

Utility Board Approved October 25, 2017

**THE RETIREMENT SYSTEM**

**FOR THE GENERAL EMPLOYEES  
OF THE UTILITY BOARD  
OF THE CITY OF KEY WEST, FLORIDA**

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## TABLE OF CONTENTS

	<b>Page</b>
<b>ARTICLE ONE THE RETIREMENT SYSTEM.....</b>	<b>1</b>
<b>ARTICLE TWO DEFINITIONS.....</b>	<b>1</b>
2.01 Accumulated Contributions .....	1
2.02 Accrued Benefit .....	1
2.03 Actuarial Equivalent .....	1
2.04 Career Average Compensation .....	2
2.05 Code .....	2
2.06 Compensation .....	2
2.07 Credited Service.....	2
2.08 Early Retirement Age .....	2
2.09 Employee .....	2
2.10 Final Average Compensation.....	2
2.11 Fund .....	3
2.12 Management.....	3
2.13 Member .....	3
2.14 Normal Retirement Age.....	3
2.15 Pension Plan Administrator .....	3
2.16 Plan Year.....	3
2.17 System.....	3
2.18 Trustee.....	3
2.19 Union.....	3
2.20 Utility Board .....	3
<b>ARTICLE THREE MEMBERSHIP AND MEMBER CONTRIBUTIONS .....</b>	<b>3</b>
3.01 Eligibility for Membership .....	3
3.02 Required Union Member Contributions .....	4
3.03 Required Management Member Contributions .....	4
3.04 Refund of Accumulated Contributions .....	4
<b>ARTICLE FOUR RETIREMENT BENEFITS.....</b>	<b>5</b>
4.01 Normal Retirement Benefits .....	5
4.02 Termination Retirement Benefit .....	5

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
4.03 Disability Retirement Benefit .....	7
4.04 Optional Methods of Retirement Benefits .....	8
4.05 Manner of Making Payments.....	9
4.06 Monthly Benefits .....	9
4.07 Minimum Benefit.....	9
4.08 Limitations .....	9
4.09 Benefit Adjustments.....	9
4.10 Required Beginning Date.....	10
<b>ARTICLE FIVE DEATH BENEFITS .....</b>	<b>10</b>
5.01 General .....	10
5.02 Service Connected Death.....	10
5.03 Non-Service Connected Death.....	12
5.04 Minimum Benefit.....	13
5.05 Limitations .....	13
5.06 Monthly Benefits .....	13
<b>ARTICLE SIX LIMITATIONS ON BENEFITS.....</b>	<b>13</b>
6.01 Errors.....	13
6.02 Rights to Trust Assets .....	13
6.03 RESERVED.....	13
6.04 Maximum Benefits.....	13
<b>ARTICLE SEVEN PLAN FUNDING .....</b>	<b>14</b>
7.01 Contributions.....	14
7.02 Payment to Fund .....	14
7.03 Plan Expenses .....	14
7.04 System Benefit .....	15
7.05 Forfeitures .....	15
<b>ARTICLE EIGHT TRUST AND TRUSTEES .....</b>	<b>15</b>
8.01 Appointment of Trustees.....	15
8.02 Terms of Office.....	15
8.03 Rules and Decisions.....	15

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
8.04 Administrative Functions.....	15
8.05 Fund Administration.....	16
8.06 Fund Investment.....	17
8.07 Fund Audit.....	17
8.08 Exculpation.....	17
<b>ARTICLE NINE AMENDMENTS AND TERMINATION .....</b>	<b>17</b>
9.01 Amendments.....	18
9.02 Termination.....	18
9.03 Liquidation of the Fund.....	18
<b>ARTICLE TEN MISCELLANEOUS.....</b>	<b>19</b>
10.01 Legality.....	19
10.02 Non-guarantee of Employment.....	19
10.03 Forfeiture of Benefits.....	19
10.04 Non-alienation of Benefits.....	19
10.05 Construction.....	19
10.06 Governing Laws.....	19
10.07 Qualified Military Service.....	19
10.08 Direct Transfers of Eligible Rollover Distributions.....	19
10.09 Mandatory Distributions.....	21
10.10 Use of Electronic Media.....	21
<b>ARTICLE ELEVEN PRESERVATION OF BENEFITS PLAN.....</b>	<b>21</b>
11.1 Creation and Effective Date of Preservation of Benefits Plan.....	21
11.2 Definitions.....	22
11.3 Preservation of Benefits.....	22
11.4 Administration.....	22
11.5 Determination of Funding Amount Needed.....	22
11.6 Benefit Amount.....	23

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
11.7 Additional Funding.....	23
11.8 IRS Section 415 (m).....	23

## ARTICLE ONE

### THE RETIREMENT SYSTEM

It is deemed to be in the best interest of the Utility Board of the City of Key West, Florida ("Utility Board") that it continues The Retirement System for the General Employees of The Utility Board of the City of Key West, Florida ("System"), a defined benefit pension plan originally established with an effective date of April 9, 1954, and is amended in its entirety, as provided herein, effective January 1, 2011, unless otherwise noted herein or otherwise required by applicable law. The System is a "governmental plan" within the meaning of Section 414(d) of the Code, and as such, is exempt from the Employee Retirement Income Security Act of 1974, as amended.

The benefits of former Employees of the Utility Board (or their beneficiaries) shall be determined under the System as in effect at the time of the Employee's termination of service. Except to the extent necessary to carry out the provisions of the preceding sentence, all prior Resolutions of the Utility Board or of the Trustees are hereby repealed. The benefits of all Employees on the date this Resolution is adopted, and of all persons hired or re-employed after that date, shall be determined under the System as it is in effect by this Resolution or as it may be amended.

The Internal Revenue Service is requiring that the System be amended and restated for legislative changes. This amended and restated System document is intended to comply with the applicable provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"), the final Code Section 415 regulations, the Pension Protection Act of 2006 ("PPA"), the Heroes Earnings Assistance and Relief Tax Act ("HEART") and the applicable provisions of various administrative pronouncements promulgated by the Internal Revenue Service.

## ARTICLE TWO

### DEFINITIONS

For the purpose of the System, the following terms shall have the following meanings:

2.01 Accumulated Contributions means the sum of all amounts deducted from a Member's Compensation and contributed to the Fund. The term Accumulated Contributions shall not include any contributions made by the Utility Board for Management or Union Members regardless of whether or not such contributions were made prior to or after the date this paragraph was added to the System.

2.02 Accrued Benefit means the monthly benefit payable at or after Normal Retirement Age, as determined under the System's formula.

2.03 Actuarial Equivalent means equality in value of the aggregate amounts expected to be received under different forms of payment. Actuarially equivalent amounts will be determined based on the 1994 Group Annuity Reserving Table, projected to 2002, based on a

fixed blend of 50% male mortality rates, per IRS Revenue Ruling 2001-62, with interest at eight (8%) where the age shall be set forward five (5) years for disabled lives.

2.04 Career Average Compensation means the average annual Compensation earned by a Member from date of participation to termination of service. Compensation is calculated using the Member's base hourly rate in effect each pay period, multiplied by the corresponding hours earned during that pay period, less any hours that are considered "leave without pay" or are otherwise excluded from Compensation by Section 2.06.

