

## **RESOLUTION 14-029**

**A RESOLUTION OF THE NORTH NAPLES FIRE CONTROL AND RESCUE DISTRICT, COLLIER COUNTY, FLORIDA, AMENDING THE NORTH NAPLES FIRE CONTROL AND RESCUE DISTRICT FIREFIGHTERS' PENSION PLAN BY REORGANIZING, RENUMBERING AND RESTATING THE PENSION PLAN PROVISIONS AND CONSOLIDATING THE PROVISIONS INTO A SINGLE PENSION PLAN DOCUMENT; PROVIDING FOR REPEAL OF CONFLICTING RESOLUTIONS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Resolution No. 96-004, which was approved by the Board of Fire Commissioners on July 11, 1996, created a local law Pension Plan entitled the North Naples Fire Control and Rescue District Firefighters' Pension Plan ("Pension Plan"); and

**WHEREAS**, since its original adoption in 1996, the Pension Plan has been amended approximately twenty-five times through separate Resolutions that amend certain sections of the Pension Plan (the "Amendments"); and

**WHEREAS**, as a result of the Amendments, the District does not have a single Pension Plan document that contains all of the provisions of the Pension Plan; and

**WHEREAS**, the Board of Fire Commissioners desires to reorganize, renumber and restate the Pension Plan provisions as provided herein; and

**WHEREAS**, this Resolution shall replace all prior resolutions creating or amending the Pension Plan, so as to maintain the consolidation of the adopted Pension Plan provisions in a single Pension Plan document; and

**WHEREAS**, pursuant to law, ten (10) days' notice has been given by publication in a paper of general circulation in the District, notifying the public of this proposed resolution and of a public hearing in the Board of Fire Commission Chambers of the North Naples Fire Control & Rescue District; and

**WHEREAS**, a public hearing before the Board of Fire Commission was held pursuant to the published notices described above, at which hearing the parties in interest and all other citizens so desiring had an opportunity to be and were in fact heard.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF FIRE COMMISSIONERS OF THE NORTH NAPLES FIRE CONTROL AND RESCUE DISTRICT, COLLIER COUNTY, FLORIDA:**

**Section 1.** That the recitals contained in the preamble to this Resolution are incorporated by reference herein.

**Section 2.** That the following North Naples Fire Control And Rescue District Firefighters' Pension Plan is hereby adopted:

**NORTH NAPLES FIRE CONTROL AND RESCUE DISTRICT  
FIREFIGHTERS' PENSION PLAN**

**Section 1.** The North Naples Fire Control and Rescue District Firefighters' Pension Plan is hereby confirmed and continued as a local law Pension Plan pursuant to Chapter 175, Florida Statutes. An excise tax on property insurance premiums is hereby assessed and imposed pursuant to Section 175.101, Florida Statutes, in the manner and amount specified therein, for the purposes of this Pension Plan.

**Section 2. Definitions.**

- a. "Accumulated Contributions" means a member's own contributions without interest.
- b. "Actuarial Equivalent" means a benefit or amount of equal value, based upon the RP2000 Combined Healthy Mortality Table (without projection) with a fifty

percent blending of male and female mortality rates and an interest rate as determined by the actuary and approved by the Board from time to time.

- c. "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 as a full-time firefighter and member of this plan, whichever is greater. A year shall be twelve (12) consecutive months.
- d. "Beneficiary" means the person or persons entitled to receive benefits hereunder upon the death of a member who has or have been designated in writing by the member and filed with the board in accordance with the provisions of this Pension Plan.
- e. "Board" means the board of trustees, which shall administer the Pension Plan as provided herein.
- f. "Code" means the U.S. Internal Revenue Code of 1986, as amended from time to time.
- g. "Credited Service" means the total number of years and fractional parts of years of employment as a District firefighter and contributing member of this Pension Plan on or after January 1, 1996, omitting intervening years or fractional parts of years when such firefighter may not be employed by the District. If a member accumulates service as both a full-time firefighter and as a volunteer firefighter, credited service shall be calculated separately for full-time and volunteer service, with the sum of all years and fractional parts of years of service used only for vesting and benefit eligibility purposes. A firefighter may voluntarily leave his/her

contributions in the pension fund for a period of five (5) years after leaving the employment of the District pending the possibility of being rehired. When a firefighter leaves District employment (other than employment in temporary position) in order:

1. To perform training and service in the Armed Forces of the United States or the United States Merchant Marine, or
2. To report for the purpose of being inducted into, entering, or determining, by pre-induction or other examination, physical fitness to enter the Armed Forces, whether or not voluntarily,

the firefighter shall receive credited service for the years or fractional parts of years that they were engaged in such Armed Forces or Merchant Marine activities in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994, (USERRA) as amended and Section 175.032(4), F.S. As provided by the USERRA and Section 175.032(4), F.S., the firefighter shall receive credited service for the period of military service on return to employment as a District firefighter.

A Firefighter may purchase up to five (5) years of Credited Service for service in the Armed Forces of the United States, the United States Merchant Marine or service as a Firefighter for any employer prior to employment by the District, provided that the firefighter is not entitled to receive a pension benefit for such service. For purposes of determining credit for prior service as a firefighter, in addition to service as a firefighter in this state, credit may be given for federal, other state, or county service if the prior service is recognized by the Division of

State Fire Marshal as provided under Chapter 633, F.S., or the firefighter provides proof to the Board of Trustees that his or her service is equivalent to the service required to meet the definition of a firefighter under subsection 175.032(8), Florida Statutes. Such purchase shall be by depositing into the pension fund the full actuarial costs of such Credited Service that would be occurred had the Firefighter been employed by the District, for the period of Credited Service purchased. Such payment for said prior service may be made as a lump sum, or installments according to a schedule approved by the Board of Trustees, by direct in-service transfer into the pension fund from any deferred compensation account pursuant to Section 457(e)(17) of the Code. Installment payments shall require interest at the actuarial rate of return for the years purchased, provided that the Firefighter shall pay for all actuarial calculations after the first inquiry. Such purchase of Credited Service shall take effect upon vesting. If a member terminates service prior to vesting and receives a refund of employee contributions, the amount paid for Credited Service shall also be refunded.

- h. "District" means North Naples Fire Control and Rescue District.
- i. "Effective Date" means the date on which the first member joins this Pension Plan.
- j. "Firefighter" means a full-time employee of the District who is certified as a firefighter as a condition of employment in accordance with the provisions of Section 633.35, Florida Statutes, and whose duty it is to extinguish fires, protect life and protect property.

- k. "Fund" means the pension fund established as part of this Pension Plan.
- l. "Member" means an actively employed firefighter who fulfills the prescribed participation requirements.
- m. "Pension Plan" or "Plan" means the North Naples Fire Control and Rescue District Firefighters' Pension Plan, as set forth in this resolution and any amendments thereto.
- n. "Retirement" means a member's separation from District employment with eligibility for and actual receipt of benefits under the Pension Plan.
- o. "Salary" means a member's monthly compensation for work performed for the District arising from the member's employment as a firefighter, including up to 300 hour of overtime payments paid from a salary fund.
- p. "Spouse" means the lawful wife or husband of a member in accordance with laws of any state.
- q. "Volunteer Firefighter" shall have the same meaning as the term defined at Section 175.032(5)(b), Florida Statutes.

### **Section 3. Membership.**

- a. All full-time firefighters hired by the District on or after January 1, 1996 shall be members of this Pension Plan, except for those members who elect not to participate in this plan in accordance with subsection (b) below. All members shall be required to complete a medical examination as may be prescribed by the District, and provide complete and accurate information concerning their health status as requested by the board. Any material misstatement or omissions of requested health or medical information by an applicant or member shall be

grounds for denial of benefits. Based upon medical evidence of any pre-existing adverse health condition, resulting from the prescribed examination or other medical records or history, the board may determine any member ineligible for disability benefits hereunder, as related to such pre-existing condition. A member may be declared ineligible for disability benefits at the time of the initial examination provided in this section, or at a later date if the Board establishes that a condition existed at the time of the member's employment or date of membership. The procedures followed and the determination of the board as to a pre-existing condition shall be on a uniform, non-discriminatory basis, with all members in similar situations being treated alike.

- b. The Fire Chief may elect not to participate in this plan by submitting a written notice of non-participation to the board of trustees within sixty (60) days of initial employment as Fire Chief. A Fire Chief who elects not to participate in this plan shall not thereafter be eligible to accrue or receive benefits through this plan.

