

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT IN  
AND FOR BROWARD COUNTY, FLORIDA

STEVEN SPARKMAN, LUIS A.  
ORTIZ, JOHN KIDD, ARNOLD  
CAMPBELL, DANIEL CASEY,  
DANA DOKLEAN, and MICHAEL  
MCKINNEY,

APPEAL: CACE 19-015953 (AW)

Petitioners,

APPELLATE DIVISION

v.

CITY OF HOLLYWOOD POLICE  
OFFICERS' RETIREMENT SYSTEM,

Respondent.

\_\_\_\_\_ /

**APPENDIX IN SUPPORT OF RESPONSE TO ORDER TO SHOW CAUSE**

**ROBERT D. KLAUSNER**

Florida Bar No. 244082

**STUART A. KAUFMAN**

Florida Bar No. 979211

**BLANCA T. GREENWOOD**

Florida Bar No. 919004

**KLAUSNER, KAUFMAN**

**JENSEN & LEVINSON, P.A.**

7080 N.W. 4<sup>th</sup> Street

Plantation, Florida 33317

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## APPENDIX

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Respectfully Submitted,

**ROBERT D. KLAUSNER**

Florida Bar No. 244082

**STUART A. KAUFMAN**

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By: /s/ *Robert D. Klausner*

ROBERT D. KLAUSNER

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been filed with the court via e-portal and furnished via e-mail, this 15th day of November, 2019 to:

By: /s/ *Robert D. Klausner*

ROBERT D. KLAUSNER

## HOLLYWOOD POLICE OFFICERS' RETIREMENT SYSTEM

### FINAL ADMINISTRATIVE ORDER DENYING RE-CLASSIFICATION OF CREDITED SERVICE

THIS CAUSE came before the Board, on proper notice, on June 28, 2019 on the request of Steven Sparkman and others similarly situated (the applicants)<sup>1</sup> to reclassify time served as a city of Hollywood corrections officer from the General Employee Retirement System to the City of Hollywood Police Retirement System credit. For the reasons which follow, that request is denied.

The applicants all were originally hired as corrections officers for the City of Hollywood Police Department. They were all certified as corrections officers pursuant to Chapter 943, Fla. Stat. Their assigned duties were primarily custody and transportation of inmates in the City jail. The applicants did have the authority to wear a firearm and did have authority to apprehend any escaped prisoner.

Following a period of service in the City jail, the applicants returned to the police academy and received certification as a law enforcement officer. Following this certification, the applicants were hired as police officers and enrolled in this Plan.

The terms of the Plan and the Section 185.02 limit membership in this Plan to "police officers." See, 185.02(16), Fla. Stat. and 33.126, Hollywood City Code.

The term "police officer" was essentially unchanged between the original adoption of Chapter 185 in 1953 and the addition of the certification requirement in 1991. See Chapter 91-45, Laws of Florida 1991. This addition is significant.

In *Headley v. Sharpe*, 138 So. 2d 536 (Fla. 3d DCA 1962), the Third District Court of Appeal found that the job description for corrections personnel in the city of Miami Police Department met the then applicable definition of police officer for pension purposes. That changed however, in 1970 when the same court determined that differing job descriptions within the police department led to approval of different pay classifications for persons in the police department corrections division, even though the corrections personnel were classified as police officers. See, *City of Miami v. Rumpf*, 235 So. 2d 341 (Fla. 3d DCA 1970). This evolutionary process ended with *City of Miami v. Musial*, 291 So. 2d 77 (Fla. 3d DCA 1974) when the same court denied a transfer from the City's General Employee Retirement plan to the fire and police plan because of the different training for persons in records and identification from those who were police officers, even though the employees all had a police classification. Significantly, the court also noted that a multi-year delay in requesting reclassification constituted a waiver of any potential misclassification.

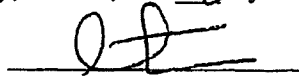
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<sup>1</sup> The applicants are Steven Sparkman, Michael McKinney, Luis Ortiz, James Barnick, Arnold Campbell, Sergio Lopez, Daniel Casey, John Kidd, Jeff Mathis and Dana Doklean.

The applicant have all been police officers for some years. Had they been corrections officers in 1962, the *Headley v. Sharpe* precedent would have applied. However, the passage of time since the applicants were classified from corrections to police and the development of separate certification pathways for corrections and police in Florida support the conclusion that the applicants request must be denied. While the Board values their service as corrections officers, the language of 185.02 and 33.126 control.

Accordingly, the applicants request for reclassification of their corrections service be and the same is hereby denied.

Done at Hollywood, Broward County, Florida, this 28 day of June, 2019.



Chairman

#### NOTICE OF APPELLATE RIGHTS

This is a final administrative order denying your request for reclassification of service. You have a right to seek review in the Circuit Court of the 17th Judicial Circuit of Florida by filing a petition for certiorari with the clerk of the Circuit Court within 30 days of the date this order is filed with the Administrator/Clerk of the Board in the manner prescribed in Rule 9.100, Florida Rules of Appellate Procedure. Failure to seek review within the time prescribed by law will make this order final. In any judicial proceeding, the unsuccessful party is required to pay the attorneys' fees of the prevailing party.

FILED WITH THE ADMINISTRATOR/CLERK OF THE BOARD THIS 28 DAY OF JUNE, 2019.

[Print](#)

## City of Hollywood Code of Ordinances

**§ 33.125 ESTABLISHMENT; PURPOSE.**

There is hereby established a Police Officer's Retirement System comprising a comprehensive amended retirement plan for the Police Officers of the city. The purpose of this plan is to establish amended terms and conditions under which retirement benefits will be provided to eligible employees of the city. The benefits under the plan shall be in addition to amounts received as Federal Social Security benefits, and shall also be in addition to benefits received by any member from any other private or public retirement system.

(Ord. O-91-82, passed 11-20-91; Am. Ord. O-2011-27, passed 9-7- 11; Am. Ord. O-2019-02, passed 2-20-19)

### **§ 33.132 THE BOARD OF TRUSTEES.**

The general administration and responsibility for the proper operation of the system and for making effective the provisions of this subchapter are hereby vested in a Board of Trustees consisting of seven members, as follows:

(A) One representative appointed by the Mayor of the city; one representative appointed by the City Commission; and five members of the Police Department, including DROP participants, who shall be elected by a per capita vote of all members of the Police Department who come within the purview of this subchapter. The Chief of Police shall be a nonvoting, ex-officio member of the Board. All qualified members entitled to vote shall be notified in person or by mail five days in advance of said election. Elections shall be held to replace the Trustees whose term of office expires at that time and the elected Trustees shall begin their term of office immediately, said term of office being two years, taking effect the first Monday after the election to office. The Board of Trustees must meet and organize and elect one of their members as Chairperson and one of their members as Secretary within ten days after being elected and duly qualified.

(B) If any vacancy occurs in the office of Trustee, the vacancy shall be filled for the unexpired term in the same manner as the office was previously filled.

(C) Trustees may be reimbursed for all necessary expenses which they may actually expend through the services of the Board.

(D) Each Trustee shall, within ten days after appointment or election, take an oath of office before the City Clerk, that so far as it devolves upon the Trustee, he or she will diligently and honestly administer the affairs of the Board and that he will not knowingly violate or willingly permit to be violated, any provisions of the law applicable to the retirement system. Such oath shall be subscribed by the member making it and certified by the Clerk and filed in the Clerk's office.

(E) Each Trustee shall be entitled to one vote on the Board. Four votes shall be necessary for a decision by the Trustees at any meeting of the Board. The Chairperson of the Board of Trustees shall have the right to one vote only.

(F) Subject to the limitations of this subchapter, the Board of Trustees shall from time to time establish rules and regulations for the administration of the funds created by this subchapter and for the transaction of its business, including provisions for the compulsory attendance of its members which shall have the force of law.

(G) It shall engage such actuarial and other services as shall be required to transact the business of the system. The compensation of all persons engaged by the Board necessary for the operation of the retirement system shall be paid at such rates and in such amounts as the Board of Trustees shall agree but in no case shall the expenditures for such services or operations exceed 3% of the maximum of the fund each fiscal year. All expenditures shall be authorized and disbursed by the Board of Trustees. The Secretary shall be bonded for \$500. The premium of said bond shall be paid out of this fund.

(H) The Chief of Police of the city shall assign to the Board of Trustees, sufficient personnel, office space, equipment and stationery, at Police Headquarters to keep and maintain all records and transactions to permit the Board of Trustees to operate efficiently and exercise their powers and perform their duties.

(I) Each year on or before March 15, the Board of Trustees must submit to the Division of Retirement of the Department of Management Services in order for the fund to receive a share of the State Funds for the then current calendar year an annual report as required by F.S. § 185.221. The pension benefit improvements for ten years certain and life thereafter, normal retirement after 22 years

of service, upgrade of benefits to 80% after 22 years, a maximum of 8 years' participation in the DROP plan, and the right to purchase additional benefits up to 8% of average monthly earnings contained in § 33.128 shall be deemed "minimum benefits" or "extra benefits," as those terms are used in F.S. Chapter 185, and the Board of Trustees shall report these improvements as "qualifying benefit improvements," on the "Actuarial Confirmation of the Use of State Moneys" page of the annual reports for the fiscal years ending September 30, 2006 and thereafter.

(J) The Board of Trustees shall publish annually in the city's budget report, a report for the preceding year showing a valuation of the assets and liabilities of the funds provided for by this subchapter as certified by the actuary, and a statement as to the accumulated cash and securities of the funds as certified by the City Comptroller and shall be set forth such other facts, recommendations and data as may be in advancement of knowledge concerning employee pensions.

(K) Any elected Trustee who neglects the duties of office shall be subject to recall by the members of the system. Such recall shall be conducted as follows:

(1) A petition containing the signatures of a majority of the members of the system and stating the name of the Trustee or Trustees and the specific allegations to warrant their recall shall be filed with the Chairperson of the Board.

(2) Trustee or Trustees against whom a petition of recall has been filed shall have 15 days in which to file a written rebuttal to any charges contained in the petition with the Chairperson of the Board.

(3) The Chairperson of the Board shall set an election by the members of the system 30 days subsequent to the filing by the Trustee complained against of the Trustee's response or the conclusion of the 15-day period whichever occurs first, said election to be held by secret ballot at the offices of the City Clerk for a four day period to facilitate the ability of the members of the system to cast their ballots.

(4) When two-thirds of the members of the system vote to recall a Trustee, the seat shall be immediately declared vacant, and the recall of the Trustee or Trustees shall no longer serve.

(L) The Board of Trustees shall have the power to examine facts upon which any pensions are granted under this subchapter, and to ascertain if any pension has been granted erroneously, fraudulently, or illegally for any reason. Said Board shall also be empowered to purge the pension rolls of any pensions to the city Police Officers if same are found to be erroneous, fraudulent or illegal for any reason, and to reclassify any pensioner who, under this subchapter, is erroneously, improperly or illegally classified.

(Ord. O-91-82, passed 11-20-91; Am. Ord. O-2001-13, passed 5-2-01; Am. Ord. O-2007-15, passed 6-20-07; Am. Ord. O-2009-29, passed 9-16-09; Am. Ord. O-2019-02, passed 2-20-19)



**HOLLYWOOD POLICE OFFICERS' RETIREMENT SYSTEM**  
**Office of Retirement**  
**4205 Hollywood Blvd., Suite 4**  
**Hollywood, Florida 33021**

**April 26, 2019**

**MINUTES**

A regular meeting of the Hollywood Police Officers' Retirement System was held on Friday, April 26, 2019, at 10:30 A.M., in the Office of Retirement, 4205 Hollywood Blvd., Suite 4, Hollywood, Florida 33021.

**PRESENT:**

D. Strauss - Chairman, C. Marano – Secretary, P. Laskowski, R. Brickman, R. Wise, C. Boyd & V. Szeto.

Also present were Eugene "Mac" Champion, City of Hollywood; Gregory Gosch, Sawgrass Asset Management; John McCann, AndCo Consulting; John Rochford – Toqueville; Adrian Sancho & Michael Bray - Inverness Counsel; Robert Klausner, Legal Counsel - Klausner, Kaufman, Jensen & Levinson; David M. Williams, Plan Administrator, Various plan members present.

**PUBLIC COMMENT**

Mr. Steve Sparkman (plan member) advised he was hired in 1995 as a Corrections Officer for the detention area. Mr. Steve Sparkman spoke of others similarly situated. He felt that due to his duties and responsibilities, his service time should be counted in the Police Pension Plan, instead of the General Employee (GE) Plan where his time is currently stands. Mr. Sparkman became a police officer in 1996 after attending the police academy and became enrolled in the Police Pension Plan at that time. At this point his GE time is being handled under the coordination of benefits provisions. The GE Plan is currently void of any DROP Provision for his time cited. Mr. Klausner said he would review the matter and respond at a future meeting.

Mr. Sancho & Mr. Bray of Inverness Counsel spoke to the Board about a proposed fee restructure. Current blended rate is 40 bps, the proposed blended rate is 37 bps effective July 1, 2019. New investment advisory agreement will follow.

**READING OF THE WARRANTS**

The warrants since the last meeting were reviewed and executed by the Board of Trustees.

**APPROVAL OF THE MINUTES OF THE MARCH 29, 2019 MEETING**

Mr. Strauss asked if there were any additions or corrections to the Minutes of the March 29, 2019 pension board meeting. Mr. Szeto made a motion to approve the Minutes of the March 29, 2019 pension board meeting, which was seconded by Mr. Boyd. All board members voted yes.

**ATTORNEY'S REPORT**

Lafrance Matter - Mr. Klausner advised the Independent Medical Examination (IME) is being scheduled in short order. Informal Hearing will follow thereafter.

Mr. Strauss asked Mr. Klausner about the fire loan program and how it relates to our program. Mr. Klausner advised that the FD program is not administered in the manner as this Board does. In the FD Plan, Mr. Klausner had the program eliminated. Mr. Klausner advised that by Rule the Board may opt to eliminate the program as well. Mr. Klausner indicated that this Plan has a "Letter of Determination" from the IRS but cited that a random audit from the IRS may cause a weakness, but feels we are in compliance. **Tab 4**

Mr. Brickman said that his recollection of the program was that the Plan was in full compliance. Mr. Strauss closed by advising he understands that the city will be claiming we are not in compliance. No action taken.

Jump Start DROP: Mr. Strauss asked Mr. Klausner if the drop jump start provision could be restored as it was prior to September 30, 2011. Mr. Klausner replied in the affirmative. When asked how it should be applied, Mr. Klausner advised apply it as it would have happened.

Bien Group: Mr. Klausner was asked how the members in the Bien Case should be handled with the restoration. Mr. Klausner indicated restore them in the same manner as the other members being restored.<sup>1</sup>

Mr. Klausner was asked about retired officers being rehired as part time school resource officers. Mr. Klausner stated that tax code permits if normal retirement and the ordinance now covers it.

Mr. Klausner was advised that some members switching from RPRB to DROP are requesting to change their respective options. Mr. Klausner felt that this is a new benefit and they should be afforded the option.

Mr. Klausner was asked about the 60-day window to enter DROP. He felt it would be prudent to administer from the date the collective bargaining agreement was executed.

Mr. Klausner reminded the Board of the 2019 Klausner, Kaufman, Jensen & Levinson Client Conference - June 10-12, 2019 in Fort Lauderdale. Registration is on-line.

#### ADMINISTRATIVE REPORT

DROP/PRB Loan: Mr. Williams cited the members loan requests. He outlined that the members have the funds in their respective DROP/PRB accounts to cover the loan and they have been participants in the DROP/PRB plan for the required amount of time. No conflict exists with the 12-month rule. Mr. Brickman made a motion to approve the loans presented. This motion was seconded by Mrs. Marano. All board members voted yes.

