

ORDINANCE NO. 828

AN ORDINANCE OF THE CITY OF OKEECHOBEE AMENDING AND RESTATING THE CITY OF OKEECHOBEE AND OKEECHOBEE UTILITY AUTHORITY EMPLOYEES' RETIREMENT SYSTEM, 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 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 EXEMPTION FROM EXECUTION AND NON-ASSIGNABILITY; PROVIDING FOR PENSION VALIDITY; PROVIDING FOR FORFEITURE OF PENSION UNDER CERTAIN CIRCUMSTANCES; PROVIDING FOR INDEMNIFICATION AND DEFENSE OF CLAIMS; PROVIDING FOR PURCHASE OF CREDIT FOR MILITARY SERVICE PRIOR TO EMPLOYMENT; PROVIDING FOR DIRECT TRANSFERS OF ELIGIBLE ROLLOVER DISTRIBUTIONS; PROVIDING FOR RE-EMPLOYMENT AFTER RETIREMENT; PROVIDING FOR THE ADOPTION OF PLAN BY THE OKEECHOBEE UTILITY AUTHORITY; PROVIDING FOR THE PURCHASE OF CREDIT FOR PRIOR GOVERNMENT SERVICE; PROVIDING FOR SEVERABILITY OF PROVISIONS; REPEALING ALL ORDINANCES IN CONFLICT HERewith AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Okeechobee and the Okeechobee Utility Authority Employees are presently provided pension and certain other benefits under Ordinances of the City of Okeechobee and;

WHEREAS, the City Council desires to clarify and restate the provisions of the General Employees' Retirement Plan to consolidate all prior ordinances and Code provisions and to incorporate Federal law and the applicable State laws.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OKEECHOBEE, FLORIDA:

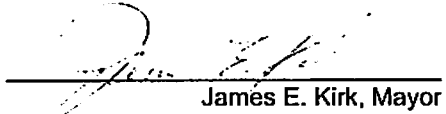
SECTION 1: That the City of Okeechobee and Okeechobee Utility Authority Employees' Retirement System, is hereby amended and restated as set forth in the document designated CITY OF OKEECHOBEE AND OKEECHOBEE UTILITY AUTHORITY EMPLOYEES' RETIREMENT SYSTEM, attached hereto and made a part hereof.

SECTION 2: All Ordinances or parts of Ordinances in conflict herewith be and the same are hereby repealed.

SECTION 3: 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 4: That this Ordinance shall become effective upon adoption.

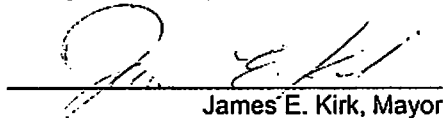
INTRODUCED on first reading and set for public hearing this 17th day of June, 2003.


James E. Kirk, Mayor

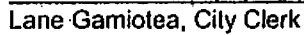
ATTEST:


Lane Gamiolea, City Clerk

PASSED on second reading after public hearing this 15th day of July, 2003.


James E. Kirk, Mayor

ATTEST:


Lane Gamiolea, City Clerk

APPROVED FOR LEGAL SUFFICIENCY:


John R. Cook, City Attorney

CITY OF OKEECHOBEE AND OKEECHOBEE UTILITY AUTHORITY
EMPLOYEES' RETIREMENT SYSTEM

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 at the rate of five and one-quarter percent (5-1/4%) per annum through September 30, 1993 and three percent (3%) per annum thereafter compounded annually on September 30. Interest is not prorated on Member contributions during a Plan Year. For those Members who purchase Credited Service with interest or at no cost to the System, ~~pursuant to Section 24 only that portion of any payment representing the amount attributable to Member contributions based on the applicable member contribution rate, plus interest, shall be included in Accumulated Contributions~~ 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 without the crediting of interest of three percent (3%) percent per annum.

Act means the Employee Retirement Income Security Act of 1974 (P.L. 93-406) and any regulations issued thereunder by the Department of Labor and the Internal Revenue Service, as that Statute and these regulations shall be amended:

Actuarial Equivalent means that any benefit payable under the terms of this System in a form other than the normal form of benefit shall have the same actuarial present value on the date payment commences as the normal form of benefit. For purposes of establishing the actuarial present value of any form of payment other than a lump sum distribution, all future payments shall be discounted for interest and mortality by using 8% interest and the 1983 Group Annuity Mortality Table.

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. 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 Okeechobee, Florida and the Okeechobee Utility Authority.