#### **Section 4. Board of Trustees.**

- a. The sole and exclusive administration of and responsibility for the proper operation of the Pension Plan and for making effective the provisions of this resolution are hereby vested in a board of trustees. However, the board of trustees is not empowered to amend the provisions of the Pension Plan.
- b. The board of trustees shall consist of five (5) persons, two (2) of whom, unless otherwise prohibited by law, shall be legal residents of the District, who shall be appointed by the District board of commissioners, and two (2) of whom shall be full-time firefighter members of the Pension Plan, who shall be elected by a

majority of the firefighters who are members of the Pension Plan. 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 District board of commissioners. Upon receipt of the fifth person's name, the District board of commissioners shall, as a ministerial duty, appoint such person to the board of trustees. 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 the office is sooner vacated, and may succeed himself or herself in office. Each resident trustee shall serve as trustee for a period of two (2) years, unless sooner replaced by the District board of commissioners at whose pleasure the trustee shall serve, and may succeed himself as a trustee. Each firefighter trustee shall serve as trustee for a period of two (2) years, unless he or she sooner leaves the employment of the District as a firefighter or otherwise vacates his/her office as trustee, whereupon a successor shall be chosen in the same manner as the departing trustee. Each firefighter trustee may succeed himself or herself in office. The board of trustees shall meet at least quarterly each year. Effective October 1, 2013 and thereafter; each resident trustee shall serve as trustee for a period of four (4) years, unless sooner replaced by the District board of commissioners at whose pleasure the trustee shall serve, and may succeed himself or herself as a trustee. Each firefighter trustee shall serve as trustee for a period of four (4) years, unless the firefighter trustee sooner leaves the employment of the district as a firefighter or otherwise vacates his or her office as trustee, whereupon a successor shall be chosen in the same manner as the



departing trustee. The fifth trustee shall serve a four (4) year term, unless the office is sooner vacated, and may succeed himself or herself as the fifth in office. Prior to October 1, 2013, the District shall appoint one resident trustee to a 3 year term and one resident trustee to a 4 year term. Additionally, there shall be an election for one elected trustee for a 3 year term and an election for one elected trustee for a 4 year term. 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 District board of commissioners. Upon receipt of the fifth person's name, the District board of commissioners shall, as a ministerial duty, appoint such person to the board of trustees for a 4 year term.

- c. 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. Additionally, the secretary of the board shall keep a record of all persons receiving pension benefit payments under the provisions of this plan, in which shall be noted the time when such pension benefit was approved and when the pension benefit ceased to be paid. This record shall include a list of all firefighters employed by the District showing the name, address, date of employment and date of termination of each firefighter. The trustees shall not receive any compensation as such, but may receive expenses and per diem as provided by law.
- d. Each trustee shall be entitled to one (1) 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.

- e. The District attorney shall give advice to the board in all matters pertaining to its duties in the administration of the Pension Plan whenever requested. The District attorney shall represent and defend the board as its attorney in all suits or legal actions that may be brought against it, and bring all suits and actions at the direction of the board. The board may choose to use the District's actuary or other professional, technical or other advisors, but must do so only under the terms and conditions acceptable to the board. However, if the board so elects, it may employ independent legal counsel at the pension fund's expense for the purposes contained herein. The board may also engage such professional, technical or other advisers as it deems necessary to administer the Pension Plan. The compensation of all persons engaged by the board and all other expenses of the board necessary for the operation of the Pension Plan shall be paid from the pension fund at such rates and in such amounts as the board shall agree. The board must, at least every three (3) years, retain a professionally qualified independent consultant, as defined in Chapter 175 F.S., who shall evaluate the performance of any existing professional money manager and shall make recommendations to the board regarding the selection of money managers for the next investment term. These recommendations shall be considered by the board at its next regularly scheduled meeting, which will be advertised in the same manner as for any meeting of the board.

- f. The duties and responsibilities of the board shall include, but not necessarily be limited to, the following:
1. To construe the provisions of the Pension Plan and determine all questions arising thereunder.
  2. To determine all questions relating to eligibility and membership.
  3. To determine and certify the amount of all retirement allowance or other benefits hereunder.
  4. To establish uniform rules and procedures to be followed for administrative purposes, benefit applications and all matters required to administer the Pension Plan.
  5. To distribute to members, at regular intervals, information concerning the Pension Plan.
  6. To receive and process all applications for benefits.
  7. 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 Pension Plan and fund.
  8. To perform such other duties as are specified in this Pension Plan.

**Section 5. Finances and Fund Management.**

- a. As part of the Pension Plan, there is hereby established a fund, into which shall be deposited all of the contributions and assets whatsoever attributable to the Pension Plan.
- b. 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.

- c. All funds and securities of the pension fund may be deposited by the board with the finance officer of the District, acting in a ministerial capacity only, who shall be liable in the same manner and to the same extent as he or she is liable for the safekeeping of District funds. However, any funds and securities so deposited with the finance officer of the District shall be kept in a separate fund or clearly identified as funds and securities of the Pension Plan. In lieu thereof, the board shall deposit the funds and securities of the pension fund in a qualified public depository as defined in Section 280.02, Florida Statutes, which depository with regard to such funds and securities 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 purpose of investment decisions and management. Such investment manager shall acknowledge that it is a fiduciary and have discretion, subject to any guidelines as prescribed by the board, in the investment of all fund assets.
- d. All funds and securities of the Pension Plan 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:

1. Current amounts of accumulated contributions of members on both an individual and aggregate account basis;
  2. Receipts and disbursements;
  3. Benefit payments;
  4. Current amounts clearly reflecting all monies, funds and assets whatsoever attributable to contributions and deposits from the District;
  5. All interest, dividends and gains (or losses) whatsoever; and
  6. Such other entries as may be properly required so as to reflect a clear and complete financial report of the fund.
- e. If the assets of the fund are one hundred thousand dollars (\$100,000) or more, an independent audit shall be performed annually by a certified public accountant who may, in the board's discretion, be the accountant retained by the District for the District audit. The audit shall be for the most recent fiscal year of the District 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 valuation of assets on both a cost and market basis, as well as other items normally included in a certified audit. If the fund has less than one hundred thousand (\$100,000) in assets, an annual certified statement of accounting must be prepared in accordance with Section 175.261(1)(b), Florida Statutes.
- f. The board shall have the following investment power and authority:

1. 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.
2. 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:
  - (a) Annuity and life insurance contracts of 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 Pension Plan, and to pay the initial and subsequent premiums thereon.
  - (b) Time or savings accounts of a national or 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.
  - (c) Obligations of the United States or obligations guaranteed as to principal and interest by the government of the United States.
  - (d) Bonds issued by the State of Israel.
  - (e) Bonds, stocks, commingled funds administered by national or state banks, or 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 corporation is traded on a nationally recognized exchange and in the case of bonds holds a rating of not less than investment grade by a major rating service, and if such investments are made in a pooled fund administered by a state or national bank, then the rating of each issue in the pooled fund shall hold a rating of not less than investment grade by a major rating service.

(f) Real estate.

3. 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 (1) issuing company, nor shall the aggregate investment in any one (1) 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 fifty percent (50%) of the assets of the fund.
4. The board may retain in cash such amounts of the fund as it may deem advisable, having due regard for the cash requirements of the Pension Plan.
5. No person or entity 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/her or its own negligence, willful misconduct or lack of good faith.

6. 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 such securities unregistered and in a form permitting transferability, but the books and records shall at all times show that all investments are part of the fund.
7. 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 stocks 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 in the best interest of the fund to exercise.
8. 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.



9. 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 resolution, can reasonably be taken or performed only after receipt by it from a member, the District, or any other entity, of specific information, certification, direction or instruction, 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.
10. Any overpayments or underpayments from the fund to a member or beneficiary caused by errors of computation shall be adjusted with interest at a rate per annum approved by the board. Overpayments shall be charged against payments next succeeding the correction. Underpayments shall be made up from the fund.
11. 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.
12. 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 agents.

13. The board shall not invest more than ten percent (10%) at market of its assets in real property or real estate to include investment in real estate limited partnerships or real estate trusts.
14. The board shall not invest more than twenty-five percent (25%) at market of the fund's assets in foreign securities or certificate of indebtedness, except as specifically authorized herein.
15. The board shall identify and publicly report any direct or indirect holdings it may have in any scrutinized company, as defined in Florida Statutes, Section 215.473, and proceed to sell, redeem, divest, or withdraw all publicly traded securities it may have in such company beginning January 1, 2010 and shall thereafter be prohibited from purchasing or holding such securities. The divestiture of any such security must be completed by September 30, 2010. In accordance with Ch. 2009-97, Laws of Florida, no person may bring any civil, criminal, or administrative action against the board or any employee, officer, director, or advisor of such board based upon the divestiture of any security pursuant to this paragraph.

## **Section 6. Contributions.**

### **a. Member Contributions.**

1. *Amount.* Effective October 1, 2011, members of the Pension Plan shall be required to make regular contributions to the fund in the amount of three percent (3%) of their salary, which shall be deducted from the salary of each member. The District shall pay one-half of one percent (0.5%) of the member contribution. Member contributions shall be deposited with the

Board every pay period. The contributions deducted from the salary of each member to the fund shall be designated as employer contributions pursuant to Section 414(h) of the Code, in accordance with Resolution 96-005. Both the one-half percent (.50%) contributions paid by the District and the two and one-half percent (2.50%) contributions paid by the employee shall be excluded from the member's gross income for Federal Income Tax purposes. For all other purposes of the Pension Plan, such contributions shall be considered to be member contributions.

2. *Method.* Member contributions shall be made by payroll deductions.

