

RESOLUTIONS

(1)

RESOLVED: That upon the recommendation of the Town Assessor and the Board of Finance, Chapter 54, Article II, Division 2 of the Code of Ordinances of the Town of Westport, Tax Relief for Senior Citizens or Permanently and Totally Disabled Persons is hereby amended. (First reading, full text is as follows.)

Sec. 54-62. - Statutory authority.

This division is adopted pursuant to the authority granted to the Town under C.G.S. § 12-129n.

(Code 1981, § 134-2)

Sec. 54-63. - Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Assessment Tax year* means the fiscal year beginning July 1 and ending June 30 for which property taxes are assessed ~~paid and which are~~ based upon the grand list valuation of the preceding October 1.

*Qualifying income* means the adjusted gross income, as defined in the Internal Revenue Code of 1986, as may be amended, plus tax-exempt interest income, plus any other income as may be reportable for federal income tax purposes, as well as nontaxable income, including the nontaxable component of social security benefits and excluding capital losses and any current year business operating losses, losses from rental activities, current year deductions for depreciation of assets used in a trade or business, and any net operating loss (NOL) carryover reportable for federal income tax purposes. ~~railroad retirement benefits, income from other tax exempt retirement and annuity sources, and the nontaxable portion of any Social Security benefits, less Qualifying income may be reduced by an amount equal to the medical and dental expense deduction allowed or allowable under Section 213(a) of the Internal Revenue Code of 1986, as may be amended.~~

Although the following list is not intended to be all-inclusive, examples of items to be included in determining qualifying income are as follows:

- (1) Wages, bonuses, commissions, gratuities and fees, self-employment net income;
- (2) Gross social security, federal supplemental security income, payment for jury duty (excluding travel allowance);
- (3) Dividends, interest, and annuities;
- (4) Taxable portion of IRA distributions;
- (5) Black Lung payments;
- (6) Experience Works payments (formerly Green Thumb payments);
- (7) Interest or proceeds resulting from gifts received;
- (8) Lottery winnings;
- (9) Net income from the sale or rent of real or personal property (excluding depreciation);
- (10) Taxable pensions, including veterans' and railroad retirement pensions;
- (11) Severance pay; unemployment compensation;
- (12) Worker's compensation;
- (13) Alimony; and
- (14) Capital gains.

Qualifying income shall exclude income from the following sources:

- (1) Social Security payments specifically for a dependent person or minor child;
- (2) Casualty loss reimbursements by insurance companies;
- (3) Gifts, bequests or inheritances, except for any interest or other income produced by the gift, bequest or inheritance;
- (4) Grants for disaster relief;
- (5) Income derived through volunteer service under the Domestic Volunteer Service Act of 1973, as amended, including stipends earned under the Foster Grandparents' Program, Retired Senior Volunteer Program, Senior Companion Program, and Community Training under Department of Mental Retardation;
- (6) Life insurance proceeds;
- (7) Food stamps; fuel assistance; child support payments and temporary family assistance program payments.
- (8) For a married taxpayer whose spouse is a resident of a health care or nursing home facility and who is receiving payments related to such spouse under Title XIX Medicaid, qualifying income shall not include the spouse's Social Security income, provided that the following has been submitted to the Assessor on the facility's letterhead and signed by the administrator or other facility official:
  - (i) Proof that the spouse is in a health care or nursing home facility;
  - (ii) The period during the benefit year that the spouse was in the facility; and
  - (iii) The period during the benefit year that the spouse was on Title XIX Medicaid.

*Residence* means the property which is the principal residence of the taxpayer and all improvements thereon.

(Code 1981, § 134-3)

Sec. 54-64. - Criteria for qualification.

To qualify for the tax relief provided in this division, on the date of application, a taxpayer:

(1) Shall be:

- a. Sixty-five years of age or older or whose spouse, who is domiciled with him or her, shall be 65 years of age or older;
- b. Sixty years of age or older and the surviving spouse of a taxpayer previously qualified under this section at the time of his or her death; or
- c. Under age 65 years of age and eligible in accordance with applicable federal regulations to receive permanent total disability benefits under Social Security, or shall not have been engaged in employment covered by Social Security and accordingly shall not have qualified for benefits thereunder, but shall have become qualified for permanent total disability benefits under any ~~F~~ederal, ~~S~~tate or local government retirement or disability plan, including the Railroad Retirement Act and any government-related teacher's retirement plan, in which requirements with respect to qualifications for such permanent total disability benefits are comparable to such requirements under Social Security; and

(2) Shall own real property (or be liable for the payment of taxes thereon under C.G.S. § 12-48) and shall occupy such property as his or her residence for not less than 183 days in the calendar year immediately preceding the date of application, provided however, if the taxpayer has been confined to a nursing home or healthcare facility for more than 183 days in the immediately preceding calendar year, said taxpayer will not be disqualified for relief hereunder unless the taxpayer's confinement has or is expected to exceed 365 days. The following must be submitted to the Assessor on the facility's letterhead and signed by the administrator or other facility official:

(i) Proof that the taxpayer is in a health care or nursing home facility;

(ii) The period during the immediately preceding the date of application that the taxpayer was in the facility; and

(iii) The period of time during which the taxpayer is expected to remain in the facility.

(3) Shall have been, or whose spouse shall have been, liable for residential real property taxes to the Town for a period of one year immediately preceding the receipt of tax benefits under this division; and

(4) Shall have individually, if unmarried, or jointly, if married, qualifying income in an amount not to exceed the limits described in Section 54-68 9. Such qualifying income limits shall be applied annually to the calendar year immediately preceding the date of application.

(Code 1981, § 134-4)

5) Shall have first applied for all state funded tax relief benefits applicable to the property for which the taxpayer is eligible or shall certify at the time of filing an application for tax relief hereunder on a form provided by the Assessor that he or she is ineligible for such tax relief.

6) Shall not rent all or a portion of his/her residence to a tenant for any period of time during which tax benefits are received hereunder.

7) No tax abatement shall be given to any taxpayer who has delinquent taxes (i.e. real property, personal property or motor vehicle taxes), capital assessments, fees, fines or user charges owed to the Town. For the purposes of this subsection, taxes previously abated or deferred shall not be considered delinquent. This section is not intended to disqualify taxpayers seeking a tax deferral only

8) No tax abatement shall be given to any taxpayer whose residence has a fair market value (based on the Assessor's fair market valuation) in excess of \$2,000,000.

#### Sec. 54-65 – Applicant as Trust

Notwithstanding the provisions of Sec 54-64, if title to the property is owned by a trust or trustee, the taxpayer may still be eligible for tax relief hereunder if the taxpayer is the primary beneficiary of the trust and the taxpayer otherwise qualifies for tax relief hereunder. A copy of the trust agreement shall accompany the application and shall be reviewed by the Town Attorney prior to any tax relief being granted.

#### Sec. 54-65-6. - Benefit limitations.

The benefits under this division shall be limited to the residence of the taxpayer.

(Code 1981, § 134-5)

Sec. 54-66.7 - Application—Procedure; contents.

Applications for benefits under this division:

(1) Shall be made annually on forms provided by the Assessor of the Town and shall be accompanied by (a) a copy of the applicant's entire federal tax return; and (b) documentation of all other income for the calendar year immediately preceding the date of application; and (c) a properly executed IRS Form 4506 allowing the Town to verify the federal tax information and (d) such other verification of income as may be required by the Assessor.

~~(2) Shall indicate, in addition to the qualifying information set forth in this division, whether or not the applicant has previously applied or is currently applying for this or any other State or local property tax relief.~~

3) Shall be submitted in person by the taxpayer unless the taxpayer is temporarily residing in a nursing home or healthcare facility. Proof that such taxpayer is in a facility must be submitted to the Assessor on the facility's letterhead and signed by the administrator or other facility official.

(Code 1981, § 134-6)

Sec. 54-67.8 - Application—Deadlines.

(a) *Tax abatement.* In order to claim tax abatement benefits pursuant to Section 54-689(1), an application shall be filed annually with the Assessor not later than the May 15 immediately preceding the applicable assessment tax year, commencing July 1 of that same calendar year.

For those taxpayers who have sought and received, by May 15 an extension of time to file a federal tax return, the application must nevertheless be filed by May 15 and a copy of the entire federal tax return must be received by the Assessor's office by June 15 or the application will be denied.

(b) *Tax deferral.* In order to claim tax deferral benefits pursuant to Section 54-689(2), applications shall be filed annually with the Assessor not later than the December 31 that falls within the applicable assessment tax year.

(Code 1981, § 134-7)

Sec. 54-68-9 - Tax relief programs.

An applicant may apply annually for one or more of the following tax relief programs:

(1) *Tax abatement.* For applicants who elect to apply for the tax abatement benefits under this division, the benefit shall be allowed on a graduated basis, as follows:

<i>Qualifying Income</i>	<i>Benefit Rate</i>
Less than \$25,000.00	\$3,500.00 shall be abated
\$25,000.00, but less than \$35,000.00	\$3,000.00 shall be abated
\$35,000.00, but less than \$45,000.00	\$2,000.00 shall be abated
\$45,000.00, but less than \$55,000.00	\$1,000.00 shall be abated

(2) *Tax deferral.* Applicants who elect to apply for tax deferral benefits under this division may defer taxes as follows:

<i>Qualifying Income</i>	<i>Benefit Rate</i>
Less than \$75,000.00	100 percent <u>Tax deferral</u> . The applicant may defer up to 100 percent of the tax assessed, less any <u>State</u> and local tax relief, for the applicable assessment year
\$75,000.00 but less than \$100,000.00	<p><u>Deferral freeze: Tax increase deferral</u>. The applicant may defer up to 100 percent of any <u>increase in real property taxes from the immediately preceding tax year</u>. For purposes of this <u>deferral, the applicant's residence in the immediately preceding year must be the same as the applicant's residence in the applicable tax year.</u></p> <p><del>(1) The applicant may defer an amount not to exceed the increase between the tax, less any State tax relief, for the applicable assessment year and the tax, less any State tax relief, for the base year, provided that applicant's residence in the base year is the same as the applicant's residence in the applicable assessment year.</del></p> <p><del>(2) General rule. The base year shall be the later of the assessment year beginning July 1, 2005, or the assessment year immediately preceding the initial year of application for the residence for which application is made.</del></p> <p><del>(3) The term "initial year of application," as used in this section, shall be defined as the earliest assessment year for which the applicant filed a timely application for any of the tax relief programs of this section, provided that the applicant met all eligibility requirements of this article (including income, residency and age or disability) for the initial year of application.</del></p> <p><del>(4) Exception. Applicants with an initial year of application for the assessment year beginning July 1, 2007, may elect to utilize as a base year either the assessment year beginning July 1, 2005, or the assessment year beginning July 1, 2006.</del></p>

(Code 1981, § 134-8)

Sec. 54-69 70. - Hardship exception.

In cases of extreme hardship, the Board of Selectmen may, upon written application, ~~;~~ (i) waive the qualifying income requirement for either of the two tax deferral relief programs, or (ii) waive the qualifying requirement set forth in Section 54-64(8) for the tax abatement program. The term "extreme hardship" includes, but is not limited to, unreimbursed medical or dental expenses and unreimbursed property casualty.

(Code 1981, § 134-9)

Sec. 54-701. - Responsibility of tax deferral benefit recipient.

Any qualified recipient of a tax deferral benefit shall be subject to the following:

- (1) The recipient shall enter into a written agreement with the Town providing for reimbursement. The principal amount of such tax deferral benefit plus interest shall be recorded on the land records of the Town and shall constitute a lien on the property, payable upon the earlier of death or conveyance.
- (2) All deferral benefits plus interest shall be reimbursed to the Town upon the earlier of the death of the recipient or the conveyance of the real property subject to such deferral benefits, unless the property is conveyed to the recipient's spouse who meets the eligibility requirements of Section 54-756. In the case of a conveyance to a surviving spouse who does not meet the eligibility requirements of Section 54-756, all deferral benefits plus interest shall be reimbursed to the Town within five years of such conveyance unless, within such five-year period, the surviving spouse meets the eligibility requirements of Section 54-756. Interest shall continue to be at the rate set forth in Subsection (3) of this section and shall continue to accrue from the date of death until the date of payment. The grantee or, in the event of death, the personal representative of the person for whom tax deferral was approved, shall be required, within a period not exceeding ten days immediately following the date of death or conveyance, to notify the Assessor thereof.

(3) All benefits shall be subject to an interest charge at the annual percentage rate of 50 basis points less than the average Bond Buyer Eleven Index for January of each year rounded to the nearest whole percent. Such interest charge shall be included in the written agreement to be entered into by the Town and the recipient. Such interest shall be simple interest, not compounded and, except as provided in Subsection (2) of this section, shall accrue from the date of deferral until the earlier of the date of conveyance or death.

(4) Total deferments, including accrued interest, for all years shall not exceed the assessed value of the real property.

(5) The recipient shall provide written confirmation from the current mortgagee, if any, of the property stating that the mortgagee has knowledge of and is in agreement with the conditions set forth in this Section 54-71.

(Code 1981, § 134-10)

Sec. 54-712. - Proration of tax benefits.

The property tax benefits provided for in this division may, in any case where title to real property is recorded in the name of the taxpayer or his or her spouse and any other person or persons, be prorated to reflect the fractional share of such taxpayer or spouse or, if such property is a multiple-family dwelling, such benefits may be prorated to reflect the fractional portion of such current property occupied by the taxpayer or his or her spouse.

(Code 1981, § 134-11)

Sec. 54-723. - Coordination of benefits.

The tax relief provided for by this division shall be in addition to, and not dependent upon, any other local or State tax relief benefits for which an applicant may be qualified. In no case, however, shall the sum of tax relief benefits exceed the applicant's annual property tax assessment on his or her residence.

(Code 1981, § 134-11.1)

Sec. 54-734. - Implementation of provisions; confidentiality.