2.05 Code means the Internal Revenue Code of 1986, as amended.

2.06 Compensation means a member's base compensation (hourly rate each pay period, multiplied by 80 hours). Effective upon approval by the Utility Board in 2017 for Members under Section 2.04 and on January 1, 2020 for Members under Section 2.10, Compensation means a member's base compensation (hourly rate in effect each pay period multiplied by the corresponding hours earned during that pay period). However, Compensation shall not include overtime (except as provided below), commissions, bonuses, expense allowances and any hours that are considered "leave without pay", as defined in the books and records of the Utility Board. The annual Compensation of each member is taken into account for determining the benefits provided under the system and shall not exceed the annual compensation limit of Section 401(a) (17) of the Code, as in effect on the first day of the Plan Year. This limit shall be adjusted by the Secretary of the Treasury to reflect increases in the cost of living, as provided in Section 401(a) (17) (b) of the Code; provided, however, that the dollar increase in effect on January 1 of any calendar year is effective for plan year beginning in such calendar year. If a Plan determines annual Compensation over a Plan Year that contains fewer than 12 calendar months (a "short Plan Year"), then the Compensation limit for such "short Plan Year" is equal to the Compensation limit for the calendar year in which the "short Plan Year" begins multiplied by the ratio obtained by dividing the number of full months in the "short Plan Year" by 12.

So that Members who are assigned to work a 12-hour shift will not be penalized by receiving credit for having worked less than 2080 hours in a calendar year, a limited number of overtime hours actually worked in a payroll period shall be counted each calendar year, at the Member's base compensation (straight time) rate of pay, to ensure each Member who worked a 12-hour shift gets pension credit for having actually worked 2080 hours each calendar year (which shall become 2088 hours each calendar year for those members entitled to a Final Average Compensation benefit, effective January 1, 2020).

2.07 Credited Service means the total number of completed years and months of active service a Member performs from the later of: April 9, 1954; or such Member's Date of Hire (or probationary period) to the earlier of: such Member's date of termination; or retirement. Buy-back for Credited Service is permitted under the following circumstance: Members who were employed on or before June 30, 1979, were permitted to buy Credited Service for the period of employment from August 16, 1943 to April 9, 1954. Except with respect to a Member entitled to Credited Service as both an Employee and a Member of the Utility Board, Credited Service is limited to 30 years. However, Members with thirty (30) or more years of Credited Service as of November 23, 1998, will be limited to thirty-five (35) years of Credited Service. Credited Service for an elected official will be 4 years upon completion of a 4-year term and Credited Service for a Utility Board Chairman will be 2 years upon completion of a 2-year term.

2.08 Early Retirement Age means the earlier of the day the Member attains age fifty-five (55) and completes ten (10) years of Credited Service *or* the day the Member completes twenty (20) years of Credited Service.

2.09 Employee means any regular and any permanent officer or Employee of the Utility Board as well as every Member of the Utility Board effective as of the date of election to the Utility Board. Individuals who perform services for the Employer as an independent contractor shall be excluded from the System, even if a governmental agency retroactively reclassifies such individual(s) as an Employee(s).

2.10 Final Average Compensation means the average annual compensation earned by a member during the highest five years out of the last ten years of service immediately preceding termination of service or retirement. Compensation is calculated using the member's base hourly rate each pay period, multiplied by 80 hours, less any hours that are considered "leave without pay."

Effective January 1, 2020, Final Average Compensation means the average annual Compensation earned by a Member during the highest 10,440 hours out of the last 20,880 hours of service (which shall be determined using the highest 130.5 payroll periods of the last 261 payroll periods) immediately preceding termination of service or retirement. Compensation is calculated using the Member's base hourly rate in effect each pay period multiplied by the corresponding hours earned during that pay period, less any hours that are considered "leave without pay," or are otherwise excluded from compensation by Section 2.06.

2.11 Fund means the trust fund established under Article Seven, which shall hold all assets of the System.

2.12 Management means those Employees whose positions are not covered by the Union Contract.

2.13 Member means any Employee who becomes a Member of the System as provided in Article Three.

2.14 Normal Retirement Age means the earlier of the day the Member attains age sixty (60) and completes ten (10) years of Credited Service *or* the day the Member completes thirty (30) years of Credited Service, regardless of age. For all Employees who were System Members on or before November 13, 2008, Normal Retirement Age means the earlier of the day the Member attains age sixty (60) *or* the day the Member completes thirty (30) years of Credited Service, regardless of age.

2.15 Pension Plan Administrator shall be the Board of Trustees. In addition to other duties, the Pension Plan Administrator shall have full responsibility for compliance with any reporting and disclosure requirements applicable to the System.

2.16 Plan Year means a twelve (12) consecutive month period ending every December 31<sup>st</sup>.

2.17 System means the Utility Board of Key West, Florida Retirement System as set forth herein.

2.18 Trustee means a person appointed or elected as provided in Section 8.01.



2.19 Union means those Employees whose positions are covered by the Union Contract.

2.20 Utility Board means the Utility Board of the City of Key West, Florida.

### ARTICLE THREE

#### MEMBERSHIP AND MEMBER CONTRIBUTIONS

3.01 Eligibility for Membership. Every person who was a Member under the System as in effect immediately before Resolution No. 40 was adopted shall continue as a Member. All persons who became Employees on or after February 19, 1992, until October 1, 2003 shall become Members immediately. Any new Employees hired after October 1, 2003, will not be eligible for Membership in the System until after their probationary period has been completed, as defined in the books and records of the Utility Board, and the Employee is made a regular full-time Employee. All persons who became Employees because of their election as a Member to the Utility Board shall be retroactively eligible for Membership effective as of the date of election.

3.02 Required Union Member Contributions. The Utility Board shall contribute the entire eight and one-half percent (8.5%) of each Union Member's Compensation to the Fund. These contributions shall be paid monthly into the Fund so as to make the System non-contributory.

3.03 Required Management Member Contributions.

(a) The Utility Board shall contribute eight and one-half percent (8.5%) of each Management Member's Compensation to the Fund. These contributions shall be paid monthly into the Fund by the Utility Board.

(b) With respect to a Member who is first eligible to participate in the System as of the effective date of Resolution No. 50 (March 29, 1993), because of his election as a Member of the Utility Board, the Utility Board Member shall contribute such amount of money as may be determined by the Actuary so as to fund such Member's benefit retroactive to the date of election of such Member as a Member of the Utility Board. After the effective date of this Resolution, the Utility Board shall contribute eight and one-half percent (8.5%) of each Member's Compensation or other compensation derived as a Member of the Utility Board to the Fund. The requirement to contribute eight and one-half percent (8.5%) of such Member's Compensation shall apply equally to all Members who are eligible to participate because of their election as a Member of the Utility Board regardless of the date of election. These contributions shall not be deducted from such Member's Compensation and shall be paid monthly into the Fund by the Utility Board.

3.04 Refund of Accumulated Contributions.

(a) Each Member who terminates service with the Utility Board with less than five (5) years of Credited Service and who is not entitled to a retirement death benefit under Articles four or five, shall receive a return of an amount equal to Accumulated Contributions multiplied by 1.01% within ninety (90) days after termination of service, unless he elects to come under the provisions of subparagraph (c) below.

(b) Each Member with more than five (5) years Credited Service shall receive an amount equal to Accumulated Contributions multiplied by 1.03% within ninety (90) days after termination of service, unless he elects to come under the provisions of subparagraph (c) below. If the Member receives the amount specified in the preceding sentence, he shall lose all right thereafter to receive a credit for his years of Credited Service as of his termination date, except as provided in subparagraph (e) below.