- b. Insurance Premium Tax Revenues and Other Contributions Received by Operation of State Law. Insurance premium tax revenues collected and distributed pursuant to Chapter 175, Florida Statutes, and any other monies received by operation of the laws of the State of Florida for the express purpose of funding and paying for retirement benefits for firefighters of the District, shall be deposited directly into the pension fund by the District, as provided in Section 175.121, Florida Statutes. In conjunction with the District's adoption of a resolution implementing this Pension Plan pursuant to Section 175.351, Florida Statutes, the insurance premium tax revenues received pursuant to Section 175.101, Florida Statutes, shall be deposited into and become an integral part of this pension fund, and not used for any other purpose.
- c. District Contributions. So long as this Pension Plan is in effect, the District shall make quarterly contributions to the fund in an amount equal to the difference each year between the total contributions from all other sources for the year, and

the total cost for the year, as shown by the most recent actuarial valuation of the Pension Plan. 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 thirty (30) year period, commencing with the fiscal year in which the effective date of this Pension Plan occurs.

- d. Other. Private donations, gifts and contributions may be deposited into the fund.

#### **Section 7. Benefit Amounts and Eligibility.**

- a. *Normal Retirement Date.* A member's normal retirement date shall be the first day of the month coincident with or next following the attainment of age fifty-five (55) and the completion of ten (10) years of credited service, the vesting period for members in this plan for Normal Retirement Date shall be reduced from ten (10) years to six (6) years effective July 1, 2001 provided that the member is "employed in a regularly established position" on that date. If not so employed on that date a member must be "employed in a covered position for at least one work year after July 1, 2001" or upon attaining twenty-five (25) years of credited service regardless of age. A member may retire on his/her normal retirement date or on the first day of any month thereafter. Normal retirement under the Pension Plan is retirement from employment with the District on or after the normal retirement date. A member's accrued benefit shall become 100% fully vested (non-forfeitable) upon the attainment of Normal Retirement Date.
- b. *Normal Retirement Benefit.* A member retiring hereunder on or after his/her normal retirement date shall receive a monthly benefit which shall commence on his/her retirement date and be continued thereafter during the member's lifetime,

ceasing upon death, but with one hundred twenty (120) monthly payments guaranteed in any event. The monthly retirement benefit shall equal three percent (3.0%) of average final compensation for each year of credited service.

- c. *Early Retirement Date.* A member may retire on his or her early retirement date, which shall be the first day of the month coincident with or next following the completion of ten (10) years of credited service, the vesting period for members in this plan for the Early Retirement Benefit shall be reduced from ten (10) years to six (6) years effective July 1, 2001 provided that the member is “employed in a regularly established position” on that date. If not so employed on that date a member must be “employed in a covered position for a least one work year after July 1, 2001.” Early retirement under the Pension Plan is retirement from employment with the District on or after the early retirement date and prior to the normal retirement date.
- d. *Early Retirement Benefit.* A member retiring hereunder on his or her early retirement date shall receive a monthly retirement benefit which shall commence on his/her early retirement date and shall be continued on the first day of each month thereafter. The benefit payable shall be as determined in paragraph (b) above, which is actuarially reduced from the amount to which he/she would have been entitled had he/she retired on the date which would have been his/her normal retirement date had he/she continued employment as a firefighter, and with the same number of years of credited service as of the time his/her benefits commence and based on his/her average final compensation at that date. In no event, however, shall the early retirement reduction exceed three (3%) for each

year by which the member's age at retirement precedes the member's normal retirement age.

- e. *Cost of Living Adjustment.* The monthly benefit of each retiree and beneficiary receiving benefits under this plan shall be increased each January 1 by three percent (3%).
- f. Each retiree, or if the participant is deceased, his or her spouse who is the participant's designated beneficiary shall receive a monthly retiree supplemental payment, that shall be used as a health insurance subsidy payment, equal to the number of years of credited service completed at the time of the member's retirement, including years in the DROP, multiplied by five dollars (\$5.00), however, no retiree or beneficiary may receive a monthly subsidy payment of more than one hundred fifty dollars (\$150.00) or less than thirty dollars (\$30.00).

#### **Section 8. Pre-Retirement Death Benefits.**

- a. *Prior to Vesting or Eligibility for Retirement.* The beneficiary of a deceased member who was not receiving monthly benefits or who was not yet vested or eligible for early or normal retirement shall receive a refund of one hundred percent (100%) of the member's accumulated contributions without interest.
- b. *Deceased members Vested or Eligible for Retirement.* The beneficiary of any member who dies while actively employed and who, at the date of his/her death was vested or eligible for early or normal retirement, shall be entitled to a benefit as follows:
  - 1. If the member was vested, but not eligible for normal or early retirement, the beneficiary shall receive a benefit payable for ten (10) years, or, if the

beneficiary is the member's spouse, for the spouse's lifetime, ceasing upon the spouse's death, but with 120 monthly payments guaranteed in any event, beginning on the date that the deceased member would have been eligible for early or normal retirement, at the option of the beneficiary. The benefit shall be calculated as for normal retirement based on the deceased member's credited service and average final compensation as of the date of his/her death and reduced as for early retirement, if applicable. The beneficiary may also elect to receive an immediate benefit, payable for ten (10) years, which is actuarially reduced to reflect the commencement of benefits prior to the early retirement date.

2. If the deceased member was eligible for normal or early retirement, the beneficiary shall receive a benefit payable for ten (10) years, or, if the beneficiary is the member's spouse, for the spouse's lifetime, ceasing upon the spouse's death, but with 120 monthly payments guaranteed in any event, beginning on the first day of the month following the member's death or at the deceased member's otherwise normal retirement date, at the option of the beneficiary. The benefit shall be calculated as for normal retirement based on the deceased member's credited service and average final compensation as of the date of his/her death and reduced as for early retirement, if applicable.
3. In the alternative to the benefit payable to a non-spouse beneficiary for ten (10) years pursuant to paragraph (1) or (2) above, the non-spouse beneficiary may elect to receive an actuarially reduced lifetime joint

annuity. Any beneficiary may not otherwise elect an optional form of benefit; however, the board may elect to make a lump sum payment pursuant to Section 11, subsection g.

4. Any beneficiary may, in lieu of any benefit provided for in paragraph 1 or 2 above, elect to receive a refund of the deceased member's accumulated contributions.
- c. Notwithstanding any other provision in this section to the contrary, the surviving Spouse of any Member killed in the line of duty shall receive a monthly pension equal to one-half (1/2) of the monthly Salary (as defined in Section 2 of the Plan Document) being received by the Member at the time of death for the surviving Spouse's life.
1. In the event the surviving Spouse of a Member killed in the line of duty dies, the monthly payments that would have been payable to such surviving Spouse had such surviving Spouse lived shall be paid for the use and benefit of such Member's unmarried child or children under the age of eighteen (18) until the eighteenth birthday of the Member's youngest child.
  2. In the event the Member killed in the line of duty leaves no surviving Spouse but is survived by an unmarried child or children under the age of eighteen (18) years such benefits provided by paragraph 1. above normally payable to a surviving spouse shall be paid for the use and benefit of such Member's child and or children until the eighteenth birthday of the Member's youngest child.



- d. *Death while performing USERRA-qualified active military service.* In the case of a Member who dies on or after January 1, 2007 while performing “Qualified Military Service” under Title 38, United States Code, Chapter 43, Uniformed Services Employment and Reemployment Rights Act (“USERRA”) within the meaning of Section 414(u) of the Internal Revenue Code, any “additional benefits” (as defined by Section 401(a)(37) of the Internal Revenue Code) provided under the Plan that are contingent upon a Member’s termination of employment due to death shall be determined as though the Member had resumed employment immediately prior to his/her death. With respect to any such “additional benefits,” for vesting purposes only, credit shall be given for the period of the Member’s absence from covered employment during “Qualified Military Service”.

#### **Section 9. Disability Benefits.**

- a. *Disability Benefits On-Duty.* Each firefighter who is a member in the Pension Plan and who shall have become totally and permanently disabled while an active member of the Pension Plan to the extent that he/she 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/her 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 (3.0%) of his/her average final compensation multiplied by the total years of credited service, but in any event the minimum amount paid to the member

shall be sixty-five percent (65%) of his/her average monthly salary at the time of disability.

- b. Any condition or impairment of health of a firefighter 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 firefighter shall have successfully passed a physical examination upon entering into such service, including cardiogram, 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. A condition or impairment of health caused by hepatitis, meningococcal meningitis, or tuberculosis, that requires medical treatment and results in disability or death shall be presumed to have occurred in the line of duty, unless the contrary be shown by competent evidence, in accordance with Section 112.181, Florida Statutes, as amended from time to time.
- c. *Disability Benefits Off-Duty.* Each firefighter who is a member in the Pension Plan with ten (10) or more years of credited service who becomes totally and permanently disabled to the extent that he/she is unable, by reason of a medically determinable physical or mental impairment, to render useful and efficient service as a firefighter, which disability was not directly caused by the performance of his/her duties as a firefighter, shall be entitled to a monthly pension equal to three percent (3.0%) of his/her average final compensation multiplied by the total years of credited service, but in any event the minimum amount paid to the member shall be twenty-five percent (25%) of his/her average

monthly salary at the date of disability, whichever is greater, minus any benefits that may be paid from time to time by any policy or plan of disability insurance or benefits maintained by the District or Pension Plan; provided that effective July 1, 2000 service time required to qualify for non-service related disability benefits shall be reduced from ten (10) to eight (8) or more years of credited service. A firefighter must apply for benefits under such disability insurance or benefits as a condition of receiving disability benefits from this Pension Plan.