The Tax Collector and the Assessor of the Town shall prescribe, with regard to their respective duties under this division, such forms and procedures as may be necessary to implement the provisions of this division. The Assessor, in addition, shall satisfy himself or herself as to the qualifying income of an applicant for benefits under this division by requesting and reviewing such evidence of qualifying income as he or she may deem pertinent. All applications, federal income tax returns filed therewith and any additional evidence of qualifying income which the Assessor may require shall be kept confidential and not open to public inspection.

(Code 1981, § 134-11.2)

Sec. 54-745. - Appeals.

Persons aggrieved by any act or determination of the Assessor or Tax Collector under this division may appeal to the Board of Assessment Appeals.

(Code 1981, § 134-11.3)

Sec. 54-756. - Reduction of abatement due to conveyance or death.

If any person with respect to whom a claim for tax abatement, in accordance with this division, has been approved for any ~~assessment- tax~~ year shall die or shall transfer, assign, grant or otherwise convey in such ~~assessment tax~~ year the interest in real property to which such claim for tax abatement is related, other than to such person's spouse who meets the eligibility requirements of Section 54-64.5, the amount of such tax abatement shall be pro rated. The pro rata portion of the amount otherwise applicable to such ~~assessment tax~~ year shall be determined by a fraction, the numerator of which shall be the number of full months in the ~~assessment- tax~~ year prior to the date of death or conveyance and the denominator of which shall be 12. If such death or conveyance occurs in the month of July within the ~~assessment- tax~~ year, the allowable abatement shall be zero. The grantee or, in the event of death, the personal representative of the person for whom tax abatement was approved shall be required, within a period not exceeding ~~ten~~ forty-five days immediately following the date of death or conveyance, to notify the Assessor thereof, whereupon the Assessor shall notify the Tax Collector of such death or conveyance, and, upon receipt of such notice, the Tax Collector shall, if such notice is received after the tax due date, deliver a bill to the grantee or personal representative, stating the additional amount of tax due.

(Code 1981, § 134-11.4)

Secs. 54-767—54-93. - Reserved.

(2)

RESOLVED: That the Collective Bargaining Agreement between the Town of Westport and the Local 1303-194, Council 4, AFSCME, AFL-CIO for the period July 1, 2011 through June 30, 2015 is hereby ratified and the sum of \$ 41,997 to the 2012-2013 fiscal year budget is hereby appropriated.

(3)

RESOLVED: That upon the request of the Finance Director, the Town of Westport 401(k) Plan, as Amended and Restated, Effective October 1, 2012 is hereby approved.  
(Copy of Plan available in the Finance Department)

(4)

RESOLVED: That upon the request of the Finance Director, the Town of Westport Defined Contribution Retirement Plan, Effective January 1, 2012 is hereby approved.  
(Copy of Plan available in the Finance Department)

July 24, 2012

Westport Board of Finance

Re: Review of the Westport Senior Tax Relief programs

Dear Members:

The Assessor's Office recently performed a review of the Westport Tax Relief Abatement and Deferral Programs. These income based programs were initially started to assist Westport's most needy seniors by reducing their tax burden, thereby allowing them to spend their retirement years in their homes. At the same time we also needed to be fair to the other taxpayers who ultimately support this program.

These annual programs begin in February, with applicants bringing in their recently filed tax returns and filling out their applications with a member of the Assessor's staff. For the applicants who aren't able to come in, Human Services provides in-home visits. This year, the Abatement program will service 444 elderly taxpayers with benefits ranging from \$1,000 to \$3,500, with these benefits coming directly off of their tax bill. The Deferral Program has been used annually by approximately 210 residents in recent years and allows an applicant who has an income of less than \$75,000 to defer all of their annual taxes. For taxpayers with an income of between \$75,000 and \$100,000 they can defer the increase from the previous year. The Senior Tax Relief Program-Annual chart that was supplied to you shows 193 Deferral applications for 2011, and is as of July. Since the application process for this program ends in December 2012, all applicants have yet to apply. Overall, these programs have had a positive effect on the residents that qualify and more importantly are a good indicator of Westport's commitment to help its fellow elderly citizens.

Through observations during the application process, there has been a growing sense in the Assessor's Office that certain clarifications and a redefining of income requirements needed review. This review consisted of obtaining the local ordinances of numerous Fairfield County municipalities and considering how their programs are offered. Each municipality has programs that have been developed specifically based on the needs of the community. Although there is some continuity amongst all the programs, because of the uniqueness of each municipality, the guidelines for income and benefit levels, asset tests and annual budget caps vary greatly. One area that appears to be consistent among the towns in the survey is the method in which the exclusion of losses is handled when calculating qualifying income. The survey found that all municipalities that use income as a basis for determining benefits treat all losses as zero, which means that losses have no affect on the qualifying income. At present, Westport allows for items like business losses, real estate losses, operating losses to be used in the calculation of qualifying income. This results in a number of applicants who would normally have significant incomes and not qualify, to reduce their income and qualify for the senior relief programs.



If the proposed changes to the income qualifications are made to the Westport ordinance, there would certainly be a reduction in the number of these current recipients as well as future applicants. The changes would make Westport's income guideline more consistent with the majority of Fairfield county towns and other municipalities in Connecticut.

Westport last updated this ordinance in 2006, which was effective for the 2005 Grand List. The survey indicated that municipalities typically perform reviews on their elderly relief programs at intervals between three to five years. This allows for adjustments to the programs that better reflect the possible changes to senior's needs and economic conditions. This would also allow for the proposed changes to be implemented and the time necessary to analyze the additional data that those changes would produce. At that time, if additional changes were deemed necessary, the data would be there to support it.

Based on the survey, Westport is in the upper one-third regarding the benefits that it provides to its seniors. Its commitment is evident in these figures and I feel that the changes proposed would only strengthen it in order to continue helping those most in need.

If you have any questions, please contact me.

Sincerely,

Paul Friia

Dear BOF Members,

Since I will be out of the country when you consider the changes to the current tax relief ordinance, I want to provide some perspective regarding our programs as well as our reasons for not recommending adding an asset test to the administration of these programs. I fully support the Assessor's recommendations, as crafted by Gail Kelly, and hope that the Board stands behind them so that the implementation can be put into effect soon. Even though data is not submitted until February, it will be important to inform the community of changes in the current calendar year.

First, keep in mind that the real cost of the program is the abatements---as deferred taxes are paid back to the town with interest. The abatement, or town credit, has hovered around \$1.1 million since the inception of the current program in Grand List year 2005. The 2011 town credit is actually \$100,000 less than that of 2005. Moreover, as a % of the total budget---municipal and BOE combined---what we abate to our seniors has declined. In the 2006-07 budget year, abatements were .008 of the total combined budget of \$152 million; for this current fiscal year, they were .006 of the \$188 million budget. At the same time, we are helping 444 households with abatements, as opposed to the 307 in 2006. I believe this has sent a powerful signal to our seniors of our desire to keep them in the community.

Second, the reason why we researched and recommended the program we now have is that the 2005 revaluation hit our seniors particularly hard. Many experienced great tax increases as the value of their property rose in the reval---not because their homes were so grand, but because land values increased so dramatically. They wanted to stay in Westport, but their taxes had become prohibitive as they no longer had the income to pay them. And as a community, we wanted them to stay---and we wanted them to come forward for the assistance they needed, as many were too embarrassed or ashamed to do so.

Regarding asset tests, here was our reasoning at the time the program was implemented, and that reasoning remains the same:

- Asset tests are not being used in any other town program offering help to those in need, from camperships to fuel assistance. It would be unfair to asset test our seniors just for this purpose, when we don't do it for any other program or any other applicants.
- The one basis that we could certainly test would be against the value of the property, as this is information we definitely have. Let's say we used \$1million in assessed value as a benchmark. By doing this, however, we would be going against the very intent of the program as noted above. Someone with a property whose value had risen in the revaluation, but whose income was fixed, would no longer qualify---the very situation tax relief was intended to ameliorate.

- Because the home is the only asset value we could definitively identify, someone with \$1million in property value would be disadvantaged to someone with the same value in other assets. It would be very cumbersome to prove what assets actually exist, as they may not be income producing.

Overall, this program has been effective and it has been run efficiently. The changes that the Assessor has recommended do not fundamentally change the program, as we are not looking to change either eligibility or benefits in a substantive way. We are looking to tighten the program, and can only guesstimate the savings that will result as in the \$75-100,000 range. The other tightening action, implemented recently, is to actually seek certified tax returns from the IRS rather than relying only on copies brought in by applicants.

These changes should weed out those with significant asset values—apart from their homes—who do not need the relief. To prove this out, Paul and Joyce went through the applications of those with assessed property values in excess of \$2 million. Of those seven households, four are over 94 years of age and five are using the deferral program at the same time, a strong indication of need. The two remaining households will not be eligible under the proposed changes that eliminate losses against income. Therefore, without adding an asset test, we will be tightening the program and still allowing those in need, even with a very high property value, to receive assistance.

We can and should revisit this program in the next revaluation, and put together a new committee to research and recommend substantive changes. But for now, these recommendations make sense and I hope you approve them. Thanks for your attention.

Shelly Kassen

Million Dollar plus homes receiving Abatement

M/S	2011 VALUE	2011 ASSESSMENT	VETS EX	DISABLE	NET ASSESSMENT	TAX AMOUNT	TOWN CREDIT	STATE CREDIT	TAX OWED	TAX DEFERRED
M	\$ 4,993,714	\$ 3,495,600	\$32,000	\$0	\$ 3,463,600	\$ 62,033	\$3,500	\$1,000	\$57,533	
M	\$ 4,273,143	\$ 2,991,200	\$0	\$0	\$ 2,991,200	\$ 53,572	\$1,000	\$0		\$52,572
M	\$ 3,288,571	\$ 2,302,000	\$32,000	\$0	\$ 2,270,000	\$ 40,656	\$3,000	\$500		\$37,156
S	\$ 2,810,857	\$ 1,967,600	\$32,000	\$0	\$ 1,935,600	\$ 34,667	\$3,000	\$0		\$31,667
S	\$ 2,600,857	\$ 1,820,800	\$0	\$0	\$ 1,820,600	\$ 32,607	\$3,000	\$250		\$29,357
M	\$ 2,346,571	\$ 1,642,600	\$26,000	\$0	\$ 1,616,600	\$ 28,953	\$1,000	\$0	\$27,953	
S	\$ 1,876,714	\$ 1,313,700	\$0	\$0	\$ 1,313,700	\$ 23,528	\$3,500	\$750		\$19,278
S	\$ 1,847,000	\$ 1,292,900	\$0	\$0	\$ 1,292,900	\$ 23,156	\$3,500	\$500		\$19,156
M	\$ 1,801,714	\$ 1,261,200	\$0	\$0	\$ 1,261,200	\$ 22,588	\$3,000	\$500		\$19,088
S	\$ 1,621,571	\$ 1,135,100	\$0	\$0	\$ 1,135,100	\$ 20,330	\$1,000	\$0	\$19,330	
S	\$ 1,585,714	\$ 1,110,000	\$32,000	\$0	\$ 1,078,000	\$ 19,307	\$3,500	\$1,000	\$14,807	
S	\$ 1,509,857	\$ 1,056,900	\$32,000	\$0	\$ 1,024,900	\$ 18,356	\$3,000	\$0		\$15,356
M	\$ 1,503,286	\$ 1,052,300	\$26,000	\$0	\$ 1,026,300	\$ 18,381	\$2,000	\$0		\$16,381
							\$34,000			
M	\$ 1,418,143	\$ 992,700	\$26,000	\$0	\$ 966,700	\$ 17,314	\$2,000	\$0	\$15,314	
M	\$ 1,372,714	\$ 960,900	\$0	\$0	\$ 960,900	\$ 17,210	\$2,000	\$0		\$15,210
S	\$ 1,371,429	\$ 960,000	\$0	\$0	\$ 960,000	\$ 17,194	\$3,500	\$500	\$13,194	
M	\$ 1,366,857	\$ 956,800	\$0	\$0	\$ 956,800	\$ 17,136	\$3,000	\$750		\$13,386
S	\$ 1,341,000	\$ 938,700	\$0	\$0	\$ 938,700	\$ 16,812	\$3,500	\$500		\$12,812
M	\$ 1,276,857	\$ 893,800	\$0	\$0	\$ 893,800	\$ 16,008	\$2,000	\$0		\$14,008
S	\$ 1,273,857	\$ 891,700	\$32,000	\$0	\$ 859,700	\$ 15,397	\$3,500	\$750		\$11,147
M	\$ 1,253,000	\$ 877,100	\$32,000	\$0	\$ 845,100	\$ 15,136	\$2,000	\$0	\$13,136	
S	\$ 1,242,143	\$ 869,500	\$0	\$0	\$ 869,500	\$ 15,573	\$3,500	\$1,000	\$11,073	
M	\$ 1,237,571	\$ 866,300	\$0	\$0	\$ 866,300	\$ 15,515	\$3,500	\$500	\$11,515	
S	\$ 1,200,714	\$ 840,500	\$0	\$0	\$ 840,500	\$ 15,053	\$2,000	\$0		\$13,053
M	\$ 1,200,143	\$ 840,100	\$0	\$0	\$ 840,100	\$ 15,046	\$2,000	\$0	\$13,046	
S	\$ 1,162,714	\$ 813,900	\$0	\$0	\$ 813,900	\$ 14,577	\$1,000	\$0		\$13,577
M	\$ 1,158,286	\$ 810,800	\$32,000	\$0	\$ 778,800	\$ 13,948	\$3,500	\$750		\$9,698
M	\$ 1,154,143	\$ 807,900	\$32,000	\$0	\$ 775,900	\$ 13,896	\$3,000	\$0	\$10,896	
S	\$ 1,154,000	\$ 807,800	\$32,000	\$0	\$ 775,800	\$ 13,895	\$3,500	\$750		\$9,645
S	\$ 1,143,429	\$ 800,400	\$0	\$0	\$ 800,400	\$ 14,335	\$2,000	\$0		\$12,335
S	\$ 1,130,429	\$ 791,300	\$0	\$0	\$ 791,300	\$ 14,172	\$3,000	\$0		\$11,172
S	\$ 1,118,143	\$ 782,700	\$26,000	\$0	\$ 756,700	\$ 13,552	\$3,500	\$0	\$10,052	
S	\$ 1,115,286	\$ 780,700	\$26,000	\$0	\$ 754,700	\$ 13,517	\$3,000	\$0		\$10,517
S	\$ 1,072,000	\$ 750,400	\$26,000	\$0	\$ 724,400	\$ 12,974	\$2,000	\$0	\$10,974	
S	\$ 1,037,857	\$ 726,500	\$32,000	\$0	\$ 694,500	\$ 12,438	\$3,500	\$750	\$8,188	
S	\$ 1,036,286	\$ 725,400	\$0	\$0	\$ 725,400	\$ 12,992	\$3,500	\$1,000		\$8,492
S	\$ 1,032,857	\$ 723,000	\$26,000	\$0	\$ 697,000	\$ 12,483	\$2,000	\$0	\$10,483	
M	\$ 1,031,714	\$ 722,200	\$0	\$0	\$ 722,200	\$ 12,935	\$3,000	\$500	\$9,435	
S	\$ 1,019,286	\$ 713,500	\$26,000	\$0	\$ 687,500	\$ 12,313	\$2,000	\$0		\$10,313
S	\$ 1,009,286	\$ 706,500	\$0	\$0	\$ 706,500	\$ 12,653	\$1,750	\$0	\$10,903	
M	\$ 1,008,571	\$ 706,000	\$44,000	\$0	\$ 662,000	\$ 11,856	\$3,000	\$0		\$8,856
S	\$ 1,004,857	\$ 703,400	\$0	\$0	\$ 703,400	\$ 12,598	\$2,000	\$0	\$10,598	
							\$77,750			
						TOTAL	\$111,750			

