



VILLAGE OF KEY BISCAYNE

Office of the Village Manager

Village Council

Robert L. Vernon, *Mayor*
Michael Davey, *Vice Mayor*
Enrique Garcia
Robert Gusman
Michael E. Kelly
Jorge E. Mendia
Thomas Thornton

February 18, 2009

Village Manager

Genaro "Chip" Iglesias

MEMORANDUM

TO: Honorable Mayor and Members of the Village Council

FROM: Genaro "Chip" Iglesias, Village Manager 

RE: Proposed Ordinance Amending the Village's Police Officers and Firefighters Retirement Plan

RECOMMENDATION

It is recommended that Village Council adopt the attached ordinance which amends the Village's Police Officers and Firefighters Retirement Plan (the "Plan") to reflect the changes to the Plan that were agreed upon in the collective bargaining agreements between the Village and the Key Biscayne Professional Firefighters Association, Local 3638 ("Firefighters' Union").

BACKGROUND

On August 26, 2008, Village Council ratified an agreement between the Village and the Firefighters' Union for the bargaining unit that consists of firefighters/paramedics, driver engineers, fire lieutenants and executive assistants to the Fire Chief and an agreement for the bargaining unit that consists of Fire Captains. Both agreements contain several changes to the Plan for the Village's firefighters. These changes to the Plan must be implemented by an ordinance, which amends the pertinent sections of the Village Code dealing with the Plan in order to reflect the changes that have been agreed upon in the agreements.

Alison Bieler, an attorney for the Board of Trustees of the Plan, has drafted the ordinance, which is attached to this memo, and Mr. Brett Schneider, Village Attorney's

Office has reviewed the ordinance. The ordinance implements the changes to the Plan that were agreed to in the agreements, which include:

- Increasing the benefit multiplier for years of service greater than 15 from 3% to 4%.
- Allowing firefighters to retire based on a combination of age and service totaling 75 years.
- Allowing firefighters to purchase an increased benefit multiplier, which is equivalent to 1, 2 or 3 whole years of additional credited service.
- Adding a new provision implementing a firefighter share plan using excess State funds.
- Establishing a 5 year Deferred Retirement Option Plan (DROP) for firefighters.

Also, attached to this memo is the Actuarial Impact Statement for the foregoing changes to the Plan.

cc: Stephen H. Helfman, Village Attorney



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December 9, 2008

Ms. Joan Wall
Board of Trustees
2955 Myrtle Oak Circle
Davie, Florida 33328-6739

Re: Village of Key Biscayne Police Officers and Firefighters Retirement Plan

Dear Joan:

As requested, we have prepared a revised version of the Actuarial Impact Statement for the proposed changes in the Plan affecting firefighters. This set of results uses only the excess annual state revenue to fund the increase in contribution requirements. The changes include an increase in the benefit multiplier for service greater than 15 years (from 3% to 4%), a new condition for Normal Retirement based on a combination of age and service totaling 75 years, and a provision that allows for Firefighters' to purchase an increased multiplier to be applied in the calculation of benefits.

With regard to proposals for the establishment of a DROP program, a Share Plan and the Benefit Enhancement provision, it is our opinion that these programs will not result in additional benefit costs or liabilities. However, there will be added administrative costs associated with these programs that might range from \$3,000 to \$6,000 per year.

As you can see from the exhibit, the changes in the plan provisions do not result in a cost increase to the City due to the use of Chapter 175 funds. It is important to keep in mind that the plan change would increase City costs if the State Revenue does not increase at a rate at least equal to the rate of payroll growth.

It is also worth noting that these results are based on an October 1, 2007 measurement date and asset values have declined substantially since then; as such, the funding requirements both before and after the multiplier change will be higher in the future.

The calculations are based upon assumptions regarding future events, which may or may not materialize. They are also based upon present and proposed plan provisions that are outlined in the report. If you have reason to believe that the assumptions that were used are unreasonable, that the plan provisions are incorrectly described, that important plan provisions relevant to this proposal are not described, or that conditions have changed since the calculations were made, you should contact the author of this report prior to relying on information in the report.

If you have reason to believe that the information provided in this report is inaccurate, or is in any way incomplete, or if you need further information in order to make an informed decision on the subject matter of this report, please contact the author of the report prior to making such decision.

We welcome your questions and comments.

Sincerely yours,

J. Stephen Palmquist, ASA
Senior Consultant and Actuary

JSP/te

**Key Biscayne Police Officers and Firefighters Retirement Plan
Impact Statement – December 8, 2008**

Description of Amendment

- The benefit multiplier for Firefighters for years of service greater than fifteen will be increased from 3% to 4%.
- A Normal Retirement condition based on a combination of age and service totaling an amount of 75 years for Firefighters will be implemented.
- A provision allowing Firefighters to purchase an increased benefit multiplier will be added.
- A provision implementing a Firefighters share plan using excess State funds will be added.
- Establish a Firefighters' Deferred Retirement Option Plan (DROP).