- d. *Conditions Disqualifying Disability Benefits.* A member may be disqualified from receiving disability benefits based on a pre-existing condition as determined by the board in accordance with this Pension Plan. Each firefighter who is claiming disability benefits must also establish, to the satisfaction of the board, that such disability was not occasioned primarily by:
1. Drug or alcohol abuse; or
  2. Injury or disease sustained while willfully participating in a riot, civil insurrection or other act of violence, or while committing a felony; or
  3. Injury or disease sustained after his or her employment as a firefighter with the District shall have terminated; or
  4. Intentional, self-inflicted injury.
- e. *Medical Examination Requirement.* A member shall not be eligible for disability benefits unless and until he/she undergoes a medical examination by a qualified physician or physicians selected by the board for that purpose. The member will be required to authorize the release of all relevant medical records to the physician or physicians who conduct the medical examination. Any member

receiving disability benefits under provisions of this plan may be periodically re-examined 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 a member receiving disability benefits is no longer permanently and totally disabled to the extent that the member is able to render useful and efficient service as a firefighter, disability benefit payments to the member shall be discontinued. The cost of the medical examination and/or re-examination of a member claiming and/or receiving disability benefits shall be borne by the pension fund.

- f. If a member recovers from disability and reenters the service of the District as a firefighter, his/her service will be deemed to have been continuous, but the period beginning with the first month for which he/she received a disability retirement income payment and ending with the date he/she reentered the service of the District will not be considered as credited service for purposes of the Pension Plan. If the member recovers from disability, has his or her disability benefit terminated, re-enters employment as a Firefighter, and is continuously employed for a minimum of one year of creditable service, he or she may claim as creditable service the months during which he or she was receiving disability benefits, upon payment of the required contributions. Contributions shall equal the total required employee and employer contribution rate during the period the member received disability benefits, multiplied times his or her rate of monthly compensation prior to the commencement of disability retirement for each month of the period claimed, plus 6.5% interest on such contributions, compounded

annually each June 30 to the date of payment. If the member does not claim credit for all of the months he or she received disability benefits, the months claimed must be the most recent months of retirement.

- g. The board shall have the power and authority to make the final decisions regarding all disability claims.
- h. *Workers' Compensation.* When a member is receiving a disability pension and also disability benefits pursuant to a disability insurance policy maintained and paid for by the District or workers' compensation benefits pursuant to Chapter 440, Florida Statutes, for the same disability, or both workers' compensation and disability insurance policy benefits, and the total monthly benefits received from the above exceed one hundred percent (100%) of the member's salary at the time of disability, excluding overtime, the disability pension benefit shall be reduced so that the total amount received by the member does not exceed one hundred percent (100%) of such salary. In the case of a lump sum workers' compensation settlement, the disability retirement income payable from the Pension Plan shall be adjusted as follows:
  - 1. The amount of the lump sum settlement shall be divided by the participant's remaining life expectancy (in months) as determined using standards actuarial tables approved by the actuary for the Pension Plan.
  - 2. If the number obtained in paragraph 1 above, when added to the participant's monthly disability retirement income from the Pension Plan, exceeds the participant's final monthly compensation on the date of disability, the amount of the excess shall be deducted from the

participant's monthly disability retirement income from the Pension Plan, for the duration of the participant's remaining life expectancy as determined in paragraph 1 above.

3. If the number obtained in paragraph 1 above, when added to the participant's monthly disability retirement income from the Pension Plan, does not exceed the participant's final monthly compensation on the date of disability, there shall be no reduction of the participant's disability retirement income from the Pension Plan.

#### **Section 10. Termination of Employment Prior to Retirement.**

If a member terminates District employment and is not eligible for any other benefits under this Pension Plan, the member shall be entitled to the following:

- a. If the member has less than ten (10) years credited service upon termination, the member shall be entitled to a refund of his/her accumulated contributions, or the member may leave them deposited with the pension fund for up to five (5) years following termination. Provided that the vesting period for members in this plan for this benefit shall be reduced from ten (10) years to six (6) years effective July 1, 2001 provided that the member is "employed in a regularly established position" on that date. If not so employed on that date a member must be "employed in a covered position for a least one work year after July 1, 2001."
- b. 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 based upon the member's credited service and average final compensation as of the date of termination,

payable commencing at the member's normal or early retirement date; provided he/she does not elect to withdraw his/her accumulated contributions and provided the member survives to his/her normal or early retirement date. Provided that the vesting period for members in this plan for this benefit shall be reduced from ten (10) years to six (6) years effective July 1, 2001 provided that the member is "employed in a regularly established position" on that date. If not so employed on that date a member must be "employed in a covered position for a least one work year after July 1, 2001."

#### **Section 11. Optional Forms of Benefits.**

- a. In lieu of the amount and form of retirement income payable in the event of normal or early retirement as specified in this plan, 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:
  1. A retirement income of a monthly amount payable to the member for his/her lifetime only.
  2. 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, one hundred percent (100%), seventy five percent (75%), sixty-six point six seven percent (66.67%) or fifty percent (50%) of such monthly amount payable to a joint pensioner for his lifetime.
  3. If a member retires prior to the time at which social security benefits are payable, he/she 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 Pension Plan, based upon the social security law in effect at the time of the member's retirement.

- b. The member, upon electing any option provided in subsection (a) of this section, will designate the joint pensioner or beneficiary (or Beneficiaries) to receive the benefit, if any, payable under the Pension Plan in the event of the 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 (1) or more primary Beneficiaries where applicable. If a member has elected an option with a joint pensioner or beneficiary and the member's retirement income benefits have commenced, such member may change his or her designated joint pensioner or beneficiary up to two times without the approval of the Board or the current designated survivor. The retired member need not provide proof of the good health of the designated survivor being removed, and the designated survivor being removed need not be living.
- c. The consent of a member'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 Pension Plan shall thereupon cease.
- d. Upon change of a member's beneficiary or joint pensioner in accordance with this section, the board shall adjust the member's monthly benefit by application of



actuarial calculations to insure that the benefit paid in the Actuarial Equivalent of the member's then-current benefit. Any such member shall pay the actuarial recalculation expenses and shall make repayment of any overage of previously paid pension benefits as a result of said recalculations. 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 member, such benefits as are payable in the event of the death of the member subsequent to his retirement shall be paid as provided in Section 12.

- e. 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:
  - 1. If a member dies prior to his/her normal retirement date or early retirement date, whichever first occurs, no retirement benefit will be payable under the option to any person, but the benefit, if any, will be determined under Section 8.
  - 2. If the designated beneficiary (or beneficiaries) or joint pensioner dies before the member's retirement under the Pension Plan, the option elected will be cancelled automatically and a retirement income of the normal form and amount will be payable to the member upon his/her 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.

3. If both the retired member and the beneficiary (or Beneficiaries) designated by the member 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 a of this section, 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 12.
4. If a member continues beyond his/her normal retirement date pursuant to the provision of Section 7, subsection a, and dies prior to his/her 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/her death occurred.
- f. A member may not change his/her retirement option after the date of cashing or depositing his/her first retirement check.
- g. 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 Three Thousand Five Hundred Dollars (\$3,500.00). 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 Pension Plan with regard to such member and shall not be subject to review by anyone, but shall be final, binding and conclusive on all persons.

- h. Deferred retirement option plan (DROP). A DROP, as defined in this plan, is established and shall be administered by the board of trustees of the North Naples Fire Control and Rescue District Firefighters' Pension Plan. Participation shall be subject to the following terms and conditions:

1. *Eligibility.* An "eligible participant" of the Pension Plan, which is defined as an individual currently on full-time work status, may elect to participate in the DROP on the first day of the month coincident with or next following either, attainment of age fifty-five (55) and the completion of ten (10) years of credited service, or the completion of twenty-five (25) years of credited service, which date shall constitute the "initial date of eligibility."
2. *Written election.* An eligible participant electing to participate in DROP must complete and execute such forms as may be required by the District and supplied by the board of trustees not less than thirty (30) days prior to entering into the DROP. The forms shall include, but not be limited to, an irrevocable letter of resignation effective no later than the conclusion of the maximum period of DROP participation. Election into DROP is irrevocable provided there shall be no minimum period of participation, however, in the event of a voluntary termination prior to the maximum period, any DROP participant terminating prior to such maximum DROP period shall

submit a written notice at least thirty (30) days prior to such early termination of DROP participation.