Authority was sought by Mr. Williams to represent the Plan in a deposition in the HD Supply Security Litigation Case. The Board by consensus agreed Mr. Williams was the best representative to attend.

#### QUARTERLY INVESTMENT REPORT – SAWGRASS ASSET MANAGEMENT

Mr. Gregory Gosch, Sawgrass Asset Management appeared before the Board to review the performance of the portfolio. The relationship inception date was reported to be June 23, 2017. The portfolio managed is diversified large growth equity.

##### Market Review:

The storm clouds of the 4<sup>th</sup> quarter passed as quickly as they came, and the S&P 500 rallied to its best quarterly return in almost 10 years with a gain of 13.7%.

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<sup>1</sup> Mr. Williams contacted Mr. Klausner after the meeting to clarify his position as Mr. Klausner was called away before Mr. Williams could do so during the meeting. Mr. Klausner was under the impression that the Bien Group was in the RPRB and not already in the DROP. Therefore, members in that class should not be altered. Mr. Klausner will revisit this matter at the June 28, 2019 meeting.

The stock market was propelled in no small part by the Fed's decision to abandon its plan to raise rates over the course of 2019. Whether the policy change was politically motivated or driven by a weakening economy, stocks celebrated the news and posted strong gains across the board.

Gains were broad as every sector of the market posted positive results led by Technology and Industrials. Though Healthcare and Financials lagged the overall market, they both still posted absolute returns for the quarter in excess of 6.0%.

Smaller stocks enjoyed better returns as the Russell Midcap (16.5%) and the Russell 2000 (14.6%) modestly beat the Russell 1000 (14.0%). Growth stocks regained the lead with the Russell 3000 Growth returning (16.1%) vs. Russell 3000 Value (11.9%).

Not surprisingly, risk was rewarded this quarter as high beta was by far one of the stronger performing factors while valuation factors poorly performed.

**Portfolio Review:**

After posting two strong relative quarters, the portfolio lagged the Russell 1000 Growth in this runaway quarter.

Given the outsized returns and the high beta tone of the market we were not surprised to give back some relative return this quarter.

All of the underperformance occurred during the initial sharp bounce in January. Both February and March saw gains relative to the benchmark.

Stock selection was generally weak primarily in Technology (Facebook), and Consumer Discretionary (Amazon). The lone bright spot was in the strong Industrial group where Paychex and Verisk posted strong gains.

The biggest headwind for the portfolio was factor positioning as our intentional tilts toward lower beta, lower volatility and favorable valuation all worked against us.

It is notable that despite our weak relative performance in the first quarter, our downside protection of the 4<sup>th</sup> quarter leaves us well ahead of the index for the combined two quarters. This also results in strong 1-year results with the portfolio outperforming the Russell 1000 Growth by 4% in a period when large growth led the market.

**Outlook:**

The 1<sup>st</sup> quarter rally brings us within a few percentage points of the September highs, and given the significant decline of the 4<sup>th</sup> quarter, this rally could be considered a retest of the old highs.

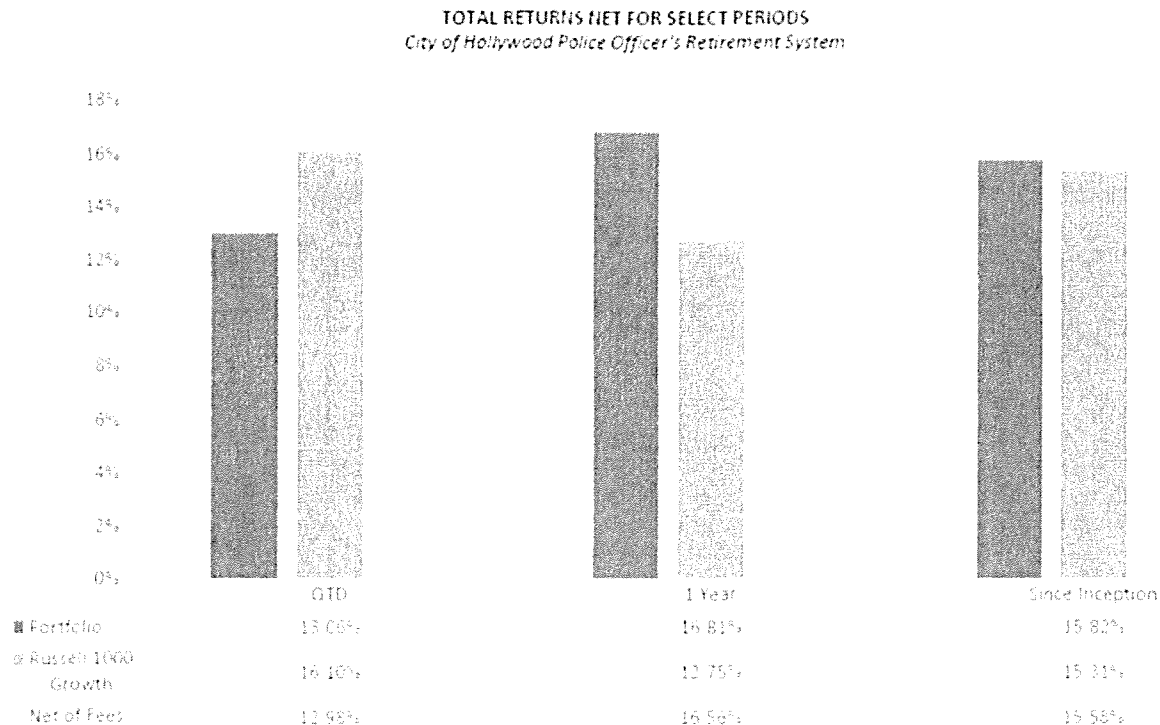
Even if the market reaches new heights, it is hard to imagine continuing at this pace.

We remain puzzled about a stock market which seems to favor risk and a Fed which has reversed course based on their concern of a weaker economy.

Considering the broad market is expected to grow earnings in the 4%-8% range, valuations in the higher end of historic ranges, and a bull market into its 10<sup>th</sup> year, we believe it prudent to keep an eye on risk.

Though not the traditional view, it is possible that the decline that we saw in the early part of 2018 was the beginnings of a longer-term topping process or at the least a consolidation of stock prices.

Sawgrass Portfolio Performance through March 31, 2019



FIXED INCOME UPDATE & REBALANCING – John McCann – AndCo Consulting

Equity: Mr. McCann began by reviewing Clarivest substandard performance. He reminded to the Board that three managers were hired for this asset class and we would eliminate the underperforming manager. Mr. McCann recommend immediate termination of Clarivest. After discussion among the Board and Mr. McCann, a motion was made by Mr. Brickman to terminated Clarivest. The motion was seconded by Mr. Szeto. All board members voted yes.

Mr. McCann advised the assets from Clarivest will be part of the rebalancing. After review and discussion Mr. Laskowski made a motion to fund Inverness Equity with 10 million dollars (in cash and/or in kind), with the balance going to Wells Capital (in cash and/or in kind). The motion was seconded by Mr. Szeto. All board members voted yes. The Board also provided the authority for Mr. Williams to engage BTIG as the transitional manager.

Fixed Income: Mr. McCann began by citing that the portfolio manager left Inverness, which is a big concern. The replacement has only been at Inverness for a year. The Board invited Mr. Rochford (the former Inverness portfolio manager) now at Toqueville to discuss his position at the new firm. Mr. Rochford advised he has full discretion as the portfolio manager at Toqueville. Mr. McCann advised Toqueville has been vetted by AndCo.

After various options were discussed and considered, Mr. Brickman made the motion to retain Inverness Counsel Fixed, however transfer 15 million from Inverness to Garcia Hamilton, further, to engage Toqueville as a new fixed income manager and transfer 10 million dollars upon

**Hollywood Police Officers' Retirement Board - Minutes**

**April 26, 2019**

**Page 5**

successful negotiation of an advisory agreement. The foregoing was seconded by Mr. Strauss. All board members voted yes.

Updated investment policy and guidelines will follow from Mr. McCann. investment

**OPEN DISCUSSION**

No discussion ensued.

**MEETING ADJOURNED**

There being no further business, the meeting was adjourned at 12.12 P.M.

The next scheduled meeting is May 17, 2019 at 10:30 A.M.

Respectfully submitted,

APPROVED:

C. Marano, Secretary

D. Strauss, Chairperson



***CITY OF HOLLYWOOD, FLORIDA***  
**POLICE OFFICERS' RETIREMENT SYSTEM**

**4205 Hollywood Boulevard, Suite 4  
Hollywood, Florida 33021**

**Telephone: (954) 967- 4395    Fax: (954) 967- 4387    Toll Free: (866) 738- 4776**

## **PUBLIC NOTICE**

**THE CITY OF HOLLYWOOD POLICE OFFICERS'  
RETIREMENT SYSTEM BOARD OF TRUSTEES  
WILL BE MEETING**

**LOCATION: OFFICE OF RETIREMENT  
4205 HOLLYWOOD BLVD., SUITE 4  
HOLLYWOOD, FLORIDA 33021**

**DATE: JUNE 28, 2019**

**TIME: 10:30 AM**

IF ANY PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE BOARD WITH RESPECT TO ANY MATTER CONSIDERED AT SUCH MEETING OR HEARING, THEY WILL NEED A RECORD OF THE PROCEEDINGS, AND FOR SUCH PURPOSE, THEY WILL NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE WHICH THE APPEAL IS TO BE BASED.

THIS MEETING MAY BE CONDUCTED BY MEANS OF OR IN CONJUNCTION WITH COMMUNICATION MEDIA TECHNOLOGY, THE TYPE BEING A SPEAKER TELEPHONE. THE ACCESS POINT WILL BE THE SECOND FLOOR POLICE PENSION CONFERENCE ROOM, WITHIN THE SUN CREDIT UNION BUILDING.

PERSONS WITH DISABILITIES WHO REQUIRE REASONABLE ACCOMMODATION TO PARTICIPATE IN CITY PROGRAMS AND/OR SERVICES MAY CALL THE OFFICE OF THE CITY MANAGER FIVE BUSINESS DAYS IN ADVANCE AT 954-921-3201 (VOICE). IF AN INDIVIDUAL IS HEARING OR SPEECH IMPAIRED, PLEASE CALL 800-955-8771 (V-TDD).

IN COMPLIANCE OF STATE LAW, THE BOARD OF TRUSTEES FINDS THAT A PROPER AND LEGITIMATE PURPOSE IS SERVED WHEN MEMBERS OF THE PUBLIC HAVE BEEN GIVEN A REASONABLE OPPORTUNITY TO BE HEARD ON A MATTER BEFORE THE BOARD. THEREFORE, THE BOARD OF TRUSTEES HAVE DETERMINED AND DECLARED THAT THEY WILL ALLOT 30 MINUTES IN TOTAL FOR THIS PURPOSE; HOWEVER EACH PERSON IS LIMITED TO NO MORE THAN (3) THREE MINUTES TO COMMENT AT EACH MEETING.

**HOLLYWOOD POLICE OFFICERS' RETIREMENT SYSTEM**  
**Office of Retirement**  
**4205 Hollywood Blvd., Suite 4**  
**Hollywood, Florida 33021**

**June 28, 2019**  
**10:30 AM**

**A G E N D A**

- I. CALL TO ORDER
- II. READING OF THE WARRANTS
- III. PUBLIC COMMENTS <sup>1</sup>
- IV. APPROVAL OF THE MINUTES OF THE MAY 17, 2019 MEETING  
*(Discussion and/or Action)*
- V. ATTORNEY'S REPORT – Stuart Kaufman/Robert Klausner
  - Corrections Inquiry – Report to the Board.
  - DROP status members eligible by age prior to 10-01-2011 and entered DROP by years of service post 10-01-2011.
  - Restoration of Benefits – Retired prior to restoration ordinance (pre-post waiver).
  - Restoration of Benefits – Active personnel (pre-post waiver waiver).
  - Lafrance – IME Update.
  - DROP Rules Update.
  - SPD Update.
  - Jump Start Duration for restored members.
  - GE Ordinance Review – application to DROP members who have coordination of Benefits.*(Discussion and/or Action)*
- VI. ADMINISTRATIVE REPORT – David M. Williams  
*(Discussion and/or Action)*
- VII. NEW BUSINESS
  - Administrative Expense Budget 19/20
  - Drop Loan Interest Change*(Discussion and/or Action)*
- VIII. QUARTERLY INVESTMENT REPORT
  - Entrust*(Discussion and/or Action)*
- IX. OPEN BOARD DISCUSSION  
*(Discussion and/or Action)*
- X. ADJOURNMENT

Next Regular Meeting: July 26, 2019

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The term "police officer" was essentially unchanged between the original adoption of Chapter 185 in 1953 and the addition of the certification requirement in 1991. See Chapter 91-45, Laws of Florida 1991. This addition is significant.

In *Headley v. Sharpe*, 138 So. 2d 536 (Fla. 3d DCA 1962), the Third District Court of Appeal found that the job description for corrections personnel in the city of Miami Police Department met the then applicable definition of police officer for pension purposes. That changed however, in 1970 when the same court determined that differing job descriptions within the police department led to approval of different pay classifications for persons in the police department corrections division, even though the corrections personnel were classified as police officers. See, *City of Miami v. Rumpf*, 235 So. 2d 341 (Fla. 3d DCA 1970). This evolutionary process ended with *City of Miami v. Musial*, 291 So. 2d 77 (Fla. 3d DCA 1974) when the same court denied a transfer from the City's General Employee Retirement plan to the fire and police plan because of the different training for persons in records and identification from those who were police officers, even though the employees all had a police classification. Significantly, the court also noted that a multi-year delay in requesting reclassification constituted a waiver of any potential misclassification.

The applicant have all been police officers for some years. Had they been corrections officers in 1962, the *Headley v. Sharpe* precedent would have applied. However, the passage of time since the applicants were classified from corrections to police and the development of separate certification pathways for corrections and police in Florida support the conclusion that the applicants request must be denied. While the Board values their service as corrections officers, the language of 185.02 and 33.126 controls.

Accordingly, Mr. Klausner's opinion was that the applicants request for reclassification of their corrections service be denied.

After considering the foregoing and allowing for public input, Mr. Brickman made the motion to deny based on the legal issues outlined. Mr. Wise seconded the motion. All board members voted yes.

Copies will be sent to all known affected members who have a right to appeal. Also noted that the affected members will be able to participate in the GE Plan and DROP due to the restoration of benefits.

- Lafrance Matter - Mr. Klausner advised a second Independent Medical Examination (IME) has been scheduled for July 5th.
- DROP status members eligible by age prior to 10-01-2011 and entered DROP by years of service post 10-01-2011 - Mr. Klausner opined members were eligible to DROP based on age pre-referendum. The matter has been settled by behavior. The city has stopped contributions. Members in question should remain status quo.
- Restoration of Benefits – Retired prior to restoration ordinance (pre-post waiver). Active personnel (pre-post waiver). - Mr. Klausner spoke to the City of Miami case where the Board reinstated an ordinance and the 3<sup>rd</sup> DCA reversed the Board action. As such Mr. Klausner cannot give a definitive decision.



**HOLLYWOOD POLICE OFFICERS' RETIREMENT SYSTEM**  
**Office of Retirement**  
**4205 Hollywood Blvd., Suite 4**  
**Hollywood, Florida 33021**

**June 28, 2019**

**MINUTES**

A regular meeting of the Hollywood Police Officers' Retirement System was held on Friday, June 28, 2019, at 10:33 A.M., in the Office of Retirement, 4205 Hollywood Blvd., Suite 4, Hollywood, Florida 33021.

