

**RESOLUTION NO. 2011-52**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WINTER SPRINGS, FLORIDA, AMENDING THE DEFINED BENEFIT PLAN AND TRUST FOR EMPLOYEES OF THE CITY OF WINTER SPRINGS; AMENDING ARTICLE I OF THE DEFINED BENEFIT PLAN TO REVISE THE DEFINITION OF “PLAN COMPENSATION”; AMENDING ARTICLE II OF THE DEFINED BENEFIT PLAN TO REVISE THE ELIGIBILITY PROVISIONS AND PROVIDE THAT EMPLOYEES HIRED ON OR AFTER OCTOBER 1, 2011 SHALL NOT PARTICIPATE IN THE DEFINED BENEFIT PLAN BUT SHALL PARTICIPATE IN A DEFINED CONTRIBUTION PLAN; AMENDING ARTICLE IV OF THE DEFINED BENEFIT PLAN TO PROVIDE FOR A FIVE PERCENT CONTRIBUTION BY PARTICIPANTS; AMENDING ARTICLE V OF THE DEFINED BENEFIT PLAN TO PROVIDE A TWO AND ONE-HALF PERCENT BENEFIT MULTIPLIER FOR SERVICE ON AND AFTER OCTOBER 1, 2011 FOR GENERAL GOVERNMENT EMPLOYEES AND MODIFYING THE DEFINITION OF AVERAGE COMPENSATION; AMENDING ARTICLE VI OF THE DEFINED BENEFIT PLAN TO MODIFY THE ELIGIBILITY REQUIREMENTS FOR AN UNREDUCED EARLY RETIREMENT BENEFIT; AMENDING ARTICLE VIII OF THE DEFINED BENEFIT PLAN TO MODIFY THE VESTING SCHEDULE; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the City Commission of the City of Winter Springs has determined that certain changes to the City’s Defined Benefit Plan and Trust are in the best interest of the City, its employees and taxpayers;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF WINTER SPRINGS, FLORIDA:

Section 1.

That Article I, Section 1.10 of the Defined Benefit Plan and Trust for Employees of the City of Winter Springs be amended as follows:

1.10 Compensation Definitions. Any reference in this Plan to Compensation is a reference to the definition in this Section 1.10, unless the Plan reference specifies a modification

to this definition. The Retirement Committee will take into account only Compensation actually paid for the relevant period.

(A) Total Compensation. "Total Compensation" means wages, salaries, and other amounts received (whether or not paid in cash) for personal services actually rendered in the course of employment with the Employer, but only to the extent included in gross income. This definition includes, but is not limited to commissions, overtime pay and bonuses. With respect to the Plan Years beginning prior to October 1, 1998, Total Compensation does not include elective contributions. With respect to Plan Years beginning on and after October 1, 1998, Total Compensation includes elective contributions. Total Compensation also does not include:

(1) Employer contributions to a plan of deferred compensation to the extent the contributions are not included in the gross income of the Employee for the taxable year in which contributed, on behalf of an Employee to a Simplified Employee Pension Plan to the extent such contributions are excludible from the Employee's gross income, and any distributions from a plan of deferred compensation, regardless of whether such amounts are includible in the gross income of the Employee when distributed.

(2) Other amounts which receive special tax benefits, such as premiums for group term life insurance (but only to the extent that the premiums are not includible in the gross income of the Employee), or contributions made by an Employer towards the purchase of an annuity contract described in Code §403(b) (whether or not the contributions are excludible from the gross income of the Employee).

(B) Plan Compensation. Plan Compensation means Total Compensation described in Section 1.10(A), except that Plan Compensation includes elective contributions for all Plan Years. Plan Compensation applies to determine a Participant's benefit formula and Accrued Benefit under Article V. Effective October 10, 2011, Plan Compensation means base salary including overtime pay up to one hundred fifty (150) hours in a Plan Year, and excluding all other forms of compensation.