Funding Implications of Amendment

An actuarial cost estimate is attached. The amendment is being funded by additional annual revenue. As a result, the employer contribution for the first year will not be affected by this amendment.

Certification of Administrator

I believe the amendment to be in compliance with Part VII, Chapter 112, Florida Statutes and Section 14, Article X of the Constitution of the State of Florida.

For the Board of Trustees
as Plan Administrator

SUPPLEMENTAL ACTUARIAL VALUATION REPORT

Plan

Village of Key Biscayne Police Officers and Firefighters Retirement Plan

Valuation Date

October 1, 2007

Date of Report

December 9, 2008

Report Requested by

Board of Trustees

Prepared by

J. Stephen Palmquist

Group Valued

Active Firefighters and Police Officers

Plan Provisions Being Considered for Change

- The benefit multiplier would be increased from 3.0% to 4.0% for years of service greater than fifteen.
- A new condition for Normal Retirement would be established based on a combination of age and service totaling 75 years.
- A provision allowing for the purchase of an increased benefit multiplier would be added.
- A share plan using excess state revenue would be added.
- A Deferred Retirement Option Plan (DROP) would be added.

Participants Affected

All active Firefighters not including any Firefighters who terminate employment before passage of the amending ordinance.

Actuarial Assumptions and Methods

Same as October 1, 2007 Actuarial Valuation Report with no exceptions

Some of the key assumptions/methods are:

Investment return – 8.5% per year
Salary increase – 9.4% to 3.5% varies depending on service
Cost Method – Entry Age

Amortization Period for Any Increase in Actuarial Accrued Liability

30 years

Summary of Data Used in Report

See attached page.

Actuarial Impact of Proposal(s)

See attached page(s).

Special Risks Involved With the Proposal That the Plan Has Not Been Exposed to Previously

None

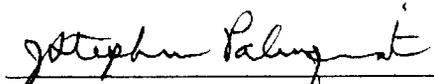
Other Cost Considerations

The decline in assets since 10/1/07 will likely increase the required contribution by the City in the 2009-2010 fiscal year whether or not this proposed amendment is passed.

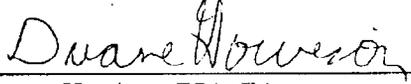
Possible Conflicts With IRS Qualification Rules

None

As indicated below, the undersigned are Members of the American Academy of Actuaries (MAAA) and meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion herein.



J. Stephen Palmquist, ASA, MAAA, FCA
Enrolled Actuary No. 08-1560



Duane Howison, FSA, EA
Enrolled Actuary No. 08-6169

CHAPTER 175 REVENUE

A. Valuation Date	October 1, 2007 <i>Valuation</i>	October 1, 2007 <i>4.0% Mult. after 15 yrs svc Rule of 75 For Firefighters</i>	<i>Increase (Decrease) From Valuation</i>
B. Chapter 175 Reserve Before Changes	\$ 605,245	\$ 605,245	\$ -
C. Reserve Used to Fund Proposed Change	-	-	-
D. Reserve Remaining	605,245	605,245	-
E. Chapter 175 Revenue in 2008	275,597	275,597	-
F. Base Amount of Annual Chapter 175 Revenue Before Changes	112,937	112,937	-
G. Chapter 175 Additional Annual Revenue (E-F)	162,660	162,660	-
H. Additional Annual Revenue Used to Fund Proposed Change	-	122,318	122,318
I. Additional Annual Revenue Remaining	162,660	40,342	(122,318)
J. Base Amount of Annual Revenue After Changes	112,937	235,255	122,318

ANNUAL REQUIRED CONTRIBUTION (ARC)

A. Valuation Date	October 1, 2007 <i>Valuation</i>	October 1, 2007 <i>4.0% Mult. after 15 yrs svc</i>	
		<i>Rule of 75 For Firefighters</i>	<i>Increase (Decrease)</i>
B. ARC to Be Paid During Fiscal Year Ending	9/30/2009	9/30/2009	
C. Assumed Date of Employer Contrib.	Monthly	Monthly	
D. Annual Payment to Amortize Unfunded Actuarial Liability	\$ 198,919	\$ 253,875	\$ 54,956
E. Employer Normal Cost	521,654	577,058	55,404
F. ARC if Paid on the Valuation Date: D+E	720,573	830,933	110,360
G. ARC Adjusted for Frequency of Payments	752,505	867,756	115,251
H. ARC as % of Covered Payroll	13.11 %	15.12 %	2.01 %
I. Assumed Rate of Increase in Covered Payroll to Contribution Year	6.00 %	6.00 %	- %
J. Total Covered Payroll for Contribution Year	6,085,450	6,085,450	-
K. Firefighters' Payroll for Contribution Year	3,470,418	3,470,418	-
L. ARC for Contribution Year: H x J	797,802	920,120	122,318
M. Estimate of State Revenue in Contribution Year*	158,284	280,602	122,318
N. Required Employer Contribution (REC) in Contribution Year	639,518	639,518	-
O. REC as % of Covered Payroll in Contribution Year: N ÷ J	10.51 %	10.51 %	- %