**SENIOR TAX RELIEF PROGRAM**

<u>GL YEAR</u>	<u>BUDGET YEAR</u>	<u>TOTAL T/C</u>	<u>TOTAL DEFERRAL</u>	<u>T/C APPS ONLY</u>	<u>DEFERRAL APPS ONLY</u>	<u>TOTAL APPS</u>	<u>TOTAL DEFERRED</u>
2005	2006-2007	\$ 1,164,380.00	\$ 1,049,870.00	307	57	364	
2006	2007-2008	\$ 1,006,428.00	\$ 1,355,075.00	263	67	330	
2007	2008-2009	\$ 1,002,506.00	\$ 1,541,270.00	265	61	326	
2008	2009-2010	\$ 1,039,454.00	\$ 1,472,473.00	418	41	459	211
2009	2010-2011	\$ 1,179,000.00	\$ 1,488,977.00	458	59	517	221
2010	2011-2012	\$ 1,066,000.00	\$ 1,363,870.00	420	52	472	199
2011	2012-2013	\$ 1,060,227.00	\$ 1,450,000.00	444	35	479	193

**TOWN OF WESTPORT GRAND LIST YEAR 2011  
PROPERTY TAX RELIEF**

APPLICATIONS FOR TAX RELIEF ARE TAKEN BY THE ASSESSOR'S OFFICE (PHONE NUMBER 203-341-1070). THE DATES FOR FILING ARE AS FOLLOWS:

STATE PROGRAMS	FEBRUARY 1 -MAY 15 <sup>TH</sup>
TOWN CREDIT	FEBRUARY 1 -MAY 15 <sup>TH</sup>
TOWN DEFERRAL	FEBRUARY 1 -DECEMBER 28 <sup>TH</sup>
TOWN SEWER DEFERRAL	FEBRUARY 1 -NOVEMBER 15 <sup>TH</sup>
TOWN ADD'L VETS	FEBRUARY 1 -OCTOBER 1 <sup>ST</sup>

TOWN TAX RELIEF MUST BE APPLIED FOR EVERY YEAR, ALTHOUGH THE STATE PROGRAM APPLICATIONS ARE REQUIRED EVERY TWO YEARS. MANY APPLICANTS RECEIVE ASSISTANCE FROM BOTH THE STATE AND THE TOWN.

TAX RELIEF IS AVAILABLE TO RESIDENTS 65 AND OLDER OR RESIDENTS WHO ARE PERMANENTLY AND TOTALLY DISABLED. TO ASSIST YOU IN DETERMINING ELIGIBILITY, THE INFORMATION IS GIVEN IN THE CHART BELOW.

**INCOME GUIDELINES FOR PROPERTY RELIEF PROGRAMS**

<u>PROGRAM</u>	<u>MAXIMUM INCOME</u>	<u>AMOUNT OF BENEFIT</u>	<u>BENEFIT TYPE</u>
STATE CREDIT	\$32,300 (SINGLE) \$39,500 (MARRIED)	\$150 - \$1000 \$150 - \$1250	WAIVER WAIVER
TOWN CREDIT	UNDER \$25,000 \$25,000 - UNDER \$35,000 \$35,000- UNDER \$45,000 \$45,000- UNDER \$55,000	\$3,500 \$3,000 \$2,000 \$1,000	WAIVER WAIVER WAIVER WAIVER
TOWN DEFERRAL	> \$75,000	UP TO 100% OF TAXES	DEFERRAL
TOWN DEFERRAL	\$75,000 - \$100,000	TAX INCREASE ONLY	DEFERRAL
TOWN ADD'L VETS	\$57,300 (SINGLE) \$64,500 (MARRIED)	\$20,000	OFF ASSM'T

THE ABOVE INCOMES INCLUDE **ADJUSTED GROSS INCOME PLUS NON-TAXABLE SOCIAL SECURITY**. QUALIFIED APPLICANTS WILL BE ALLOWED TO SUBTRACT MEDICAL EXPENSES GREATER THAN 7 ½% (THIS AMOUNT IS LOCATED ON THE ITEMIZED PAGE OF YOUR TAX RETURN) OF INCOME FROM TOTAL INCOME AMOUNT, AS DEFINED BY THE IRS CODE FOR TOWN PROGRAMS ONLY. **PLEASE BRING ALL INFORMATION (2011 TAX RETURN AND 2011 SOCIAL SECURITY EARNING STATEMENT) WHEN APPLYING.**

UNDER TOWN GUIDELINES, APPLICANTS WHO QUALIFY FOR THE TOWN CREDIT ARE NOW ABLE TO TAKE ADVANTAGE OF THE DEFERRAL PROGRAM AS WELL AS THE TOWN CREDIT.

TAXES AND INTEREST ARE NOT DUE ON THE DEFERRAL PROGRAM UNTIL THE HOME CHANGES TITLE. SIMPLE (NON COMPOUNDING) INTEREST (3%) IS CHARGED.

RESIDENTS WHO FIND IT DIFFICULT TO GET TO TOWN HALL TO APPLY FOR TAX RELIEF MAY CALL THE DEPARTMENT OF HUMAN SERVICES, 203-341-1050 AND REQUEST A HOME VISIT.

THE ABOVE INCOME LEVELS REFER TO THE 2011 GRAND LIST YEAR. ADJUSTMENTS WILL BE REFLECTED IN THE JULY 2012 TAX BILL.

TOWN	NUMBER OF RECIPIENTS	ASSET TEST	INCOME LIMITS	ANNUAL BUDGET CAP	PRORATE BENEFIT	ANNUAL EXPENDITURE	EXCLUDES LOSSES
WESTPORT	444	NO	under \$25000 = \$3500 \$25000 - under \$35000 = \$3000 \$35000 - under \$45000 = \$2000 \$45000 - under \$55000 = \$1000	NO	NO	\$1,060,227	NO
BROOKFIELD	239	YES -> \$238,641 median assessment	\$45,220 unmarried \$55,200 married	YES - = /> 1% RE tax or \$474,000	YES	\$423,476	YES - negatives are treated as zero
DARIEN	170	NO	\$48500 - Up to 98% Credit/Deferral on first \$800,000 assessed	YES - \$9,941 per applicant	NO	\$582,000	YES - negatives are treated as zero
EASTON	185	YES -> \$500k - Liquid assets	\$85,000	YES - 4% of all RE tax revenue	YES	\$382,250	NO- includes all adult income
FAIRFIELD	1578	YES - If owner owns another home worth more than \$500,000, then they do not qualify	\$0 - \$14500 = \$4400M or \$3900S \$14501-\$20800=\$3900M or \$3500S \$20801-\$25700=\$3200M or \$\$2800S \$25701-\$30700= \$2800M or\$2500S \$30701-\$37700=\$2200M or \$1900S \$37701-\$44000=\$1500M or\$1200S \$44001-\$60900=\$900M or \$900S	NO	NO	\$3,157,125	YES - negatives are treated as zero
GREENWICH	727	YES - House >150% of the median value of homes sold that year	under \$24000 = \$1900 \$24000 - 36000 = \$1300 \$36001 - \$50000 = \$1000 \$50000 - \$60000 = \$500	YES - 1/2% of all RE tax revenue	YES	\$777,771	YES - same as the new Westport guidelines
MONROE	588	NO	\$0 - \$23600 = 13% or \$1300 \$23601 - \$32700 = 12% or \$1200 \$32701 - \$47376 = 10% or \$1000 \$47377 - \$55850 = 8% or \$800 \$55851 - \$60000 = 5% or \$500	YES - 2% of all RE tax revenue	Program has never exceeded the 2% cap	\$387,910	YES - negatives are treated as zero
NEW CANAAN	72	YES- Home cannot be valued higher than \$1,514,051 for current year. Liquid assets not to exceed \$200,000 for Single and \$250,000 for married	Adjusted Gross not higher than \$60,000. \$0 - \$19,999 = \$2000M or \$1750S \$20,000 - \$39,999=\$1750M or \$1500S \$40,000 - \$60,000=\$1200M or \$1000S	YES - 1/2% of all tax revenue	YES	\$107,312	YES - negatives are treated as zero

TOWN	NUMBER OF RECIPIENTS	ASSET TEST	INCOME LIMITS	BUDGET CAP	PRORATE BENEFIT*	ANNUAL EXPENDITURE	EXCLUDES LOSSES
WESTPORT	444	NO	under \$25000 = \$3500 \$25000 - under \$35000 = \$3000 \$35000 - under \$45000 = \$2000 \$45000 - under \$55000 = \$1000	NO	NO	\$1,060,227	NO
NORWALK	1176	NO	up to \$32000 = \$1150      \$32001 to \$45000 = \$750	Yes - 1/2% of all tax revenue	YES	\$1,143,270	YES - negatives are treated as zero
NEWTOWN	741	NO	up to \$45000 = 1930 up to \$55000 = \$1430 up to \$65000 = 1230	YES	YES	\$1,225,000	YES - negatives are treated as zero
REDDING	UNAVAIL.	NO	NO	NO - \$2464 per household	NO	\$1,670,592	NO
RIDGEFIELD	1610	NO	NO	YES/NO - \$1048 per household	NO	\$1,989,160	NO
STAMFORD	979	YES - only up to \$800,000 value on property are eligible. Up to \$250,000 liquid assets for Married. Up to \$200,000 liquid assets for Single.	up to \$100,000M up to \$85,000S	NO	NO	\$620,601	YES - negatives are treated as zero
STRATFORD	1300	NO	up to \$46,900 for M or S. First year base credit ranges from \$160 to \$500 depending on income. 75% of future increases are abated.	NO	NO	\$1,400,000	YES - negatives are treated as zero
TRUMBULL	1100	NO	\$0 - \$16200 = \$1350 \$16201 - \$23700 = \$1050      \$23701 - \$31200 = \$815      \$31201 - \$38700 = \$625      \$38701 - \$46200 = \$450      \$46201 - \$53700 = \$325      \$53701 - \$61000 = \$200	NO	NO	\$560,000	YES - negatives are treated as zero



WESTPORT		444	NO	under \$25000 = \$3500 \$25000 - under \$35000 = \$3000 \$35000 - under \$45000 = \$2000 \$45000 - under \$55000 = \$1000	NO	NO	\$1,060,227	NO
WESTON		96	YES - Liquid assets that exceed \$1,000,000 to include the residence less mortgages	Based on the first \$400,000 assessed > \$37000 = 75%	\$600,000	YES	\$552,139	YES - negatives are treated as zero
WILTON		294	NO	under \$39500 = \$4300 \$39501 - \$75000 = \$4299 - \$1	\$1,100,000	YES	\$1,061,500	YES - negatives are treated as zero

\* Prorate Benefit is when the municipality prorates all of the elderly benefits when the cost of the programs exceed the Annual Budget Cap.

M = Married

S = Single

**AGREEMENT**

**BETWEEN**

**THE TOWN OF WESTPORT, CONNECTICUT**

**AND**

**LOCAL 1303-194, COUNCIL #4  
AMERICAN FEDERATION OF STATE, COUNTY  
AND  
MUNICIPAL EMPLOYEES  
AFL-CIO**

**JULY 1, 2011- JUNE 30, 2015**

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AGREEMENT made by and between the TOWN OF WESTPORT, CONNECTICUT (hereinafter referred to as "TOWN"), and LOCAL 1303-194 OF COUNCIL #4, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, (hereinafter referred to as "UNION")

WHEREAS, the UNION was organized and designed to maintain and promote a, harmonious relationship between the TOWN and its employees covered by this Agreement in order that more efficient and progressive public service may be rendered; and

WHEREAS, the UNION has been designated in Connecticut State Board of Labor Relations, Decision No. 2163-A, dated April 26, 1983, as the collective bargaining representative of a unit of employees of the TOWN as more specifically hereinafter set forth; and

WHEREAS, the parties, pursuant to the requirements of the Municipal Employees Relations Act, concluded negotiations in good faith on all matters properly subject to collective bargaining;

NOW THEREFORE, the parties agree as follows:

**ARTICLE I**  
**RECOGNITION**

The TOWN recognizes the UNION as the exclusive representative, for purposes of collective bargaining with respect to wages, hours and other conditions of employment, of all regular full time and regular part time employees employed by the TOWN in the classifications provided in the Wage Schedule. Regular part time employees are defined to include only those employees employed on an annual basis to work twenty (20) or more hours a week on a continuous and regular work schedule. Part time employees employed to work less than twenty (20) hours per week or seasonally less than a full year are specifically excluded from coverage of this Agreement. Permanent employees as used hereinafter shall be defined as regular full time and regular part time employees who have successfully completed their probationary period.

