

THE CITY OF NORTH MIAMI BEACH

RETIREMENT PLAN

FOR

POLICE OFFICERS AND FIREFIGHTERS

OF

CITY OF NORTH MIAMI BEACH

MARCH 15, 1990

ARTICLE I: CREATION; AMENDMENT; TERMINATION

§ 1.01 AUTHORIZATION

The City of North Miami Beach Retirement plan, for Police Officers and Firefighters, hereinafter referred to as "RETIREMENT PLAN", is hereby established under the provisions of Ordinance 89-18 as revised and restated by Ordinance 65-30.

§ 1.02 PURPOSE

The purpose of the retirement plan is to provide benefits to the Police Officers and Firefighters of the City and their beneficiaries upon the occurrence of retirement, death or disability of the employee.

§ 1.03 NAME

The plan hereby created by the City shall be known as the Retirement Plan for Police Officers and Firefighters of the City of North Miami Beach.

§ 1.04 EFFECTIVE DATE

The plan, effective October 1, 1965, becomes effective as revised and restated January 1, 1990, and is an amendment, restatement and continuation of the superseded plan, adopted effective as of July 1, 1957.

§ 1.05 AMENDMENT OF PLAN

- (a) Resolution of City - The plan may be amended by the City from time to time in any respect whatever, by resolution of City Council of North Miami Beach, specifying such amendment, subject only to the following limitations:
- (1) Approval of Participants - Approval of 60% of the active members shall be required before the plan may be amended by the City Council. Changes to benefits or contributions will be negotiated as required by Chapter 447, Florida Statutes.

- (A) Such consent shall not be required if such amendment pertains to the actuarial soundness of the plan as determined by the actuary employed by the City Council in accordance with Section 5.06 or if such amendment shall be necessary to comply with any laws or regulations of the United States or of any state to qualify this as a tax-exempt plan and trust.
- (2) Report and Recommendation from City Manager and the actuary, and/or any other pension board consultant shall be required before the plan may be amended by the City Council.
- (3) Distribution for Benefit of Participants Only - Such amendment shall, under no condition result in or permit the return or repayment to the City of any property held or acquired by the trustee or the proceeds thereof or result in or permit the distribution of any such property for the benefit of anyone other than the participants and their beneficiaries or joint pensioners, except to the extent provided by section 5.09 (Expenses of Administration) and section 8.06 (Termination of Plan and Distribution of Trust Fund).
- (4) Duties of Trustees Under Amendment - Such amendment shall, under no condition change the duties or responsibilities of the trustee [hereunder] without its written consent.
- (b) Retroactive Amendment - Subject to the foregoing limitations, any amendment may be made retroactive which, in the judgment of the retirement committee, is necessary or advisable. Such retroactive amendment shall not deprive a participant, without his consent, of a right to receive those benefits hereunder, which have already fully vested and matured in such participant. Such modification or amendment shall be as necessary to comply with any laws or regulations of the United States or of any state to qualify this as a tax-exempt plan or trust.

#### § 1.06 TERMINATION OF PLAN

- (a) By Ordinance - The plan may be terminated by the City at any time by delivering to the trustee in writing an ordinance of the City Council of North Miami Beach, duly certified by an official of the City, specifying that,

- i) the plan is being terminated, or
- ii) contributions thereunder are being permanently discontinued.

(b) Automatic Termination - The plan shall automatically terminate only upon adjudication by a court of competent jurisdiction that the City is bankrupt or insolvent (whether such proceedings be voluntary or involuntary), upon dissolution of the City or upon the liquidation, merger or consolidation without provisions being made by its successor, if any, for the continuation of the plan.

## ARTICLE II: DEFINITIONS

For the purposes of the Retirement Plan, certain words and phrases shall have the meanings ascribed to them in this article except where the context otherwise requires. The masculine pronoun, wherever used, shall include the feminine.

*Actuarial Equivalent* as used herein means equality in value of the aggregate amounts expected to be received under different forms of payment. Actuarially Equivalent amounts will be determined for all purposes based on the 1951 Group Annuity Mortality Table projected by Scale C to 1965 with interest at 8.0% where the Participant's age shall be set back one (1) year and the Beneficiary's age shall be set back four (4) years for all calculations.

*Basic Compensation for Police Officers* means, as per the State Statute, the total cash remuneration paid to a police officer for services rendered.

*Basic Compensation for Firefighters* means the regular fixed monthly compensation actually paid to a participant by Metropolitan Dade County.

*Beneficiary* means the surviving person or persons designated as such by a Member or Retirant in the last written designation on file with the Board in accordance with section 7.02. In the absence of such survivor or such designation, it means the estate of the deceased Member or Retirant, as the case may be.

*City Council or Council* means the City Council of the City of North Miami Beach, Florida.

*City or Employer* means the City of North Miami Beach, Florida.

*Credited Service* means service credited to a member under the plan provided in Article III.

*Disability* means, in the opinion of the Retirement Committee, the employee is wholly prevented from rendering useful and efficient service as a police officer and/or firefighter.

**Employee** means sworn police officers, and former firefighters employed by the City of North Miami Beach as defined herein.

**Enrolled Actuary** means an actuary who is enrolled under Subtitle C of Title III of the Employee Retirement Income Security Act of 1974 and who is a member of the Society of Actuaries or the American Academy of Actuaries.

**Final Monthly Compensation** means the participant's average monthly rate of compensation from the City or County for the sixty (60) successive months out of the 120 months next preceding his termination date, which give the highest average monthly rate of compensation for the participant.

The participant's average monthly rate of compensation will be determined by dividing the total basic compensation received by him during such 60 month period by the number of months for which he received compensation from the City or County in such 60 month period.

In computing "final monthly compensation" for a participant who has returned to the active service of the City or County following a leave of absence granted by the City or County during which he did not receive regular compensation from the City, or County following a period of disability retirement or termination of service with a vested benefit, as described in sections 6.03(i) and 6.04(a)(5) hereof respectively, the period during which he was on leave of absence, or during which he was on disability retirement, or during which his service was terminated, shall be ignored or excluded, in determining the 120 successive months preceding a subsequent date of termination of service or his date of early or normal retirement.

**Firefighter** means any firefighter who is a current member of the plan who was formerly employed by the City of North Miami Beach and now employed by Metropolitan Dade County.

**Leave of Absence** means a grant of leave by the retirement committee because of illness, military service or for any other reason that does not terminate the employee's service.

*Members* means any police officer or firefighter included in the membership of the plan, as provided in Article III. A member who retires shall be deemed a retired member or retirant.

*Normal Retirement Date* for firefighters means the first day of any month coincident with or next following the date a member attains the age of 52.

*Normal Retirement Date* for police officers means the first day of any month coincident with or next following the earlier of the completion of 23 years of credited service or attainment of age 52.

*Participant's Contribution Account* means the required contributions paid by any member as provided in section 4.01 or credited to the member pursuant to section 4.02, together with any interest allowed thereon under this plan until such time as the employee's service with the City is terminated at the rate computed annually, as determined by the committee from time to time.

*Pension* means the monthly amount payable to a Pensioner under the Plan. The pension shall be due as of the first day of the calendar month next following the death of a member. It shall cease after the payment due on the first day of the month in which the Pensioner ceases to be entitled thereto according to the provisions of this Plan.

*Pensioner* means the dependent beneficiary of a member or retirant in receipt of a pension under the Plan as the result of the death of said member or retirant.

*Permanent Disability* means the disabled employee according to the retirement committee is likely to remain disabled continuously and permanently from a cause other than specified in Section 6.03.

*Physical Examiners* means the physicians provided for in section 6.03.

*Plan* means the retirement plan established herein to be known and cited as the Retirement Plan for Police Officers and Firefighters of City of North Miami Beach.

**Plan Trust Fund** means the trust fund established by this plan for the purpose of holding and investing the contributions paid by members and employers and paying the benefits to which members or their beneficiaries may be entitled.

**Police Officer** means any person who is elected, appointed, or employed full time by the City of North Miami Beach. Full time shall include a police officer working forty hours a week or employed to work forty hours a week or with compensated leave time equaling forty hours a week. He shall be certified or required to be certified as a law enforcement officer in compliance with F.S. 943.14, who is vested with authority to bear arms and make arrests, and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers, but does not include part-time law enforcement officers or auxiliary law enforcement officers as the same are defined in F.S. 943.10(5) and (7), respectively.

**Retirant** means a person in receipt of retirement allowance payments under the Plan or the basis of his service as an employee.

**Retirement Committee** or "Committee" means the managing board of the Retirement Plan.

**Service** means that period of continuous uninterrupted employment with the City and its designated successors from the employee's or participant's last date of employment to the earlier of the date of termination of his credited service and his retirement, as defined in Article III.

**Social Security Coverage** means old-age, survivors, disability and health insurance, as provided by the United States Social Security Act (42 U.S.C.A. 301).

**Spouse** means the legally recognized spouse of the member at the time of his death.

Trustee means the trustees appointed by the retirement committee to administer the trust fund created for the purposes of the Plan or such other trustee the committee may designate from time to time.

