

# **TOWN OF DAVIE**

## **TOWN COUNCIL AGENDA REPORT**

**TO:** Mayor and Councilmembers

**FROM/PHONE:** William F. Underwood, II, Director of Budget & Finance/1050

**PREPARED BY:** William F. Underwood, II, Director of Budget & Finance

**SUBJECT:** Ordinance

**AFFECTED DISTRICT:** N/A

**TITLE OF AGENDA ITEM:** AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, AMENDING THE RETIREMENT PLAN AND TRUST FOR THE MANAGEMENT AND GENERAL EMPLOYEES OF THE TOWN OF DAVIE TO ADMIT AS MEMBERS OF THE PLAN GENERAL EMPLOYEES REPRESENTED BY THE FRATERNAL ORDER OF POLICE; PROVIDING FOR PUBLICATION; PROVIDING FOR REPEAL OF CONFLICTING SECTION IN PRIOR ORDINANCES; PROVIDING AN EFFECTIVE DATE.

**REPORT IN BRIEF:** The attached ordinance provides a technical amendment to the Defined Benefit Plan necessary to implement the Collective Bargaining Agreement. A new identifiable group of employees is joining the Plan and the appropriate definitions and effective dates must be formally adopted.

**PREVIOUS ACTIONS:** Town Council previously approved Ordinance 2004-2 establishing a retirement plan and Ordinance 2006-21 amending the Plan.

**CONCURRENCES:** The attached ordinance was drafted by the Pension Board Attorney and has been forwarded to the Town's attorney for review. The Pension Board has approved this modification.

**FISCAL IMPACT:**

Has request been budgeted? Yes

If yes, expected cost: \$ 17.39% of covered salaries, included in FY 2007 Budget

Account Name: Various department retirement accounts

If no, amount needed: \$

What account will funds be appropriated from:

Additional Comments:

**RECOMMENDATION(S):** Motion to approve the ordinance

**Attachment(s):** Ordinance, Adoption Agreement and Plan Document

ORDINANCE \_\_\_\_\_

AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, AMENDING THE RETIREMENT PLAN AND TRUST FOR THE MANAGEMENT AND GENERAL EMPLOYEES OF THE TOWN OF DAVIE TO ADMIT AS MEMBERS OF THE PLAN GENERAL EMPLOYEES REPRESENTED BY THE FRATERNAL ORDER OF POLICE; PROVIDING FOR PUBLICATION; PROVIDING FOR REPEAL OF CONFLICTING SECTION IN PRIOR ORDINANCES; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Davie and the Fraternal Order of Police, Florida State Lodge, entered into a Collective Bargaining Agreement for General Employees providing that the Town will make available for General Employees an equivalent defined benefit plan to the benefits provided to non-represented employees; and

WHEREAS, Florida Statutes, Section 447.309(3), requires amendment to the pension plan for purposes of extended benefits; and

WHEREAS, the Town Council of the Town of Davie finds the long-term tenure of its employees to be in the best interests of the Town and its employees, and

WHEREAS, the Town Council finds that the extension of plan benefits to represented general employees will attract qualified individuals to the Town and can encourage long-term and continued employment with the Town of Davie; and

WHEREAS, the Town Council under the provisions of the laws of the State of Florida, is authorized to operate such a Retirement Plan and Trust for its employees.

NOW, THEREFORE, BE IT ENACTED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE

Section 1. The Retirement Plan and Trust for the Management and General Employees of the Town of Davie is hereby amended, effective October 1, 2006, to cover general employees represented by the collective bargaining agreement between the Town and the Fraternal Order of Police, Florida State Lodge. The instrument which represents the terms of said Plan and Trust will be and remain an exhibit to this Ordinance, remanded to the custody of the Town representative who will maintain such for public inspection.

Section 2. The Town Council of the Town of Davie shall have the power to amend said Plan and Trust at such time or times as considered in the best interest of the Town and its employees.

Section 3. This Ordinance shall remain in full force and effect until supplemented, amended, repealed or otherwise altered.

Section 4. This Ordinance shall be published as required by the Code of the Town of Davie

Section 5. This Ordinance hereby repeals all Ordinances in conflict herewith.

Section 6. This Ordinance shall take effect October 1, 2006.

PASSED ON FIRST READING THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2006

PASSED ON SECOND AND FINAL READING THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2006

\_\_\_\_\_  
MAYOR/COUNCIL MEMBER

ATTEST:

\_\_\_\_\_  
TOWN CLERK

PASSED AND ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2006

**FLORIDA MUNICIPAL PENSION TRUST FUND  
DEFINED BENEFIT PLAN AND TRUST**

**ADOPTION AGREEMENT**

The undersigned employer adopts the Florida Municipal Pension Trust Fund Defined Benefit Plan and Trust for those Employees who shall qualify as Participants hereunder, to be known as the Retirement Plan and Trust for the Employees of the Town of Davie.

It shall be effective as of the date specified below. The Employer hereby selects the following Plan specifications:

**EMPLOYER INFORMATION**

<b>Employer:</b>	<b><u>Town of Davie</u></b>
<b>Contact Name and Title:</b>	<b><u>Mr. William Underwood, Finance Dir</u></b>
<b>Address:</b>	<b><u>6591 Orange Drive</u></b>
	<b><u>Davie, FL 33314</u></b>
<b>Telephone:</b>	<b><u>954-797-1050</u></b>

**NAME AND ADDRESS OF TRUSTEE:**

Florida Municipal Pension Trust Fund  
301 South Bronough , P.O. Box 1757  
Tallahassee, FL 32302-1757  
TEL: (850) 222-9684 Fax: (850)222-3806

**LOCATION OF EMPLOYER'S PRINCIPAL OFFICE:**

The Employer is located in the State of Florida and this Trust shall be enforced and construed under the laws of the State of Florida.

**EMPLOYER FISCAL YEAR:**

Twelve months commencing on October 1st and ending on September 30th.

**A. PLAN INFORMATION**

This Adoption Agreement shall establish a new Plan and Trust with the following provisions:

- A1) **Effective Date:**  
Effective Date: October 1, 2003
- A2) **Plan Year (12 consecutive month period):**  
Beginning October 1 and Ending September 30
- A3) **Plan Anniversary Date (Annual Valuation Date):**  
October 1
- A4) **Name of Plan Administrator:**  
Florida League of Cities, Inc.  
Post Office Box 1757  
Tallahassee, Florida 32302-1757  
Tel: (850) 222-9684 Fax: (850) 222-3806
- A5) **Florida Municipal Pension Trust Fund I.D. Number:**  
59-2961075

A6) **Plan's Agent for Legal Process:**

Robert D. Klausner, Esq.  
Klausner & Kaufman, P.A.  
10059 NW 1<sup>st</sup> Court  
Plantation, Florida 33324  
Tel: (954) 916-1202 Fax: (954) 916-1232

~~Monroe Kiar, Esq.~~  
~~Town of Davie Attorney~~

**B. PLAN**

The Plan represents ~~two~~ three classifications of employees:

1. Management Employees
2. Non-represented General Employees
3. Represented General Employees, effective the first full pay period in October of 2006.

**C. ELIGIBILITY**

Employees shall become participants in the plan effective:

- a. X immediately when hired as a full time employee.
- b. \_\_\_\_\_ one-year after the date of hire
- c. \_\_\_\_\_ other: \_\_\_\_\_

**D. SALARY**

Salary means the total cash remuneration paid to an employee for services rendered.

**E. CREDITED SERVICE**

**E1) MANAGEMENT AND NON-REPRESENTED GENERAL EMPLOYEES**

If Employee is hired after October 1, 2003, the total number of years and fractional parts of years of service measured from date of employment. If employee is a current employee as of October 1, 2003, credited service shall mean the total number and fractional parts of years of service measured from October 1, 2003 and the total number and fractional parts of years of service purchased at actual actuarial cost.

Credited Service may be purchased for all years of service with the Town of Davie at actual actuarial cost. Up to five (5) years of credited service may be purchased for previous full-time employment with the federal government, including military service, or any state, county, or city government other than the Town of Davie, provided that no retirement benefits were provided for such previous full-time employment with the federal government, including military service, or any state, county, or city.

**E2) Option of Purchasing Prior Credited Service**

Credited service shall also include credited service purchased by a member in accordance with this section:

- a) Participants who were employed in a position covered by the Plan prior to October 1, 2003, may purchase up to five (5) additional years of credited service under the Plan for all or a portion of their previous full-time employment with the federal government, including military service, or any state, county, or city government other than the Town of Davie. Any participant who elects to purchase previous full-time employment with the federal government, including military service, or any state, county, or city government other than the Town of Davie, shall pay the full actuarial cost of such credited service on or before three (3) months from the date of the past service cost calculation, in accordance with subsection (c) below.
- b) Participants with a hire date after October 1, 2003, may purchase up to five (5) additional years of credited service at any time before completing twelve (12) months of service with the Town of Davie; provided the member has paid into the plan prior to completing twelve (12) months of service, the full actuarial cost of such credited service as determined by the plan actuary. No additional service credit will be allowed if the participant is receiving or will receive any other retirement benefit based on the prior government service.

c) Payment for the purchase of credited service authorized in subsection (a) and (b), above, shall be made in one of the following manners:

1. Cash lump sum payment.
2. Direct transfer or rollover of an eligible rollover distribution from a qualified Plan.

Full payment for the purchase of past service credit must be made before separation from Town employment. If full payment is not made by time of separation, credited service shall be based on amount of payment received.

### **E3) REPRESENTED GENERAL EMPLOYEES**

If Represented Employee is hired after October 1, 2006, the total number of years and fractional parts of years of service measured from date of employment. If employee is a current employee as of October 1, 2006, credited service shall mean the total number and fractional parts of years of service measured from October 1, 2006 and the total number and fractional parts of years of service purchased at actual actuarial cost.