**ARTICLE II**  
**DUES, CHECK-OFF**

**SECTION 1.**

The TOWN agrees to deduct from the paycheck of each employee who has signed an authorized payroll deduction card a sum certified by the secretary or other authorized official of the UNION, as UNION dues. Deduction will be made from the payroll periodically as specified on the card and total dues shall be delivered to the person and place designated by an authorized official of Local 1303. Each deduction shall be made from the first payroll of each month except when the employee is not on the payroll for that period. The TOWN shall not be

responsible for deducting any member's dues if he/she is not on the payroll during the specific deduction payroll period.

## **SECTION 2.**

All employees covered by this Agreement who are members of the UNION in good standing at the time this Agreement becomes effective and all employees who thereafter become members during the term of this Agreement, including any newly hired employees, shall, as a condition of continued employment, maintain, their membership, in the UNION for the duration of this Agreement by offering to pay regular monthly dues and other fees levied against all members.

Any new employee hired after this Agreement becomes effective, upon satisfactory completion of his/her probationary period, shall as a condition of continued employment, become a member of the UNION and pay the regular monthly dues, or in lieu thereof pay to the UNION a monthly service fee. The UNION agrees to save the TOWN harmless for any loss, damage or expense arising from the application of the provision of this section requiring non-members of the UNION to pay the service fee as a condition of employment.

## **ARTICLE III EMPLOYEE STATUS**

### **SECTION 1. PROBATIONARY PERIODS**

- a) Any new employee shall have a probationary period of six (6) months (which may be extended by management up to 3 months) during which time he/she shall be evaluated at the end of the third and sixth month. New employees shall not be entitled to benefits during their probationary period except for the following: a) holiday pay for those holidays specified in Article VI which may occur during said probationary period, b) earned vacation according to Article VII and c) sick leave earned during the probationary period earned at the rate of one (1) day per month. Upon satisfactory completion of the probationary period he/she shall be classified a permanent employee, regular full time or regular part time. During the probationary period an employee may be terminated with or without cause and without recourse to the grievance and arbitration provisions of this Agreement.
- b) Probationary period for a promotion shall be three (3) months. Any promoted employee who fails the three (3) month probationary period shall be returned to his/her former position.

### **SECTION 2. LAYOFFS**

- a) In the event of a reduction in the work force or the abolishment of a position, the employee with the least seniority within the classification in the department shall be laid off first. The TOWN agrees to place the affected employees in a vacant position provided the employee is qualified for the position. In the event that the vacancy would result in a demotion (reduction in classification and/or pay grade), the employee shall have the

option to accept the layoff or the demotion. In the case of an employee who accepts a demotion in lieu of layoff, it is understood that such employee shall have his/her seniority rights and recall rights as if he/she had accepted a layoff.

- b) A laid off employee shall have recall rights for a period of one (1) year from the date of layoff. Such recall rights shall be based on seniority i.e., last laid off, first reinstated. Recall rights shall apply to the department from which the employee was laid off.
- c) If a vacancy exists in a department for which no employee is on recall, then all laid off employees may apply, except that if an employee is on layoff from a position in one department and the classification in a different department is vacant, that employee shall have preference based on seniority. Such recall shall be subject to a three (3) month probationary period.
- d) A laid off employee has the right to bump a less senior employee in a lower classification within the department, provided he/she is capable of performing the required work in the reasonable judgment of the TOWN.

### **SECTION 3. DISCHARGE**

No permanent employee shall be discharged or otherwise disciplined except for just cause. In the event of a discharge or other disciplinary action, the employee shall be given the reason therefore in writing within seven (7) calendar days, and a copy shall be mailed or given to the UNION. Depending on the nature of the infraction, disciplinary action may include a verbal or written warning, suspension without pay or discharge. All disciplinary action shall be subject to the grievance procedure.

### **SECTION 4. NOTICE OF VACANCY**

Notice of vacancies and/or new positions covered by this Agreement shall be posted on TOWN bulletin boards at each location to which employees regularly report and sent to the president of the UNION three (3) working days prior to any other public announcement. Such notices shall include job classification, rate range and job requirements, and qualifications for that classification as determined by the TOWN.

### **SECTION 5. TRANSFER, PROMOTIONS AND NEW POSITIONS**

Present employees who apply for a vacancy or a new position within the bargaining unit shall be considered prior to all other candidates. In filling a vacancy or a new position, qualifications, and departmental and town wide seniority respectively, shall be given consideration. If an involuntary permanent transfer shall become necessary, the employee with the least classification seniority in the department from which the transfer is being made, shall be transferred first. Employees desiring a permanent transfer within the same job

classification shall so inform the Personnel Director in writing.

## **ARTICLE IV HOURS OF WORK**

### **SECTION 1.**

A regular part time employee covered by this Agreement shall be scheduled by his/her respective department head as approved by the First Selectman.

### **SECTION 2.**

- a) The normal work week for all regular full time employees, except as set forth in Schedule A, shall be a five (5) day, forty (40) hour work week from Monday through Friday. Daily hours for such forty (40) hour employees shall be from 8:00a.m. to 4:30 p.m. including a one-half (1/2) hour meal period. All other regular full time employees shall work the hours set forth in Schedule A, to include a one-half (1/2) hour meal period.
- b) Each employee shall be entitled to one 15 minute break in the morning and one 15 minute break in the afternoon. Breaks shall normally be taken at 10:00 a.m. and 2:00 p.m. except that the time may change subject to the needs of a particular job.
- c) By consent of the parties and the particular employee's workday hours and times of break may be adjusted from time to time for mutual convenience. Consent for such adjustment shall not be unreasonably withheld.

### **SECTION 3.**

Work performed by regular full time employees beyond eight (8) hours in any one (1) day or forty (40) hours in any week shall be compensated at one and one-half (1½) times the regular hourly rate of pay. All overtime work must be approved in advance by the department head or his/her designee.

### **SECTION 4.**

Work performed by regular full time employees on Sunday will be compensated at two (2) times the regular hourly rate of the employee except for those employees whose regular schedules include Sunday.

### **SECTION 5.**

Work performed on a holiday, shall be compensated at two (2) times the regular hourly rate of the employee in addition to holiday pay; or in lieu of such holiday pay the employee may elect to take compensatory time at straight time. Compensatory time off for holiday work will be selected by the employee with the approval of the department head or his/her designee.

### **SECTION 6.**

Employees regularly scheduled to work on Easter Sunday, shall be paid at the rate of two (2) times their hourly rate for the hours worked that day.

## **SECTION 7.**

Overtime and call back lists shall be established, maintained and posted in order that such overtime and call back work be offered to and distributed as equally as possible on a rotating basis within a department or a division by classification. In the event that overtime work is required and all employees on the overtime roster have refused such overtime, the employee first offered the overtime shall be required to perform such work unless excused, in which case, the TOWN may use other sources.

## **ARTICLE V WAGES AND BENEFITS**

### **SECTION 1.**

Annual wages effective July 1, 2011 through June 30, 2015 and the classifications covered by this Agreement are set forth in Wage Schedules attached hereto. The annual rate of pay of each employee and whatever additional pay to which he/she is entitled shall be divided into twenty-four (24) payments which are as nearly equal as possible, and shall be paid to such employee on the 15th and the last day of every month, or the legal full banking day prior to the 15th or last day of the month, should those dates fall on a weekend or a holiday.

### **SECTION 2. INCREMENT FORMULA**

- a) An employee hired prior to January 1 in any fiscal year shall be entitled to a full step in the applicable salary schedule on the following July 1; an employee hired between January 1st and March 31st in any fiscal year shall be entitled to a one-half ( $\frac{1}{2}$ ) step in the applicable salary schedule on the following July 1st and shall be entitled to one and one-half ( $1\frac{1}{2}$ ) steps the following July 1st; and an employee hired between April 1st and June 30th shall not be entitled to a step increase on the next following July 1st. In no event, shall a step increase be granted until completion of a probationary period nor shall any step increase for any employee exceed the top step of the applicable salary schedule. Notwithstanding this provision, there will be no step change for the year 2012-2013.
- b) A promoted employee shall be placed in the appropriate salary grade at a step which is closest to but greater than his/her current rate of pay.
- c) A demoted employee shall be placed in the appropriate salary grade at a step which is closest to but not greater than his/her current rate of pay.

### **SECTION 3. MEDICAL, DENTAL AND PRESCRIPTION DRUG INSURANCE**

- a) Each regular full time employee, having completed his/her new hire probationary period, shall, during the period of employment by the TOWN, be covered by:
  - (1) Blue Cross Century Preferred Plan for the employee and dependents with:
    - (a) \$15 Co-Pay per Office Visit for Medical Care until June 30,



2014. Effective July 1, 2014, \$20 Co-Pay per Office Visit for Medical Care.
- (b) \$00 Co-Pay per Office Visit for Preventative Care According to Schedule
  - (c) \$200 Co-Pay per Hospital Admission
  - (d) \$100 Co-Pay for Out Patient Surgery
  - (e) \$75 Co-Pay per admission for Emergency Room and/or Urgent Care
  - (f) \$200/\$400/\$500 deductibles
  - (g) 80%/20% co-insurance to \$3,500/\$7,000/\$8,750; 100% thereafter
  - (h) Prescription Drug excluded

Effective January 1, 2011, each employee shall contribute ten percent (10%) of the Fully Allocated Rate for the medical, dental and prescription drug Plans for the coverage he/she has elected. Effective January 1, 2012, employees shall contribute eleven percent (11%) of the cost of said insurance retroactive. Effective January 1, 2013, employees shall contribute twelve percent (12%) of the cost of said insurance. Effective January 1, 2014, employees shall contribute thirteen percent (13%) of the cost of said insurance. All such contributions for health insurance shall be exempt from Federal Income Tax with IRS approval.

Prescription Drug Plan for participants and their dependents with the following copayments;

Effective July 1, 2011 the copayments for the Prescription Drug Plan will be as follows:

	30 Day Retail	60 Day Mail Order
Generic	\$5.00	\$5.00
Formulary	\$15.00	\$15.00
Non- Formulary	\$30.00	\$30.00
Specialty	\$30.00	\$30.00

Note: Formulary drugs are defined from time to time by the Provider.

As an alternate to the above plan, the TOWN shall offer a Health Reimbursement Account (HRA) with a One Thousand Five Hundred Dollars (\$1,500.00) individual deductible and a Three Thousand Dollars (\$3,000) for two person or family deductible, which deductibles shall be funded 75% by the TOWN.

- b) Effective the month following RTM approval of this Agreement each regular full time employee shall be eligible for Family coverage under the Blue Cross Flexible Dental Plan. Effective July 1, 2012, the maximum dental benefit is One Thousand Five Hundred Dollars (\$1,500.00).
- c) Regular 9-month employees shall be eligible to participate in the same medical, dental and prescription drug insurance, for Single Plus One coverage by paying the percentage of the cost of coverage specified in a) above for twelve (12) months. Such employees shall be entitled to purchase Family coverage by paying, in addition to the costs specified in a) above for Single Plus One coverage, 100% of the difference in cost between Single Plus One and Family coverage.

Other regular part- time employees shall be eligible for the same medical and dental insurance for Single coverage by paying the percentage of the cost of coverage specified in a) above. Such employees shall be entitled to purchase Single Plus One or Family coverage by paying, in addition to the costs specified in a) above for Single coverage, 100% of the difference in cost between Single and Single Plus One coverage, or 100% of the difference in cost between Single and Family coverage.

- d) Reference to a specific health insurance provider shall be intended solely as a point of reference for benefits, and shall not obligate the TOWN to provide benefits through any particular provider.

#### **SECTION 4. PRODUCTIVITY AWARD**

An employee shall be eligible for an award bonus if he/she has met the criteria for the program described in Schedule B.

#### **SECTION 5. LIFE INSURANCE**

The TOWN shall provide and pay for Twenty Thousand Dollars (\$20,000) group life insurance policy for each regular full time and regular part time employee. After signing, the TOWN will apply to increase the group life coverage to one times the base salary, for each regular full time and regular part time employee, rounded to the nearest one thousand, to a maximum of Fifty Thousand Dollars (\$50,000).

#### **SECTION 6. RETIREMENT HEALTH INSURANCE**

Upon retirement from the employment of the TOWN, each retiree shall be permitted to continue coverage as available for retired employees under said medical and dental insurance at the individual's cost as provided in the Westport Municipal Employees' Retirement Plan; and provided further, that such coverage

shall continue only during such period of time as the retiree is not employed elsewhere wherein similar benefits are available.

**ARTICLE VI**  
**PAID HOLIDAYS**

**SECTION 1.**

Regular full time and regular part time employees shall be paid for and have the following designated days off as holidays:

Independence Day	Last full workday before New
Years Day	
Labor Day	New Years Day
Columbus Day	Martin Luther King Day
Veterans Day	Presidents Day
Thanksgiving Day	Memorial Day
Day after Thanksgiving	
Last full workday before Christmas	
Christmas Day	

**SECTION 2.**

A regular part time employee shall be paid holiday pay on the basis of his/her average daily hours worked during the previous fiscal year.

**SECTION 3.**

If any of the listed holidays falls on a Sunday; the following Monday shall be considered the holiday. If a holiday falls on a Saturday, the Friday before shall be considered the holiday. If any of the listed holidays falls on a scheduled vacation day, the employee shall be given an extra day off.