ARTICLE III: MEMBERSHIP

§ 3.01 Eligibility: Participation

- (a) **Date of Participation** - The date on which each such employee will become a participant in the plan shall be:
- (i) January 1, 1990 for each employee who was a participant in the RETIREMENT PLAN FOR EMPLOYEES OF CITY OF NORTH MIAMI BEACH effective October 1, 1965.
  - (ii) The date as of which each employee commences employment with the City.

§ 3.02 SERVICE

- (a) **Definition** - The term service means that period of continuous, uninterrupted employment with the City and its designated successors from the employee's or participant's last date of employment to the earlier of the date of termination of his credited service and his retirement as herein described.
- (b) **Termination** - Any absence from the active service of the city, including but not limited to, absences by reason of discharge or resignation, which is not deemed a leave of absence as defined herein, will be considered a termination of service. (except as provided in Section 6.04(a)(5)(C))

§ 3.03 LEAVE OF ABSENCE

- (a) **In General** - Absence from the active service of the City by reason of leave of absence granted by the City because of illness or military service, or for any other reason, will not terminate an employee's or participant's service. However, he must return to the active employment of the City at or prior to the expiration of his leave or, if not specified therein, within the period of time which accords with the City's policy with respect to permitted absences.
- (b) **Termination and Exception**. If the employee or participant does not return to the active employment of the City at or prior to the expiration of his leave of absence (as above defined) his service will be considered terminated as of the date on which his leave began.

1) Disability or Death on Leave - Except for the absence because of military service, if such employee or participant is prevented from his timely return to the active employment of the City because of his total and permanent disability or his death, he shall, nevertheless, be entitled to any disability benefit as provided in section 6.03 hereof or to any death benefit as provided in section 6.04 hereof, whichever is applicable, as though he returned to active employment immediately preceding the date of his total and permanent disability or his death.

(c) Military Service. Absence from the active service of the City because of compulsory engagement in military service will be considered a leave of absence granted by the City. Such absence will not terminate the service of an employee or a participant if he returns to the active employment of the City within the period of time during which he has re-employment rights under any applicable Federal law or within 60 days from and after discharge or separation from such compulsory engagement if no Federal law is applicable. No provision of this paragraph or in this plan shall require re-employment of any employee or participant whose active service with the City was terminated by reason of military service.

#### § 3.04 CREDITED SERVICE

(a) Defined - The credited service of each employee or participant, will be the total period of his service as defined in section 3.02, "Service", computed in completed calendar months, from the last date of employment until the first day of the month coincident with or next following his date of actual retirement or termination of employment. (See Section 6.04(a)(5)(C))

(b) Exclusion From Credited Service - The period of any absence of 31 days or more will be excluded from an employee's or participant's credited service unless he receives regular compensation from the City during such absence and except or otherwise provided below. Any absence of 30 days or less will be included in the employee's credited service.

(c) Military Service.

(1) First Two Years of Absence - The first 2 years of any absence due to the employee's or participant's engagement in military service will be included in his credited service if such absence is covered by a leave of absence granted by the City or is by reason of compulsory military service.

(2) **Absence Prior to Effective Date of Plan** - An employee or a participant who was absent prior to the effective date of the plan because of his engagement in military service will be credited for the full period of such absence if such absence was covered by a leave of absence granted by the City or was by reason of compulsory military service provided such period would otherwise have been included as credited service if the employee or participant had been in the active service of the City.

(d) **Employees Excluded From Participation Under Prior Plan** - For any employee who was excluded from participation as a result of being at least age 60 on his date of employment and who became eligible to participate when that provision was eliminated, credited service will be the period of service from the date participant contributions begin until the date of actual retirement or termination of employment.

## ARTICLE IV: FINANCING

### § 4.01 PARTICIPANT'S CONTRIBUTION ACCOUNT

- (a) **Contributions Mandatory** - The "Participant's Contribution Account" will consist of tax deferred participant contributions. Contributions required of employees (no less than 1% of salary) will be paid by the City and shall be treated for IRS purposes as employer contributions. However, for all purposes of determining benefits under the Plan, they will be considered participant contributions. This section is intended to comply with Section 414(h) of the Internal Revenue Code.
- (b) **Amount of Contribution** - Each police officer will contribute toward the cost of the plan an amount equal to 8% of his basic annual compensation as defined in Article II, effective as of date of service.
- (c) **Length of Contribution** - Each participant shall continue to contribute to the plan until the date of the termination of the participant's service with the City.

### § 4.02 CONTRIBUTIONS

- (a) **City Contributions.** The City shall make contributions together with the contributions of police officers, as are required by State Statute.
- (b) **State Contributions.** The monies received from the State of Florida under Chapters 175 and 185 of the Florida Statutes shall be transferred to the trust fund as established in the trust agreement of which this plan is a part, for the exclusive benefit of the firefighters and police officers and their beneficiaries.
  - (1) However, any firefighter or police officer who has attained the age of 58 as of October 1, 1965 will not have the funds credited to his account under Chapters 175 and 185, Florida Statutes, transferred to the above-mentioned trust.
  - (2) The City must satisfy the relevant requirements of Chapters 175 and 185 on a current basis during that calendar year.

### § 4.03 CITY'S CONTRIBUTIONS IRREVOCABLE

The City shall have no right, title or interest in the trust fund or in any part thereof. No contributions made thereto shall revert to the City except such part of the trust fund, if any, which remains therein after the satisfaction of all liabilities to persons entitled to benefits under the plan, as described in section 8.06 (Termination of Plan and Distribution of Trust Fund.)

§ 4.04 ADMINISTRATION OF FUNDS

- (a) Employee Contributions - shall be deposited in the retirement plan on at least a monthly basis.
- (b) City Contributions - shall be deposited on at least a quarterly basis.
- (c) State Contributions - Chapter 175 and 185 tax revenue and any other funds received by the City pursuant to those chapters shall be deposited in the retirement fund for police officers and firefighters within five (5) days of receipt.

ARTICLE V: ADMINISTRATION OF PLAN

§ 5.01 ADMINISTRATION BY RETIREMENT COMMITTEE

- (a) **Membership** - There is hereby created a retirement committee for the Plan which shall be solely responsible for administering the Plan. Effective January 1, 1990 and thereafter, the committee shall consist of five members, (a) two of whom, unless otherwise prohibited by law, shall be legal residents of the City, who shall be elected officials or original appointment designees. The designees shall have no direct or indirect vested interest in the plan, (b) two of whom shall be police officers and/or firefighters as defined in Article II who shall be elected by a majority of the police officers and firefighters who are members of the Plan, (c) and the fifth member shall be chosen by a majority of the previous four members, and such person's name shall be submitted to the City Council. Upon receipt of the fifth person's name, the City Council shall, as a ministerial duty, appoint such person to the committee as its fifth member. The fifth member shall have the same rights as each of the other four members appointed or elected as herein provided and may succeed himself in office. The priority of the four members shall be to choose the fifth member to the Committee. Thereafter, the chosen fifth member will serve concurrent terms with the other four members. Each resident member shall serve as trustee for a period of two (2) years, unless sooner replaced by the City Council at whose pleasure he shall serve, and may succeed himself as a committee member. Each police officer and/or firefighter member shall serve as committee member for a period of two (2) years, unless he sooner leaves the employment of the City as a police officer, and/or firefighter, whereupon the City Council shall choose his successor in the same manner as an original appointment. Each police officer and/or firefighter may succeed himself in office. The committee shall meet at least quarterly each year. The committee 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.

§ 5.02 OFFICERS AND EMPLOYEES OF RETIREMENT COMMITTEE

The retirement committee shall by majority vote elect from its members a chairman and a secretary. The secretary of the committee shall keep a complete minute book of the actions, proceedings, or hearings of the committee. The committee members shall not receive any compensation as such, but may receive expenses and per diem as provided by law or ordinance.

§ 5.03 ACTION BY RETIREMENT COMMITTEE

- (a) Each member of the retirement committee shall be entitled to one vote on the committee. Three (3) concurring votes shall be necessary for a decision by the members of any meeting of the committee and three (3) members shall constitute a quorum of the committee.
- (b) Minutes of all meetings of the retirement committee and a record of any action taken by the retirement committee shall be kept in written form, and such record shall be kept by the secretary appointed by the retirement committee.
- (c) The retirement committee shall give to the trustee, any order, direction, consent, or advice, required under the terms of the trust agreement, and the trustee shall be entitled to rely on any instrument delivered to it and signed as set forth above.
- (d) A member of the retirement committee may not vote or decide upon any matter relating solely to himself or vote in any case in which his individual right or claim to any benefit under the plan is particularly involved.
- (e) The committee shall not conduct business which would result in a recommendation of an amendment to the plan without the presence of at least a quorum of the committee.
- (f) Each member of the committee shall, within ten (10) days after appointment, take the constitutional oath of office, to be administered by and filed with the Clerk of the Council.
- (g) The committee may employ such legal, technical, professional or other advisors and medical and other services, per state law as shall be required. The compensation for all such services shall be fixed by the committee, subject to the limitations provided herein.