**PRESENT:**

D. Strauss - Chairman, C. Marano - Secretary, P. Laskowski, R. Brickman, C. Boyd, R. Wise & V. Szeto.

Also present were Laurette Jean, Budget Division Director, City of Hollywood; Jeff Marano, Retired Member; Gregg Rossman, Attorney; Robert Klausner & Anna Klausner Parish, Legal Counsel - Klausner, Kaufman, Jensen & Levinson; David M. Williams, Plan Administrator.

**PUBLIC COMMENT**

Mr. Marano recapped the ordinance transition and provided accolades to staff involved. Mr. Marano thanked Mr. Keller for making the coordination of benefits for GE members a reality.

**READING OF THE WARRANTS**

The warrants since the last meeting were reviewed and executed by the Board of Trustees.

**APPROVAL OF THE MINUTES OF THE MAY 17, 2019 MEETING**

Mr. Strauss asked if there were any additions or corrections to the Minutes of the May 17, 2019 pension board meeting. Mr. Laskowski made a motion to approve the Minutes of the May 17, 2019 pension board meeting, which was seconded by Mr. Szeto. All board members voted yes.

**ATTORNEY'S REPORT**

- Corrections Inquiry - Mr. Klausner advised the Board, on the request of Mr. Steven Sparkman and others similarly situated (the applicants) to reclassify time served as a city of Hollywood corrections officer from the General Employee Retirement System to the City of Hollywood Police Retirement System credit. For the reasons which follow, that request is denied.

The applicants all were originally hired as corrections officers for the City of Hollywood Police Department. They were all certified as corrections officers pursuant to Chapter 943, Fla. Stat. Their assigned duties were primarily custody and transportation of inmates in the City jail. The applicants did have the authority to wear a firearm and did have authority to apprehend any escaped prisoner.

Following a period of service in the City jail, the applicants returned to the police academy and received certification as a law enforcement officer. Following this certification, the applicants were hired as police officers and enrolled in this Plan.

The terms of the Plan and the Section 185.02 limit membership in this Plan to "police officers." See, 185.02(16), Fla. Stat. and 33.126, Hollywood City Code.

On the matter of the waiver, Mr. Klausner stated the union can enter into a waiver. But the union lacks the ability to constrain a member who was eligible to retire or senior management (pension members outside of the collective bargaining agreement).

Mr. Rossman stated that in the Miami case, the court said the Board had no authority. This is different here in Hollywood as the prior referendum ordinance language has been wiped out. Mr. Rossman reflected if the Board does not restore, affected members will bring a lawsuit against the Board. If the Board restores, they take "a chance" of being sued by the city. Mr. Klausner has fears of overstepping authority and may require judicial interpretation. Mr. Klausner said the Board can approve, but not pay it until further Board action.

Mr. Strauss reminded all present that Mr. Kaufman cited the Headley Case in the case of Mr. Bien and those similarly situated.

Discussion ensued about ethics forms being completed by Mr. Strauss and Mr. Szeto.

By consensus of all present there were two distinct groups. Active/Retired members pre-waiver and retired members post waiver. After further discussion the following motions were made.

Motion by Mr. Brickman to treat all members eligible active/retired pre-waiver based on Headley; however, do not begin to pay until further direction of the Board. This motion was seconded by Mr. Laskowski.

Voice Vote: D. Strauss - Did not vote – form 8 will follow  
C. Marano – Yes  
P. Laskowski – Yes  
R. Brickman – Yes  
C. Boyd – Yes  
R. Wise – Yes  
V. Szeto – Did not vote – form 8 will follow  
Motion passed 5 – yes, 0 – No and 2 – Abstained

Motion by Mr. Laskowski to treat all eligible post-waiver retired members as Group One Members pursuant to the restoration ordinance; however, do not begin to pay until further direction of the Board. This motion was seconded by Mr. Boyd.

Voice Vote: D. Strauss - Yes  
C. Marano – Yes  
P. Laskowski – Yes  
R. Brickman – Yes  
C. Boyd – Yes  
R. Wise – Yes  
V. Szeto – Yes  
Motion passed 7-0

- DROP Rules Update – Mr. Klausner advised the updates are being made. When complete, he will bring before the Board.
- SPD Update – Actuary is completing, and Mr. Klausner will provide a legal review upon receipt.

- Jump Start Duration for restored members – Mr. Williams asked Mr. Klausner the duration the members should be afforded to participate. Mr. Klausner felt one year from the date of the restoration ordinance was passed would be reasonable.
- GE Ordinance Review – Application to DROP members who have coordination of Benefits – Mr. Klausner reflected police pension members who had prior GE employment with the city is now being restored. GE DROP rollovers will follow at the end of the GE Drop participation period.

#### ADMINISTRATIVE REPORT

INVERNESS COUNSEL CONTRACT – Mr. Williams cited the Minutes of April 26, 2019 where Mr. Sancho & Mr. Bray of Inverness Counsel spoke to the Board about a proposed fee restructure. Current blended rate is 40 bps, the proposed blended rate is 37 bps effective July 1, 2019. Based on that Inverness proposal a new investment advisory agreement followed.

#### EXISTING CONTRACT STATES:

10. Manager shall receive a fee of 0.40 basis points (excluding cash) on all assets under management ("Fee"). The Fee shall be payable quarterly based on the Value of the Account as of the last day of the quarter. The Fee shall be paid by Board within a reasonable time. If at any time Manager agrees with another client (excluding City of Miami Beach Firemen's Relief & Pension Fund; City of Miami Beach Police Relief and Pension Fund; City Pension Fund for Firefighters and Police Officers in the City of Miami Beach; City Pension Fund for Firefighters and Police Officers in the City of Pembroke Pines, and Miami Beach FOP Insurance Trust Fund) to provide services comparable to those hereunder, and if such other agreement requires payment of fees in any respect lower than those required hereunder, then Manager agrees that fees required hereunder shall automatically be reduced to the level required

#### FIRST DRAFT OF PROPOSED CONTRACT

Manager shall receive a fee calculated in accordance with the attached fee schedule for each category of assets under management.

#### Investment Advisory Fee Schedule

Assets Under Management	Equity	Fixed Income
\$0 – \$50 Million	0.55%	0.20%
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\$100 – \$200 Million	0.45%	0.125%
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#### SECOND DRAFT OF PROPOSED CONTRACT

Manager shall receive a fee based on an annual rate of 37 bps (0.37%) of assets under management.

ASSETS BASED ON A MV OF \$88,289,375 ie. AFTER MONEY GOING TO GHA AND TOQUEVILLE.

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Mr. Brickman made the motion to accept the new proposed fee effective July 1, 2019 and to authorize the administrator to open a separate R&D Account to hold the cash for pension plan payments if deemed appropriate. Mr. Szeto seconded the motion. All members voted yes.

ADAMS TRANSITION - Mr. Williams reflected that when agreements are developed, it is difficult to foresee all the possible scenarios that arise. Mr. Adams signed and returned the required form to transition from RPRB to DROP. In the transition of Tony Adams from RPRB to DROP, it was determined he would not be eligible to DROP until October of 2020. As such Mr. Williams restarted Mr. Adams' contributions to the Plan and worked out what was owed to the Plan since his entry into the RPRB<sup>1</sup>. After exhausting his Share Account for repayment, Mr. Adams still owes the Plan \$45,390.88. Mr. Adams is proposing his payment be deferred and accrue interest until his DROP entry. At that juncture, his account will remain in a negative position until such time as the DROP payments exceed the negative balance owed. Based on the assumption rate, Mr. Adams will owe the Plan \$51,602.96 when he enters the DROP<sup>2</sup>. Mr. Klausner felt that this was a very unique case and that an agreement will be created for the member to execute and return. Mr. Laskowski made a motion to approve payment at the time the member enters the DROP based on the assumed rate of return accruing and the member signs the agreement to be authored by Mr. Klausner. This motion was seconded by Mr. Szeto. All board members voted yes.

STATE REPORT - Mr. Williams advised the Annual Report has been completed and filed by representatives of Kabat, Schertzer, De La Torre, Taraboulos & Co., LLC.

FORM 1 – Mr. Williams reported all Form 1's were received by the Supervisor of Elections.

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WELLS FARGO – Mr. Williams provided a notice of appointment of Nico Marais as the CEO of Wells Fargo Asset Management (WFAM) dated June 10, 2019.

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<sup>1</sup> Contributions and Loan(s)

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### NEW BUSINESS

2019/20 Administrative Expense Budget - Mr. Williams outlined the Administrative Expense Budget provision. 175.061(8) and 185.05(8) require that all firefighter and police Boards of Trustees shall provide a detailed accounting report and operate under an administrative expense budget. A copy of the budget shall be provided to the plan sponsor and made available to plan members before the beginning of the fiscal year. If the Board amends the administrative expense budget, the Board must provide a copy of the amended budget to the plan sponsor and make available a copy of the amended budget to plan members. For plans that use a September 30 - October 1 fiscal year, the new administrative expense budget must be prepared and made available prior to October 1st. Mr. Williams presented an Administrative Expense Budget based on the expenses reported in the financial statements of September 30, 2018 for the Board to consider. Mr. Williams stated that 100 basis points of expense is considered reasonable in the industry. The proposed budget is estimated at 34 basis points which is based on the September 30, 2018 balance of the System, so he believes it is extremely reasonable. After review and discussion, Mr. Brickman made a motion to approve the 2019/20 Administrative Expense Budget as presented, which was seconded by Mrs. Marano. All board members voted yes.

May be viewed on-line at:

<http://hollywoodpolice.com/boards/retirement/2019-20%20Admin%20Expense%20Budget.pdf>

DROP Loan Interest Charge – Mr. Strauss indicated that he feels it would be prudent to charge the assumed rate of return, vs. the current published Fed Rate. Mr. Brickman differed and felt the current rate was reasonable. Mr. Laskowski opined that at a recent educational meeting he attended, the rate of return on loans was raised and charging the assumed rate would be reasonable and would insulate the Board from potential criticism from the city. Mr. Klausner added that the fire pension plan has eliminated loans completely, so police pension members should be fine with the adjustment. Motion by Mr. Laskowski to begin charging the assumed rate of return on any and all future DROP Loans. Motion seconded by Mr. Strauss. Motion passed 6-1 with Mr. Brickman voting - No.

### ENTRUST INVESTMENT REPORT

Mr. Mark A. Guariglia & Mr. Bryan Schneider of EntrustPermal appeared before the Board to provide an investment update. It was reported that the account was valued at \$5,247,103 as of April 30, 2019. With an inception date of July 31, 2015, the net rate of return was valued at 4.21%.

The representatives reminded the Board that activist strategies range from “constructivism,” where the activist managers work collaboratively with the company’s management team, to “aggressive activism,” where managers employ a variety of hostile techniques that include replacing management teams and boards. Activist investors identify companies whose valuations do not reflect their intrinsic value and develop robust plans to unlock shareholder value through a variety of ways: Operational Improvements, Capital Allocation, Corporate Transactions and Management/Board (recruitment, structuring, composition and communication).

The following chart outlines the EnTrustGlobal Activist Fund SPC Allocation:

Account Summary		
Contribution	8/1/2015	\$5,000,000
Total Contribution		\$5,000,000
Balance	4/30/2019	\$5,247,103
Net Profits Generated By EnTrust Global		\$247,103

The EnTrust Global Special Opportunities Funds (the "Funds") are comprised exclusively of co-investments, which target high-conviction ideas that are a result of market dislocations and/or involve manager led catalysts.

Opportunities involve an element of influence vis-à-vis the target situation. Active engagement and insight with respect to investment provides level of transparency and control. Allows investors to allocate and commit capital now to take advantage of future market dislocations. Funds do not have any predetermined exposure by asset class, sector, strategy, or geography. Target range of ~30+ investments with an expected average position size of ~2%~6%. Diversified collection of idiosyncratic investments captures attractive opportunities in any given market environment. EnTrust Global launched the initial class of Special Opportunities Fund IV ("Fund IV" or the "Fund") in Q1 2018. Funds employ a committed capital and drawdown structure, charging fees only on invested capital. Allows for quick execution. Enables investors to reserve liquidity for potential dislocation opportunities; solves the systemic problem of "Institutional Paralysis". The Special Opportunities Funds earn a "liquidity premium" by taking advantage of the lack of 2-5 year institutional capital.

Account Summary		
Committed Capital	3/1/2018	\$5,400,000
Called Capital		\$2,527,880
Uncalled Capital		\$2,872,120
Capital Balance*	4/30/2019	\$5,550,189
Net Profits Generated by EnTrust Global		\$150,189

**OPEN DISCUSSION**

No discussion ensued.

**MEETING ADJOURNED**

There being no further business, the meeting was adjourned at 12:30 P.M.

The next scheduled meeting is July 26, 2019 at 10:30 A.M.

Respectfully submitted,

APPROVED:

C. Marano, Secretary

D. Strauss, Chairperson

**HOLLYWOOD POLICE OFFICERS' RETIREMENT SYSTEM**  
**Office of Retirement**  
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**June 28, 2019**

**MINUTES**

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**PRESENT:**

D. Strauss - Chairman, C. Marano - Secretary, P. Laskowski, R. Brickman, C. Boyd , R. Wise & V. Szeto.

Also present were Laurette Jean, Budget Division Director, City of Hollywood; Jeff Marano, Retired Member; Gregg Rossman, Attorney; Robert Klausner & Anna Klausner Parish, Legal Counsel - Klausner, Kaufman, Jensen & Levinson; David M. Williams, Plan Administrator.

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Following a period of service in the City jail, the applicants returned to the police academy and received certification as a law enforcement officer. Following this certification, the applicants were hired as police officers and enrolled in this Plan.

The terms of the Plan and the Section 185.02 limit membership in this Plan to "police officers." See, 185.02(16), Fla. Stat. and 33.126, Hollywood City Code.



The term "police officer" was essentially unchanged between the original adoption of Chapter 185 in 1953 and the addition of the certification requirement in 1991. See Chapter 91-45, Laws of Florida 1991. This addition is significant.

In *Headley v. Sharpe*, 138 So. 2d 536 (Fla. 3d DCA 1962), the Third District Court of Appeal found that the job description for corrections personnel in the city of Miami Police Department met the then applicable definition of police officer for pension purposes. That changed however, in 1970 when the same court determined that differing job descriptions within the police department led to approval of different pay classifications for persons in the police department corrections division, even though the corrections personnel were classified as police officers. See, *City of Miami v. Rumpf*, 235 So. 2d 341 (Fla. 3d DCA 1970). This evolutionary process ended with *City of Miami v. Musial*, 291 So. 2d 77 (Fla. 3d DCA 1974) when the same court denied a transfer from the City's General Employee Retirement plan to the fire and police plan because of the different training for persons in records and identification from those who were police officers, even though the employees all had a police classification. Significantly, the court also noted that a multi-year delay in requesting reclassification constituted a waiver of any potential misclassification.

The applicants have all been police officers for some years. Had they been corrections officers in 1962, the *Headley v. Sharpe* precedent would have applied. However, the passage of time since the applicants were classified from corrections to police and the development of separate certification pathways for corrections and police in Florida support the conclusion that the applicants request must be denied. While the Board values their service as corrections officers, the language of 185.02 and 33.126 controls.

Accordingly, Mr. Klausner's opinion was that the applicants request for reclassification of their corrections service be denied.

After considering the foregoing and allowing for public input, Mr. Brickman made the motion to deny based on the legal issues outlined. Mr. Wise seconded the motion. All board members voted yes.

Copies will be sent to all known affected members who have a right to appeal. Also noted that the affected members will be able to participate in the GE Plan and DROP due to the restoration of benefits.