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 General Employee with member contributions when required, omitting intervening years or fractional parts of years when such

Member was not employed by the City as a General Employee. A Member may voluntarily leave his Accumulated Contributions in the Fund for a period of five (5) years after leaving the employ of the City pending the possibility of being reemployed as a General Employee, without losing credit for the time that he was a Member of the System. If a non-vested Member leaves the employ of the City and is not reemployed within five (5) years, his Accumulated Contributions will be returned. If the a vested Member leaves the employ of the City, his Accumulated Contributions will be returned upon his written request. Upon return of his Accumulated Contributions, all of his rights and benefits under the System are forfeited and terminated.

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 General Employee with the City to perform training or service, and reemployment on or after December 12, 1994, 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 General Employee within one (1) year from the earlier of the date of his military discharge or his release from service.
- B. The Member deposits into the Fund the same sum that the Member would have contributed if he had remained a General Employee during his absence. The Member must deposit all missed contributions within a period equal to three (3) times the period of military service, but not more than five (5) years from the date of re-employment or he will forfeit the right to receive Credited Service for his military service pursuant to this Section.
- C. The maximum credit for military service pursuant to this Section shall be five (5) years.
- D. The Member must have been discharged or released from service under honorable conditions.
- E. This Section is intended to satisfy the minimum requirements of the Uniformed Services Employment and Reemployment Rights Act (USERRA), (P.L. 103-353). To the extent that this Section does not meet the minimum standards of USERRA, as it may be amended from time to time, the minimum standards shall apply.

Effective Date means ~~the date on which this ordinance becomes effective~~ December 14, 1971.

General Employee means any actively employed person in the regular full-time service of the City of Okeechobee or the Okeechobee Utility Authority, including those in their initial probationary employment period, but also including elected officials. This term shall not include certified police officers and certified firefighters employed by the City or the members of the Okeechobee Utility Authority Board.

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

Member means an actively employed General Employee 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.

Salary means the basic compensation for services rendered to the City as a General Employee, plus all tax deferred, tax sheltered and tax exempt items of income, if otherwise includible as basic compensation, derived from elective employee payroll deductions or salary reductions, but excluding overtime, bonuses and any other non-regular payment. Compensation in excess of the 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 Okeechobee and Okeechobee Utility Authority Employees' Retirement System 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 General Employees as of the Effective Date, and all future new General Employees, shall become Members of this System as a condition of employment.

Notwithstanding the previous paragraph, the current City Administrator and any future City Administrator or Administrative Assistant and the current or future Executive Director of the Okeechobee Utility Authority may, in the event he has elected to participate in another pension program, within the first sixty (60) days of his employment as City Administrator or Administrative Assistant or Executive Director, notify the Board and the City of Okeechobee (with respect to the City Administrator or Administrative Assistant) or the Okeechobee Utility Authority (with respect to the Executive Director), in writing, of his election to not be a Member of the System. In the event of any such election, he shall be barred from future membership in the System.

Notwithstanding any provision herein to the contrary, the current City Administrator as of April 1, 2001 may, in the event he has elected to participate in another pension program on or before June 1, 2001, notify the Board and the City of Okeechobee, in writing, of his election to opt out of the System. In the event of such election, the Board shall refund the Accumulated Contributions to the City Administrator and he shall be barred from future membership in the System.

2. Designation of Beneficiary.

Each General Employee 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 hereby vested in a Board of Trustees. The Board is hereby designated as the plan administrator. The Board shall consist of five (5) Trustees, one of whom, shall be a legal resident of the City, who shall be appointed by the Okeechobee City Council, one of who shall be appointed by the Okeechobee Utility Authority Board, one of whom shall be a full-time General Employee Member employed by the City of Okeechobee, and one of whom shall be a full-time General Employee Member employed by Okeechobee Utility Authority. The fifth Trustee shall be chosen by a majority of the previous four Trustees as provided for herein, and such person's name shall be submitted to the Okeechobee City Council. Upon receipt of the fifth person's name, the Okeechobee City Council shall, as a ministerial duty, appoint such person to the Board of Trustees as its fifth Trustee. The fifth Trustee shall have the same rights as each of the other four Trustees appointed or elected as herein provided and shall serve a two (2) year term unless he sooner vacates the office. Each resident Trustee appointed by the City of Okeechobee or by the Okeechobee Utility Authority shall serve as Trustee for a period of two (2) years, unless he sooner vacates the office or is sooner replaced by the appointing authority 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 of Okeechobee or Okeechobee Utility Authority as a General Employee 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. 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 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 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.
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 ~~is hereby established~~ 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 system 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 safe-keeping 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 System. In lieu thereof, the Board shall deposit the funds of the System 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 the 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 City 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 Okeechobee City Council 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 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 the an agency of the government of the United States.

