

ORDINANCE NO. 2015-

AN ORDINANCE OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAZYNE, FLORIDA (“VILLAGE”), AMENDING THE VILLAGE CODE BY AMENDING CHAPTER 23 “RETIREMENT,” SECTION 23-31 “DEFINITIONS” TO MAKE THE BENEFITS PROVIDED BY THE PLAN “DEFINITELY DETERMINABLE” IN ACCORDANCE WITH SECTION 401(a)(25) OF THE INTERNAL REVENUE CODE; BY AMENDING SECTION 23-32 “MEMBERSHIP,” SECTION 23-37 “PRE-RETIREMENT DEATH,” SECTION 23-40 “OPTIONAL FORM OF BENEFITS,” SECTION 23-48 “DISTRIBUTION OF BENEFITS” AND SECTION 23-55 “DIRECT TRANSFERS OF ELIGIBLE ROLLOVER DISTRIBUTIONS” AND ADDING SECTION 23-58 “FEDERAL TAX PROVISIONS” AND SECTION 23-59 “QUALIFIED HEALTH INSURANCE PREMIUM DISTRIBUTIONS” TO COMPLY WITH THE FAVORABLE DETERMINATION LETTER ISSUED BY THE INTERNAL REVENUE SERVICE ON SEPTEMBER 12, 2014; BY AMENDING SECTION 23-35 “CONTRIBUTIONS” TO ENABLE THE VILLAGE TO USE \$504,093 IN ACCUMULATED EXCESS CHAPTER 185 PREMIUM TAX REVENUE RECEIVED BY THE PLAN ON OR BEFORE AUGUST 25, 2014 TO OFFSET THE VILLAGE’S REQUIRED CONTRIBUTION TO THE PLAN; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village of Key Biscayne (the “Village”) has a Police Officers and Firefighters Retirement Plan (the “Retirement Plan”) for sworn law enforcement personnel and firefighters employed in the Village’s Police and Fire Departments;

WHEREAS, on September 23, 2014, the Village amended its ordinance governing the Retirement Plan by implementing changes to the Plan that the Village had collectively bargained with the Key Biscayne Professional Association, Local 3638, which represents the Village’s firefighter/paramedics, fire lieutenants and fire captains, and the International Union of Police

Associations, which represents a bargaining unit consisting of the Village’s police officers and sergeants and a bargaining unit consisting of the Village’s police lieutenants;

WHEREAS, the Retirement Plan’s tax counsel has advised that additional revisions to the Plan are necessary to make certain that the collectively bargained changes to the benefits afforded by the Retirement Plan are “definitely determinable” pursuant to Section 401(a)(25) of the Internal Revenue Code and that the Retirement Plan complies with the favorable determination letter issued by the Internal Revenue Service on September 12, 2014;

WHEREAS, the State of Florida Division of Retirement has advised that additional amendments to the Retirement Plan are necessary to implement the collectively bargained changes to the Retirement Plan enabling the Village to use \$504,093 in accumulated excess chapter 185 premium tax revenue received by the Retirement Plan on or before August 25, 2014 to offset its required contribution to the Retirement Plan; and

WHEREAS, Village Council finds that it is in the best interest of the Village and its employees to amend the Retirement Plan.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:¹

Section 1. Recitals. The foregoing whereas clauses are true and correct and are incorporated herein by this reference.

Section 2. Village Code Amended. Article II “Police Officers and Firefighters Retirement Plan” of Chapter 23 “Retirement” of the Village of Key Biscayne Code of Ordinances is hereby amended by amending Section 2-31 “Definitions” to read as follows:

¹ Words in ~~strikeout~~ type are deletions from existing text and words in underline type are additions.

Sec. 23-31. Definitions.

* * *

Annual Required Contribution means the amount of money that must be contributed to the Plan as ~~set forth in the most recent actuarial valuation for the Plan~~ in order to satisfy the total cost for any year, as such term is defined in Section 23-35(c)(1) herein.

* * *

Salary for Police Officers Members for services rendered to the Village before August 26, 2014 and for Firefighter Members for services rendered to the Village before March 11, 2014 means total cash remuneration for services rendered to the Village. Salary for Police Officer Members for services rendered to the Village on or after August 26, 2014 and for Firefighter Members for services rendered to the Village on or after March 11, 2014 means a Member's base pay and any educational incentives mandated by the State of Florida. Compensation in excess of limitations set forth in § 401 (a)(17) of the Code shall be disregarded.

