

## DIVISION 4. FORT LAUDERDALE FIREFIGHTERS' SUPPLEMENTAL SHARE PLAN

### **Sec. 20-136. Creation; purpose.**

Pursuant to F.S. § 175.351(1)(a), the city commission of the City of Fort Lauderdale hereby creates a separate supplemental plan trust fund to be entitled "The Fort Lauderdale Firefighters' Supplemental Share Plan." The purpose of this supplemental share plan is to place additional premium tax revenues in F.S. §§ 175.101 and 175.351, and earnings generated therefrom in a separate supplemental plan trust fund to pay extra benefits to city firefighters participating in such separate supplemental plan trust fund. In accordance with the provisions of F.S. § 175.351 (1), this supplemental share plan has been approved by a majority of the city's firefighters. The separate supplemental share plan hereby created shall be in addition to any other benefits under the City of Fort Lauderdale's Police and Firefighters' Retirement System, and nothing herein shall in any way affect any other benefits that now or hereafter exist.

(Ord. No. C-05-29, § 1, 10-5-05)

### **Sec. 20-137. Definitions.**

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

*Account* means the participant's supplement share plan account credited with (i) allocations of initial allocation of additional premium tax revenues under City Code section 20-140(a) hereof, (ii) subsequent annual allocation of additional premium tax revenues under City Code section 20-140(b) hereof, (iii) allocations of forfeitures under City Code section 20-140(c) hereof, and (iv) allocation of the net investment return of the share plan under City Code section 20-140(d) hereof.

*Additional premium tax revenues* means revenues received by the city pursuant to F.S. § 175.121, that exceed the amount received for calendar year 1997.

*Annual valuation date.* See "valuation date, annual."

*Beneficiary* means any person, persons or entity designated by a participant to receive any benefits payable in the event of the participant's death. If no beneficiary designation is in effect at the participant's death, or if no person, persons or entity so designated survives the participant, the participant's surviving spouse, if any, shall be deemed to be the beneficiary; otherwise the beneficiary shall be the participant's estate.

*Board or board of trustees* means the board of trustees of the City of Fort Lauderdale Police and Firefighters' Retirement System, who shall likewise serve as the board of trustees for this supplemental share plan. The board shall be the administrative board, which shall hold title to,

supervise, administer and manage the assets of this supplemental share plan.

*City* means the City of Fort Lauderdale, Florida.

*City Code* means the Code of Ordinances of the City of Fort Lauderdale, as same may be amended from time to time.

*Credit or credited service* means the aggregate number of years of service, and fractional parts of years of service of any participant, from the date he or she first entered employment as a firefighter on or after January 1, 1998 until either (i) the date of disability as determined by the retirement system board under City Code section 20-129(c) of the retirement system for a firefighter receiving disability retirement benefits thereunder or (ii) the date his or her employment is terminated, omitting intervening years and fractional parts of years when such participant may not have been employed by the city, subject to the following conditions:

(1) No participant will receive credit for years or fractional parts of years of service if he or she has withdrawn his or her contributions to the retirement system for those years or fractional parts of years of service, unless the participant repays into the retirement system the amount he or she has withdrawn, plus interest determined by the retirement system's board of trustees. The participant shall have at least ninety (90) days after his or her reemployment to make repayment.

(2) Credited service under this supplemental share plan shall be provided only for service as a firefighter or for military service, as provided for herein, and shall not include credit for any other type of service.

(3) In determining the credited service of any participant, credit for up to five (5) years of time spent in the military service of the Armed Forces of the United States shall be added to the years of actual service if:

- a. The participant is in the active employ of the city immediately prior to such service and leaves a position, other than a temporary position, for the purpose of voluntary or involuntary service in the Armed Forces of the United States;
- b. The participant is entitled to reemployment under the provisions of the Uniformed Services Employment and Reemployment Rights Act; and
- c. The participant returns to his or her employment as a firefighter within one (1) year from the date of release from such active service.
- d. To receive credited service for such period of military service, the participant is not required to make contributions to the retirement system.

Credited service of any participant shall not be deemed interrupted by:

(4) Any authorized leave of absence, vacation or period of suspension, provided that all participants similarly situated in similar circumstances shall be treated alike pursuant to uniform, nondiscriminatory rules.