3. *Limitation/disqualification for other benefits.* An eligible participant may elect to participate in the DROP only once. After commencement of participation in DROP, a participant shall no longer earn, accrue or purchase additional service credits towards retirement benefits and shall not be eligible for disability retirement benefits, pre-retirement death benefits or later enhancements to the firefighters' Pension Plan.
4. *Cessation or reduction of contributions.* Upon the effective date of an eligible participant's participation in DROP, all contributions by and on behalf of the participant to the plan shall be discontinued.
5. *Benefit calculation.* For all plan purposes, service and vesting credits of an eligible participant electing DROP shall be fixed as of the effective date of commencement of DROP participation. Any service as a firefighter after entry into DROP shall not be used for calculation or determination of benefits payable by the Pension Plan. The average final compensation of a participant, as defined in this plan shall be determined as of the effective date of commencement of DROP participation and any subsequent earnings shall not be used for calculation or determination of benefits payable by the Pension Plan.
6. *Benefit credits to DROP account.*
  - (a) Upon entry into DROP, the monthly retirement benefit which would have been payable had the participant ceased employment and

commenced receiving a normal retirement benefit shall be credited to the participant's DROP account on a monthly basis. No benefit credits from the plan shall be made to a DROP account for more than the maximum period of DROP participation.

- (b) No participant shall receive a credit to the participant's DROP account until the required DROP forms have been submitted, including the participant's irrevocable letter of resignation, and the District has actually discontinued the participant's contributions to the Pension Plan.

7. *DROP account earnings.* Each DROP account shall be eligible to earn interest in accordance with the following methods:

- (a) The DROP account shall earn interest as of each January 1 equal to the actual net earnings of the Pension Plan for the prior plan year as determined by the actuary using the standard IRS formula for purposes of reporting the annual investment return on schedule B (form 5500), whether or not such form is actually required for this Pension Plan, but in no event shall be less than two and one half percent (2.5%) compounded annually, less the DROP's administrative fee, subject to confirmation through the annual independent audit. In the case of a partial year's participation, interest shall be prorated to achieve the applicable rate of interest set forth in this section on an annualized basis.

- (b) The DROP account shall earn interest as actually realized, less the DROP's administrative fee.
- 8. *Maximum period of participation.* An eligible participant may elect to participate in DROP for a maximum of sixty (60) months. At the conclusion of the maximum period of DROP participation, retirement benefit payments to the DROP account shall cease and the participant's termination from employment with the District shall become effective pursuant to the executed irrevocable letter of resignation.
- 9. *Administrative fee for DROP account.* An annual administrative fee shall be charged on each January 1 for the administration and operation of a participant's DROP account at the rate of one-half ( $\frac{1}{2}$ ) of one (1) percent. In the case of a participant who separates from service after January 1, the administrative fee shall be paid on a prorated basis for the partial year of participation. The Administrative Fee charged to DROP participants may be amended from time to time by the board of trustees at their sole discretion in keeping with their fiduciary responsibility to Pension Plan participants and beneficiaries.
- 10. *Distribution of DROP account*
  - (a) Upon termination of a participant's District employment, whether by retirement, resignation, discharge or death, no further benefit credits shall be made to the DROP account.
  - (b) All retirement benefits paid after termination of employment shall be made directly to the participant, or in the case of death, in

accordance with any survivorship option which the participant elected.

- (c) Within sixty (60) days following the end of the month in which the participant terminated employment, the balance of the participant's DROP account shall be paid to the participant as a lump sum or by rollover to another qualified retirement plan. The participant must elect the method of payment within fifteen (15) days following the end of DROP participation and the election shall be irrevocable. Failure to elect a payment within the prescribed time shall be deemed an election to receive payment of the entire DROP account balance in cash, less required income tax withholding.
- (d) Notwithstanding the option selected by the participant, the board of trustees reserves the right to accelerate payments to comply with the minimum distribution provisions of the Internal Revenue Code or to defer payments to comply with the maximum benefit provisions of the Internal Revenue Code.

- 11. *Disability of a DROP participant.* If the District determines that a firefighter has become unable to perform the duties of a firefighter due to service or non-service related disability and terminates the employment of the firefighter for this reason, the participant shall be deemed to have retired on a service retirement and DROP participation shall end. Distribution of the DROP account balance shall be made in accordance with the

provisions and requirements of this section in the manner elected by the participant.

12. *Death of a DROP participant.* If a DROP participant dies, the participant shall be deemed to have retired upon entry into DROP and survivorship benefits, if any, shall be paid in accordance with the participant's benefit elections upon entry into DROP. The balance in the DROP account shall be distributed in accordance with the distribution methodology elected by the participant, or if no such election has been made, the participant's designated beneficiary may elect the method of payment in accordance with the time and election requirements of this section.

## **Section 12. Beneficiaries.**

Each member 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/her death; and each designation may be revoked by such member by signing and filing with the board a new designation-of-beneficiary form. If a deceased member fails to name a beneficiary in the manner prescribed in subsection a of this section, or if the beneficiary (or beneficiaries) named by a deceased member predeceases the member, the death benefit, if any, which may be payable under the Pension Plan with respect to such deceased member, shall be paid to the estate of the member.



### **Section 13. Reports to Division of Retirement.**

No later than March 15 of each year, the chairman or secretary of the board shall file a report with the Division of Retirement in accordance with Section 175.351(12), Florida Statutes.

### **Section 14. Roster of Retirees.**

The secretary of the board shall keep a record of all persons receiving benefits under the provisions of this plan, in which it shall be noted the time when the benefits commence and when the same shall cease to be paid. Additionally, the secretary shall keep a record of all members employed by the District in such a manner as to show the name, address, date of employment, and date such employment is terminated.

### **Section 15. Internal Revenue Code Compliance.**

a. Maximum amount of retirement income.

1. The limitations of this Subsection (a) shall apply in limitation years beginning on or after July 1, 2007, except as otherwise provided herein, and are intended to comply with the requirements of the Pension Protection Act of 2006 and shall be construed in accordance with said Act and guidance issued thereunder. The provisions of this Subsection (a) shall supersede any provision of the Plan to the extent such provision is inconsistent with this Subsection.

The Annual Pension as defined in Paragraph (2) below otherwise payable to a Member at any time shall not exceed the Dollar Limitation for the Member multiplied by a fraction whose value cannot exceed one, the numerator of which is the Member's number of years (or part thereof, but not less than one year) of service with the District and the denominator of which is 10. For this purpose, no more than one year of service may be credited for any Plan Year. If the benefit the Member would otherwise accrue in a limitation year would produce an Annual Pension in excess of the Dollar Limitation, the benefit shall be limited (or the rate of accrual reduced) to a benefit that does not exceed the Dollar Limitation.

2. “Annual Pension” means the sum of all annual benefits, payable in the form of a straight life annuity. Benefits payable in any other form shall be adjusted to the larger of:

(a) For limitation years beginning on or after July 1, 2007

(I) the straight life annuity (if any) payable to the Member under the Plan commencing at the same Annuity Starting Date as the Member’s form of benefit, or

(II) the actuarially equivalent straight life annuity commencing at the same Annuity Starting Date, computed using a 5.00% interest rate and the mortality basis prescribed in Code Section 415(b)(2)(E)(v).

(b) For limitation years beginning before July 1, 2007

(I) the actuarially equivalent straight life annuity commencing at the same Annuity Starting Date, computed using the interest rate and mortality basis specified by the Board of Trustees for determining Actuarial Equivalence under the Plan for the particular form of payment, or

(II) the actuarially equivalent straight life annuity commencing at the same Annuity Starting Date, computed using a 5.00% interest rate and the mortality basis prescribed in Code Section 415(b)(2)(E)(v).

No actuarial adjustment to the benefit shall be made for benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, and postretirement medical benefits); or the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to §417(e)(3) of the Internal Revenue Code and would otherwise satisfy the limitations of this Subsection (a), and the amount payable under the form of benefit in any Limitation Year shall not exceed the limits of this Subsection (a) applicable at the annuity starting date, as increased in subsequent years pursuant to § 415(d) of the Code. For this purpose, an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

3. “Dollar Limitation” means, effective for the first limitation year beginning after January 1, 2001, \$160,000, automatically adjusted under Code Section 415(d), effective January 1 of each year, as published in the Internal Revenue Bulletin, and payable in the form of a straight life annuity. The new limitation shall apply to limitation years ending with or within the calendar year of the date of the adjustment, but a Member’s benefits shall not reflect the adjusted limit prior to January 1 of that calendar year. The Dollar Limitation shall be further adjusted based on the age of the Member when the benefit begins as follows:

(a) For Annuity Starting Dates in limitation years beginning on or after July 1, 2007

(i) If the Annuity Starting Date for the Member’s benefit is after age 65

i. If the Plan does not have an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement

The Dollar Limitation at the Member’s Annuity Starting Date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Member’s Annuity Starting Date that is the actuarial equivalent of the Dollar Limitation with actuarial equivalence computed using a 5.00% interest rate assumption and the mortality basis prescribed in Code Section 415(b)(2)(E)(v) for that Annuity Starting Date (and expressing the Member’s age based on completed calendar months as of the Annuity Starting Date).

ii. If the Plan does have an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement

The Dollar Limitation at the Member’s Annuity Starting Date is the lesser of (aa) the Dollar Limitation multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the Plan at the Member’s Annuity Starting Date to the annual amount of the adjusted immediately commencing straight life annuity under the Plan at age 65, both determined without applying the limitations of this Subsection (a), and (bb) the

limitation determined under Subparagraph (3)(a)(I)(i) of this Subsection(a). For this purpose, the adjusted immediately commencing straight life annuity under the Plan at the Member's Annuity Starting Date is the annual amount of such annuity payable to the Member, computed disregarding the Member's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing straight life annuity under the Plan at age 65 is the annual amount of such annuity that would be payable under the Plan to a hypothetical Member who is age 65 and has the same Accrued Benefit as the Member.

