

August 17, 2017

Ms. Kerry Dutton  
Resource Centers, LLC  
4360 Northlake Blvd., Suite 206  
Palm Beach Gardens, FL 33410

**Re: Village of Tequesta General Employees Pension Trust Fund**

Dear Kerry:

We have reviewed the proposed amendment (copy attached) for the Village of Tequesta General Employees Pension Trust Fund. This proposed amendment would amend the Plan as follows:

- Adding a provision to comply with the Uniform Services Employment and Reemployment Rights Act (USERRA) which requires that a member who is disabled or dies while on leave for active duty military service be treated as if they were rehired effective the day before the death or disability.
- Updating the definition of Salary or Compensation to include differential wages paid by the employer to a member while on intervening military service.
- Incorporating the provisions of Florida Statutes 112.656 which requires that Trustees discharge their duties solely in the interest of participants and beneficiaries of the Plan.
- Updating the Conditions Disqualifying Disability Benefits section to specify that injury or disease sustained while serving in any branch of the Armed Forces is not excluded for members who have become disabled as a result of intervening military service under the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART).
- Updating the definition of Distributee for Rollover Distributions to permit a non-spouse beneficiary to rollover assets to an individual retirement account.
- Adding a provision to provide that a mandatory distribution without member approval can only be made in the event that the distribution is less than \$1,000.00.

Under USERRA, if a member dies or becomes disabled while in the military, the Plan would provide certain benefits. The value of these benefits would result in an actuarial loss in the year in which the death or disability occurred. Because of the very low probability that this provision will be utilized, we do not feel that an estimate for advanced funding is necessary.

In our opinion, these changes will not have an actuarial impact on the cost of the Pension Fund for prefunding purposes. Therefore, it is our opinion that a formal Actuarial Impact Statement is not required. However, we recommend that you send a copy of this letter and the amendment to the Bureau of Local Retirement Systems.

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Jeffrey Amrose is a member of the American Academy of Actuaries and meets the Qualification Standards of the American Academy of Actuaries to render the actuarial opinions contained herein. The undersigned actuary is independent of the plan sponsor.

We welcome your questions and comments.

Respectfully submitted,



Jeffrey Amrose, EA, MAAA  
Senior Consultant & Actuary

cc: Bonni Jensen

Enclosure

The above communication shall not be construed to provide tax advice, legal advice or investment advice.

## **EXHIBIT "A"**

### **VILLAGE OF TEQUESTA**

#### **GENERAL EMPLOYEES' PENSION TRUST FUND**

##### **Section 1. Creation of Pension Trust Fund.**

The Village of Tequesta General Employees' Pension Trust Fund for the purpose of providing retirement, death and disability benefits to members of the Fund, certain former general employees and survivor benefits to beneficiaries. Prior to November 9, 1999, all Village Employees were part of one Plan. Effective November 9, 1999, by Village of Tequesta Ordinance No. 549, the Plan was separated between the General Employees and the Public Safety Employees. This System is intended to be a tax qualified plan under Code Section 401(a) and meet the requirements of a governmental plan as defined in Code Section 414(d).

##### **Section 2. Definitions.**

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

Accumulated Contributions means a Member's own contributions without interest.

Actuarial Equivalent means a benefit or amount of equal value, based upon 1983 Group Annuity Mortality table and an 8% rate of interest. For Plan Years beginning after December 31, 2002 for purposes of Code Section 415(b), the mortality table is the table used under Code Section 417(e) as prescribed by the Secretary of the Treasury in Rev. Rul. 2001-62 ~~95-6~~.

Average Final Compensation shall mean one-twelfth (1/12) of the average salary of the five (5) highest years of the last ten (10) years of credited service prior to retirement, termination, or death, or the career average as a full time General Employee, whichever is greater. A year shall be twelve (12) consecutive months

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

Board or Board of Trustees, means a member of the General Employee Board of Trustees, which shall administer and manage the System herein provided and serve as Trustees of the Fund for the benefit of beneficiaries of the general employees.

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

Credited Service means the total number of years and fractional parts of years of service as a General Employee who makes member contributions to the Plan, omitting intervening years or fractional parts of years when such General Employee was not employed by the Village of Tequesta. A plan member may voluntarily leave his/her contribution in the Fund for a period of five (5) years after leaving the employ of the Village of Tequesta pending the possibility of being rehired in a full time position by the Village of Tequesta without losing credit for the time of active participation as a plan member. Should the employee not be re-employed with the Village of Tequesta in a full time capacity within five (5) years, his/her contributions shall be returned to him/her with three percent (3%) interest.

The years or fractional parts of years that a General Employee serves in the military service of the Armed Forces of the United States or the United States Merchant Marine, voluntarily or involuntarily, upon being granted leave by the Village of Tequesta and separation from employment as a Village of Tequesta plan member, shall be added to his/her years of credited service provided that:

- A. The General Employee returns to his/her full time employment with the Village of Tequesta within one (1) year from the date of his/her military discharge, **except that effective January 1, 2007, General Employees who die or become disabled while serving on active duty military service shall be entitled to the rights of this section even though such participant was not re-employed by the Village as a General Employee. Members who die or become disabled while on active duty military service shall be treated as though re-employed as a General Employee the day before the Member became disabled or died, and then either died a non-duty death while employed or became disabled from a non-duty disability. Eligibility, if any, for benefits will then be determined under the plan provisions.**
- B. The General Employee deposits into the Fund the same sum that the Member would have contributed if he/she had remained a General Employee, plus an amount of interest that substantially approximates the amount earned by the Fund from the date of return to employment to the date of deposit in accordance with Code Section 414(u) effective December 12, 1994.
- C. The maximum credit for military service shall be five (5) years.

Effective Date means the date on which this Ordinance becomes effective.

Fund means the Trust Fund established herein as part of the System, for the benefit of General Employees.

General Employee means an actively employed full-time person employed by the Village of Tequesta, including his/her initial probationary employment period, excluding certified Firefighters and certified Police Officers.

General Employee Board means the board of trustees provided hereunder to administer and manage the funds for the benefit of the General Employees.

Member means an actively employed General Employee that fulfills the applicable prescribed participation requirements.