(5) Unless otherwise specifically permitted, no credited service for any purpose under this supplemental share plan shall be allowed for any period of time in which a participant fails to make his or her required contribution to the retirement system.

*Credited service under the retirement system* means credited service in accordance with the terms and conditions of the retirement system. This defined term is to be utilized only in conjunction with the concept of vesting and forfeiture.

*Effective date* means October 1, 2005, the date on which this supplemental share plan shall take effect.

*Extra benefits* means benefits in addition to or greater than those provided to the general employees of the city and in addition to those in existence for the city's firefighters on March 12, 1999.

*Firefighter* means anyone defined as a firefighter in the City of Fort Lauderdale Police and Firefighters' Retirement System.

*Forfeiture* means the termination of a participant's account under City Code section 20-141(c)(1), "forfeiture for cause" and City Code section 20-141(c)(2), "nonvesting forfeiture" of this share plan.

*I.R.C.* means the Internal Revenue Code as same may be amended from time to time.

*Net investment return for the retirement system* means the retirement system's rate of investment return on the retirement system's assets as a whole as reported by the retirement system's investment consultant, net of investment expenses and any administrative expense incurred by the retirement system.

*Net investment return for the share plan* means the net investment return for the retirement system, net of any investment expenses and any administrative expenses incurred by the share plan.

*Participant* means (i) a firefighter who was in the employ of the city as of January 1, 1998, excluding firefighters receiving, on that date, disability retirement benefits under City Code section 20-129(c) of the Retirement System, but including those firefighters who were so employed on January 1, 1998 and thereafter terminated employment or received disability retirement benefits as determined retirement system board under City Code section 20-129 or (ii) one who became a firefighter on or after January 2, 1998.

*Quarterly valuation date.* See "valuation date, quarterly."

*Retirement system* means the City of Fort Lauderdale Police and Firefighters' Retirement System, codified at City Code section 20-126, et seq.

*Retirement system board* means the board of trustees of the retirement system which serves as the administrative board thereof and holds title to, supervises, administers the retirement system and manages the assets thereof.

*Service incurred death* means the death of a participant as a direct result of an occurrence arising in the performance of rendering service for the city as a firefighter.

*Supplemental share plan* or *share plan* means the Fort Lauderdale Firefighters' Supplemental Share Plan as provided herein.

*Supplemental share plan year* or *share plan year* means January 1 through December 31, commencing January 1, 1998.

*State* shall mean the State of Florida.

*Trustee* means any member of the board.

*Valuation date, annual* means the last business day of any supplemental share plan year. The annual valuation date shall be the date upon which the fair market value of the assets of the supplemental share plan shall be determined.

*Valuation date, quarterly* means March 31st, June 30th, September 30th and December 31st of each supplemental plan year. The quarterly valuation date shall be the date(s) upon which the fair market value of the assets of the supplemental share plan shall be determined.

(Ord. No. C-05-29, § 1, 10-5-05)

## **Sec. 20-138. Funding.**

(a) *Allocation of additional premium tax revenues.* The retirement system has heretofore received additional premium tax revenues that were paid to and collected by the state in calendar years 1998 through 2004. Upon implementation of this supplemental share plan, the board shall allocate to each participant a pro rata share of the additional premium tax revenues to each respective participant's account based upon his or her accrued credited service during the relevant period. A participant's year of credited service under this share plan in calendar year 1998 shall correspond to additional premium tax revenues paid to and collected by the state in calendar year 1998. As of the effective date of this share plan, the additional premium tax revenues paid to and collected by the state in a given calendar year are distributed to the retirement system in the next succeeding calendar year.

(1) A participant's pro rata shares of the initial allocation of additional premium tax revenues shall be based on each participant's accrued credited service for each of the seven (7) years from calendar year 1998 through and including calendar year 2004.

(2) For allocations after the initial allocation of additional premium tax revenues, the board shall allocate to each participant's account each year the additional premium tax revenues it receives under the provisions of F.S. § 175.121 (2004), based on his or her accrued credit service during the relevant period.

