

1 **AN ORDINANCE AMENDING CHAPTER 12, ARTICLE III**
2 **(ORLANDO FIREFIGHTER PENSION FUND) OF THE**
3 **CHARTER OF THE CITY OF ORLANDO, FLORIDA, PURSUANT**
4 **TO THE AUTHORITY CONTAINED IN CHAPTER 2009-268,**
5 **LAWS OF FLORIDA; BY CREATING SECTION 26, “ORLANDO**
6 **FIREFIGHTERS’ SHARE PROGRAM”;** **PROVIDING FOR**
7 **SEVERABILITY; AND PROVIDING EFFECTIVE DATE.**
8

9 **WHEREAS**, Section 175.351(1), Florida Statutes, provides that if a municipality has a
10 pension plan for firefighters which meets the minimum benefits and minimum standards set forth in
11 Chapter 175, Florida Statutes, the board of trustees of the pension plan may (a) place the income
12 from the premium tax in Section 175.101, Florida Statutes, in such pension plan where it shall be
13 used to pay extra benefits to the firefighters included in that pension plan, or (b) place the income
14 from the premium tax in Section 175.101, Florida Statutes, in a separate supplemental plan to pay
15 extra benefits to firefighters participating in such separate supplemental plan;

16 **WHEREAS**, Section 175.351, Florida Statutes, provides that when a plan is in compliance
17 with such minimum benefit provisions, as subsequent additional state premium tax revenues
18 become available they shall be used to provide extra benefits;

19 **WHEREAS**, a SHARE program is an extra benefit within the meaning of Section 175.351,
20 Florida Statutes;

21 **WHEREAS**, Chapter 2009-268, Laws of Florida, provides that the legislative body of the
22 City of Orlando is authorized to amend the pension plan to the limited extent necessary to create a
23 SHARE program or plan to provide for extra benefits as required by Section 175.351 (1), Florida
24 Statutes, but must obtain prior agreement of the collective bargaining agent of the members;

25 **WHEREAS**, there is no actuarial cost to the City of Orlando, now or in the future, to
26 establish a SHARE program as such program is solely funded by the additional state premium tax
27 revenues and the earnings thereon; and

28 **WHEREAS**, Local 1365 of the International Association of Firefighters, the collective
29 bargaining agent for firefighters in the City of Orlando, has agreed to the proposed amendments.

30 **NOW, THEREFORE**, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF
31 ORLANDO, FLORIDA:

1 **SECTION ONE:** Section 26 of the Orlando Firefighter Pension Plan, as codified in
2 Chapter 12, Article III, of the Charter of the City of Orlando, Florida, be, and the same is created to
3 read:

4 **Sec. 26. - ORLANDO FIREFIGHTERS' SHARE PROGRAM**

5 **(1) Creation and Purpose.**

6 (a) Pursuant to Section 175.351(1)(b), Florida Statutes, a supplemental share
7 program to be entitled "The Orlando Firefighters' Share Program" is created. The purpose of this
8 share program is to place additional state premium tax revenues in Sections 175.101 and 175.351,
9 Florida Statutes, and earnings generated therefrom, in the share program to pay extra benefits to
10 city firefighters participating in such share program. The share program hereby created shall be in
11 addition to any other benefits under the Orlando Firefighter Pension Plan, and nothing herein shall
12 in any way affect any other benefits that now or hereafter exist.

13 (b) The extra benefits to be provided for or on behalf of participants of the Orlando
14 Firefighters' Share Program shall be provided through participant – directed investments, and in
15 accordance with s. 401(a) of the Internal Revenue Code and its related regulations.

16 (c) The Orlando Firefighters' Share Program is a program within the Orlando
17 Firefighter Pension Plan. Accordingly, except as otherwise provided in Section 26, all other
18 provisions of Chapter 12, Article III of the City of Orlando Code, shall be applicable unless
19 superseded by more specific or conflicting language in this Section 26.

20 (d) The city shall not be required to levy any additional taxes on its residents or to
21 make any contributions to the share program.

22 **(2) Definitions.**

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

25 (a) *Account* means the participant's share program individual account credited with (i) initial
26 allocation of additional state premium tax revenues under Section 26 (5) hereof, (ii)
27 subsequent annual allocations of additional state premium tax revenues under Section 26 (6)
28 hereof, (iii) allocations of forfeitures under Section 26 (9) hereof, and (iv) the net investment
29 return of the participant's individual share program account.

30 (b) *Additional state premium tax revenues* means revenues collected by the state and received
31 by the city and the Orlando Firefighter Pension Plan pursuant to Section 175.121, Florida
32 Statutes, that exceed the amount received for calendar year 1997, as adjusted because of
33 benefit improvements, as provided in Section 175.351, Florida Statutes, that are required to

1 be used for extra benefits. The threshold amount to determine the additional state premium
2 tax revenues for the initial tax distribution from the State of Florida for collections in the
3 following calendar years is:

4	1998 – 2006	\$1,065,707
5	2007 – 2008	\$1,286,732
6	2009	\$2,410,006

7 The threshold amount to determine the additional state premium tax revenues for the
8 supplemental tax distribution from the State of Florida, if any, for collections in the following
9 calendar years is:

10	1998 – 2009	\$72,788.
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11 (c) *Board or board of trustees* means the Board of Trustees of the Orlando Firefighter Pension
12 Plan, who shall likewise serve as the board of trustees of this share program. The board shall
13 determine the initial allocation of additional state premium tax revenues, annual allocations of
14 additional state premium tax revenues, forfeitures, and administrative expenses of the share
15 program, and shall otherwise administer the share program in accordance with this Section
16 26.