One hundred and twenty monthly payments guaranteed means benefits are payable for the life of a retiree with a guarantee of 120 monthly payments. Should a member die before 120 monthly payments (10 years) are made, then the remainder of the 120 monthly payments will be paid to a beneficiary. Should a member receive more than 120 monthly payments, then no benefit is payable to a beneficiary.

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

Salary or Compensation means base wages to include regular earnings, vacation pay, sick pay, plus all tax deferred items of income, excluding lump sum payments, overtime, bonuses and longevity bonus. The amount of compensation taken into account under the System may not exceed \$200,000. This amount is subject to adjustment as provided for in Code Section 401(a)(17), Code Section 415(d) and Section 16 of this Plan.

**Beginning with salary earned after December 31, 2008, and pursuant to Internal Revenue Code Section 414(u)(7), the definition of salary includes amounts paid by the Village as differential wages to members who are absent from employment while in qualified military service.**

Spouse means the lawful wife or husband of a plan member at the time of pre-retirement, death or retirement.

Statement of Investment Policy means the written investment policy adopted by the Boards pursuant to this Ordinance and F.S. 112.661, et seq., which shall apply to funds under the control of the board.

System means the Village of Tequesta General Employees' Pension Trust Fund as contained herein and all amendments thereto.

Vested deferred retirement means a Member who leaves the employ of the Village with 6 or more years of credited service and who is not eligible for any retirement benefit. This benefit is payable at early or normal retirement.

Village means the Village of Tequesta, Florida.

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

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

1. Condition of Eligibility

All full time General Employees as of the effective date, and all future new full time General Employees shall become Members of this System as a condition of employment.

2. Membership

Each full time General Employee shall complete a form prescribed by the Board providing the following information:

- A. Acceptance of the terms and conditions of the Retirement System, and,
- B. Designation of a beneficiary or beneficiaries, and,
- C. A certified statement as to prior medical and psychological history.

3. Change in Designation of Beneficiary

A member may from time to time change his/her 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 System shall cease.

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

1. The sole and exclusive administration of and responsibility for the proper operation of the retirement system and for making effective the provisions of this ordinance is hereby vested in a Board of Trustees. The Board shall consist of five (5)

Trustees, two (2) of whom, unless otherwise prohibited by law, shall be legal residents of the municipality, who shall be appointed by the Tequesta Village Council, and two (2) of whom shall be full-time General Employee members of the System, however, in the event that either full time General Employee position remains vacant for three months or more, then the position can be filled by a legal resident of the Village of Tequesta elected by the General Employee Members of the System in accordance with the election rules established by the Board for one term. At the end of the term the position will be posted to again be filled by a full time General Employee. The fifth (5<sup>th</sup>) Trustee shall be selected by a majority vote of the other four (4) Trustees.

Each person seeking to fill a designated employee representative Board member seat shall be elected by the full-time General Employee Members of the System. Upon receipt of the fifth (5<sup>th</sup>) person's name the Tequesta General Council shall, as a ministerial duty, appoint such person to the General Employee Board as its fifth (5<sup>th</sup>) Trustee. The fifth (5<sup>th</sup>) Trustee shall have the same rights as each of the other Trustees appointed or elected as herein provided and shall serve a two (2) year term unless the office is sooner vacated and may succeed himself or herself in office. Each resident Trustee shall serve as Trustee for a period of two (2) years unless sooner replaced by the Tequesta Village Council at whose pleasure the Trustee shall serve, and may succeed himself or herself as a Trustee. Each General Employee Trustee shall serve as Trustee for a period of two (2) years, unless he/she sooner leave the employment of the Village or otherwise vacates his/her office as Trustee, whereupon a successor shall be chosen in the manner as the departing Trustee. Each employee representative Trustee may succeed himself or herself in office. The General Employee Board shall meet at least quarterly each year. The Board shall be a legal entity with, in addition to other powers and responsibilities contained herein, the power to bring and defend lawsuits of every kind, nature, and description.

2. The Board shall, by majority vote, elect a chairman and secretary. The secretary of the Board shall keep, or cause to be kept, a complete minute book of the actions, proceedings, or hearings of the Board and shall preside over Board meetings in the absence of the Chairman. The Trustees shall not receive any compensation as such, but may receive expenses and per diem as provided by law.

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

4. The Board of Trustees shall engage such actuarial, accounting, legal, and other services as shall be required to transact the business of the Retirement System to administer and manage the fund and to meet the requirements of applicable law. The compensation of all persons engaged by the Board of Trustees and all other expenses

of the Board necessary for the operation of the Retirement System shall be paid from the Fund at such rates and in such amounts as the Board of Trustees shall approve.

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

- A. To construe the provisions of the System and determine all questions arising thereunder.
- B. To determine all questions relating to eligibility and participation.
- C. To determine and certify the amount of all retirement allowances or other benefits hereunder.
- D. To establish uniform rules and procedures to be followed for administrative purposes, benefit applications and all matters required to administer the System.
- E. To distribute to Members, at regular intervals, information concerning the System.
- F. To receive and process all applications for participation and benefits.
- G. To authorize all payments whatsoever from the Fund, and to notify the disbursing agent in writing of approved pension payments and other expenditures arising through operation of the System and the Fund.
- H. To have performed actuarial studies in accordance with Florida Statute 112.63 providing a copy of the same to the Division of Retirement, and with at least biennial valuations, and make recommendations regarding and all changes in the provisions of the System.
- I. Ensure compliance with Article X, Section 14, of the Florida Constitution, requiring that any increase in benefits be funded on an actuarially sound basis.
- J. Ensure the completion of an actuarial impact statement prior to the adoption of a change in the plan's retirement benefits, a copy of which must be provided to the Division of Retirement.



K. To ensure the funds and assets for the benefit of the employee groups they serve are segregated and separated from the funds and assets under the control of the Board.

L. To perform such other duties as are specified in this Ordinance.

M. To adopt and be guided by Statements of Investment Policy applicable to all funds under the control of the General Employee Board of Trustees as required from time to time by F.S. 112.661, et seq., and/or its successor statutes.

**6. In all cases, the Trustees will carry out these duties consistent with the provisions of Florida Statute §112.656 which provides that the Trustees discharge his or her duties solely in the interest of the participants and beneficiaries for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the plan.**

## **Section 5. Finance And Fund Management.**

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

1. As part of the System, there is hereby established a Fund, into which shall be deposited all of the contributions and assets whatsoever attributable to the System, for the benefit of General Employees.