## Section 2.

That Article II, Section 2.01 of the Defined Benefit Plan and Trust for Employees of the City of Winter Springs be amended as follows:

2.01 Eligibility. Each Employee (other than an Excluded Employee) becomes a Participant in the Plan on the first day of the month (if employed on that date) immediately following the date 6 months after his Employment Commencement Date. "Employment Commencement Date" means the date on which the Employee first performs an Hour of Service for the Employer. Notwithstanding any other provision of this Plan, any Employee other than a sworn police officer and Forensic Professional hired on or after October 1, 2011, shall not be eligible to participate in this Plan. Any Employee other than a sworn police officer or forensic professional hired on or after October 1, 2011, shall participate in the defined contribution plan established

pursuant to Resolution 2011-52, if eligible to participate in the defined contribution plan. Employees hired as sworn police officers or forensic professional on or after October 1, 2011 shall participate in this Plan.

(A) Excluded Employee

(1) An Employee is an Excluded Employee if his customary weekly employment with the Employer is less than 29 hours. An Employee is an Excluded Employee if he is actively participating (and “benefiting” within the meaning of Treas. Reg. § 1.410(b)-3) in another qualified plan maintained by the Employer other than the Money Purchase Pension Plan and Trust for Employees of the City of Winter Springs, Florida (hereinafter referred to as the “Money Purchase Plan”).

(2) If a Participant has not incurred a Separation from Service but becomes an Excluded Employee, then during the period such a Participant is an Excluded Employee, the Participant will not accrue a benefit under the Plan attributable to any period during which he is an Excluded Employee. However, during such period of exclusion, the Participant, without regard to employment classification, continues to receive credit for vesting under Article VIII for each included Year of Service.

(3) If an Excluded Employee who is not a Participant becomes eligible to participate in the Plan by reason of a change in employment classification, he will participate in the Plan immediately if he has satisfied the eligibility conditions of Section 2.01 and would have been a Participant had he not been an Excluded Employee during his period of Service. Furthermore, the Plan takes into account all of the Participant’s included Years of Service with the Employer as an Excluded Employee for purposes of vesting credit under Article VIII.

(B) Employees with Non-Contributing Service. Any Employee who completed Years of Service prior to adoption of Resolution No. 2003-44, but did not make contributions to this Trust Fund or to the Money Purchase Plan, shall be credited with Years of Accrual Service upon payment of the Required Participant Contributions due under this Plan and the required participant contributions due under the Money Purchase Plan for such service.

Section 3.

That Article II, Section 2.03 of the Defined Benefit Plan and Trust for Employees of the City of Winter Springs be amended as follows:

2.03 Participation upon Re-employment. A Participant whose employment terminates and who is subsequently reemployed prior to October 1, 2011 will re-enter the Plan as a Participant on the date of his re-employment. An Employee other than a sworn police officer or forensic professional who satisfies the Plan's eligibility conditions but who terminates employment with the Employer prior to becoming a Participant will, upon reemployment, participate in the defined contribution plan established pursuant to Resolution 2011-52, in accordance with the terms and conditions therein provided. ~~become a Participant on the later of the Plan Entry Date on which he would have entered the Plan had he not terminated employment or the date of his reemployment.~~ Any Employee other than a sworn police officer or forensic professional who terminates employment prior to satisfying the Plan's eligibility conditions and who is subsequently reemployed on or after October 1, 2011 shall participate in the defined contribution plan established pursuant to Resolution 2011-52, in accordance with the terms and conditions therein provided. ~~becomes a Participant in accordance with the provisions of Section 2.01.~~ Any Employee employed as a police officer or forensic professional who terminates employment prior to satisfying the Plan's eligibility conditions and who is subsequently reemployed becomes a Participant in accordance with the provisions of Section 2.01.