- (h) The committee shall keep in convenient form such data as shall be necessary for actuarial valuation of the various funds of the retirement system and for checking the experience of the retirement system.
- (i) The committee shall arrange for the necessary physicians to pass upon all medical examinations required under the provisions of this division. It shall be their duty to investigate all essential statements and certificates by or on behalf of members in connection with applications for disability retirement and shall report in writing to the committee their conclusions and recommendations upon all matters referred to them.

#### § 5.04 RULES AND REGULATIONS OF RETIREMENT COMMITTEE

The retirement committee shall have the authority to make such rules and regulations and to take such action as may be necessary to carry out the provisions of the plan. The retirement committee is subject to the provisions of the plan, and may decide any questions that arise in the administration, interpretation and application of the plan. Its decisions shall be conclusive and binding on all parties. The retirement committee may delegate any part of its authority and duties as it deems expedient.

#### § 5.05 POWERS OF THE RETIREMENT COMMITTEE

- (a) Construction of Plan - In order to effectuate the purposes of the plan, the retirement committee shall have the power to construe the plan, to supply any omissions therein, to reconcile and correct any errors or inconsistencies and to make equitable adjustments for any mistakes or errors made in the administration of the plan.

#### § 5.05A CITY ATTORNEY AND INDEPENDENT COUNSEL

- (a) City Attorney - The City Attorney shall give advice to the retirement committee in all matters pertaining to its duties in administration of the retirement trust fund whenever requested.
  - (1) He shall represent and defend the retirement committee as its attorney in all suits and actions at law or in equity that may be brought against it.

(2) He shall bring all suits and actions on the retirement committee's behalf that may be required or determined by the committee.

(b) However, if the retirement committee so elects, it may employ independent legal counsel at the pension fund's expense for the purposes contained herein, together with such other professional, technical, or other advisers as the committee deems necessary.

#### § 5.06 ACTUARY

(a) **General Duties** - The actuary shall be appointed by the retirement committee to serve as long as it is agreeable to the retirement committee and the actuary. The actuary will do such technical and advisory work as the retirement committee may request, including analysis of the experience of the plan from time to time, the preparation of actuarial tables for the making of computations thereunder and the submission of an actuarial report to the retirement committee as of the anniversary date of the plan each year. That report shall contain an actuarial valuation showing the financial condition of the plan, a statement of the contributions to be made by the City for the ensuing year, and such other information as may be required by the retirement committee and by Florida law. The actuarial report is required to be submitted to the State Department of Insurance and to the State Department of Administration.

#### § 5.07 GENERAL INFORMATION ON FILE

The following information shall be maintained in accurate and accessible form by the retirement committee.

(a) **Active and Inactive Members** - For each active and inactive member of the plan a number or other means of identification; date of birth; sex; date of employment; period of credited service, split, if required, between prior service and current service; and occupational classification.

(b) **Active Members** - For each active member; current pay rate; cumulative contributions together with accumulated interest, if credited; age at entry into the plan; and current rate of contribution.

(c) **Inactive Members** - For each inactive member, average final compensation or equivalent and age at which deferred benefit is to begin.

- (d) **Retired Members and Other Beneficiaries** - For each retired member and other beneficiary, a number or other means of identification, date of birth, sex, beginning date of benefit, type of retirement and amount of monthly benefit, and type of survivor benefit.

#### § 5.08 FIDUCIARY DUTIES

- (a) **In General** - The named fiduciary shall discharge its duties with respect to the plan 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 administration.
- (b) **Named Fiduciary** - The retirement committee shall be the named fiduciary with authority to control and manage the administration and operation of the retirement plan in accordance with the ordinance and other applicable law governing the retirement plan.
- (c) **Insurance** - The retirement committee may purchase insurance for its named fiduciary to cover liability or losses incurred by reason or act or omission of the fiduciary.

#### § 5.09 EXPENSES OF ADMINISTRATION

The City may pay all expenses incurred in the administration of the plan, including expenses and fees of the trustee, but it shall not be obligated to do so. Any such expenses and fees not so paid by the City shall be paid from the trust fund.

#### § 5.10 WRITTEN PLAN DESCRIPTION

- (a) **In General** - The provisions of this retirement plan shall be contained in a written plan description which shall include a report of pertinent financial and actuarial information on the solvency and actuarial soundness of the plan.
- (b) **Furnished to Membership** - The plan description shall be furnished to each member of the plan upon his initial employment in the plan and thereafter upon request by the member.

#### § 5.11 GENERAL PROVISIONS

- (a) **Relief from Responsibility or Liability** - Any provision in a legal agreement, contract, or instrument which purports to relieve the fiduciary of the Plan from responsibility or liability is void as being against public policy.

- (b) **Civil Action by Beneficiary or Member** - A civil action may be brought by a member or beneficiary of the Plan to recover benefits due to him under the terms of the Plan, to enforce his rights, or to clarify his rights to future benefits under the terms of the plan.
- (c) **Written Notice of Denial of Claims** - There shall be timely adequate written notice given to any member or beneficiary whose claim for benefits under the terms of the Plan has been denied. This notice shall set forth the specific reasons for such denial. There will be a full and fair review in those cases when a member or beneficiary has had his claim to benefits denied.

§ 5.12 APPLICABLE LAW

The plan will be construed according to the laws of the State of Florida, and all provisions of the plan will be administered according to those laws.

§ 5.13 ERRORS

Should any change or error in the records be discovered or result in any member or beneficiary receiving from the retirement system more or less than he would have been entitled to receive had the records been correct, the retirement committee shall have the power to correct the error and, as far as possible, to adjust the payments in such a manner that the actuarial equivalent of the benefits to which the member or beneficiary was correctly entitled shall be paid.

ARTICLE VI: RETIREMENT BENEFITS

§ 6.01 NORMAL RETIREMENT

(a) Normal Retirement Defined - Normal retirement under the plan is retirement from the service of the City on, or after, the normal retirement date.

(b) Normal Retirement Date

Firefighters -

The normal retirement date for each firefighter will be the first day of the month coincident with or next following the date he attains the age of 52. However, a firefighter may continue in the service of the City beyond his normal retirement date and retire as of the first day of any month beyond his normal retirement date which is coincident with or next following his actual termination of service.

Police Officers -

The normal retirement date for each police officer will be the first day of any month coincident with or next following the earlier of the completion of 23 years of credited service or attainment of age 52. However, a police officer may continue in the service of the City beyond his normal retirement date and retire as of the first day of any month beyond his normal retirement date which is coincident with or next following his actual termination of service.

(c) Amount of Retirement Income

Firefighters -

To a firefighter who retires on or after normal retirement date:

The monthly amount of retirement income payable to each participating firefighter who retires on or after his normal retirement date shall be an amount equal to 3% (.0300) of his final monthly compensation multiplied by his years of credited service.

Retroactively effective June 1, 1989, all former firefighters or beneficiaries of former firefighters of the Retirement Plan of the City of North Miami Beach shall receive a one-time increase in benefit equal to one percent (1%) for each full year since their retirement.

Police Officers - Effective retroactively December 30, 1988 -

To a police officer who retires on or after normal retirement date:

The monthly amount of retirement income payable to each participating police officer who retires on or after his normal retirement date shall be an amount equal to 3% (.0300) of his final monthly compensation multiplied by his years of credited service.

- (d) Payment of Retirement Income - The monthly retirement income payable in the event of normal retirement will be payable on the first day of each month. The first payment will be made on the participant's normal retirement date (or on the first day of the month coincident with, or next following, his actual retirement, if later). The last payment will be the payment due next preceding the retired participant's death. In the event the participant dies after his retirement but before he has received retirement income payments for a period of ten (10) years, the same monthly benefit will be paid for the remainder of such 10 year period to the beneficiary (or beneficiaries) designated by the participant, or, if no designated beneficiary is surviving, the same monthly benefit shall be payable for the remainder of such 10 year period as provided in sections 7.02 (Beneficiaries), and 7.03 (Contingent Beneficiaries) hereof.

§ 6.02 EARLY RETIREMENT AND RETIREMENT INCOME

- (a) Defined - Early retirement under the plan is retirement from the service of the City, as of the first day of any calendar month prior to the participant's normal retirement date subsequent to the date he has both attained the age of 45 years and completed at least fifteen (15) years of credited service.
- (b) Payment Governed by - In the event of early retirement, payment of retirement income will be governed by the following provisions:

- (1) **Early Retirement Date** - The early retirement date will be the first day of the month coincident with or next following the date a participant retires from the service of the City under the provisions of this section prior to his normal retirement date.
- (2) **Amount of Retirement Income**. - The monthly amount of retirement income payable to an employee who retires prior to his normal retirement date under the provisions of this section shall be an amount equal to 3% (.0300) of his final monthly compensation multiplied by his years of credited service multiplied by the actuarially equivalent reduction factor to take into account the participant's younger age at retirement and the earlier commencement of retirement income payments.
- (3) **Payment of Retirement Income** - The retirement income payable in the event of early retirement will be payable on the first day of each month. The first payment will be made on the participant's early retirement date and the last payment will be the payment due next preceding the retired participant's death. In the event the participant dies after his retirement, but before he has received retirement income payments for a period of 10 years, the same monthly benefit will be paid for the remainder of such 10-year period to the beneficiary (or beneficiaries) designated by the participant, or, if no designated beneficiary is surviving, the same monthly benefit shall be payable for the remainder of such 10-year period as provided in sections 7.02 and 7.03.