(c) In lieu of receiving a return of his Accumulated Contributions as provided above, the Member may elect to leave his Accumulated Contributions in the Fund for a period of three years pending re-employment. If the Member is re-employed by the Utility Board within the three-year period, he shall receive credit for his years of Credited Service as of his last termination date. The Member may withdraw his Accumulated Contributions during the three year period, but in such event he shall lose all right thereafter to receive a credit for his years of Credited Service as of his last termination date, except as provided in subparagraph (e) below.

(d) If the Member is not re-employed by the Utility Board within three years, then the Trustees shall return his Accumulated Contributions multiplied by 1.01% or 1.03%, depending on the number of years of Credited Service.

(e) A former Member who takes a refund of Accumulated Contributions and who is later re-employed by the Utility Board within three years of his termination of service shall have the right to repay the Fund. The repayment must be made within ninety (90) days of re-employment. The repayment shall be the amount refunded plus the greater of; interest, at the rate of eight percent (8%) per year; or the rate of return earned by the Fund during the period of time in which he took his refund and was not employed by the Utility Board. Upon such repayment, the Member shall receive credit for his years of Credited Service as of his last termination date.

## **ARTICLE FOUR**

### **RETIREMENT BENEFITS**

#### 4.01 Normal Retirement Benefits.

(a) For employees hired on or after June 1, 2010, the annual normal retirement benefit for every Member shall be an amount equal to two percent (2.0%) of Career Average Compensation times years of Credited Service. For employees hired on or before May 31, 2010, the annual normal retirement benefit for every Member shall be an amount equal to two point four percent (2.4%) of Final Average Compensation times years of Credited Service. Such Member shall receive a monthly benefit equal to 1/12 of the annual normal retirement benefit commencing on the first day of the month following such Member's termination of service with the Utility Board.

(b) Unless another form of benefit is elected under Section 4.04, the normal retirement benefit, as it may be supplemented, shall be paid to the Member monthly for his lifetime only and shall cease upon his death or re-employment to the Utility Board. If a Member dies before the start of his benefit payments, he shall not receive any retirement benefit unless such benefit, if any, is payable under Article Five (5).

(c) Except as set forth in Section 4.01(d), any Member who is re-employed and who has been receiving benefits before being rehired shall have his normal retirement benefit reduced (but not below the amount he has previously received) by the Actuarial Equivalent of any such earlier payments, provided that no such reduction may be made for disability payments previously paid.

(d) For purposes of this Section, the fact that a Member is eligible to participate in the System by virtue of his election as a Member of the Utility Board shall not be considered re-employment and the provisions of Section 4.01(c) shall not be operative to reduce the normal retirement benefit by the Actuarial Equivalent of any prior payments which such Member received by virtue of his participation as a retired Employee of the System.

**4.02 Termination Retirement Benefit.**

(a) Every Member who is not eligible for a normal retirement benefit on his termination of service shall have his termination retirement benefit, if any, determined under this Section.

(b) For Employees hired on or after June 1, 2010, the annual termination retirement benefit shall be an amount equal to two percent (2.0%) of Career Average Compensation times years of Credited Service times the Member's vested percentage. For Employees hired on or before May 31, 2010, the annual termination retirement benefit shall be an amount equal to two point four percent (2.4%) of the Final Average Compensation times years of Credited Service times the Member's vested percentage. A Member's vested percentage shall be as follows:

<u>Years of Credited Service</u>	<u>Vested Percentage</u>
Less than 5	0%
5 but less than 6	25%
6 but less than 7	30%
7 but less than 8	40%
8 but less than 9	60%
9 but less than 10	80%
10 or more	100%

Notwithstanding the foregoing, the vested percentage of an Employee's Accrued Benefit will become one hundred percent (100%) vested and non-forfeitable upon the attainment of Normal Retirement Age.

(c) Any Member who terminates service for any reason other than death or disability who has completed less than five (5) years of Credited Service will not be entitled to any benefit. Any Member who separates from service of any reason other than death or disability who has completed five (5) or more years of Credited Service will receive his/her accrued retirement benefit when the Member reaches age sixty (60) and would have completed ten (10) years of Credited Service or when the Member would have completed thirty (30) years of Credited Service if the Member had remained continuously employed.

A Member who terminates service after (a) attainment of age fifty-five (55) and completion of ten (10) years of Credited Service or (b) completion of twenty (20) years of Credited Service, regardless of age shall be entitled to an early retirement benefit equal to the accrued benefit reduced by 5% per year for each year benefits commence before

normal retirement age. A Member who terminates service before attainment of age fifty-five (55) who has completed ten (10) years of Credited Service shall be entitled to an early retirement benefit equal to the accrued benefit upon attainment of age fifty-five (55) reduced by 5% per year for each year of benefits commence before normal retirement age. Notwithstanding the above, a Member who terminates service on or after attainment of age sixty (60) shall be entitled to the vested accrued benefit payable immediately without reduction, provided however, that any Member who attains age sixty (60) without any vested percentage will not receive a benefit from the System.

(d) Except as set forth in Section 4.02(e), any Member who is re-employed and who has been receiving benefits before being rehired shall have his termination retirement benefit reduced (but not below the amount he was previously receiving) by the Actuarial Equivalent of any such earlier payments, provided that no such reduction shall be made for disability retirement benefits previously paid.

(e) For purposes of this Section, the fact that a Member is eligible to participate in the System by virtue of his election as a Member of the Utility Board shall not be considered re-employment and the provisions of Section 4.02(d) shall not be operative to reduce the termination retirement benefit by the Actuarial Equivalent of any prior payments which such Member received by virtue of his participation as a retired Employee of the System.

#### 4.03 Disability Retirement Benefit.

(a) Each Member who becomes totally and permanently disabled, as determined by the Trustees under subparagraph (c) below, after he/she has at least ten (10) years of Credited Service may upon application and approval receive a disability retirement benefit instead of termination retirement benefit. The benefit shall be paid regardless of whether the disability was service connected. For this purpose, total and permanent disability means a physical or mental condition of the Member resulting from a bodily injury or disease or mental disorder which renders him/her incapable of continuing as an Employee at the Utility Board or any other employer and which disability is expected to be permanent. In addition, an Employee who is physically or mentally unable to continue performing in his/her present occupation, but is able to perform another type of work, will not qualify for disability benefits.

(b) For Employee hired on or after June 1, 2010, the annual disability retirement benefit shall be an amount equal to the greater of (1) two percent (2.0%) of Career Average Compensation paid to the Member multiplied by the Member's years of Credited Service or (2) twenty percent (20%) of the average actual annual Compensation earned by the Member from date of participation through date of disability. For Employees hired on or before May 31, 2010, the annual disability retirement benefit shall be an amount equal to the greater of: (1) two point four percent (2.4%) of average actual Compensation earned by the Member for the three (3) years immediately preceding disability, multiplied by the Member's years of Credited Service; or (2) twenty percent (20%) of the average actual annual Compensation paid to the Member for the three (3) years immediately preceding disability. The disability retirement benefit shall be decreased on an actuarial basis to reflect any worker's compensation or similar injury disability payments made, which may be required by law. Such decrease may result in no disability benefit being payable to a Member under the System.