* \$122,318 of additional annual chapter revenue is used to fund proposed plan improvements

ACTUARIAL VALUE OF BENEFITS AND ASSETS

A. Valuation Date	October 1, 2007	October 1, 2007 <i>4.0% Mult. after 15 yrs svc Rule of 75 For Firefighters</i>	<i>Increase (Decrease)</i>
B. Actuarial Present Value of All Projected Benefits for			
1. Active Members			
a. Service Retirement Benefits	\$ 15,142,886	\$ 16,346,544	\$ 1,203,658
b. Vesting Benefits	1,507,503	1,711,645	204,142
c. Disability Benefits	1,643,502	1,557,856	(85,646)
d. Preretirement Death Benefits	416,119	387,367	(28,752)
e. Return of Member Contributions	69,571	69,571	-
f. Total	<u>18,779,581</u>	<u>20,072,983</u>	<u>1,293,402</u>
2. Inactive Members			
a. Service Retirees & Beneficiaries	1,765,868	1,765,868	-
b. Disability Retirees	-	-	-
c. Terminated Vested Members	333,497	333,497	-
d. Total	<u>2,099,365</u>	<u>2,099,365</u>	-
3. Total for All Members	20,878,946	22,172,348	1,293,402
C. Actuarial Accrued (Past Service)			
Liability per GASB No. 25	12,335,707	13,288,936	953,229
D. Plan Assets			
1. Market Value	9,533,919	9,533,919	-
2. Actuarial Value	9,017,393	9,017,393	-
E. Unfunded Actuarial Accrued			
Liability: C - E2	3,318,314	4,271,543	953,229
F. Actuarial Present Value of Projected Covered Payroll	48,680,132	47,426,662	(1,253,470)
G. Actuarial Present Value of Projected Member Contributions	5,111,414	4,979,799	(131,615)
H. Funded Ratio: D2/C	73.1 %	67.9 %	(5.2) %

CALCULATION OF EMPLOYER NORMAL COST

A. Valuation Date	October 1, 2007	October 1, 2007	<i>Increase (Decrease)</i>
		<i>4.0% Mult. after 15 yrs svc Rule of 75 For Firefighters</i>	
B. Normal Cost for			
1. Service Retirement Benefits	\$ 781,886	\$ 830,407	\$ 48,521
2. Vesting Benefits	97,184	107,128	9,944
3. Disability Benefits	158,255	155,877	(2,378)
4. Preretirement Death Benefits	18,942	18,042	(900)
5. Return of Member Contributions	20,752	20,969	217
6. Total for Future Benefits	<u>1,077,019</u>	<u>1,132,423</u>	<u>55,404</u>
7. Assumed Amount for Administrative Expenses	<u>47,439</u>	<u>47,439</u>	<u>-</u>
8. Total Normal Cost	<u>1,124,458</u>	<u>1,179,862</u>	<u>55,404</u>
C. Expected Member Contribution	602,804	602,804	-
D. Employer Normal Cost: B8-C	521,654	577,058	55,404
E. Employer Normal Cost as % of Covered Payroll	9.09 %	10.05 %	0.97 %

PARTICIPANT DATA		
	October 1, 2007	October 1, 2006
ACTIVE MEMBERS		
Number	65	64
Covered Annual Payroll	\$ 5,740,991	\$ 5,355,088
Average Annual Payroll	\$ 88,323	\$ 83,673
Average Age	41.0	42.2
Average Past Service	7.3	7.0
Average Age at Hire	33.7	35.2
RETIREES & BENEFICIARIES & DROP		
Number	12	9
Annual Benefits	\$ 180,175	\$ 134,357
Average Annual Benefit	\$ 15,015	\$ 14,929
Average Age	62.2	63.2
DISABILITY RETIREES		
Number	0	0
Annual Benefits	\$ 0	\$ 0
Average Annual Benefit	\$ 0	\$ 0
Average Age	0.0	0.0
TERMINATED VESTED MEMBERS		
Number	4	5
Annual Benefits	\$ 72,244	\$ 84,721
Average Annual Benefit	\$ 18,061	\$ 16,944
Average Age	44.6	48.2