#### § 6.03 DISABILITY RETIREMENT AND RETIREMENT INCOME

- (a) **Definition** - An actively employed participant may retire from the service of the City under the plan if he becomes totally and permanently disabled as defined in Paragraph (b) of this section 6.03, on or after the effective date of the plan but prior to his attainment of age 52. Such retirement from the service of the City shall herein be referred to as disability retirement.
- (b) **Total and Permanent Disability** - A participant will be considered totally disabled if, in the opinion of the retirement committee, based upon evidence, exhibits, their findings and the reports of the following physical examiners:

- (i) a duly licensed physician selected by the retirement committee,
- (ii) a duly licensed physician selected by the participant, and
- (iii) in the event of a disagreement between (i) and (ii), a duly licensed physician mutually agreeable to the physicians selected in (i) and (ii) above,

he is wholly prevented from rendering useful and efficient service in that capacity. A participant will be considered permanently disabled if, in the opinion of the retirement committee, based upon evidence, exhibits, their findings and the reports of the physical examiners selected as outlined above, such participant is likely to remain so disabled continuously and permanently from a cause other than specified in paragraph (d) of this section 6.03.

(c) Line of Duty Disability

- (1) *In General* - Any condition or impairment of health of any and all police officers or firefighters caused by tuberculosis, hypertension, heart disease, or hardening of the arteries, resulting in total or partial disability or death, shall be presumed to be accidental and suffered in the line of duty unless the contrary be shown by competent evidence.
- (2) *Injury by Exposure*- Any condition or impairment of health caused directly or proximately by exposure, which exposure occurred in the active performance of duty at some definite time or place without willful negligence on the part of the police officer or firefighter, resulting in total or partial disability, shall be presumed to be accidental and suffered in the line of duty.
  - A. However, such police officer or firefighter shall have successfully passed a physical examination upon entering such service, which physical examination including electrocardiogram failed to reveal any evidence of such condition.
  - B. Such presumption shall not apply to benefits payable under or granted in a policy of life insurance or disability insurance.

(d) **Nonadmissible Causes of Disability** - A participant will not be entitled to receive any disability retirement income if, in the opinion of the retirement committee, the disability is a result of:

- (i) Injury or disease sustained by the participant while willfully and illegally participating in fights, riots, civil insurrections or while committing a felony;
- (ii) Injury or disease sustained by the participant while serving in any armed forces;
- (iii) Injury or disease sustained by the participant diagnosed or discovered subsequent to the date his employment has terminated;
- (iv) Injury or disease sustained by the participant while working for anyone other than the City, and arising out of such employment; or
- (v) Discretionary Conditional Review: Excessive and habitual use by the participant of drugs, intoxicants or narcotics.

(e) **Proof of Disability.**

- (1) **Certificate from Physical Examiners** - The retirement committee, before approving the payment of any disability retirement income may require satisfactory proof, in the form of a certificate from the Physical Examiners that the participant has become disabled as provided herein.
- (2) **Continuing Proof of Disability** - Every six months after commencement of disability retirement income, or more frequently, the retirement committee may similarly require proof of the continued disability of the participant.

(f) **Disability Retirement Income.**

(1) **Monthly Income Payable Prior to Normal Retirement Date:**

- A. **Formula** - The benefit payable prior to the normal retirement date of participant who retires from the service of the City under the provisions of this Section due to total and permanent disability is the monthly income equal to 60% of the participant's final monthly compensation at

the date of termination of his service due to disability.

- B. Any Police Officer or Firefighter who is granted a disability retirement benefit will receive a monthly benefit calculated under paragraph A., however, this benefit shall not be less than 42% of his final monthly compensation at the date of termination of service due to disability.

(2) Monthly Income Commencing on Normal Retirement Date.

- A. Cessation of Monthly Income - The monthly income in the amount described in section 6.03(f)(1), (Monthly Income Payable Prior to Normal Retirement Date), above, unless previously discontinued in accordance with section 6.03(g), (Payment of Disability Retirement Income), below, shall cease with the last such payment being due on the first day of the month immediately preceding the disabled participant's normal retirement date.
- B. Commencement of Monthly Disability Income Commencing on the disabled participant's normal retirement date, his monthly disability retirement income shall be in an amount computed as for normal retirement in accordance with section 6.01(b), (Normal Retirement Date) based upon his anticipated number of years of credited service at his normal retirement date (as defined below) and his projected rate of final monthly compensation at his normal retirement date (as defined below), but such monthly retirement income shall not exceed the monthly disability retirement income determined under section 6.03(f)(1).
- C. Anticipated Credited Service - The participant's anticipated number of years of credited service at his normal retirement date shall be equal to that number which he would have accrued at such date in accordance with section 3.04, (Credited Service), if his employment had not been terminated but had continued uninterrupted from the date of termination of his service due to disability to his normal retirement date.

D. Projected Rate of Final Monthly Compensation The participant's projected rate of final monthly compensation at his normal retirement date shall be determined as of the participant's normal retirement date based on the assumption that the participant's last regular rate of monthly basic compensation prior to the date of termination of his service due to disability would have been continued without change to his normal retirement date.

(g) Payment of Disability Retirement Income.

(1) Date of Commencement of Payment - The monthly retirement income to which a police officer or firefighter is entitled in the event of his disability retirement shall be payable on the first day of the first month after the retirement committee determines such entitlement.

A. Partial Month - However, the monthly retirement income shall be payable as of the date the retirement committee determines such entitlement, and any portion due for a partial month shall be paid together with the first payment.

(2) Last Payment - The last payment will be as follows:

(i) If the participant recovers from the disability prior to his normal retirement date, the last payment will be the payment due next preceding the date of such recovery.

(ii) If the participant dies prior to his normal retirement date without recovering from his disability, the last payment will be the payment due next preceding the date of his death. However, such participant's designated beneficiary (or beneficiaries) will be entitled to a death benefit as provided in section 6.03(h) below.

(iii) If the participant attains his normal retirement date while still disabled, the last payment will be the payment due next preceding the disabled participant's death. In the event the disabled participant dies before he has received retirement benefits for a period of 10 years after his normal retirement date, the same monthly benefit which he was entitled to receive

commencing on his normal retirement date will be paid for the remainder of such 10-year period to the beneficiary designated as provided in Section 7.02 "Beneficiaries".

(h) **Benefit Payable in the Event of Death of Disabled Participant Prior to his Normal Retirement Date.**

(1) **Amount of Death Benefit** - In the event that the death of a disabled participant occurs after he has been determined to be disabled by the retirement committee but prior to his normal retirement date (whether or not his disability retirement income payments have commenced), his beneficiary (or beneficiaries) will receive the monthly retirement income, payable for 10 years certain and life thereafter and beginning on the first day of the month coincident with or next following the date of the disabled participant's death, which can be provided, on an actuarially equivalent basis, by (A) or (B), whichever is greater, where:

A. is equal to the single sum value as of the date of the participant's death, of the deferred monthly retirement income commencing at normal retirement date which the disabled participant would have accrued to the date of his death if he had remained continuously in the service of the City from the date of termination of his service due to disability to the date of his death, and

B. is the smaller amount of

(i) an amount equal to 24 times his final monthly compensation immediately preceding the date of termination of his service due to disability, and

(ii) an amount equal to 100 times the participant's anticipated monthly retirement income commencing at his normal retirement date;

(2) **Lump Sum Benefit** - In lieu of payment of such benefit in the form of the monthly income described above, the single-sum value of such benefit may be paid on an actuarially equivalent basis to the participant's designated beneficiary (or beneficiaries) in such other manner or form as the participant may elect and the retirement committee may approve, or in the event no election is made by the participant prior to his

death, as the beneficiary (or beneficiaries) may elect and the retirement committee may approve.

- (3) *Amount of Deferred Monthly Retirement Income* - The amount of such deferred monthly retirement income commencing at normal retirement date which the disabled participant would have accrued to the date of his death shall be computed as for normal retirement under section 6.01(b), (Normal Retirement Date:) based upon the disabled participant's anticipated number of years of credited service at the date of his death (as defined below) and his projected rate of final monthly compensation at the date of his death (as defined below).
- (4) *Number of Years of Credited Service* - The participant's anticipated number of years of credited service at the date of his death shall be equal to that number which he would have accrued at such date in accordance with section 3.04, (Credited Service), hereof if his employment had not been terminated but had continued uninterrupted from the date of termination of his service due to disability to the date of his death.
- (5) *Projected Rate of Final Monthly Compensation* - The participant's projected rate of final monthly compensation at the date of his death shall be determined as of the date of the participant's death, based on the assumption that the participant's last regular rate of monthly basic compensation prior to the date of termination of his service due to disability would have continued without change to the date of his death.