(c) For a Member to be entitled to a disability retirement benefit, he/she must apply in writing to the Trustees and provide along with the disability request a physician's report and

statement by two different Florida-licensed physicians at the Employees own expense who have treated and/or evaluated the Member for their disabling condition to attest to their total and permanent disability. The Trustees may also arrange for a physical examination(s) by a physician(s) of their choice to determine the validity whether or not to grant the disability request. The physicians' reports shall be given due consideration by the Trustees in arriving at their decision concerning the disabled status of a Member. The decision of the Trustees concerning the disabled status of a Member shall be final. The disability retirement benefit will commence on the first of the month following final approval (e.g., final approval February 15, 2010, effective benefit date March 1, 2010).

Any Member receiving a disability retirement benefit shall be required to provide an annual recertification, at their own expense, of their total and permanent disability to the Pension Plan Administrator. This recertification is due on each anniversary of the effective date of the disability retirement benefit. The reason for this recertification is to determine whether the Member remains totally and permanently disabled. The recertification process will be as follows:

1. The Pension Plan Administrator will mail the following recertification forms, certified, return receipt requested, to the disabled Member:
  - *Disabled Retiree's Report of Continuing Disability.* This form must be completed by the Member and returned within sixty (60) days from the date of mailing. The form requests the medical status since the date of disability retirement.
  - *Physician's Report of Reexamination.* This form must be completed by a physician chosen by the Member and returned within 60 days from the date of mailing.
2. The Pension Board of Trustees, may, in its sole discretion also arrange for a medical examination(s) by a physician(s) of the Utility Board's choice to determine whether the Member remains permanently and totally disabled.
3. It is the sole responsibility of the disabled retiree to provide the information to the Pension Plan Administrator in a timely manner. If a disabled retiree fails to provide the requested information within sixty (60) days, the Member will receive a second request giving thirty 30 days to comply. Information not returned within a total of ninety 90 days may subject the Member to termination or suspension of the disability benefit. Should any Member refuse to submit to a required examination/reexamination, the Member's disability benefit shall cease.

The disability retirement benefit does not allow a Member to receive disability benefits while employed. It is the responsibility of the disabled Member to notify the Pension Plan Administrator immediately if the disabled Member returns to any type of employment with any employer. Upon reemployment or recovery, disability benefits will be terminated and regular retirement benefits would be calculated.

(d) Except as set forth in Section 4.03(e), any Member who is re-employed and who has been receiving benefits before being rehired shall have his termination retirement benefit

reduced (but not below the amount he was previously receiving) by the Actuarial Equivalent of any such earlier payments, provided that no such reduction shall be made for disability retirement benefits previously paid.

(e) For purposes of this Section, the fact that a Member is eligible to participate in the System by virtue of his election as a Member of the Utility Board shall not be considered re-employment and the provisions of Section 4.03(d) shall not be operative to reduce the disability retirement benefit by the Actuarial Equivalent of any prior payments which such Member received by virtue of his participation as a retired Employee of the System.

4.04 Optional Methods of Retirement Benefits. Each Member eligible for a retirement benefit may elect to have his benefit payable under any one of the options set forth below in lieu of a life annuity defined in Section 4.01(b). The value of optional retirement benefits shall be Actuarially Equivalent to the value of benefits otherwise payable. The optional methods are as follows:

OPTION 1: Joint and Last Survivor Option.

This option provides a Member with a decreased retirement benefit during his lifetime with such decreased retirement benefit (or a designated fraction thereof, i.e., 50%, 75% and 100%) continued after his death for the lifetime of another person. The decrease will be based on the benefit amount immediately preceding the Member's death. This option shall be void if the other person dies before the Member.

OPTION 2: Ten Year Certain Option.

This option provides a Member with a decreased retirement benefit during his lifetime, but provides that if a Member dies before he has received the benefit for one hundred twenty (120) months, his beneficiary will receive the same monthly benefit for the remainder of the 120 month period.

OPTION 3: Joint and Last Survivor Option with Pop-Up Feature.

This option provides a Member with a decreased retirement benefit during his lifetime with such decreased retirement benefit (or a designated fraction thereof, i.e., 50%, 75% and 100%) continued after his death for the lifetime of another person. The decrease will be based on the benefit amount immediately preceding the Member's death. However, under this option, if such other person dies before the Member, the benefit paid during the remaining lifetime of such Member shall increase to the amount payable under the normal form of payment.

OPTION 4: Other Agreed Upon Options.

4.05 Manner of Making Payments. Whenever a court has appointed a guardian of the property, or any other person to manage the financial affairs of any person entitled to receive any payment of a benefit or installment thereof, the Trustees shall, upon verification of the entry of a court order, make payments to the guardian of the property, or any other person appointed by court order to manage the financial affairs of any person entitled to receive any payment of a benefit or installment thereof. Any payment of a benefit or installment thereof in accordance with the provisions of this Section shall be a complete discharge of any liability for the making of such payment under the provisions of the System.

4.06 Monthly Benefits. All benefits paid under this Article, except as provided in Section 4.07, shall be paid on a monthly basis.

4.07 Minimum Benefit. The benefits actually paid by the System under this Article to or with respect to a Member shall aggregate no less than the value of the Member's Accumulated Contributions determined as of the date of the Member's termination of service. If at that time the benefit ceases (or the Member's death, before benefits begin) the value of the Employee's Accumulated Contributions exceeds the total of all benefit payments made, the Member or his estate or beneficiary, as the case may be, shall be paid in a lump sum the amount of such excess.

4.08 Limitations. The provisions of Article Six shall apply to all benefits provided under this Article and thereby may reduce or eliminate a benefit described in this Article.

4.09 Benefit Adjustments. Commencing January 1, 2001, and every calendar year thereafter, benefits being paid to retirees of the System will be increased by three percent (3%). Should recommendations from the System's actuarial or financial advisors determine that this cost of living adjustment needs to be eliminated or decreased, it shall be within the discretion of the Trustees to do so. If a retiree begins receiving retirement benefits on January 1, the retiree will receive the cost of living adjustment set forth in this Section effective the same January 1 on which he retired.

4.10 Required Beginning Date. Notwithstanding anything in the System to the contrary, all distributions under the System shall comply with Section 401(a)(9) of the Code and the Regulations thereunder, as prescribed by the Commissioner in Revenue Rulings, Notices, and other guidance published in the Internal Revenue Bulletin, to the extent that said provisions apply to governmental plans under Section 414(d) of the Code, and shall be made in accordance with the following requirements:

(i) Any benefit paid to a Member shall commence on the later of:

(A) April 1 of the year following the calendar in which the Member retires; or

(B) April 1 of the year immediately following the calendar year in which the Member reaches age 70½.

(ii) Distributions of a Member's benefits will be made in accordance with Sections 1.401(a)(9)-2 through 1.401(a)(9)-9 of the IRS Regulations, and such other rules thereunder as may be prescribed by the Secretary of the Treasury, to the extent that said provisions apply to governmental plans under Section 414(d) of the Code.

(iii) Notwithstanding anything contained herein to the contrary, payments under the System to a Beneficiary due to Member's death shall satisfy the incidental death benefit requirements and all other applicable provisions of Section 401(a)(9)(G) of the Code, the regulations issued thereunder, and such other rules thereunder as may be prescribed by the Secretary of the Treasury, including IRS Notice 2007-7, to the extent that said provisions apply to governmental plans under Section 414(d) of the Code.

## ARTICLE FIVE

### DEATH BENEFITS

5.01 General. The benefits payable under this Article shall not be paid in addition to any other benefits but shall be paid in lieu of any other benefits.