**ARTICLE VII**  
**VACATIONS**

**SECTION 1.**

- a) A permanent employee who has completed one (1) or more years of service as of each July 1st shall receive two (2) weeks vacation with pay. An employee with less than one year service on July 1st shall receive vacation on a pro-rata basis.
- b) An employee who has completed two (2) years of service as of July 1st shall receive three (3) weeks vacation pay.
- c) An employee, who was hired prior to July 1, 2012, who has completed eleven (11) or more years of service as of July 1st shall receive the following working days of vacation:

<u>COMPLETED SERVICE</u>	<u>EARNED VACATION</u>
eleven (11) years	Sixteen (16) days
twelve (12) years	Seventeen (17) days
thirteen (13) years	Eighteen (18) days
fourteen (14) years	Nineteen (19) days

fifteen (15) years	Twenty (20) days
twenty one (21) years	Twenty one (21) days
twenty two (22) years	Twenty two (22) days
twenty three (23) years	Twenty three (23) days
twenty four (24) years	Twenty four (24) days
twenty five (25) years	Twenty five (25) days

An employee, who was hired on or after July 1, 2012, who has completed eleven (11) or more years of service as of July 1st shall receive the following working days of vacation:

<u>COMPLETED SERVICE</u>	<u>EARNED VACATION</u>
eleven (11) years	Sixteen (16) days
twelve (12) years	Seventeen (17) days
thirteen (13) years	Eighteen (18) days
fourteen (14) years	Nineteen (19) days
fifteen (15) years	Twenty (20) days
twenty five (25) years	Twenty five (25) days

**SECTION 2. WHEN VACATIONS ARE TAKEN**

- a) Vacations shall be taken in the fiscal year following the year in which it was earned except that special permission may be granted by the First Selectman for an employee to carry over unused vacation from one year only to the next following year.
- b) An employee shall be granted vacation for the time requested subject to the approval of the Department Head and the demands of service. In the event of conflict between two or more employees requesting the same vacation period, seniority shall govern. No vacation request shall be unreasonably denied. In the event there is any unused vacation by March 1st in any fiscal year the balance shall be scheduled by March 31st to be used prior to June 30th.

**SECTION 3. AT TERMINATION**

Any employee who is entitled to earned vacation at the time his/her services are terminated shall receive one (1) days vacation pay for each day of earned vacation.

**SECTION 4.**

An employee shall be entitled to earned vacation pay if he/she resigns from his/her position... **SECTION 5.**

Regular part time employees who are covered by this Agreement shall receive vacation benefits on a pro-rata basis and shall be paid vacation pay on the basis of his/her average weekly hours (or average daily hours where applicable) worked during the previous fiscal year.

**ARTICLE VIII**  
**LEAVE PROVISIONS**

**SECTION 1. SICK LEAVE**

Each permanent employee shall be entitled to accumulated sick leave with pay at the rate of one (1) day per month from the date of employment provided, however, the TOWN may require satisfactory proof of illness when sick leave is taken. An employee may charge to his/her sick leave accrual up to two (2) days of absence in a fiscal year due to an illness of a spouse or child requiring the presence of such employee.

Upon the expiration of accumulated sick leave at full pay, employees will be entitled to leave at the rate of one -half (½) pay as follows:

<u>YEARS OF SERVICE</u>	<u>WORKING DAYS AT 1/2 PAY</u>
0-3 Years	30
3 or more	60

Each regular part time employee shall be entitled to sick leave on the same basis except that the compensation therefore shall be based on the average daily hours worked during the previous fiscal year.

**SECTION 2.**

The First Selectman, for reasonable cause, may extend any of the above for not more than three (3) successive twelve (12) day periods if the employee is unable to return to work because of sickness upon expiration of his/her sick leave.

If any employee uses all of his/her sick leave and any extensions and he/she is not eligible to be placed on pension, the First Selectman may grant the employee sick leave without pay for a maximum time of one (1) year. He/she will be reinstated, if he/she is able to return to work before his/her leave terminated, upon physician's certification to perform his/her duties without loss of rank, seniority rights or any privileges.

**SECTION 3. INJURY LEAVE UP TO MAXIMUM RECOVERY**

Each employee who is injured or disabled in the performance of his/her duties shall be entitled after ten (10) work days absence to injury leave with full pay (not to be charged to earned sick leave) less Workers' Compensation from the date of injury until such time as he/she is able to return to duty or reaches the point of maximum recovery, whichever comes first. In no event shall such injury leave exceed eighteen (18) months. Nothing herein shall affect rights or benefits under existing Workers' Compensation law. If such employee is unable to return to duty, he/she shall be eligible for a disability pension, under the Pension Plan, if qualified.

**SECTION 4. FUNERAL LEAVE**

Three (3) days special leave with pay shall be granted to attend a wake, funeral or memorial services for a death in the immediate family. Should the leave period include days not scheduled normally as work days, only the actual work days necessary to complete the three (3) day period shall be allowed. Immediate family shall mean wife, husband, sister, brother, father, mother, grandparents,

children, grandchildren, and mother, father or children of the current spouse. Extensions may be given for just cause by the First Selectman or his/her designee.

One (1) day special leave with pay shall be granted in the event of death of a relative not included in the definition of immediate family.

**SECTION 5. ACCUMULATED VACATION AND PAY AT DEATH**

In the event of the death of an employee, if the deceased employee has unused or earned vacation time due him/her, his/her spouse shall receive the accumulated time in monetary value. In addition to any other payments or benefits to which he/she may be entitled, the spouse of any employee who dies during the term of this Agreement shall receive the next four (4) weeks pay following the employee's last earned pay. If such employee is not survived by a spouse, such terminal pay and vacation pay shall be paid to his/her estate.

**SECTION 6 PALL BEARER LEAVE**

Leave with pay for an employee to act as pall bearer shall be granted upon approval of the First Selectman or his/her designee.

**SECTION 7. LEAVE WITHOUT PAY**

The First Selectman may grant a leave of absence without pay not to exceed one (1) year to an employee who requests such leave in writing for valid personal reasons. Leave shall not be unreasonably withheld and terms of the leave shall be specified in the letter granting the leave. Leave for other employment shall not be grounds for leave of absence. During a leave of absence there shall be no accrual of time for pension purposes. All health benefits and life insurance may be continued at the expense of the employee.

**SECTION 8. PERSONAL LEAVE**

An employee with the prior approval of the head of the department (except in an emergency) shall be entitled to three (3) personal leave days in each fiscal year for personal business. New Hire probationary employees may not take personal leave during the probationary period.

**SECTION 9. MILITARY LEAVE**

Any employee required to serve on military duty for training because of membership in the National Guard or in the Reserve of the U.S. Armed Forces shall be granted time off to meet the required military obligation but not to exceed thirty (30) days in any one calendar year. In the event the military base pay for any such duty for training is less than the normal wages from the TOWN for the same period, said employee shall be paid the difference by the TOWN.

**SECTION 10.**

Maternity Leave shall be granted in accordance with state statutes.

**ARTICLE IX**  
**GRIEVANCE PROCEDURES**

The purpose of this procedure is to provide an orderly method of adjusting grievances within the time limits specified. Any employee having a grievance

concerning the interpretation or application of any provision of this Agreement may seek adjustment under this grievance procedure by filing a summary of his/her particular grievance in writing with his/her immediate superior within fifteen (15) calendar days after the occurrence of the grievance or from the date the employee knew or should have known of the incident giving rise to the grievance. The UNION shall have the right to institute or withdraw from any grievance.

Time limits specified herein may be extended by mutual agreement in writing between the president of the UNION and the TOWN. Such agreement shall not be unreasonably withheld by either party.

**STEP 1. EMPLOYEE TO DEPARTMENT HEAD**

The employee and the UNION steward or both shall present to the Department Head all facts available pertaining to the problem. Within seven (7) calendar days the Department Head shall adjust the problem or notify the employee and/or his/her representative of his/her decision.

**STEP 2. TO THE PERSONNEL DIRECTOR**

If the employee and the UNION feel there should be further review, the facts pertaining to the problem shall be presented to the Personnel Director in writing by the steward within seven (7) calendar days after a decision is rendered under Step 1. The Personnel Director shall review the problem and discuss it with the employee and his/her representative and within seven (7) calendar days render his/her decision in writing.

**STEP 3. TO THE FIRST SELECTMAN**

If the employee and the UNION feel further review is necessary, the UNION shall within seven (7) calendar days after a decision is rendered under Step 2, request a meeting with the First Selectman. The First Selectman shall, within seven (7) calendar days thereafter call meeting of all the parties concerned and the UNION'S Grievance Committee and discuss the problem fully. The First Selectman may render a decision in writing, either at the end of the meeting or within seven (7) calendar days after the meeting to the Representative of the UNION.

**STEP 4. ARBITRATION**

In the event the employee and the UNION feel that further review is justified, he/she shall within fifteen (15) calendar days after the First Selectman renders his/her decision file notice of appeal to submit the matter to arbitration by the Connecticut State Board of Mediation and Arbitration. The decision of the Board shall be final and binding on both parties. Each party shall be liable for their own share of expenses and any general expenses of the arbitration not applicable to either party shall be mutually shared by both parties. The Arbitration Board shall have no authority to amend, modify, alter or otherwise change the language of the Agreement.

**ARTICLE X  
NO STRIKE-NO LOCKOUT**

During the life of this Agreement, there shall be no strike, slowdown, suspension or stoppage of work in any part of the TOWN'S operation by employees or employee, nor shall there be any lockout by the TOWN in any part of the TOWN'S operation.

## **ARTICLE XI MANAGEMENT RIGHTS**

Except as otherwise specifically provided in this Agreement the TOWN of Westport reserves all rights of management, whether by statute or otherwise, to direct and control the operation of the TOWN facilities and the TOWN employees including, but not limited to, the rights to: to determine the standards of services to be offered by TOWN employees; to determine the standards of selection for TOWN employment; to direct its employees and to take disciplinary action against them; to relieve its employees from duty because of lack of work or for other legitimate reasons; to issue rules, policies and regulations, including those affecting working conditions; from time to time, to change those rules, policies and regulations and enforce them; to maintain the efficiency of governmental operations; to determine work schedules; to determine the methods, means and personnel by which the TOWN's operations are to be conducted; to determine the content of job classifications; to exercise complete control and discretion over its organization and technology of performing its work; and to fulfill all of its legal responsibilities subject to bargaining impact as may be required by MERA.

## **ARTICLE XII UNION BUSINESS**

### **SECTION 1.**

The President, Vice-President, Secretary and Treasurer of the UNION shall have super- seniority during their tenure in office in the event of a layoff in their respective departments. Irrespective of seniority, they shall be the last to be laid off.

### **SECTION 2.**

With the prior notice to the TOWN, the duly elected officers of the UNION specified in Section 1 who are TOWN employees may be granted time off without loss of pay to attend to UNION business up to a maximum of nine (9) days total for all such officers in each year of this Agreement. Such approval shall not be unreasonably withheld. Such nine (9) days shall be exclusive of any time required to process grievances under the Agreement.

### **SECTION 3.**

a) Grievant and a UNION steward or one officer shall be granted necessary time off without loss of pay at Step 1 and Step 2 of the Grievance Procedures.

b) Grievant, one steward and one officer of the UNION shall be granted necessary time off without loss of pay to attend a grievance hearing at Step 3 and Step 4.



- c) A Staff Representative of Council #4, AFSCME, shall be entitled to attend grievance hearings at Step 3 and Step 4.

**ARTICLE XIII**  
**PENSION PLAN and 401(k) PLAN**

- a) The parties agree that the document entitled "Retirement Plan for Municipal Employees of the Town of Westport," adopted July 1, 1966, and as last amended July 1, 1993 shall be incorporated herein, as part of this collective bargaining agreement.
- b) The employee contributions to the said Pension Plan shall be 3¼% through payroll deductions for employees covered by this Agreement through December 31, 2006. Effective January 1, 2007 the contribution rate shall be 4%.
- c) An employee who has accrued unused sick time at his/her retirement date, shall have unused sick time, to a maximum of sixty (60) days, included in said employees "credited service" under the aforesaid "Retirement Plan for the Town of Westport," sixty (60) days of accumulated sick time will entitle the employee to three (3) calendar months of credited service for benefit computation. If the employee has less than sixty (60) days in unused sick time prior to retirement date, no sick time may be included as credited services for the purpose of retirement.
- d) Effective July 1, 2007 employees are entitled to participate in "The Town of Westport 401k Plan" under the terms and conditions of that Plan.

**ARTICLE XIV**  
**MISCELLANEOUS**

**SECTION 1. JURY DUTY**

Leave for jury duty shall be granted without loss of pay except that any enumeration received by the employee for such jury duty shall be deducted from his/her pay so that in no event, can the total amount exceed a regular day's pay. The employer reserves the right to have the employee excused from jury duty.

**SECTION 2. CLOTHING ALLOWANCE**

- a) All employees covered by this Agreement, (except EMS), shall receive a work clothing reimbursement of \$400 to be expended for appropriate articles of clothing related to their employment, which shall include safety shoes, and subject to the rules and regulations as may be promulgated by the First Selectman or his/her designee. Effective July 1, 2007 the work clothing reimbursement shall be \$450.

Any employee hired after July 1st but prior to December 31st, shall receive \$100.00 upon hire for the purchase of safety shoes. Upon becoming a permanent employee, the employee shall receive the balance of the clothing allowance for that fiscal year. An employee hired on or after January 1<sup>st</sup>, shall receive \$100 upon hire but shall not be entitled to any

additional clothing allowance in that fiscal year.

- b) Rain gear shall be provided as needed to employees required to work outdoors in inclement weather.
- c) Designated employees are required to wear the logo clothing which will be issued (without charge) as noted below:

INITIAL ISSUE (SEPT. 15)		ANNUALLY THEREAFTER (SEPT. 15)	EVERY THIRD YEAR
T-Shirts	5	5	
Golf Shirts	3	1	
Sweat Shirts	2	1	
Jackets	1		1

Semi-Annually (Sept. 15 and Mar. 15) employees may purchase additional items from their respective clothing allowances at pre-established prices. Clothing worn must be clean and presentable.