~~(4) — International securities:~~

~~(5)(4) Stocks, commingled or mutual funds administered by national or state banks, bonds or other evidences of indebtedness issued or guaranteed by a corporation organized under the laws of the United States, any state or organized territory of the United States, or the District of Columbia, provided that the security of the corporation is traded on a nationally recognized exchange; , 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 fifteen percent (15%) 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 , international equity securities and convertible securities at cost exceed sixty percent (60%) of the assets of the Fund. No more than fifteen percent (15%) at cost of the Fund assets shall be invested in international securities:~~
- ~~G.~~
- 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 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 or 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, recapitalization, 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 to, shall be paid. Over payment 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 herein provided for.
- 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 ~~at least monthly~~ 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. City Contributions.

So long as this System is in effect, the City of Okeechobee and the Okeechobee Utility Authority 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 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 ~~over a period of not more than forty (40) years, commencing with the fiscal year in which the Effective Date of this System occurs~~ as provided in Part VII of Chapter 112, Florida Statutes. The total cost for any year shall be apportioned equitably and consistently between the City of Okeechobee and the Okeechobee Utility Authority based on the costs associated with each entity's employees.

3. 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 sixty-five (65) and the completion of five (5) years of Credited Service or upon the completion of thirty (30) 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 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 benefit shall equal two and one-tenth percent (2.1%) 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 later of the attainment of age fifty-five (55) 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 at age sixty-five (65) 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, which is reduced by two percent (2%) for each year by which the commencement of benefits precedes age sixty-five (65).

SECTION 7. DEATH BENEFITS.

1. Prior to Vesting or Eligibility for Retirement.

The Beneficiary of a deceased Member who was not receiving monthly benefit payments, or who was not yet vested or eligible for retirement shall receive a refund of one hundred percent (100%) of the Member's Accumulated Contributions.

2. Deceased Members Vested or Eligible for Retirement.

Any member, whether or not still actively employed, who has a right to a vested accrued benefit, shall be eligible for a death benefit if he dies before collecting any other benefits from this System. The amount of the death benefit shall be equal to fifty percent (50%) of the actuarially equivalent single sum value of the Member's vested accrued benefit or his Accumulated Contributions, whichever is greater.

If this single sum value is less than \$5,000, it shall be paid in a lump sum. If the value exceeds \$5,000, the Beneficiary may elect payment under any of the optional forms available for retirement benefits or a lump sum payment.

If a Member is eligible for early or normal retirement, but remains in employment and dies while so employed, the death benefit shall be determined as follows: It shall be assumed that such deceased Member had retired immediately preceding his date of death and elected the Ten Year Certain and Life Thereafter option. However, the death benefit shall be equal to fifty percent (50%) of the actuarially equivalent single sum value of the Member's vested accrued benefit, if larger than the Ten Year Certain and Life Thereafter option, described earlier in this Section.

SECTION 8. DISABILITY.

1. Disability Benefits.

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 perform the duties that the General Employee was assigned at the time of the impairment and is unable to perform the duties of another General Employee position which the City of Okeechobee or the Okeechobee Utility Authority makes available to him in a similar job classification and rank at no reduction in Salary for which the General Employee is qualified by reason of training, education, or experience, whether or not such disability was directly caused by the performance of his duty as a General Employee. Upon establishing the same to the satisfaction of the Board, the General Employee shall be entitled to a monthly pension determined in the same manner as for Early Retirement set forth in Section 6, subsection 4.B, if the benefit begins at or after age fifty-five (55), and if the benefit begins prior to age fifty-five (55), the benefit shall be actuarially reduced for the period prior to age fifty-five (55). 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. 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 alcohol.
- B. Injury or disease sustained while willfully and illegally participating in fights, riots or civil insurrections.
- C. Injury or disease sustained while committing a crime.
- D. Injury or disease sustained while serving in any branch of the Armed Forces.
- E. Injury or disease sustained after his employment as a General Employee with the City Okeechobee or the Okeechobee Utility Authority shall have terminated.
- F. Willful, wanton or intentional misconduct or gross negligence of the Member.
- G. Injury or disease sustained by the Member while working for anyone other than the City of Okeechobee or the Okeechobee Utility Authority and arising out of such employment.
- H. A condition pre-existing the General Employee's membership in the System. No Member shall be entitled to a disability pension because of or due to the aggravation of a specific injury, impairment or other medical condition pre-existing at the time of membership in the System, provided that such pre-existing condition and its relationship to a later injury, impairment or other medical condition be established by competent substantial evidence. Nothing herein shall be construed to preclude a disability pension to a Member who, after membership in the System, suffers an injury, impairment or other medical condition different from some other injury, impairment, or other medical condition existing at or prior to said membership.