5.02 Service Connected Death.

(a) If a Member dies and worker's compensation death benefits become payable, a service connected death benefit will be paid. This service connected death benefit will be calculated as follows: the greater of (1) seventy-five percent (75%) of the normal retirement benefit the Member would have received if he had continued as an Employee at the same rate of pay in effect when he died, until he would have become eligible for a normal retirement benefit or (2) seventy-five percent (75%) of the Member's accrued retirement benefit at the time of the Member's death. Each Member shall be allowed to elect one of the following two options for the payment of this service connected death benefit, provided however, that Option 2 is only available if the Member has children under the age of twenty-one (21) or under the age of twenty-five (25) provided the dependent child is a full-time student in college or disabled under Social Security:

1. The domestic partner or spouse will receive the benefit as calculated in 5.02 (a) above, for their lifetime; or
2. The benefit will be the greater of (1) the normal retirement benefit the Member would have received if he had continued as an Employee at the same rate of pay in effect when he died, until he would have become eligible for a normal retirement benefit or (2) the Member's accrued benefit at the time of the Member's death, to either: 1) the domestic partner or spouse; or 2) the children until the last child turns twenty-one (21) or turns twenty-five (25) provided the dependent child is a full-time student in college or disabled under Social Security. When the last child turns twenty-one (21) or turns twenty-five (25) provided the dependent child is a full-time student in college or disabled under Social Security, the benefit will reduce to the greater of (1) sixty percent (60%) of the normal retirement benefit the Member would have received if he had continued as an Employee at the same rate of pay in effect when he died, until he would have become eligible for a normal retirement benefit or (2) sixty percent (60%) of the Member's accrued retirement benefit at the time of the Member's death, payable to the domestic partner or spouse for their lifetime.

(b) In the absence of an election by the Member, immediately upon the death of the Member, the greater of (1) seventy-five percent (75%) of the normal retirement benefit the Member would have received if he had continued as an Employee at the same rate of pay in effect when he died, until he would have become eligible for a normal retirement benefit or (2) seventy-five percent (75%) of the Member's accrued retirement benefit at the time of the Member's death, will be paid to the surviving domestic partner or spouse, if any, or if none, then to the Member's children under the age of twenty-one (21), or under the age of twenty-five



(25) provided the dependent child is a full-time student in college or disabled under Social Security in equal parts. Within ninety (90) days from the date of death, the surviving domestic partner or spouse, if any, or if none, then the Member's children under the age of twenty-one (21) or under the age of twenty-five (25) provided the dependent child is a full-time student in college or disabled under Social Security, shall elect one of the options provided for in (1) or (2) of this Section 5.02, provided however, that Option 2 is only available if the Member has children under the age of twenty-one (21) or under the age of twenty-five (25) provided the dependent child is a full-time student in college or disabled under Social Security.

(c) Whenever the benefit is paid to the child, and when there is more than one child and the oldest turns twenty-one (21) or turns twenty-five (25) provided the dependent child is a full-time student in college or disabled under Social Security, the total benefit being paid will not be reduced until the youngest child turns twenty-one (21) or turns twenty-five (25) provided the dependent child is a full-time student in college or disabled under Social Security.

(d) Payments will commence as soon as administratively practicable, but will be effective on the day following death.

### 5.03 Non-Service Connected Death.

(a) If a Member dies while an employee and death benefits are not payable under Section 5.02, a non-service connected death benefit as follows: the greater of (1) seventy-five percent (75%) of the normal retirement benefit the Member would have received if he had continued as an Employee at the same rate of pay in effect when he died, until he would have become eligible for a normal retirement benefit or (2) seventy-five percent (75%) of the Member's accrued retirement benefit at the time of the Member's death. Each Member shall be allowed to elect one of the following two options for the payment of this non-service connected death benefit, provided however, that Option 2 is only available if the Member has children under the age of twenty-one (21) or under the age of twenty-five (25) provided the dependent child is a full-time student in college or disabled under Social Security:

1. The domestic partner or spouse will receive the benefit as calculated in 5.03(a) above, for their lifetime; or
2. The benefit will be the greater of (1) the normal retirement benefit the Member would have received if he had continued as an Employee at the same rate of pay in effect when he died, until he would have become eligible for a normal retirement benefit or (2) the Member's accrued retirement benefit at the time of the Member's death, to either 1) the domestic partner or spouse; or (2) the children until the last child turns twenty-one (21) or turns twenty-five (25) provided the dependent child is a full-time student in college or disabled under Social Security. When the last child turns twenty-one (21) or turns twenty-five (25) provided the dependent child is a full-time student in college or disabled under Social Security, the benefit will drop to sixty percent (60%) of the normal retirement benefit the Member would have received if he had continued as an Employee at the same rate of pay in effect when he died, until he would have become eligible for a normal

retirement benefit payable to the domestic partner or spouse for their lifetime.

(b) In the absence of an election by the Member, immediately upon the death of the Member, the greater of (1) seventy-five percent (75%) of the normal retirement benefit the Member would have received if he had continued as an employee at the same rate of pay in effect when he died, until he would have become eligible for a normal retirement benefit or (2) seventy-five percent (75%) of the Member's accrued retirement benefit at the time of the Member's death, will be paid to the surviving domestic partner or spouse, if any, or if none, then to the Member's children under the age of twenty-one (21) or under the age of twenty-five (25) provided the dependent child is a full-time student in college or disabled under Social Security, in equal parts. Within ninety (90) days from the date of death, the surviving domestic partner or spouse, if any, or if none, then the Member's children under the age of twenty-one (21), or under the age of twenty-five (25) provided the dependent child is a full-time student in college or disabled under Social Security shall elect one of the options provided for in (1) or (2) of this Section 5.03 provided however, that Option 2 is only available if the Member has children under the age of twenty-one (21) or under the age of twenty-five (25) provided the dependent child is a full-time student in college or disabled under Social Security.

(c) When there is more than one child and the oldest turns twenty-one (21) or turns twenty-five (25) provided the dependent child is a full-time student in college or disabled under Social Security, the total benefit being paid will not be reduced until the youngest child turns twenty-one (21) or turns twenty-five (25) provided the dependent child is a full-time student in college or disabled under Social Security.

(d) Payments will commence as soon as administratively practicable, but will be effective on the day following death.

5.04 Minimum Benefit. The benefits actually paid by the System under this Article with respect to a Member's death shall aggregate no less than the value of the Member's Accumulated Contributions determined as of the date of the Member's death. If at the time the benefit ceases the value of the Accumulated Contributions exceeds the total of all benefit payments made, the Member's beneficiary shall be paid in a lump sum the amount of such excess.

5.05 Limitations. The provisions of Article Six shall apply to all benefits provided under this Article and may thereby reduce or eliminate a benefit described in this Article.

5.06 Monthly Benefits. All benefits payable under this Article, except as provided in Section 5.04 shall be paid on a monthly basis. Each month the beneficiary or beneficiaries shall be paid one-twelfth (1/12) of the total payment otherwise determined under this Article.

## ARTICLE SIX

### LIMITATIONS ON BENEFITS

6.01 Errors. Should any change or error in records reveal that any Member or beneficiary is receiving from the System more or less than he would be entitled to receive had

the records been correct, then on discovery of any such error the Trustees shall correct same and as far as practical shall direct that future payments be adjusted in such manner that the Actuarial Equivalent of the benefit to which the Member or beneficiary was correctly entitled shall be paid.