2. The actual custody and supervision of the Fund (and assets thereof) shall be vested in the Board of Trustees. Payment of benefits and disbursements from the Fund shall be made by the Village on the Board's agreement, but only upon written authorization from the Board.

3. All funds and securities of the Fund may be deposited by the Board of Trustees with the Treasurer of the municipality, acting in a ministerial capacity only, who shall be liable in the same manner and to the same extent that as he is liable for the safekeeping of funds for the municipality. However, any funds and securities so deposited with the Treasurer of the municipality shall be kept in separate funds by the Treasurer or clearly identified as such funds and securities of the General Employee Trust Fund. In lieu thereof, the Board of Trustees shall deposit the funds and securities of the Fund in a qualified public depository or depositories as defined in Section 280.02, Florida Statutes, which depository or depositories with regard to such funds and securities shall conform to and be bound by all of the provisions of Chapter 280, Florida Statutes. In order to fulfill its investment responsibilities as set forth herein, the Board may retain the services of a custodian bank or banks, an investment advisor or advisors registered under Investment Advisors Act of 1940, registered broker dealer or otherwise

exempt from such required registration, an insurance company, or a combination of these, for the purposes of investment decisions and management. Such investment manager or managers shall have discretion, subject to any guidelines as prescribed by the Board, in the investment of all fund assets.

4. Accurate records shall be maintained at all times reflecting the market valuations of funds and assets of the Fund, including accurate current accounts and entries as regards the following:

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

5. An independent audit shall be performed annually by a certified public accountant for the most recent fiscal year of the Village showing a detailed listing of assets and a statement of all income and disbursements during the year for each Fund. Such income and disbursements must be reconciled with the assets at the beginning and end of the year. Such report shall reflect complete evaluations of assets on both a cost and market basis, as well as other items normally included in a certified audit.

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

- A. The Board of Trustees shall be vested with full legal title to the Fund, subject, however, and in any event to the authority and power of the Tequesta Village Council to amend or terminate this Trust, provided that no amendment or Fund termination shall ever result in the use of any assets of the Fund except for the payment of regular expenses and benefits under this System. All contributions from time to time paid into the Fund, and the income thereof, without distinction between principal and income, shall be held in the Fund and administered by the Board or its Agents.

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

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

(2) Time or savings accounts of a national bank, a state bank insured by the Bank Insurance Fund, or a savings and loan association insured by the Savings Association Insurance Fund which is administered by the Federal Deposit Insurance Corporation or a state or federal chartered credit union whose share accounts are insured by the National Credit Union Share Insurance Fund.

(3) Obligations of the United States or obligations guaranteed as to principal and interest by the government of the United States.

(4) Bonds, stocks, commingled funds administered by National or State Banks or evidences of indebtedness issued or guaranteed by a corporation organized under the laws of the United States, or registered investment company pursuant to the Investment Advisors Act of 1940, any state or organized territory of the United States, or the District of Columbia, provided that the corporation is traded on a nationally recognized Exchange and in the case of bonds only holds a rating in one of the four highest classifications by a major rating service, except that 5% of the total market value of the portfolio may be invested in securities that fall below these rating guidelines.

(5) Real estate.

(6) All monies paid into or held in the Pension Fund shall be invested and reinvested by the Board of Trustees and the investment of all or any part of such funds shall be invested in accordance with an established investment policy adopted by the Board of Trustees.

(7) Up to 10% of the Plan assets may be invested in foreign securities.

C. The Board of Trustees shall not invest more than five percent (5%) of its assets in the common stock or capital stock of any one issuing company, nor shall the aggregate investment in any one issuing company exceed five percent (5%) of the outstanding capital stock of that company; nor shall the aggregate of its investments in common stock, capital stock and convertible bonds at cost exceed sixty percent (60%) of the assets of the Fund.

D. The Board of Trustees may retain in cash and keep unproductive of income such amount of the Fund as they may deem advisable, having regard for the cash requirements of the System.

E. No person or entity shall be liable for the making, retention or sale of any investment or reinvestment made as herein provided, nor for any loss or diminishment of the Fund, except that due to his/her or its own negligence, willful misconduct or lack of good faith.

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

G. The Board is empowered to vote upon any stocks, bonds or securities of any corporation, association, or trust and to give general or specific proxies or powers of attorney with or without power of substitution; to participate in mergers, reorganizations, recapitalization, consolidations and similar transactions with respect to such securities; to deposit such stock or other securities in any voting trust or any protective or like committee with the Trustees or with depositories designated thereby; to amortize or fail to amortize any part of 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 the best interest of the Fund to exercise. This power may be delegated to an agent by the Board of Trustees.

H. The Board shall not be required to make any inventory or appraisal or report to any court, nor secure any order of court for the exercise of any power contained herein.

I. Where any action which a Board is required to take on any duty or function which it is required to perform either under the terms herein or under the general law applicable to it as Trustee under this Ordinance, can reasonably be taken or performed only after receipt by it from a Member, the Village, the Department or any other entity, of specific information, certification, direction or instructions, the Board shall be free of liability in failing to take such action or perform such duty or function until such information, certification, direction or instruction has been received by it.

J. Any overpayments or underpayments from a Fund to a Member or beneficiary caused by errors of computation shall be adjusted with interest at a rate per annum approved by the Board. Overpayment shall be charged against member's payments next succeeding the correction. Underpayments shall be made up from the Trust Fund.

K. A Board shall sustain no liability whatsoever for the sufficiency of a Fund to meet the payments and benefits herein provided.

L. Any of the foregoing powers and functions 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 a Fund shall always remain in the Board of Trustees.

M. A Board shall not invest more than ten percent (10%) at cost of its assets in real property or real estate and there shall be no real estate investment in a closed-ended limited partnership or a closed-ended trust. In addition, any investments in real estate in open ended limited partnerships or open ended trusts are limited to those open ended core real estate products which meet the criteria for the NCREIF ODCE.