(i) *Recovery from Disability.*

- (1) *General Provision* - If the retirement committee determines that the participant who is receiving disability retirement income is, at any time prior to his normal retirement date, no longer disabled, as provided herein, the retirement committee shall direct that the retirement income be discontinued.
- (2) *Early Retirement/Vested Deferred Retirement Income* - Any such participant who recovers from disability and whose retirement income is discontinued by the retirement committee and who, as of the date of termination of his service due to disability, had both attained the age of 45 years and completed 15 years of service shall, if he does not re-enter the

service of the City, be entitled to the early retirement income or the vested deferred retirement income as provided in sections 6.02 and 6.04(a) respectively. This amount will be based upon his final monthly compensation and his credited service as of the date of termination of his service due to disability and upon his attained age as of the date of his recovery from disability. But early retirement will be subject to the consent of the retirement committee, and the amount of the retirement income upon early retirement will be actuarially reduced to take into account the participant's younger age and the earlier commencement of retirement income payments as provided in section 6.02, (Early Retirement and Retirement Income).

- (j) Re-employment by the Employer - If the participant recovers from disability and re-enters the service of the City, his service will be deemed to have been continuous. But the period beginning with the first month for which he received a disability retirement income payment and ending with the date he re-enters the service of the City will not be considered as credited service for the purposes of the plan.

§ 6.04 BENEFITS OTHER THAN ON RETIREMENT

(a) Benefit on Termination of Service

- (1) Deferred Payment of Benefits - In the event of the termination of a participant's service prior to his normal retirement date, (for any reason other than his death), early retirement (as described in section 6.02) or disability retirement (as described in section 6.03) after he has completed ten (10) years of credited service (hereafter referred to as a "terminated participant"), he will be entitled to a monthly retirement income. That monthly income will be payable for 10 years certain and life thereafter, and will commence on his normal retirement date, if he shall then be living, in an amount equal to 3% (.0300) of his final monthly compensation multiplied by his years of credited service multiplied by his vested percentage as of the date of termination of service as shown in the schedule below.

<u>Credited Service as of Date of Termination of Service</u>	<u>Vested Percentage of Accrued Deferred Retirement Income</u>
--	--

Less than 10 years  
10 years or more

0%  
100%

- (2) **Immediate Monthly Payment of Benefits** - If a participant has at least 20 years of credited service on his date of termination of service, as described in this paragraph, he may elect to receive immediate monthly payments of his benefits in lieu of a deferred vested benefit commencing at his normal retirement date.
- (A) This immediate monthly benefit will equal the deferred vested benefit calculated above, multiplied by the actuarial reduction factor to take into account the participant's younger age at commencement of benefits.
- (B) This immediate benefit will be payable commencing as of the first day of the month coincident with or next following the date on which the retirement committee receives from the participant his election in writing and will be payable monthly thereafter for 10 years certain and life.
- (3) **Return of Contribution on Termination** - If the terminated participant described in this section has any vested percentage on his date of termination of service, he may elect to receive a return of his contributions plus interest at the rate of 3% compounded annually in lieu of a deferred vested benefit payable at his normal retirement date as described above.
- (4) **Terminated Employee's Death Prior to Commencement of Retirement Income** - In the event a terminated participant dies prior to the commencement of his retirement income at his normal retirement date (without having received, in accordance with section 6.07, the value of the benefit in Section 6.04(a)(1), (Deferred Payment of Benefits), above, without having elected and begun to receive his monthly benefits prior to his normal retirement date as described in section 6.04(a)(1) above, or without his having received a refund of his contributions with interest as described in section 6.04(a)(1) above), his beneficiary (or beneficiaries) will receive the monthly retirement income, payable for 10 years certain and life thereafter and beginning on the date of the participant's death, which can be provided by the single-sum value of the participant's accrued

deferred monthly retirement income as of the date of termination of the participant's service, accumulated at interest from the date of termination of the participant's service to the date of his death. :

(5) Re-Entry Into Service of City.

(A) If the participant's service with the City is terminated while he is entitled to the retirement income described in section 6.04(a)(1), (Deferred Payment of Benefits), above, and he subsequently re-enters the service of the City prior to electing and receiving his monthly benefits before his normal retirement date as described in section 6.04(a)(1) above, and provided he did not receive a refund of his contributions with interest, he will be entitled, upon such re-entry, to the credited service he had on the date of termination of his service in lieu of the benefits to which he was entitled on such date under section 6.04(a)(1). The monthly retirement income payable to such participant commencing at normal retirement date shall not be less than the amount to which he was entitled under section 6.04(a)(1) prior to his re-entry into the service of the City.

(B) If a participant who is receiving monthly payments prior to his normal retirement date due to the election described in section 6.04(a)(1), (Benefit on Termination of Service: Deferred Payment of Benefits), above, subsequently re-enters the service of the City, benefit payments will cease effective immediately upon re-entry and he will immediately begin to make employee contributions and accrue credited service. Upon his subsequent retirement or termination of service, benefit payments will again commence as indicated in this plan, except the value of those payments will be reduced by the value of the payments previously received. Except with respect to disability, retirement, any other participant will, on re-entry into the service of the City (unless he has been on leave of absence pursuant to the provisions of section 3.03), be treated as if he then first entered the service of the City.

- (C) If the participant's service with the City is terminated and he subsequently re-enters the service of the City, and he did not receive a return of his employee contributions, he will be entitled upon such re-entry to the credited service.

If the participant's service with the City is terminated and he subsequently re-enters the service of the City, and he did receive a return of his employee contributions, he will not be automatically entitled, upon such re-entry to the credited service, unless said participant purchases the actuarial value of the prior service years within sixty (60) days of re-entry.

- (6) Application of Options to Other Sections - The provisions of section 6.06 relating to optional forms of retirement income are applicable to the benefits provided under section 6.04(a)(1) or "Deferred Payment of Benefits".

- (7) Termination Prior to Completion of 10 Years Credited Service - Except as provided in section 6.01 with respect to normal retirement, section 6.03 with respect to disability retirement, and section 6.04 with respect to death, the participant whose service is terminated prior to the date on which he has completed ten (10) years of credited service shall be entitled only to the return of his contributions plus interest at the rate 3% compounded annually.

- (b) Benefit Payable in the Event of Death on or Prior to Normal Retirement Date While in Service.

- (1) Amount - If the service of a participant is terminated by reason of death on or prior to his normal retirement date, there shall be payable to the participant's designated beneficiary (or beneficiaries) the monthly retirement income, beginning on the first day of the month coincident with or next following the date of his death which can be provided by (i) or (ii), whichever is greater, where:

- (i) is the single sum value of his accrued deferred retirement income commencing at his normal retirement date which sum has accrued to the date of his death, where this single-sum value will be calculated in a manner

similar to the way the reserve is accumulated under a typical retirement income contract, and

(ii) is (a) or (b), whichever is smaller where (a) is 24 times his rate of monthly compensation on the October 1st preceding the date of his death and (b) is 100 times the participant's anticipated monthly retirement income commencing at normal retirement date.

- (A) Computation of Accrued Deferred Monthly Retirement Income - The amount of such accrued deferred monthly retirement income in section 6.04(b)(1)(i), above, shall be computed as for normal retirement under section 6.01(c)(1), (Amount of Retirement Income: To Participant Who Retires on Normal Retirement Date), based upon the participant's number of years of credited service and final monthly compensation at the date of his death.
- (B) Computation of Anticipated Monthly Retirement Income - The amount of anticipated monthly retirement income commencing at normal retirement date in section 6.04(b)(1)(ii)(b), above, shall be computed as for normal retirement under section 6.01(c), based on his anticipated number of years of credited service at his normal retirement date and his projected final monthly compensation at normal retirement date.
- (C) Determination of Anticipated Number of Years of Credited Service - The participant's anticipated number of years of credited service at his normal retirement date shall be determined in accordance with section 3.04, (Credited Service), based on the assumption that his employment with the City would have continued uninterrupted from his date of death to his normal retirement date.
- (D) Determination of Projected Final Monthly Compensation - The participant's projected final monthly compensation at his normal retirement date shall be determined as of the participant's normal retirement date, based on the assumption that the participant's rate of monthly basic compensation as of his date of death would have

continued, without change, to his normal retirement date.

(2) **Term of Monthly Retirement Income Payments** - Except as provided in section 6.04(b)(3) below, the monthly retirement income payments under section 6.04(b) shall be payable for the life of the beneficiary (or beneficiaries) designated or selected under section 7.02 to receive such benefit. In the event of such beneficiary's death within a period of 10 years after the participant's death, the same monthly amount shall be payable for the remainder of such 10-year period in the manner and subject to the provisions of section 7.03, (Contingent Beneficiaries).

(3) **Lump Sum Payment** - In lieu of the benefits payable in section 6.04(b)(2) (Term of Monthly Retirement Income Payments) above, the single-sum value of such benefits may be paid to the participant's designated beneficiary (or beneficiaries) in such other manner and form as the participant may elect and the retirement committee may approve, or, in the event no election is made by the participant prior to his death, as the beneficiary (or beneficiaries) may elect and the retirement committee may approve.

(c) **Benefit Payable in Event of Death While in Service After Normal Retirement Date.**

(1) **Monthly Retirement Benefit** - If the service of a participant is terminated by reason of his death after his normal retirement date, there shall be payable to the participant's designated beneficiary (or beneficiaries) the monthly retirement income, determined actuarially, beginning on the first day of the month coincident with, or next following, the date of his death, which can be provided by the single sum value of the normal retirement income to which he was entitled on his date of death.