- Lafrance Matter - Mr. Klausner advised a second Independent Medical Examination (IME) has been scheduled for July 5th.
- DROP status members eligible by age prior to 10-01-2011 and entered DROP by years of service post 10-01-2011 - Mr. Klausner opined members were eligible to DROP based on age pre-referendum. The matter has been settled by behavior. The city has stopped contributions. Members in question should remain status quo.
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Voice Vote: D. Strauss - Did not vote – form 8 will follow  
C. Marano – Yes  
P. Laskowski – Yes  
R. Brickman – Yes  
C. Boyd – Yes  
R. Wise – Yes  
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Motion passed 5 – yes, 0 – No and 2 – Abstained

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May be viewed on-line at:

[http://hollywoodpensionfund.com/docs\\_static/AnnualBudget/2019-20%20Hollywood%20Police%20Pension%20Admin%20Expense%20Budget%20approved%20June%28%2019.pdf#zoom=100](http://hollywoodpensionfund.com/docs_static/AnnualBudget/2019-20%20Hollywood%20Police%20Pension%20Admin%20Expense%20Budget%20approved%20June%28%2019.pdf#zoom=100)

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The following chart outlines the EnTrustGlobal Activist Fund SPC Allocation:

Account Summary		
Contribution	8/1/2015	\$5,000,000
Total Contribution		\$5,000,000
Balance	4/30/2019	\$5,247,103
Net Profits Generated By EnTrust Global		\$247,103

The EnTrust Global Special Opportunities Funds (the "Funds") are comprised exclusively of co-investments, which target high-conviction ideas that are a result of market dislocations and/or involve manager led catalysts.

Opportunities involve an element of influence vis-à-vis the target situation. Active engagement and insight with respect to investment provides level of transparency and control. Allows investors to allocate and commit capital now to take advantage of future market dislocations. Funds do not have any predetermined exposure by asset class, sector, strategy, or geography. Target range of ~30+ investments with an expected average position size of ~2%--~6%. Diversified collection of idiosyncratic investments captures attractive opportunities in any given market environment. EnTrust Global launched the initial class of Special Opportunities Fund IV ("Fund IV" or the "Fund") in Q1 2018. Funds employ a committed capital and drawdown structure, charging fees only on invested capital. Allows for quick execution. Enables investors to reserve liquidity for potential dislocation opportunities; solves the systemic problem of "Institutional Paralysis". The Special Opportunities Funds earn a "liquidity premium" by taking advantage of the lack of 2-5 year institutional capital.

Account Summary		
Committed Capital	3/1/2018	\$5,400,000
Called Capital		\$2,527,880
Uncalled Capital		\$2,872,120
Capital Balance*	4/30/2019	\$5,550,189
Net Profits Generated by EnTrust Global		\$150,189

OPEN DISCUSSION

No discussion ensued.

MEETING ADJOURNED

There being no further business, the meeting was adjourned at 12:30 P.M.

The next scheduled meeting is July 26, 2019 at 10:30 A.M.

Respectfully submitted,

APPROVED:

C. Marano, Secretary

D. Strauss, Chairperson

## The 2019 Florida Statutes

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[Title XII](#)  
MUNICIPALITIES

[Chapter 185](#)  
MUNICIPAL POLICE PENSIONS

[View Entire Chapter](#)

**185.05 Board of trustees; members; terms of office; meetings; legal entity; costs; attorney's fees.**—For any municipality, chapter plan, local law municipality, or local law plan under this chapter:

(1) In each municipality described in s. [185.03](#) there is hereby created a board of trustees of the municipal police officers' retirement trust fund, which shall be solely responsible for administering the trust fund. Effective October 1, 1986, and thereafter:

(a) The membership of the board of trustees for chapter plans consists of five members, two of whom, unless otherwise prohibited by law, must be legal residents of the municipality and must be appointed by the legislative body of the municipality, and two of whom must be police officers as defined in s. [185.02](#) who are elected by a majority of the active police officers who are members of such plan. With respect to any chapter plan or local law plan that, on January 1, 1997, allowed retired police officers to vote in such elections, retirees may continue to vote in such elections. The fifth member shall be chosen by a majority of the previous four members, and such person's name shall be submitted to the legislative body of the municipality. Upon receipt of the fifth person's name, the legislative body shall, as a ministerial duty, appoint such person to the board of trustees. The fifth member shall have the same rights as each of the other four members appointed or elected, shall serve as trustee for a period of 2 years, and may succeed himself or herself in office. Each resident member shall serve as trustee for a period of 2 years, unless sooner replaced by the legislative body at whose pleasure the member serves, and may succeed himself or herself as a trustee. Each police officer member shall serve as trustee for a period of 2 years, unless he or she sooner leaves the employment of the municipality as a police officer, whereupon a successor shall be chosen in the same manner as an original appointment. Each police officer may succeed himself or herself in office. The terms of office of the appointed and elected members of the board of trustees may be amended by municipal ordinance or special act of the Legislature to extend the terms from 2 years to 4 years. The length of the terms of office shall be the same for all board members.

(b) The membership of boards of trustees for local law plans is as follows:

1. If a municipality has a pension plan for police officers only, the provisions of paragraph (a) shall apply.

2. If a municipality has a pension plan for police officers and firefighters, the provisions of paragraph (a) apply, except that one member of the board shall be a police officer and one member shall be a firefighter as defined in s. [175.032](#), respectively, elected by a majority of the active firefighters and police officers who are members of the plan.

3. Any board of trustees operating a local law plan on July 1, 1999, which is combined with a plan for general employees shall hold an election of the police officers, or police officers and firefighters if included, to determine whether a plan is to be established for police officers only, or for police officers and firefighters where included. Based on the election results, a new board shall be established as provided in subparagraph 1. or subparagraph 2., as appropriate. The municipality shall enact an ordinance to implement the new board by October 1, 1999. The newly established board shall take whatever action is necessary to determine the amount of assets which is attributable to police officers, or police officers and firefighters where included. Such assets shall include all employer, employee, and state contributions made by or on behalf of police officers, or police officers and firefighters where included, and any investment income derived from such contributions. All such moneys shall be transferred into the newly established retirement plan, as directed by the board.



With respect to any board of trustees operating a local law plan on June 30, 1986, this paragraph does not permit the reduction of the membership percentage of police officers or police officers and firefighters. However, for the sole purpose of changing municipal representation, a municipality may by ordinance change the municipal representation on the board of trustees operating a local law plan by ordinance, only if such change does not reduce the membership percentage of police officers, or police officers and firefighters, or the membership percentage of the municipal representation.

(c) Whenever the active police officer membership of a closed chapter plan or closed local law plan as provided in s. 185.38 falls below 10, an active police officer member seat may be held by either a retired police officer or an active police officer member of the plan who is elected by the active and retired members of the plan. If there are no active or retired police officers remaining in the plan or capable of serving, the remaining board members may elect an individual to serve in the active police officer member seat. Upon receipt of such person's name, the legislative body of the municipality shall, as a ministerial duty, appoint such person to the board of trustees. This paragraph applies only to those plans that are closed to new members under s. 185.38(2), and does not apply to any other municipality having a chapter or local law plan.

(d) If the chapter plan or local law plan with an active membership of 10 or more is closed to new members, the member seats may be held by either a retiree, as defined in s. 185.02, or an active police officer of the plan who has been elected by the active police officers. A closed plan means a plan that is closed to new members but continues to operate, pursuant to s. 185.38(2), for participants who elect to remain in the existing plan. This paragraph applies only to those plans that are closed to new members pursuant to s. 185.38(2) and does not apply to any other municipality that has a chapter plan or a local law plan.

(2) The trustees shall by majority vote elect from its members a chair and a secretary. The secretary of the board shall keep a complete minute book of the actions, proceedings, or hearings of the board. The trustees shall not receive any compensation as such, but may receive expenses and per diem as provided by Florida law.

(3) The board of trustees shall meet at least quarterly each year.

(4) Each board of trustees shall be a legal entity that shall have, in addition to other powers and responsibilities contained herein, the power to bring and defend lawsuits of every kind, nature, and description.

(5) In any judicial proceeding or administrative proceeding under chapter 120 brought under or pursuant to the provisions of this chapter, the prevailing party shall be entitled to recover the costs thereof, together with reasonable attorney's fees.

(6) The board of trustees may, upon written request by the retiree of the plan, or by a dependent, if authorized by the retiree or the retiree's beneficiary, authorize the plan administrator to withhold from the monthly retirement payment funds necessary to pay for the benefits being received through the governmental entity from which the employee retired, to pay the certified bargaining agent of the governmental entity, and to make any payments for child support or alimony. Upon the written request of the retiree of the plan, the board of trustees may also authorize the plan administrator to withhold from the retirement payment those funds necessary to pay for premiums for accident, health, and long-term care insurance for the retiree and the retiree's spouse and dependents. A retirement plan does not incur liability for participation in this permissive program if its actions are taken in good faith.

(7) The provisions of this section may not be altered by a participating municipality operating a chapter or local law plan under this chapter.

(8)(a) The board of trustees shall:

1. Provide a detailed accounting report of its expenses for each fiscal year to the plan sponsor and the Department of Management Services and make the report available to each member of the plan and post the report on the board's website, if the board has a website. The report must include all administrative expenses that, for purposes of this subsection, are expenses relating to any legal counsel, actuary, plan administrator, and all other consultants, and all travel and other expenses paid to or on behalf of the members of the board of trustees or anyone else on behalf of the plan.

2. Operate under an administrative expense budget for each fiscal year, provide a copy of the budget to the plan sponsor, and make available a copy of the budget to plan members before the beginning of the fiscal year. If

the board of trustees amends the administrative expense budget, the board must provide a copy of the amended budget to the plan sponsor and make available a copy of the amended budget to plan members.

(b) Notwithstanding s. 185.35(2) and (3), a local law plan created by special act before May 27, 1939, must comply with the provisions of this subsection.

**History.**—s. 2, ch. 28230, 1953; s. 2, ch. 59-320; s. 2, ch. 61-119; s. 4, ch. 86-42; s. 41, ch. 93-193; s. 940, ch. 95-147; s. 45, ch. 99-1; s. 6, ch. 2002-66; s. 8, ch. 2004-21; s. 10, ch. 2009-97; s. 9, ch. 2011-216; s. 10, ch. 2015-39.

## The 2019 Florida Statutes

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Title XII  
MUNICIPALITIES

Chapter 185  
MUNICIPAL POLICE PENSIONS

[View Entire Chapter](#)

**185.06 General powers and duties of board of trustees.**—For any municipality, chapter plan, local law municipality, or local law plan under this chapter:

(1) The board of trustees, subject to the fiduciary standards in ss. [112.656](#), [112.661](#), and [518.11](#) and the Code of Ethics in ss. [112.311-112.3187](#), may:

(a) Invest and reinvest the assets of the retirement trust fund in annuity and life insurance contracts of life insurance companies in amounts sufficient to provide, in whole or in part, the benefits to which all of the participants in the municipal police officers' retirement trust fund are entitled under this chapter, and pay the initial and subsequent premiums thereon.

(b) Invest and reinvest the assets of the retirement trust fund in:

1. Time or savings accounts of a national bank, a state bank insured by the Bank Insurance Fund, or a savings and loan association insured by the Savings Association Insurance Fund administered by the Federal Deposit Insurance Corporation or a state or federal chartered credit union whose share accounts are insured by the National Credit Union Share Insurance Fund.

2. Obligations of the United States or obligations guaranteed as to principal and interest by the United States.

3. Bonds issued by the State of Israel.

4. Bonds, stocks, or other evidences of indebtedness issued or guaranteed by a corporation organized under the laws of the United States, any state or organized territory of the United States, or the District of Columbia, provided:

a. The corporation is listed on any one or more of the recognized national stock exchanges or on the National Market System of the NASDAQ Stock Market and, in the case of bonds only, holds a rating in one of the three highest classifications by a major rating service; and

b. The board of trustees may not invest more than 5 percent of its assets in the common stock or capital stock of any one issuing company, nor shall the aggregate investment in any one issuing company exceed 5 percent of the outstanding capital stock of the company or the aggregate of its investments under this subparagraph at cost exceed 50 percent of the fund's assets.

This paragraph applies to all boards of trustees and participants. However, if a municipality has a duly enacted pension plan pursuant to, and in compliance with, s. [185.35](#) and the trustees desire to vary the investment procedures, the trustees of such plan shall request a variance of the investment procedures as outlined herein only through a municipal ordinance or special act of the Legislature; if a special act, or a municipality by ordinance adopted before July 1, 1998, permits a greater than 50-percent equity investment, such municipality is not required to comply with the aggregate equity investment provisions of this paragraph. Notwithstanding any other provision of law, this section may not be construed to take away any preexisting legal authority to make equity investments that exceed the requirements of this paragraph. Notwithstanding any other provision of law, the board of trustees may invest up to 25 percent of plan assets in foreign securities on a market-value basis. The investment cap on foreign securities may not be revised, amended, repealed, or increased except as provided by general law.

(c) Issue drafts upon the municipal police officers' retirement trust fund pursuant to this act and rules prescribed by the board of trustees. All such drafts shall be consecutively numbered, be signed by the chair and

secretary or by two individuals designated by the board who are subject to the same fiduciary standards as the board of trustees under this subsection, and state upon their faces the purposes for which the drafts are drawn. The city treasurer or other depository shall retain such drafts when paid, as permanent vouchers for disbursements made, and no money may otherwise be drawn from the fund.

(d) Finally decide all claims to relief under the board's rules and regulations and pursuant to the provisions of this act.

(e) Convert into cash any securities of the fund.

(f) Keep a complete record of all receipts and disbursements and of the board's acts and proceedings.

(2) Any and all acts and decisions shall be effectuated by vote of a majority of the members of the board; however, no trustee shall take part in any action in connection with his or her own participation in the fund, and no unfair discrimination shall be shown to any individual employee participating in the fund.

(3) The secretary of the board of trustees shall keep a record of all persons receiving retirement payments under the provisions of this chapter, in which shall be noted the time when the pension is allowed and when the pension shall cease to be paid. In this record, the secretary shall keep a list of all police officers employed by the municipality. The record shall show the name, address, and time of employment of such police officer and when he or she ceases to be employed by the municipality.

(4) The sole and exclusive administration of, and the responsibilities for, the proper operation of the retirement trust fund and for making effective the provisions of this chapter are vested in the board of trustees; however, nothing herein shall empower a board of trustees to amend the provisions of a retirement plan without the approval of the municipality. The board of trustees shall keep in convenient form such data as shall be necessary for an actuarial valuation of the retirement trust fund and for checking the actual experience of the fund.

(5)(a) At least once every 3 years, the board of trustees shall retain a professionally qualified independent consultant who shall evaluate the performance of any existing professional money manager and shall make recommendations to the board of trustees regarding the selection of money managers for the next investment term. These recommendations shall be considered by the board of trustees at its next regularly scheduled meeting. The date, time, place, and subject of this meeting shall be advertised in the same manner as for any meeting of the board.

(b) For the purpose of this subsection, the term "professionally qualified independent consultant" means a consultant who, based on education and experience, is professionally qualified to evaluate the performance of professional money managers, and who, at a minimum:

1. Provides his or her services on a flat-fee basis.
2. Is not associated in any manner with the money manager for the pension fund.
3. Makes calculations according to the American Banking Institute method of calculating time-weighted rates of return. All calculations must be made net of fees.
4. Has 3 or more years of experience working in the public sector.

(6) To assist the board in meeting its responsibilities under this chapter, the board, if it so elects, may:

- (a) Employ independent legal counsel at the pension fund's expense.
- (b) Employ an independent enrolled actuary, as defined in s. 185.02, at the pension fund's expense.
- (c) Employ such independent professional, technical, or other advisers as it deems necessary at the pension fund's expense.

If the board chooses to use the municipality's or special district's legal counsel or actuary, or chooses to use any of the municipality's other professional, technical, or other advisers, it must do so only under terms and conditions acceptable to the board.