N. The Village shall maintain Fiduciary Liability insurance to cover the members of the Board of Trustees.

## **Section 6. Contributions.**

1. Member Contributions

A. Amount. Members of the Retirement System shall be required to make regular contributions to the Fund in the amount of five percent (5%) of his/her salary. Member contributions withheld by the Village on behalf of the Member shall be deposited with the Board of Trustees immediately after the withholding of such contributions. The contributions made by each Member to the Fund shall be designed as employer contributions pursuant to Section 414(h)(2) of the Code. Such designation is contingent upon the contributions being excluded from the Members' gross income for Federal Income Tax purposes. For all other purposes of the Plan, such contributions shall be considered to be Member contributions. For limitation years prior to July 1, 2007, any excess annual additions shall be placed in an unallocated suspense account.

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

2. Village Contributions

So long as this System is in effect, the Village shall make contributions at least quarterly to the Trust Fund in an amount equal to the normal cost and the amount required to fund any actuarial deficiency shown by an actuarial valuation as provided in Part VII of Chapter 112, Florida Statutes.

3. Other

Private donations, gifts and contributions may be deposited to the Fund, but such deposits must be kept separately and kept on a segregated bookkeeping basis. Funds arising from these sources shall be reserved exclusively for additional benefits for Members, and shall be reserved to be spent for the additional benefits as determined by the Board when specifically provided for by this plan document, and may not be used to reduce what would have otherwise been required by Village contributions.

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

1. Normal Retirement Date.

A Member's normal retirement date shall be the first day of the month coincident with, or next following the earlier of:

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- a) attainment of age sixty-two (62) regardless of years of credited service, or
- b) attainment of thirty (30) years of credited service regardless of age.

A Member may retire on his/her normal retirement date or on the first day of any month thereafter, and each Member shall become 100% vested in his/her accrued benefit on the Member's normal retirement date. Normal retirement under the Plan is retirement from employment with the Village of Tequesta as a General Employee, on or after the normal retirement date.

2. Normal Retirement Benefit.

A Member retiring hereunder on or after his/her normal retirement date shall receive a monthly benefit which shall commence on his/her Retirement Date and be continued thereafter during the Member's lifetime, ceasing upon death, but with one hundred twenty (120) monthly payments guaranteed in any event. Benefits are payable for the life of a retiree with a guarantee of 120 monthly payments. Should a member die before 120 monthly payments (10 years) are made, then the remainder of the 120 monthly payments will be paid to a beneficiary. Should a member receive more than 120 monthly payments, then no benefit is payable to a beneficiary. The monthly retirement benefit shall equal two percent (2%) of average final compensation, for each year of credited service ( $2\% \times \text{average final compensation} \times \text{years of credited service}$ ).

3. Early Retirement Date

A Member may retire on his/her early retirement date which shall be the first day of any month coincident with or next following the later of the attainment of age fifty (50) and the completion of six (6) years of credited service. Early retirement under the Plan is retirement from employment with the Village of Tequesta on or after the early retirement date and prior to the normal retirement date.

4. Early Retirement Benefit

A Member retiring hereunder on his/her early retirement date may receive either a deferred or an immediate monthly retirement benefit payable for life, but with one hundred twenty (120) monthly payments guaranteed in any event, as follows:

- A. A deferred monthly retirement benefit which shall commence on what would have been his/her normal retirement date had he/she remained a General Employee and shall be continued on the first day of each month thereafter. The amount of each such

deferred monthly retirement benefit shall be determined in the same manner as for retirement as his/her normal retirement date except that credited service and average final compensation shall be determined as of his/her early retirement date; or

B. An immediate monthly retirement benefit which shall commence on his/her early retirement date and shall be continued on the first day of each month thereafter. The benefit payable shall be as determined in paragraph A above, which is actuarially reduced from the amount to which he/she would have been entitled had he/she retired on his/her normal retirement date and with the same number of years of credited service as at the time his/her benefit commence and based on his/her average final compensation at that date. In no event shall the early retirement reduction exceed five percent (5%) each year by which the commencement of benefits precedes the Member's normal retirement date.

#### **Section 8. Pre-retirement Death.**

Upon the death of any vested member, whether or not still in active employment, a survivor benefit is payable to the beneficiary starting when the member would have reached retirement age. The benefit is equal to the vested pension benefit.

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

##### **1. Disability Benefits On-Duty**

Each full time employee who is a participant in the Pension Fund System and who becomes totally and permanently disabled while an active employee of the Village of Tequesta to the extent that he/she is unable, by reason of a medically determinable physical or mental impairment, to render useful and efficient service as a General Employee, which disability was directly caused by the performance of his/her duty as a General Employee shall upon establishing the same to the satisfaction of the Board, be entitled to the greater of A or B:

A. If the injury or disease is service connected, the employee shall be entitled to the greater of (1) or (2):

(1) a monthly pension equal to 42% of his/her average monthly compensation as of his/her disability retirement date, or



(2) an amount equal to the number of years of his/her credited service multiplied by 2% of his/her average monthly salary based upon his/her final 5 years of service.

2. Disability Benefits Off-Duty

Every General Employee who has six years of credited service, is a participant in the Pension Fund System and who shall have become totally and permanently disabled to the extent that he/she is unable, by reason of a medically determinable physical or mental impairment, to render useful and efficient service as a General Employee which disability is not directly caused by the performance of his/her duties as a General Employee shall be entitled to the greater of A or B:

A. a monthly pension equal to 25% of his/her average monthly compensation based upon his/her final 5 years of service, or

B. An amount equal to the number of years of his/her credited service multiplied by 2% of his/her average monthly salary based upon his/her final 5 years of service.

3. Conditions Disqualifying Disability Benefits

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

A. Excessive or habitual use of any drugs, intoxicants or alcohol.

B. Injury or disease sustained while willfully and illegally participating in fights, riots or civil insurrections.

C. Injury or disease sustained while committing a crime.

D. Injury or disease sustained while serving in any branch of the Armed Forces. **This exclusion does not affect members who have become disabled as a result of intervening military service under the federal Heroes Earnings Assistance and Relief Tax Act of 2008 (H.R. 6081; P.L. 110-245);**

E. Injury or disease sustained after his/her employment shall have terminated as a General Employee with the Village of Tequesta.

F. Willful, wanton or gross negligence of the Member.

G. Injury or disease sustained by General Employee while working for anyone other than the Village of Tequesta and arising out of such employment.

H. Injury or disease sustained by the member before employment with the Village begins. This subparagraph applies only in the event of a duty injury or disease.