For years beginning after December 31, 2008, with respect to an individual receiving a differential wage payment, as defined by Code Section 3401(h)(2), which is paid by the Village, such differential wage payment shall be included in "Salary" for System purposes. The System shall not be treated as failing to meet the requirements of any provision described in Code Section 414(u)(1)(C) by reason of any contribution or benefit which is based on the differential wage payment, provided that all employees of the Village performing service in the uniformed services described in Code Section 3401(h)(2)(A) are entitled to receive differential wage payments (as defined in Code Section 3401(h)(2)) on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the Village, to make contributions based on the payments on reasonably equivalent terms (taking into account Code Sections 410(b)(3)).

* * *

Unfunded liability means the ~~amount of~~ unfunded accrued liability in accordance with the requirements of F.S. ch. 112 as certified set forth in the most recent actuarial valuation report prepared by the actuary for the Plan in accordance with the requirements of F.S. ch. 112.63.

* * *

USERRA means the Uniformed Services Employment and Reemployment Rights Act (P.L. 103-353).

* * *

Section 3. Village Code Amended. Article II “Police Officers and Firefighters Retirement Plan” of Chapter 23 “Retirement” of the Village of Key Biscayne Code of Ordinances is hereby amended by amending Section 2-32 “Membership” to read as follows:

Sec. 23-32. Membership.

(a) *Conditions of eligibility*

* * *

(3) For years beginning after December 31, 2008, (i) an individual receiving a differential wage payment, as defined by Code Section 3401(h)(2), which is paid to such individual by the Village shall be treated as a full-time active employee of the Village for purposes of this Section 23-32

* * *

Section 4. Village Code Amended. Article II “Police Officers and Firefighters Retirement Plan” of Chapter 23 “Retirement” of the Village of Key Biscayne Code of Ordinances is hereby amended by amending Section 2-35 “Contributions” to read as follows:

Sec. 23-35. Contributions.

(a) *Member contributions.*

(1) *Amount.* Effective October 1, 2000, each Member of the System shall be required to make regular contributions to the Fund in the amount of 10.5 percent of the Member's Salary. Member contributions withheld by the Village on behalf of the Member shall be deposited with the Board at least monthly. The contributions made by each Member to the Fund shall be designated as employer contributions pursuant to § 414(h) of the Code. Such designation is contingent upon the contributions being excluded from the Members' gross income for Federal Income Tax purposes. For all other purposes of the System, such contributions shall be considered to be Member contributions. Notwithstanding the foregoing, effective April 14, 2015, the contribution for Police Officer Members shall be increased by 21.73 percent of each Police Officer Member's Salary (equal to an estimated total increase of \$504,093 for all contributing Police Officer Members). Also effective April 14, 2014, and immediately following the increase in the contribution rate for Police Officer

Members provided in the preceding sentence, the contribution for Police Officer Members shall be reduced back to 10.5 percent of each Police Officer Member's Salary, using \$504,093 from the Accumulated Excess Chapter 185 Premium Tax Reserve to fund the reduction in contribution for Police Officer Members. In implementing the foregoing, no Police Officer Member shall be required to contribute more than 10.5 percent of his/her Salary to the Plan, subject to the provisions of this Section and \$504,093 shall be applied to reduce future Village contribution requirements under the Plan for Police Officer Members. ~~and~~ Effective March 11, 2014 for Firefighter Members and August 26, 2014 for Police Officer Members, the Village's annual contribution into both the Firefighter Members' portion of the Fund and the Police Officer Members' portion of the Fund shall not exceed 14% of the System's covered payroll for the respective Members of such Fund using the definition of Salary that is applicable at the time of said calculation (the "Village's Cap"). As such, in addition to making the regular contribution to the Fund in the amount of 10.5 percent of their respective Salary, the respective Members shall be responsible for contributing to the Fund any amount over the Village's Cap of 14% of the System's covered payroll for the respective Members of the Fund in order to meet the Annual Required Contribution for the applicable Fire or Police portion of the Fund.

* * *

Section 5. Village Code Amended. Article II "Police Officers and Firefighters Retirement Plan" of Chapter 23 "Retirement" of the Village of Key Biscayne Code of Ordinances is hereby amended by amending Section 2-37 "Pre-retirement death" to read as follows:

Sec. 23-37. Pre-retirement death.

* * *

(c) Qualified military service death benefits. In the case of a death occurring on or after January 1, 2007, if a Member dies while performing qualified military service (as defined in USERRA), the survivors of the Member are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the System as if the Member had resumed and then terminated employment on account of death.