- (II) Except with respect to a Member who is a "Qualified Member" as defined in Section 415(b)(2)(H) of the Code, for benefits (except survivor and disability benefits as defined in Section 415(b)(2)(I) of the Code), if the Annuity Starting Date for the Member's benefit is before age 62

- i. If the Plan does not have an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement

The Dollar Limitation at the Member's Annuity Starting Date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Member's Annuity Starting Date that is the actuarial equivalent of the Dollar Limitation with actuarial equivalence computed using a 5.00% interest rate assumption and the mortality basis prescribed in Code Section 415(b)(2)(E)(v) for that Annuity Starting Date (and expressing the Member's age based on completed calendar months as of the Annuity Starting Date).

- ii. If the Plan does have an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement

The Dollar Limitation at the Member's Annuity Starting Date is the lesser of (aa) the Dollar Limitation multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity

under the Plan at the Member's Annuity Starting Date to the annual amount of the adjusted immediately commencing straight life annuity under the Plan at age 62, both determined without applying the limitations of this Subsection (a), and (bb) the limitation determined under Subparagraph (3)(a)(II)(i) of this Subsection (a).

- (b) For Annuity Starting Dates in limitation years beginning before July 1, 2007

Age as of Annuity Starting Date:	Adjustment of Dollar Limitation:
Over 65	<p>The smaller of:</p> <ul style="list-style-type: none"> <li>(a) the actuarial equivalent of the limitation for age 65, computed using the interest rate and mortality basis specified by the Board of Trustees for determining actuarial equivalence under the Plan, or</li> <li>(b) the actuarial equivalent of the limitation for age 65, computed using a 5.00% interest rate and the mortality basis prescribed in Code Section 415(b)(2)(E)(v).</li> </ul> <p>Any increase in the Dollar Limitation determined in accordance with this paragraph shall not reflect a mortality decrement between age 65 and the age at which benefits commence if benefits are not forfeited upon the death of the Member. If any benefits are forfeited upon death, the full mortality decrement is taken into account.</p>
62 to 65	No adjustment.
Less than 62	<p>The smaller of:</p> <ul style="list-style-type: none"> <li>(a) the actuarial equivalent of the limitation for age 62, computed using the interest rate and mortality basis specified by the Board of Trustees for determining actuarial equivalence under the Plan, or</li> <li>(b) the actuarial equivalent of the limitation for age 62, computed using a 5.00% interest</li> </ul>

	<p>rate and the mortality basis prescribed in Code Section 415(b)(2)(E)(v).</p> <p>This adjustment shall not apply to any "Qualified Member" as defined in Section 415(b)(2)(H), nor to survivor and disability benefits as defined in Section 415(b)(2)(I) of the Code.</p>
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4. With respect to clause (3)(a)(I)(i), clause (3)(a)(II)(i) and Paragraph (3)(b) above, no adjustment shall be made to the Dollar Limitation to reflect the probability of a Member's death between the Annuity Starting Date and age 62, or between age 65 and the Annuity Starting Date, as applicable, if benefits are not forfeited upon the death of the Member prior to the Annuity Starting Date. To the extent benefits are forfeited upon death before the Annuity Starting Date, such an adjustment shall be made. For this purpose, no forfeiture shall be treated as occurring upon the Member's death if the Plan does not charge Members for providing a qualified preretirement survivor annuity, as defined in Code Section 417(c), upon the Member's death.
5. The term "limitation year" is the 12 month period which is used for application of the limitations under Code Section 415 and shall be the calendar year.
6. The limitations set forth in this Subsection (a) shall not apply if the Annual Pension does not exceed \$10,000 provided the Member has never participated in a Defined Contribution Plan maintained by the District.
7. Cost-of-living adjustments in the Dollar Limitation for benefits shall be limited to scheduled annual increases determined by the Secretary of the Treasury under Section Subsection 415(d) of the Code.
8. In the case of a Member who has fewer than 10 years of participation in the Plan, the Dollar Limitation set forth in Paragraph (3) of this Subsection (a) shall be multiplied by a fraction - (i) the numerator of which is the number of years (or part thereof) of participation in the Plan, and (ii) the denominator of which is 10.
9. Any portion of a Member's benefit that is attributable to mandatory Member contributions (unless picked-up by the District) or rollover contributions, shall be taken into account in the manner prescribed in the regulations under Section 415 of the Code.

10. Should any Member participate in more than one defined benefit plan maintained by the District, in any case in which the Member's benefits under all such defined benefit plans (determined as of the same age) would exceed the Dollar Limitation applicable at that age, the accrual of the Member's benefit under this Plan shall be reduced so that the Member's combined benefits will equal the Dollar Limitation.
11. For a Member who has or will have distributions commencing at more than one annuity starting date, the Annual Benefit shall be determined as of each such annuity starting date (and shall satisfy the limitations of this Section as of each such date), actuarially adjusting for past and future distributions of benefits commencing at the other annuity starting dates. For this purpose, the determination of whether a new starting date has occurred shall be made without regard to § 1.401(a)-20, Q&A 10(d), and with regard to § 1.415(b)1(b)(1)(iii)(B) and (C) of the Income Tax Regulations.
12. The determination of the Annual Pension under Paragraph (A)(1) of this Subsection (a) shall take into account (in the manner prescribed by the regulations under Section 415 of the Code) social security supplements described in § 411(a)(9) of the Internal Revenue Code and benefits transferred from another defined benefit plan, other than transfers of distributable benefits pursuant § 1.411(d)-4, Q&A-3(c) of the Income Tax Regulations.
13. The above limitations are intended to comply with the provisions of Section 415 of the Code, as amended, so that the maximum benefits provided by plans of the District shall be exactly equal to the maximum amounts allowed under Section 415 of the Code and regulations thereunder. If there is any discrepancy between the provisions of this Subsection (a) and the provisions of Section 415 of the Code and regulations thereunder, such discrepancy shall be resolved in such a way as to give full effect to the provisions of Section 415 of the Code. The value of any benefits forfeited as a result of the application of this Subsection (a) shall be used to decrease future employer contributions.
14. For the purpose of applying the limitations set forth in Sections 401(a)(17) and 415 of the Internal Revenue Code, Compensation shall include any elective deferral (as defined in Code Section 402(g)(3) of the Internal Revenue Code), and any amount which is contributed or deferred by the employer at the election of the Member and which is not includible in the gross income of the Member by reason of Section 125 or 457 of the Internal Revenue Code. For limitation years beginning on and after January 1, 2001,

for the purposes of applying the limitations described in this Subsection (a), compensation paid or made available during such limitation years shall include elective amounts that are not includible in the gross income of the Member by reason of Section 132(f)(4) of the Internal Revenue Code. For limitation years on or after July 1, 2007, compensation shall include payments that otherwise qualify as compensation and that are made by the later of: (a) 2 and ½ (two and one-half) months after severance from employment with the employer, and (b) the end of the limitation year that includes the date of severance.

b. Required Beginning Date:

Notwithstanding any other provision of the Plan, payment of a participant's retirement benefits under the Plan shall commence not later than the participant's Required Beginning Date, which is defined as the later of:

-April 1 of the calendar year that next follows the calendar year in which the participant attains or will attain the age of 70½ years; or

-April 1 of the calendar year that next follows the calendar year in which the participant retires.

c. Required Minimum Distributions.

(1) Required Beginning Date. The participant's entire interest will be distributed, or begin to be distributed, to the participant no later than the participant's Required Beginning Date as defined in Subsection (b) of this Section 15.

(2) Death of participant Before Distributions Begin.

(a) If the participant dies before distributions begin, the participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

(I) If the participant's surviving spouse is the participant's sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the participant died, or by December 31 of the calendar year in which the participant would have attained age 70½, if later.

(II) If the participant's surviving spouse is not the participant's sole designated beneficiary, then distributions to the designated beneficiary will begin by December 31 of the



calendar year immediately following the calendar year in which the participant died.

- (III) If there is no designated beneficiary as of September 30 of the year following the year of the participant's death, the participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the participant's death.