#### 4. Physical Examination Requirement

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

Any person receiving disability benefit under provisions of this Ordinance 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 retiree is no longer permanently and totally disabled to the extent that he/she is unable to render useful and efficient service as a General Employee the Board shall recommend to the Village that the retiree be returned to their previous performance of duty as a General Employee, and the retiree so returned shall enjoy the same rights that Member had at the time he/she was placed upon pension. In the event the retiree is so ordered to return shall refuse to comply with the order within thirty (30) days from the issuance thereof, Member shall forfeit the right to his/her pension.

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

If the retiree recovers from disability and reenters his/her former service with the Village of Tequesta held prior to disability retirement, his/her service will be deemed to have been continuous, but the period beginning with the first month for which he/she received a disability retirement income payment and ending with the date he/she reentered the service of the Village 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.

#### 5. Disability Payments

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

- A. If the plan member recovers from the disability or attains his/her normal retirement date, the payment due next preceding the date of such recovery, or
- B. If the plan member dies without recovering from the disability prior to his/her normal retirement date while still disabled, the payment due next preceding his/her death or the 120<sup>th</sup> monthly payment, whichever is later.

#### **Section 10. Vesting.**

If a Member terminates his/her employment with the Village of Tequesta, either voluntarily or by discharge, and is not eligible for any other benefits under this System, the Member shall be entitled to the following:

1. If the Member has less than six (6) years credited service and has not attained the age of sixty-two (62) upon termination, the Member shall be entitled to a refund of accumulated contribution plus three percent (3%) interest or the Member may leave it deposited with the Fund, in accordance with the definition of credited service.

2. If the Member has six (6) or more years of credited service upon termination, or alternatively, the Member has attained the age of sixty-two (62), regardless of credited years of service, the Member shall be entitled to a monthly retirement benefit that is the actuarial equivalent of the amount of such retirement income otherwise payable to him/her commencing at the Member's otherwise normal or early retirement date, provided he/she does not elect to withdraw his/her accumulated contributions plus three percent (3%) interest and provided the Member survives to his/her normal or early retirement date.

3. Any plan member of the System whose position is terminated, for whatever reason, but who is employed by the Village in some capacity, shall have all retirement benefits accrued up to the date of such termination under this System preserved, provided he does not elect to withdraw his/her accumulated contributions plus three percent (3%) interest from this System. Such Accrued retirement benefits shall be payable at his/her otherwise normal retirement date hereunder, or later, in accordance with the provisions of this System.

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

1. In lieu of the amount and form of retirement income payable in the event of normal or early retirement as specified herein, a plan member, upon written request to the Board of Trustees and submission of evidence of good health (except that such evidence will not be required if such request is made at least three (3) years prior to the date of commencement of retirement income or if such request is made within six (6) months following the effective date of the Plan, if later), and subject to the approval of the Board of Trustees, may elect to receive a retirement income or benefit of equivalent actuarial valuation payable in accordance with one of the following options:

A. A retirement income of a larger monthly amount, payable to the Member for his/her lifetime only.

B. A retirement income of a modified monthly amount, payable to the Member during the joint lifetime of the Member and a dependent joint pensioner designated by the Member and following the death of either of them, 100%, 76%, 66-2/3%, or 50% of such monthly amounts payable to the survivor for the lifetime of the survivor.

2. The Member, upon electing any option of this section, will designate the joint pensioner or beneficiary (or beneficiaries) to receive the benefit, if any, payable under the Plan in the event of the Member's death, and will have the power to change such designation from time to time, but any such change shall be deemed a new election and will be subject to approval by the Board of Trustees. Such designation will name a joint pensioner or one or more primary beneficiaries where applicable. If a Member has elected an option with joint pensioner or beneficiary and the Member's retirement income benefits have commenced, the Member may thereafter change his/her designated joint pensioner or beneficiary, but only if the Board of Trustees consents to change and if the joint pensioner or beneficiary, but only if the Board of Trustees consents to change and if the joint pensioner last previously designated by the Member is alive when he/she files with the Board of Trustees the request for such change.

3. The consent of joint pensioner or beneficiary to any such change shall not be required.

4. The Board of Trustees may request such evidence of the good health of joint pensioner that is being removed as it may require and the amount of the retirement income payable to the Retiree upon designation of a new joint pensioner shall be actuarially redetermined taking into account the age and sex of the former joint pensioner, the new joint pensioner, and the Retiree. Each such designation will be made in writing on a form prepared by the Board of Trustees and on completion will be filed with the Board of Trustees.

In the event that no designated beneficiary survives the Member, such benefits as are payable in the event of the death of the Member subsequent to his/her retirement shall be paid as provided in Section 12.

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

- A. If a Member dies prior to his/her normal retirement date or early retirement date, whichever occurs, no retirement benefit will be payable under the option to any person, but the benefits, if any, will be determined under Section 8.
- B. If the designated beneficiary (or beneficiaries) or joint pensioner dies before the Member'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 Member upon his/her retirement as if the election had not been made, unless a new election is made in accordance with the provisions of this section or a new beneficiary is designated by the Member prior to his/her retirement and within ninety (90) days after the death of the beneficiary.
- C. If both the retired Member and the beneficiary (or beneficiaries) designated by the Member die before the full payment has been effected under any option providing for payments for a period certain and life thereafter, made pursuant to the provisions of subsection 1, the Board of Trustees may in its discretion, direct that the computed value of the remaining payments be paid in a lump sum and in accordance with Section 12.
- D. If a Member continues beyond his/her normal retirement date pursuant to the provisions of Section 7, subsection 1, and dies prior to his/her actual retirement and while an option made pursuant to the provisions of this section is in effect, monthly retirement income payments will be made, or a retirement benefit will be paid, under the option to a beneficiary (or beneficiaries) designated by the Member in the amount or amounts computed as if the Member had retired under the option on the date on which his/her death occurred.

6. The Member may not change his/her retirement option after the date of cashing or depositing his/her first retirement check.

## **Section 12. Beneficiaries.**

1. Each Member may, on a form provided for that purpose, signed and filed with the Board of Trustees, designate a beneficiary (or beneficiaries) to receive the benefit, if any, which may be payable in the event of his/her death; and each designation may be revoked by such Member by signing and filing with the Board of Trustees a new designation-of-beneficiary form.

