

**VILLAGE OF KEY BISCAYNE  
ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA (“VILLAGE”), AMENDING THE VILLAGE CODE BY AMENDING CHAPTER 23 “RETIREMENT,” SECTION 23-31 “DEFINITIONS,” SECTION 23-35 “CONTRIBUTIONS,” AND SECTION 23-36 “BENEFIT AMOUNTS AND ELIGIBILITY”, TO INCREASE THE BENEFIT MULTIPLIER TO 3%, PROVIDE FOR THE PURCHASE OF PAST SERVICE CREDIT, PROVIDE AN ALTERNATIVE 80% BENEFIT CAP, INCREASE THE MAXIMUM VILLAGE CONTRIBUTION RATE TO 20% OF COVERED PAYROLL, AND PROVIDE A MINIMUM FUNDED RATIO OF 80%; 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 certified firefighters employed in the Village’s Police and Fire Departments; and

**WHEREAS**, the Village has ratified collective bargaining agreements with the Key Biscayne Professional Firefighters Association, Local 3638, and Key Biscayne Police Officers Association, Local 6023, for the term of October 1, 2017 through September 30, 2020 (“CBAs”); and

**WHEREAS**, the CBAs contain changes to the Retirement Plan; and

**WHEREAS**, to implement the Retirement Plan changes it is necessary to adopt an ordinance amending the Retirement Plan.

**NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAIYNE, FLORIDA, AS FOLLOWS:<sup>1</sup>**

**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 23-31 “Definitions” to read as follows:

**Sec. 23-31. - Definitions.**

\* \* \*

*Credited Service* means the total number of years and fractional parts of years of service as a Police Officer or Firefighter with Member contributions, when required, omitting intervening years or fractional parts of years when such Police Officer or Firefighter was not employed by the Village. No credit shall be permitted for service prior to August 1, 1993. The period of any absence of 31 days or more will be excluded from a Member's Credited Service unless he receives regular compensation from the Village during such absence and except as otherwise provided below. Any absence of 30 days or less will be included.

A Member may voluntarily leave his contribution in the Fund for a period of five years after leaving the employ of the Village pending the possibility of being reemployed as a Police Officer or Firefighter without losing credit for the time that he was a Member of the System. If the Member who left the employ of the Village should not be reemployed as a Police Officer or Firefighter within five years, then the Accumulated Contributions will be returned upon his written request.

The years or fractional parts of years that a Member serves in the military service of the Armed Forces of the United States or the United States Merchant Marine, voluntarily or involuntarily, for the purpose of going on active duty, shall be added to his years of Credited Service for all purposes, including vesting, pursuant to conditions that are required or permitted under state and federal law, as amended from time to time, provided that the Police Officer or Firefighter must return to his employment as a Police Officer or Firefighter within one year from the date of his military discharge or release from active service under honorable conditions and must make a payment to the System in the amount that he or she would have contributed had he or she not entered the military. This section is intended to meet or exceed the minimum

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

requirements of the Uniformed Services Employment and Reemployment Rights Act (USERRA), (P.L. 103-353). To the extent that this section does not meet the minimum standards of USERRA, as it may be amended from time to time, the minimum standards shall apply.

Members may purchase Credited Service for service in the United States Armed Forces or service as a Florida certified firefighter or law enforcement officer prior to employment with the Village. The total amount of such service purchased, when combined with the purchase of the additional benefit multiplier provided in section 23-36(e), may not exceed five years. For the purpose of purchasing this past service credit, a member may use either the value of his/her 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 member must pay the full actuarial cost of the Credited Service purchased, plus the full cost of actuarial or other professional services required.

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**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 23-35 "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 \$504,093.00 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 \$504,093.00 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 \$504,093.00 shall be applied to reduce future Village contribution requirements under the Plan for Police Officer Members. Effective June 26, 2018 ~~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 2014 percent 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 2014 percent 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.~~

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

(b) *State contributions.* Any monies received or receivable by reason of laws of the State of Florida, for the express purpose of funding and paying for retirement benefits for Police Officer or Firefighters of the Village shall be deposited in the Fund comprising part of this System immediately and under no circumstances more than five days after receipt by the Village. By mutual agreement of the Village and the unions representing Village Police Officers and Firefighters, all premium tax revenues received pursuant to Chapters 175 and 185, Florida Statutes shall be used to reduce the Village's contributions to the Plan. Any premium tax revenues received by the Plan on or before March 10, 2014, pursuant to F.S. ch. 175 shall be used and administered in accordance with the Plan as it existed as of that date. Any and all premium tax revenues received by the Plan after March 11, 2014 pursuant to F.S. ch. 175 shall be used by the Plan to reduce the Village's pension contributions to the Plan and shall no longer be placed into a separate trust fund to pay extra benefits to Firefighter Members. Any and all premium tax revenues that were or will be received by the Plan pursuant to F.S. ch. 185, including any unallocated premium tax revenues as of August 25, 2014 and the full amount of premium tax revenues received by the Village on or after August 26, 2014 shall be used by the Plan to reduce the Village's pension contributions to the Plan, and the Village may enact provisions acceptable to the State Division of Retirement to implement this provision.