Credited Service may be purchased for all years of service with the Town of Davie at actual actuarial cost. Up to five (5) years of credited service may be purchased for previous full-time employment with the federal government, including military service, or any state, county, or city government other than the Town of Davie, provided that no retirement benefits were provided for such previous full-time employment with the federal government, including military service, or any state, county, or city. **Any participant who elects to purchase service as provided in this paragraph shall pay the full actuarial cost of such credited service on or before three (3) months from the date of the past service cost calculation prepared by the Plan actuary, in accordance with subsection (c) below.**

Credited service shall also include credited service purchased by a member in accordance with this section:

a) Participants who were employed in a position covered by the Plan prior to October 1, 2006, may purchase up to five (5) additional years of credited service under the Plan for all or a portion of their previous full-time employment with the federal government, including military service, or any state, county, or city government other than the Town of Davie. Any participant who elects to purchase previous full-time employment with the federal government, including military service, or any state, county, or city government other than the Town of Davie, shall pay the full actuarial cost of such credited service on or before three (3) months from the date of the past service cost calculation, in accordance with subsection (c) below. Full payment for the purchase of past service credit must be made before separation from Town employment. If full payment is not made by time of separation, credited service shall be based on amount of payment received. Notwithstanding the foregoing, any participant who was previously a member of the Plan and reenters the Plan shall not

be obligated to purchase credited service previously credited within the Plan; previously credited service within the Plan shall be reinstated for such members.

b) Participants with a hire date after October 1, 2006, may purchase up to five (5) additional years of credited service at any time before completing twelve (12) months of service with the Town of Davie; provided the member has paid into the plan prior to completing twelve (12) months of service, the full actuarial cost of such credited service as determined by the plan actuary. No additional service credit will be allowed if the participant is receiving or will receive any other retirement benefit based on the prior government service.

c) Payment for the purchase of credited service authorized in subsection (a) and (b), above, shall be made in one of the following manners:

1. Cash lump sum payment.
2. Direct transfer or rollover of an eligible rollover distribution from a qualified Plan.

**E43) VESTED SERVICE (for benefit eligibility)**

For General Employees, the total number of years and fractional parts of years of service measured from the date of employment for general employees.

For Management Employees, the total number of years and fractional parts of years of service measured from the date of employment, for Management Employees hired after October 1, 2003. All Management Employees employed on October 1, 2003 are deemed one hundred percent vested.

**F. FINAL MONTHLY COMPENSATION AVERAGE FINAL COMPENSATION**

For General Employees, one-twelfth of the highest average earnings during the five best years of creditable service prior to separation as an active member or the career average, whichever is greater.

For Management Employees, one-twelfth of the highest average earnings during the three best years of creditable service prior to separation as an active member or the career average, whichever is greater.

**G. BENEFIT AMOUNTS AND ELIGIBILITY (Section 6)**

**G1) Normal Retirement Date (Section 6.01):**

The normal retirement date for a plan member shall be the first day of the month coincident with, or next following attainment of age:

For General Employees, the Normal Retirement Date is attainment of age sixty (60) and six (6) years of Vested Service or age fifty-six (56) and thirty (30) years of Vested Service.

For Management Employees, the Normal Retirement Date is attainment of age fifty-two (52) and three (3) years of Vested Service or age forty-eight (48) and twenty (20) years of Vested Service.

**G2) Normal Retirement Benefit (Section 6.02):**

The monthly retirement benefit shall be a single life annuity equal to:

For General Employees, the Normal Retirement Benefit shall be a monthly benefit equal to the number of years of Credited Service multiplied by ~~Final Monthly Compensation~~ Average Final Compensation and multiplied by two percent (2%).

For Management Employees, the Normal Retirement Benefit shall be a monthly benefit equal to the number of years of Credited Service multiplied by ~~Final Monthly Compensation~~ Average Final Compensation and multiplied by three percent (3%).

**H. DISABILITY BENEFITS (Section 8)**

**H1) Disability Benefits (Section 8.01):**

General Employees, who have completed six (6) years of Vested Service, that are deemed by the Board to be totally and permanently disabled will receive their Accrued Benefit. If a General Employee has less than six (6) years of Vested Service, they will receive a return of their employee contribution, if applicable, with six percent (6%) interest.

Management Employees, who have completed three (3) years of Vested Service, that are deemed by the Board to be totally and permanently disabled will receive their Accrued Benefit with a minimum of three (3) years Credited Service. If a Management Employee has less than ~~six~~ three (3) years of Vested Service, they will receive a return of their employee contribution, if applicable, with six percent (6%) interest.

**I. DEATH BENEFITS**

**(1). DEATH BENEFITS – Prior to Vesting**

If a General Employee dies prior to Normal Retirement Date, and has less than six (6) years of Vested Service, the beneficiary shall receive a refund of one hundred percent (100%) of the member's accumulated contributions, if applicable, with five percent (5%) interest.

If a Management Employee dies prior to Normal Retirement Date, and has less than three (3) years of Vested Service, the beneficiary shall receive a refund of one hundred percent (100%) of the member's accumulated contributions, if applicable, with five percent (5%) interest.

(2) **DEATH BENEFITS – After Vesting**

If a General Employee dies prior to Normal Retirement Date, and has completed six (6) or more years of Vested Service, the beneficiary shall receive the benefit otherwise payable to the member at the member's Normal Retirement Date.

If a Management Employee dies prior to Normal Retirement Date, and has completed three (3) or more years of Vested Service, the beneficiary shall receive the benefit otherwise payable to the member at the member's Normal Retirement Date.

**J. TERMINATION OF EMPLOYMENT AND VESTING**

If a member's employment is terminated either voluntarily or involuntarily, the following benefits are payable:

If a General Employee has less than six (6) years of Vested Service upon termination, the member shall be entitled to a refund of their accumulated employee contribution with six percent (6%) interest, or the member may leave it deposited with the Fund pending future employment with the Town of Davie.

If a General Employee has six (6) or more years of Vested Service upon termination, the member shall be entitled to their accrued monthly retirement benefit, starting at the member's otherwise normal or early retirement date, provided he does not elect to withdraw his contributions and provided he survives to his normal or early retirement date.

If a Management Employee has less than three (3) years of Vested Service upon termination, the member shall be entitled to a refund of their accumulated employee contribution with six percent (6%) interest, or the member may leave it deposited with the Fund pending future employment with the Town of Davie.

If a Management Employee has three (3) or more years of Vested Service upon termination, the member shall be entitled to their accrued monthly retirement benefit, starting at the member's otherwise normal retirement date, provided he does not elect to withdraw his contributions and provided he survives to his normal or early retirement date.

**K. EMPLOYEE CONTRIBUTIONS (Section 5.01):**

No Employee Contribution

## **L. COST OF LIVING ADJUSTMENT**

A three percent (3%) cost of living increase is awarded to benefit payments each year a benefit is in force after the benefit has been paid for five (5) years. This increase will begin with the sixty-first payment and adjusted annually.

## **M. DEFERRED RETIREMENT OPTION PROGRAM-“DROP”**

In general, and subject to the provisions of this section, the Deferred Retirement Option Program, hereinafter referred to as the DROP, is a program under which an eligible member of the plan may elect to participate, deferring receipt of retirement benefits while continuing employment with the Town of Davie. The deferred monthly benefits shall accrue in the Trust Fund on behalf of the participant, plus interest compounded annually, for the specified period of the DROP participation, as provided in paragraph (c). Upon termination of employment, the participant shall receive the total DROP benefits and begin to receive the previously determined Normal Retirement Benefits.

### **(a) Eligibility of member to participate in the DROP.**

All active members are eligible to elect participation in the DROP provided that:

Election to participate is made within three (3) months immediately following the date on which the member first reaches Normal Retirement Date, or, for a member who reaches Normal Retirement Date based on service. A member who fails to make an election within such 3 month limitation period shall forfeit all rights to participate in the DROP. The member shall advise the Board, in writing of the date on which the DROP shall begin. Such beginning date may be subsequent to the 3 month election period, but must be within the 60-month limitation period as provided in subparagraph (b)1.

### **(b) Participation in the DROP**

1. An eligible member may elect to participate in the DROP for a period not to exceed a maximum of 60 calendar months immediately following the date on which the member first reaches his or her normal retirement date or the date to which he or she is eligible to defer his or her election to participate as provided in subparagraph (a). However, a member who has reached normal retirement date prior to the effective date of the DROP shall be eligible to participate in the DROP for a period of time not to exceed 60 calendar months immediately following the effective date of the DROP.
2. Upon deciding to participate in the DROP, the member shall submit, on forms:
  - a. A written election to participate in the DROP;
  - b. Selection of the DROP participation and termination dates, which satisfy the limitations stated in paragraph (a) and subparagraph 1. Such termination date shall be in a binding letter of resignation with the employer, establishing a deferred termination date. The member may change the termination date within the limitations of subparagraph 1., but only with the written approval of his or her employer.
  - c. A properly completed DROP application for service retirement as provided in this section; and

- d. Any other information required.
3. The DROP participant shall be a retiree under the Retirement Plan & Trust for the employees of the Town of Davie. However, participation in the DROP does not alter the participant's employment status and such employee shall not be deemed retired from employment until his or her deferred resignation is effective and termination occurs.