### **SECTION 3. SAFETY**

- a) Helmets shall be furnished to employees on the job wherever overhead hazards exist.
- b) It shall be mandatory for all employees who receive reimbursement for safety shoes to wear these shoes as required during working hours. Failure to wear required safety shoes or equipment shall make the employee subject to proper disciplinary action.
- c) Should an employee complain that his/her work requires him/her to be in an unsafe or unhealthy situation in violation of acceptable safety rules, the matter shall be considered immediately by the representative of the TOWN. If the matter is not adjusted satisfactorily, the grievance may be processed according to the grievance procedures of this Agreement.

### **SECTION 4. CALL BACK**

An off-duty employee, (except EMS) called for emergency work shall be given a minimum of three (3) hours work at one and one-half (1½) times his/her regular hourly rate of pay.

### **SECTION 5. MEAL REIMBURSEMENT**

Whenever employees (except EMS) are required to perform emergency duty duly authorized by the Department Head or his/her designee, the TOWN shall provide reimbursement for meals as follows:

- a) When an employee is required to stay on duty and work through the scheduled lunch period.
- b) When an employee is required to stay on duty after 4:30 p.m. and work past the 6:00 p.m. meal hour.
- c) When an employee is required to stay on duty and work through the midnight to 1:00 a.m. period.
- d) When an employee is required to stay on duty and, work past 6:00 am.

The TOWN shall not provide reimbursement for meals during emergency duty as follows:

- a) No noon meal if an employee goes off duty at or before noontime and reports for duty later.
- b) No evening meal if an employee goes off duty at or before 4:30 p.m. and reports for duty later.
- c) No midnight meal if an employee goes off duty at or before midnight
- d) No morning meal if an employee goes off duty at or before 6:00 am.

After RTM approval of this Agreement the maximum allowance for each meal shall be:

Breakfast	Four Dollars and fifty cents (\$4.50)
Lunch	Seven Dollars (\$7.00)
Dinner	Eight Dollars (\$8.00)
Midnight Meal	Seven Dollars (\$7.00)

Each bill must include amount, date and time of meal, signature of the employee and the Department Head or his/her respective designee.

#### **SECTION 6. MILEAGE ALLOWANCE**

Any employee required to use his/her automobile for TOWN business shall be reimbursed at the same rate as other TOWN employees as determined by the First Selectman.

#### **SECTION 7. EDUCATIONAL REIMBURSEMENT**

In the event the First Selectman requires an employee to attend or participate in any course of study or out of town program for purposes of improving job skills, then the TOWN agrees to reimburse such employee for all reasonable cost attendant thereto.

#### **SECTION 8. INFORMATION TO MEMBERS**

The TOWN agrees to provide each bargaining unit employee with a copy of this Agreement, a copy of the Retirement Plan, an Annual Statement of the employee's contribution to the Retirement Plan as of June 30th and an annual statement of unused accumulated leave balance.

#### **SECTION 9. NOTIFICATION TO UNION**

- a) As soon as possible after July 1<sup>ST</sup> the TOWN shall submit to the UNION a list of employees by Department, showing the employee's classification and length of service within the TOWN and the employee's current salary and pay grade. Any probationary period shall be included in determining length of service.
- b) The TOWN agrees to notify the UNION of the date of hiring, termination, permanent transfer and/or promotion of employees covered by the Agreement within thirty (30) days of such occurrence with notification as to classification and rate step.

#### **SECTION 10. WORKING IN HIGHER CLASSIFICATION**

An employee temporarily assigned by the Department Head or his/her designee to work in a higher classification for more than four (4) hours in a day shall receive an increment on his/her scale equivalent to 5% for all such hours worked.

### **SECTION 11. EMERGENCY CALL BACK PROTECTION**

The TOWN agrees to save an employee harmless from any claim for damages to person or property and to pay for damages to an employee's automobile, not otherwise covered by insurance, resulting from an accident which occurs when an employee is enroute to or returning from an emergency call back in his/her own automobile, provided that the TOWN shall not be liable for such damages if the accident was caused by willful negligence on the part of such employee.

## **ARTICLE XV EMERGENCY MEDICAL SERVICE**

### **SECTION I. TRAINING DAYS**

- a) Each EMT and EMT Coordinator shall be entitled to a maximum of eight (8) working days off in each Fiscal Year as compensation for In-Service training. Such days shall be taken as approved by the Director at the convenience of the Department.
- b) Each training session will be credited at a minimum of four (4) hours.
- c) Training days to be classified "training days" shall be scheduled and posted a minimum of one (1) week in advance except shorter notice may be given for just cause.

### **SECTION 2. CLOTHING**

The EMT and EMT Coordinator shall receive a clothing allowance of \$525 such amount being advanced immediately upon employment, to purchase necessary uniform and equipment. In addition, the TOWN shall provide the necessary patches and rockers for the uniforms.

### **SECTION 3. CALL BACK**

Each off-duty EMT and the EMT Training Coordinator called in for emergency work shall be given a minimum of four (4) hours work at one and one-half (1½) times his regular hourly rate of pay.

### **SECTION 4. WORK ON A HOLIDAY**

Effective July 1, 2007 any EMT, or EMT Coordinator who works on a Holiday listed under ARTICLE VI shall receive his/her regular salary for the day plus one additional day at the straight time rate. In addition, any overtime worked on a Holiday shall be paid at time and one-half (1.5).

## **ARTICLE XVI SUBCONTRACTING**

Before the TOWN enters into any new Agreement to subcontract any work that is presently being performed by members of the bargaining unit, it shall discuss with the bargaining unit why the TOWN is contemplating the subcontracting of the bargaining unit's work.

## **ARTICLE XVII SAVINGS CLAUSE**

If any provision of this Agreement shall be held invalid or unlawful by any tribunal of competent jurisdiction, the remaining provisions of this Agreement shall not be affected thereby.

ARTICLE XVIII  
DURATION

Except as otherwise provided herein, the effective date of this Agreement shall be the day following approval of this Agreement by the Representative Town Meeting, except that retroactivity on wages shall be payable only to those employees who are still employed by the TOWN or to those employees who have retired during the period of negotiation but before the Agreement has become effective. Thereafter, this Agreement shall remain in full force and effect without reopening of any kind through June 30, 2015.

It shall continue from year to year thereafter, unless either party gives notice to the other of its intention to change, modify or terminate this Agreement, which notice to the other party must be given in writing at least six (6) months prior to its termination.

## SCHEDULE A

### **WORK SCHEDULES - VARIOUS**

Employees in the following positions shall work the schedule listed below and this shall be considered their normal work schedule.

### **MARINA AND BATHHOUSES FACILITIES PERSONNEL**

Personnel regularly assigned to duty at the bathhouse facilities and marinas shall, from the beginning of Memorial Day weekend through Labor Day work Wednesday through Sunday 7:00a.m. to 3:30 p.m. or 12:00 p.m. to 8:00 p.m. During this time, overtime provisions for weekends will apply to Monday and Tuesday instead of Saturday and Sunday, except during the weeks when he/she is granted a Saturday/Sunday weekend off. Such overtime on Monday and Tuesday shall first be offered to those employees regularly assigned to those duties.

### **GOLF DIVISION PERSONNEL**

6:00 AM - 2:30 PM. Monday-Friday

plus at least three (3) hours of scheduled overtime on Saturday or Sunday. Such overtime to have a 5:30 AM Starting Time on weekends and holidays beginning no earlier than May 1 and ending no later than September 30; the actual date to be determined by the Director of Parks and Recreation. Employees having a 5:30 AM start shall have the option of electing to work a fourth hour of overtime; this fourth hour of overtime shall be made at the time of scheduling weekend overtime and is to be equally distributed between Saturdays and Sundays. Each bargaining unit employee shall be granted one (1) weekend without overtime per month as scheduled by the supervisor.

### **EMERGENCY MEDICAL SERVICES PERSONNEL**

Forty (40) hours per week as scheduled by the Director of EMS. Overtime provisions for over eight (8) hour day and Sunday will not apply, but overtime for more than forty (40) hours/week shall be at time and one half.

### **POLICE EQUIPMENT MECHANIC**

Monday - Friday.

7:00 AM - 3:30 PM

### **BUILDING CUSTODIANS**

Police Dept.  
Friday

7:00 AM - 3:30 PM Monday -

or 3:00 PM - 11:30 PM Monday -  
Friday

Railroad Parking  
Friday

10:00 AM - 6:30 PM Monday -

Town Hall  
Friday

6:30 AM - 3:00 PM Monday -

or 3:00 PM - 11:30 PM Monday -  
Friday

**SCHEDULE B**  
**SICK LEAVE AWARD**

Effective July 1 of each fiscal year, employees shall be eligible for an award bonus if he/she has achieved the years of service, sick leave accrual and maximum sick leave usage as shown below:

REQUIRED YEARS OF SERVICE	REQUIRED ACCRUED SICK LEAVE	SICK LEAVE USED (JULY 1 – JUNE 30)	AWARD**
5 TO 9 Years	30 days	4 or fewer days	\$100
	"	5 " " "	90
	"	6 " " "	80
	0	0	50
10 to 14 Years	60 days	4 or fewer days	\$200
	"	5 " " "	\$175
	"	6 " " "	\$150
	0	0	\$100
15 to 19 Years	90 days	4 or fewer days	\$300
	"	5 " " "	\$270
	"	6 " " "	\$225
	0	0	\$150
20 or more-Years	120 days	4 or fewer days	\$400
	"	5 " " "	\$350
	"	6 " " "	\$300
	0	0	\$200

\*\*Awards will be disbursed in a lump sum in the first pay period in December of the fiscal year following the year in which it was earned. For example, an award made in December 1996 would be based on required years of service and required accumulated sick leave as of July 1, 1995 and the number of days of sick leave used for the period July 1, 1995 through June 30, 1996. Such awards shall not be included in calculations for pension purposes



FOR THE TOWN OF WESTPORT  
LOCAL 1303-194  
COUNCIL #4 AFSCME

FOR THE UNION

\_\_\_\_\_  
Gordon Joseloff  
First Selectman

\_\_\_\_\_  
James Castelot  
Staff Representative

\_\_\_\_\_  
Personnel Director  
#4,  
  
\_\_\_\_\_  
  
\_\_\_\_\_

\_\_\_\_\_  
Joseph Arciolo Pres.  
Local 1303-194, Council

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Date)

The above is a true and attest copy of the Collective Bargaining Agreement between the TOWN OF WESTPORT and LOCAL 1303-194, COUNCIL 4, AFSCME, AFL-CIO.

Attest:  
Patricia H. Strauss  
Town Clerk

Wage Scales 2011 to 2015  
Local1303-194, Council #4

Effective July 1 of Each Year Indicated

	<u>Classification</u>	<u>FY</u>	<u>% Increase</u>	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>	<u>Step 6</u>	<u>Step 7</u>
I	Laborer Custodian	11/12	0.00%	\$ 40,225	\$ 42,236	\$ 44,348	\$ 46,564	\$ 48,893	\$ 51,337	\$ 53,903
		12/13	2.25%	\$ 41,130	\$ 43,186	\$ 45,346	\$ 47,612	\$ 49,993	\$ 52,492	\$ 55,116
		13/14	2.50%	\$ 42,158	\$ 44,266	\$ 46,479	\$ 48,802	\$ 51,243	\$ 53,804	\$ 56,494
		14/15	2.50%	\$ 43,212	\$ 45,373	\$ 47,641	\$ 50,022	\$ 52,524	\$ 55,149	\$ 57,906
II	Driver/Laborer	11/12	0.00%	\$ 42,235	\$ 44,345	\$ 46,564	\$ 48,893	\$ 51,337	\$ 53,902	\$ 56,598
		12/13	2.25%	\$ 43,185	\$ 45,343	\$ 47,612	\$ 49,993	\$ 52,492	\$ 55,115	\$ 57,871
		13/14	2.50%	\$ 44,265	\$ 46,476	\$ 48,802	\$ 51,243	\$ 53,804	\$ 56,493	\$ 59,318
		14/15	2.50%	\$ 45,372	\$ 47,638	\$ 50,022	\$ 52,524	\$ 55,149	\$ 57,905	\$ 60,801
III	Asst. Mechanic Equipment Oper. Grounds Specialist Head Custodian	11/12	0.00%	\$ 44,348	\$ 46,565	\$ 48,892	\$ 51,337	\$ 53,903	\$ 56,598	\$ 59,426
		12/13	2.25%	\$ 45,346	\$ 47,613	\$ 49,992	\$ 52,492	\$ 55,116	\$ 57,871	\$ 60,763
		13/14	2.50%	\$ 46,480	\$ 48,803	\$ 51,242	\$ 53,804	\$ 56,494	\$ 59,318	\$ 62,282
		14/15	2.50%	\$ 47,642	\$ 50,023	\$ 52,523	\$ 55,149	\$ 57,906	\$ 60,801	\$ 63,839
IV	Dockmaster Equip. Mech. Asst. Greenskeeper	11/12	0.00%	\$ 46,564	\$ 48,891	\$ 51,337	\$ 53,903	\$ 56,598	\$ 59,426	\$ 62,397
		12/13	2.25%	\$ 47,612	\$ 49,991	\$ 52,492	\$ 55,116	\$ 57,871	\$ 60,763	\$ 63,801
		13/14	2.50%	\$ 48,802	\$ 51,241	\$ 53,804	\$ 56,494	\$ 59,318	\$ 62,282	\$ 65,396
		14/15	2.50%	\$ 50,022	\$ 52,522	\$ 55,149	\$ 57,906	\$ 60,801	\$ 63,839	\$ 67,031
V	Asst. Wrkg. Foreman	11/12	0.00%	\$ 63,384						
		12/13	2.25%	\$ 64,810						
		13/14	2.50%	\$ 66,430						
		14/15	2.50%	\$ 68,091						
VI	EMT	11/12	0.00%	\$ 65,515						
		12/13	2.25%	\$ 66,989						
		13/14	2.50%	\$ 68,664						
		14/15	2.50%	\$ 70,381						
VII	Working Foreman Asst. Supt. of Greens	11/12	0.00%	\$ 66,748						
		12/13	2.25%	\$ 68,250						
		13/14	2.50%	\$ 69,956						
		14/15	2.50%	\$ 71,705						
VIII	EMT Coord.	11/12	0.00%	\$ 72,049						
		12/13	2.25%	\$ 73,670						
		13/14	2.50%	\$ 75,512						
		14/15	2.50%	\$ 77,400						