17 (d) *Effective date* means the date on which this ordinance is enacted.

18 (e) *Extra benefits* means benefits in addition to or greater than those provided to the general
19 employees of the city and in addition to those in existence for the city's firefighters on March
20 12, 1999.

21 (f) *Forfeiture* means the termination of a participant's account under Section 26 (9) "forfeiture for
22 cause" and "nonvesting forfeiture" of this supplemental share program.

23 (g) *Includable time*, for purposes of the calculation of shares for each calendar year, means
24 "credited service" or "creditable service" as defined in Section 31, "Definitions", and includes
25 time in which the firefighter was participating in the Deferred Retirement Option Program
26 (DROP), time during which a firefighter was performing "qualified military service", time during
27 which a firefighter is eligible to receive workers compensation benefits, and time in which the
28 firefighter was on Family Medical Leave Act (FMLA) leave with pay, but excludes any time in
29 which the firefighter was on any other leave of absence without pay.

30 (h) *Net investment return for the participant's share program account* means the net investment
31 return for the share participant's individual share program account, net of any investment
32 expenses, and less any administrative expenses incurred by the share program not deducted
33 from annual additional state premium tax revenues.

- 1 (i) *Plan* means the Orlando Firefighter Pension Plan.
- 2 (j) *Qualified military service* means that military service as defined in Section 414(u) of the
3 Internal Revenue Code after initial employment as a firefighter with the City of Orlando.
- 4 (k) *Separated or separation from employment* means a voluntary or involuntary cessation of
5 employment or death while as a firefighter with the City of Orlando.
- 6 (l) *Share participant or participant* means:
- 7 (i) For the initial allocation, any person who was employed as a firefighter during any
8 of the period of January 1, 1998 – December 31, 2008, who separated from employment prior to
9 July 1, 2009, who was receiving or whose surviving spouse, minor child or beneficiary is receiving,
10 or who is eligible to receive in the future, monthly pension benefits from the Orlando Firefighter
11 Pension Plan, as provided by Section 26 (20).
- 12 (ii) For the initial allocation, any person who was employed as a firefighter during any
13 of the period of January 1, 1998 – December 31, 2008, and who had not separated from
14 employment prior to July 1, 2009.
- 15 (iii) For the annual allocation for calendar year 2009, any person who was employed
16 as a firefighter during any of the period of January 1, 2009 – June 30, 2009, who separated from
17 employment prior to July 1, 2009, as provided by Section 26 (20).
- 18 (iv) For the annual allocations, any person who was employed as a firefighter during
19 any part of the corresponding calendar year who had not separated from employment prior to July
20 1, 2009.
- 21 (v) For the initial allocation and the annual allocations, share participant or participant
22 also means an eligible surviving spouse, minor child and beneficiary of a deceased firefighter who
23 was eligible to participate in the share program.
- 24 (m) *Share program or program* means the Orlando Firefighters' Share Program as provided in
25 this Section 26.
- 26 (n) *Share program year* means January 1 through December 31.

27 **(3) Eligibility for Allocations.**

28 (a) Eligibility to annually receive a share of additional state premium tax revenues
29 shall be determined for each calendar year that the additional state premium tax revenues were
30 collected by the state beginning with calendar year 1998, regardless of which year such revenues
31 were received by the plan.

32 (b) Calculation of Shares for the Initial Allocation.

1 (i) The calculation of shares for the initial allocation in Section 26 (5) for each
2 calendar year (1998 – 2008) shall be allocated based upon the number of days of includable time
3 for each participating firefighter for each calendar year when compared to the number of days in
4 the corresponding calendar year calculated to four (4) decimal places.

5 (ii) Any firefighter who has includable time during January 1, 1998 to
6 December 31, 2008, who dies prior to the effective date, who does not have as of the effective
7 date, a surviving spouse and/or minor child, or beneficiary, who is eligible to receive monthly
8 pension benefits as a result of the death of the firefighter, shall not be entitled to any part of the
9 initial allocation.

10 (iii) Any firefighter who has includable time during the period of January 1,
11 1998 – December 31, 2008 who separated from employment before July 1, 2005, and is not
12 eligible to receive benefits from the plan now or in the future, shall not be eligible to participate in
13 the initial allocation.

14 (iv) Any firefighter who has includable time during the period of January 1,
15 1998 – December 31, 2008 who separated from employment on or after July 1, 2005, who is not
16 eligible to receive benefits from the plan now or in the future, and who received a refund of
17 member's contributions, shall not be eligible to participate in the initial allocation.