#### Section 4.

That Article IV, Section 4.01 of the Defined Benefit Plan and Trust for Employees of the City of Winter Springs be amended as follows:

4.01 Required Participant Contributions. The Plan did not permit nor require Participant Contributions prior to October 1, 2000. Effective October 1, 2000, each Participant is required to contribute 3% of Compensation to the Plan, which contribution shall be considered the Required Participant Contribution. Effective October 10, 2011, each Participant is required to contribute 5% of Compensation to the Plan, which contribution shall be considered the Required Participant Contribution. The required participant contribution shall be deducted from each Participant's Compensation whenever such Compensation is paid, and remitted to the Trustee. Required participant contributions shall be considered an Employer "pick-up" contribution and shall be designated as employer contributions pursuant to Section 414(h) of the Internal Revenue Code, contingent upon the contributions being excluded from the Participant's gross income for federal income tax purposes. For all other purposes of this Plan, such contributions shall be considered Participant contributions.

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Section 5.

That Article V, Section 5.02 of the Defined Benefit Plan and Trust for Employees of the City of Winter Springs be amended as follows:

5.02 Amount of Normal Retirement Pension/Accrued Benefit. The Annual Benefit limitations of Article III apply to the determination of a Participant's normal retirement pension and Accrued Benefit in the manner prescribed in Section 3.05(H).

## (A) Normal Retirement Pension.

## (1) Benefit Formula

(a) A Participant's normal retirement pension equals 2% of the Participant's Average Final Compensation multiplied by his Years of Accrual Service for service prior to October 1, 2000, and 3% of the Participant's Average Final Compensation multiplied by his Years of Accrual Service for service on and after October 1, 2000. Such pension will be adjusted for any distribution in accordance with Section 8.05. The maximum number of Years of Accrual Service taken into account in the normal retirement pension is 30, counting forward from the date of initial participation to include any purchased past service.

(b) Notwithstanding any provision of subparagraph (a) to the contrary, effective October 1, 2008, a Participant's normal retirement pension shall equal 3% of the Participant's Average Final Compensation multiplied by his Years of Accrual service for service prior to October 1, 2000; provided that such multiplier shall increase by one-fourth of one percent (.25%) each year beginning October 1, 2005 as follows:

Effective Date	Multiplier for Service Prior to October 1, 2000
October 1, 2005	2.25%
October 1, 2006	2.50%
October 1, 2007	2.75%
October 1, 2008	3.00%

(c) A Participant's normal retirement pension shall be calculated by applying the multiplier for service prior to October 1, 2000 that is in effect on the date of the Participant's separation from service.

(d) Effective October 10, 2011, a participating General Employee's normal retirement pension of a Participant other than a sworn police officer or firefighter or forensic professional shall equal 3% of the Participant's Average Compensation

multiplied by Years of Accrual Service prior to October 1, 2011, and 2.5% of the Participant's Average Compensation multiplied by Years of Accrual Service on and after October 1, 2011. The normal retirement pension of a Participant employed as a sworn police officer or firefighter or forensic professional shall equal 3% of the Participant's Average Compensation multiplied by Years of Accrual Service. Such pension will be adjusted for any distribution in accordance with Section 8.05. The maximum number of Years of Accrual Service taken into account in the normal retirement pension is 30, counting forward from the date of initial participation to include any purchased past service.

(2) Average Compensation. Average Compensation is the average of the Participant's Plan Compensation for the Averaging Period in the Participant's Compensation History which results in the highest Average Compensation. A Participant's Compensation History is the Participant's entire period of employment with the Employer. The Averaging Period is 3 consecutive Compensation periods (or the entire period of employment, if shorter). Effective October 1, 2011 Average Compensation shall be the average of the highest five (5) consecutive years of Plan Compensation out of the ten (10) years immediately preceding termination of employment. A Compensation period is the 12-month period ending on the last day of the Plan Year. Notwithstanding the above, a Participant's Average Compensation shall not be less than his or her average compensation as of September 30, 2011.

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#### Section 6.

That Article VI, Section 6.01 of the Defined Benefit Plan and Trust for Employees of the City of Winter Springs be amended as follows:

6.01 Eligibility for Early Retirement Pension. A Participant as of September 30, 2011 who has received credit for at least 10 Years of Service (as defined in Section 8.06) and has attained age 55 may elect an early retirement pension. A Participant as of September 30, 2011 who separates from service after satisfying the service requirement but not the age requirement may elect to receive an early retirement pension upon satisfying the age requirement. In addition, a Participant as of September 30, 2011 who has completed 25 Years of Service (as defined in Section 8.06) may elect an early retirement pension.