6.02 Rights to Trust Assets. No Employee or other person shall have any right to, or interest in, any assets of the Fund upon termination of service or otherwise, except as provided from time to time under the System, and then only to the extent of the benefits payable under the System to such Employee or other person out of the Fund. All payments of benefits as provided for in the System shall be made solely out of the Fund and none of the fiduciaries under the System shall be liable in any manner for such payments of benefits.

6.03 RESERVED.

6.04 Maximum Benefits

(a) Section 415 of the Code Limitation. The benefits otherwise payable to a Member or a beneficiary under the System and, where relevant, the Accrued Benefit of a Member, shall be limited to the extent required by the provisions of Section 415 of the Code. For purposes of this Section, the Limitation Year shall mean the 12 month period beginning January 1<sup>st</sup> and ending December 31<sup>st</sup>. To the extent applicable, the provisions of Section 415 of the Code are hereby incorporated by reference into this System.

(b) No Actuarial Adjustment for COLA. No actuarial adjustment to the benefit shall be made for the COLA provided by Section 4.09, provided the form of benefit is not subject to § 417(e)(3) of the Code and otherwise satisfies the limitations of this Section 6.04 and in no event will the amount payable under the form of benefit in any limitation year exceed the limits of this Section 6.04 applicable at the annuity starting date, as increased in subsequent years pursuant to § 415(d) of the Code. For this purpose, the dollar limit of § 415(b) of the Code shall be automatically adjusted beginning with the first limitation year following a Member's severance of employment, in accordance with § 415(d) of the Code. This provision is effective as of February 12, 2014.

(c) Additional Limitation on Pension Benefits. Notwithstanding anything herein to the contrary:

1. The normal retirement benefit or pension payable to a Retiree who becomes a Member of the Fund and who has not previously participated in such Fund, on or after January 1, 1980, shall not exceed one hundred percent (100%) of his Average Final Compensation. However, nothing contained in the Section shall apply to supplemental retirement benefits or to pension increases attributable to cost-of-living allowances or adjustments.
2. No Member of the Fund 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 a different employer's retirement fund or plan. This restriction does not apply to social security benefits or federal benefits under Chapter 67, Title 10, U.S. Code.

## ARTICLE SEVEN

### PLAN FUNDING

7.01 Contributions. Members shall make such contributions to the Fund as required under the System. The Utility Board shall pay into the Fund annually such amounts as determined on a reasonable actuarial basis, as approved by the Utility Board, to fund System benefits. For the purpose of determining the Actuarial Equivalent of any benefit hereunder, such benefit shall equal any benefit having the same present value on the date payment commences.

7.02 Payment to Fund. All Member and Utility Board contributions shall be paid to and held in the Fund.

7.03 Plan Expenses. The reasonable expenses of the administrations of the System may be paid from the Fund to the extent not paid by the Utility Board.

7.04 System Benefit. All benefits under the System shall be paid from the Fund according to the terms of the System in effect from time to time.

7.05 Forfeitures. Any amounts forfeited in accordance with the provisions of the System shall not inure to the benefit of any other Member, but shall be used solely to reduce the Utility Board's future contributions under the System.

## ARTICLE EIGHT

### TRUST AND TRUSTEES

8.01 Appointment of Trustees. There shall be fourteen (14) Trustees, consisting of the General Manager/CEO of the Utility Board, ten (10) Employees and three (3) retirees, hereinafter referred to as the Pension Board of Trustees, except as provided hereinafter. The Trustees who are Employees shall be elected by the Employees, provided that at least one (1) Employee/Trustee shall be selected from each department. The Retirees shall elect three (3) retiree representatives. The Pension Board of Trustees shall elect a Chairperson and a Vice-Chairperson from the 14 Member Board.

8.02 Terms of Office. The General Manager/CEO shall serve as Trustee during his/her term of office and his/her successor shall automatically become a Trustee.

Trustees may serve any number of terms, whether or not consecutive. Except to the extent otherwise provided in a prior Plan document, all terms will be for four (4) years. If a Trustee should resign from his/her position as Trustee, his/her remaining term should be filled immediately and a special election shall take place. The initial term of office for the third (3) retiree trustee shall be until March 31, 2019 and all subsequent terms shall be for four years.

There are three trustees who had been elected as employee representatives, and who retired on December 31, 2015. Those Trustees will be allowed to complete the terms to which they have been elected. In addition, the departments from which they were elected will hold a new election to elect a new employee representative. The terms of office for these 3 employee representatives will be effective upon completion of the election until when the term of the person who was elected to the position (and has since retired) was scheduled to end.

Effective as of April 10, 2013, if a Trustee should move or be transferred to another department, he/she will be permitted to finish his/her term for that department. That Trustee can run for a Trustee position in their new department when the term becomes open for election.

8.03 Rules and Decisions. The Trustees shall adopt rules of procedure and maintain a record of their proceedings. Seven Trustees shall constitute a quorum at any meeting and each Trustee shall be entitled to one vote. A majority of Trustees present and voting shall be necessary for a decision by the Trustees.

8.04 Administrative Functions. The Trustees shall administer the System, and in so doing shall:

- (a) Observe the operations of the System.
- (b) Make recommendations for changes and improvement of the System.
- (c) Determine and authorize all claims and entitlements to benefit payments.
- (d) Determine, by means of uniform rules, all questions concerning Credited Service and Membership in the System.
- (e) Maintain accurate records of Credited Service for each Member.
- (f) Have actuarial valuations and studies of the System performed.
- (g) Render, or have prepared, a complete accounting of the financial and other transactions of the System.
- (h) Appoint such agents or counsel as may be deemed advisable to operations of the System.
- (i) Do and perform such acts as may, in the opinion of the Trustees, be deemed advisable to the proper operation of the System.

8.05 Fund Administration. The Trustees shall be responsible for the custody and management of the Fund and shall make distributions from the Fund in accordance with the terms of the System. In carrying out these responsibilities, the Trustees shall have the power:

- (j) To sell, exchange, convey, transfer or dispose of, and also grant options with respect to, any property, whether real or personal, at any time held by them, and any sale may be made by private contract or by public auction, and for cash or upon credit, or partly for cash and partly upon credit, as the Trustees, may deem best, and no person dealing with the Trustees shall be bound to see the application of the purchase money or to inquire into the validity, expediency or propriety of any such sale or other disposition.
- (k) To maintain, manage, operate, repair and improve or lease for any period any real or personal property held by them.

(l) To compromise, compound and settle any debt or obligation due to them as Trustees hereunder, and to reduce the rate of interest on, to extend or otherwise modify, or to foreclose upon default, or otherwise enforce any such obligation.

(m) To vote in person or by proxy on any stocks bonds or other securities held by them; to exercise any options appurtenant to any stocks, bonds or other securities for the converse thereof into other stocks, bonds or securities or to exercise any rights to subscribe for additional stocks, bonds or other securities and make any and all necessary payments therefore; to join in, or to dissent from, and to oppose, the reorganization, liquidation, sale or merger of corporations or properties in which they may be interested as Trustees, upon such terms and conditions as they may deem wise.

(n) To make, execute, and acknowledge and deliver any and all deeds, leases assignments and instruments.