18 (v) A former spouse who is receiving benefits from the plan as a result of a
19 Qualified Domestic Relations Order (QDRO) shall not be entitled to any part of the initial allocation
20 of an eligible firefighter.

21 (c) The calculation of shares for the annual allocations in Section 26 (6) shall be
22 allocated based upon the number of days of includable time for each calendar year when
23 compared to the number of days in the corresponding calendar year calculated to four (4) decimal
24 places.

25 (d) The participant's includable time in each calendar year beginning with calendar
26 year 1998 shall correspond to the additional state premium tax revenues collected by the state in
27 each calendar year beginning with calendar year 1998.

28 **(4) Participation.**

29 (a) Establishment of share program account. An individual account shall be
30 established for each share participant.

31 (b) Termination of participation. Every participant shall remain a participant until the
32 participant is entitled to distribution of his or her account under the terms of this share program and
33 actually receives full distribution, or upon forfeiture.

1 **(5) Initial Allocation of Additional State Premium Tax Revenues Collected During**
2 **Calendar Years 1998 - 2008.**

3 The initial allocation shall be determined by the board as follows:

4 (a) Except as provided in Section 26 (3)(b), each participant shall be eligible for an
5 allocation as provided for herein.

6 (b) For each of the calendar years specified in Section 26 (5) (c) hereafter, the
7 additional state premium tax revenues collected for that calendar year, regardless of when such
8 additional state premium tax revenues were received by the city or the plan, shall be allocated for
9 each firefighter eligible for the corresponding year's collections based upon each firefighter's share
10 when compared to the total number of shares for all eligible firefighters for that corresponding
11 calendar year.

12 (c) In calculating the initial dollar allocations for each participant's account of the
13 additional state premium tax revenues collected during calendar years 1998 – 2008, additional
14 state premium tax revenues collected in each of the following calendar years, plus the net
15 investment return of the plan as set forth in Section 26 (5) (g) hereafter, less administrative
16 expenses as set forth in Section 26 (5) (g) hereafter, will be used.

- 17
18 1. January 1, 1998 – December 31, 1998.
19 2. January 1, 1999 – December 31, 1999.
20 3. January 1, 2000 – December 31, 2000.
21 4. January 1, 2001 – December 31, 2001.
22 5. January 1, 2002 – December 31, 2002.
23 6. January 1, 2003 – December 31, 2003.
24 7. January 1, 2004 – December 31, 2004.
25 8. January 1, 2005 – December 31, 2005.
26 9. January 1, 2006 – December 31, 2006.
27 10. January 1, 2007 – December 31, 2007.
28 11. January 1, 2008 – December 31, 2008.
29

30 (d) As soon as administratively possible after the effective date, the plan's actuary
31 shall furnish to the board a spreadsheet listing each eligible firefighter and for each of the aforesaid
32 calendar years, the share amount, the cumulative total shares for all eligible firefighters for each of
33 the aforesaid calendar years, and the percentage for each eligible firefighter for each of the
34 aforesaid calendar years when compared to the total shares for the corresponding calendar year.

35 (e) After review and approval by the board, said spreadsheet shall be published on the
36 City's website, e-mailed to each firefighter who has not separated from employment using their city
37 e-mail address, and sent via U.S. regular mail at the last know address of all other persons listed
38 on said spreadsheet.

1 (f) Any person shall have the right to contest the calculation of the shares by filing a
2 written complaint with the board within thirty (30) days of publication of the spreadsheet on the
3 City's website. Within sixty (60) days but not less than thirty (30) days of publication of the
4 spreadsheet on the City's website, the board shall hold a quasi-judicial hearing to determine each
5 firefighter's initial allocation for each of the aforesaid eleven (11) calendar years, and render an
6 order. As soon as is administratively possible after final determination by the board of each
7 firefighter's initial allocation for each of the aforesaid eleven (11) calendar years, the initial dollar
8 distribution shall be made.

9 (g) The initial dollar allocation shall be calculated as follows:

10 i. The dollar amount for each eligible firefighter for each of the eleven (11)
11 calendar years and the total dollar amount for all eleven (11) calendar years for each
12 eligible firefighter shall be calculated.

13 ii. The plan's net investment return from July 1, 2009 to the end of the month
14 immediately preceding the initial dollar allocation on the reserve account as of September
15 30, 2008, plus the plan's net investment return from September 1, 2009 until the end of the
16 month immediately preceding the initial dollar allocation on the additional state premium
17 tax revenues for the 2008 calendar year collections, shall be calculated.

18 iii. The plan's net investment return shall be allocated to each participant
19 based upon the dollars to be distributed to each firefighter for calendar years 1998 – 2008
20 when compared to the total dollars to be distributed to all eligible firefighters for calendar
21 years 1998 – 2008.

22 iv. The administrative expenses in creating, implementing and making the
23 initial dollar allocations, and the expected administrative expenses through September 30,
24 2010 shall be deducted from each firefighter's dollar allocation, including the plan's net
25 investment return allocation, based upon the dollars to be distributed to each firefighter for
26 calendar years 1998 – 2008 when compared to the total dollars to be distributed to all
27 eligible firefighters for calendar years 1998 – 2008.