9 month employees are paid 75% of the applicable annual salary (grade and step) for their positions over 24 semi monthly pay periods

Parks and Rec LOCAL 1303-194 COUNCIL 4					6/30/2011	7/1/2012	7/1/2013	7/1/2014	Cumulative Cost	
<b>Summary of Contract Changes</b>										
Salary Increases - No steps will be given in the year 2012-2013					0.00%	2.25%	2.50%	2.50%		
Premium Share for Employee Effective January 1 of each year. The 11% for 2012 is retroactive to January 1, 2012					10.00%	11.00%	12.00%	13.00%		
Plan design changes include increased Co-pays for all office visits, emergency room, Hospital Admission and increased co-pays for prescription drugs.										
Workers Compensation - First ten days are charged against the employees sick days. After approval of the claim by the Town's Insurance Carrier, all time after 4 days are reinstated in the employees account.										
Injury leave is reduced to a maximum of 18 months from 24 months.										
<b>Financial Impact:</b>										
				Salary Increases	0	31,274	40,498	36,544	108,316	
				Overtime	0	5,161	5,861	6,008	17,030	
				Total Increase before Steps	0	36,435	46,359	42,552	125,346	
				Percent Increase in Salary W/O Steps		2.25%	2.50%	2.50%	7.44%	
				Step increase (two employees)	0	0	4,890	0	4,890	
				Total Salary Including Steps	0	36,435	51,249	42,552	130,236	
				Percentage Increase in Salary Including Steps		2.25%	3.10%	2.50%	7.74%	
				FICA	0	2,787	3,546	3,255	9,589	
				Workers Comp	0	2,508	3,127	2,928	8,563	
				Life Insurance	0	267	269	272	809	
				Benefit Costs	0	41,997	53,302	49,007	144,307	
Overall Cost before Insurance Savings						2.59%	3.22%	2.88%	8.94%	
				Insurance Savings	492,304	Base	12,340	12,201	12,063	36,604
				Premium Cost Share (1/1/11=10%; 1/1/12=11%; 1/1/13=12%; 1/1/14=13%)		4,923	10,535	16,909	32,368	
				Dental Increase Plan Change (Assumes 5% Med Inflation)		(327)	(322)	(322)	(972)	
				Benefit Cost Savings		16,936	22,414	28,649	67,999	
				Net Cost of Contract		25,062	30,888	20,358	76,307	
				Cost increase as a percent of payroll		1.55%	1.87%	1.20%	4.69%	
The savings generated by changes in Plan design and increased premium share by the employee will offset 3.5% of medical inflation costs										

**TOWN OF WESTPORT  
401(k) PLAN**

**As Amended and Restated  
Effective \_\_\_\_\_, 2012<sup>1</sup>**

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<sup>1</sup> The effective date should be first day of the first payroll period after approval of the restated plan by the RTM.

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**PREAMBLE**

The Town of Westport, Connecticut (the "Town") established the Town of Westport 401(k) Plan (the "Plan") effective July 1, 1985. The Plan was subsequently amended and restated, most recently on April 5, 2010 and generally effective as of July 1, 2009.

The Town hereby further amends and restates the Plan, generally effective as of \_\_\_\_\_, 2012, as follows:

**ARTICLE I**

**NAME, QUALIFIED STATUS AND EFFECTIVE DATE**

1.1 Name

The Plan as amended and restated herein shall continue to be known as the “Town of Westport 401(k) Plan.”

1.2 Qualified Status

(a) It is intended that the Plan as amended and restated herein shall continue to constitute a qualified profit-sharing plan and that the Trust shall continue to be exempt from tax under the applicable provisions and the Treasury Regulations and rulings thereunder. If any provision of the Plan should be subject to more than one interpretation, such provision shall be interpreted in a manner which shall be consistent with the Plan continuing to be regarded as a qualified profit-sharing plan and the Trust continuing to be exempt from tax as aforesaid.

(b) Contributions to the Plan shall not be conditioned upon the existence of profits. The Plan shall nevertheless be a profit-sharing plan for all purposes under the Code, including without limitation Code Section 401(a)(11)(B)(ii).

1.3 Effective Date

The Plan, as amended and restated herein, shall be effective as of \_\_\_\_\_, 2012, except as may otherwise be provided herein.

## ARTICLE II

### DEFINITIONS

For purposes of the Plan, the following words and phrases shall have the meanings indicated below unless the context clearly requires otherwise:

2.1 “Accounts” shall mean the individual bookkeeping accounts maintained for a Participant, consisting of one or more of the following: 401(k) Account and Rollover Account.

2.2 “Annual Addition” shall mean, as to a Participant for any Limitation Year, the sum of:

(a) 401(k) Contributions (other than Catch-up Contributions) allocated to the 401(k) Account on behalf of such Participant for such Limitation Year under this Plan; and contributions by or on behalf of such Participant any other qualified defined contribution plan maintained by the Town [other than contributions by a Participant to another retirement plan of the Town that are “picked up” by the Town pursuant to Code Section 414(h)(2)];

(b) Forfeitures, if any, allocated to such Participant for such Limitation Year under any other qualified defined contribution plan maintained by the Town;

(c) Such Participant’s voluntary non-deductible contributions under any qualified plan of the Town for such Limitation Year;

(d) Amounts allocated, after March 31, 1984, for such Limitation Year to an individual medical account, as defined in Code Section 415(l)(2), which is part of a pension or annuity plan maintained by the Town; and

(e) Amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after said date, which are attributable to post-retirement medical benefits allocated for such Limitation Year to the separate account of a “key employee,” as defined in Code Section 419A(d)(3), under a welfare benefit fund, as defined in Code Section 419(e), maintained by the Town.

2.3 “Applicable Dollar Amount” shall mean \$17,000, subject to adjustment pursuant to Code Section 402(g)(4) for taxable years beginning after December 31, 2011.

2.4 “Beneficiary” shall mean the person or persons designated by a Participant to receive any benefits payable under the Plan on account of the Participant’s death. If no person has been designated as a Beneficiary by a Participant, or if the designated Beneficiary or Beneficiaries (if more than one) are not in existence at the time of his death, the term “Beneficiary” shall mean the Participant’s surviving spouse, or if there is no surviving spouse, the Participant’s descendants who survive him, *per stirpes*; or if there are no such descendants, the Participant’s surviving parents, in equal shares; or if there are no surviving parents, the Participant’s estate. An Eligible Employee,

upon becoming a Participant, may designate a Beneficiary of his own choosing, and may, in addition, designate a contingent Beneficiary. A Participant may at any time revoke his designation of a Beneficiary or change his Beneficiary previously designated. Any such designation, revocation or change shall be made in writing on forms provided for the purpose and filed with the Retirement Committee. Notwithstanding the preceding provisions of this Section 2.4, if a Participant is married at a time of his death, his vested interest in his Accounts shall be payable to his surviving spouse, unless he has designated some other Beneficiary and said surviving spouse has given her consent to the payment of such interest to such Beneficiary, which consent shall acknowledge the effect thereof. Any such consent (a) shall be in writing, (b) shall be witnessed by a notary public or by a representative of the Plan and (c) shall be effective only with respect to the spouse giving it. No consent shall be required where it is established to the satisfaction of the Retirement Committee that the Participant's surviving spouse cannot be located.

2.5 “Catch-Up Contribution” shall mean, as to any Catch-Up Eligible Participant, that portion of such Participant's Compensation for a Plan Year that such Catch-Up Eligible Participant has elected to defer pursuant to Section 3.3(a).

2.6 “Catch Up-Eligible Participant” shall mean, as to a calendar year, an Employee who is a Participant and who is age 50 or older in such calendar year. For purposes of the preceding sentence, a Participant who is projected to attain age 50 before the end of a calendar year shall be deemed to be age 50 as of January 1 of such calendar year, without regard to whether he ceases to be an Employee during such calendar year before actually attaining age 50.

2.7 “Code” shall mean the Internal Revenue Code of 1986, as amended from time to time.

2.8 “Compensation” shall mean, as to a Participant, “wages,” within the meaning of Code Section 3401(a) (for purposes of income tax withholding at the source), paid to him by the Town during the period he is a Participant, disregarding rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed [such as the exception for agricultural labor in Code Section 3401(a)(2)]. Notwithstanding the preceding sentence:

- (a) There shall be included in a Participant's Compensation (1) any “elective deferral” [as defined in Code Section 402(g)(3)]; (2) any amount which is contributed or deferred by the Town at the election of such Participant and which is not includible in his gross income under Code Sections 125 or 132(f)(4); and (3) any contributions by a Participant to another retirement plan of the Town that are “picked up” by the Town pursuant to Code Section 414(h)(2).
- (b) There shall be excluded from a Participant's Compensation all of the following: overtime, bonuses, commissions and all additions above base salary.
- (c) There shall be excluded from a Participant's Compensation any amount paid after the termination of his employment, except that there shall be included in a Participant's Compensation any payment after termination of his employment that is regular compensation for services during his regular working hours, or compensation for

services outside such regular working hours (such as overtime), bonuses or other similar payments, if such payment (1) would have been paid to him before termination of employment if he had continued in employment with the Town; and (2) is paid by the later of 2½ months after termination of employment or the end of the Limitation Year including the date of termination of employment.

- (d) The Compensation of each Participant taken into account for any Plan Year shall not exceed \$250,000 [subject to cost-of-living adjustments pursuant to Code Section 401(a)(17)(B)].

2.9 “Deferred Compensation” shall mean, as to any Participant, that portion of his Compensation for a Plan Year which he has elected to defer pursuant to Section 3.2(b).

2.10 “Designated Beneficiary” shall mean, collectively, the individual or individuals who are designated as the beneficiary under Section 2.4 and who are the “designated beneficiary” under Code Section 401(a)(9) and Treasury Regulation Section 1.401(a)(9)-4, Q&A-1.

2.11 “Direct Rollover” shall mean a payment by the Plan to the Eligible Retirement Plan specified by a Distributee.

2.12 “Disability” shall mean, as to a Participant, his inability to perform any of the duties assigned by the Town because of a medically-determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of at least 12 months.

2.13 “Distributee” shall mean a Participant who is an Eligible Employee or former Eligible Employee. In addition, (a) such a Participant’s spouse or former spouse who is the alternate payee under a Qualified Domestic Relations Order, and (b) the surviving spouse of a deceased Participant who was an Employee or former Employee, shall be Distributees with regard to the interest of such spouse or former spouse in the Plan.

2.14 “Distribution Calendar Year” shall mean a calendar year for which a minimum distribution is required under Article X. For distributions beginning before a Participant’s death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year which contains his Required Beginning Date. For distributions beginning after a Participant’s death (where he dies prior to his Required Beginning Date), the first Distribution Calendar Year is the calendar year in which distributions are required to begin under Section 8.2(b).

2.15 “Effective Date” shall mean the date specified in Section 1.3.

2.16 “Eligible Employee” shall mean an Employee who regularly works for the Town for at least 20 hours per week.

2.17 “Eligible Retirement Plan” shall mean an Individual Retirement Account, an Individual Retirement Annuity, an annuity plan described in Code Section 403(a), or a qualified trust

described in Code Section 401(a), which accepts a Distributee's Eligible Rollover Distribution. The term "Eligible Retirement Plan" shall also include the following:

- (a) An annuity contract described in Code Section 403(b); and
- (b) An "eligible plan" which is maintained under Code Section 457(b) and which is maintained by a state or political subdivision of a state or instrumentality of a state and which agrees to separately account for amounts transferred to such plan from this Plan.

The foregoing definition of "Eligible Retirement Plan" shall apply in the case of a distribution to a surviving spouse of a Participant or to a spouse or former spouse of a Participant who is an alternate payee under a Qualified Domestic Relations Order.

2.18 "Eligible Rollover Distribution" shall mean any distribution of all or any portion of the balance to the credit of the Distributee under the Plan, except that an Eligible Rollover Distribution shall not include the following:

- (a) Any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's beneficiary, or for a specified period of 10 years or more;
- (b) Any distribution to the extent such distribution is required under Code Section 401(a)(9);
- (c) The portion of any distribution which is not includable in gross income; and
- (d) Any distribution which is made upon the hardship of a Participant.

The enumeration in the preceding sentence of any form of payment shall not imply that any person has the right to receive benefits under the Plan in such form unless otherwise specifically provided under the Plan.

2.19 "Employee" shall mean any person employed by and who receives Compensation from the Town. The term "Employee" shall not include (a) a Leased Employee; or (b) any person who is a nonresident alien and who receives no earned income [within the meaning of Code Section 911(d)(2) ] which constitutes income from sources within the United States [within the meaning of Code Section 861(a)(3) ].

2.20 "401(k) Account" shall mean the Account established and maintained by the Retirement Committee for each Participant as to his total interest in the Plan resulting from the Town's 401(k) Contributions on his behalf.

2.21 “401(k) Contributions” shall mean the Town’s contributions to the Plan which are made pursuant to Section 4.2.

2.22 “Individual Retirement Account” shall mean an account described in Code Section 408(a).

2.23 “Individual Retirement Annuity” shall mean an annuity described in Code Section 408(b).

2.24 “Investment Committee” shall mean the committee established pursuant to Section 11.1(a) having responsibility for the choice of investments to be available for Participant direction under Article XII.