(o) To cause any investments from time to time held by them to be registered in, or transferred into the names of the System for the Utility Board or the names of their nominees. However, the books and the records of the Trustees shall at all times show that all such investments are part of the Fund, provided that the consent of the Investment Committee is first obtained as to the appointment of any custodian of Fund assets.

(p) For the purpose of investing in and holding title to real or personal property or part of interest therein located outside the state of Florida, to appoint one or more individuals or corporations as a co-trustee or sub-trustee or to join with one or more individuals or corporations (including themselves) acting as Trustees of other pension trusts, profit sharing trusts or Employee benefit trusts in the establishments of one or more sub-trusts; such co-trustees or sub-trustees, upon being appointed shall act with such one or more than one or all of the powers, authorities, discretion, duties and functions of the Trustee under the System and as such shall be designated in the instrument establishing such sub-trust including without limitation by the reference thereto power to receive and hold property, real or personal, or part interest therein, leaseholds, mortgages, and other interests in realty, situated in any State in which the co-trust or sub-trustee is authorized to act as trustee of pension trusts, profit sharing trusts or other Employee benefit trusts; and to pay the reasonable expenses and compensation of such co-trustee or sub-trustee, provided that the consent of the Investment Committee is first obtained as to the appointment of any sub-trustee or co-trustee.

(q) To cause the purchase of insurance policies or contracts to provide all or any part of the benefits contemplated by the System.

(r) To do all acts whether or not expressly authorized which they may deem necessary or proper for the protection of the property held in the fund.

8.06 Fund Investment. The Fund shall be invested and reinvested in such securities or real or personal property, wherever situated and of whatsoever kind, as may be approved by the Trustees, including but not limited to stocks, common or preferred, bonds and mortgages (including those of the Utility Board) and other evidences of indebtedness or ownership, although the same may not be of the character permitted for investment by fiduciaries under the laws of the State of Florida. The Trustees, through their agents or otherwise, may retain in cash and keep unproductive of income such amount of the Fund as they may deem advisable, having due regard for the cash requirements of the System. In making investments and reinvestments, as

authorized by the provisions of the System, the Trustees or such person, persons, agency or entity acting pursuant to authority granted by the Trustee shall exercise the judgment and care under the circumstances then prevailing which a person of ordinary prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their own funds, considering the probable income therefrom as well as the probable safety of their capital.

8.07 Fund Audit. The Utility Board shall engage the services of a Certified Public Accountant to perform a certified audit of the Fund each year. The cost of such audit shall be the responsibility of the Utility Board.

8.08 Exculpation. No Trustee shall be liable for the making of retention or sale of any investment made as permitted herein, and no Trustee shall be liable for any loss or diminution of the fund, except in cases of a Trustee's own negligence, willful misconduct or lack of good faith.

## ARTICLE NINE

### AMENDMENTS AND TERMINATION

9.01 Amendments. The Utility Board reserves the right to make, from time to time, any amendments to the System which do not cause any part of the Fund to be used for, or diverted to, any purpose other than the exclusive benefit of Members or their beneficiaries; provided however, that the Utility Board make any amendment determines necessary or desirable, with or without retroactive effect, so long as such amendment does not violate the Code or other applicable law. If the System is amended in its application to any Member benefiting hereunder, the amount of benefits which at the time of any such amendment shall have accrued to and vested in such Member shall not be affected hereby, except to the extent that the assets of the Fund are inadequate. All such amendments shall be made by formal Resolution of the Utility Board.

9.02 Termination. Upon termination of the System for any reason, or upon the complete discontinuance of contributions, the rights of all Members to benefits accrued to the date of such termination or discontinuance, including any amounts credited to a Member's account, if applicable, are nonforfeitable, to the extent then funded. The Trustees shall liquidate the Fund in accordance with Section 9.03.

9.03 Liquidation of the Fund. If terminated, the Trustees shall continue to administer the System in accordance with the provisions in effect at the time of termination for the sole benefit of the then Members, any beneficiaries then receiving retirement benefits, and any Member entitled to receive benefits in the future under one of the options selected by any Member.

In the event of termination, the Fund shall be allocated as follows:

- (a) First, all Members shall receive a return of contributions they have made, without interest or premium.

(b) Second, the assets shall be used to provide for those already receiving benefits and those who are then eligible for a normal retirement benefit.

(c) Third, the assets shall be used to provide the benefits to those who have either:

1. attained age fifty-five (55) with ten (10) or more years of Credited Service; or
2. attained twenty (20) or more years of Credited Service.

(d) The assets shall be used to provide benefits, to the extent vested before termination of the System, to Members not previously provided for above, and

(e) Any remaining assets shall be used to pay all other benefits which have accrued under the System. The allocation of assets under the Fund shall be carried out through payment of the benefits provided hereunder as they become due, or by the transfer of such assets to any retirement system replacing this System, providing that full vesting of benefits under this System are provided and fully maintained under new such retirement system. Any allocation of assets made by the Trustees in accordance with the provisions hereunder shall be final and binding on all persons entitled to benefits under this System. Any funds remaining in the fund, after all the benefits provided hereunder have been paid, shall revert to the Utility Board.

## ARTICLE TEN

### MISCELLANEOUS

10.01 Legality. If any part of the System is declared illegal, the remainder of the System shall not thereby be invalidated. All provisions of any Resolution of the Utility Board inconsistent with the provisions of this Resolution are hereby repealed to the extent of such inconsistencies.

10.02 Non-guarantee of Employment. Nothing contained in the System shall be construed as a contract of employment between the Utility Board and any Employee, or as a right of any Employee to be continued in the employment of the Utility Board or as a limitation of the right of the Utility Board to discharge any of its Employees, with or without cause.

10.03 Forfeiture of Benefits. Any Member who engages in any illegal act which is a detriment to or causes injury or loss to the Utility Board in any material respect shall forfeit any right to benefits under the System. If a Member ceases to be an Employee, and at that time owes money to the Utility Board, the benefits to which the Member may be entitled may, at the discretion of the Utility Board, be paid to the Utility Board in satisfaction of such obligation.

10.04 Non-alienation of Benefits. No benefit provided herein shall be assignable nor shall it be subject to attachment, garnishment, execution or to any other legal process, except that, subsequent to termination of employment and prior to a refund, a Member may voluntarily assign such funds and a portion thereof to the Utility Board or any of its recognized agencies, for the satisfaction of lawfully contracted obligations.

10.05 Construction. The masculine gender shall include the feminine gender and the singular may include the plural, unless the context clearly indicates to the contrary. The words "hereof", "herein" and "hereunder", and similar compounds of the word "here" shall mean and



refer to the entire System and not to any particular provision or Section. All headings of articles, sections or subparagraphs are inserted for ease of reference and are not to be used in construing the System.

10.06 Governing Laws. Except as otherwise required by the Code, the System shall be construed, interpreted and enforced according to its terms and the laws of the State of Florida.

10.07 Qualified Military Service. Notwithstanding any other provision of the System to the contrary, contributions, benefits, and service credit with respect to qualified military service, as defined in Section 414(u) of the Code, shall be provided in accordance with Section 414(u) of the Code, USERRA and the HEART Act and the rules adopted by the Pension Board of Trustees.

10.08 Direct Transfers of Eligible Rollover Distributions

(a) Rollover Distributions. Notwithstanding any other provision of the System to the contrary, a "distributee" may elect, at the time and in the manner prescribed by the Utility Board, to have any portion or all of an "eligible rollover distribution" paid directly to an "eligible retirement plan" specified by the "distributee" in a direct rollover. For purposes of this section, the following definitions shall apply:

1. "*Distributee*" means a Member or former Member, the Member's surviving spouse, and the Member's spouse or former spouse who is the alternate payee under a domestic relations order, who is entitled to receive a portion of the Member's benefit.