28 (h) The amount determined and deducted by the board to cover administrative
29 expenses from the date of the initial dollar allocations through September 30, 2010 shall be held in
30 an interest bearing administrative expense account and shall be used to pay administrative
31 expenses incurred by the board.

32 (i) For those share participants who have separated from employment, distribution
33 shall be made pursuant to a written request from the share participant following delivery by the

1 board or its designee of "Special Tax Notice Regarding Program Payments Under Governmental
2 401(a) Programs".

3 (j) Provided that the separated firefighter has not received a refund of the member's
4 contributions, if a firefighter separated from employment other than because of death on or after
5 July 1, 2005, and is not otherwise eligible for benefits from the plan, the firefighter's dollar allocation
6 shall be transferred to the board where it shall be invested by the board in a suspense account. If
7 the separated firefighter is reemployed within five (5) years, the board shall transfer to the
8 firefighter's share program account any amount of moneys previously transferred to the suspense
9 account, plus the actual earnings on such an amount while in the suspense account.

10 **(6) Annual Allocation of Additional State Premium Tax Revenues Collected for**
11 **Calendar Year 2009, and Each Calendar Year Thereafter.**

12 (a) Except as provided herein, each eligible firefighter for the period of January 1,
13 2009 – December 31, 2009, regardless of when such firefighter separated from employment, and
14 each eligible firefighter for each calendar year thereafter regardless of when such firefighter
15 separated from employment, shall participate in the annual allocation as provided for herein.

16 (b) The additional state premium tax revenues collected for calendar year 2009, and
17 each calendar year thereafter, regardless of when such additional state premium tax monies were
18 received by the City or the plan, shall be allocated.

19 (c) As soon as administratively possible after the effective date, and on or before
20 each March 31 thereafter, the plan's actuary shall furnish to the board a spreadsheet listing for
21 each eligible firefighter, the share amount, the cumulative total shares for all eligible firefighters and
22 the percentage of each eligible firefighter share for the preceding calendar year's collections when
23 compared to the total shares for the corresponding calendar year.

24 (d) After review and approval by the board, said spreadsheet shall be published on the
25 City's website, e-mailed to each firefighter who has not separated from employment using their City
26 e-mail address, and sent via U.S. regular mail to the last known address of all other persons listed
27 on said spreadsheet.

28 (e) Any person shall have the right to contest the calculation of shares by filing a
29 written complaint with the board within thirty (30) days of publication of the spreadsheet on the
30 City's website. Within sixty (60) days but not less than thirty (30) days of publication of the
31 spreadsheet on the City's website, the board shall hold a quasi-judicial hearing to determine each
32 firefighter's share amount, the cumulative total shares for all eligible firefighters and the percentage
33 of each eligible firefighter share for the calendar year's collections, and render an order.

1 (f) As soon as administratively possible but no later than thirty (30) days after receipt
2 of the additional state premium tax revenues collected during the previous calendar year, the dollar
3 distribution shall be made to the participant's individual share account.

4 (g) The annual dollar allocation to the participant's account of the additional state
5 premium tax revenues collected shall be less an amount determined by the board as sufficient to
6 cover administrative expenses from October 1, 2010 through September 30, 2011, and each
7 October 1st through September 30th thereafter. Provided however, if the performance review, as
8 set forth in Section 26 (12), is not performed every year, the board may deduct out of the initial
9 allocation and each year thereafter from the additional state premium tax revenues a pro rata
10 amount to cover the expected administrative expenses of performance review. Provided further,
11 the board shall first use any monies in the forfeiture account to cover expected administrative
12 expenses.

13 (h) If, after use of monies remaining in the forfeiture account, the additional state
14 premium tax revenues received in any twelve (12) months prior to September 30th is equal to or
15 more than the remaining amount determined needed for administrative expenses for the following
16 October 1st – September 30th, then:

17 *i.* The amount remaining in the administrative expense account shall be
18 distributed to the participants based on shares for the previous calendar year; and

19 *ii.* The amount of the additional state premium tax revenues received in
20 excess of the remaining amount determined needed for administrative expenses for the
21 following October 1st – September 30th shall be distributed to the participants based on
22 shares for the previous calendar year.

23 (i) If, after use of monies remaining in the forfeiture account, the additional state
24 premium tax revenues received in any twelve (12) months prior to September 30th is less than the
25 remaining amount determined needed for administrative expenses for the following October 1st –
26 September 30th, then:

27 *i.* All of the additional state premium tax revenues received in any twelve
28 (12) months prior to September 30th shall be held in an interest bearing administrative
29 expense account; and

30 *ii.* Of the amount remaining in the administrative expense account from the
31 twelve (12) months ending September 30th, that amount necessary to cover the remaining
32 expected administrative expenses for the next October 1st – September 30th shall be
33 retained in the administrative expense account.

1 *iii.* Thereafter, any additional monies remaining in the administrative expense
2 account shall be distributed to the participants based on shares for the previous calendar
3 year.

