and joint pensioner applicable only to the subsequent retirement benefit.

4 3. Any ~~Member~~ Retiree who is retired under normal retirement pursuant to this System and who is reemployed by the City ~~within ninety (90) days after that Retirement and, by virtue of that reemployment is ineligible to participate in this System in a position other than as a Firefighter,~~ shall upon being reemployed, ~~discontinue receipt of retirement benefits for the period of any such reemployment during any subsequent period of employment.~~ Former DROP participants shall begin receipt of benefits under these circumstances.

5 4. After Early Retirement. Any ~~Member~~ Retiree who is retired under early retirement pursuant to this System and who ~~is reemployed by the City more than ninety (90) days after that Retirement and, by virtue of that reemployment is ineligible~~ subsequently becomes an employee of the City in any capacity, shall ~~discontinue receipt of benefits from the System. If the reemployed person, by virtue of his reemployment, is eligible to participate in this System, may, during the period of that person shall accrue a second benefit as provided for in subsection 2. above and benefit payments shall remain suspended during any such subsequent employment period. If the reemployed person is not eligible to participate in this System, that person's pension benefit payments shall be~~

suspended until the earlier of termination of employment or such time as the reemployed retiree reaches the date that he would have been eligible for normal retirement under this system had he continued employment and not elected early retirement. such reemployment, continue to receive retirement benefits previously earned: "Normal retirement" as used in this subsection shall be the current normal retirement date provided under this System.

5. Reemployment of Terminated Vested Persons. Reemployed terminated vested persons shall not be subject to the provisions of this Section until such time as they begin to actually receive benefits. Upon receipt of benefits, terminated vested persons shall be treated as normal or early Retirees for purposes of applying the provisions of this Section and their status as an early or normal Retiree shall be determined by the date they elect to begin to receive their benefit.

6. DROP Participants. Members or Retirees who are or were in the Deferred Retirement Option Plan shall, following termination of employment after DROP participation, have the options provided for in this Section for reemployment.