**(c) Benefits payable under the DROP**

1. Effective with the date of DROP participation, the member's initial normal monthly benefit, including creditable service, optional form of payment, and average final compensation, and the effective date of retirement shall be fixed. The beneficiary shall be the beneficiary eligible to receive any DROP benefits payable if the DROP participant dies prior to the completion of the period of DROP participation. In the event a joint annuitant predeceases the member, the member may name a beneficiary to receive accumulated DROP benefits payable. Retirement benefits shall accrue monthly in the Trust Fund. Interest shall accrue at an effective annual rate of 6.5 percent compounded monthly, on the prior month's accumulated ending balance, up to the month of termination or death.
2. The effective date of DROP participation and the effective date of retirement of a DROP participant shall be the first day of the month selected by the member to begin participation in the DROP, provided such date is properly established, with the written confirmation of the employer.
3. Normal retirement benefits and interest thereon shall continue to accrue in the DROP until the established termination date of the DROP, or until the participant terminates employment or dies prior to such date. Although individual DROP accounts shall not be established, a separate accounting of each participant's accrued benefits under the DROP shall be calculated and provided to participants.
4. At the conclusion of the participant's DROP, the TRUST shall distribute the participant's total accumulated DROP benefits, subject to the following provisions:
  - a. The terminated DROP participant or, if deceased, such participant's named beneficiary, shall elect on forms to receive payment of the DROP benefits in accordance with one of the options listed below. For a participant or beneficiary who fails to elect a method of payment within 60 days of termination of the DROP, the division will pay a lump sum as provided in sub-sub-subparagraph (I).
    - (I) Lump sum.- All accrued DROP benefits, plus interest, less withholding taxes remitted to the Internal Revenue Service, shall be paid to the DROP participant or surviving beneficiary.
    - (II) Direct rollover.- All accrued DROP benefits, plus interest, shall be paid from the DROP directly to the custodian of an eligible retirement plan as defined in s. 402(c)(8)(B) of the Internal Revenue Code. However, in the case of an eligible rollover distribution to the surviving spouse of a deceased participant, an eligible retirement plan is an individual retirement account or an individual retirement annuity as described in s. 402(c)(9) of the Internal Revenue Code.
    - (III) Partial lump sum.--A portion of the accrued DROP benefits shall be paid to the DROP participant or surviving spouse, less withholding taxes remitted to

the Internal Revenue Service, and the remaining DROP benefits shall be transferred directly to the custodian of an eligible retirement plan as defined in s. 402(c)(8)(B) of the Internal Revenue Code. However, in the case of an eligible rollover distribution to the surviving spouse of a deceased participant, an eligible retirement plan is an individual retirement account or an individual retirement annuity as described in s. 402(c)(9) of the Internal Revenue Code. The proportions shall be specified by the DROP participant or surviving beneficiary.

- b. The form of payment selected by the DROP participant or surviving beneficiary complies with the minimum distribution requirements of the Internal Revenue Code.
  - c. A DROP participant who fails to terminate employment shall be deemed not to have retired, and the DROP election shall be null and void. Membership in the plan shall be reestablished retroactively to the date of the commencement of the DROP.
5. The accrued benefits of any DROP participant, and any contributions accumulated under such program, shall not be subject to assignment, execution, attachment, or to any legal process whatsoever, except for qualified domestic relations orders by a court of competent jurisdiction, income deduction orders and federal income tax levies.
  6. DROP participants shall not be eligible for disability retirement benefits.

**(d) *Death benefits under the DROP***

1. Upon the death of a DROP participant, the named beneficiary shall be entitled to apply for and receive the accrued benefits in the DROP.
2. The normal retirement benefit accrued to the DROP during the month of a participant's death shall be the final monthly benefit credited for such DROP participant.
3. Eligibility to participate in the DROP terminates upon death of the participant. If the participant dies on or after the effective date of enrollment in the DROP, but prior to the first monthly benefit being credited to the DROP, Normal Retirement Benefits shall be paid in accordance with regular retirement benefit provisions.
4. A DROP participants' survivors shall not be eligible to receive active member death benefits.

**(e) *Forfeiture of retirement benefits***

Nothing in this section shall be construed to remove DROP participants from the scope of s. 8(d), Art. II of the State Constitution, s. [112.3173](#). DROP participants who commit a specified felony offense while employed will be subject to forfeiture of all retirement benefits, including DROP benefits, pursuant to those provisions of law.

This Adoption Agreement may be used only in conjunction with the Basic Plan Document.

This Adoption Agreement and the Basic Plan Document shall together be known as the Florida Municipal Pension Trust Fund Defined Benefit Plan and Trust.

We have consulted our attorney with reference to this Plan and Trust Agreement.

We understand that the Employer may amend any election in this Adoption Agreement by giving the Trustee written notification of such Amendment as adopted.

The Employer hereby agrees to the provisions of the Plan and Trust

IN WITNESS WHEREOF, the Employer and Trustee hereby cause this Agreement to be executed on the \_\_\_\_ day of \_\_\_\_, 20\_\_.

**EMPLOYER:**

\_\_\_\_\_  
*Town of Davie*

**By:** \_\_\_\_\_

**Date:** \_\_\_\_\_

\_\_\_\_\_  
*(Name of Trustee)*

**Date:** \_\_\_\_\_

\_\_\_\_\_  
*(Name of Trustee)*

**Date:** \_\_\_\_\_



**RETIREMENT PLAN AND TRUST  
FOR THE MANAGEMENT &  
GENERAL EMPLOYEES OF THE  
TOWN OF DAVIE**

Sponsored and Administered by:  
**FLORIDA LEAGUE OF CITIES, INC.**  
301 S. Bronough Street, P.O. Box 1757  
Tallahassee, FL 32302-1757  
(850) 222-9684  
Fax (850) 222-3806

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# ARTICLE 1

## DEFINITIONS

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

**1.01 “Accumulated Contributions”:**

shall mean a Participant's own contributions or contributions to purchase past Service Credit in the plan.

**1.02 “Accrued Benefit”:**

shall mean a fraction of the benefit to which a Participant would be entitled at their Normal Retirement Date. The numerator of the fraction is the years of participation completed to date and the denominator is the years of participation in the Plan that would have been earned if the Participant continued employment until their Normal Retirement Date.

**1.03 “Actuary”:**

shall mean an actuary that is a member of the Society of Actuaries or the American Academy of Actuaries and who is enrolled under subtitle C of Title III of the Employee Retirement Income Security Act of 1974.

**1.04 “Actuarial Equivalent”:**

shall mean a benefit or amount of equivalent current value to the benefit that would otherwise have been provided to the Participant, determined on the basis of appropriate actuarial methods and actuarial assumptions determined by the Actuary and approved by the Administrator. Actuarial Equivalent is further defined in the attachment marked Exhibit B.

**1.05 “Adoption Agreement”:**

shall mean the document outlining the specific benefits of the Plan, as executed by the Employer and attached to and made part of the Plan.

**1.06 “Average Final Compensation”:**

For General Employees, one-twelfth of the highest average earnings during the five best years of creditable service prior to separation as an active member or the career average, whichever is greater.

For Management Employees, one-twelfth of the highest average earnings during the three best years of creditable service prior to separation as an active member or the career average, whichever is greater.

**1.07 “Beneficiary”:**

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

**1.08 “Board”:**

shall mean the Board of Trustees, which shall administer and manage the Plan herein provided and serve as Trustees of the Fund.

**1.09 “Code”:**

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

**1.10 “Credited Service”:**

shall mean the total number of years and fractional parts of years as a Participant during which the Participant made required contributions to the Plan, omitting intervening years or fractional parts of years when such Participant is not employed by the Employer.

A Participant may voluntarily leave his Participant contributions in the Fund for a period of five (5) years after leaving the employ of the Employer pending the possibility of being rehired in a position eligible for participation in this Plan, without losing credit for the time that he was a Participant in the Plan. If a vested Participant does not become reemployed within five (5) years, then the Accumulated Contributions will be returned to the Participant without interest, unless otherwise specified in the Adoption Agreement, upon receipt of written request of the Participant. If a Participant who is not vested is not reemployed with the Employer within five (5) years, his Accumulated Contributions shall be returned without interest. Upon return of a Participant's Accumulated Contribution, all rights and benefits under the Plan are forfeited and terminated. Upon any reemployment in a position eligible for participation in this Plan, a Participant shall not receive credit for the years and fractional parts of years for which he has withdrawn his Accumulated Contributions from the Plan unless the Participant repays into the Fund the contributions he has withdrawn, with interest, as determined by the Board, within ninety (90) days after reemployment.

A Participant shall receive Credited Service for all purposes, including vesting, for the years or fractional parts of years that he is engaged in the military service of the Armed Forces of the United States, voluntarily or involuntarily, after employment with the Employer, to perform training or service, provided that:

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

**1.11 “Deferred Retirement Option Plan” or “DROP”:**

shall mean a local law plan retirement option in which a Participant may elect to participate. A Participant may retire for all purposes of the plan and defer receipt of retirement benefits into a DROP account while continuing employment with his employer. However, a Participant who enters the DROP and who is otherwise eligible to participate shall not thereby be precluded from participating or continuing to participate in a supplemental plan, if in existence on, or created after, the date of adoption of a DROP by the Employer pursuant to Section M, "DROP," of the Adoption Agreement.

**1.13 "Effective Date":**

shall mean the date of this Plan as specified in the Adoption Agreement - Section A1.

**1.14 "Employee":**

shall mean the classes of employees designated as eligible to participate in this Plan as specified in the Adoption Agreement - Section B., except as otherwise provided in the Adoption Agreement.

**1.15 "Employer":**

shall mean the municipality, governmental entity, public agency or political subdivision established within the State of Florida that adopts this Plan.

**1.16 "Fund":**

shall mean the Trust Fund established herein as part of the Plan.

**1.16.1 "Full Time Employee"**

shall mean an employee of the Town of Davie scheduled to be paid for a minimum of 2080 hours per year.

**1.17 "General Employee"**

shall mean all full time employees of the Town of Davie not classified as a management employee and not otherwise restricted. Effective the first full pay period in October 2006, General Employee shall include all General Employees represented by the Fraternal Order of Police, Florida State Lodge, hereinafter "Represented General Employees".

**1.18 "Limitation Year":**

shall mean the Plan Year.

**1.18.1 “Management Employee”:**

shall mean town administrator, assistant or deputy town administrator, directors, the police and fire chief, town clerk, deputy or assistant town clerk, redevelopment administrator and deputy or assistant directors.