4 (j) If, after use of monies remaining in the forfeiture account, there are insufficient
5 additional state premium tax revenues when combined with the amount remaining in the
6 administrative expense account to meet the remaining expected administrative expenses for the
7 following October 1st – September 30th, the board shall assess each participant's account in an
8 amount and manner deemed appropriate by the board.

9 (k) The annual dollar allocation shall be calculated as follows:

10 *i.* Calculate the percentage of each eligible firefighter's share when
11 compared with the total number of shares for all eligible firefighters for the corresponding
12 calendar year.

13 *ii.* Determine the expected costs, expenses and fees in operating and
14 administering the supplemental share program during the next October 1st – September
15 30th, and deduct such from the additional state premium tax revenues.

16 *iii.* If there are additional state premium tax revenues remaining after
17 deduction for expected costs, expenses and fees pursuant to Section 26 (6)(k)
18 (*ii*) heretofore, for eligible firefighters who entered Forward DROP prior to July 1, 2009,
19 each shall receive their share of includable time for the corresponding calendar year times
20 \$2,246.55. Provided however, if there is insufficient additional state premium tax revenues
21 to distribute the full amount to eligible firefighters who entered Forward DROP prior to July
22 1, 2009, the amount to be distributed shall be prorated as determined by the board.

23 *iv.* For all eligible firefighters, including all Forward DROP participants,
24 determine the annual dollar allocation on the remaining additional state premium tax
25 revenues after deduction of the annual dollar allocations in Section 26 (6)(k) (*iii*)
26 heretofore, if any.

27 (l) For those eligible participants who have separated from employment, distribution
28 shall be made pursuant to a written request from eligible share participant following delivery by the
29 board or its designee of "Special Tax Notice Regarding Program Payments Under Governmental
30 401(a) Programs".

31 **(7) Vesting Requirement.**

32 (a) Solely for the purposes of the Orlando Firefighters' Share Program, vested or
33 vesting means the guarantee that a participant is eligible to receive a retirement benefit from the

1 plan on the completion of ten (10) years of credited service with the plan, or such other vesting
2 period of the plan as may exist in the future, at the time of separation from employment, or upon a
3 determination by the board that the firefighter is eligible for disability benefits from the plan.

4 Additionally, a participant who dies while employed as a firefighter with the City of Orlando or who
5 dies while performing qualified military service, regardless of years of service and regardless of
6 whether or not such death was in the line of duty, shall be considered vested for purposes of the
7 Orlando Firefighters' Share Program, regardless of whether or not such death qualifies for benefits
8 from the plan.

9 (b) If a participant separates from employment prior to satisfying the vesting
10 requirements, the participant's accumulation shall be transferred from the participant's account to
11 the board where it shall be invested by the board in a suspense account. If the separated
12 participant is reemployed as a firefighter within five (5) years, the board shall transfer to the
13 participant's account any amount of moneys previously transferred from the participant's account to
14 the suspense account, plus the actual earnings on such an amount while in the suspense account,
15 provided however, if the separated participant received a refund of member contributions, the
16 reemployed firefighter shall repay the member contributions to the plan, with interest as
17 determined by the board. If the reemployed firefighter does not repay the member's contributions
18 for the previous credited service with interest as determined by the board within the time
19 determined by the board, the previous accumulations shall be forfeited.

20 (c) Any nonvested accumulations transferred from a participant's account to the
21 suspense account shall be forfeited by the participant if the participant is not reemployed as a
22 firefighter within five (5) years after separation from employment.

23 **(8) Share Program Benefits.**

24 (a) Share program benefits shall be provided in accordance with s. 401(a) of the
25 Internal Revenue Code.

26 (b) Share program benefits shall accrue in individual accounts that are participant-
27 directed, and funded by additional state premium tax revenues and earnings thereon, less
28 administrative expenses.

29 (c) Share program benefits may not be paid under this section unless the participant
30 has separated from employment and a proper application has been filed in the manner prescribed
31 by the board or its designee. The board or its designee may cancel an application when the
32 participant or beneficiary fails to timely provide the information and documents required by the
33 board or its designee.

1 **(9) Forfeitures.**

2 (a) Forfeiture for cause. Notwithstanding anything in the share program to the
3 contrary, if a participant is convicted of a specified offense as set forth in Section 112.3173, Florida
4 Statutes, or the participant's retirement benefit is otherwise forfeited pursuant to subsection
5 112.3173 (3), Florida Statutes, as the same may be amended from time to time, the provisions of
6 Section 112.3173, Florida Statutes, as same may be amended from time to time, shall apply and
7 the participant shall forfeit all rights to receive a benefit from the share program in accordance with
8 the provisions of such Section 112.3173, Florida Statutes.

9 (b) Non vesting forfeiture. If a share participant separates from employment who is
10 not vested and who has not applied for disability benefits from the plan within the applicable time
11 period, then the participant's account shall be administered pursuant to Section 26 (7). A firefighter
12 who has applied for disability benefits from the plan who has separated from employment shall be
13 included in the calculation of the annual allocation for that period before separation. If such
14 firefighter who has separated from employment is later determined not to be eligible for disability
15 benefits from the plan, then the participant's account shall be administered pursuant to Section 26
16 (7). Any firefighter whose application for disability benefits is pending shall not be entitled to receipt
17 of the participant's account, unless the firefighter is otherwise qualified to receive pension benefits
18 from the plan, now or in the future, based on years of service.