(3) The board shall make the allocation of the additional premium tax revenues it receives to the share plan as soon as possible but in no event later than five (5) days after its receipt of such additional premium tax revenues. Thereafter, the board shall forthwith allocate to each participant's account the participant's allocable share thereof based on the participant's accrued credited service during the corresponding calendar year in which the additional premium tax revenues were paid to and collected by the state.

(4) The city shall not be required to levy any additional taxes on its residents or to make any contributions to the supplemental share plan.

(b) *Payment of costs, expenses and fees.* All costs, expenses and fees of administering the supplemental share plan shall be paid from the assets of the share plan in such fashion as the board shall determine. Any allocation to a participant's account shall be net of the participant's allocable portion of the share plan's costs, expenses and fees of administering the share plan based on the participant's accrued credited service during the relevant period.

(c) *Exclusive benefit rule.* No part of the assets of the supplemental share plan shall be used for, or diverted to any purpose whatsoever other than for the exclusive benefit of participants and beneficiaries thereof in accordance with the terms hereof and paying the expenses of the share plan as provided in subsection (b) above. No person shall have any interest in, or right to, any part of the assets of the supplemental share plan, except as and to the extent expressly provided in the Share plan.

(d) *Custody of fund assets.* The board shall hold all assets of the supplemental share plan in trust solely for use in paying the benefits provided by the supplemental share plan in accordance with the terms hereof and paying expenses of the share plan as described in paragraph (b) of this City Code section 20-138.

(Ord. No. C-05-29, § 1, 10-5-05)

### **Sec. 20-139. Participation.**

(a) *Establishment of share plan account.* An account shall be established for each participant.

(b) *Termination of participation.* Every firefighter who becomes a participant shall remain a participant until the participant is entitled to distribution of his or her account under the terms of this supplemental share plan and actually receives full distribution.

(Ord. No. C-05-29, § 1, 10-5-05)

### **Sec. 20-140. Allocation to accounts.**

(a) *Initial allocation of additional premium tax revenues.* The additional premium tax revenues received by the board that were paid to and collected by the state in calendar years 1998 through 2004, exclusive of amounts necessary to meet state minimum standards under F.S. Ch. 175, shall be the initial allocation of additional premium tax revenues to each participant's share account.

(1) The initial allocation of additional premium tax revenues to each participant's share account shall be based upon each participant's accrued credited service for each of the seven (7) years between January 1, 1998 and December 31, 2004 (share plan years 1998 through and including 2004), with no differentiation given on account of a participant's seniority, rank or compensation, and shall include interest credits at the annual rate of five and seven tenths (5.7%) percent, from the dates of receipt until the October 1, 2005 effective date.

(2) The initial allocation shall be made in share plan year 2005 within sixty (60) days following the effective date of this share plan.

(b) *Subsequent annual allocation of additional premium tax revenues.* When the board receives, on behalf of the supplemental share plan, the additional premium tax revenues, subsequent to the initial allocation in share plan year 2005, the board shall forthwith allocate, exclusive of amounts necessary to meet state minimum standards under F.S. Ch. 175, to each participant's share plan account his or her pro rata share thereof based solely on the proportion to the period of credited service of each participant in the relevant share plan year bears to the total period of credited service of all participants in that share plan year with no differentiation given on account of a participant's seniority, rank or compensation. Thereafter, when the board receives on behalf of the share plan subsequent annual premium tax Revenues, it shall similarly allocate to each participant's account his or her pro rata share thereof as set forth above.

(c) *Allocations of forfeitures.* As of the annual valuation date in each share plan Year, all amounts forfeited under City Code section 20-141 since the preceding annual valuation date shall be prorated and credited to the accounts of the individual Participants in the same manner as the allocations under subparagraph (b) of this City Code section 20-140.

(d) *Allocation of net investment return.* The board shall invest the supplemental share plan assets together with the assets of the retirement system. Except for the initial allocation of additional premium tax revenues, both excess and supplemental under F.S. § 175.121, under subparagraph (a) of this City Code section 20-140, the board shall value the share plan's assets as of each quarterly valuation date and shall allocate to the participant's account his or her allocable share of the change in the fair market value of the share plan's assets. Except as to the initial allocation of additional premium tax revenues under subparagraph (a) hereof, for the purpose of allocation of net investment return, the net investment return for the retirement system shall be the retirement system's rate of investment return of the retirement system's assets as a whole as reported by the retirement system's investment consultant, net of investment expenses.