ORDINANCE NO. 2009-

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE VILLAGE OF KEY BISCAYNE, FLORIDA BY AMENDING CHAPTER 23 “RETIREMENT” AT SECTION 23-31 “DEFINITIONS;” BY AMENDING SECTION 23-35 “CONTRIBUTIONS;” BY AMENDING SECTION 23-36 “BENEFIT AMOUNTS AND ELIGIBILITY;” BY AMENDING SECTION 23-56 “SHARE PLAN;” AND BY CREATING A NEW SECTION 23-57 “DEFERRED RETIREMENT OPTION PROGRAM” TO IMPLEMENT THE TERMS AND CONDITIONS OF THE COLLECTIVE BARGAINING AGREEMENT BETWEEN THE VILLAGE AND THE INTERNATIONAL ASSOCIATION OF FIREFIGHTERS; PROVIDING FOR INCLUSION IN CODE; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Village and the International Association of Firefighters have entered into a collective bargaining agreement setting forth terms and conditions of employment for Village firefighters; and

WHEREAS, the Village Council desires to amend the retirement plan for the Village’s firefighters to implement the benefit enhancements set forth in the collective bargaining agreement; and

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

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

Section 1. Recitals Adopted. That each of the above stated recitals is hereby adopted and confirmed.

Section 2. Village Code Amended. Section 23-31 “Definitions” of Chapter 23 “Retirement” of the Village Code is hereby amended to read as follows:¹

¹ / Proposed additions to the existing Village Code text are indicated by underline; proposed deletions from the existing Village Code text are indicated by ~~striketrough~~.

Sec. 23-31. Definitions.

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

* * * *

Share Plan means the benefit defined contribution plan that is part of the System as set forth in Section 23-56 of the Village Code. ~~The Share Plan is funded by any State contributions, pursuant to F.S. chs. 175 and 185, that exceed the levels set forth in section 23-35.~~

* * * *

Section 3. Village Code Amended. Section 23-35 “Contributions” of Chapter 23 “Retirement” of the Village Code is hereby amended to read as follows:

Sec. 23-25. 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. ~~Each year after September 30, 2000 in which the Member contribution rate is eight percent of Salary and the total of such rate plus the State contribution exceeds the total cost for the year (as shown by the most recent actuarial valuation of the System) such excess shall be contributed to the Share Plan.~~ 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.

(2) Method. Such contributions shall be made by payroll deduction.

* * * *

Section 4. Village Code Amended. Section 23-36 “Benefit Amounts and Eligibility” of Chapter 23 “Retirement” of the Village Code is hereby amended to read as follows:

Sec. 23-36. Benefit amounts and eligibility.

(a) *Normal retirement date.*

(1) A Member's normal retirement date shall be the first day of the month coincident with or the next following the earlier of attainment of age 55 and the completion of five years of Credited Service or attainment of age 52 and the completion of 25 years of Credited Service.

(2) A firefighter member shall be eligible to retire on the date upon which the total of a firefighter member's age, computed in full months, plus the firefighter member's credited service, computed in full months, equals 900 months (i.e. 75 years).

A Member may retire on his normal retirement date or on the first day of any month thereafter, and each Member shall become 100 percent vested in his accrued benefit on the Member's normal retirement date. Normal retirement under the System is retirement from employment with the Village on or after the normal retirement date.

(b) *Normal retirement benefit.*

(1) Police Officers. A police officer member retiring hereunder on or after his normal retirement date shall receive a monthly benefit which shall commence on his retirement date and be continued thereafter during his lifetime, ceasing upon his death, but for ten years certain in any event. The monthly retirement benefit shall equal three percent of Average Final Compensation for each year of Credited Service.

(2) Firefighters. A firefighter member retiring hereunder on or after his normal retirement date shall receive a monthly benefit which shall commence on his retirement date and be continued thereafter during his lifetime, ceasing upon his death, but for ten years certain in any event. The monthly retirement benefit shall be computed as follows:

(A) three percent of Average Final Compensation for the first fifteen (15) years of Credited Service; and

(B) four percent of Average Final Compensation for each year of credited service in excess of fifteen (15) years.

Notwithstanding anything herein to the contrary, the benefits provided in this section shall not exceed one hundred percent (100%) of a firefighter member's Final Average Compensation.

(c) *Early retirement date.* A Member may retire on his early retirement date which shall be the first day of any month coincident with or next following the later of the attainment of age 50 and the completion of five years of Credited Service. Early retirement under the System is retirement from employment with the Village on or after the early retirement date and prior to the normal retirement date.

(d) *Early retirement benefit.* A Member retiring hereunder on his early retirement date may receive either a deferred or an immediate monthly retirement benefit payable in the same form as for normal retirement as follows:

(1) A deferred monthly retirement benefit which shall commence on what would have been his normal retirement date had he continued employment as a Police Officer or Firefighter and shall be continued on the first day of each month thereafter. The amount of each such deferred monthly retirement benefit shall be determined in the same manner as for retirement on his normal retirement date except that Credited Service and Average Final Compensation shall be determined as of his early retirement date; or

(2) An immediate monthly retirement benefit which shall commence on his early retirement date and shall be continued on the first day of each month thereafter. The benefit payable shall be as determined in paragraph (1) above, reduced by 0.25 percent for each month by which his early retirement date precedes the date which would have been his normal retirement date had he continued employment as a Police Officer or Firefighter.