19 (c) Any participant's account which is forfeited shall be held in an interest bearing
20 forfeiture account to be used for the payment of administrative expenses expected for the following
21 October 1st – September 30th, which expected amount shall be transferred to the administrative
22 expense account. Any monies remaining in the forfeiture account after the transfer of the amount
23 of expected administrative expenses shall be allocated among the other participants based upon
24 the amount of shares each participant is allocated for the calendar year in which the forfeiture
25 occurs.

26 **(10) Administration.**

27 (a) Subject to approval of a vote by the active members of the Orlando Firefighter
28 Pension Plan, the board shall select a private sector company or companies to offer one or more
29 investment products or services to the participants of the share program. Such private sector
30 company or companies shall be a bundled provider that offers participants a range of individually
31 allocated or unallocated investment products and a range of administrative and customer services,
32 including accounting and administration of individual participant accounts; individual participant
33 record keeping; asset purchase, control, and safekeeping; direct execution of the participant's

1 instructions as to asset allocation; calculation of daily net asset value; direct access to participant
2 account information; periodic reporting to participants, at least quarterly, on account balances and
3 transactions; guidance, advice, and allocation services directly to its own investment options or
4 products, but only if the bundled provider complies with the standard of care of s. 404(a)(1)(A-B) of
5 the Employee Retirement Security Act of 1974 (ERISA) and if providing such guidance, advice, or
6 allocation of services does not constitute a prohibited transaction under s. 4975(c)(1) of the Internal
7 Revenue Code or s. 406 of ERISA, notwithstanding that such prohibited transaction provisions do
8 not apply to the Orlando Firefighters' Share Program; a broad array of distribution options; asset
9 allocation; and retirement counseling and education. Private sector companies include investment
10 management companies, insurance companies, depositories, and mutual fund companies.

11 (b) The board shall have the full power and authority to adopt rules and regulations for
12 the administration of this share program and to interpret, alter, amend or revoke any rules so
13 adopted, which rules shall have the force of law. However, the board shall not have the authority to
14 adopt any rules which makes a substantive change to the share program.

15 (c) The board shall have the full power and authority to retain independent legal
16 counsel, independent actuary, and such independent professional, technical, or other advisors as it
17 deems necessary at the expense of this share program.

18 (d) Except as otherwise provided in Section 26, all costs, expenses and fees of
19 administering this share program shall be paid from additional state premium tax revenues or the
20 assets of this share program in such fashion as the board shall determine. Any allocation to a
21 participant's account shall be net of the participant's allocable portion of the share program's costs,
22 expenses and fees of administering the share program.

23 (e) The Orlando Firefighters' Share Program shall be administered by the board and
24 any approved provider and third party administrator, if any, in accordance with all applicable
25 mandatory provisions of federal and state law now existing or as they may exist in the future. The
26 board is hereby authorized to adopt written rules setting forth the specifics of applicable mandatory
27 provisions of federal and state law as they now exist or may exist in the future, which rules shall
28 have the force of law.

29 **(11) Investment.**

30 (a) The investment of the assets of the Orlando Firefighter's Share Program shall be
31 subject to the limitations and conditions set forth in Section 175.071 and Section 251.47(1) – (6) (8)
32 (9) (11) and (17), Florida Statutes, and shall be pursuant to a written investment policy adopted by

1 the board pursuant to Section 112.661, Florida Statutes, as such statutes now exist or as they may
2 exist in the future.

3 (b) Pursuant to Section 26 (10)(a), the board shall select one or more bundled
4 providers, each of whom may offer multiple investment options and related services.

5 (c) As a condition of offering any investment option or product, the approved provider
6 must agree to make the investment product or service available under the most beneficial terms
7 offered to any other customer, subject to approval by the board.

8 **(12) Performance Review.**

9 (a) At least once every three (3) years, the board shall retain a “professionally
10 qualified independent consultant”, as defined by Section 175.071(6), Florida Statutes, to review
11 and evaluate the performance of each approved provider and product.

12 **(13) Participant Information Requirements.**

13 (a) The board shall insure that each participant is provided an annual statement of the
14 amount of additional state premium tax revenues, including forfeitures, less administrative
15 expenses allocated to the participant’s individual share account.

16 (b) The board shall insure that each participant is provided a quarterly statement that
17 accounts for the participant’s interest and investment earnings thereon; any fees, penalties, or the
18 deductions that apply thereto.

19 (c) The approved provider and the third-party administrator, if any, shall provide
20 quarterly and annual summary reports to the board and any other reports requested by the board.