The share plan's net investment return shall be the same as the retirement system's net investment return, net of investment expenses and any administrative expenses incurred by the share plan.

(e) *Allocations after termination.* Except as otherwise provided in this subparagraph (e), no amounts shall be allocated to a participant's account under subparagraph (b), subsequent annual allocations of additional premium tax revenues, subparagraph (c), allocations of forfeitures, or subparagraph (d), allocation of net investment returns, of this City Code section 20-140 after the first share plan year next succeeding the share plan year that the participant ceases accruing credited service under the share plan; provided, however, that a participant shall continue to receive allocations under subparagraphs (b), subsequent annual allocations of additional premium tax revenues, and (c), allocation of forfeitures, of this City Code section 20-140 after the participant ceases accruing credited service only to the extent such allocations and forfeitures are proportionately attributable to a period when the participant was accruing credited service. However, in the event a subsequent annual allocation of additional premium tax revenues is not received by the share plan in the share plan year next succeeding the calendar year in which the additional premium tax revenue is paid to and collected by the state, then, in that event, such portion of a subsequent annual allocation of additional premium tax revenues not received by the share plan in the share plan year next succeeding the calendar year in which it was collected by the state shall be allocated to the participant's account in the same manner as set forth in City Code section 20-40(b) hereof.

(f) *Maximum allocation limitation.* Notwithstanding any provision of this supplemental share plan to the contrary, the maximum amount allocated to the participant's account for any calendar year under the provisions of subparagraphs (a) and (b) of this City Code section 20-140 shall not exceed the limitations set forth in I.R.C. Section 415 and any regulations issued thereunder.

(g) *Allocation of costs and expenses.* Any allocation to a participant's account shall be net of the participant's allocable portion of the share plan's costs, expenses and fees of administering the share plan based on the participant's accrued credited service during the relevant period.

(Ord. No. C-05-29, § 1, 10-5-05)

## **Sec. 20-141. Benefits; forfeitures.**

A participant shall receive a distribution of benefits from this supplemental share Plan upon the participant's termination of employment or award of disability retirement benefits under City Code section 20-129(c) of the retirement system in accordance with the provisions of this City Code section 20-141. However, no participant shall receive a benefit from the share plan in excess of the amount allocated to the participant's account.

(a) *Termination of employment or disability retirement.*

(1) Except as otherwise provided in this City Code section 20-141, if a participant (i) terminates employment as a firefighter for any reason whatsoever or (ii) is awarded a disability retirement benefit in accordance with City Code section 20-129(c) of the retirement system, having accrued at least ten (10) years of credited service under the retirement system, then the participant shall receive a benefit equal to entire amount of the participant's account.

(2) In the event a participant, having accrued less than ten (10) years of credited service under the retirement system, is awarded a service incurred disability benefit in accordance with City Code section 20-129(c) of the retirement system, then the participant shall receive a benefit equal to the entire accrued amount of the participant's account as of the date of the award of the service incurred disability retirement.

(b) *Death.*

(1) If a participant dies, having accrued at least ten (10) years of credited service under the retirement system, before complete distribution of the entire amount of the participant's account, then such undistributed portion(s) of the participant's account shall be paid to the participant's beneficiary.

(2) In the event a participant suffers a service incurred death having accrued less than ten (10) years of credited service under the retirement system, then the entire accrued amount of the participant's account, as of the date of death, shall be paid to the participant's beneficiary.

(3) The board may require and rely upon such proof of death and such evidence of the right of any beneficiary to receive the value of the account of a deceased participant as the board may deem proper and its determination of the right of that beneficiary to receive payment shall be conclusive.

(c) *Forfeitures.*

(1) *Forfeiture for cause.* Notwithstanding anything in the plan to the contrary, if a Participant is convicted of a specified offense as set forth in F.S. § 112.3173, as same may be amended from time to time, the provisions of F.S. § 112.3173, as same may be amended from time to time shall apply and the participant shall forfeit all rights to receive a benefit from the supplemental share plan in accordance with the provisions of such F.S. § 112.3173. For purposes of this paragraph (d), "convicted" and "specified offense" shall have the meanings given to them in F.S. § 112.3173.