3. 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 that it would be reasonable and prudent to do so.

Any Retiree receiving disability benefits under provisions of this ordinance may be periodically re-examined 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 General Employee, the Board shall recommend to the City that the Retiree be returned to performance of duty as a General Employee, and the Retiree so returned shall enjoy the same rights that he had at the time he was placed upon pension. In the 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 General Employee, his service shall be deemed to have been continuous, and the period for which Retiree received a disability retirement income shall be Credited Service for purposes of the System. If the Retiree fails to reenter the service of the City as a General Employee within thirty (30) days from the date the Board determines 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 General Employee, the Member's future benefits shall be determined as though he initially terminated employment on the date the Board determined that he was permanently and totally disabled to the extent that he was unable to render useful and efficient service as a General Employee.

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

5. Disability Payments.

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.

6. Workers' Compensation.

When a Retiree is receiving a disability pension and workers' compensation benefits pursuant to Florida Statute Chapter 440, for the same disability, and the total monthly benefits received from both exceed 100% of the Member's average monthly wage, as defined in Chapter 440, Florida Statutes, the disability pension benefit shall be reduced so that the total monthly amount received by the Retiree does not exceed 100% of such average monthly wage. The amount of any lump sum workers' compensation payment shall be converted to an equivalent monthly benefit payable for ten (10) Years Certain by dividing the lump sum amount by 83.9692.

SECTION 9. VESTING.

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

1. If the Member has less than five (5) years 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 five (5) 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 age 65, or age 55 reduced as for early retirement from age 65, 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, vested or eligible for Retirement under Pre-Retirement Death.

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 modified monthly amount, payable to the Member during the lifetime of the Member and following the death of the Member, 100%, 75%, ~~66-2/3%~~ or 50% of such monthly amount payable to a joint pensioner for his lifetime. ~~Except where the Retiree's joint pensioner is his Spouse,~~ 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.
 - B. A retirement income of a modified monthly amount for the lifetime of the Member only.
 - 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. This option may be combined with other optional forms of benefits.

2. The Member, upon electing any option of this Section, will designate the joint pensioner (subsection 1.,A. 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. If a Member has elected an option with a joint pensioner or Beneficiary and Member's retirement income benefits have commenced, Member may thereafter change his designated Beneficiary at any time, but may change his joint pensioner only if the designated joint pensioner and the Member were married at the time of Member's Retirement and are divorced subsequent thereto and the joint pensioner is alive at the time of the change.
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 ~~Beneficiary~~ or joint pensioner in accordance with this Section, the amount of the retirement income payable to the Retiree shall be actuarially determined to take into account the age and sex of the former joint pensioner, the new joint pensioner and the Retiree. 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 retired Member 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 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. 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 employed by the City in such a manner as to show the name, address, date of employment and date of termination of employment.

SECTION 14. BOARD ATTORNEY AND PROFESSIONALS.

~~The Board may employ independent legal counsel at the System's expense for the purposes contained herein, together with such other professional, technical, or other advisors as the Board deems necessary.~~

SECTION 15 14. 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 ~~\$90,000~~ \$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 62, the ~~\$90,000~~ \$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 Internal Revenue Code, ~~but not less than \$75,000, if the benefit begins at or after age fifty-five (55). In the event the Member's retirement benefit becomes payable before age fifty-five (55), the \$75,000 limitation shall be reduced from age fifty-five (55) 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. 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.

C. If 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 65. This adjustment shall be made ~~using an assumed interest rate of five percent (5%) and shall be made~~ in accordance with regulations promulgated by the Secretary of the Treasury or his delegate.

4. Less than Ten 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. \$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 \$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. ~~Member in Defined Contribution Plan:~~

~~In any case where a Member under this System is also a Member in a "Defined Contribution Plan" as defined in §414(i) of the Code, maintained by the City, the sum of the "Defined Benefit Plan Fraction" and the "Defined Contribution Plan Fraction" (both as defined in §415(e) of the Code) shall not, subject to the restrictions and exceptions contained in §2004 of the Act, exceed 1.0. This limitation is repealed effective January 1, 2000:~~

76. 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.

87. Cost-of-Living Adjustments.

The limitations as stated in subsections 1, 2; and 3, ~~and 6~~ 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.

98. Additional Limitation on Pension Benefits.

Notwithstanding anything herein to the contrary:

- A. The normal retirement benefit or pension payable to a Retiree who becomes a Member of the System and who has not previously participated in such System, on or after January 1, 1980, shall not exceed 100 percent 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 another 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 46 15. 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 of this ordinance, 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 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, Member's entire interest in the System shall be distributed within five (5) years of Member's death, unless it is to be distributed in accordance with 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 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 47 16. MISCELLANEOUS PROVISIONS.