Effective for Plan Years beginning on and after January 1, 2007, a non-spouse beneficiary, may elect to directly rollover an eligible distribution to an IRA, a Roth IRA or an individual retirement annuity under Section 408(b) of the Code that is established on behalf of the designated beneficiary as an inherited IRA, pursuant to the provisions of Section 402(c)(11) of the Code. In order to be able to roll over the distribution, the distribution otherwise must satisfy the definition of "eligible rollover distribution". In addition, the determination of any required minimum distribution under Section 401(a)(9) of the Code that is ineligible for rollover shall be made in accordance with IRS guidance.

2. "*Eligible retirement plan*" An eligible retirement plan is an IRA described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, an annuity Contract described in Section 403(b) of the Code, an eligible plan under Section 457 of the Code that agrees to separately account for such transferred amounts and which is maintained by a state, political subdivision of a state or an agency or instrumentality of a state or political subdivision of a state or a qualified trust described in Section 401(a) of the Code that accepts the distributee's "eligible rollover distribution". For distributions made after December 31, 2007, an eligible retirement plan shall include a Roth IRA as

defined under Section 408A of the Code. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a Spouse or former Spouse who is the alternate payee under a court order.

3. "*Eligible rollover distribution*" An eligible rollover distribution is any distribution of all or any portion of the Member's benefit, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated Beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and any distribution made to satisfy Section 415 of the Code.
4. "*Direct rollover*" A direct rollover is a payment by the System to the eligible retirement plan specified by the distributee.

(b) Rollovers or Transfers into the Fund.

The fund will accept, solely for the purpose of purchasing Credited Service as provided herein, permissible Member requested transfers of funds from other retirement or pension plans, Member rollover cash contributions and/or direct cash rollovers of distributions as following:

1. Transfers and Direct Rollovers or Member Rollover Contributions from Other Plans. The Fund will accept either a direct rollover of an eligible rollover distribution or a Member contribution of an eligible rollover distribution from a qualified plan described in Sections 401(a) or 403(a) of the Code, from an annuity contract described in Section 403(b) of the Code or from an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state. The Fund will also accept legally permissible Member requested transfers of funds from other retirement or pension plans.
2. Member Rollover Contributions from IRAs. The Fund will accept a Member rollover contribution of the portion of a distribution from an individual retirement account or annuity described in Section 408(a) or 408(b) of the Code that is eligible to be rolled over and would otherwise be included in gross income.

10.09 Mandatory Distributions. Notwithstanding any other provision of the Plan to the contrary, a Member must consent to receipt of any distribution in excess of \$1,000 that constitutes an "eligible rollover distribution" (as defined in Section 10.8(a)(3) and that is made to

a Member before the Member attains the later of age sixty-two (62) or Normal Retirement Age (See Section 3.04 and Section 4.07).

10.10 Use of Electronic Media. The Utility Board or the Pension Plan Administrator may use telephonic or electronic media to satisfy any notice requirements required by this System, to the extent permissible under the Code (or other generally applicable guidance). In addition, a Member's consent, if required, may be provided through telephonic or electronic means, to the extent permissible under the Code (or other generally applicable guidance). The Utility Board or the Pension Plan Administrator also may use telephonic or electronic media to conduct System transactions such as enrolling Members, and other transactions, to the extent permissible under the Code (or other generally applicable guidance).

## ARTICLE ELEVEN

### PRESERVATION OF BENEFITS PLAN

11.1 Creation and Effective Date of a Preservation of Benefits Plan. A preservation of benefits plan is hereby established to allow eligible members of the ("Plan") to receive those retirement benefits to which they would otherwise be entitled to pursuant to Resolutions of the Utility Board as amended, if not for the benefit limitation contained in Section 415 of the Internal Revenue Code and the Plan. This Article is effective as of February 12, 2014.

11.2 Definitions. All definitions contained in Article Two of the Plan Document are applicable to the preservation of benefits Account, unless differently defined in this section.

*Maximum benefit* means the retirement benefit a member is entitled to receive from the retirement system in any month after giving effect to any provision of a qualified plan designed to conform to section 415 of the Internal Revenue Code of 1986, as amended.

*Preservation of Benefits Plan participant* means any member whose retirement benefit is determined on the basis of the retirement system without regard to limitations set forth in this division that exceed the maximum benefit under section 415 of the Internal Revenue Code of 1986, as amended.

*Preservation of Benefits Plan* means the unfunded plan created by the Utility Board to provide benefits to members that would be provided under the retirement system, but for the limitations imposed by section 415 of the Internal Revenue Code of 1986, as amended.

*Unrestricted benefit* means the monthly retirement benefit, including, but not limited to, periodic increases provided in 4.09 that a member, spouse, child or other

beneficiary, would receive under the terms of the retirement system of the Utility Board, except for the restrictions contained in this division.

11.3 Preservation of Benefits. The excess retirement benefits above the limits permitted by the Internal Revenue Code shall be as follows:

(a) Funded from the General Fund of the Utility; and

(b) Paid annually concurrently with the Utility Board's annual contribution to normal pension costs, which shall cause the Utility Board to realize a reduction in normal pension costs in the same amount; and

(c) Be deposited into a separate account established to receive the Utility Board's excess retirement benefit contributions, which accounts shall be separate and apart from the accounts established to receive the Utility Board's normal pension contribution for the Plan.

11.4 Administration. The Board of Trustees of The Retirement System for the General Employees of the Utility Board of the City of Key West, Florida is appointed as the committee to administer the Preservation of Benefits Plan for the retirees.

11.5 Determination of Funding Amount Needed. The actuaries for the Board of Trustees of The Retirement System for the General Employees of the Utility Board of the City of Key West, Florida shall calculate the amounts necessary to fund the defined benefit plan giving effect to the reductions caused by implementation of Section 415 of the Internal Revenue Code.

11.6 Benefit Amount. The unrestricted excess benefits shall be paid to each eligible Preservation of Benefits Plan participant on a monthly basis in an amount equal to the difference between the allowable pension to be paid under the Internal Revenue Code and the amount of the defined benefit that would otherwise be paid if not for the benefit limitations.

11.7 Additional Funding. Should additional retirements occur during the year where the eligible member's retirement benefit exceeds the Section 415 limits, the actuaries shall calculate the additional excess benefit amount required for the remainder of the fiscal year and should such amount exceed the amount available from the funds provided for the fiscal year, the Board of trustees shall notify the Utility Board of the additional funds required. Upon the Utility Board's receipt of notice of the additional funds required, the Utility Board shall forward the additional funds required. The requirement for additional funds paid by the Utility Board shall be reflected as a reduction in the Utility Board's contribution of normal pension costs for the following year.

11.8 IRC Section 415 (m). This Preservation of Benefits Plan is intended to be a “qualified governmental excess benefit arrangement” described in Section 415(m) of the code and shall be administered in a manner consistent with those requirements.

**IN WITNESS WHEREOF**, this Plan has been executed this \_\_\_\_ day of \_\_\_\_\_, 2017.

The Retirement System for the General Employees of the Utility Board of Key West, Florida

By: \_\_\_\_\_  
Harry Bethel, Chairman