Any deputy or assistant fire chief or police chief who was placed into the Retirement Plan and Trust for Management and General Employees (hereinafter “Continued Public Safety Officers”) prior to December 31, 2005 shall have their rights preserved in the Management and General Employee Plan. Following the adoption of this ordinance, service credit for Continued Public Safety Officers shall be computed and provided to the Town of Davie Firefighter Pension Plan and Police Pension Plan, as appropriate. The Town of Davie Firefighter Pension Plan and Police Plan, as appropriate, shall award service credit to Continued Public Safety Officers based on all service earned under the Management and General Employee Plan as a public safety officer. Although Continued Public Safety Officers shall be permitted to remain members of the Retirement Plan and Trust for Management and General Employees, benefits received from the Management and General Employees Plan shall be offset against benefits paid under the Firefighter or Police Plan. If a Continued Public Safety Officer vests in the Retirement Plan and Trust for Management and General Employees but fails to vest in the Firefighter or Police Plan, the Continued Public Safety Officer shall receive full benefits from the Retirement Plan and Trust for Management and General Employees. Under no circumstances shall a Continued Public Safety Officer receive duplication of Benefits.

**1.19 “Normal Retirement Date”:**

shall mean the date as specified in the Adoption Agreement - Section G1 Normal Retirement Date.

**1.20 “Participant or Member”**

shall mean the actively employed Employees who are eligible to participate in this Plan as specified in the Adoption Agreement - Section B, Plan and Section C, Eligibility. Benefit improvements which, in the past, have been provided for by amendments to the Plan adopted by the Employer by ordinance or resolution, and any benefit improvements which might be made in the future shall apply prospectively and shall not apply to Participants who terminate employment or who retire prior to the effective date of any ordinance or resolution adopting such benefit improvements, unless such ordinance or resolution specifically provides to the contrary.

**1.21 “Plan”:**

shall mean the pension Plan as herein set forth and as may be amended from time to time.

**1.22 “Plan Year”:**

shall mean the Plan's accounting year of twelve (12) consecutive months commencing on October 1 of each year and ending the following September 30, or the Plan Year as specified in the Adoption Agreement.

**1.25 "Salary/Compensation":**

As defined in Section D of the Adoption Agreement.

**1.26 "Spouse":**

shall mean the lawful wife or husband of a Participant at the time benefits become payable.

**1.27 "Total and Permanent Disability":**

shall mean a physical or mental condition of a Participant resulting from bodily injury, disease, or mental disorder which renders him incapable of employment, and which condition constitutes total disability as determined by the Board.

**1.28 "Trust Fund or Trust":**

shall mean the Trust Fund established under this Plan to hold Plan assets and to which contributions are to be paid and benefits held. Nothing herein shall preclude the establishment of more than one trust fund as may be required by law or adopted by the Employer.

**1.29 "Trustee":**

shall mean the person or persons named as and making up the Board of Trustees or Board, who shall administer and manage the Plan.

**1.30 "Valuation Date":**

shall mean the first day of the Plan Year.

## **ARTICLE 2 PARTICIPATION**

### **2.01 Conditions of Eligibility**

A Participant shall become eligible to participate in this Plan as specified in Section C of the Adoption Agreement.

### **2.02 Participation**

Each Participant shall complete a form prescribed by the Board providing the following information:

- (A) enrollment in the Plan
- (B) designation of a beneficiary or beneficiaries,

### **2.03 Change in Designation of Beneficiary**

A Participant may from time to time change his designated Beneficiary by written notice to the Board upon forms provided by the Board. Upon such change, the rights of all previously designated beneficiaries to receive any benefits under the Plan shall cease. A change of beneficiary shall not require consent of the beneficiary.

## ARTICLE 3 BOARD OF TRUSTEES

### 3.01 Board of Trustees

(A) A Board of Trustees shall provide administrative supervision to ensure proper operation of the Plan. The Trustees shall consist of: two members of the management employees as defined in the Plan document who shall be elected by the management employees; two members of the general employees as defined in the Plan document who shall be elected ~~by the management employees who shall be elected~~ by the general employees and one Town Administrator designee. The initial term of the Board shall be: a one (1) year term for one management employee and one (1) general employee; a two (2) year term for one (1) management employee and one (1) general employee and a three year term for the Town Administrator's designee. Thereafter, each member shall serve a three (3) year term. If that Board member leaves the employ of the Employer as a Participant or otherwise vacates his office as Board member, whereupon a successor shall be chosen in the same manner as the departing Board member. The Board of Trustees shall meet and shall establish a frequency of meetings. Each Board of Trustees shall be a legal entity with, in addition to other powers and responsibilities contained herein, the power to bring and defend lawsuits of every kind, nature, and description. Accurate and detailed accounts of all Board meetings must be kept. All accounts, books and records relating thereto shall be open to inspection and audit in accordance with general law. The Board shall issue such reports as are requested and make available to the same for inspection any and all records and accounts which are deemed appropriate in order to comply with governmental regulations issued thereunder.

(B) The Board members shall, by a majority vote, elect a Chairman and a Secretary. The Secretary, or other designee of the Board shall keep a complete minute book of the actions, proceeding, or hearings of the Board. The Board members shall not receive any compensation as such, but may receive expenses and per diem as provided by law.

(C) Each Board member shall be entitled to one vote on the Board. Decisions by the Board members are determined by majority voting at any meeting of the Board. A Board member shall have the right to abstain from voting as the result of a conflict of interest provided that Board member states in writing the nature of the conflict and complies with the provisions of Section 112.3143, Fl. Stat.

(D) The Board of Trustees shall engage such actuarial, accounting, legal, and other services as shall be required to transact the business of the Plan. The compensation of all persons engaged by the Board of Trustees and all other expenses of the Board necessary for the operation of the Plan shall be paid from the Fund at such rates and in such amounts as the Board of Trustees shall approve.

**(E)** The duties and responsibilities of the Board of Trustees shall include, but not necessarily be limited to, the following:

- (1)** To construe the provisions of the Plan and determine all questions arising thereunder.
- (2)** To determine all questions relating to eligibility and participation.
- (3)** To determine and certify the amount of all benefits hereunder.
- (4)** To establish uniform rules and procedures to be followed for administrative purposes, benefit applications, and all matters required to administer the Plan.
- (5)** To distribute to Participants, at regular intervals, information concerning the Plan.
- (6)** To receive and process all applications for participation and 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 Plan and Fund.
- (8)** To have performed actuarial studies and at least triennial valuations, and make recommendations regarding any and all changes in the provisions of the Plan.
- (9)** To perform such other duties as required to administer the Plan.
- (10)** Invest and reinvest the assets of the Fund.
- (11)** In any application to or proceeding or action in the courts, the Board and Employer shall be a necessary party, and no Participant 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 powers and functions of the Board may be performed or carried out by the Board through duly authorized agents, provided that the Board at all times maintains continuous supervision over the acts of any such agent;

**ARTICLE 4**  
**FINANCES AND FUND MANAGEMENT**

**4.01 Establishment and Operation of Fund**

(A) As part of the Plan, there is hereby established the Fund, into which shall be deposited all of the contributions and assets whatsoever attributable to the Plan, including any assets of any prior municipal trust fund(s).

(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 or its designee.

(C) All funds of the Plan may be deposited by the Board with the Employer, acting in a ministerial capacity only, who shall be liable in the same manner and to the same extent as he is liable for the safekeeping of funds for the Employer. However, any funds so deposited with the Employer shall be kept in a separate fund by the Employer or clearly identified as such funds of the Plan. In lieu thereof, the Board shall deposit the funds in a qualified public depository as defined in Section 280.02, Fl. Stat., which depository with regard to such funds shall conform to and be bound by all of the provisions of Chapter 280, Fl. Stat. In order to fulfill its investment responsibilities as set forth herein, the Board may retain the services of a custodian bank, an investment adviser 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 have discretion, subject to any guidelines as prescribed by the Board, in the investment of all Fund assets.

(D) All funds of the Plan may be commingled without limitation in governmental investment trusts, no-load investment funds or no-load mutual funds, and all such trusts or funds must comply with the Investment Policy adopted by the Board of Trustees. Accurate records are to be 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 Participants on both an individual and aggregate account basis, and
- (2) receipts and disbursements, and
- (3) benefit payments, and
- (4) current amounts clearly reflecting all monies, funds and assets whatsoever attributable to contributions and deposits from the Employer, and
- (5) all interest, dividends and gains (or losses), and
- (6) such other entries as may be properly required so as to reflect a clear and complete financial report of the Fund.

**(E)** An independent audit shall be performed annually by a certified public accountant for the most recent fiscal year of the Employer showing a listing of assets and a statement of all income and disbursements during the year. Such income and disbursements must be reconciled with the assets at the beginning and end of the year. Such report shall reflect a complete evaluation of assets on a cost and market basis, as well as other items normally included in a certified audit.

**(F)** The Board of Trustees shall have the following investment powers and authority:

**(1)** The Board of Trustees shall be vested with full legal title to said Fund, subject, however, and in any event to the authority and power of the governing body of the Employer to amend or terminate this Plan, provided that no amendment or termination shall ever result in the use of any assets of the Fund except for the payment of regular expenses and benefits under this Plan, and except as otherwise provided in this Plan. All contributions deposited 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. The Fund shall be invested in accordance with an established investment policy adopted by the Board.

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

**(4)** The Board is empowered, but is not required, to vote upon any stocks, bonds, or securities of any corporation, association, or trust and to give general or specific proxies or powers of attorney with or without power of substitution to participate in mergers, reorganizations, recapitalization, consolidations and similar transactions with respect to such securities; to deposit such stock or other securities in any voting trust or any protective or like committee with the Trustee 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.

**(5)** Any overpayments or underpayments from the Fund to a Participant or beneficiary caused by errors of computation shall be adjusted with interest at a rate per annum as utilized in the prior years' actuarial valuation. Overpayments shall be charged against payments next succeeding the correction. Underpayments shall be made up from the Trust Fund.

(6) In any application to or proceeding or action in the courts, the Board and Employer shall be a necessary party, and no Participant 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.