2. If a deceased Member fails to name a beneficiary in the manner prescribed in subsection 1, or if the beneficiary (or beneficiaries) named by a deceased Member predeceases the Member, the death benefit, if any, which may be payable under the Plan with respect to such deceased Member shall be paid, in the discretion of the Board of Trustees, either to:

- A. The wife or dependent children of the Member;
- B. The dependent living parents of the Member; or
- C. Estate of the Member.

## **Section 13. Claims Procedures Before the Board Decision.**

1. If any Member of the System has been:

- A. Placed on pension under the terms and provisions of this ordinance for disability, or
- B. Placed on pension because the Member has served the required number of years to entitle him to a pension, or
- C. Refused benefits under this Plan, and is dissatisfied with the amount of pension the Member is receiving, or believes that he should be entitled to benefits under the Plan, the Member may, in writing, request the Board to review his/her case. The Board shall review the case and enter such order thereon as it deems right and proper within sixty (60) days from receipt of such written request and the receipt by the Board of a written medical release authorization and a list of names and addresses of all treating health care providers for such review of disability claims; provided, that the Board may extend the time for entering such order by an additional forty-five (45) days if it determines such time is necessary for discovery in full and adequate review.

2. In the event that the order from the Board denies the claim for a change in such benefits or denies the claim for benefits, the order of the Board shall be put in writing. Such written order shall include:

- A. The specific reasons for the denial, including specific references to pertinent provisions of the retirement system on which such denial is based;

- B. A description of any additional material or information that the Board feels is necessary for the Member to perfect his/her claim, together with an explanation of why such material or information is necessary; and

- C. An explanation of the review procedure next open to the Member.

Such review procedure shall provide that:

- (1) Prior to such review, the Member or his/her duly authorized representative may review any pertinent documents including Plan provisions, minutes of the meeting of the Board in which denial of the claim was originally recommended, and any other documents material to the case;

- (2) After such review, the Member and/or his/her duly authorized representative shall submit their case in writing to the Board and request a hearing. Such submission shall be filed with the Board no later than ninety (90) days after the receipt of the order of the Board. Upon receipt of the written submission by the Member, the Board shall schedule an opportunity for a full and fair hearing of the issue within the next ninety (90) days, and such scheduled hearing shall be communicated in writing to the Member. The Member and/or his/her duly authorized representative may then appear at such scheduled hearing to present their case. The Board shall consider the facts presented at the scheduled hearing and shall, within thirty (30) days after such hearing, make a final ruling in writing on the request of the Member. The written decision shall include the reasons for such decision and, such decision shall be final.

- (a) The Chairman shall preside over the hearing and shall rule on all evidentiary and other legal questions that arise during the hearing.

(b) Either party, the claimant or the Board, may file pleadings within the time limits set herein. Procedural motions are to be determined by the Chairman of the Board at any time. All parties are to furnish copies of all pleadings to the opposing parties and exchange lists with names and addresses of witnesses expected to be called to testify at the hearing, as well as the list of exhibits that are intended to be introduced, at least forty-five (45) days prior to the hearing. Testimony of witnesses shall be under oath or affirmation. Depositions or affidavits shall not be admissible unless upon stipulation by all parties. The Chairman, any Member of the Board, the attorney for the Board, the claimant and the claimant's attorney, upon recognition by the Chairman, may direct questions to any witness during the proceedings. Each party shall have the right to present evidence relevant to the issues, to cross-examine witnesses, to impeach witnesses and to respond to the evidence presented against the party. Each party shall have the right to present any opening and closing arguments. Any party may secure the services of a court reporter to record the proceedings with the cost to be borne by the party requesting the court reporter or requesting the transcription of the proceedings.

c) In all cases, unless otherwise provided in this section, the burden of proof shall be on the claimant who seeks to draw his/her entitlement to a pension, disability pension, or increased pension benefits.

3. In all proceedings under subsections 1 or 2 hereof, the Board shall have the power to subpoena and require the attendance of witnesses and the production of documents for discovery prior to and at the proceedings provided for in each paragraph. A reasonable fee may be charged for the issuance of any subpoenas not to exceed the fees set forth in Florida Statutes.

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

The Secretary of the Board shall keep a record of all persons enjoying a pension under the provisions of this Ordinance in which it shall be noted the time when the pension is allowed and when the same shall cease to be paid. Additionally, the Secretary shall keep a record of all General Employees employed by the Municipality



who are Members of the plan in such a manner as to show the name, address, date of employment and date such employment is terminated.

### **Section 15. Board Attorney and Professionals.**

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

### **Section 16. Maximum Pension.**

1. 415(b) Internal Revenue Code Limits
  - A. Basic Limitations. Notwithstanding anything to the contrary in this Plan, the provisions of Section 415 and its regulations are hereby incorporated by reference into this plan. Subject to the adjustments in Code Section 415, the maximum amount of the actual annual retirement income paid in any year with respect to a Participant under this Plan attributable to employer provided benefits shall not exceed the dollar amount allowable for any calendar year pursuant to §415(b) of the Code, as adjusted in such calendar year for increases in the cost of living in accordance with Regulations issued by the Secretary of the Treasury under §415(d) of the Code. For purposes of applying the basic limitation, benefits payable in any form other than a straight life annuity with no ancillary benefits shall be adjusted, as provided by Treasury Regulations, so that such benefits are the Actuarial Equivalent of a straight life annuity. For purposes of this subsection Article, the following benefits shall not be taken into account:
    - (1) Any ancillary benefit which is not directly related to retirement income benefits;
    - (2) Any other benefit not required under §415(b)(2) of the Code and Treasury Regulations thereunder to be taken into account for purposes of the limitation of §415(b)(1) of the Code.
  - B. This section shall be effective for distributions after December 31, 2001.
  - C. For purposes of applying the limitations of Code Section 415(b), compensation includes those items as set forth in Reg. 1.415-2(d). This definition specifically includes the crediting of compensation while absent from service for military duty; such crediting shall not exceed the compensation that would have been credited under the System if System services had continued.

2. Additional Limitation on Pension Benefits. Notwithstanding anything herein to the contrary:

A. The normal retirement benefit or pension to a retiree who becomes a member of the Plan and who has not previously participated in such Plan, on or after January 1, 1980, shall not exceed 100 percent of his/her average final compensation. However, nothing contained in this section shall apply to supplemental retirement benefits or to pension increases attributable to cost-of-living increases or adjustments. In all events, distributions shall be limited by the applicable provisions of Code section 415(b) limits.