(2) **Monthly Retirement Income Payments** - Except as provided in section 6.04(c)(3), (Lump Sum Benefits), below, the monthly retirement income payments under section 6.04(c) shall be payable for the life of the beneficiary (or beneficiaries) designated or selected under Section 7.02, (Beneficiaries), to receive such benefit. In the event of such beneficiary's death within a period of 10 years after the participant's death, the same monthly amount shall be payable for the remainder of such 10-year period in the manner

and subject to the provisions of section 7.03, (Contingent Beneficiaries).

- (3) **Lump Sum Payment** - In lieu of the benefits payable in section 6.04(c)(2) (Monthly Retirement Income Payments) above, the single-sum value of such benefits may be paid to the participant's designated beneficiary (or beneficiaries) in such other manner and form as the participant may elect and the retirement committee may approve, or, in the event no election is made by the participant prior to his death, as the beneficiary (or beneficiaries) may elect and the retirement committee may approve.

#### § 6.05 LIMITATIONS OF BENEFITS

- (a) **New Members** - The normal retirement benefit or pension payable to a retiree who becomes a member of the retirement plan and who has not previously participated in such plan on or after January 1, 1980 shall not exceed 100 percent of his 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. As used in this section, the term "average final compensation" means the average of the member's earnings over a period of time which the governmental entity has established by this ordinance.

No member of a retirement system or plan covered by this part 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; provided that this restriction does not apply to social security benefits or federal benefits under chapter 67, Title 10, U.S. Code.

#### § 6.06 OPTIONAL FORMS OF RETIREMENT INCOME

- (a) **Options** - In lieu of the amount and form of retirement income payable in the event of normal retirement, early retirement or termination of service as specified in sections 6.01, 6.02, and 6.04(a), a participant, or a terminated participant as defined in section 6.04(a), upon written request to the retirement committee may elect to receive a retirement income or benefit commencing on the date specified in sections 6.01, 6.02 or 6.04(a), whichever is applicable, of equivalent actuarial value payable in accordance with one of the following options:

Option 1: A retirement income of larger monthly amount, payable to the participant for his lifetime only.

Option 2: A retirement income of modified monthly amount, payable to the participant during the joint lifetime of the participant and a joint pensioner designated by him, and following the death of either of them, 2/3 of such monthly amount payable to the survivor for the lifetime of the survivor.

- (b) **Designation of Joint Pensioner, Beneficiary, or Beneficiaries** - The participant 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 his death and will have the power to change such designation from time to time, but any such change shall be deemed a new election. Such designation will name a joint pensioner or one or more primary beneficiaries where applicable.
- (c) **Changes of Joint Pensioner, Beneficiary or Beneficiaries** - If a participant has elected an option with a joint pensioner or beneficiary (or beneficiaries) and his retirement income benefits have commenced, he may thereafter change his designated joint pensioner or beneficiary (or beneficiaries). He may do so in the case where the designation to be changed is one involving a joint pensioner, if the joint pensioner last previously designated by him is alive when he files with the retirement committee his request for such change. The consent of a participant's joint pensioner or beneficiary (or beneficiaries) to any such change shall not be required.
- (d) **Change of Joint Pensioner, Actuarial Redetermination of Income** - The retirement committee may request such evidence of the good health of the joint pensioner who is being removed as it may require. The amount of retirement income payable to that participant upon the 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 participant. Each such designation will be made in writing on a form prepared by the retirement committee.

- (e) **Benefits Where No Survivors** - In the event that no designated beneficiary survives the participant, such benefits as are payable in the event of the death of the participant subsequent to his retirement shall be paid as provided in section 7.02, (Beneficiaries).
- (f) **Limitations on Retirement Income Under Options Retirement** income payments will be made under the option elected in accordance with the provisions of this section and will be subject to the following limitations:
- (i) If a participant dies prior to his retirement under the plan, or if a terminated participant dies prior to the commencement of his payments at his normal retirement date, no benefit will be payable under the option to any person, but benefits will be payable as provided in Section 6.04, "Benefits Other Than on Retirement."
  - (ii) If the designated beneficiary (or beneficiaries) or joint pensioner dies before the participant's retirement under the plan or subsequent to a terminated participant's date of termination of service, but prior to his normal retirement date, the option elected will be cancelled automatically and a retirement income of the normal form and amount will be payable to the participant upon his retirement or to the terminated participant at his normal retirement date as if the election had not been made, unless a new election is made in accordance with the provisions of this section or unless a new beneficiary (or beneficiaries) or joint pensioner is designated by the participant prior to his retirement or by the terminated participant prior to his normal retirement date and within 90 days after the death of the prior beneficiary (or beneficiaries) or joint pensioner.
  - (iii) If both the participant and the beneficiary (or beneficiaries) designated by him die after the date that the participant's retirement income commences under the plan but before the full payment has been effected under any option providing for payments for a period certain and life thereafter, the retirement committee may, in its discretion, direct that the commuted value of the remaining payments be paid in a lump sum and in accordance with Section 7.03, "Contingent Beneficiaries".

§ 6.07 LUMP SUM PAYMENT OF SMALL RETIREMENT INCOME

Notwithstanding any provision of the plan to the contrary, if the monthly retirement income payable to any person entitled to any benefit hereunder is less than \$30 or if the single-sum value of the accrued retirement income is less than \$3,500 as of the date of retirement or termination of service, whichever is applicable, the retirement committee may, in the exercise of its discretion, specify that the actuarial equivalent of such retirement income be paid in a lump sum or in monthly installments for a period certain of not more than 60 months.

§ 6.08 TEMPORARY LIMITATIONS ON BENEFITS REQUIRED BY THE INTERNAL REVENUE SERVICE

The term "employee" as used in this Section 6.08 shall include all employees who are participants in the plan on the applicable effective date as hereinafter described and all employees who may later become participants in the plan.

Notwithstanding any provision of any other section of the plan to the contrary, the retirement income or retirement benefit in any form attributable to the City's contributions for any participant within the applicable group of the 25 highest-paid employees, as hereinafter described, shall not exceed an amount which is equal in value to (or which is actuarially equivalent to) the amount specified below with respect to the period for which the limitations described herein shall be applicable.

- A. With respect to any employee who is in the group of the 25 highest-paid employees of the City, determined as of July 1, 1957, who is a participant under the plan and whose monthly retirement income under the plan will exceed \$125, and who is not in the group of the 25 highest-paid employees determined as of October 1, 1965 (to whom the provisions of Section 6.08(B) below shall be applicable), the benefits in any form attributable to City contributions, which any participant to whom this Section 6.08 (A) is applicable may receive prior to July 1, 1967, shall not exceed an amount which is equal in value (or which is actuarially equivalent to) the larger of the following amounts:

- (1) \$20,000 and

(2) An amount computed by multiplying the number of years elapsed since July 1, 1957, for which the full current costs have been met, by the smaller of the following amounts:

(a) \$10,000; and

(b) An amount equal to 20% of the participant's average regular annual compensation received from the City for the five years immediately preceding the date of such determination, or for a participant whose service has terminated, who has retired prior to his normal retirement date or who has attained his normal retirement age whether or not he has retired under the plan, the date of termination of service, the date of retirement or the normal retirement date, respectively.

Provided, however, if the full current costs have not been met as of July 1, 1967, the above restrictions will continue to apply until the full current costs have been funded for the first time.

(B) With respect to any employee who is in the group of the 25 highest-paid employees of the City, determined as of October 1, 1965, and whose monthly retirement income under the plan will exceed \$125, the benefits in any form attributable to City contributions which any participant to whom this Section 6.08(B) is applicable may receive prior to October 1, 1975 shall not exceed an amount which is equal in value (or which is actuarially equivalent to) the largest of the following amounts:

(1) The amount attributable to City contributions which would have been applied to provide the benefits for such participant if the plan, as in effect on September 30, 1965, had been continued without change;

(2) \$20,000; and

(3) The sum of:

(a) The amount attributable to City contributions which would have been applied to provide benefits accrued to the participant under the plan on September 30, 1965; and

(b) An amount computed by multiplying the number of years elapsed since October 1, 1965 for which the full current costs of the plan have been met by the smaller of the following amounts:

(i) \$10,000; and

(ii) An amount equal to 20% of the participant's average regular annual compensation received from the City for the five years immediately preceding the date of such determination, or for a participant whose service has terminated, who has retired prior to his normal retirement date or who has attained his normal retirement age whether or not he has retired under the plan, the date of termination of service, the date of retirement or the normal retirement date, respectively.

Provided, however, if the full current costs have not been met as of October 1, 1975, the above limitations will continue to apply until the full current costs have been funded for the first time.

The foregoing conditions will not restrict the payment of the full benefits to a beneficiary after the death of a participant whose benefits are subject to the provisions of this Section 6.08 if, at the time of such death, the plan is in full effect and the full current costs thereof have been met.