(7) Any powers and functions of the Board may be performed or carried out by the Board through duly authorized agents, provided that the Board at all times maintains continuous supervision over the acts of any such agent; provided further, that legal title to the Fund always remain with the Board.

## **ARTICLE 5 CONTRIBUTIONS**

### **5.01 Participant Contributions**

(A) **Amount** Participants in the Plan shall be required to make contributions to the Fund in the amount specified in the Adoption Agreement - Section K, Employee Contributions.

(B) **Method** Participant contributions shall be made by payroll deduction. Participant contributions withheld by the Employer on behalf of the Participant shall be deposited in the Fund immediately after each pay period.

(C) **Pre-Tax Employee Contributions** If pre-tax Employee Contributions are applicable, this provision will be noted within the Adoption Agreement - Section K as pre-tax contributions pursuant to Section 414(h) of the Code, otherwise the Plan will assume after tax contributions. Such designation is contingent upon the contribution being excluded from the Employees' gross income for federal income tax purposes. For all other purposes of the Plan, such contributions shall be considered Employee contributions.

### **5.02 Employer Contributions**

So long as this Plan is in effect, the Employer shall deposit at least quarterly contributions for each Plan Year to the Trust Fund in an amount equal to or greater than the amount determined by the Actuary, taking into account Participant contributions, state contributions for such year, and the total cost for the Plan Year, as represented in the most recent actuarial valuation of the Plan. The total cost for each Plan Year shall be defined as the total normal cost plus the additional amount sufficient to amortize the un-funded past service liability as provided in Part VII of Chapter 112, Florida Statutes.

### **5.03 Other**

Private donations, gifts and contributions may be deposited to the Fund.

## **ARTICLE 6**

### **BENEFIT AMOUNTS AND ELIGIBILITY**

#### **6.01 Normal Retirement Date**

A Participant's Normal Retirement Date shall be as specified in the Adoption Agreement - Section G1, Normal Retirement Date. A Participant may retire on his Normal Retirement Date or on the first day of any month thereafter. Normal Retirement under the Plan is retirement from employment with the Employer on or after the Normal Retirement Date and completion of the required years of vested service.

#### **6.02 Normal Retirement Benefit**

A Participant retiring hereunder on or after his Normal Retirement Date shall receive a monthly benefit as specified in the Adoption Agreement - Section G2, Normal Retirement Benefit, which shall commence on the first day of the month coincident with or next following his termination of employment.

In the event that a Participant does not begin to receive his Benefit at his Normal Retirement Date, such Participant shall be entitled to a deferred benefit equal to the benefit he was entitled to receive at his Normal Retirement Date, adjusted to take into account his Average Final Compensation and years of Credited Service as of his actual retirement date.

#### **6.03 Normal Form of Benefit**

The normal form of benefit shall be a single monthly retirement benefit for life, ceasing upon death.

#### **6.04 Cost of Living Adjustments to Benefit Payments**

A cost-of-living increase, if applicable, shall be as specified in the Adoption Agreement, Section L - COLA Adjustments.

#### **6.05 DEFERRED RETIREMENT OPTION PROGRAM or "DROP"**

A Deferred Retirement Option Program or "DROP", if applicable, shall be as specified in the Adoption Agreement, Section M – DEFERRED RETIREMENT OPTION PROGRAM, "DROP".

**ARTICLE 7**  
**PRE-RETIREMENT DEATH**

**7.01 Death Prior to Vesting** Prior to retirement, if the Participant dies, and he is not vested, his beneficiary shall receive benefits as specified in the Adoption Agreement - Section 11, Death Prior to Vesting.

**7.02 Death After Vesting** Prior to retirement, if a vested Participant dies, having completed the required years of Vested Service, his beneficiary shall receive benefits as specified in the Adoption Agreement - Section 12, Death After Vesting.

**7.03 Beneficiaries Receipt of Payment** A Beneficiary may not elect an optional form of benefit, however, the Board may elect to make a lump sum payment pursuant to Article 10(F) to a beneficiary of the death benefits payable hereunder.

## **ARTICLE 8 DISABILITY**

### **8.01 Disability Benefits**

Any employee, as defined in the Adoption Agreement - Section B, Plan who shall have become Totally and Permanently Disabled to the extent that he is unable, by reason of a medically determinable physical or mental impairment, to render useful and efficient service, as defined in Article 1, shall, upon establishing the same to the satisfaction of the Board of Trustees, be entitled to a disability benefit as provided in the Adoption Agreement - Section H1.

A disabled Participant that does not meet the vested years of service requirement in the Adoption Agreement - Section H1, will be entitled to a disability benefit as provided in the Adoption Agreement - Section H1.

### **8.02 Conditions Disqualifying Disability Benefits**

Each Participant who is claiming disability benefits shall establish, to the satisfaction of the Board that such disability was not occasioned primarily by:

- (A) Excessive or habitual use of any drugs, intoxicants or narcotics.
- (B) Injury or disease sustained while willfully and illegally participating in fights, riots or civil insurrections, or while committing a crime.
- (C) Injury or disease sustained while serving in any branch of the Armed Forces.
- (D) Injury or disease sustained after his employment as a Participant with the Employer had terminated.

### **8.03 Physical Examination Requirement**

A Participant shall not become eligible for disability benefits until and unless he undergoes physical examination by a qualified physician or physicians and/or surgeons or surgeons, who shall be selected by the Board for that purpose.

Any Participant receiving disability benefits under 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 the former Participant is no longer Permanently and Totally Disabled to the extent that he is able to render useful and efficient service, the Board shall recommend to the Employer that the former Participant be returned to performance of duty and shall again become eligible to Participate in the Plan. In the event the former Participant so ordered to return to employment shall refuse to comply with the order within thirty (30) days from the issuance thereof, the Participant shall forfeit the right to his benefits hereunder.

The cost of the physical examination and/or re-examination of the Participant claiming and or receiving disability benefits shall be paid by the Plan. All other reasonable costs as determined

by the Board incident to the physical examination, such as, but not limited to, transportation, meals and hotel accommodations, shall be paid by the Plan.

If a Participant recovers from disability and reenters the service of the Employer as a Participant, his service will be deemed to have been continuous, but the period beginning with the first month for which he received a disability retirement income payment and ending with the date he reentered the service of the Employer will not be considered as Credited Service for the purposes of the Plan. The Board shall have the power and authority to make the final decision regarding all disability claims.

#### **8.04 Disability Payments**

The monthly benefit to which a Participant is entitled in the event of the Participant's disability shall be payable on the first day of the first month after the Board determines such entitlement. Provided, however, the Participant may select, at any time prior to the date on which benefit payments begin, an optional form of benefit payment as described in Article 10, Optional Forms of Benefits, which shall be the Actuarial Equivalent of the normal form of benefit. The amount of the first disability payment shall include an amount payable from the date the Board determined such entitlement. Disability benefits shall cease:

- (A) If the Participant recovers from the disability prior to his Normal Retirement Date, the payment due next proceeding the date of such recovery, or
- (B) If the Participant dies without recovering from disability or attains Normal Retirement Date, the payment due next proceeding his death.

#### **8.05 Disability Payments & Workers Compensation**

If a Participant receives a disability benefit under the Plan and workers compensation benefits pursuant to Chapter 440, Fl. Stat., for the same disability and the total monthly benefits received from both exceed one hundred percent (100%) of the Participants' average monthly wage determined in accordance with Chapter 440, Fl. Stat., the disability pension benefit shall be reduced so that the total monthly amount received by the Participant does not exceed one hundred percent (100%) of such average monthly wage. In the event of a lump sum workers compensation settlement, the disability retirement income payable from the Plan shall be adjusted as follows:

- (A) The amount of the lump sum settlement shall be divided by the Participant's remaining life expectancy (in months) as determined using the actuarial assumptions represented in the last completed valuation of the Plan.
- (B) If the number obtained in paragraph (A) above, when added to the Participant's monthly disability retirement income from the 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 (A) above.

(C) If the number obtained in paragraph (A) above, when added to the Participant's monthly disability retirement income from the 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 benefit from the plan.

## **ARTICLE 9**

### **VESTING**

If a Participant terminates his employment with the Employer for reasons other than retirement, disability or death, the Participant shall be entitled to the following:

**(A)** If the Participant has less than the number of years of Vested Service specified in the Adoption Agreement - Section J, Termination of Employment and Vesting, the Participant shall be entitled to the following:

- (1) If a General Employee has less than six (6) years of Vested Service upon termination, the member shall be entitled to a refund of their accumulated employee contribution with six percent (6%) interest, or the member may leave it deposited with the Fund pending future employment with the Town of Davie.
- (2) If a General Employee has six (6) or more years of Vested Service upon termination, the member shall be entitled to their accrued monthly retirement benefit, starting at the member's otherwise normal or early retirement date, provided he does not elect to withdraw his contributions and provided he survives to his normal or early retirement date.
- (3) If a Management Employee has less than three (3) years of Vested Service upon termination, the member shall be entitled to a refund of their accumulated employee contribution with six percent (6%) interest, or the member may leave it deposited with the Fund pending future employment with the Town of Davie.
- (4) If a Management Employee has three (3) or more years of Vested Service upon termination, the member shall be entitled to their accrued monthly retirement benefit, starting at the member's otherwise normal or early retirement date, provided he does not elect to withdraw his contributions and provided he survives to his normal or early retirement date.

**(B)** Any vested Participant of the Plan who is no longer eligible to participate in this Plan due to a change of employment, but who remains employed by the Employer in a class not eligible to participate under this Plan, shall have his Accrued Benefit to the date of such termination under this Plan preserved, provided he does not elect to withdraw his Accumulated Contributions from this Plan. Such Accrued Benefit shall be payable at his otherwise Normal Retirement Date hereunder in accordance with the provisions of this Plan.