B. No member of the Plan who is not now a member of such 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 member is already receiving, or will receive in the future, a retirement benefit or pension from another retirement system or plan. This restriction does not apply to social security benefits or federal benefits under Chapter 67, Title 10, U.S. Code.

3. 401(a)(17) Limitation on Compensation. For any person who first becomes a member in any plan year beginning on or after January 1, 1996, compensation for any plan year shall not include any amounts in excess of the Internal Revenue Code s. 401(a)(17) limitation (as amended by the Omnibus Budget Reconciliation Act of 1993), which limitation shall be adjusted as required by federal law for qualified government plans and shall be further adjusted for changes in the cost of living in the manner provided by Internal Revenue Code s. 415(d). For any person who first became a member prior to the first plan year beginning on or after January 1, 1996, the limitation on compensation shall be not less than the maximum compensation amount that was allowed to be taken into account under the plan as in effect on July 1, 1993, which limitation shall be adjusted for changes in the cost of living since 1989 in the manner provided by Internal Revenue Code s. 415(d).

**Section 17. Commencement of Benefits.**

1. Unless the Member otherwise elects, with such election being in writing and to the Trustees and specifying the form of retirement income and date on which the retirement income is to commence, the payment benefits under the Plan to the Member shall commence not later than the 60<sup>th</sup> day after the close of the Plan Year in which the latest following events occur:

A. The attainment by the Member of age 65;

B. The 10<sup>th</sup> anniversary of the date on which the Member commenced participation in the Plan; or

C. The termination of the Member's service with the Village of Tequesta

2. If the payment of a Member's retirement income cannot begin on the date required under subsection 1 of the Section because the Trustees either cannot ascertain the amount of the Member's retirement income or cannot locate the Member after making reasonable efforts to do so, the payment of the Member's benefit shall begin not later than sixty (60) days after the date on which the amount can be ascertained or the Member is located, whichever is applicable. Any such payment shall be made retroactive to a date which is not earlier than the date on which the payment of the Member's benefit was scheduled to begin but which is not later than the date specified under subsection 1 of this Section.

### **Section 18. Distribution of Benefits.**

Notwithstanding any other provision of this Plan to the contrary, a form of retirement income payable from this Plan after the effective date of this ordinance, shall be made in accordance with the requirements of Code Section 401(a)(9), including the minimum distribution incidental benefit requirements of section 1.401(a)(9)-2 Code Section 401(a)(9)(G) to satisfy the following conditions:

1. If the retirement income is payable before the Member's death,

A. it shall either be distributed or commence to the Member not later than April 1 of the calendar year following the later of the calendar year in which the Member attains age 70½, or the calendar year in which the Member retires,

B. the distribution shall commence to them not later than the calendar year defined above; and shall be paid over the life of the Member or over the lifetimes of the Member and spouse, or dependent, or, shall be paid over the period extending not beyond the life expectancy of the Member and spouse, or dependent.

Where a form of retirement income payment has commenced in accordance with the preceding paragraphs and the Member dies before his/her 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 Member's death.

2. If the Member's death occurs before the distribution of his/her interest in the Plan has commenced, the Member's entire interest in the Plan shall be distributed

within five (5) years of the Member's death, unless it is to be distributed in accordance with the following rules:

- A. The Member's remaining interest in the Plan is payable to his/her spouse or dependent;
- B. The remaining interest is to be distributed over the life of the spouse, issue or dependent or over a period not extending beyond the life expectancy of the spouse or dependent; and
- C. Such distribution begins within one year of the Member's death unless the Member's spouse, issue or dependent shall receive the remaining interest in which case the distribution need not begin before the date on which the Member would have attained age 70½ and if the spouse, issue or dependent dies before the distribution to the spouse, issue or dependent begins, this Section shall be applied as if the spouse, issue or dependent were the Plan Member.

#### **Section 19. Miscellaneous Provision.**

- 1. Interest of Members in Pension Fund. At no time prior to the satisfaction of all liabilities under the Plan with respect to Members and their spouses or beneficiaries, shall any part of the corpus or income of the Pension Fund be used for or diverted to any purpose other than for their elusive benefit.
- 2. No amendment or ordinance shall be adopted by the Village Council of the Village of Tequesta which shall have the effect of reducing the then vested accrued benefits to Members or Members beneficiaries.
- 3. Rollover Distributions.
  - A. This subsection applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this subsection, a distributee may elect, at the time and in the manner prescribed by the Board of Trustees, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.
  - B. Definitions.
    - (1) "Eligible rollover distribution" is any distribution of all or any portion of the balance to the credit of the distributee or an alternate payee under an income deduction order

under Florida law, except that an eligible rollover 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 10 years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Code.

(2) "Eligible retirement plan" is an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, a qualified trust, an annuity plan described in section 403(a) of the Code, an eligible deferred compensation plan described in §457(b) which is maintained by eligible employer described in §457(e)(1)(A) of the Code or an annuity contract described in 403(b) of the Code, that accepts the distributee's eligible rollover distribution.

(3) "Distributee" includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is entitled to payment under a court order that complies with the provisions of Code Section 414(p)(1)(a)(i) are distributees with regard to the interest of the spouse or former spouse. **Additionally, "Distributee" includes a non-spouse beneficiary whose rollover options are limited to an individual retirement annuity.**

(4) "Direct rollover" is a payment by the Plan to the eligible retirement plan specified by the distributee.

**4. In the event of a mandatory distribution if the present value of such benefit is in excess of one thousand dollars (\$1,000.00) a lump sum payment may be made only with the consent or acceptance of the payee. The amount of any such lump sum payment shall be actuarially determined.**

## **Section 20. Repeal or Termination of System.**

1. This Ordinance establishing the System and Fund, and subsequent Ordinances pertaining to said System and Fund, may be modified, terminated, or amended, in whole or in part; provided that if this or any subsequent Ordinance shall be amended or repealed in its application to any person benefitting hereunder, the amount of benefits which are the time of any such alteration, amendment, or repeal shall have

accrued to the Member or beneficiary shall not be affected thereby, except to the extent that the assets of the Fund may be determined to be inadequate.