(2) *Non vesting forfeiture.*

a. If a participant terminates employment or is awarded disability retirement benefits under City Code section 20-129(c) of the retirement system with less than ten (10) years of credited service under the

retirement system, then participant's account shall be forfeited and allocated as set forth in City Code section 20-140(c) and not paid to the participant.

b. Notwithstanding subparagraph (c)(2) a. above, if a participant, having accrued less than ten (10) years credited service under the retirement system, is (i) awarded a service incurred disability retirement benefit in accordance with City Code section 20-129(c) of the retirement system, or (ii) suffers a service incurred death, then the participant's account shall not be forfeited and allocated as set forth in city Code section 20-140(c) above, but shall be distributed and paid to the participant or his or her beneficiary in accordance with City Code section 20-141(a)(2) and 20-141 (b)(2) above.

(d) *Payment of benefits.* Benefits under this City Code section 20-141 shall be payable as soon as possible following the quarterly valuation date coincident with or next following (i) the participant's termination of employment as a firefighter or (ii) award of disability retirement benefits under City Code section 20-129(c) of the retirement system. Acceptance of any partial or full payment of a participant's account as provided in this City Code section 20-141 shall be in full settlement of all claims of a participant against the supplemental share plan as to the partial or full payment received.

(1) Provided a participant has ten (10) years or more credited service under the retirement system, then within thirty (30) days after the quarterly valuation date next succeeding (i) the participant's termination of employment as a firefighter or (ii) award of disability retirement benefits under City Code section 20-129(c) of the retirement system or for a participant described in City Code sections 20-141(a) (2), 20-141(b)(2) or 20-141(c)(2)b. above, the then existing balance of the participant's account shall be distributed to the participant, including allocation of forfeitures under City Code section 20-140 above and allocations of share plan net investment returns accruing through the date of termination or award of disability benefits.

(2) Within thirty (30) days after the next succeeding subsequent annual allocation of additional premium tax revenues, the allocable portion of the participant's allocation of subsequent additional premium tax revenues, both excess and supplemental under F.S. § 175.121, under City Code section 20-140 (b) and the allocable portion of the participant's allocation of forfeitures under City Code section 20-140(c) shall be distributed to the participant.

(3) There shall be no further distributions to the participant after the distributions in subparagraphs (d)(1) and (d)(2) above.

(e) *Required distributions.* In no event shall the provisions of this supplemental share plan operate so as to allow the distribution of a participant's account to begin after the later of April 1st following (i) the calendar year in which the participant attains age seventy and one-half (70 1/2) or (ii) the calendar year in which the participant terminates

employment (the "required beginning date"). In the event a participant is required to begin receiving payments while in service under the provisions of this subparagraph (e), the participant may elect to receive payments while in service in accordance with option (1) or (2) as follows:

- (1) A participant may receive one (1) lump sum payment on or before the participant's required beginning date equal to the entire account balance and annual lump sum payments thereafter of amounts accrued during each calendar year; or
- (2) A participant may receive annual payments of the minimum amount necessary to satisfy the minimum distribution requirements of I.R.C. Section 401 (a)(9). Such minimum amount will be determined on the basis of the joint life expectancy of the participant and the designated beneficiary. Such life expectancy will not be recalculated.

An election under this subparagraph (e) shall be made by a participant by giving written notice to the board within the ninety-day period prior to the participant's required beginning date. Upon the participant's subsequent termination of employment or award of disability benefits under City Code section 29-129(c) of the retirement system, payment of the participant's account shall be made in accordance with the provisions of this City Code section 20-141. In the event a participant fails to make an election under this subparagraph (e), payment shall be made in accordance with subparagraph (e)(2) above.

(f) *Distribution limitation.* Notwithstanding any other provision of this supplemental share plan, all distributions from this share plan shall conform to the regulations issued under I.R.C. Section 401(a)(9), including the incidental death benefit provisions of I.R.C. Section 401(a)(9)(G). Further, such regulations shall override any provision of this supplemental share plan that are inconsistent with I.R.C. Section 401(a)(9).