**(C)** If a Participant who terminates employment prior to his Normal Retirement Date and elects to withdraw Accumulated Contributions, is subsequently reemployed and again becomes a Participant in this Plan, his Credited Service for purposes of vesting and benefit accruals shall not include any periods of employment prior to his reemployment date unless he repays to the Fund his Accumulated Contributions previously withdrawn with interest, as

determined by the Board, within ninety (90) days after reemployment. If a Participant repays the foregoing amount to the Fund within the prescribed time period, the interest of the Participant in his Accrued Benefit previously forfeited shall be restored in full and the Participant's Credited Service shall be based on all periods of employment.

## **ARTICLE 10**

### **OPTIONAL FORMS OF BENEFITS**

**(A)** In lieu of the normal form of benefit as specified herein, a Participant's Normal Retirement or Disability Benefit may be paid in an optional form as selected by the Participant.

Subject to the approval of the Board or its designee, the Participant may elect to receive the Actuarial Equivalent of the benefit otherwise payable to the Participant in accordance with one of the following options:

1. Monthly income payments for the life of the Participant with 120 payments certain.
2. Monthly income payment for the life of the Participant and after his death, a joint pensioner benefit payable for the life of the joint pensioner equal to, 100%, 75%, 66 2/3%, or 50% of the amount payable to the Participant.
3. Such other amount and form of retirement benefit payment that, in the opinion of the Board, will meet the circumstances of the Participant and the Trust.
4. Lump Sum Payments are not allowed.

**(B)** The Participant, upon electing any option pursuant to this Article, will designate the joint pensioner or beneficiary (or beneficiaries) to receive the benefit, if any, payable under the Plan in the event of Participant's death, and will have the power to change such designation from time to time. Such designation will name a joint pensioner or one or more primary beneficiaries where applicable.

A Participant may change his Beneficiary at any time. If a Participant has elected an option with a joint pensioner and the Participant's retirement benefits have commenced, the Participant may thereafter change his designated Beneficiary at any time, but may only change his joint pensioner twice. Subject to this restriction, a Participant may substitute a new joint pensioner for a deceased joint pensioner.

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

**(D)** Benefit payments shall be made under the option elected in accordance with the provisions of this Article and shall be subject to the following limitations:

1. If a Participant dies prior to his Normal Retirement Date the beneficiary will receive a benefit paid under the normal form of benefit in accordance with Article 7, Pre-Retirement Death.

2. If both the retired Participant and the beneficiary (or beneficiaries) designated by Participant die before full payment has been effected under any option providing for payments for a period certain and life thereafter, the value of the remaining payments shall be paid in such other amount and form of retirement benefit payment that, in the opinion of the Board, will meet the circumstances of the retiree and the Trust in accordance Article 11.

3. If the designated Beneficiary (or Beneficiaries) or joint pensioner dies before the Participant's retirement under the Plan, the option elected will be canceled automatically and a retirement income of the normal form and amount will be payable to the Participant upon his retirement as if the election had not been made, unless a new election is made in accordance with provisions of this Article or a new Beneficiary is designated by the Participant prior to his retirement.

4. If a Participant continues employment beyond his Normal Retirement Date pursuant to the provisions of the Normal Retirement Date provided in the Adoption Agreement, and dies prior to his actual retirement and while an option made pursuant to the provisions of the Adoption Agreement 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 Participant in the amount or amounts computed as if the Participant had retired under the option on the date on which his death occurred.

(E) Unless otherwise allowed by law, a Participant may not change his benefit payment option after the date of cashing or depositing his first benefit check.

(F) Notwithstanding anything herein to the contrary, the Board in its discretion, may elect to make a lump sum payment to a Participant or a Participant's Beneficiary in the event that the monthly benefit amount is less than one hundred dollars (\$100), or the total commuted value of the remaining monthly income payments to be paid does not exceed five thousand dollars (\$5,000). 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 Plan with regard to such Participant and shall not be subject to review by anyone, but shall be final, binding and conclusive on all persons.

## **ARTICLE 11**

### **BENEFICIARIES**

**(A)** Each Participant may, on a form provided for that purpose, signed and filed with the Board, designate a beneficiary (or beneficiaries) to receive the benefit, if any, which may be payable in the event of his death and each designation may be revoked by such Participant by signing and filing with the Board a new designation-of-beneficiary form. The consent of a Participant's beneficiary to any change of beneficiary shall not be required.

**(B)** If a deceased Participant fails to name a beneficiary in the manner prescribed in Section A, or if the beneficiary (or beneficiaries) named by a deceased Participant predeceases the Participant, the death benefit, if any, which may be payable under the Plan with respect to such deceased Participant shall be paid by the Board to the estate of the Participant, and the Board, in its discretion, may direct that the commuted value of the remaining value of the remaining monthly income benefits be paid in a lump sum in accordance with section 10(f).

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

**ARTICLE 12**  
**CLAIMS PROCEDURES**

The Board shall establish administrative claims procedures to be utilized in processing written requests (“claims”), on matters which affect the substantial rights of any person (“claimant”), including Participants, retirees, Beneficiaries, or any person affected by a decision of the Board.

**ARTICLE 13**  
**This section intentionally left blank**

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**ARTICLE 14**  
**ROSTER OF RETIREES**

The Secretary of the Board shall keep a record of all persons receiving a benefit or vested Participants who will receive a future vested benefit under the provisions of this Plan in which it shall be noted the time when the benefit became payable. Additionally, the Secretary shall keep a record of all Participants employed by the Employer in such a manner as to show the name, address, date of employment and date such employment is terminated.

**ARTICLE 15**  
**BOARD ATTORNEY AND PROFESSIONALS**

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

## ARTICLE 16 MAXIMUM PENSION

**16.01 Basic Limitations** Subject to the adjustments hereinafter set forth, the maximum amount of annual retirement income payable with respect to a Participant under this Plan shall not exceed the dollar amount as may be allowable for any calendar year pursuant to §415(b) of the Code

**16.02 Participation in Other Defined Benefit Plans**

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

**16.03 Adjustments in Limitations**

- (A) In the event the Participant's retirement benefits become payable before age sixty-two (62), the maximum amount of annual retirement income limitation prescribed by this Article shall be reduced in accordance with Regulations issued by the Secretary of the Treasury, so that such limitation (as so reduced) equals an annual benefit (beginning when such retirement income benefit begins) which is equivalent to the maximum amount of annual retirement income as prescribed by this Article beginning at age 62.
- (B) In the event the Participant's benefit is based on at least fifteen (15) years of Credited Service, the adjustments provided for in A. above shall not apply.
- (C) The reductions provided for in A. above shall not be applicable to disability benefits, or pre-retirement death benefits.
- (D) In the event the Participant's retirement benefit becomes payable after age sixty-five (65), for purposes of determining whether this benefit meets the limitation set forth in Section 16.01 herein, such benefit shall be adjusted so that it is actuarially equivalent to the benefit beginning at age sixty-five (65). This adjustment shall be made using an assumed interest rate of five percent (5%) and shall be made in accordance with regulations promulgated by the Secretary of the Treasury or his delegate.
- (E) Less than Ten (10) Years of Service.  
The maximum retirement benefits payable under this Article to any Participant who has completed less than ten (10) years of Credited Service with the Employer shall be the amount determined under Section 16.01 herein, multiplied by a fraction, the numerator of which is the number of the Participant's years of Credited Service and the denominator of which is ten (10). The reduction provided for in this subsection shall not be applicable to disability benefits or pre-retirement death benefits.
- (F) Ten Thousand Dollar \$10,000 Limit.  
Notwithstanding the foregoing, the retirement benefit payable with respect to a Participant shall be deemed not to exceed the limitations set forth in this Article if the benefits payable, with respect to such Participant under this Plan and under all other qualified defined benefit pension plans to which the Employer contributes, do not exceed ten thousand dollars (\$10,000) for the applicable Plan Year and for any prior Plan Year and the Employer has not

at any time maintained a qualified defined contribution plan in which the Participant participated.

(G) Reduction of benefits.

Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the Participant's benefit under any defined benefit plans in which Participant participated, such reduction to be made first with respect to the plan in which Participant most recently accrued benefits and thereafter in such priority as shall be determined by the Board and the plan administrator of such other plans, and next, by reducing or allocating excess forfeitures for defined contribution plans in which the Participant participated, such reduction to be made first with respect to the plan in which Participant most recently accrued benefits and thereafter in such priority as shall be established by the Board and the plan administrator for such other plans provided, however, that necessary reductions may be made in a different manner and priority pursuant to the agreement of the Board and the plan administrator of all other plans covering such Participant.

(H) Cost-of-Living Adjustments.

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

(I) Additional Limitation on Pension Benefits.

Notwithstanding anything herein to the contrary:

- (1) the normal retirement benefit or pension payable to a Retiree who becomes a Participant of the Plan on or after January 1, 1980, and who has not previously participated in such Plan, shall not exceed 100 percent of his Average Final Compensation. However, nothing contained in this Article shall apply to supplemental retirement benefits or to pension increases attributable to cost-of-living increases or adjustments.
- (2) no Participant of the Plan shall be allowed to receive a retirement benefit or pension which is in part or in whole based upon any service with respect to which the Participant is already receiving, or will receive in the future, a retirement benefit or pension from a different employer's retirement plan. This restriction does not apply to social security benefits or federal benefits as provided under federal law.