(e) Firefighter Benefit Enhancement. As determined by the actuary for the plan, and based upon the member's credited service at the time of retirement, a firefighter member who is eligible for normal or early retirement may, contemporaneously with the firefighter's retirement, purchase an increase to the benefit multiplier which is equivalent to one (1), two (2) or three (3) whole years of additional credited service. For the purpose of purchasing this benefit enhancement, a firefighter member may use either the value of the firefighter's accrued sick or annual leave (less required withholding taxes) valued in accordance with the Village's leave payoff policy or an applicable collective bargaining agreement; a tax-qualified transfer of funds from the member's 457 Deferred Compensation Plan; cash payment; or any combination of the foregoing. A firefighter member shall be responsible for the full actuarial cost of this benefit enhancement, plus the full cost of any actuarial or other professional services required to determine the benefit enhancement.

Section 5. Village Code Amended. Section 23-56 "Share Plan" of Chapter 23

"Retirement" of the Village Code is hereby re-titled and amended to read as follows:

Sec. 23-56. Firefighters' Share Plan.

~~(a) Allocation procedure. Each Member shall have a Share Account which will include the Member's share of contributions credited in accordance with section 23-35(a)(1), net investment earnings attributable to Share Accounts and forfeitures. As of each September 30, each Member's Share Account shall be computed as the total of:~~

- ~~(1) His Share Account as of the previous September 30;~~
- ~~(2) The portion of net investment earnings allocable to his Share Account;~~
- ~~and~~
- ~~(3) The product of the number of his shares multiplied by the value of each new share.~~

~~The portion of net investment earnings allocable to a Member's Share Account is equal to the ratio of his Share Account as of the previous September 30 to the total of all Share Accounts as of the previous September 30 with said ratio multiplied by the net investment earnings for the year.~~

~~The value of all new shares for the year is equal to the total of:~~

- ~~(4) Contributions credited pursuant to section 23-35(a)(1); and~~
- ~~(5) Forfeitures which arise during the year.~~

~~Each Participant shall receive one share for each full month of Credited Service during the year. The value of each new share shall be equal to the value of all new shares divided by the total number of shares in effect as of September 30.~~

~~(b) *Distribution.* In the event that a Member terminates his employment with the Village under any of the conditions listed below, he or his designated Beneficiary shall be eligible to receive from the Fund his Share Account as of the previous September 30. The applicable conditions for the distribution as just described are:~~

- ~~(1) Attainment by the Member of his early or normal retirement date;~~
- ~~(2) The Member's disability, as described in section 23-38; or~~
- ~~(3) The Member's death.~~

~~If a Member terminates employment with at least five years of Credited Service, his Share Account will be payable at his otherwise early or normal retirement date. Such Account shall continue to share in its portion of net investment earnings each year until the September 30 prior to the date of distribution of the Account. Such Account shall not be credited with contributions or forfeitures. Upon the death of such Member prior to the distribution of his Account, the Account shall be payable to his designated Beneficiary.~~

~~If the Member does not satisfy any of the listed conditions, he shall forfeit his Share Account. All such forfeitures shall be allocated to remaining participants as of the next September 30.~~

~~The Board shall administer the Share Plan in the same manner as it administers the defined benefit portion of this System. The Board shall make all determinations regarding eligibility and distribution of Share Plan monies.~~

(1) *Creation; purpose.*

Pursuant to F.S. §175.351(1)(a), the Village Council of the Village of Key Biscayne hereby creates a trust fund to be known as the "Village of Key Biscayne Firefighters' Share Plan." The purpose of this Share Plan is to place additional premium tax revenues pursuant to F.S. §§175.101 and 175.351 and earnings generated therefrom into a separate trust fund to pay extra benefits to Village firefighters who are

participants in the Village of Key Biscayne Police Officers and Firefighters Retirement Plan as of January 1, 2009. In accordance with the provisions of F.S. §175.351(1), this Share Plan has been approved by a majority of such participants. The Share Plan hereby created shall be in addition to any other benefits under the Village of Key Biscayne Police Officers and Firefighters Retirement Plan and nothing herein shall in any way affect any other benefits that now or hereafter exist.

(2) Definitions. The following words and phrases shall, unless otherwise defined or required by the context, for the purpose of the share plan, have the meanings indicated below.