(7) Notwithstanding paragraph (1)(b) and as provided in s. 215.473, the board of trustees must identify and publicly report any direct or indirect holdings it may have in any scrutinized company, as defined in that section, and proceed to sell, redeem, divest, or withdraw all publicly traded securities it may have in that company beginning January 1, 2010. The divestiture of any such security must be completed by September 10, 2010. The

board and its named officers or investment advisors may not be deemed to have breached their fiduciary duty in any action taken to dispose of any such security, and the board shall have satisfactorily discharged the fiduciary duties of loyalty, prudence, and sole and exclusive benefit to the participants of the pension fund and their beneficiaries if the actions it takes are consistent with the duties imposed by s. 215.473, and the manner of the disposition, if any, is reasonable as to the means chosen. For the purposes of effecting compliance with that section, the pension fund shall designate terror-free plans that allocate their funds among securities not subject to divestiture. No person may bring any civil, criminal, or administrative action against the board of trustees or any employee, officer, director, or advisor of such pension fund based upon the divestiture of any security pursuant to this subsection.

**History.**—s. 3, ch. 28230, 1953; s. 1, ch. 57-118; s. 3, ch. 59-320; s. 2, ch. 61-119; s. 1, ch. 65-366; ss. 22, 35, ch. 69-106; s. 5, ch. 86-42; s. 941, ch. 95-147; s. 2, ch. 98-134; s. 67, ch. 99-2; s. 18, ch. 99-392; s. 29, ch. 2000-151; s. 11, ch. 2009-97; s. 19, ch. 2010-5; s. 11, ch. 2015-39.

## Florida Attorney General Advisory Legal Opinion

Number: AGO 82-47

Date: June 22, 1982

Subject: Transcript of council meetings

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Mr. John T. Parnham  
City Attorney  
City of Gulf Breeze  
222 South Tarragona, Suite 160  
Post Office Box 631  
Pensacola, Florida 32593

RE: MUNICIPALITIES--Verbatim transcript of all meetings not required

Dear Mr. Parnham:

This is in response to your request for an opinion on substantially the following question:

Is a municipality required under the provisions of s. 286.011(2), F.S., to provide for public inspection a verbatim transcript of all meetings of the city council?

Your question is answered in the negative.

Section 286.011(2), F.S., of the Government in the Sunshine Law, provides, in pertinent part, as follows:

"The *minutes* of a meeting of any such board or commission of any such state agency or authority shall be promptly recorded and such records shall be open to public inspection. . . ." (e.s.)

The term "minutes" is not specifically defined in the Florida Statutes for the purposes of the above statutory provision. However, it is a basic rule of statutory construction that words in statutes should be given the meaning accorded to them in common usage unless a different connotation is expressed in, or necessarily implied from, the context of the statute. *City of Winter Park v. Jones*, 392 So.2d 568 (5 D.C.A. Fla., 1980); *Gaulden v. Kirk*, 47 So.2d 567 (Fla. 1950). Another rule of statutory construction provides that words of common usage, when used in a statute, should be construed in their plain and ordinary sense. *Freedman v. State Board of Accountancy*, 370 So.2d 1168 (4 D.C.A. Fla., 1979); *Pedersen v. Green*, 105 So.2d 1 (Fla. 1958). It does not appear from the context of the statute that the term "minutes" should be given a meaning different from that which has evolved from common usage and since words of common usage should be construed in their plain and ordinary sense, I resorted to several different dictionaries to ascertain if there is a consensus on the meaning

of the word "minutes" and found that there does appear to be a consensus.

Webster's Third New International Dictionary of the English Language Unabridged, at page 1440, defines "minutes" as, *inter alia*, a series of brief notes taken to provide a record of proceedings (as of an assembly or conference) or of transactions (as of the directors of a corporation); an official record of such notes. Black's Law Dictionary (Rev. 4th ed. 1968), at page 1149, defines "minutes" as *memoranda or notes of a transaction or proceeding*. The World Book Encyclopedia Dictionary, at page 1236, defines "minutes" as: "a. an official record of proceedings at a society, board, committee, etc. b. a rough draft or *written summary; note; memorandum*." Finally, the term "minute" signifies a memoranda or draft, and, specifically, in the plural, the official records made of the transactions or proceedings at a meeting of an organized body. See, 58 C.J.S. *Minute*, page 810.

All of the above authorities, and others too numerous and repetitious to cite, define "minutes" to mean in essence, a brief summary or series of brief notes or memoranda of a proceeding or transaction. My research has failed to disclose any authority whose definition of the term "minutes" is construed to mean a word for word or verbatim transcript of a proceeding. It is therefore my opinion that the term "minutes" as used in s. 286.011(2), F.S., means, as its common and ordinary usage exemplifies, a brief summary or series of brief notes or memoranda of the meeting. Cf., AGO 075-45, in which it was opined that sound recorders may be used to record public meetings *in toto* so long as the written minutes of such meetings are promptly recorded for public inspection as required by s. 286.011, F.S., and the written minutes and tape or sound recordings are preserved, retained, and disposed of in compliance with the provisions of s. 267.051, F.S. It should also be noted that any such tape or sound recording of a public meeting constitutes a public record within the definitional purview of s. 119.011(1), F.S., and is thereby subject to public inspection under the provisions of s. 119.07, F.S.

Moreover, had the Legislature intended by enactment of s. 286.011(2) to require that a verbatim record of a meeting be promptly recorded and open to public inspection, it could easily have done so by providing for the same instead of for "minutes." By examining the provisions of s. 286.0105, F.S., it becomes clearly evident that the Legislature realized the difference between a "verbatim record of the proceedings" and "minutes of a meeting." Section 286.0105, F.S., provides, in pertinent part, that each entity subject to s. 286.011, shall include in its notice of any meeting or hearing the advice that if a person decides to appeal any decision with respect to any matter considered at such meeting or hearing, he will need a record of the proceedings, and for that purpose, he may need to ensure that a "verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based."

In summary, unless and until legislatively or judicially determined otherwise, it is my opinion that a municipality is not required under the provisions of s. 286.011(2), F.S., to provide for public inspection a verbatim transcript of all meetings of the city council. However, pursuant to s. 286.011(2), F.S., a municipality is required to promptly record and open to public inspection "minutes" of all meetings of the city council,

0036

**i.e., a brief summary or series of brief notes or memoranda reflecting the events of the meetings.**

**Sincerely,**

**Jim Smith  
Attorney General**

**Prepared by:**

**Linda Lettera  
Assistant Attorney General**



**§ 33.127 ELIGIBILITY.****(A) Conditions of eligibility.**

(1) Active, non-retired employees who are members of the "Police Pension Fund, City of Hollywood", at the time of the adoption of this retirement system shall become members of this system.

(2) It shall be mandatory for any future Police Officer to become a member if at least 18 years of age and provided that:

(a) Such Police Officer satisfactorily completes all required medical examinations for a Police Officer of his classification as prescribed by the Board and the Police Department at the time of initial employment;

(b) Such Police Officer meets all other requirements of the city.

(c) The methods and procedures to be followed with regard to the above shall be determined by the Board.

(3) Police Officers who were previously employed by the city in a capacity other than as a Police Officer but who subsequently become members as defined herein shall be eligible for membership under this system; provided however, that for purposes of this system, continuous service shall include only that period of employment during which such persons are Police Officers as defined herein.

(4) A member may elect to purchase credit for the period of attendance at a basic recruit training program approved by the Criminal Justice Standards and Training Commission of the Florida Department of Law Enforcement while employed by the city and for any portion of the one year probationary period that predates October 12, 2015, by contributing 8% of his or her earnings for those periods, plus interest as determined by the Board, into the system. A member shall have until the date on which he or she makes application for retirement within which to make this election and to make the necessary contribution.

**(B) Application.** Each Police Officer shall complete an application form, within the time limit established by the Board, covering the following points, as well as such other points or items as may be prescribed by the Board:

(1) Such Police Officer's acceptance of the terms and conditions of this plan; and, if requested;

(2) Such Police Officer's designation of a beneficiary or beneficiaries.

**(C) Change in designation of beneficiary.** A member may from time to time change his or her designated beneficiary by written notice to the Board upon forms provided by the Board; no change of beneficiary shall be effective until such written notice has been received by the Board. Upon such change, the rights of all previously designated beneficiaries to receive any benefit under the plan shall cease. Notwithstanding the foregoing, a member who has entered the DROP plan created pursuant to § 33.128(E) shall be limited to a maximum of two such changes during his or her participation in the DROP plan and retirement. Similarly, a member who retires without participating in the DROP plan shall be limited to two such changes during his or her retirement. Any actuarial cost of a change in designation of beneficiary shall be fully paid by the member or retiree. The actuarial cost shall be calculated based on the remaining value, rather than the initial value, of the members or retiree's benefits under the plan. In no event shall a change in the beneficiary of a member who has entered the DROP plan or retired result in an increase of such members or retiree's benefit amount under the plan.

(Ord. O-91-82, passed 11-20-91; Am. Ord. O-98-06, passed 4-1-98; Am. Ord. O-2001-13, passed 5-2-01; Am. Ord. O-2002-33, passed 9-18-02; Am. Ord. O-2007-15, passed 6-20-07; Am. Ord. O-2015-22, passed 10-7-15)

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT  
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO.: CACE17-002456 (21)  
JUDGE: RAAG SINGHAL

JEREMIAH BRUTUS,  
Plaintiff,

v.

FORT LAUDERDALE POLICE AND FIRE  
RETIREMENT SYSTEM BOARD OF TRUSTEES,  
Defendant.

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**ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND  
GRANTING DEFENDANT'S CROSS MOTION FOR SUMMARY JUDGMENT AND  
OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

**THIS CAUSE** came before this Court on Plaintiff's Motion for Summary Judgment, filed January 24, 2018, and Defendant's Cross Motion for Summary Judgment and Opposition to Plaintiff's Motion for Summary Judgment, filed May 1, 2018. This Court, having considered the motions, having heard argument of counsel, having reviewed the court file, and being otherwise duly advised in the premises, rules as follows:

On December 10, 2013, Jeremiah Brutus ("Plaintiff") was employed full time by the City of Fort Lauderdale Police Department ("Police Department") to become a certified law enforcement officer in compliance with sections 943.13 and 943.1395, Florida Statutes. As a result, Plaintiff became a member of the Fraternal Order of Police, Lodge 31 ("FOP"), the collective bargaining representative of police officers. Plaintiff also began contributing to the Fort Lauderdale Police and Fire Retirement System, the Police Department's pension plan ("Pension Plan"). Plaintiff has since contributed \$14,475.96 to the Pension Plan, which the Board continues to hold. The Pension Plan is governed by certain provisions of Chapter 185, Florida Statutes, and

is codified in Division 3 "Police and Firefighters Retirement System," Article IV "Pensions" of Chapter 20 of Fort Lauderdale's Code of Ordinances ("City Code").

On January 21, 2014, Plaintiff registered to attend the 291st Broward County Police Academy ("Police Academy"). On February 25, 2014, Plaintiff injured his right knee while participating in an obstacle course training exercise at the Police Academy. As a result of the injury, Plaintiff was placed on light duty and was transferred to the Evidence Unit. Thereafter, also in 2014, worker's compensation authorized surgery for Plaintiff to have his right knee repaired as well as a manipulation of the knee. On September 1, 2015, Plaintiff underwent another surgery to further repair his right knee. On August 29, 2016, Plaintiff filed an in-line-of-duty permanent total disability application with the Defendant, Fort Lauderdale Police and Fire Retirement System Board of Trustees (the "Board"). The Board sent Plaintiff to be examined by the Board's medical panel, which found Plaintiff to be permanently totally disabled because of the injury.

The Police Department then terminated Plaintiff's employment on September 13, 2016, as he was unable to complete his training and graduate from the Police Academy. On October 14, 2016, Plaintiff's application for disability retirement benefits was denied because Plaintiff was not certified as a law enforcement officer or capable of becoming certified and was therefore not a member of the Pension Plan. Instead, Plaintiff would be eligible to receive a return of his Pension Plan contributions. On January 9, 2017, the Board provided written notice of the denial of Plaintiff's application for disability retirement benefits.

On January 24, 2018, Plaintiff filed the instant Motion for Summary Judgment for entitlement to in-line-of-duty permanent total disability benefits under section 112.66(5), Florida Statutes. Plaintiff also filed an Appendix to Motion for Summary Judgment (hereinafter "Pl. Supp. App."). On May 1, 2018, the Board filed its Cross Motion for Summary Judgment and Opposition

to Plaintiff's Motion for Summary Judgment and an Appendix in Support of Motion for Summary Judgment and Opposition to City's Motion for Summary Judgment (hereinafter "Def. Opp'n App."). On May 21, 2018, this Court heard oral argument from counsel on both motions.

A motion for summary judgment should be granted "if the pleadings and summary judgment evidence on file show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fla. R. Civ. P. 1.510(c). "The law is well settled in Florida that a party moving for summary judgment must show conclusively the absence of any genuine issue of material fact and the court must draw every possible inference in favor of the party against whom a summary judgment is sought." *Moore v. Morris*, 475 So. 2d 666, 668 (Fla. 1985) (citing *Wills v. Sears, Roebuck & Co.*, 351 So. 2d 29 (Fla. 1977); *see also Holl v. Talcott*, 191 So. 2d 40 (Fla. 1966)). "[S]ummary judgment should not be granted unless the facts are so crystallized that nothing remains but questions of law." *Morris*, 475 So. 2d at 668 (citing *Shaffran v. Holness*, 93 So. 2d 94, 97–98 (Fla. 1957)). In this case, the parties have stipulated that there are no factual issues in dispute and the actual controversy is concentrated on a limited legal issue. Therefore, summary judgment is appropriate because no genuine issue of material fact exists. *Id.*

This case involves the narrowed issue of whether Plaintiff meets the statutory definition of "police officer" pursuant to section 185.02(16), Florida Statutes, to be covered under the beneficiary and retirement act of section 112.66(5), Florida Statutes. The polestar of a statutory construction analysis is legislative intent. *See Borden v. E.-European Ins. Co.*, 921 So. 2d 587, 595 (Fla. 2006). "The Legislature's intent must be determined primarily from the language of the statute." *Palm Beach Gardens Police Pension Fund Bd. of Trs. v. Mitchell J. Beers, P.A.*, 842 So. 2d 911, 913 (Fla. 4th DCA 2003). To discern legislative intent, a court looks first to the plain and

obvious meaning of the statute's text, "which may be ascertained by reference to a dictionary definition." *Robinson v. State*, 205 So. 3d 584, 590 (Fla. 2016) (citing *Rollins v. Pizzarelli*, 761 So. 2d 294, 298 (Fla. 2000)). "It is an elementary principle of statutory construction that significance and effect must be given to every word, phrase, sentence, and part of the statute if possible, and words in a statute should not be construed as mere surplusage." *Hechtman v. Nations Title Ins.*, 840 So. 2d 993, 996 (Fla. 2003). Even "[t]he title is more than an index to what the section is about or has reference to; it is a direct statement by the legislature of its intent." *State v. Webb*, 398 So. 2d 820, 825 (Fla. 1981); *see also Gulfstream Park Racing Ass'n v. Tampa Bay Downs, Inc.*, 948 So. 2d 599, 605 (Fla. 2006). If the language of the statute is "clear and unambiguous and conveys a clear and definite meaning" there is no need to resort to statutory construction. *Headley v. City of Miami*, 215 So. 3d 1, 7 (Fla. 2017) (citing *Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984)). If, however, an ambiguity exists, a court should look to the rules of statutory construction to help interpret legislative intent. *See, e.g., Gulfstream Park Racing Ass'n*, 948 So. 2d at 606–07.