16.04

***Benefit Restoration Plan & Trust***

(A) An Employer may fund a Benefit Restoration Plan as permitted under Code Section 415(m) as specified in this Section

**(B) Definitions**

(1) **“Information Sheet”:**

*is the document executed by the Employer providing specific information as to that Employer.*

(2) **“Participant”:**

*means an employee of the Employer who is eligible to receive benefits under this Benefit Restoration Plan, under (C).*

(3) **“Pensioner”:**

*means a former employee of the Employer who is retired and receiving retirement benefits.*

(4) **“Benefit Restoration Plan”:**

*means the provisions of section 16.04, which is hereby established for the payment of retirement benefits supplementing the Plan benefits as permitted under Code Section 415(m).*

(5) **“Benefit Restoration Plan Year”:**

*means the limitation year of the Plan under Code Section 415.*

(6) **“Plan”:**

*means the plan identified in the Adoption Agreement which is a Florida Municipal Pension Trust Fund Defined Benefit Plan maintained by a participating employer, and with respect to which this Benefit Restoration Plan will provide supplemental benefits.*

(7) **“Trust”:**

*means the trust fund established in section 4.02 of this Benefit Restoration Plan, which shall constitute a separate trust fund from the trust fund maintained under the Plan.*

(8) **“Board”:**

*means the Board of Trustees of the Plan, serving in the separate capacity as Trustees of this benefit Restoration Plan.*

**(C) PARTICIPATION**

(1) All Participants, Pensioners and Beneficiaries of the Plan whose retirement or survivor benefits from that Plan for a Plan Year have been limited by Code Section 415 are eligible to participate in this Benefit

Restoration Plan, unless excluded by category under the terms of the Information Sheet.

(2) Participation in the Benefit Restoration Plan is automatic. Any Participant, Pensioner or Beneficiary who is eligible for benefits is entitled to such benefits without the necessity of enrollment. Participation in the Benefit Restoration Plan will cease for any Plan Year in which the retirement benefit of a Pensioner or Beneficiary is not limited by Code Section 415.

**(D) BENEFITS**

**(1) *Benefit Amount***

A covered Pensioner or Beneficiary shall receive a monthly benefit equal to the difference between the participant's monthly retirement benefit otherwise payable from the Plan prior to any reduction or limitation because of Code Section 415 and the actual monthly retirement benefit payable from the Plan as limited by Code Section 415. The monthly benefit shall be subject to withholding for any applicable income or employment taxes.

**(2) *Payment of Benefit***

Benefits under the Benefit Restoration Plan shall be paid only if the Pensioner or Beneficiary is receiving retirement benefits from the Plan.

**(3) *Form of Benefit***

The form of the benefit paid to a Pensioner or Beneficiary from the Benefit Restoration Plan shall be the same payable under the Plan.

**(E) CONTRIBUTIONS AND FUNDING**

**(1) *Contributions***

(a) The Board, upon the recommendation of the actuary, shall determine the required contributions to pay plan benefits in accordance with (2) below. The required contribution for each Plan Year shall be the total amount of benefits payable under Section 3 to all Pensioners and Beneficiaries, plus such amount as determined by the Board to pay the administrative expenses of the Benefit Restoration Plan and the Employer's share of any employment taxes on the benefits paid from the Plan.

(b) The required contribution as determined by the Board, upon the recommendation of the actuary, shall be paid into the Trust from an allocation of the Employer contribution amounts paid under the Plan.

(2) ***Benefit Restoration Plan Trust Fund***

Contributions to the Benefit Restoration Plan shall be deposited in the separate Trust established and administered by the Board. This Trust is intended to be exempt from federal income tax under Code Sections 115 and 415(m)(1). The Trust assets shall be subject to the claims of general creditors of the Employer in the case of bankruptcy.

(3) ***Funding Assets***

The benefit liabilities of the Benefit Restoration Plan shall be funded on an as-needed basis. The Trust established under section (2) above shall not be accumulated to pay benefits payable in future years. Accordingly, any assets of the Trust shall be invested by the Board in short-term investments as the Board may determine to assure preservation of principal rather than the generation of income.

(4) ***Non-assignability of Benefits***

The benefits payable under this Benefit Restoration Plan may not be assigned or alienated, except as otherwise permitted for benefits payable by the Plan.

(5) ***Amendment and Termination***

The Employer reserves the right to amend this Benefit Restoration Plan at any time. No modification or amendment of the Benefit Restoration Plan shall make it possible for any part of the income or assets of the fund to be used for, or diverted to, purposes other than for the exclusive benefit of the Participants, Pensioners and Beneficiaries, except as set forth in section (2) above.

The Employer reserves the right to discontinue or terminate this Benefit Restoration Plan in whole or in part. Upon a termination of the Benefit Restoration Plan, the Board shall take such steps as the Board determines to be necessary or desirable to comply with applicable laws and to apply any remaining assets.

If, after satisfaction of all liabilities, there is any balance remaining in the fund, such balance shall be refunded to the Employer if not otherwise prohibited by law.

(F) **ADMINISTRATION**

(1) ***Benefit Restoration Plan Administration***

The Benefit Restoration Plan shall be administered by the Board. The Board shall have the same authority to administer the Benefit Restoration Plan as exists for the Plan. The Board may delegate any or all of the Board's administrative authority.

(2) ***Compliance Authority***

The Board may make modifications to the benefits payable under the Benefit Restoration Plan as may be necessary to maintain its qualified status under Code Section 415(m).

(3) ***No Liability for Benefits***

Since this Benefit Restoration Plan is not intended to accumulate funds, the Benefit Restoration Plan shall not be liable for the payment of any benefits except to the extent of funds actually received from the Employer and not previously distributed or applied to pay Benefit Restoration Plan expenses.

(4) This Benefit Restoration Plan shall be construed, administered and governed in all respects by the laws of the State of Florida.

(G) **EFFECTIVE DATES**

The Board shall pay benefits under the Benefit Restoration Plan beginning on or after the date specified on the Information Sheet.

## **ARTICLE 17**

### **DISTRIBUTION OF BENEFITS**

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

- (A)** If the retirement income is payable before the Participant's death,
  - (1)** It shall either be distributed or commence to the Participant not later than April 1 of the calendar year following the later of the calendar year in which the Participant attains age seventy and one-half (70½), or the calendar year in which the Participant retires; and,
  - (2)** the benefit shall be paid over the life of the Participant or over the lifetimes of the Participant and designated beneficiary and shall be paid over the period extending not beyond the life expectancy of the Participant and designated beneficiary

Where benefit payments have commenced in accordance with the preceding paragraphs and the Participant dies before his entire interest in the Plan has been distributed, the remaining portion of such interest in the Plan shall be distributed no less rapidly than under the form of distribution in effect at the time of the Participant's death.

- (B)** If the Participant's death occurs before the distribution of his interest in the Plan has commenced, the Participant's entire interest in the Plan shall be distributed within five (5) years of the Participant's death, unless it is to be distributed in accordance with the following rules:

- (1)** The Participant's remaining interest in the Plan is payable to his designated beneficiary.
- (2)** The remaining interest is to be distributed over the life of the designated beneficiary over a period not extending beyond the life expectancy of the designated beneficiary; and
- (3)** Such distribution begins within one year of the Participant's death unless the Participant's spouse shall receive the remaining interest in which case the distribution need not begin before the date on which the Participant would have attained age seventy and one-half (70½), and if the spouse dies before the distribution begins, this Article shall be applied as if the spouse were the Plan Participant.

- (C)** Direct Transfers of Eligible Rollover Distributions

- (1)** This paragraph applies to distributions made on or after January 1, 1993. Notwithstanding any provisions of the Plan to the contrary that would otherwise limit a distributee's (as defined below) election under this paragraph, a distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an eligible rollover distribution (as defined below) paid directly to an

eligible retirement plan (as defined below) specified by the distributee in a direct rollover (as defined below).

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

**(i)** An “eligible rollover distribution” is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee’s designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9), and the portion of any distribution that is not included in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).

**(ii)** An “eligible retirement plan” is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), or a qualified trust described in Code Section 401(a), that accepts the distributee’s eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

**(iii)** A “distributee” includes an Employee or former Employee. In addition, the Employee’s or former Employee’s surviving spouse is a distributee with regard to the interest of the spouse.

**(iv)** A “direct rollover” is a payment by the Plan to the eligible retirement plan specified by the distributee.

## **ARTICLE 18**

### **MISCELLANEOUS PROVISIONS**

#### **18.01 Interest of Participants in Plan**

At no time prior to the satisfaction of all liabilities under the Plan with respect to Participants and 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. No plan amendment or ordinance shall be adopted by the Employer which shall have the effect of reducing the then vested accrued benefits of Participants or Participants' beneficiaries under the Plan.

#### **18.02 Summary Plan Descriptions**

The Summary Plan Description outlining the provisions of this Plan was designed only to give a brief description of the benefit provided and does not include all the provisions or exclusions in the Plan Document. If the Summary Plan Description disagrees with the Plan herein in any way, the Plan Document will govern.

#### **18.03 Gender and Number**

Wherever any words are used in the masculine, feminine or neutral gender, they shall be construed as though they were also used in another gender in all cases where they would apply. Whenever any words are used herein in the singular or plural form, they shall be construed as though they were also used in the other form in all cases where they would apply.

#### **18.04 Headings and References**

All headings and references to sections, subsections, paragraphs, etc., in this Plan are inserted for convenience only and shall not affect the construction or interpretation of this Plan.

#### **18.05 Benefit Improvements**

Benefit improvements which, in the past, have been provided for by amendments to the Plan adopted by the Employer by ordinance or resolution, and any benefit improvements which might be made in the future, shall apply prospectively and shall not apply to Participants who terminate employment or who retire prior to the effective date of any ordinance or resolution adopting such benefit improvements, unless such ordinance or resolution specifically provides to the contrary.

#### **18.06 Procedure for Unclaimed Benefit**

If the Board is unable, within three years after any benefit becomes due to a Participant or Beneficiary under the Plan, to authorize payment because the identity or whereabouts of such person cannot be ascertained, the Board may direct that such benefit and all further benefits with respect to such person shall be forfeited and all liability for the payment thereof shall terminate.

#### **18.07 Qualified Military Service:**

Notwithstanding any provision of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with § 414(u) of the Code.

**18.08 Domestic Relations Order Submission:**

(A) Prior to the entry of any domestic relations order which affects or purports to affect the Fund's responsibilities in connection with the payment of benefits, that order should be submitted through the Fund's administrator for review as to whether the Fund may honor it.