21 **(14) Federal Requirements.**

22 (a) Provisions of this section shall be construed and the Orlando Firefighters’ Share
23 Program shall be administered, so as to comply with the applicable provisions of the Internal
24 Revenue Code, 26 U.S.C., now existing or as they may exist in the future, and specifically with
25 program qualification requirements imposed on governmental programs under s. 401(a) of the
26 Internal Revenue Code. The board shall have the power and authority to adopt rules reasonably
27 necessary to establish and maintain the qualified status of the Orlando Firefighters’ Share Program
28 under the Internal Revenue Code and to implement and administer the Orlando Firefighters’ Share
29 Program in compliance with the Internal Revenue Code; provided, however, the board shall not
30 have the authority to adopt any rule which makes a substantive change to the Orlando Firefighters’
31 Share Program.

1 (b) Any provision of this section which is susceptible to more than one construction
2 must be interpreted in favor of the construction most likely to satisfy requirements imposed by s.
3 401(a) of the Internal Revenue Code.

4 **(15) Investment Policy Statement.**

5 Investment products and approved providers selected for the Orlando Firefighters' Share
6 Program shall conform with the written policy statement adopted by the board pursuant to Section
7 112.661, Florida Statutes, as such statute now exists or as it may exist in the future. The
8 statement must also include, among other items, the investment objectives of the Orlando
9 Firefighters' Share Program, manager selection and monitoring guidelines, and performance
10 measurement criteria. The board's "professionally qualified independent consultant" may present
11 recommended changes in the investment policy statement to the board for approval.

12 **(16) Statement of Fiduciary Standards and Responsibilities.**

13 (a) Investment by approved providers of the Orlando Firefighters' Share Program
14 assets shall be subject to the fiduciary standards set forth in Section 112.656 and Section 518.11,
15 Florida Statutes, as such statutes now exists or as it may exist in the future.

16 (b) If a participant or beneficiary of the Orlando Firefighters' Share Program exercises
17 control over the assets in his or her account, as determined by reference to regulations of the
18 United States Department of Labor under s. 404(c) of the Employee Retirement Income Security
19 Act of 1974 and all applicable laws governing the operation of the program, no program fiduciary
20 shall be liable for any loss to a participant's or beneficiary's account which results from such
21 participant's or beneficiary's exercise or control.

22 **(17) Participant Records.** - - Personal identifying information of a participant in the
23 Orlando Firefighters' Share Program contained in records held by the board or the City of Orlando
24 is exempt from Section 119.07(1), Florida Statutes and Section 24(a) Article I of the State
25 Constitution.

26 **(18) Designation of Beneficiaries.**

27 (a) Each participant may, on a form provided for that purpose, signed and filed with
28 the approved provider and third party administrator, if any, designate a choice of one or more
29 persons, named sequentially or jointly, as his or her beneficiary who shall receive the benefits, if
30 any, which may be payable pursuant to this section in the event of the participant's death. If no
31 beneficiary is named in this manner, or if no beneficiary designated by the participant survives the
32 participant, the beneficiaries shall be the beneficiaries of the participant's estate. The board may

1 determine the beneficiaries of the participant's estate pursuant to rules adopted by the board.
2 Otherwise, a court order determining the beneficiaries of the participant's estate shall be required.

3 (b) A trust may be designated as a beneficiary.

4 (c) In connection with the initial allocation or any future annual allocation to which the
5 firefighter is eligible, the board may honor any written designation of beneficiary of the eligible
6 firefighter received by the board or city which specifically references this share program, even if
7 such written designation was received prior to the effective date.

8 **(19) Miscellaneous provisions.**

9 (a) Exclusive benefit rule. No part of the assets of this share program shall be used
10 for, or diverted to any purpose whatsoever other than for the exclusive benefit of the share
11 participants and beneficiaries thereof, and defraying reasonable expenses of administering the
12 share program. No person shall have any interest in, or right to, any part of the assets of this share
13 program, except as and to the extent expressly provided in this Section 26.

14 (b) Non alienation of benefits. The benefits provided by this share program shall not
15 be subject to garnishment, execution, attachment, the operation of bankruptcy or insolvency law, or
16 to any legal process whatsoever, and shall be unassignable. Provided, however, the board may
17 authorize deductions in accordance with Section 175.061(7), Florida Statutes, as such statute now
18 exists or may exist in the future.

19 (c) Marriage dissolution. No distribution of a participant's account shall be made
20 because of dissolution of marriage. Payouts can only be made after the participant's separation
21 from employment as a firefighter. A participant's account shall not be subject to a Qualified
22 Domestic Relations Order (QDRO). The costs incurred by the board for any actuarial, accounting,
23 administrative, or legal services required to respond to any court orders or any other matters
24 involving the calculation or division of a participant's account due to a dissolution of marriage shall
25 be deducted from the participant's account.

26 (d) Termination and discontinuance of the program. It is the intent of the City of
27 Orlando that this share program be permanent and remain in effect for an indefinite period.
28 However, in the event this share program is discontinued or terminated, all participants shall
29 immediately become fully vested in their benefits. The discontinuance or termination shall be
30 carried out in all respects in conformance with applicable statutes, rules and regulations of the
31 federal government and the State of Florida, or any duly constituted agency thereof having
32 jurisdiction.

1 (e) Applicable laws. This share program shall be construed and enforced under the
2 applicable laws of the State of Florida and any applicable federal laws, rules and regulations, and
3 all of the provisions hereof shall be administered in accordance therewith.