- (b) The participant's entire interest shall be distributed as follows:

- (I) Participant Survived by Designated Beneficiary. If the participant dies before the date distribution of his or her interest begins and there is a designated beneficiary, the participant's entire interest will be distributed, beginning no later than the time described in Subparagraph (2)(a) above, over the life of the designated beneficiary or over a period certain not exceeding:

- (i) unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the participant's death; or

- (ii) if the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.

- (II) No Designated Beneficiary. If the participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the participant's death, distribution of the participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the participant's death.

- (c) Death of Surviving Spouse Before Distributions to Surviving Spouse Begin. In any case in which (i) the participant dies before the date distribution of his or her interest begins, (ii) the participant's surviving spouse is the participant's sole designated beneficiary, and (iii) the surviving spouse dies before distributions to the surviving spouse begin, Subparagraphs (2)(a) and 2(b) above shall apply as though the surviving spouse were the participant.

- (3) Requirements For Annuity Distributions That Commence During participant's Lifetime.
- (a) Joint Life Annuities Where the Beneficiary Is Not the Participant's Spouse. If the participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the participant and a nonspousal beneficiary, annuity payments to be made on or after the participant's Required Beginning Date to the designated beneficiary after the participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the participant using the table set forth in Q&A-2 of Section 1.401(a)(9)-6 of the Treasury regulations. If the form of distribution combines a joint and survivor annuity for the joint lives of the participant and a nonspousal beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the designated beneficiary after the expiration of the period certain.
- (b) Period Certain Annuities. Unless the participant's spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the participant's lifetime may not exceed the applicable distribution period for the participant under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the participant reaches age 70, the applicable distribution period for the participant is the distribution period for age 70 under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations plus the excess of 70 over the age of the participant as of the participant's birthday in the year that contains the annuity starting date. If the participant's spouse is the participant's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the participant's applicable distribution period, as determined under this Subparagraph (3)(b), or the joint life and last survivor expectancy of the participant and the participant's spouse as determined under the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the participant's and spouse's attained ages as of the participant's and spouse's birthdays in the calendar year that contains the annuity starting date.
- (4) Form of Distribution. Unless the participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first distribution

calendar year distributions will be made in accordance with Subparagraphs (4)(a) and (4)(b) below. If the participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the Code and the Treasury regulations. Any part of the participant's interest which is in the form of an individual account described in Section 414(k) of the Code will be distributed in a manner satisfying the requirements of Section 401(a)(9) of the Code and the Treasury regulations that apply to individual accounts.

(a) General Annuity Requirements. If the participant's interest is paid in the form of annuity distributions under the Plan, payments under the annuity will satisfy the following requirements:

(I) the annuity distributions will be paid in periodic payments made at intervals not longer than one year;

(II) the distribution period will be over a life (or lives) or over a period certain, not longer than the distribution period described in Paragraphs 2 or 3 above, whichever is applicable, of this Subsection (c) ;

(III) once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted;

(IV) payments will either be non-increasing or increase only as follows:

(i) by an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the Bureau of Labor Statistics;

(ii) to the extent of the reduction in the amount of the participant's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period dies or is no longer the participant's beneficiary pursuant to a qualified domestic relations order within the meaning of Section 414(p) of the Code;

(iii) to provide cash refunds of employee contributions upon the participant's death; or

(iv) to pay increased benefits that result from a Plan amendment.

- (b) Amount Required to be Distributed by Required Beginning Date. The amount that must be distributed on or before the participant's Required Beginning Date (or, if the participant dies before distributions begin, the date distributions are required to begin under Subparagraph (2)(A)(i) or (2)(A)(ii), whichever is applicable) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the participant's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the participant's Required Beginning Date.
    - (l) Additional Accruals After First Distribution Calendar Year. Any additional benefits accruing to the participant in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.
- (5) For purposes of this Subsection, distributions are considered to begin on the participant's Required Beginning Date. If annuity payments irrevocably commence to the participant (or to the participant's Surviving Spouse) before the participant's Required Beginning Date (or, if to the participant's Surviving Spouse, before the date distributions are required to begin in accordance with Subparagraph (2)(a) above), the date distributions are considered to begin is the date distributions actually commence.
- (6) Definitions.
  - (a) Designated beneficiary. The individual who is designated as the beneficiary under the Plan and is the designated beneficiary under Section 401(a)(9) of the Code and Section 1.401(a)(9)-4 of the Treasury regulations.
  - (b) Distribution calendar year. A calendar year for which a minimum distribution is required. For distributions beginning before the participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the participant's Required Beginning Date. For distributions beginning after the participant's death, the first

distribution calendar year is the calendar year in which distributions are required to begin pursuant to Paragraph (2) of this Subsection (c).

- (c) Life expectancy. Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury regulations.

d. Rollover Distributions.

1. 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 Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

2. Definitions.

The following definitions apply to this Section:

- (a) Eligible rollover distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:
  - (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 10 years or more;
  - (II) any distribution to the extent such distribution is required under Section 401(a)(9) of the Code;
  - (III) the portion of any distribution which is made upon hardship of the Member; and
  - (IV) the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities), provided that a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax Employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Code that agrees to separately

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

- (b) **Eligible retirement plan:** An eligible retirement plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, an annuity contract described in Section 403(b) of the Code, a qualified trust described in Section 401 (a) of the Code, an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan, or, with respect to distributions on or after January 1, 2008, a Roth IRA (subject to the limitations of Code Section 408A(c)(3)) that accepts the distributee's eligible rollover distribution.
  - (c) **Distributee:** A distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse. Furthermore, effective January 1, 2007, a surviving designated beneficiary as defined in Section 401(a)(9)(E) of the Code who is not the surviving spouse and who elects a direct rollover to an individual retirement account described in Section 408(a) of the Code or an individual retirement annuity described in Section 408(b) of the Code shall be considered a distributee.
  - (d) **Direct rollover:** A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.
- e. Notwithstanding any other provision of this Plan, the maximum amount of any mandatory distribution, as defined in Section 401(a)(31) of the Code, payable under the Plan shall be \$1000.
- f. **Compensation Limitations Under 401(a)(17):**

In addition to other applicable limitations set forth in the Plan, and notwithstanding any other provision of the Plan to the contrary, the annual compensation of each participant taken into account under the Plan shall not exceed the EGTRRA annual compensation limit for limitation years beginning

after December 31, 2001. The EGTRRA annual compensation limit is \$200,000, as adjusted by the Commissioner for increases in the cost of living in accordance with Section 401(a)(17)(B) of the Code. The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which Compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the EGTRRA annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

Any reference in the Plan to the limitation under Section 401 (a)(17) of the Code shall mean the EGTRRA annual compensation limit set forth in this provision.

- g. At no time prior to the satisfaction of all liabilities under the plan 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.

**Section 16. Reserved.**

**Section 17. Reserved.**

**Section 18. Repeal or Termination of Pension Plan.**

- a. The resolution establishing the Pension Plan and fund, this resolution confirming and continuing the Pension Plan and fund, and subsequent resolutions pertaining to said Pension Plan and fund, may be modified, terminated, or amended, in whole or in part; provided; however, that if this or any subsequent resolution shall be altered, 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.
- b. If this resolution shall be repealed, or if contributions to the Pension Plan are discontinued, the Board shall continue to administer the Pension Plan in accordance with the provisions of this resolution, for the sole benefit of the then

members, any beneficiaries then receiving retirement allowances, and any future persons entitled to receive benefits under one (1) of the options provided for in this resolution who are designated by any of said members. In the event of repeal, or if contributions to the Pension Plan are discontinued, there shall be full vesting (100%) of benefits accrued to the date of repeal. The Board shall determine the date of distribution and the asset value required to fund all nonforfeitable benefits. The Board shall inform the District if additional assets are required, in which event the District shall continue to financially support the Pension Plan until all nonforfeitable benefits have been fully funded.

The allocation of the fund provided 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 (1) 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 this Pension Plan, the Pension Plan shall be terminated or the full current costs of the Pension Plan shall not have been met, anything in the Pension Plan to the contrary notwithstanding, District contributions which may be used for the benefit of any one (1) of the twenty-five (25) highest paid members on the effective date, whose anticipated annual retirement allowance provided by the District's contributions at the member's normal retirement date would exceed One



Thousand Five Hundred Dollars (\$1,500.00), shall not exceed the greater of either Twenty Thousand Dollars (\$20,000.00) or an amount computed by multiplying the smaller of Ten Thousand Dollars (\$10,000.00) or twenty percent (20%) of such member's average annual earnings during his/her 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 Pension Plan under the Internal Revenue Code, this paragraph shall be ineffective without the necessity of further amendment of the plan.

#### **Section 19. Exemption from Execution and Non-Assignability.**

Except as otherwise provided by law, the persons, annuities, or any other benefits accrued or accruing to any person under the provisions of this plan and the accumulated contributions and the cash securities in the fund created under this plan are hereby exempted from any state, county or municipal tax and shall not be subject to execution, attachment, garnishment or any legal process whatsoever, except the recipient of any monthly benefit may authorize the board of trustees to withhold from the monthly benefit those funds necessary to pay for benefits being received through the District, the certified bargaining agent, alimony, child support or medical payments to a former spouse or minor child, and to pay for accident, health, and long-term care insurance premiums for the recipient, the recipient's spouse and the recipient's dependents. The Plan shall not incur any liability for making or failing to make such withholdings.