"The doctrine of *in pari materia* is a principle of statutory construction that requires that statutes relating to the same subject or object be construed together to harmonize the statutes and to give effect to the Legislature's intent." *Fla. Dep't of State v. Martin*, 916 So. 2d 763, 768 (Fla. 2005) (citing *Forsythe v. Longboat Key Beach Erosion Control Dist.*, 604 So. 2d 452, 455 (Fla. 1992)). In ascertaining the legislative intent, a court must consider the plain language of the statute, give effect to all statutory provisions, and construe related provisions in harmony with one another. *See M.W. v. Davis*, 756 So. 2d 90 (Fla. 2000). "Municipal ordinances are subject to the same rules of construction as are state statutes." *Rinker Materials Corp. v. N. Miami*, 286 So. 2d 552, 553 (Fla. 1973) (citing *Rose v. Hillsboro Beach*, 216 So. 2d 258, 259 (Fla. 4th DCA 1968)).

As such, this Court must consider Chapter 185, Florida Statutes, and the City Code, as a whole, when applying the definitions of “police officer” to the facts of this case.

Based on the clear language of section 185.01, Florida Statutes, which states “that it is a proper and legitimate state purpose to provide a uniform retirement system for the benefit of police officers . . . in such manner as to maximize the protection of police officers’ retirement trust funds,” a local ordinance is required to comply with Chapter 185, Florida Statutes, and provide minimum benefits and meet minimum standards. § 185.01(1)–(2), Fla. Stat.; *see also Kilpatrick v. Sklar*, 548 So. 2d 215, 218 (Fla. 1989) (noting that because of the inherent dangers in duties performed by police officers “special funds and programs have been established to compensate them in the event they suffer injury or death while acting in the course of their employment.”). The plain and ordinary meaning of section 185.01, Florida Statutes, is evident, the section is unambiguous, and the court need not go further in analyzing its’ meaning. In determining the meaning of “police officer” to decide the narrowed issue in this case, however, this Court must read section 185.02(16), Florida Statutes, as a whole and *in pari materia* with the definition of “police officer” in section 20-127., City Code. This Court must then reconcile that definition with the definitions of “employee” and “member,” as those terms are also used in the employment benefit context here.

Plaintiff argues that he is entitled to disability retirement benefits pursuant to a strict reading of the definition of the term “police officer” in section 185.02(16), Florida Statutes. Section 185.02(16), Florida Statutes, provides that the term “‘Police officer’ **means any person who is elected, appointed, or employed full time** by a municipality, **who is certified or required to be certified** as a law enforcement officer in compliance with s. 943.1395 . . . .” § 185.02(16), Fla. Stat. (emphasis added). In particular, Plaintiff argues that the word “or” is disjunctive and permits a “police officer” to be someone who is not certified as a law enforcement officer. *Id.*

Additionally, the Notice of Appointment, dated December 18, 2013, specifies that Plaintiff was assigned the position of “Police Officer,” effective December 10, 2013, as a “regular full time” employee. (Pl. Supp. App. p. 5); *see also* (Def. Opp’n App. p. 44); *but see* (Def. Opp’n App. p. 43, 46–47) (describing the assigned position as “non-certified” police officer). The Board disagrees and asserts that Plaintiff is not an “employee” because he never became a “regular employee[] of the City” and he is not a “police officer” because he did not receive his “State Certification.” §§ 20-126. & 20-127., City Code. Additionally, the Board maintains that Plaintiff was not a “Member” because he was not an employee and he did not graduate from the Police Academy or “fulfill[] the prescribed participation requirements.” § 20-127., City Code. Furthermore, the City Code specifies that the Board has the sole responsibility to construe provisions of the Pension Plan and decide all claims. *See* § 20-132.(a), City Code (“The general administration and responsibility for the proper operation of the System and for making effective the provisions of this article are hereby vested in a Board of Trustees . . .”).

Section 185.06(4), Florida Statutes, provides that “[t]he sole and exclusive administration of . . . the proper operation of the [Pension Plan] and for making effective the provisions of this chapter are vested in the [B]oard . . . .” § 185.06(4), Fla. Stat. “The [Administrative Procedure] Act . . . contemplates that courts, not agencies, will authoritatively resolve ambiguities in statutes and regulations.” *Perez v. Mortg. Bankers Ass’n*, 135 S. Ct. 1199, 1211 (2015) (Scalia, J., concurring in the judgment); *see also* Administrative Procedure Act of 1926, 5 U.S.C. § 553(b)(A) (2018). “However, when a statutory term is subject to varying interpretations and that statute has been interpreted by the executive agency charged with enforcing the statute,” a reviewing court follows a deferential principle of statutory construction: an agency’s interpretation of the statute that it is charged with enforcing is entitled to great deference. *GTC, Inc. v. Edgar*, 967 So. 2d 781,



785 (Fla. 2007).<sup>1</sup> A reviewing court should “not depart from the contemporaneous construction of a statute by a state agency charged with its enforcement unless the construction is ‘clearly unauthorized or erroneous.’” *Id.* (quoting *Level 3 Communs., LLC v. Jacobs*, 841 So. 2d 447, 450 (Fla. 2003)).<sup>2</sup> In light of the language of the statute and the City Code, the Board’s denial of Plaintiff’s application for disability retirement benefits was neither unreasonable nor clearly erroneous.

Here, Plaintiff had just begun his training in the Police Academy Basic Recruit Training Program when the injury occurred. *See* (Def. Opp’n App. p. 40). As a result of said injury, Plaintiff remained on light duty and was unable to complete his training, graduate from the Police Academy, or become certified as a police officer under section 943.13, Florida Statutes. *See* (Def. Opp’n App. p. 40–42). Despite the Court’s sympathy for Plaintiff and respect for his injury, under the terms of Chapter 185, Florida Statutes, and the City Code, a police officer must be certified pursuant to section 943.13, Florida Statutes, to be entitled to disability retirement benefits. Although Plaintiff had begun contributing to the Pension Plan, mere contribution to the Pension Plan does not entitle him to disability retirement benefits.<sup>3</sup> Instead, Plaintiff should receive a return of his contributions to the Pension Plan.

Accordingly, it is:

**ORDERED AND ADJUDGED** that Defendant’s Cross Motion for Summary Judgment and Opposition to Plaintiff’s Motion for Summary Judgment is hereby GRANTED. Accordingly, Plaintiff’s Motion for Summary Judgment is hereby DENIED. Defendant, as the prevailing party.

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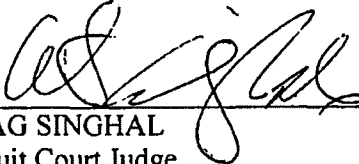
<sup>1</sup> *But see id.* at 1213 (Thomas, J., concurring in the judgment) (noting “constitutional concerns” raised by the legal precedent that “requires judges to defer to agency interpretations of regulations . . .”).

<sup>2</sup> *But see id.* at 1221 (Thomas, J., concurring in the judgment) (“When courts refuse even to decide what the best interpretation is under the law, they abandon the judicial check [of the check and balance system].”).

<sup>3</sup> Plaintiff’s contribution to the Pension Plan amounts to \$14,475.96. *See* (Def. Opp’n App. p. 39). However, if entitled to disability retirement benefits, Plaintiff would receive a projected value of \$542,336.00 throughout his lifetime. *See* (Def. Opp’n App. p. 13–18).

is entitled to attorney's fees and costs pursuant to section 185.05(5), Florida Statutes. The Court retains jurisdiction to determine Defendant's reasonable attorneys' fees, pursuant to an evidentiary hearing to be set by this Court upon further notice.

**DONE AND ORDERED** in Chambers at Fort Lauderdale, Broward County, Florida on July 19, 2018.

  
\_\_\_\_\_  
RAAG SINGHAL  
Circuit Court Judge

cc: All persons listed on e-Portal Service List.

IN THE CIRCUIT COURT OF THE  
17th JUDICIAL CIRCUIT IN AND FOR  
BROWARD COUNTY, FLORIDA

JEREMIAH BRUTUS,

Plaintiff,

CASE NO.: CASE 17002456

v.

FORT LAUDERDALE POLICE AND  
FIRE RETIREMENT SYSTEM  
BOARD OF TRUSTEES,

Defendant.

**BOARD OF TRUSTEES' CROSS MOTION FOR SUMMARY JUDGMENT AND  
OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

Defendant, Board of Trustees ("Board") of the City of Fort Lauderdale Police and Fire Retirement System ("Pension Plan"), pursuant to Rule 1.510, Fla. R. Civ. P., files its Cross-Motion for Summary Judgment<sup>1</sup> and opposes Plaintiff, Jeremiah Brutus' Motion for Summary Judgement, which is properly denied.

**I. INTRODUCTION**

On January 9, 2017 the Board provided written notice of denial of Plaintiff's disability application. Appx. No. 1. The facts in this case are not disputed.<sup>2</sup> The matter is appropriately decided on summary judgment, as a matter of law.

The Board of Trustees is charged with the responsibility to construe the provisions of the Plan and decide all claims, including questions of eligibility and participation. Fort Lauderdale City Code (hereinafter "City Code") § 20-132(a), (n)(1), (n)(2); *see also* Fla. Stat. §185.06(4)

<sup>1</sup> The Board's Appendix ("Appx."), which includes the Affidavit of the Board's Executive Director ("Wengeur Affid."), has been contemporaneously filed with this Cross Motion.

<sup>2</sup> Counsel for parties have agreed to stipulate to the admissibility of the public records contained in each Appendix filed in support of their respective motions.

(providing that sole responsibility for the proper operation of the fund is vested in the Board).<sup>3</sup> The Board properly exercised its lawful authority and correctly applied the plain language of the law governing the Pension Plan when it denied Plaintiff's application for pension benefits. Both the Pension Plan provisions set forth in the City Code and the underlying state statutes necessitate the same result. As specified in the City Code, only "*regular employees of the City classified as Police Officers or Firefighters who have received their State Certification*" are permitted to receive pension benefits from the Pension Fund. City Code § 20-126 (emphasis added).

The issue in this case is whether non-certified, probationary employees of a police department are eligible to receive police pension benefits, when the Plan specifically and repeatedly specifies that benefits are only payable to *certified* law enforcement officers vested with the authority to make arrests. *See* City Code § 20-126; *see also* City Code § 20-127 (definitions of "employee" and "member"); City Code § 20-128 (conditions of eligibility). As a matter of law, the extraordinary requirements for equitable estoppel cannot be established in this case. Efforts by the City of Fort Lauderdale to reasonably accommodate Plaintiff's injury never placed him in a disadvantageous legal position of any kind.

For the reasons which follow, the Plaintiff's Motion for Summary Judgment should be denied and final judgment entered for the Board.

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<sup>3</sup> The Plan is codified in Chapter 20 of the City Code. The Pension Plan is also governed by Chapter 185, Fla. Stat., the general state law for municipal police pension plans. The City Code of Ordinances for the Pension Plan is available online using the following link: [https://library.municode.com/fl/fort\\_lauderdale/codes/code\\_of\\_ordinances?nodeId=COOR\\_CH20PE\\_ARTIVPE\\_DIV3POFIRESY](https://library.municode.com/fl/fort_lauderdale/codes/code_of_ordinances?nodeId=COOR_CH20PE_ARTIVPE_DIV3POFIRESY)

## II. LEGAL STANDARDS FOR SUMMARY JUDGMENT, INCLUDING RULES OF STATUTORY INTERPRETATION AND DEFERENCE TO BOARD'S APPLICATION OF PENSION PLAN PROVISIONS

"Summary judgment is proper if there is no genuine issue of material fact and if the moving party is entitled to a judgment as a matter of law." *Volusia Cty. v. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126, 130 (Fla. 2000). A motion for summary judgment is required to state with particularity the grounds upon which it is based and the matters of law at issue. Fla. R. Civ. P. 1.510(c).

"It is a fundamental principle of statutory interpretation that legislative intent is the 'polestar' that guides this Court's interpretation." *Borden v. East-European Ins. Co.*, 921 So. 2d 587, 595 (Fla. 2006). The best method to determine the intent of the legislature is to "look to the actual language used in the statute." *Daniels v. Fla. Dep't of Health*, 898 So. 2d 61, 64 (Fla. 2005).

A court will first examine a statute's plain meaning, resorting to rules of statutory construction only if the statute's language is ambiguous. *Kumar v. Patel*, 227 So. 3d 557, 559 (Fla. 2017); *Medical Center of Palm Beaches v. USAA Cas. Ins. Co.*, 202 So. 3d 88, 90 (Fla. 4<sup>th</sup> DCA 2016)("[w]hen the statute is clear and unambiguous, courts will not look behind the statute's plain language for legislative intent or resort to rules of statutory construction to ascertain intent."). When construing different parts of a statute, "[i]t is axiomatic that all parts of a statute must be read together in order to achieve a consistent whole. Where possible, courts must give full effect to all statutory provisions and construe related statutory provisions in harmony with one another." *Knowles v. Beverly Enterprises-Florida, Inc.*, 898 So. 2d 1, 6 (Fla. 2004).

The “general administration and responsibility” for the operation of the Pension Plan is vested in the Board. City Code § 20-132(a). The duties of the Board include construing the provisions of the Plan to “finally decide all claims to relief” and the determination of “all questions relating to eligibility and participation.” City Code § 20-132(n)(1) & (n)(2); *see also* Fla. Stat. §185.06(4). The Court should defer to the Board’s administrative expertise in this technical area. *Department of Environmental Regulation v. Goldring*, 477 So. 2d 532, 534 (Fla. 1985)(“Courts should accord great deference to administrative interpretations of statutes which the administrative agency is required to enforce.”). The Court should avoid statutory constructions that require adding language into an ordinance. *See Rinker Materials Corp. v. City of North Miami*, 286 So. 2d 552, 553 (Fla. 1973)(courts generally may not insert words or phrases in municipal ordinances).

As set forth below, Plaintiff’s proposed construction would require the court to ignore the plain language of the Plan and add the word “recruit” and “trainee” into narrowly crafted, technical, Plan definitions.

### **III. SUMMARY JUDGEMENT EVIDENCE ESTABLISHING AN ABSENCE OF ISSUES OF MATERIAL FACT**

1. “Recruit Officer Jeremiah Brutus” was hired as a “Non-Certified Police Officer” on December 10, 2013. Appx. No. 3 - 6, 9 & 10.
2. Plaintiff started the “Police Academy Basic Recruit Training Program on January 21, 2014” as a “recruit officer.” Appx. No. 3.
3. The November 26, 2013 new hire requisition list provides police academy registration information for Plaintiff and describes his position as “Non-Certified.” The subject line of the memo describes the position as “Non-Cert” police officer. Appx. No. 6.
4. Plaintiff’s 12/2/13 application describes his position as “Non-Certified.” Appx. No. 10.
5. The Human Resources “report to work form” describes the position of “N/C

Police Officer.” Appx. No. 9.

6. The Police Department “Agreement for Reimbursement of Training and Ballistic Vest Expenses” indicates that the undersigned applicant was hired “to become a certified Police Officer through enrollment at the Police Academy” with a signature line for “Police Officer Applicants.” Appx. No. 8.
7. Plaintiff’s Notice of Appointment dated 12/19/13 describes the “Conditions of Appointment” as follows:  
  
“12 Month Probationary Period begins *after* completion of the Police Academy” Appx. No. 7 (emphasis added).
8. Recruit officers “are placed on probation for a period of one (1) year following police academy graduation to allow for adequate monitoring of job performance.” Appx. No. 3.
9. In February of 2014, four (4) weeks after commencement of the Police Academy, Plaintiff injured his knee during obstacle course training. Appx. No. 3.
10. On March 23, 2014 Plaintiff underwent surgery with Dr. Richard Zavovyski to repair his patellar tendon. He reached MMI on January 22, 2015 with a 3% whole person Worker’s Compensation impairment rating. Appx. No. 1 at ¶7.
11. By memo dated 12/6/14 Recruit Police Officer Jeremiah Brutus was placed on light duty and transferred to the evidence unit to allow him to “rehabilitate his knee” and hopefully “attend the next possible police academy.” Appx. No. 5.
12. By memo dated 3/11/2015 the City extended the one year “probation expiration date” date to October 6, 2016 to enable Plaintiff to enroll in the next available Police Academy class beginning on May 1, 2015. Appx. No. 3.
13. On September 1, 2015 Plaintiff underwent a repair/reconstruction of the knee joint by Dr. Paul Meli. Appx. No. 1 at ¶11.
14. As evidenced by a performance evaluation dated 12/6/15, “Recruit Brutus” remained on light duty and was assigned to the training unit as he attended physical therapy. Appx. No. 4.
15. On August 29, 2016, Plaintiff filed a disability application with the Board. Appx. No. 1 at ¶13.
16. After undergoing several surgeries and intense physical therapy, it was the opinion of Verano M. Hermida, MD, in an independent medical examination dated September 27, 2016 that, “Mr. Brutus is unable to perform [the] full duties of a police officer on the regular continuous basis. His condition is currently

permanent and his prognosis is guarded. I do not believe any future surgery will be able to return him to be able to perform full duties as a police officer on a regular continuous basis.” Appx. No. 1 at p. 3.