4 (f) Disclaimer with respect to investments. The City and the board of trustees make
5 no endorsement, guarantee or any other representation and shall not be liable to this share
6 program or any participant, beneficiary, or any other person with respect to the financial
7 soundness, investment performance, fitness, or suitability (for meeting a participant's objectives,
8 future obligations under the program, or any other purpose) of any investment option offered by this
9 share program or any investment vehicle in which a participant's account are actually invested.

10 (g) Spendthrift provision. The interests of the participant in his individual share
11 account, or the income or gains therefrom, shall not be subject to the rights of creditors of the
12 participant, and shall be exempt from execution, attachment, distress for rent, and all other legal or
13 equitable process issued by or on behalf of such creditors, and the interests of the participant in his
14 individual account or the income or gains therefrom shall not be assignable.

15 (h) Venue. Any litigation concerning this share program shall be conducted in the
16 state courts in the State of Florida situated in Orange County, Florida.

17 (i) Reservation of right to amend share program. Subject to the provisions of Chapter
18 447, Part II, Florida Statutes, the City reserves the right at any time to amend or modify this share
19 program, provided that no amendment shall cause any part of the share program assets to be used
20 or diverted to purposes other than the exclusive benefit of the participants and their beneficiaries.

21 (j) Compliance with Internal Revenue Code. If it is determined by the Internal
22 Revenue Service that any provision of this share program cannot be corrected, or that the
23 operation or administration of the share program cannot be corrected, such as to disqualify the
24 Orlando Firefighter Pension Plan from being tax exempt under the applicable provisions of the
25 Internal Revenue Code, then all assets of this share program shall be used to provide "extra
26 benefits" in such a manner to not disqualify the Orlando Firefighter Pension Plan.

27 **(20) Special Provision Concerning Initial Allocation and Annual Allocation for**
28 **Calendar Year 2009.**

29 Notwithstanding any other provisions in Section 26,

30 (a) For those eligible participants who were employed as a firefighter any time during
31 the period of January 1, 1998 – December 31, 2008, who had not separated from employment prior
32 to July 1, 2009, the initial allocation shall be made as soon as administratively possible after the

1 effective date pursuant to Section 26 (5); and the annual allocations beginning with collections for
2 calendar year 2009 shall be made pursuant to Section 26 (6).

3 (b) For those firefighters who were employed as a firefighter at any time during the
4 period of January 1, 1998 – June 30, 2009, who separated from employment prior to July 1, 2009,
5 monies that would have otherwise been distributed to them, or their surviving spouse, minor child
6 and beneficiary, if said firefighter is deceased, as part of the initial allocation pursuant to Section 26
7 (5) and the annual allocation for calendar year 2009 pursuant to Section 26 (6), shall be held by the
8 board in such manner as deemed appropriate by the board, but shall be accounted for separately
9 until distributed in accordance with Section 26 (20) (c) or Section 26 (20) (d) hereafter. The
10 amount of said monies to be withheld pursuant to this Section 26 (20) (b), shall be the amount
11 determined by the board based on the advice of the board’s actuary and the city’s treasurer.

12 (c) Upon the effective date of a special act of the Florida legislature ratifying this
13 ordinance or otherwise amending the Orlando Firefighter Pension Plan to expressly authorize
14 inclusion of firefighters who separated from employment prior to July 1, 2009 in this share program,
15 the net monies withheld as part of the initial allocation and the annual allocation for calendar year
16 2009, shall be distributed to those firefighters who separated prior to July 1, 2009, or surviving
17 spouse, minor child and beneficiary if said firefighter is deceased, pursuant to the provisions of this
18 Section 26 plus any investment return, less administrative expenses while held separately by the
19 board, as determined by the board consistent with the provisions of Section 26.

20 (d) In the event a special act is not enacted as provided in Section 26 (20) (c)
21 heretofore, before September 30, 2012, those net monies withheld by the board pursuant to
22 Section 26 (20) (b) heretofore shall not be distributed to the aforesaid firefighters who separated
23 from employment prior to July 1, 2009, or their surviving spouse, minor child and beneficiary if said
24 firefighter is deceased, but shall be distributed to those participants who had not separated from
25 employment prior to July 1, 2009, plus any investment return, less administrative expenses while
26 held separately by the board, as determined by the board consistent with the provisions of Section
27 26.

28 **SECTION TWO:** Severability. If any section, sub-section, sentence, clause, phrase
29 or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of
30 competent jurisdiction, such portion shall be deemed a separate, distinct, and independent
31 provision and such holding shall not affect the validity of the remaining portions hereto.

32 **SECTION THREE:** Effective Date. This Ordinance shall take effect immediately upon
33 passage.

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ADVERTISED _____, 2010.

READ FIRST TIME _____, 2010.

READ SECOND TIME AND ENACTED _____, 2010.

CITY OF ORLANDO, FLORIDA

Mayor

ATTEST:

City Clerk

(Seal)

APPROVED AS TO FORM AND LEGALITY

for the use and reliance of the City of Orlando,
Florida, only. _____, 2010.

City Attorney
Orlando, Florida