The provisions of this Section 6.08 will not apply to the retirement income payable in the normal form, or under Option 1, Option 2, or any other optional form which does not provide a larger monthly income to any participant retiring or receiving benefits during any period in which the plan is in full effect and the full current costs have been met.

The limitations will not apply to the payment of any survivorship income with respect to any deceased participant or retired participant who dies prior to the termination of the plan and while the full current costs thereof have been met.

In the event of the termination of the plan prior to the end of the 10-year period that next follows the effective date of the plan, that portion of the assets of the trust fund arising from contributions made by the City with respect to those participants to whom the provisions of this Section 6.08

are applicable which is in excess of the foregoing limitations will be apportioned to the other participants including retired participants, in accordance with the provisions contained in Section 8.06 hereof.

§ 6.09 FORFEITURE OF BENEFITS

- (a) **In General** - Any member who has been found guilty by a verdict of a jury or by the court trying the case without a jury, of committing, aiding, or abetting any embezzlement or theft from his employer, bribery in connection with the employment, or other felony specified in Chapter 838, Florida Statutes, committed prior to retirement, or who has entered a plea of guilty or of nolo contendere to such crime, or any member whose employment is terminated by reason of his admitted commitment, aiding, or abetting of an embezzlement or theft from his employer, bribery, or other felony specified in Chapter 838, Florida Statutes, shall forfeit all rights and benefits under this plan, except for the return of his accumulated contributions as of the date of termination.
- (b) **Return of Accumulated Contributions** - Any member who has willfully and with intent to defraud the public, or the public agency for which he acts or in which he is employed, of the right to receive the faithful performance of his duty as a public officer or employee, realizes or obtains, or attempts to realize or obtain a profit, gain or advantage for himself or for some other person through the use or attempted use of the power, rights, privileges, duties, or position of his public office or employment position prior to his retirement shall forfeit all rights and benefits under this plan, except for the return of his accumulated contributions as of the date of termination.
- (c) **Notice** - The City as the employer of any member whose office or employment is terminated by reason of his admitted commitment, aiding, or abetting of an offense specified herein, shall forward notice thereof to the Commission of Ethics of the State of Florida.
- (d) **Forfeiture Determination.**
- (1) **Upon Notice** - Whenever the retirement committee receives notice pursuant to paragraph (c) above, or otherwise has reason to believe that the rights and privileges of any person are required to be forfeited under this section, the Committee shall give notice and hold a hearing in accordance with Chapter 120, Florida Statutes, for the purpose of determining whether such rights and privileges are required to be

forfeited. If the retirement committee determines that such rights and privileges are required to be forfeited, it shall order such rights and privileges forfeited.

- (2) **Appeals** - Any order of forfeiture of retirement plan rights and benefits and privileges shall be appealable to the District Court of Appeal.
- (3) **Payments During Appeal** - Payments of retirement benefits ordered forfeited, except payments drawn from non-employer contributions to the retiree's account, shall be stayed pending an appeal as to a felony conviction. If such conviction is reversed, no retirement benefits shall be forfeited. If such conviction is affirmed, retirement benefits shall be forfeited as ordered herein.
- (4) **Excess Benefits** - If any member's rights and privileges under the plan are forfeited pursuant to this section, and if such person has received benefits from the plan in excess of his accumulated contributions, such person shall pay back to the plan the amount of the benefits received in excess of his accumulated contributions, and, if he fails to pay back such amount, the retirement board may bring an action in circuit court to recover such amount plus court costs.
- (e) **Increased Benefits and Forfeitures** - Forfeitures shall not be used to increase the benefits that any employee would otherwise receive under the plan at any time prior to the termination of the plan or the complete discontinuance of contributions to the plan but shall be anticipated in determining the costs under the plan.

## ARTICLE VII: PARTICIPANTS

### § 7.01 Participants To Furnish Required Information

- (a) **General** - Each participant will furnish to the retirement committee such information as the committee deems necessary or desirable for the purpose of administering the plan. The provisions of the plan respecting any, payments thereunder are conditional upon the participants furnishing promptly such true, full and complete information as the retirement committee may request.
- (b) **Proof of Age** - Each participant will furnish to the retirement committee proof of his age (and, in the case of election of Option 2 under section 6.06, proof of age of the joint pensioner selected by him) at such time as required by the retirement committee.
- (1) The retirement committee will, if such proof of age is not submitted as required, use as conclusive evidence thereof, such information as is deemed by it to be reliable, regardless of the source of such information.
- (2) Any adjustment required by reason of lack of proof or misstatement of the age of persons entitled to benefits hereunder, by the participant or otherwise, will be in such manner as the retirement committee deems equitable.
- (c) **Filing of Information** - Any notice or information which, according to the terms of the plan or the rules of the retirement committee, must be filed with the retirement committee, shall be deemed so filed if addressed and either delivered in person or mailed to the retirement committee, in care of the City of North Miami Beach, 17011 N.E. 19th Avenue, North Miami Beach, Florida 33162.

### § 7.02 Beneficiaries

- (a) **Beneficiaries Defined** - Each participant may, on a form provided for that purpose, signed and filed with the retirement committee, designate a beneficiary (or beneficiaries) to receive the benefit, if any, which may be payable, in the event of his death, pursuant to the provisions of section 6.01, 6.02, 6.03 or 6.04 hereof, and each designation may be revoked by such participant by signing and filing with the retirement committee a new designation of beneficiary form.

(b) **Failure to Designate Beneficiaries** - If a deceased participant failed to name a beneficiary in the manner above prescribed or if the beneficiary (or beneficiaries) named by a deceased participant predeceases the participant, the death benefit, if any, which may be payable under the plan with respect to such deceased participant may be paid, in the discretion of the retirement committee either to:

(i) Any one or more of the persons comprising the group consisting of the participant's spouse, the participant's descendants, the participant's parents, or the participant's heirs-at-law, and the retirement committee may pay the entire benefit to any member of such group or apportion such benefit among any two or more of them in such shares as the retirement committee, in its sole discretion, shall determine, or

(ii) the estate of such deceased participant; provided, however, that in any of such cases the retirement committee, in its discretion, may direct that the commuted value of the remaining monthly income payments, be paid in a lump sum.

(c) **Payments Final** - Any payment made to any person pursuant to the power and discretion conferred upon the retirement committee by the provisions of this section 7.02 shall operate as a complete discharge of all obligations under the plan with respect to such deceased participant and shall be final, binding and conclusive on all persons ever interested hereunder.

#### § 7.03 CONTINGENT BENEFICIARIES

(a) **Contingent Beneficiary Defined** - In the event of the death of a beneficiary who survives the participant and who is receiving benefits under sections 6.01, 6.02, 6.03, 6.04 or 6.06 hereof, within the 10 year (or other) period with respect to which death benefits are payable under the plan, after the participant's death, the same amount of monthly retirement income which the beneficiary was receiving shall be payable for the remainder of the above period to a person designated by the participant, or if no person was so named, then to a person designated by the beneficiary to receive the remaining death benefits, if any.

(b) **No Contingent Beneficiary** - If no person so designated in (a) above is living upon the occurrence of the contingency in (a) above, the remaining death benefits, if any, shall be payable for the remainder of such applicable 10 year (or other) period, in the discretion of the retirement committee, either to

(i) All or any one or more of the persons comprising the group consisting of the participant's spouse, the beneficiary's spouse, the participant's descendants, the beneficiary's descendants, participant's parents, the beneficiary's parents, the participant's heirs-at-law, or the beneficiary's heirs-at-law, or

(ii) The estate of such deceased beneficiary.

(c) **Lump Sum Payment** - In any of the cases in (a) or (b) above, the retirement committee may, in its discretion, direct that the commuted value of the monthly retirement income payments due for the remainder of the applicable 10-year (or other) period to be paid in a lump-sum.

(d) **All Payments Final** - Any payments made to any person pursuant to the power and discretion conferred on the retirement committee under this section 7.03 shall operate as a complete discharge of all obligations under the plan with respect to such deceased beneficiary and shall be final, binding and conclusive on all persons interested hereunder.

#### § 7.04 PARTICIPANT'S RIGHTS IN TRUST FUND

No participant or other person shall have any interest in or any right in, to or under the trust fund, or any part of the assets thereof, except as and to the extent expressly provided in the plan.

#### § 7.05 BENEFITS NOT ASSIGNABLE

(a) **In General** - No benefits, rights or accounts shall exist under the plan which are subject in any manner to voluntary or involuntary anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt to so anticipate, alienate, transfer, assign, pledge, encumber or charge the same shall be void;

(1) **Liability Limitation** - Any such benefit, right or account shall not be in any manner liable for or subject to the debts, contracts, liabilities, engagements, torts or other obligations of the person

entitled to such benefit, right or account.

- (2) **Benefit Not Asset** - Any such benefit, right or account under the plan shall not constitute an asset in case of bankruptcy, receivership, or divorce of any person entitled under the plan.
- (3) **Payment Directly to Participant or Beneficiary** - Any such benefit, right or account shall be payable only directly to the participant or any beneficiary.