A Participant employed after September 30, 2011 who has received credit for at least 15 Years of Service (as defined in Section 8.06), and has attained age 55 may elect an early retirement pension. A Participant employed on September 30, 2011 who separates from service after satisfying the service requirement but not the age requirement may elect to receive an early retirement pension upon satisfying the age requirement. In addition, a Participant employed after September 30, 2011 who has completed 25 Years of Service (as defined in Section 8.06) may elect an early retirement pension.

The early retirement pension for a Participant is his or her Nonforfeitable Accrued Benefit payable at Normal Retirement Date without actuarial reduction for early commencement but only if benefits commence on or after the Participant attains age 55.

Notwithstanding the above, the early retirement pension for a Participant as of September 30, 2011 who has received credit for 10 or more Years of Service but less than 15 Years of Service is the sum of his or her Nonforfeitable Accrued Benefit as of September 30, 2011 payable at Normal Retirement Date without actuarial reduction for early commencement plus his or her Accrued Benefit payable at Normal Retirement Date earned after September 30, 2011 with actuarial reduction for early commencement but only if benefits commence on or after the Participant attains age 55.

If an eligible Participant elects to commence his early retirement pension prior to attaining age 55, such Participant's early retirement pension is the Actuarial Equivalent of his Nonforfeitable Accrued Benefit payable at age 55.

#### Section 7.

That Section 8.05 of the Defined Benefit Plan and Trust for Employees of the City of Winter Springs be amended as follows:

##### 8.05 Vesting Schedule.

(A) 100% Vesting Upon Certain Events. A Participant's Accrued Benefit is 100% Nonforfeitable upon and after his attaining Normal Retirement Age (if employed on or after that date). A Participant's Accrued Benefit is 100% Nonforfeitable if the Participant's separation from Service is a result of death, disability or eligibility for an early retirement pension.

(B) 100% Vesting of Required Participant Contributions. Each Participant is immediately 100% vested with respect to his Required Participant Contributions. A Participant is entitled to receive a return of his Required Participant Contributions, contributed while a participant under the money purchase plan prior to October 1, 2000, upon termination of employment, together with simple interest at a rate equal to the interest rate on 30-year Treasury securities as published in the Internal Revenue Bulletin determined as of the calendar month preceding the first day of the Plan year, and effective October 1, 2003, a rate equal to the U.S. Treasury Department long-term average rate published on the last day of the calendar month preceding the first day of the Plan year, or such other rate that may be approved by the U.S. Treasury Department to replace the 30-year Treasury bond rate as a benchmark for calculating lump sum payouts from defined benefit plans, in lieu of any other benefit under the Plan. The amount received as a distribution by the Participant shall be used to reduce the accrued benefit, if any, at his normal retirement date. Required Participant contributions contributed on and after October 1, 2000 are 100% vested and shall be included in the deferred vested benefit payable to the Participant upon normal retirement date.

(C) Vesting Schedule prior to October 1, 2011. Subject to Section 8.05(A) and Section 8.05(B), a Participant's Nonforfeitable percentage in his Accrued Benefit equals the percentage in the following schedule:

<u>Years of Service</u>	<u>Nonforfeitable Percentage</u>
Less than 3 .....	None
3 .....	20%
4 .....	40%
5 .....	60%
6 .....	80%
7 or more .....	100%

(D) Vesting Schedule effective October 1, 2011. Effective October 1, 2011, and subject to Section 8.05(A) and Section 8.05(B), a Participant's Nonforfeitable percentage in his Accrued Benefit equals the percentage in the following schedule:

<u>Years of Service</u>	<u>Nonforfeitable Percentage</u>
<u>Less than 7 .....</u>	<u>None</u>
<u>7 or more .....</u>	<u>100%</u>

Notwithstanding anything herein to the contrary, the Accrued Benefit of a Participant with at least three (3) Years of Service on October 1, 2011 shall continue to vest in accordance with Section 8.05(C).