- (a) “Account” means the participant’s share plan account credited with: (i) the initial allocation of unused premium tax revenues under section 3(a) hereof; (ii) subsequent annual allocation of additional premium tax revenues under section 3(b) hereof; (iii) allocations of forfeitures under section 3(c) hereof; and (iv) the net investment return on the participant’s share plan account in accordance with the participant’s investment election pursuant to sections 3(d), 3(e) and 3(f) hereof.
- (b) “Additional Premium Tax Revenues” means revenues received after January 1, 2009 by the Village pursuant to F.S. §175.121 that exceed \$235,255 per annum.
- (c) “Beneficiary” means any person designated by a participant to receive any benefits payable in the event of the participant’s death. If no beneficiary designation is in effect at the participant’s death, the participant’s surviving spouse, if any, shall be deemed to be the beneficiary; otherwise the beneficiary shall be the participant’s estate. A participant who retires on or after January 1, 2009 and before March 1, 2009 shall have thirty (30) days from notification by the Board to designate a beneficiary. A participant who retires after March 1, 2009 shall have thirty (30) days from the participant’s retirement date to designate a beneficiary.
- (d) “Board” means the board of trustees of the Village of Key Biscayne Police Officers and Firefighters Retirement Plan, who shall likewise serve as the board of trustees for this share plan. The board shall be the administrative board, which shall hold title to, supervise, administer and manage the assets of this share plan.
- (e) “Effective Date” means January 1, 2009 the date on which this share plan shall take effect.

- (f) “Extra Benefits” means benefits in addition to or greater than those provided to the general employees of the Village and in addition to those benefits in existence for firefighters who retired before January 1, 2009.
- (g) “Forfeiture” means the termination of a participant’s account under section 5 of this share plan.
- (h) “IRC” means the Internal Revenue Code of 1986 as same may be amended from time to time.
- (i) “Participant” means an actively employed full-time firefighter with the Village, including a firefighter serving a probationary period, who is certified as a Firefighter as a condition of employment in accordance with the provisions of F.S. § 633.35, and whose duty it is to extinguish fires, to protect life and to protect property on or after January 1, 2009.
- (j) “Retirement Plan” means the Village of Key Biscayne Police Officers and Firefighters Retirement Plan, codified at Village Code section 23-31 et seq.
- (n) “Retirement Plan Board” means the board of trustees of the Retirement Plan which serves as the administrative board thereof and holds title to, supervises, administers the Retirement Plan and manages the assets thereof.
- (o) “Share Plan” means the Village of Key Biscayne Firefighters’ Share Plan as set forth herein.
- (p) “Share Plan Year” or “Plan Year” means each October 1st through September 30th, commencing October 1, 2008.
- (q) “State” shall mean the State of Florida.
- (r) “Trustee” means any member of the Board.
- (s) “Unused Premium Tax Revenues” means the revenues heretofore received by the Village pursuant to F.S. §175.121 prior to January 1, 2009, that have not been used to provide extra benefits for Village firefighters as of January 1, 2009.
- (t) “Valuation Date” or “Annual Valuation Date” means September 30th of any Share Plan Year. The Annual Valuation Date shall be the date upon which the fair market value of the assets of the Share Plan shall be

determined.

(u) “Vested Participant” means a participant with at least five (5) years of credited service in the Retirement Plan.

(v) “Village” means the Village of Key Biscayne, Florida.

(w) “Village Code” means the Code of Ordinances of the Village of Key Biscayne as the same may be amended from time to time.

(3) Funding; allocation to accounts.

(a) Allocation of Unused Premium Tax Revenues. Upon implementation of this Share Plan and as soon as practicable, the Board shall allocate to each Participant’s account the Participant’s per capita share of the Unused Premium Tax Revenues.

(b) Allocation of Additional Premium Tax Revenues Received for Calendar Year 2008 and thereafter. Upon implementation of this Share Plan and as soon as practicable upon receipt by the Board of the Additional Premium Tax Revenues it receives under the provisions of F.S. § 175.121, the Board shall allocate to each Participant’s account the Participant’s per capita share of the Additional Premium Tax Revenues. The Village shall not be required to levy any additional taxes on its residents or to make any contributions to the Share Plan.

(c) Allocations of forfeitures. As of the Annual Valuation Date in each Share Plan Year, all amounts forfeited under Section 5 since the preceding Annual Valuation Date shall be prorated and credited to the accounts of the individual Participants in the same manner as the allocations under subparagraph (b) above.

(d) Initial account investment election. Upon implementation of this Share Plan or as soon as practicable, the Board shall establish a deadline for Vested Participants to submit initial investment elections for the remainder of the calendar year. Thereafter, each Participant upon becoming a Vested Participant, shall submit in writing, within thirty (30) days, an irrevocable investment election for the remainder of the calendar year. If a Participant fails to submit a written investment election to the Board, then the default investment election for the Participant's Share Plan Account shall be as determined by the Board.