(c) *Village contributions.*

(1) So long as this System is in effect, the Village shall make contributions to the Fund in an amount equal to the difference in each year between the total aggregate Member contributions for the year, plus State contributions for such year that are not contributed to the Share Plan, and the total cost for the year, as shown by the most recent actuarial valuation of the System. The total cost for any year shall be defined as the total normal cost plus the additional amount sufficient to amortize the unfunded past service liability in accordance with the requirements of F.S. ch. 112. Notwithstanding the foregoing, ~~effective March 11, 2014 for the Firefighter portion of the Plan~~

~~and effective August 26, 2014 for the Police Officer portion of the Plan, the Village's annual contribution into each respective portion of the Fund shall not exceed the Village's Cap as provided in subsection (a) above.~~

(2) Effective June 26, 2018 the minimum funded ratio (actuarial value of assets divided by the actuarial accrued liability) for the Police and Fire portions of the Fund shall be 80 percent based on an assumed rate of return of seven and one-half percent. In the event the funded ratio for the Police or Fire portion of the Fund should fall below 80 percent based on an assumed rate of return of seven and one-half percent ~~Effective March 11, 2014, the maximum unfunded liability for the Firefighter Members' portion of the Fund shall not exceed \$3,024,000.00 (the "Fire UAL Cap") and effective August 26, 2014, the maximum unfunded liability for the Police Officer Members' portion of the Fund shall not exceed \$1,776,000.00 (the "Police UAL Cap"). If the unfunded liability of either portion of the Fund increases over the respective Fire or Police UAL Cap, the System's multiplier for the Members of that portion of the Plan shall be automatically reduced for prospective service of the Members of that portion of the Plan to the extent necessary to keep such Members' portion of the Fund's funded ratio at 80 percent unfunded liability under the respective Fire or Police UAL Cap. Alternatively, the Members of the portion of the Plan in which the funded ratio has fallen below 80 percent where the UAL Cap has been exceeded shall have the option of increasing their Member contribution paying off any unfunded liability in excess of the respective UAL Cap or of making other design changes to that portion of the System in accordance with State law so that the funded ratio is at least 80 percent unfunded liability of that portion of the Plan does not exceed the applicable UAL Cap. Should the Firefighter Members and/or Police Officer Members of the Plan wish to exercise either such alternative, the applicable unions representing the members of such groups must provide the Village with written notification prior to August 1<sup>st</sup> preceding the fiscal year following the date on which the funded ratio for the Police or Fire portion of the Fund falls below 80 percent based on an assumed rate of return of seven and one-half percent respective portion of the Plan's unfunded liability otherwise would exceed the applicable UAL Cap.~~

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**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 23-36 "Benefit amounts and eligibility" to read as follows:

**Sec. 23-36. - Benefit amounts and eligibility.**

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(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 earned before August 26, 2014, ~~and shall equal two and three quarters percent of Average Final Compensation for each year of Credited Service earned on or after August 26, 2014~~ and before October 1, 2017, and three percent of Average Final Compensation for each year of Credited Service earned on or after October 1, 2017.

(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 for each year of Credited Service earned before March 11, 2014 shall be computed as follows:

- a. Three percent of Average Final Compensation for the first 15 years of Credited Service; and
- b. Four percent of Average Final Compensation for each year of credited service in excess of 15 years.

For all years of Credited Service earned on or after March 11, 2014 and before October 1, 2017, the monthly retirement benefit for Firefighter Members shall be two and three quarters percent of Average Final Compensation, and for all years of Credited Service earned on or after October 1, 2017, the monthly retirement benefit for Firefighter Members shall be three percent of Average Final Compensation, regardless of the Firefighter Members' Credited Service.

Notwithstanding anything herein to the contrary, the benefits provided in this section shall not exceed 100 percent of a Firefighter Member's Final Average Compensation for those Firefighter Members who retire or enter DROP prior to March 11, 2014.

Effective ~~June 26, 2018~~ March 11, 2014 for Firefighter Members and ~~effective August 26, 2014 for Police Officer Members~~, the annual service retirement benefit based on the normal annuity form (life with ten-year certain) payable for Members shall not exceed the greater of: (a) the lesser of \$90,000.00 or 90 percent of the Member's Average Final Compensation; or (b) 80 percent of the Member's Average Final Compensation (hereinafter the "Benefit Cap"), provided, however, that under no circumstances shall a Member receive an amount of monthly retirement annuity which is less than two percent per year of the Member's Credited Service. The Benefit Cap will apply to the normal form of benefit. If an optional form of benefit is selected, the Benefit Cap will be adjusted to that it is actuarially equivalent to the normal form using the same actuarial factors as used to determine the amount of the optional form of benefit. The Benefit Cap shall apply to all Members except those Firefighter Members who

entered the DROP before March 11, 2014 and those Police Officer Members who entered the DROP before August 26, 2014. For those Firefighter Members that reached the Benefit Cap prior to March 11, 2014 and for those Police Officer Members who reached the Benefit Cap prior to August 26, 2014, their cap shall be the amount of annual service retirement as calculated on March 10, 2014 for Firefighter Members and August 25, 2014 for Police Officer Members and they must continue to contribute into the Fund in the same manner as other Members.

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(g) Police Share Plan. In accordance with section 185.35(6), F.S., a defined contribution plan component ("share plan") is hereby established as part of the Plan, to be funded entirely with Ch. 185 premium tax revenues. However, the Village and the union representing Village Police Officers have mutually agreed that no Ch. 185 premium tax revenues will be allocated to the share plan at this time. The Village and union have further agreed that the share plan shall not be activated until the parties mutually agree that Ch. 185 premium tax revenues will be allocated to the share plan.

**Section 4.** **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 5.** **Conflicts.** All ordinances or parts of ordinances, resolutions or parts of resolutions, in conflict herewith, are repealed to the extent of such conflict.

**Section 6.** **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 7.** **Effective Date.** That this Ordinance shall be effective immediately upon adoption on second reading.

PASSED AND ADOPTED on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

PASSED AND ADOPTED on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

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MAYRA PENA LINDSAY, MAYOR

ATTEST:

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JENNIFER MEDINA, MMC  
VILLAGE CLERK

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

\_\_\_\_\_  
VILLAGE ATTORNEY