Section 6. Village Code Amended. Article II “Police Officers and Firefighters Retirement Plan” of Chapter 23 “Retirement” of the Village of Key Biscayne Code of Ordinances is hereby amended by amending Section 2-40 “Optional forms of benefits” to read as follows:

Sec. 23-40. Optional forms of benefits.

* * *

(g) Notwithstanding anything herein to the contrary, the Board in its discretion, with the consent of the Member or the Member’s Beneficiary, as applicable, may elect to make a lump sum payment to a Member or a Member's Beneficiary in the event that the total commuted value of the remaining monthly income payments to be paid do not exceed \$3,500.00. Any such payment made to any person pursuant to the power and discretion conferred upon the Board by the preceding sentence shall operate as a complete discharge of all obligations under the System with regard to such Member and shall not be subject to review by anyone, but shall be final, binding and conclusive on all persons.

Section 7. Village Code Amended. Article II “Police Officers and Firefighters Retirement Plan” of Chapter 23 “Retirement” of the Village of Key Biscayne Code of Ordinances is hereby amended by amending Section 2-48 “Distribution of benefits” to read as follows:

Sec. 23-48. Distribution of benefits.

Notwithstanding any other provision of this System to the contrary, a form of retirement income payable from this System after the Effective Date of Ordinance No. 97-21, shall satisfy the following conditions:

* * *

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

- a. The Member's remaining interest in the System is payable to his Spouse, issue or dependent;
- b. The remaining interest is to be distributed over the life of the Spouse, issue or dependent or over a period not extending beyond the life expectancy of the Spouse, issue or dependent; and

c. Such distribution begins within one year of the Member's death unless the Member's Spouse, ~~issue or dependent shall receive the remaining interest~~ is the sole designated beneficiary, in which case the distribution need not begin before the date on which the Member would have attained age 70½ and if the Member's 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 Member.

Section 8. Village Code Amended. Article II "Police Officers and Firefighters Retirement Plan" of Chapter 23 "Retirement" of the Village of Key Biscayne Code of Ordinances is hereby amended by amending Section 2-55 "Direct transfers of eligible rollover distributions" to read as follows:

Sec. 23-55. Direct transfers of eligible rollover distributions.

(a) *General.* Notwithstanding any provision of the System to the contrary that would otherwise limit a distributee's election under this section, a distributee may elect, at the time and in the manner prescribed by the Board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(b) *Definitions.*

(1) *Eligible rollover distribution:* An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: 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 § 401(a)(9) of the Code; and the portion of any distribution that is not includable in gross income.

(2) *Eligible retirement plan:* An eligible retirement plan is an individual retirement account described in § 408(a) of the Code, an individual retirement annuity described in § 408(b) of the Code, an annuity plan described in § 403(a) of the Code, or a qualified trust described in § 401(a) of the Code, that accepts the distributee's eligible rollover distribution. ~~However, in the case of an eligible rollover distribution to the surviving Spouse,~~ Effective for distributions made after December 31, 2001 an eligible retirement plan is an individual retirement account or individual retirement annuity, shall also mean an annuity contract described in Section 403(b) of the Internal Revenue Code and an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a

state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan.

(3) *Distributee*: A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving Spouse is a distributee with regard to the interest of the Spouse. Effective as of January 1, 2008, an Employee's or former Employee's non-spouse Beneficiary is a distributee with regard to the interest of the Employee or former Employee.

(4) *Direct rollover*: A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee. Effective as of January 1, 2008, a non-spouse Beneficiary may make a direct rollover only to an "inherited" individual retirement account as described in Section 408(b) of the Internal Revenue Code. If a non-spouse Beneficiary receives a distribution from the System, the distribution is not eligible for a 60-day (non-direct) rollover.

(c) *Rollover by a Non-Spouse Designated Beneficiary*. For distributions made on or after January 1, 2007, a non-spouse Beneficiary who qualifies as a "designated beneficiary" under Section 401(a)(9)(E) of the Code may establish an individual retirement plan that will be treated as an "inherited IRA" pursuant to the provisions of Section 402(c)(11) of the Code, into which all or a portion of a death benefit distribution from the System can be transferred directly. A trust maintained for the benefit of one or more designated beneficiaries shall be treated in the same manner as a designated beneficiary.

Section 9. Village Code Amended. Article II "Police Officers and Firefighters Retirement Plan" of Chapter 23 "Retirement" of the Village of Key Biscayne Code of Ordinances is hereby amended by creating a new Section 2-58 "Federal Tax Provisions" to read as follows:

Sec. 23-58. Federal Tax Provisions.