## **Section 20. Pension Validity.**

The Board shall have the power to examine 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. Said Board is empowered to purge the pension rolls of any person heretofore granted a pension under prior or existing law or heretofore granted under this plan 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 plan be improperly or illegally classified.

## **Section 21. Forfeiture of Pension.**

- a. Any member who has been found guilty by a verdict of a jury, or by the court trying the case without a jury, of committing, aiding, or abetting any embezzlement or theft from his or her employer, bribery in connection with the employment, or other felony specified in Chapter 838, Florida Statutes, except Sections 838.15 and 838.16, committed prior to retirement, or who has entered a plea of guilty or of nolo contendere to such crime, or any member whose employment is terminated by reason of the member's admitted commitment, aiding, or abetting of an embezzlement or theft from his or her employer, bribery, or other felony specified in Chapter 838, except Sections 838.15 and 838.16, shall forfeit all rights and benefits under this Pension Plan, except for the return of his or her accumulated contributions as of the date of termination.
- b. Any member who prior to retirement, is adjudged by a court of competent jurisdiction to have violated any state law against strikes by public employees, or

who has been found guilty by such court of violating any state law prohibiting strikes by public employees, shall forfeit all rights and benefits under this Pension Plan, except for the return of his or her accumulated contributions as of the date of the conviction.

**Section 22. Reserved.**

**Section 23. Retiree Health Insurance Subsidy.**

Each eligible retiree or beneficiary who is a spouse or financial dependent shall receive a monthly retiree health insurance subsidy payment equal to the number of years of credited service completed at the time of the member's retirement multiplied by five dollars (\$5.00); however, no retiree or beneficiary may receive a subsidy payment of more than one hundred fifty dollars (\$150.00) or less than fifty dollars (\$50.00).

**Section 24. Pick-Up of Employee Contributions to the Pension Fund.**

The District authorizes the pick-up of employee contributions to the North Naples Fire Control and Rescue District Firefighter's Pension Plan for firefighters who are hired by the District on or after January 1, 1996. District staff shall take all steps necessary to implement such "pick-up" in accordance with the Code.

**Section 25. Adjustment To Benefit Multiplier.**

- a. The District may use all Chapter 175 premium tax revenues received during the plan year (or in the case of a supplemental distribution, revenues applicable to the plan year even if received after the end of the plan year), up to the "applicable frozen amount," to reduce the District's required contributions to the Pension Plan during the following fiscal year. For example, all premium tax revenues received by the District up to the \$1.746 million "applicable frozen

amount” during the plan year beginning October 1, 2006 may be used to reduce the District’s required contributions to the Pension Plan during the plan year beginning October 1, 2007 (i.e., the District may use the full amount of the \$750,913.99 regular distribution and the \$639,535.39 supplemental distribution [total: \$1,390,443.30] received during the plan year beginning October 1, 2006, to reduce the District’s required contributions to the Pension Plan during the plan year beginning October 1, 2007). Any premium tax revenues received by the District in excess of the \$1.746 million “applicable frozen amount” during any plan year beginning October 1, 2006 or later shall be held in reserve and used to provide additional “extra benefits” that are negotiated by the District and Local 2297 and implemented by the District.

- b. Effective October 1, 2008, the benefit multiplier shall be increased to 3.53% for all years of credited service through September 30, 2007, for all Plan members who are employed by the District on September 30, 2007. The cost of this benefit increase, as reflected in the October 9, 2007 actuarial study prepared by the plan actuary, shall be fully funded with Chapter 175 premium tax revenues, as follows:

- 1. The initial cost shall be funded by applying the entire amount of the “excess state monies reserve” (\$1,575,234.97) reflected in the October 1, 2006 actuarial valuation.
- 2. Every 3 years beginning with the October 1, 2009 actuarial valuation report, the plan actuary shall calculate the cost of the additional .53% (or greater) benefit multiplier provided in this section. In the event there is

any additional cost attributable to the additional .53% (or greater) benefit multiplier reflected in a future actuarial valuation report, that additional cost shall be funded first by applying up to the entire amount of the “excess state monies reserve” reflected in the same actuarial valuation report; and then only if such “excess state monies reserve” is not sufficient to fund the additional cost, by an increase in member contributions. In the event the cost attributable to the additional .53% (or greater) benefit multiplier in any future year is less than the cost initially determined for such benefit, the amount of the reduction shall be reflected as “additional .53% multiplier cost savings,” and shall be available to provide an increase in the benefit multiplier as set forth in paragraph (c), below.

3. Every 3 years beginning with the October 1, 2009 actuarial valuation report, the plan actuary shall perform a study of whether the “excess state monies reserve” remaining after the calculation in paragraph (b)(2) above, and any “additional .53% multiplier cost savings” are sufficient to fully fund an additional .53% benefit multiplier for all years of credited service to the date of that actuarial valuation report, or whether the “excess state monies reserve” and “additional .53% multiplier cost savings” are sufficient to provide a greater benefit multiplier for such years of credited service. If the study shows that the “excess state monies reserve” and “additional .53% multiplier cost savings” are sufficient to fully fund an additional .53% or greater benefit multiplier for all years of credited service to the date of the actuarial valuation report, the parties agree that the District will amend

the Firefighter Pension Plan effective the next following October 1 to implement such increased benefit multiplier.

4. In no event shall the District's required contributions be increased to fund the additional .53% (or greater) benefit multiplier provided in this section.
- c. Effective October 1, 2010, the benefit multiplier shall be increased from 3.0% to 3.53% for all years of credited service through September 30, 2010, for all Plan members who are employed by the District on October 1, 2011 and have credited service prior to October 1, 2010. The cost of this benefit increase, as reflected in the August 29, 2011 special actuarial analysis prepared by the plan actuary, shall be fully funded by the "excess state monies reserve". In no event shall the District's required contribution be increased to fund the additional .53% multiplier provided in this section.

**Section 3.** All resolutions or parts of resolutions in conflict with this resolution are hereby repealed to the extent of such conflict.

**Section 4.** The provisions of this Resolution are declared to be severable and if any provision of this Resolution or the application thereof to any person or circumstance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining provisions of this Resolution, but they shall remain in effect, it being the legislative intent that this Resolution shall stand notwithstanding the invalidity of any part.

**Section 5.** The appropriate District officials are authorized to do all things necessary to carry out the aims and intent of this Resolution.

**Section 6.** This Resolution shall take effect immediately upon adoption.


The foregoing resolution was offered by Commissioner McGOWAN, who moved its adoption.

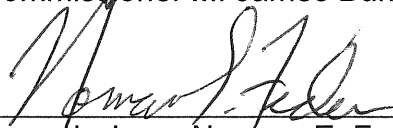
The motion was seconded by Commissioner Hanson, and the Vote was as follows:

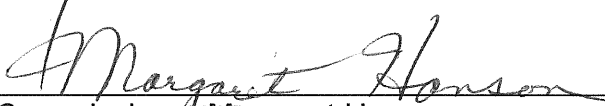
Commissioner M. James Burke:	<u>yes</u>
Commissioner Norman E. Feder:	<u>yes</u>
Commissioner Margaret Hanson:	<u>yes</u>
Commissioner J. Christopher Lombardo:	<u>yes</u>
Commissioner John McGowan:	<u>yes</u>

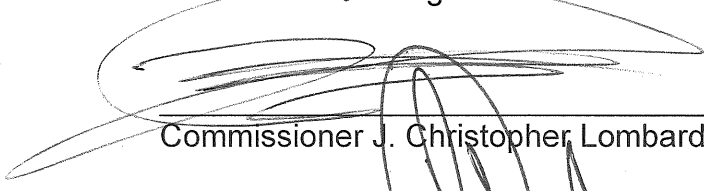
Duly passed on this 11th day of December, 2014 by the Board of Fire Commissioners of the North Naples Fire Control and Rescue District.

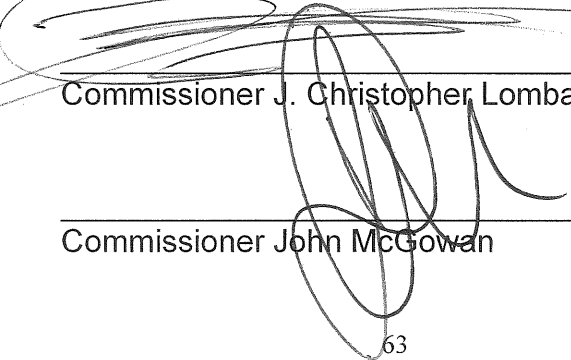
**NORTH NAPLES FIRE CONTROL & RESCUE DISTRICT**

  
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Commissioner M. James Burke

  
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Commissioner Norman E. Feder

  
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Commissioner Margaret Hanson

  
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Commissioner J. Christopher Lombardo

  
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Commissioner John McGowan

12-11-14