(B) If the domestic relations order is not submitted to the administrator for review prior to entry, and the Fund is ordered to take action that it may not legally take, and the Fund expends administrative or legal fees in resolving the matter, the Participant who submitted the domestic relations order will be required to reimburse the Fund its expenses in connection with the order.

(C) The administrator may develop rules or regulations concerning what the Fund will consider to determine if a domestic relations order may be complied with by the Fund.

**18.09 Plan Amendments**

The Employer acknowledges the FMPTF Defined Benefit Plan document may be amended from time to time by the FMPTF Master Trustee to comply with applicable federal or state laws or regulations, and to make ministerial or administrative changes to the Plan, without the consent of the Employer or of Participants or any Beneficiaries thereof. Any amendment of the Plan, made in accordance with this provision, may be made retroactively, if deemed necessary or appropriate by the FMPTF Master Trustee. A copy of any Plan amendment shall be delivered to the Plan administrator, and the Plan shall be amended in the manner and effective as of the date set forth therein, and the Employers, Employees, Participants and Beneficiaries shall be bound by the amendment. The FMPTF Master Trustee shall not make any amendment to benefits under the Plan unless the amendment is necessitated to comply with applicable federal or state laws or regulations. Employers shall receive copies of any Plan amendments made by the FMPTF Master Trustee.

**ARTICLE 19**  
**REPEAL OR TERMINATION OF PLAN**

(A) This Plan and Fund may be modified, terminated, or amended, in whole or in part at any time by the Employer; provided that if this Plan or any subsequent ordinance or resolution shall be amended or repealed in its application to any person benefiting hereunder, the amount of benefits which at the time of any such alteration, amendment, or repeal shall have accrued to the Participant or beneficiary shall not be affected thereby, except to the extent that the assets of the Fund may be determined to be inadequate.

(B) If this Plan shall be repealed, or if contributions to the Plan are discontinued, or if there is a transfer, merger or consolidation of government units, services or functions as provided in Chapter 121, Fl. Stat., the Board shall continue to administer the Plan in accordance with the provisions of this Plan, for the sole benefit of the then Participant's, any beneficiaries then receiving retirement allowances, and any future persons entitled to receive future benefits. In the event of repeal, termination or permanent discontinuance of contributions due to transfer, merger or consolidation of government units, services or functions, there shall be full vesting (100%) of benefits accrued to date of repeal and the assets of the Plan shall be allocated in an equitable manner to provide benefits on a proportionate basis to the persons so entitled in accordance with the provisions thereof.

(C) The following shall be the order of priority for purposes of allocating the assets of the Plan as of the date of repeal of this Plan, or if contributions to the Plan are discontinued with the date of such discontinuation being determined by the Employer.

(1) Apportionment shall first be made in respect of each retired Participant receiving a retirement or disability benefit hereunder on such date, each person receiving a benefit on such date on account of a retired or disabled (but since deceased) Participant, and each Participant who has, by such date, become eligible for normal retirement but has not yet retired, an amount which is the actuarial equivalent of such benefit, based upon the actuarial assumptions in use for purposes of the most recent actuarial valuation, provided that, if such asset value be less than the aggregate of such amounts, such amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such asset value.

(2) If there be any asset value remaining after the apportionment under paragraph 1, apportionment shall next be made in respect of each Participant in the service of the Employer on such date who has completed at least ten (10) Years of Credited Service and who is not entitled to an apportionment under paragraph 1, in the amount required to provide the Actuarial Equivalent, as described in paragraph 1 above, of the accrued Normal Retirement Benefit, based on the Credited Service and Salary as of such date, and each vested former Participant then entitled to a deferred benefit who has not, by such date, begun receiving benefit payments, in the amount required to provide said Actuarial Equivalent of the accrued Normal Retirement Benefit, provided that, if such remaining asset value is less than the aggregate of the amounts apportioned hereunder, such latter amounts shall be

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

**(3)** If there be any asset value after the apportionments under paragraph 1 and 2 above, apportionment shall be made in respect of each Participant in the service of the Employer on such date who is not entitled to an apportionment under paragraphs 1 and 2 above in the amount equal to Participant's Accumulated Contributions, provided that, if such remaining asset value be less than the aggregate of the amounts apportioned hereunder, such latter amount shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.

**(4)** If there be any asset value remaining after the apportionments under paragraphs 1, 2, and 3 above, apportionment shall lastly be made in respect of each participant included in paragraph 3 above to the extent of the Actuarial Equivalent, as described in paragraph 1 above, of the accrued Normal Retirement Benefit, less the amount apportioned in paragraph 3 above, based on the Credited Service and Average Final Compensation as of such date, provided that, if such remaining asset value be less than the aggregate of the amounts apportioned hereunder, such amounts shall be reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.

**(5)** In the event that there be asset value remaining after the full apportionment specified in paragraphs 1, 2, 3, and 4 above, such excess shall be returned to the Employer, less return of the State's contributions to the State, provided that, if the excess is less than the total contributions made by the Employer and the State to the date of termination such excess shall be divided proportionately to the total contributions made by the Employer and the State.

The allocation of the Fund provided for in this subsection may, as decided by the Board and the Employer be carried out through the purchase of insurance company contracts to provide the benefits determined in accordance with this subsection. The Fund may be distributed in one sum to the persons entitled to said benefits or the distribution may be carried out in such other equitable manner as the Board and the Employer may direct. The Trust may be continued in existence for purposes of subsequent distributions.

**(6)** After all the vested and accrued benefits provided hereunder have been paid and after all other liabilities have been satisfied, then and only then, shall any remaining funds be reverted to the Employer.

**ARTICLE 20**  
**EXEMPTION FROM EXECUTION, NON-ASSIGNABILITY**

The pensions, annuities, or any other benefits accrued or accruing to any person under the provisions of this Plan, the Accumulated Contributions and the assets in the Fund created under this Plan are exempt from any state, county or municipal tax of the state and shall not be subject to execution, attachment, garnishment or any legal process whatsoever and shall be unassignable.

**ARTICLE 21**  
**FORFEITURE OF PENSION: CONVICTION AND FORFEITURE**

Any Participant who is convicted of the any of the following offenses committed prior to retirement, or whose employment is terminated by reason of his admitted commission, aid or abetment of the following specified offenses, shall forfeit all rights and benefits under this Plan, except for the return of his Accumulated Contributions as of the date of termination.

- (A) Specified offenses are as follows:
- (1) the committing, aiding or abetting of an embezzlement of public funds;
  - (2) the committing, aiding or abetting of any theft by a public officer or employee from the employer;
  - (3) bribery in connection with the employment of a public officer or employee;
  - (4) any felony specified in Chapter 838, Florida Statutes;
  - (5) the committing of an impeachable offense.
  - (6) the committing of any felony by a public officer or employee who willfully and with intent to defraud the public or the public agency, for which he acts or in which he is employed, of the right to receive the faithful performance of his duty as a public officer or employee, realizes or obtains or attempts to obtain a profit, gain, or advantage for himself or for some other person through the use or attempted use of the power, rights, privileges, duties or position of his public office or employment position.
- (B) Conviction shall be defined as follows: An adjudication of guilt by a court of competent jurisdiction; a plea of guilty or a nolo contendere; a jury verdict of guilty when adjudication of guilt is withheld and the accused is placed on probation; or a conviction by the Senate of an impeachable offense.
- (C) Court shall be defined as follows: any state or federal court of competent jurisdiction, which is exercising its jurisdiction to consider a proceeding involving the alleged commission of a specified offense. Prior to forfeiture, the Board shall hold a hearing on which notice shall be given to the Participant whose benefits are being considered for forfeiture. Said Participant shall be afforded the right to have an attorney present. No formal rules of evidence shall apply, but the Participant shall be afforded a full opportunity to present his case against forfeiture.
- (D) Any Participant who has received benefits from the Plan in excess of his Accumulated Contributions after Participant's rights were forfeited pursuant to this section shall be required to pay back to the Fund the amount of the benefits received in excess of his Accumulated Contributions. The Board may implement all legal action necessary to recover such funds.
- (E) As provided in the Florida Statutes, it is unlawful for a person to willfully and knowingly make, or cause to be made, or to assist, conspire with, or urge another to make, or cause to be made, any false, fraudulent, or misleading oral or written statement or withhold

or conceal material information to obtain any benefit from the Plan. A person who commits a crime is punishable as provided in Section 775.082 or Section 775.083, Florida Statutes.

**(F)** In addition to any applicable criminal penalty upon conviction for a violation described in paragraph (E), a Participant or Beneficiary of the Plan may, in the discretion of the Board, be required to forfeit the right to receive any or all benefits to which the person would be otherwise be entitled under the Plan. For purposes of this paragraph (F) “conviction” means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld.

## **ARTICLE 22**

### **PENSION VALIDITY**

The Board shall have the power to examine and investigate into the facts upon which any pension shall heretofore have been granted under any prior or existing law, or shall hereafter be granted or obtained erroneously, fraudulently or illegally for any reason. The Board is empowered to purge the pension rolls or correct the pension amount of any person heretofore granted a pension under prior or existing law or any person hereafter granted a pension under this 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 erroneously, improperly or illegally classified. Any overpayments or under payments shall be corrected and paid or repaid in a reasonable manner determined by the Board.

**ARTICLE 23  
SIGNATORIES**

**This agreement is effective on the date specified in the Adoption Agreement.**

**TOWN OF DAVIE** \_\_\_\_\_

**AUTHORIZED SIGNATURE** \_\_\_\_\_

**TITLE** \_\_\_\_\_

\_\_\_\_\_  
**DATE**

**EXHIBIT A**  
**MASTER TRUST AGREEMENT**

TOWN COUNCIL PREVIOUSLY APPROVED ON JANUARY 7, 2004 VIA ORDINANCE  
NUMBER O-2004-2

**EXHIBIT B**  
**ACTUARIAL EQUIVALENT**

TOWN COUNCIL PREVIOUSLY APPROVED ON JANUARY 7, 2004 VIA ORDINANCE  
NUMBER O-2004-2