- (e) Annual account investment election. Each Vested Participant shall be required to make an annual investment election for the Participant's Share Plan Account among the investment options approved by the Board for Share Plan Accounts. Vested Participants shall, between November 15th and December 15th of each calendar year, submit the Participant's investment election to the Board for the succeeding calendar year. If a Participant fails to submit a written investment election to the Board by December 15th, then the default investment election for the succeeding calendar year for Participant's Share Plan Account shall be as determined by the Board.
- (f) Account investment for non-vested participants. A non-Vested Participant's Share Plan Account shall be invested as determined by the Board until such time as the participant becomes a Vested Participant and the Board receives an initial investment election in accordance with subsection 3(d) hereof.
- (g) Payment of costs, expenses and fees. All costs, expenses and fees of administering the Share Plan shall be paid from the assets of the Share Plan in such fashion as the Board shall determine. Any allocation to a Participant's Account shall be net of the Participant's share of the costs, expenses and fees of administering the Share Plan.
- (h) Exclusive benefit rule. No part of the assets of the Share Plan shall be used for or diverted to any purpose whatsoever other than for the exclusive benefit of Participants thereof in accordance with the terms hereof and paying the expenses of the Share Plan as provided in subsection (g) above. No person shall have any interest in or right to any part of the assets of the Share Plan except as and to the extent expressly provided in the Share Plan.
- (i) Custody of fund assets. The Board shall hold custody of Share Plan in trust solely for use in paying the benefits provided by the Share Plan in accordance with the terms hereof and paying expenses of the Share Plan as described in subsection (g) above.
- (j) Maximum allocation limitation. Notwithstanding any provision of this share plan to the contrary, the maximum amount allocated to the participant's or eligible beneficiary's account for any calendar year under the provisions of subsections (a), (b) and (c) of this Section 3 shall not exceed the limitations set forth in IRC section 415 and any regulations issued thereunder.

(4) Participation.

(a) Establishment of Share Plan Account. An Account shall be established for each eligible Participant subsequent to the effective date of this Ordinance.

(b) Distribution. A vested Participant shall receive a distribution of his benefits from this Share Plan upon the Participant's commencement of retirement benefits under the Retirement Plan. The Participant's distribution shall be equal to the balance in his Account on the Participant's retirement date. A Participant shall receive his benefit in a single lump sum, as soon as practicable, unless he elects to receive his distribution in one of the following optional forms:

1. Equal annual payments over a period, designated by the Participant, not to exceed the life expectancy of the last to survive of the Participant and his Beneficiary. In the event the Participant dies before all installments have been paid, the remaining balance in his account shall be paid in an immediate lump sum to his Beneficiary, if still living, or if the Participant does not have a Beneficiary or if the Beneficiary has predeceased the Participant, to the Participant's estate. Upon written request of the Participant (or his Beneficiary in the event of the Participant's death), the Board may permit the Participant (or his Beneficiary, as the case may be) to withdraw all or any portion of his unpaid account after payment of the benefit has commenced.

2. An annuity.

3. An eligible rollover distribution paid directly to another qualified retirement plan.

4. A transfer to the Fund of the Retirement Plan in order to purchase the firefighter benefit enhancement set forth in Section 23-36(e).

A written notice of election to receive payments in an optional form must be filed with the Board upon a form prescribed by the Board, and must be sworn to by the person entitled to receive such monies.

(c) Termination of participation. Every individual who is a Participant as of the effective date shall remain a Participant until death, termination of employment with the Village as a firefighter or retirement. The Board may require and rely upon such proof of death and such evidence of the right of any eligible Beneficiary to receive the value of the Account of a deceased Participant as the Board may deem proper and its determination of the right of that Beneficiary to receive payment shall be conclusive.

(d) Payment of benefits. Benefits under this Section 4 shall be payable as soon as possible following the payment date described in subsection (b) above. Acceptance of any partial or full payment of a Participant's Account as provided in this Section 4 shall be in full settlement of all claims of a Participant or Beneficiary against the Share Plan as to the partial or full payment received.

(5) Forfeitures.

(a) Forfeiture without cause. If a Participant terminates his employment with the Village as a firefighter for any reason whatsoever prior to completing five (5) years of credited service in the Retirement Plan, the Participant's Share Plan Account shall be forfeited and allocated to the accounts of all remaining Participants in accordance with the provisions of paragraph (c) of Section 3 above.

(b) Forfeiture for cause. Notwithstanding anything in the plan to the contrary, if a participant or beneficiary is convicted of a specified offense as set forth in F.S. §112.3173, as same may be amended from time to time, or F.S. § 175.195, as same may be amended from time to time, the provisions of either F.S. §112.3173 and F.S. § 175.195, as applicable, shall apply and the Participant or Beneficiary shall forfeit all rights to receive a benefit from the Share Plan. For purposes of this subsection (b), "convicted" and "specified offense" shall have the meanings given to them in either F.S. §112.3173 or F.S. § 175.195, as may be applicable.