(a) *USERRA*. Notwithstanding any provision of this System to the contrary, effective as of December 12, 1994, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Internal Revenue Code, USERRA and Chapters 175 and 185, Florida Statutes as applicable.

(b) *Exclusive Benefit*. No benefit provided hereunder shall be assignable or subject part of the corpus or income of the fund be used for, or diverted to, purposes other than for the exclusive benefit of Members and their Beneficiaries and until those liabilities are satisfied, all Village contributions will remain in the fund for the benefit of the Members or Beneficiaries in the event the System is terminated or Village contributions cease.

(c) Vesting. Upon the termination of the plan or on the complete discontinuance of contributions under the plan, each member shall have nonforfeitable, 100% vested rights to benefits accrued to date of the termination or discontinuance to the extent funded at that time.

(d) Required Distributions. Notwithstanding anything herein to the contrary, a Member's benefits shall commence no later than April 1 of the calendar year following the later of (i) the calendar year in which he or she attains age 70 ½ or (ii) the calendar year in which he or she retired (the "Required Beginning Date"). All distributions from the plan (including the Share Plan) shall conform to the regulations issued under Section 401(a)(9) of the Internal Revenue Code, including the incidental death benefit provision of Section 401(a)(9)(G) of the IRC. Further, such regulation shall override any plan or Share Plan provision that is inconsistent with Section 401(a)(9) of the Internal Revenue Code.

(e) Limitation on Benefits. Notwithstanding any other provisions of this plan, the retirement benefit of a Member shall be reduced to the extent that it exceeds amounts specified in Section 415 of the Internal Revenue Code. Compensation for this purpose means wages for federal income tax withholding purposes, as defined in Section 3401(a), plus all other payment to a Member in the course of the Member's trade or business, for which the Village must furnish the Member a written statement under Sections 6041, 6051, and 6052, but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or services performed.

Section 10. Village Code Amended. Article II "Police Officers and Firefighters Retirement Plan" of Chapter 23 "Retirement" of the Village of Key Biscayne Code of Ordinances is hereby amended by creating a new Section 2-59 "Qualified Health Insurance Premium Distributions" to read as follows:

Sec. 23-59. Qualified Health Insurance Premium Distributions.

(a) A Member who is an Eligible Retired Public Safety Officer and is receiving monthly benefits from the System may elect to have Qualified Health Insurance Premium Distributions made in accordance with this Section.

(b) Qualified Health Insurance Premium Distributions may be excluded from the gross income of the Eligible Retired Public Safety Officer Under Section 402(l) of the Code, subject to the annual dollar limitation therein of \$3,000.

(c) The following definitions apply for purposes of this Section 23-59:

(1) An "Eligible Retired Public Safety Officer" is a Member who (a) is a Public Safety Officer (as defined in Section 1204(9)(A) of the Omnibus Crime

Control and Safe Streets Act of 1968) and (b) separated from service with the Village by reason of disability in accordance with Section 23-38 or at or after his or her normal retirement date in accordance with Section 23-36(a).

(2) A "Qualified Health Insurance Premium Distribution" is an amount deducted from an Eligible Retired Public Safety Officer's monthly benefit payment and paid directly to the insurer providing coverage for which Qualified Health Insurance Premiums are paid. Such amount may not exceed the amount of the Qualified Health Insurance Premiums.

(3) "Qualified Health Insurance Premiums" means premiums for coverage for the Eligible Retired Public Safety Officer (and his or her spouse and dependents, if applicable) under accident and health insurance (including an accident or health plan within the meaning of Section 105(e) of the Code) or a qualified long-term care insurance contract as defined in Section 7702B(b) of the Code.

Section 11. **Severability.** The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 12. **Conflicts.** All ordinances or parts of ordinances, resolutions or parts of resolutions, in conflict herewith, are repealed to the extent of such conflict.

Section 13. **Inclusion In The Code.** It is the intention of the Village Council, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Key Biscayne, Florida; that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 14. **Effective Date.** That this Ordinance shall be effective immediately upon adoption on second reading.

PASSED AND ADOPTED on first reading this _____ day of _____, 2015.

PASSED AND ADOPTED on second reading this _____ day of _____, 2015.

MAYRA PENA LINDSAY, MAYOR

ATTEST:

CONCHITA H. ALVAREZ, MMC
VILLAGE CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

VILLAGE ATTORNEY