17. By letter dated October 14, 2016, the Board notified Plaintiff that his disability application could not be processed as he was unable to complete the certification requirements necessary to become a certified Police Officer. Appx. No. 2.
18. The October 14 letter provided that “while in the academy” employees of the Fort Lauderdale Police Department are “conditional” participants in the Retirement System “in anticipation of completion of the academy and receipt of state certification.” Appx. No. 2.
19. By letter dated January 9, 2017, the Board provided Plaintiffs’ counsel with the statutorily required written notice under Section 112.66, Fla. Stat., that Plaintiff’s claim for benefits had been denied. Appx. No. 1.
20. The January 9, 2017 letter indicates that the Board’s determination was based on its exclusive authority to interpret the provisions of the Plan. As the Board’s decision is based on a question of law and there were no disputed issues of fact, the letter concluded that “review by an action for declaratory relief on the purely legal issue presented is appropriate.” Appx. No. 1 at pp. 6-7.
21. The Retirement System periodically publishes a “Summary Plan Description” (SPD). Appx. No. 11 and Wenguer Affidavit at ¶11.
22. The SPD is available online and is made available to all new hires. Wenguer Affidavit at ¶11.
23. The SPD specifies that only “sworn” police officers may become members of the Retirement System. The SPD describes “Who Can Be a Member of This Plan” as follows:

Each *sworn* police officer and firefighter of the City who is eligible to participate in the Plan and *who fulfills the prescribed eligibility requirements* is considered a Member of the Plan.

Appx. No. 11. at p. 0030 (emphasis added).

24. The SPD describes the Plan’s eligibility requirements, indicating that employees are eligible to become members of the Retirement System if they meet “all City requirements for employment as either a Police Officer or Firefighter.” *See* Appx. No. 11 at p. 0038.
25. The requirements for “Creditable Service” are also described in the SPD as follows:



Credible Service is used to compute the amount of your benefit when you retire, to determine whether you are eligible for certain benefits and to determine whether you are vested. Your Creditable Service is equal to your total length of *service with the City as a Police Officer or Firefighter*. Creditable Service omits periods when you were not employed by the City. You accrue years of Creditable Service from your pension date-of-hire until you either enter into the DROP or terminate employment.

Appx. No. 11 at p. 0038 (emphasis added).

26. Creditable service accrues beginning upon an employee's "pension date-of-hire." *See* Appx. No. 11 at p. 0038.
27. An employee's "pension date-of-hire" is not necessarily an employee's actual date of hire. Wenguer Affidavit at ¶18.
28. Police academy cadets are placed into the Plan as "conditional participants." A cadet's "pension date-of-hire" cannot be determined unless and until the cadet/trainee ultimately gets certified with the State of Florida Criminal Justice Standards and Training Commission. Wenguer Affidavit at ¶19.
29. Plaintiff never satisfied the Retirement System's conditions to become eligible for benefits. Wenguer Affidavit at ¶20.
30. The hypothetical annual benefit payable for a service incurred disability pension would be approximately \$40,411.28. The present value of this lifetime benefit would be approximately \$542,336. Appendix D.
31. According to the Plan's actuary, "Currently, employees in the academy are not covered members of the retirement system and the plan does not provide for non-covered employees to receive pension benefits." Appendix D.

#### IV. ARGUMENT

##### **Summary Judgment is Properly Granted on the Board's Cross Motion**

The Board correctly interpreted the Pension Plan. Judgment is properly entered on the Board's cross motion for summary judgment for the reasons set forth below.

1. Plaintiff is ineligible for pension benefits since he is not a certified law enforcement officer

Multiple overlapping provisions of the Plan specify that benefits are only payable to

certified law enforcement officers. *See* City Code §§ 20-126, 20-127 & 201-128. To begin with, the very first paragraph of the City Code establishing the Plan unambiguously provides that the retirement system was established for “police and fire employees, *who have received their State Certification.*” (emphasis added). *See* City Code § 20-126; *see also* Appx. No. 11 at p. 30 & Appx. No. 12 at p. 60 (indicating that only “sworn” police officers are eligible to become members of the Plan). This opening directive in the first section of the Pension Plan directly refutes any suggestion that non-certified, probationary trainees are eligible for pension benefits.

Likewise, the Pension Plan’s definitions impose the same requirement that pension benefits are only payable to police officers “who have received their State Certification.” *See* City Code § 20-127. The record establishes that Plaintiff was a “recruit officer” who was hired in a “non-certified”/“non-cert”/“N/C” position. Appx. Nos. 3-6, 9, 10. Unfortunately, Plaintiff was never certified and never completed his police academy training despite the City’s good faith effort provide reasonable accommodations. Appx. No. 1 at ¶14. Absent certification as a law enforcement officer, Plaintiff does not satisfy the requirements of the defined terms “Employee,” “Member,” or “Police Officer” in Section 20-127 on the Plan; *see also* Appx. No. 11 at p. 38 & Appx. No. 12 at p. 68 (“You are eligible to be a member of the Plan if you *meet all City requirements for employment as either a Police Officer or Firefighter*”)(emphasis added).

The record establishes that Plaintiff does not satisfy the requirements of the term “Employee,” which is defined to mean “all *regular employees* of the City classified as Police Officers or Firefighters *who have received their State Certification.*” City Code § 20-126 (emphasis added). It is undisputed that Plaintiff did not receive his state certification. Moreover, Plaintiff was consistently classified as a “recruit officer,” “applicant,” and “probationary” employee. Appx. Nos. 3-7, 9-10. As a “recruit officer” who had not completed his probationary

training, Plaintiff never became a “regular employee” within the definition of the term “Employee.” City Code § 20-126. Plaintiff was assigned to the training and evidence units, where he was able to work as a non-certified, probationary recruit. Appx. Nos. 3, 4, 5. Plaintiff never satisfied the Plan’s conditions to become eligible for benefits. *See* Wenguer Affid. at ¶20.

For these same reasons Plaintiff did not fulfill the requirements of the defined term “Member,” which is defined as an Employee “*who fulfills the prescribed participation requirements.*” *See* § 20-127 (emphasis added). The Pension Plan’s participation requirements include the obligation to satisfy “all requirements” for employment as a police officer, including law enforcement officer certification requirements under Section 943.1395, Fla. Stat.

The Plan’s participation requirements are set forth in Section 20-128. Consistent with Section 20-127 described above, Section 20-128 requires all Employees 1) satisfactorily complete all required medical examination for their classification and 2) meet all certification requirements for employment as a police officer. The record establishes that Plaintiff satisfies neither of these mandatory requirements. In pertinent part, Section 20-128 provides as follows:

Sec. 20-128. - Eligibility.

(a) *Conditions of eligibility:*

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- (2) Except as may be expressly provided otherwise herein, Membership in the System shall be mandatory for all future Employees provided that:
  - a. Such Employee satisfactorily completes *all required medical examinations* for an Employee of his classification.
  - b. Such Employee meets *all requirements of the City for employment as a Police Officer* or Firefighter (emphasis added)

The record is undisputed that Plaintiff did not complete “all required medical examinations” for the classification of police officer. Appx. No. 1 at ¶14; Appx. No. 2. Likewise, Plaintiff did not meet “all requirements for employment of a police officer” since he never completed his probation and obtained certification under Chapter 943, Fla. Stat.

Given the overlapping and mutually reinforcing definitions and eligibility requirements set forth above, it is clear that Plaintiff did not satisfy the definition of the term “police officer” in Section 20-127.<sup>4</sup> “It is axiomatic that all parts of a statute must be read together in order to achieve a consistent whole. Where possible, courts must give full effect to all statutory provisions and construe related statutory provisions in harmony with one another.” *Knowles v. Beverly Enterprises–Florida, Inc.*, 898 So. 2d 1, 6 (Fla. 2004). Reading all Plan provisions together in *pari materia*, the Board properly complied with the requirement that police officer members are required to be certified.

Plaintiff’s argument that the phrase “certified or required to be certified” obviates the certification requirement should be rejected. First, Plaintiff’s proposed definition cannot be reconciled with the unambiguous defined terms and eligibility requirements cited above. *See* §§ 20-126, 20-127 & 20-128. Second, Plaintiff’s construction ignores the fact that police officers are defined as “law enforcement officer[s]” who are required to be “vested with authority to bear arms and make arrests.” Only certified law enforcement officers possess the authority to make arrests under Florida law. *See e.g.* §901.15, Fla. Stat. (setting forth the circumstances under which a “law enforcement officer” may initiate an arrest). Moreover, Plaintiff’s interpretation is at odds with Civil Service requirements discussed *infra* in section 2 below.

Further resolving any doubt as to these mandatory eligibility requirements for pension

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<sup>4</sup> Section 20-127 of the Plan defines the term “police officer” as follows:

*Police Officer* means any person who is appointed or employed full time by any municipality, **who is certified or required to be certified as a law enforcement officer in compliance with § 943.1395, Florida Statutes, who is vested with authority to bear arms and make arrests**, and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic or highway laws of the state.  
(emphasis added). *See also* § 185.02(16), Fla. Stat, which contains a substantially similar definition of the term police officer.

benefits, Chapter 943 details the requirements to become a “law enforcement officer” under Florida law. Among other things, law enforcement officers are required to graduate from an approved academy and pass the required physical examination required by the Criminal Justice Standards and Training Commission.<sup>5</sup> See §943.13(9), Fla. Stat. (requiring that applicants “complete a commission-approved basic recruit training program”); *see also* §943.13(9), Fla. Stat. (requiring that applicants have passed a physical examination “based on specifications established by the Commission”). Having failed to do so, Plaintiff never obtained the required certification to become a “law enforcement officer.” Only law enforcement officers are vested with authority “to bear arms and make arrests” as required by the Plan. In short, because Plaintiff was never certified, he was never vested with the authority to bear arms or make arrests under the definition of police officer in Section 20-128 of the Plan or Section 185.02(16), Fla. Stat.

2. Plaintiff is ineligible for pension benefits as a non-certified probationary employee

The Plan and Civil Service rules are both codified in Chapter 20 of the City Code. This is not by accident, since the same defined terms are used in both the Civil Service rules and the Plan. As a recruit Plaintiff never became a “regular employee” during his probationary period. Under the Civil Service rules, regular employees are required to satisfy probationary requirements for their job classification. Indeed, page three of Plaintiff’s Appendix (Board’s Appx. No. 7) confirms that the “12 month Probationary Period begins *after* completion of the Police Academy.” (emphasis added) Thus, Plaintiff never completed “probationary” requirements because he never graduated from the Police Academy. As indicated in the October

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<sup>5</sup> The Criminal Justice Standards and Training Commission was created by Section 943.11, Fla. Stat. Among other things, the Commission is charged with establishing “uniform minimum training standards” for law enforcement officers. See § 943.12(5), Fla. Stat. The Commission is also charged with adopting rules for certification of law enforcement officers, including rules demonstrating “proficiency with firearms.” See § 943.12(16), Fla. Stat.

14, 2016 denial letter, Plaintiff was a “conditional” participant in the Plan “in anticipation of completion of the academy and receipt of state certification.” Appx. No. 2. Due to Plaintiff’s inability to complete certification requirements this condition “never came to pass.” *Id.*<sup>6</sup>

Section 20-28 of the Civil Service rules defines “regular employee” as follows:

*Regular employee* shall mean an employee who has been appointed to a permanent position in the classified Service in accordance with the provisions of the rules after completing a probationary period, and he shall gain status in the class to which appointed.

*Probationary employee* shall mean any employee who is serving his probationary period prior to being regularly appointed to a permanent position and class in the classified Service.

Based on the Civil Service rule defined term “regular employee,” Plaintiff is not an “employee” under Section 20-127 of the Plan. As discussed *supra*, “employee” for pension purposes is defined as “*all regular employees of the City classified as Police Officers or Firefighters who have received their State Certification.*” (emphasis added) Yet, Plaintiff was merely a “probationary employee” who had not completed his “probationary period prior to being regularly appointed to a permanent position” as a certified police officer. Appx. Nos. 2, 3, 7; City Code § 20-28.

Similarly, the eligibility requirements of Section 20-128 of the Plan mandate that members meet all required medical examinations for their “classification” and all requirements for “employment as a Police Officer.” City Code § 20-128(a)(1) & (2). Yet, Plaintiff was never classified as a police officer who has “received their State Certification,” as is required to satisfy

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<sup>6</sup> Executive Directory Wenguer indicates that creditable service accrues beginning upon an employee’s “pension date-of-hire.” An employee’s “pension date-of-hire” is not necessarily an employee’s actual date of hire. Police academy cadets are placed into the Plan as “conditional participants.” A cadet’s “pension date-of-hire” cannot be determined unless and until the cadet/trainee ultimately gets certified with the State of Florida Criminal Justice Standards and Training Commission. Wenguer Affid. at ¶¶ 17–19.

the definition of the term “employee” in Section 20-127 of the Plan. Probationary employees, by definition, have not been appointed to a permanent position in the classified service. The record establishes that Plaintiff’s position was consistently described as a “Recruit,” “Non-Certified,” or “Non-Cert” conditional position. Appx. Nos. 3-7, 9-10.

3. Plaintiff is ineligible for pension benefits under Chapter 185, Fla. Stat.

The Board’s interpretation is in harmony with the general state law for municipal police pensions, Chapter 185, Fla. Stat., which precludes payment of police pension benefits to applicants: 1) who are not “certified as a law enforcement officer;” 2) are not “vested with authority to bear arms and make arrests;” and 3) “whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic or highway laws of the state.” *See* §§ 185.02(16) & 185.02(1), Fla. Stat. Moreover, the restrictive, technical definitions in Chapter 185 expressly exclude “part-time and auxiliary law enforcement officers” and specify that credit service “shall be provided only for service as a police officer.” *See* § 185.02(7). Plaintiff’s construction would render these unambiguous statutory provisions meaningless and was properly rejected by the Board.

The legislative intent section of Chapter 185 begins with the Legislature’s declaration that the activities of police officers “as hereinafter defined” are vital to the public welfare of the state. The Legislature specifically observes that police officers “make arrests” for violations of the law and “keep the peace.” Cadets and recruits are never mentioned in Chapter 185 because they perform none of these specified functions.

The definition of police officer in Section 185.02(16) contains the following three requirements: 1) the full time employee “is certified or required to be certified as a law enforcement officer in compliance with s. 943.1395;” 2) is vested with authority to bear arms; 3)

is vested with the authority to make arrests; and 4) whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state.” Part time and officers and auxiliary law enforcement officers are specifically excluded from Section 185.02(16)’s definition.