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

At no time prior to the satisfaction of all liabilities under the System with respect to 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 Benefits.**

No amendment or ordinance shall be adopted by the City Council of the City of Okeechobee 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 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.

SECTION 48 17. REPEAL OR TERMINATION OF SYSTEM.

1. This 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, 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, or if contributions to the System are discontinued, 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 portion of the 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.

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 \$1,500, shall not exceed the greater of either a) \$20,000, or b), an amount computed by multiplying the smaller of \$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 18. 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 and shall not be subject to execution, attachment, garnishment or any legal process whatsoever and shall be unassignable.

SECTION 19. 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 20. 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 21. 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 mis-

feasance in office.

SECTION 23 22. TRANSFERS WITHIN THE CITY.

If a member of any of the City's three retirement systems transfers to either of the other two systems, he must choose one of the following procedures with regard to Credited Service accrued to date of transfer.

1. The Member may take a refund of his Accumulated Contributions, in which event no pension benefit shall be payable based on Credited Service attributable to the period covered.
2. The member may leave his Accumulated Contributions in the fund in which event his Credited Service with both systems shall be combined for purposes of determining eligibility for benefits and for vesting. When the member is eligible to receive a benefit, he shall receive benefits from both systems, which shall consist of accrued benefits under each system based on the provisions of the respective system and the earnings and Credited Service under that system.

SECTION 24 23. MILITARY SERVICE PRIOR TO EMPLOYMENT.

The years or fractional parts of years that a General Employee serves or has served on active duty in the active military service of the Armed Forces of the United States, or the United States Merchant Marine or the United States Coast Guard, voluntarily or involuntarily, honorably or under honorable conditions, prior to first and initial employment with the City 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 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. ~~The request shall be made only once and made by the Member on or before six (6) months from the date of his employment with the City.~~ 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 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.

SECTION 25 24. DIRECT TRANSFERS OF ELIGIBLE ROLLOVER DISTRIBUTIONS.

1. Rollover Distributions.
 - A. General. This Section applies to distributions made on or after January 1, ~~1993~~ 2002. Notwithstanding any provision of the plan 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.

2- B. Definitions.

- A- 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: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated Beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and 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.
- B- (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. However, This definition shall also apply in the case of an eligible rollover distribution to the surviving Spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.
- C- (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.
- D- (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 26 25. REEMPLOYMENT AFTER RETIREMENT

Any Retiree who is receiving a normal or early retirement benefit from the System and who is subsequently reemployed by either the City of Okeechobee or the Okeechobee Utility Authority shall elect to:

1. Unless otherwise prohibited by law, continue to receive his retirement benefit, but in such event he shall neither accrue additional Credited Service nor be eligible for any other benefit under the System, except for the retirement benefit he continues to receive, or;
2. Discontinue his retirement benefit and begin to accrue additional Credited Service and be eligible for all other benefits under the System.

SECTION 27 26. ADOPTION OF PLAN BY THE OKEECHOBEE UTILITY AUTHORITY

Effective September 29, 1995, the Okeechobee Utility Authority shall adopt this City of Okeechobee and Okeechobee Utility Authority Employees' Retirement System, by Resolution, to provide benefits to full time employees of the Okeechobee Utility Authority. For purposes of determining benefits under this system, employment by the Okeechobee Utility Authority shall be treated in the same manner as, and have the same effect as, employment by the City of Okeechobee, and there shall be no lapse in plan membership or Credited Service due to transfers of employment between the Okeechobee Utility Authority and the City of Okeechobee. Where reference is made elsewhere in this document to "the City," such reference shall be deemed to include the Okeechobee Utility Authority, unless clearly indicated otherwise by context.

SECTION 27. PRIOR GOVERNMENT SERVICE.

Unless otherwise prohibited by law, the years or fractional parts of years that a general employee who was previously a member, but who terminated employment and is not otherwise entitled to credited service for such previous period of employment as a general employee, or the years or fractional parts of years that a member previously served as an employee for any governmental agency in the United States, including but not limited to federal, state or local government service, and for which he does not otherwise qualify for and receive credit under this system, 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 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 or her request for credit, but, in any event, prior to Retirement, and shall be made in one lump sum payment upon receipt of which Credited Service shall be given.
4. There shall be no maximum purchase of Credited Service pursuant to this Section and Credited Service purchased 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 governmental agency, if such prior service forms or will form the basis of a retirement benefit or pension from another retirement system or plan as set forth in Section 14, subsection 8.B.