(6) Miscellaneous provisions.

(a) Village's responsibilities. The Village shall have no responsibility for the operation of this Share Plan except those specified herein.

(b) Facility of payment. If the Board finds that a Participant or other person entitled to a benefit is unable to care for his or her affairs or is a minor or is legally incapacitated, the Board may direct that any benefit due such individual shall be paid to the individual's duly appointed legal representative. Any payment so made shall be a complete discharge of the liabilities of this Share Plan for that benefit.

(c) Information. Each Participant, Beneficiary or other person entitled to a benefit, before any benefit shall be payable to such individual or credited to the Participant's Account under the fund, shall file with the Board the information that it shall require to establish the individual's rights and benefits under the Share Plan.

- (d) Severability of provisions. If any provision of this Share Plan is for any reason held unconstitutional, inoperative or void, such holding shall not affect the remaining provisions of this Share Plan. It is the intent of the Village Council to create this Share Plan without such unconstitutional, inoperative or void provision and the remainder of the share plan, after the exclusion of such provision, shall be deemed and held to be valid as if such provision had not been included herein.
- (e) Reports. The Board shall issue a report of this Share Plan's operations at least annually.
- (f) Reservations of right to amend Share Plan. Subject to the provisions of F.S. Ch. 447, Pt. II, the Village reserves the right at any time to amend or modify this Share Plan, provided that no amendment shall cause any part of the Share Plan assets to be used or diverted to purposes other than the exclusive benefit of the Participants and their Beneficiaries.
- (g) Termination and discontinuance. Subject to the provisions of F.S. Ch. 447, Pt. II, this Share Plan may be terminated by the Village. Upon termination of this Share Plan, the Share Plan assets shall be apportioned and distributed in accordance with the allocation formulas set forth herein.

Section 6. Village Code Amended. Section 23-57 "Deferred Retirement Option Program (DROP)" of Chapter 23 "Retirement" of the Village Code is created and reads as follows:

Sec. 23-57. Firefighter Deferred Retirement Option Program (DROP).

- (1) A Deferred Retirement Option Plan (DROP) for firefighter members shall be adopted and administered by the Board.
- (2) Participation in the DROP shall be limited to five years. The five-year participation period shall be measured from actual retirement of the firefighter.
- (3) Upon entering the DROP, a firefighter participant shall make an investment election for the firefighter's DROP account among the investment options approved by the Board for DROP accounts. Thereafter, between November 15th and December 15th of each year, firefighter participants shall make an annual irrevocable investment election among the investment options approved by the Board for DROP accounts for the following calendar year. Investment elections shall be in writing and submitted to the Retirement

Board by no later than December 15th of each year. If a firefighter participant fails to timely submit a written investment election to the Retirement Board, the default investment election for the participant's DROP account will be determined by the Board for the calendar year.

(4) Upon termination of employment as a firefighter with the Village, the participant's DROP account shall be distributed to him. The firefighter participant's distribution shall be equal to the balance in his DROP Account on the termination date. The firefighter participant shall receive his benefit in a single lump sum unless he elects to one of the following optional forms:

(a) Equal annual payments over a period, designated by the firefighter participant, not to exceed the life expectancy of the last to survive of the participant and his beneficiary. In the event the firefighter participant dies before all installments have been paid, the remaining balance in his account shall be paid in an immediate lump sum to his beneficiary, if still living, or if the firefighter participant does not have a beneficiary or if the beneficiary has predeceased the participant, to the participant's estate. Upon written request of the firefighter participant (or his beneficiary in the event of the participant's death), the Board may permit the participant (or his beneficiary, as the case may be) to withdraw all or any portion of his unpaid account after payment of the benefit has commenced.

(b) An annuity.

(c) An eligible rollover distribution paid directly to another qualified retirement plan.

A written notice of election to receive distribution in an optional form must be filed with the Board upon a form prescribed by the Board, and must be sworn to by the person entitled to receive such monies.

(5) The DROP shall contain such other terms and conditions as the Board deems necessary and appropriate for proper administration of the DROP.

Section 7. 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 8. 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 made a part of the Code of Key Biscayne, Florida; that the sections of this Ordinance may be renumbered or re-lettered to accomplish such

intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 9. Effective Date. This Ordinance shall take effect immediately upon passage by the Village Council on second reading.

PASSED AND ADOPTED on first reading this 24th day of February, 2009.

PASSED AND ADOPTED on second reading this _____ day of _____, 2009.

MAYOR ROBERT L. VERNON

ATTEST:

CONCHITA H. ALVAREZ, MMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

VILLAGE ATTORNEY