(g) *Direct rollover of certain distributions.* Notwithstanding any provision of this supplemental share plan to the contrary that would otherwise limit a distributee's election under this subparagraph (g), a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution paid directly by the supplemental share plan to an eligible retirement plan specified by the distributee in a direct rollover. The following definitions apply to the terms used in this paragraph (g):

- (1) Eligible rollover distribution means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any distribution to the extent such distribution is required under Section 401(a)(9) of the Code, and the portion of any distribution that is not includible in gross income;
- (2) Eligible retirement plan means an individual retirement account 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, a

deferred compensation plan described in Section 457 of the Code, or a qualified trust described in Section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse an eligible retirement plan is an individual retirement account or individual retirement annuity.

(3) Distributee means an employee or former employee. In addition, the employee's surviving spouse is a distributee with regard to the interest of the spouse; and

(4) Direct rollover means a payment by the fund to the eligible retirement plan specified by the distributee.

(Ord. No. C-05-29, § 1, 10-5-05)

## **Sec. 20-142. Miscellaneous provisions.**

(a) *Nonalienation of benefits.* The benefits provided by this supplemental share plan shall not be subject to garnishment, attachment; execution of any other legal process, except the board may authorize the deduction of alimony and child support, in accordance with F.S. § 175.061(7) (2004).

(b) *City's responsibilities.* The city shall have no responsibility for the operation of this supplemental share plan except those specified herein.

(c) *Facility of payment.* If the board shall find that a participant or other person entitled to a benefit is unable to care for the participant's affairs or is a minor, or is legally incapacitated, the board may direct that any benefit due the participant shall be paid to the participant's duly appointed legal representative. Any payment so made shall be a complete discharge of the liabilities of this supplemental share plan for that benefit.

(d) *Information.* Each participant, beneficiary or other person entitled to a benefit, before any benefit shall be payable to the participant or on the participant's account under the fund, shall file with the board the information that it shall require to establish the participant's rights and benefits under the plan.

(e) *Amendment.* The provisions of the plan are intended to meet the requirements of a qualified profit sharing plan under I.R.C. Section 401(a) and to be tax-exempt under I.R.C. Section 501(a). Should any changes be required to this Supplemental Share Plan for it to comply or to continue to comply with the provisions of I.R.C. Sections 401(a) and 501(a), the board shall recommend to the city commission any such required changes to the share plan.

(f) *Severability of provisions.* If any provision of this supplemental share plan is for any reason held unconstitutional, inoperative or void, such holding shall not affect the remaining provisions of this supplemental share plan. It is the intent of the city commission to create this supplemental share plan without such unconstitutional,

inoperative or void provision and the remainder of the supplemental share plan, after the exclusion of such provision, shall be deemed and held to be valid as if such provision had not been included herein.

(g) *Gender.* Whenever used in this supplemental share plan, the masculine shall include the feminine and the singular shall include the plural, unless the context indicates otherwise.

(h) *Captions.* The caption preceding the sections and paragraphs of this supplemental share plan are for convenience only. In the case of ambiguity or inconsistency, the text rather than the caption shall control.

(i) *Reports.* The board shall issue a report of this supplemental share plan's operations at least annually.

(j) *Reservation of right to amend supplemental share plan.* Subject to the provisions of F.S. Ch. 447, Pt. II, the city reserves the right at any time to amend or modify this supplemental share plan, provided that no amendment shall cause any part of the share plan assets to be used or diverted to purposes other than the exclusive benefit of the participants and their beneficiaries.

(k) *Termination and discontinuance.*

(1) Notwithstanding any other provision of this supplemental share plan to the contrary, upon the date of either full or partial termination of this share plan, upon complete discontinuance of contributions of additional premium tax revenues to this supplemental share plan, an affected participant's right to their accrued benefit under the terms and conditions of this share plan shall be one hundred (100) percent nonforfeitable.

(2) Subject to the provisions of F.S. Ch. 447, Part II, this supplemental share plan may be terminated by the city. Upon termination of this share plan, the share plan assets shall be apportioned and distributed in accordance with the accrual formulas set forth herein.

(Ord. No. C-05-29, § 1, 10-5-05)

Secs. 20-143--20-150. Reserved.