§ 7.06 BENEFITS PAYABLE TO MINORS AND INCOMPETENTS

- (a) **In General** - Whenever any person entitled to payments under this plan shall be a minor or under other legal disability or in the sole judgment of the retirement committee shall otherwise be unable to apply such payments to his own best interest and advantage (as in the case of illness, whether mental or physical, or where the person not under legal disability is unable to preserve his estate for his own best interest), the retirement committee may in the exercise of its discretion direct all or any portion of such payments to be made in any one or more of the following ways unless claim shall have been made therefore by an existing and duly appointed guardian, conservator, committee or other duly appointed legal representative, in which event payment shall be made to such representative:
  - (i) Directly to such person unless such person shall be a minor or shall have been legally adjudicated incompetent at the time of the payment;
  - (ii) To the spouse, child, parent or other blood relative to be expended on behalf of the person entitled or on behalf of those dependents as to whom the person entitled has the duty of support;
  - (iii) To a recognized charity to be expended for the benefit of the person entitled or for the benefit of those dependents as to whom the person has the duty of support; or
  - (iv) By the retirement committee itself receiving and expending or directing the expenditure of the same for the benefit of the person entitled or for the benefit of those dependents as to whom the person has the duty of support.

- (b) **Decision of Retirement Committee Final** - The decision of the retirement committee will, in each case, be final and binding upon all persons and, except in the case of (iv) above, the retirement committee shall not be obliged to see to the proper application or expenditure of any payments so made. Any payment made pursuant to the power herein conferred upon the retirement committee shall operate as a complete discharge of the obligations of the trustee and of the retirement committee.

§ 7.07 CONDITION OF EMPLOYMENT NOT AFFECTED BY PLAN

The establishment and maintenance of the plan will not be construed as conferring any legal rights upon any participant to the continuance of his employment with the City, nor will the plan interfere with the right of the City to discipline, lay off or discharge any participant.

§ 7.08 ABANDONMENT OF BENEFITS

- (a) **Participant's Address** - Each participant and other person entitled to benefits hereunder shall file with the retirement committee from time to time, in writing, his post office address and each change of post office address, and any check representing payment hereunder.
- (1) **Communication to Participant** - Any communication addressed to a participant, a former participant, a beneficiary or a pensioner hereunder at his last address filed with the retirement committee (or, if no such address has been filed, then at his last address as indicated on the records of the City) shall be binding on such person for all purposes of the plan.
- (2) **Obligation of Committee and Trustee** - Neither the retirement committee nor the trustee shall be obligated to search for or ascertain the location of any such person.
- (b) **Options of Retirement Committee** - If the retirement committee, for any reason, is in doubt as to whether retirement income payments are being received by the person entitled thereto, it shall, by registered mail addressed to the person concerned at his address last known to the retirement committee, notify such person that:

- (i) All unmailed and future retirement income payments shall be henceforth withheld until he provides the retirement committee with evidence of his continued life and his proper mailing address; and
- (ii) His right to any retirement income whatsoever shall, at the option of the retirement committee, be cancelled forever if, at the expiration of three years from the date of such mailing, he shall not have provided the retirement committee with evidence of his continued life and his proper mailing address.
- (iii) Upon legal determination of death, or other evidence satisfactory to the retirement committee, a participant's retirement income payable under any provision of the plan will be paid to his designated beneficiary. If, however, no designated beneficiary is recorded with the retirement committee, it will be paid first to his spouse, if living, and if not, to his surviving children in equal shares.

## ARTICLE VIII: TRUST FUND AND TRUSTEE

### § 8.01 TRUST AGREEMENT

The trust agreement, and any future amendments thereto, shall form a part of the plan, and any amendments hereto, in the same manner as if all terms and provisions were copied here in detail. The terms and provisions of the plan, and any future amendments hereto, shall form a part of the trust agreement in the same manner as if it were copied in detail in the trust agreement.

### § 8.02 TRUSTEE

The term "trustee" means the trustee appointed by the retirement committee and approved by the City Council to administer the trust fund created for the purposes of the plan or such other trustee the retirement committee may designate from time to time, which is approved by the City Council.

### § 8.03 PURPOSE OF TRUST FUND

- (a) Creation - A trust fund will be created and maintained for the purpose of the plan, and the monies thereof will be invested in accordance with the terms of the agreement and declaration of trust which forms a part of the plan.
- (b) Contributions and Benefits - All contributions will be paid into the trust fund, and all benefits under the plan will be paid from the trust fund.

### § 8.04 BENEFITS SUPPORTED ONLY BY TRUST FUND

Any person having any claim under the plan will look solely to the assets of the trust fund for satisfaction. In no event will the City or any of its officials, employees, members of its City Council or agents be liable in their individual capacities to any person whomsoever, under the provisions of the plan or of the trust agreement.

### § 8.05 TRUST FUND APPLICABLE ONLY TO PAYMENT OF BENEFITS

The trust fund will be used and applied only in accordance with the provisions of the plan, to provide the benefits thereof, and no part of the corpus or income of the trust fund will be used for, or diverted to, purposes other than for the exclusive benefit of participants and other persons thereunder entitled to benefits, except to the extent provided in section 5.09 and section 8.06, with respect to

expenses of administration and termination of the plan, respectively.

§ 8.06 TERMINATION OF PLAN AND DISTRIBUTION OF TRUST FUND

Upon termination of the plan for any reason, or upon written notice to the trustee that contributions thereunder are being permanently discontinued, the trust fund shall be apportioned and distributed in accordance with the following procedure:

- (1) **Date of Distribution, Asset Value** - The retirement committee shall determine the date of distribution and the asset value to be distributed, after taking into account the expenses of such distribution.
- (2) **Method of Distribution** - The retirement committee shall determine the method of distribution of the asset value that is, whether distribution shall be by payment in cash, by the maintenance of another or substituted trust fund, by the purchase of insured annuities, or in kind based on the then market value - for each class of participants and other persons entitled to benefits under the plan, as specified in (3) below.
- (3) **Asset Value** - The retirement committee shall apportion the asset value as of the date of termination of the plan in the manner set forth below, on the basis that the amount required to provide any given retirement income shall mean the actuarially computed single-sum value of such retirement income; except that, if the method of distribution determined under 8.06(2), "Method of Distribution", above involves the purchase of an insured annuity, the amount required to provide the given retirement income shall mean the single premium payable for such annuity.
  - (a) Apportionment shall first be made in respect of each retired police officer or retired firefighter receiving a retirement income hereunder on such date, each person receiving a retirement income on such date on account of a retired (but since deceased) police officer or firefighter, and each police officer or firefighter who has, by such date, become eligible for normal retirement but has not yet retired, in the amount required to provide such retirement income, provided that, if such asset value is 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 is any asset value remaining after the apportionment under paragraph (a) apportionment shall next be made in respect of each police officer or firefighter in the service of the municipality on such date who has completed at least ten (10) years of credited service, who has contributed to the municipal police officers' or firefighters' pension trust fund for at least ten (10) years, and who is not entitled to an apportionment under paragraph (a), in the amount required to provide the actuarial equivalent of the accrued normal retirement income, based on the police officers' or firefighters' credited service and earnings to such date, and each former participant then entitled to a benefit under the provisions of s.185.19 or 175.211 who has not by such date reached his normal retirement date, in the amount required to provide the actuarial equivalent of the accrued normal retirement income to which he is entitled under s. 185.19 or 175.211; provided that, if such remaining asset value is less than the aggregate of the amounts apportioned hereunder, such latter amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.
- (c) If there is any asset value after the apportionments under paragraphs (a) and (b) apportionment shall lastly be made in respect of each police officer or firefighter in the service of the municipality on such date who is not entitled to an apportionment under paragraphs (a) and (b) in the amount equal to his total contributions to the Plan to date of termination; provided that, if such remaining asset value is less than the aggregate of the amounts apportioned hereunder, such latter amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.
- (d) In the event that there is asset value remaining after the full apportionment specified in paragraphs (a), (b), and (c), such excess shall be returned to the municipality, less return to the state of the state's contributions, provided that, if the excess is less than the total contributions made by the municipality and the state to date of termination of the plan, such excess shall be divided proportionately to the total contributions made by the municipality and state.

4. The retirement committee shall distribute, in accordance with the manner of distribution determined under subsection (2), the amounts apportioned under subsection (3).
5. If after a period of 24 months after the date on which the Plan terminated or the date on which the retirement committee received written notice that the contributions thereunder were being permanently discontinued, the municipality or the retirement committee of the municipal police officers' or firefighters' pension trust fund affected has not complied with all the provisions in this section, the Department of Insurance shall effect the termination of the fund in accordance with this section.

**§ 8.07 BENEFITS 100% VESTED IF PLAN IS TERMINATED OR CONTRIBUTIONS PERMANENTLY DISCONTINUED**

- (a) **In General** - In the event that the plan is terminated or contributions to the trust are permanently discontinued, the benefits of each participant in the plan on such date of termination or discontinuance shall be 100% vested to the extent then funded, where such vested benefits shall be determined and distributed as provided in Section 8.06 hereof.

(b) **State Monies**

However, the state monies, received under Chapters 175 and 185, Florida Statutes, shall be used for the exclusive benefit of the police and fire departments, in accordance with the requirements of those statutes.