(E)(D) Amendment to Vesting Schedule. Though the Employer reserves the right to amend the vesting schedule at any time, the Retirement Committee will not apply the amended vesting schedule to reduce the Nonforfeitable percentage of any Participant's Accrued Benefit derived from Employer contributions (determined as of the later of the date the Employer adopts the amendment, or the date the amendment becomes effective) to a percentage less than the Nonforfeitable percentage computed under the Plan without regard to the amendment. An amended vesting schedule will apply to a Participant only if the Participant receives credit for at least one Hour of Service after the new schedule becomes effective.

If the Employer makes a permissible amendment to the vesting schedule, each Participant having at least 3 Years of Service with the Employer may elect to have the percentage of his Nonforfeitable Accrued Benefit computed under the Plan without regard to the amendment. The Participant must file his election with the Retirement Committee within 60 days of the latest of (1) the Employer's adoption of the amendment; (2) the effective date of the amendment; or (3) his receipt of a copy of the amendment. The Retirement Committee, as soon as practicable, must forward a true copy of any amendment to the vesting schedule to each affected Participant,



together with an explanation of the effect of the amendment, the appropriate form upon which the Participant may make an election to remain under the vesting schedule provided under the Plan prior to the amendment and notice of the time within which the Participant must make an election to remain under the prior vesting schedule. The vesting schedule election does not apply to a Participant if the amended vesting schedule provides for vesting at least as rapid at all times as the vesting schedule in effect prior to the amendment.

(E) Forfeiture for Cause. The Plan does not permit a forfeiture for cause.

#### Section 8.

That Article VIII, Section 8.08 of the Defined Benefit Plan and Trust for Employees of the City of Winter Springs be amended as follows:

8.08 Included Years of Service - Vesting. For purposes of determining "Years of Service" under Section 8.06, the Plan takes into account all Years of Qualified Service credited to a Participant pursuant to Section 5.02(B) and all Years of Service an Employee completes with the Employer except:

(A) Any Year of Service completed before a Break in Service, unless the Employee completes a Year of Service after the Break in Service. This Break in Service rule will not operate to recredit any Year of Service disregarded under clause (B).

(B) Any Year of Service completed before a Break in Service if the number of the Participant's consecutive Breaks in Service equals or exceeds the greater of 5 or the aggregate number of the Years of Service prior to the Break. This Break in Service rule applies only if the Participant is 0% vested in his Accrued Benefit derived from Employer contributions at the time he has a Break in Service. Furthermore, the aggregate number of Years of Service before a Break in Service does not include any Years of Service not required to be taken into account under this exception by reason of any prior Break in Service. If the Retirement Committee disregards the Participant's Years of Service under this exception, the Plan forfeits his pre-Break in Service Accrued Benefit.

(C) Any Year of Service before the Plan Year in which the Participant attained the age of 18.

(D) Any period of employment with the City during which the Employee participated in the defined contribution plan established pursuant to Resolution 2011- 52.

#### Section 9.

That this resolution shall supersede any and all conflicting provisions of any previously adopted resolutions.

Section 9.

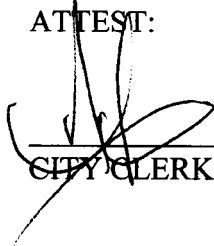
That should any section or provision of this resolution or any portion thereof, any paragraph, sentence, or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or part thereof other than the part declared to be invalid.

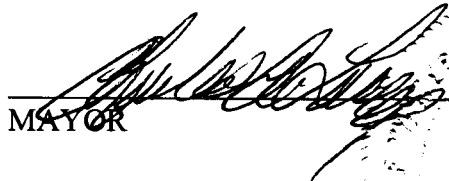
Section 10.

That this resolution shall take effect upon adoption.

**PASSED and ADOPTED this 24<sup>th</sup> day of October, 2011.**

ATTEST:

  
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CITY CLERK

  
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MAYOR