If part time and auxiliary law enforcement officers - who do possess a certification under Chapter 943 and have arrest powers and the authority to bear arms - are excluded, it follows that a non-certified employees and cadets, like Plaintiff, who are not working in a sworn law enforcement capacity are also properly excluded from coverage under the Pension Plan. Further reinforcing the point, Chapter 185’s definition of “credited service” requires that benefits can only be earned “*for service as a police officer or for military*<sup>7</sup> service and may not include credit for any other type of service.” See § 185.02(7)(c)(emphasis added). Thus, when all provisions of Chapter 185 are read in *pari materia* there is only one conclusion. Police officer benefits may only be paid to “certified law enforcement officers,” who are “vested with authority to bear arms and make arrests” and “whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic or highway laws of the state.” See §§ 185.02(16) & 185.02(1). Plaintiff fulfills none of these requirements.

4. The legislative history of SB 208 (Ch. 86-42, Laws of Florida) is directly contrary to Plaintiff’s proposed construction

The applicable language in the statutory definition of “police officer” was adopted in 1986 by Senate Bill 208, Ch. 86-42, Laws of Fla. (hereinafter “SB 208”). Appx. E. As set forth below, SB 208 refutes any suggestion that non-certified cadets were intended to be exempted

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<sup>7</sup> Chapter 185 allows cities to permit the purchase of prior military service under certain conditions set forth in Section 185.02(7)(d), Fla. Stat. The similarities between military service and law enforcement service are self-evident. This is not the case for Plaintiff’s administrative and training roles as a cadet or time spent as a probationary, non-certified trainee in the evidence division.



from Section 185.02's definition of police officer.

SB 208 created a comprehensive set of twenty-seven amendments to Chapter 185, Fla. Stat, governing municipal police pension plans. As described in the "legislative declaration" of SB 208, the Legislature expressed two purposes for the bill: 1) to impose new "minimum standards for the operation and funding" of police pension plans; and 2) to implement the provision of s. 14, Art X of the Florida Constitution by specifying that such retirement systems "be managed, administered, operated, and funded in such a manner as to maximize the protection of police officers' retirement trust funds." *See* SB 208 at § 185.01. This intent to impose stricter operational and funding standards is directly contrary to Plaintiff's interpretation.

Prior to the adoption of SB 208, the term police officer was merely defined as "a full-time police officer who receives compensation from municipal funds and any incorporated municipality of the state for services rendered." This lax and circular definition was deleted and replaced with the current requirements discussed *supra* in Section 3 above. For example, under the new, stricter standards, auxiliary and part-time officers were excluded from the definition of police officer. Most importantly, the requirement that officers be "certified or required<sup>8</sup> be certified" was added.

Accordingly, the specific, express legislative intent of SB 208 fully supports the Board's interpretation that non-certified officers and cadets are excluded from membership in a Chapter 185 pension plan. Moreover, notwithstanding the express legislative directive, the extensive new amendments contained in SB 208, read in *pari materia*, establish that the new standards were

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<sup>8</sup> Chapter 943 contains limited exceptions for officers who are not certified but are otherwise "required to be certified" as a law enforcement officer. For example, the certification requirement can be waived by the Criminal Justice Standards and Training Commission if an experienced law enforcement officer was otherwise trained by the Federal Government or another state. *See* §943.131(2), Fla. Stat. (permitting exemptions for officers who have "successfully completed a comparable basic recruit training program").

intended to create new, stricter qualification requirements to “maximize the protection” of police pension trust funds.

5. Rules of construction and case law from around the country support the Board’s decision

It is unnecessary to resort to statutory rules of construction since the Pension Plan’s eligibility requirements are unambiguous. Nevertheless, the following rules of statutory construction would lead to the same result, that the Board correctly interpreted the governing ordinances and statutes to only permit certified law enforcement officers to receive pension benefits:

- (i) where a statute specifically enumerates those covered, it will be construed to exclude those not mentioned;
- (ii) the mention of one thing implies the exclusion of another;
- (iii) “when a law expressly describes the particular situation in which something should apply, an inference must be drawn that what was not included by specific reference was intended to be omitted or excluded;”
- (iv) courts should not insert words or phrases into municipal ordinances;
- (v) technical words are presumed to have their technical meaning.

As set forth above, “reserve” officers and “probationary” employees are not included in the Plan’s definition of member, employee, or police officer. *See* § 20-127. Accordingly, extending pension benefits to reserve, probationary employees would improperly require the court to re-write the Plan, contrary to express terms of the City Code. *See Rose v. Town of Hillsboro Beach*, 216 So. 2d 258 (Fla. 4th DCA 1968)(indicating that courts should not re-write municipal ordinances). Courts must follow what the legislature has written and may not add, subtract or distort the words written. *62 Cases More or Less Each Containing Six Jars of Jam v. U.S.*, 340 U.S. 593, 596 (1951); *Donato v. American Tel. & Tel.*, 767 So. 2d 1146 (Fla. 2000).

Where a statute specifically enumerates those individuals or circumstances covered, it is properly construed to exclude those not mentioned. *Zopf v. Singletary*, 686 So. 2d 680, 681-82 (Fla. 1st DCA 1997); *State v. Hearn*, 961 So. 2d 211, 219 (Fla. 2007). The Plan specifies that it applies only to “law enforcement officers” who are “regular employees” vested with “authority to bear arms and make arrests.” See § 20-127; 185.02(16), Fla. Stat. “Under the canon of statutory construction *expressio unius est exclusio alterius*, the mention of one thing implies the exclusion of another.” *Id.* Because the definition of police officer specifies that law enforcement officers are “vested with authority to bear arms and make arrests,” this necessarily excludes non-certified, probationary employees who lack arrest powers. See City Code § 20-127; 185.02(16), Fla. Stat.

Likewise, when a law expressly describes the particular situation in which something should apply, an inference must be drawn that what was not included by specific reference was intended to be omitted. *Gay v. Singletary*, 700 So. 2d 1220, 1221 (Fla. 1997)(describing the doctrine of *inclusio unius est exclusio alterius*). Law enforcement officers, by definition, are required to be certified and employed by an “employing agency” in compliance with Chapter 943, Fla. Stat. Any contrary interpretation ignores the detailed statutorily and regulatory requirements to be a law enforcement officer. This specific term of art, “law enforcement officer,” is purposely used in both the Plan and §185.02(16), Fla. Stat.

Lastly, technical words are presumed to have their technical meaning. *Headley v. City of Miami*, 215 So. 3d 1, 9 (Fla. 2017)(when the words in a statute are technical in nature and have a fixed legal meaning, it is presumed that the Legislature intended that the words be given their technical meaning); see also *Ocasio v. Bureau of Crimes Compensation Division of Workers’ Compensation*, 408 So. 3d 751, 753 (Fla. 3d DCA 1982)(technical words and phrases cannot be

presumed to have been used “in a loose, popular sense”)(internal citations omitted).

While the question of whether a non-certified cadet in a police academy is an intended beneficiary of disability benefits for police officers injured in the line of duty may be a case of first impression in Florida, courts in Illinois, Rhode Island and Pennsylvania have reached the same conclusion as the Board that police cadets are not eligible for pension benefits from a police officer pension plan. For example, *Dodaro v. Illinois Workers’ Compensation Commission* held that “a recruit does not have full police powers until he or she completes training at the police academy and is sworn in as a police officer.” 950 N.E.2d 256, 260 (Ill App. 2010). The court reasoned that the claimant had “neither completed training at the police academy nor had [he] been sworn in as a police officer.” *Id.* at 263. Additionally, the duties and powers of police recruits are materially different from those of a police officer. The primary responsibility of a police recruit is to attend the police academy and learn the skills necessary to eventually become a certified officer. As recognized in *Dorado*, “[r]ecruits are not issued a badge, and they do not carry any identification used by the police department . . . [They] are required to keep their weapons locked up at the police academy, they are not allowed to make arrests, and they are considered ‘just civilians’ outside of the police academy.” *Id.* at 263.

Pennsylvania courts have reached the same result excluding police cadets from eligibility for police officer pension benefits. *Valentin v. Pennsylvania State Police*, 758 A.2d 760 (Pa. Commw. Ct. 2000)(holding that police cadet was not a member of the state police, which precluded receipt of state police benefits); *Duffy v. Pennsylvania State Police*, 701 A.2d 304 (Pa. Commw. Ct. 1997)(same).

In *Spicuzza v. Pare*, the Rhode Island Supreme Court held that there was no statutory authority to award a disability pension to a recruit/trainee. 2005 WL 3179627 \*8 (R.I. 2005).

After this issue was litigated in Rhode Island, the state legislature specifically amended the state retirement system to provide an appropriate level of benefits for cadets. Of course, the Plan may only be amended by the City of Fort Lauderdale and Chapter 185 may only be amended by the Florida Legislature.<sup>9</sup>

Similarly, a retired fire chief who was rehired as a civilian fire administrator was deemed ineligible for firefighter pension benefits. The court concluded that the civilian fire administrator was working in a non-sworn firefighter capacity since he was no longer tasked with on-scene fire suppression duties. *Cronholm v. Board of Trustees of Lockport Fire Protection District Firefighters' Pension Fund*, 2016 IL App (3d) 150122 (holding that the definition of firefighter only applied “those whose duty is to participate in the work of controlling and extinguishing fires at the location of such fires”).

Florida courts have routinely held that in cases of first impression, “it is helpful to look to cases from foreign jurisdictions involving the interpretation of similar provisions in statutes of other states or federal statutes.” *Pasco County School Board v. Florida Public Employees Relations Commission*, 353 So. 2d 108 (Fla. 1<sup>st</sup> DCA 1977). Accordingly, the Board’s interpretation is supported by rules of statutory construction and out-of-state authority in several states.

6. The Board is not estopped from complying with its Plan provisions and state law

The Board is not estopped from complying with explicit Plan requirements due to the conditional receipt of employee contributions during Plaintiff’s probationary period. The elements for equitable estoppel are: (1) a representation by the party estopped to the party claiming the estoppel as to some material fact; (2) which representation is contrary to the

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<sup>9</sup> Yet, the current definition of “police officer” in Section 185.02 has been in effect for over twenty-five years and the Florida Legislature has not seen fit to amend it. *See* Ch. 91-45, Laws of Florida (adopting H.B. 2349).

condition of affairs later asserted by the estopped party; (3) a reliance upon the representation by the party claiming the estoppel; and (4) a change in the position of the party claiming the estoppel to their detriment, caused by the representation and their reliance thereon. *Rayborn v. Dep't of Management*, 803 So. 2d 747, 748 (Fla. 3d DCA 2001)(holding that erroneous enrollment of an employee into FRS does not stop the agency from denying entitlement to benefits); *City of Tampa v. Lewis*, 488 So. 2d 860, 863 (Fla. 2d DCA 1986)(reversing trial court's application of collateral estoppel to bar pension board from contesting issue of whether injury was sustained "in service" of the police department).

When estoppel is asserted against a governmental entity the following additional exceptional circumstances are required: (1) conduct by the government that goes beyond mere negligence and that will cause serious injustice; and (2) a showing that the application of estoppel will not unduly harm the public interest.<sup>10</sup> *Associated Indus. Ins. Co., Inc. v. State, Dep't of Labor & Employment Sec.*, 923 So. 2d 1252, 1255 (Fla. 1<sup>st</sup> DCA 2006)(indicating that equitable estoppel against the government only applies in "rare instances and under exceptional circumstances").

Plaintiff cannot establish as a matter of law that exceptional circumstances required for estoppel are implicated in this case. The City of Fort Lauderdale attempted to reasonably accommodate Plaintiff's injury by allowing him to work in probationary, non-certified, light duty positions in the evidence and training divisions while he was undergoing physical therapy. Appx. No. 5. This did not disadvantage Plaintiff. Rather, as explained in the 12/6/14 memo, Plaintiff was placed on light duty and transferred to the evidence unit to allow him to "rehabilitate his

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<sup>10</sup> The Board's actuary has indicated that the hypothetical annual benefit payable for a service incurred disability pension would be approximately \$40,411.28. The present value of this lifetime benefit would be approximately \$542,336. Yet, according to the Plan's actuary, "[c]urrently, employees in the academy are not covered members of the retirement system and the plan does not provide for non-covered employees to receive pension benefits." Appx. C.

knee” and hopefully “attend the next possible police academy.” Appx. No. 5. By memo dated 3/11/2015 the City extended the one year “probation expiration date” to October 6, 2016 to enable Plaintiff to enroll in the next available Police Academy class beginning on May 1, 2015. Appx. No. 3. This conduct cannot be deemed detrimental, particularly when the record establishes that Plaintiff was classified as a “recruit officer” who was hired in a “non-certified,” probationary basis. Appx. Nos. 3-7, 9-10.

In order for estoppel to apply a party needs to be placed into a disadvantageous legal position causing serious injustice. *Florida Dep’t of Health & Rehab. Serv.*, 835 So. 2d 1091, 1096-1097 (Fla. 2003)(indicating that “equitable estoppel arises when one party lulls another party into a disadvantageous legal position”). The record in this case evidences that the City attempted to accommodate Plaintiff by allowing him an opportunity to rehabilitate his knee. Efforts by the City to reasonably accommodate Plaintiff while he was receiving workers’ compensation benefits did not place him in a disadvantageous legal position of any kind. The Rhode Island Supreme Court in *Spicuzza* likewise rejected an estoppel claim on public policy grounds, holding that defendants should not be penalized for attempting to accommodate an injured cadet by paying medical expenses. *Spicuzza v. Pare*, 2005 WL 3179627 at \*8 (penalizing defendants for providing assistance would “discourage similar humane gestures out of fear that such generosity would result in an admission of liability”). Moreover, equitable estoppel is a defensive doctrine, not a cause of action. Thus, it may only be invoked against a governmental entity as a supporting theory for some other independent remedy. *Bair v. City of Clearwater*, 196 So. 3d 577, 584 (Fla. 2d DCA 2016); *see also Branca v. City of Miramar*, 634 So. 2d 604, 606 (Fla. 1994)(governmental entity may not be estopped through mistaken statements of law).

It is important to note that Plaintiff is not left without recompense from his employer for

the injuries suffered in the police academy. Plaintiff has received both wage loss and medical benefits under the Workers' Compensation law. That does not justify his claim for pension benefits. Florida case law is abundantly clear that receipt of workers' compensation benefits does not automatically entitle an applicant to pension benefits. *City of Tampa v. Lewis*, 488 So. 2d 860, 863 (Fla. 2d DCA 1986). As recognized by the *Lewis* court, "different standards and procedures" are used by workers' compensation commissioners and pension boards when applying applicable law to their respective programs. *Id.* at 863. Thus, an applicant is required to independently satisfy workers' compensation requirements under Chapter 440, Fla. Stat., in order to obtain workers' compensation benefits.

By contrast, pension benefits are separately governed by specific Plan provisions<sup>11</sup> and Chapter 185, Fla. Stat. Importantly, the *Lewis* case specifically held that the doctrine of collateral estoppel does not apply to a pension board merely because an applicant has been granted workers' compensation benefits. *Id.*

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<sup>11</sup> The Plan's service incurred disability benefit is an actuarially calculated 65% of salary pension, payable monthly for life. *See* City Code § 20-129(c)(1). By contrast, workers' compensation pays medical benefits, temporary disability benefits, and permanent disability benefits. As a result, Plaintiff has remedies under Chapter 440, which has an entirely different purpose and requirements than Chapter 185. *Lewis*, 488 So. 2d at 863.



### CONCLUSION

The Board respectfully requests that this Honorable Court grant Summary Judgment for the Board. Plaintiff's Motion for Summary Judgment is properly denied. The Board's Cross Motion is properly granted.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY, that on May 1, 2018, I electronically filed the foregoing with the Clerk of Court by using the Florida Courts eFiling Portal system. I further certify that I electronically mailed the foregoing document to the following:

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