2. If this Ordinance shall be repealed, or if contributions to the System are discontinued, the Board shall continue to administer the System in accordance with the provisions of this Ordinance, for the sole benefit of the then Members, any beneficiaries then receiving retirement allowances, and any future persons entitled to receive benefits under one of the options provided for in this Ordinance who are designated by any of said Members. In the event of repeal, Plan termination or if contributions are completely discontinued, there shall be full vesting (100%) of benefits accrued to date of repeal and the assets of the System shall be allocated in an equitable manner to provide benefits on a proportionate basis to the persons so entitled in accordance with the provisions thereof.

3. The following shall be the order of priority for purposes of allocating the assets of the System as of the date of repeal of this Ordinance, or if contributions to the System are discontinued with the date of such discontinuation being determined by the Board.

A. Apportionment shall first be made in respect of each retired General Employee 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) General Employee 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.

B. If there be any asset value remaining after the apportionment under paragraph A, apportionment shall next be made in respect of each full time General Employee in service of the Village of Tequesta on such date who has completed at least six (6) years of credited service and who is not entitled to an apportionment under paragraph A, in the amount required to provide the actuarial equivalent, as described in A above, of the accrued normal retirement benefit based on the credited service and average monthly earnings as of such date, and each vested former Member then entitled to a deferred benefit who has not by such date, begun receiving benefit payments, in the amount required to provide said actuarial equivalent of the accrued normal retirement benefit; provided that, if such remaining asset value be

less than the aggregate of the amounts apportioned hereunder, such latter amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.

C. If there be any asset value after the apportionment under paragraph A and B, apportionment shall be made in respect of each full time General Employee in service of the Village of Tequesta on such date who is not entitled to an apportionment under paragraphs A and B in the amount equal to Member's Accumulated Contributions, provided that, if such remaining asset value be less than the aggregate of the amounts apportioned hereunder such latter amount shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.

D. If there be any asset value remaining after the apportionment's under paragraphs A, B and C, apportionment shall lastly be made in respect of each Member included in paragraph C above to the extent of the actuarial equivalent, as described in paragraph A above, of the accrued normal retirement benefit, less the amount apportioned in paragraph C, based on credited service and average monthly earnings as of such date provided that, if such remaining asset value be less than the aggregate of the amounts apportioned hereunder such amounts shall be reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.

E. In the event that there be asset value remaining after the full apportionment's specified in paragraphs A, B, C, and D, such excess shall be returned to the Village.

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

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

**Section 21. Exemption from Execution, Non-assignability.**

The pensions, annuities, or any other benefits accrued or accruing to any person under the provisions of this Ordinance and the accumulated contributions and the cash securities in the Fund created under this Ordinance are hereby exempted from any state, county or municipal tax of the state and shall not be subject to execution, attachment, garnishment or any legal process whatsoever and shall be unassignable. However, pursuant to an income deduction order, the Trustees may direct that retirement benefits be paid for alimony or child support in accordance with rules and regulations adopted by the Board of Trustees.

## **Section 22. Pension Validity.**

The Board of Trustees shall have the power to examine into the facts upon which any pension shall heretofore have been granted and under any prior or existing law, or shall hereafter be granted or obtained erroneously, fraudulently or illegally for any reasons. Said Board is empowered to purge the pension rolls of any person heretofore granted a pension under prior or existing law or heretofore granted under this Ordinance if the same is found to be erroneous, fraudulent or illegal for any reason, and to reclassify any person who has heretofore under any prior or existing law been or who shall hereafter under this Ordinance be erroneously, improperly or illegally classified.

## **Section 23. Forfeiture of Pension.**

Any Plan Member convicted of the following offenses committed prior to retirement, or whose employment is terminated by reason of his/her admitted commission, aid or abatement of the following specified offenses, shall forfeit all rights and benefits under this Pension Fund, except for the return of this accumulated contributions as of the date of termination.

### **1. Specified offenses are as follows:**

- A. The committing, aiding or abetting of an embezzlement of public funds;
- B. The committing, aiding or abetting of any theft by a public officer or employee from employer;
- C. Bribery in connection with the employment of a public officer or employee;
- D. Any felony specified in Chapter 838, Florida Statutes;
- E. The committing of an impeachable offense.

2. The committing of any felony by a public officer or employee who willfully and with intent to defraud the public or public agency, for which he acts or in which he is



employed, of the right to receive the faithful performance of his/her 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 use or attempted use of the power, rights, privileges, duties or position of his/her public office or employment position.

A. Conviction shall be defined as follows:

An adjudication of guilt by a court of competent jurisdiction; a plea of guilty or 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.

B. Court shall be defined as follows:

Any state or federal court of competent jurisdiction which is exercising jurisdiction to consider a proceeding involving the alleged commission of a specified offense. Prior forfeiture, the Board of Trustees shall hold a hearing on which notice shall be given to the Member whose benefits are being considered for forfeiture. Said Member shall be afforded the right to have an attorney present. No formal rules of evidence shall apply, but the Member shall be afforded a full opportunity to present his/her case against forfeiture.

Any Member who has received benefits from the System in excess of his/her accumulated contributions after Member's rights were forfeited shall be required to pay back to the Fund the amount of the benefits received in excess of his/her accumulated contributions. The Board of Trustees may implement all legal action necessary to recover such funds.

**Section 24. Military Service Prior to Employment.**

In accordance with Code Section 415(n), the years or fractional parts of years that a Member serves or has served in the military service of the Armed Forces of the United States or United States Merchant Marine, voluntarily or involuntarily, prior to first and initial employment with the Village of Tequesta shall be added to his/her years of credited service provided that:

1. The General Employee contributes to the Fund the sum that he/she would have contributed had he/she been a member of the Plan for the years or fractional parts of years for which he/she is requesting credit plus amounts actuarially determined such that the crediting of service does not result in any cost to the Fund plus payment of costs for all professional services rendered to the Board in connection with the purchase years of credited service.

2. The request shall be made only once and made by the Member on or before the later of twelve (12) months from the effective date of this Ordinance or six (6) months from the date of his/her employment with the Village of Tequesta, whichever is later.

3. Payment by the Member of the required amount shall be made within six (6) months of his/her request for credit and shall be made in one lump sum payment upon receipt of which credited service shall be given. Credited service purchased pursuant to this section shall be counted for all purposes except toward vesting of benefits.

4. The maximum credit under this section shall be five (5) years.

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