2.25 “Leased Employee” shall mean any person (other than an employee of the recipient) who pursuant to an agreement between the recipient and any other person has performed services for the recipient [or for the recipient and related persons determined in accordance with Section 414(n)(6)] on a substantially full-time basis for a period of at least one year, and such services are performed under primary direction or control by the recipient.

2.26 “Limitation Year” shall mean the 12-month period for purposes of determining the limitation on Annual Additions, in accordance with Code Section 415, which period shall begin on July 1 and shall end on the following June 30.

2.27 “Normal Retirement Date” shall mean the date a Participant attains age 65.

2.28 “Participant” shall mean an Employee who has become a Participant in the Plan and shall include any Participant no longer actively employed by the Town, and any Beneficiary of a deceased Participant, until all benefits due such Participant under the Plan shall have been fully distributed.

2.29 “Plan” shall mean the Town of Westport 401(k) Plan, as amended and restated herein.

2.30 “Plan Year” shall mean the period beginning on July 1 and ending on the following June 30.

2.31 “Qualified Domestic Relations Order” shall mean an order described in Code Section 414(p)(1)(A).

2.32 “Qualified Military Service” shall mean any service in the “uniformed services” (as defined in Chapter 43 of Title 38, United States Code) by any individual if such individual is entitled to reemployment rights under such chapter as to such service.

2.33 “Required Beginning Date” shall mean, as to a Participant, April 1 of the calendar year following the later of (a) the calendar year in which he attains age 70½ or (b) the calendar year

in which he retires.

2.34 “Retirement Committee” shall mean the committee established under Section 12.1(a) to administer the Plan.

2.35 “Rollover Account” shall mean the Account established and maintained by the Retirement Committee for each Participant for each Participant as to his total interest in the Plan resulting from Rollover Contributions by him or made on his behalf.

2.36 “Rollover Contributions” shall mean:

- (a) A Participant contribution that is all or part of an “eligible rollover distribution” [as defined in Code Section 402(c)] from:
  - (1) A “qualified plan” described in Code Sections 401(a) or 403(a) excluding after-tax employee contributions;
  - (2) An “eligible plan” under Code Section 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state; or
  - (3) An Individual Retirement Account [that was not used as a conduit from such a “qualified plan” described in Section 2.36(a)(1)] or an Individual Retirement Annuity that is eligible to be rolled over and would otherwise be includable in such Participant’s gross income.
- (b) A direct rollover of such an “eligible rollover distribution” on behalf of a Participant from a plan described in Sections 2.36(a)(1) or 2.36(a)(2).

2.37 “RTM” shall mean the Representative Town Meeting of the Town.

2.38 “Town” shall mean the Town of Westport, Connecticut.

2.39 “Trust” shall mean the trust created pursuant to a Trust Agreement.

2.40 “Trust Agreement” shall mean the agreement between the Town and a corporation, establishing the Trust.

2.41 “Trustee” shall mean, as to a Trust Agreement, the corporation acting as trustee thereunder. As of the Effective Date, the Trustee is Wells Fargo Bank, N.A.

2.42 “Trust Fund” shall mean the cash, securities and any other property held by the Trustee pursuant to the provisions of the Trust Agreement, together with any earnings or income therefrom.



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2.43 “Valuation Calendar Year” shall mean, as to a Distribution Calendar Year, the calendar year immediately preceding such Distribution Calendar Year.

2.44 “Valuation Date” shall mean each day as of which the assets of Trust are valued.

**ARTICLE III**

**401(k) CONTRIBUTIONS**

3.1 Eligibility

(a) Each Eligible Employee who is not already a Participant on the Effective Date shall become a Participant on the Effective Date. Each Employee who is hired by the Town after the Effective Date shall become a Participant on the first day of the first payroll period as of which he is an Eligible Employee.

(b) To participate, an Eligible Employee must follow the procedures for enrollment specified by the Retirement Committee, which may involve completing enrollment forms and returning them to the Retirement Committee or completing the documents electronically. If an Eligible Employee fails to complete any such forms, the Retirement Committee may determine that he shall nevertheless be enrolled in the Plan.

(c) If a Participant terminates employment with the Town and is later rehired as an Eligible Employee, he will again become an active Participant as of his rehire date.

3.2 401(k) Contributions

(a) For each Plan Year, the Town shall contribute to the Plan for such Plan Year 401(k) Contributions equal to the Deferred Compensation of all Participants employed by the Town for such Plan Year.

(b) Each Participant may elect to defer a portion of his Compensation expressed as a percentage of his Compensation, not less than 1% and not more than 40%. The amount by which a Participant's Compensation is deferred shall be that Participant's Deferred Compensation and shall be treated as a 401(k) Contribution and shall be credited to his 401(k) Account. . Notwithstanding the preceding sentences of this Section 3.2(b):

- (1) A Participant may change his election pursuant to this Section 3.2(b) in accordance with procedures specified by the Retirement Committee, but in any event not less than twice per Plan Year (as of July 1 and January 1).
- (2) A Participant may at any time, by written notice to the Retirement Committee, direct the suspension of such election, with such suspension to take effect as soon as practicable following receipt of such notice by the Retirement Committee.

(c) Amounts held in a Participant's 401(k) Account shall not be distributable except on account of any of the following:

- (1) His severance of employment with Town;

- (2) His Disability;
- (3) His death;
- (4) His attainment of age 59½;
- (5) Hardship, as specified in Section 7.6; or
- (6) The termination of the Plan without establishment of a successor plan by the Town.

The Retirement Committee may authorize distribution of a Participant's 401(k) Account where any of the events in the preceding sentence have occurred, subject to all other requirements of the Plan concerning distributions.

(d) A Participant's Deferred Compensation shall not exceed the Applicable Dollar Amount for the taxable year of the Participant. In the event that the Applicable Dollar Amount is exceeded, the Retirement Committee shall direct the Trustee to distribute such excess amount, and any income allocable to such amount, to the Participant not later than the first April 15 following the close of the Participant's taxable year. If there is a loss allocable to such excess amount, the distribution shall in no event be less than the lesser of the Participant's Elective Account or the Participant's Deferred Compensation for the Plan Year. Income or loss shall be allocated to such excess amount in accordance with Regulation Section 1.402(g)-1(e)(5), excluding income or loss for the period between the end of such taxable year and the date of distribution.

(e) In the event that a Participant is also a participant in:

- (1) Another qualified cash-or-deferred arrangement [as defined in Code Section 401(k)];
- (2) A simplified employee pension [as defined in Code Section 408(k)]; or
- (3) A salary reduction arrangement [within the meaning of Code Section 3121(a)(5)(D)],

and the elective deferrals, as defined in Code Section 402(g)(3), made under such other arrangement(s) and this Plan cumulatively exceed the Applicable Dollar Amount [or such amount adjusted annually as provided in Code Section 415(d) pursuant to regulations] for such Participant's taxable year, such Participant may, not later than March 1 following the close of his taxable year, notify the Retirement Committee in writing of such excess and request that his Deferred Compensation under this Plan be reduced by an amount specified by him. Such amount may then be distributed in the same manner as provided in Section 3.2(d), together with income or loss allocated thereto determined in accordance with the procedure specified in Section 3.2(d)

(f) The Retirement Committee shall adopt a procedure necessary to implement the salary reduction elections provided for in this Section 3.1 and in Section 3.2.

3.3 Catch-Up Contributions.

(a) A Catch-Up Eligible Participant may make a Catch-Up Contribution for a Plan Year, expressed as a whole-number percentage of his Compensation, not less than 1% and not more than 20%:

- (1) At the beginning of such Plan Year, he elects pursuant to Section 3.2(b) to defer the maximum portion of his Compensation during such Plan Year which is permitted thereunder;
- (2) At any time during such Plan Year, that portion of his Compensation which he has elected to defer for each pay period during the remainder of such Plan Year pursuant to Section 3.2(b) when added to that portion of his Compensation already deferred during such Plan Year pursuant to Section 3.2(b), is projected to equal the maximum amount permitted pursuant to Section 3.2(b);
- (3) At any time during such Plan Year, that portion of his Compensation already deferred during such Plan Year pursuant to Section 3.2(b) equals the maximum amount permitted pursuant to Section 3.3(e); or
- (4) At any time during the Limitation Year coinciding with such Plan Year, that portion of his Compensation already deferred during such Limitation Year pursuant to Section 3.2(b), when added to his other Annual Additions during such Limitation Year, equals the maximum Annual Addition permitted for such Limitation Year pursuant to Section 5.1.

(b) The Retirement Committee shall establish procedures to assure that each Catch-Up Eligible Participant shall have an effective opportunity to make a Catch-Up Contribution. Such procedures shall include, but shall not necessarily be limited to, allowing such a Catch-Up Eligible Participant to defer an additional dollar amount of his Compensation for each remaining payroll period during such Plan Year such that the total of all such additional dollar amounts during such Plan Year equals the maximum Catch-Up Contribution permitted for such Plan Year pursuant to Section 3.3(c).

(c) A Catch-Up Contribution as to a Catch-Up Eligible Participant shall not exceed \$5,500 for his taxable year, subject to adjustment pursuant to Section 414(v)(2)(C) for taxable years beginning after December 31, 2012.

(d) A Catch-Up Eligible Participant's Catch-up Contributions shall be treated as 401(k) Contributions (except as otherwise provided in this Article III) and shall be credited to his 401(k) Account, but shall not be subject to the following Plan provisions:

- (1) The limit on Deferred Compensation in Section 3.2(d); or
- (2) The limits on Annual Additions in Section 5.1.

3.4 Vesting

A Participant shall always be fully vested in the balance in his 401(k) Account.

**ARTICLE IV**

**ROLLOVER CONTRIBUTIONS**

4.1 Acceptance of Rollover Contributions

The Trust Fund shall accept a Rollover Contribution by or on behalf of a Participant. Any such Rollover Contribution by or on behalf of a Participant shall be credited to his Rollover Account.

4.2 Vesting

A Participant shall always be fully vested in the balance in his Rollover Account.

**ARTICLE V**

**LIMITS ON ANNUAL ADDITIONS**

5.1 Limits on Annual Additions

In no event shall any Annual Addition as to a Participant for a Limitation Year exceed the lesser of:

- (a) \$50,000, or such higher amount as may be permitted at the relevant time under Code Section 415(c); or
- (b) 100% of the Compensation paid to the Participant by the Town during such Limitation Year.

For purposes of Section 5.1(b), "Compensation" shall be determined without regard to Sections 2.8(a)(3) and(b).

5.2 Reduction of Annual Additions

Otherwise permissible Annual Additions as to a Participant under this Plan shall be reduced to the extent necessary, as determined by the Retirement Committee, to prevent disqualification of the Plan for exceeding the limits under Code Section 415. The Retirement Committee shall advise affected Participants of any reduction of their Annual Additions required by the preceding sentence.

5.3 Corrections of Excess Annual Additions

The correction of excess Annual Additions occurring due to a reasonable error in estimating Participants' Compensation shall be made pursuant to the terms of the correction methods provided for under Revenue Procedure 2008-50, or any subsequent Internal Revenue Service correction programs.

ARTICLE VI

ACCOUNTING AND ALLOCATIONS

6.1 Individual Accounts

Adequate records shall be established and maintained to disclose the interest of each Participant in the Trust Fund. Such records shall be in the form of individual Accounts which shall be credited and charged in the manner provided in the Plan.

6.2 Valuation of Trust Fund

The assets of the Trust Fund shall be valued at fair market value as of each Valuation Date. As to each investment fund subject to Participant direction in accordance with Section 10.1, the earnings or losses thereof since the preceding Valuation Date shall be allocated among the Accounts of Participants holding shares or units of such fund *pro rata*. Each Account shall be adjusted for distributions and repayments since the immediately preceding Valuation Date.

6.3 Allocation of Contributions

(a) As of each Valuation Date, any 401(k) Contributions received by the Trustee since the preceding Valuation Date shall be credited to the 401(k) Accounts of the Participants on whose behalf such contributions were made.

(b) As of each Valuation Date, the Rollover Contributions received by the Trustee since the preceding Valuation Date shall be credited to the Rollover Accounts of the Participants making such contributions or on whose behalf such contributions were made

6.4 Statements of Accounts

Each Participant shall receive a statement of the balance in his Accounts not less than quarterly.



**ARTICLE VII**

**DISTRIBUTION OF BENEFITS**

7.1 Termination of Employment on Account of Retirement, Death or Disability

If a Participant's employment with the Town is terminated on or after he attains his Normal Retirement Date, or on account of death or Disability, or for any other reason, the Retirement Committee shall as soon as practicable thereafter, direct the Trustee to distribute the entire balance in his Accounts to or for his benefit, or to or for the benefit of his Beneficiary, as the case may be, in the manner provided in Section 7.2.

7.2 Method of Making Distributions

(a) Distribution of the balance in a Participant's Accounts shall be made to or for his benefit, or to or for the benefit of his Beneficiary, by payment in a lump sum, except as provided in Sections 7.2(b) and 8.3.

(b) In lieu of a distribution of the balance in his Accounts in a lump sum, a DPW Participant may elect to receive the distribution of the balance in his Accounts in monthly, quarterly, semi-annual or annual installments commencing on a date selected by him and over a period not greater than (1) 10 years or (2) his life expectancy [determined using the "Single Life Table" in Treasury Regulation Section 1.401(a)(9)-1, Q&A-1 in the year in which such installments commence]. The term "DPW Participant" means a Participant who is also a participant in the Town of Westport Defined Contribution Retirement Plan and a full-time employee of the Highway, Maintenance, Equipment Maintenance, Sewer Treatment Plant or Solid Waste Divisions of the Public Works Department of the Town who (1) first commenced employment with the Town after April 30, 2012 and (2) is either is a member of Local 1303-385, Council 4, American Federation of State, County and Municipal Employees, AFL-CIO or is eligible to become such a member.

7.3 Direct Rollovers of Eligible Rollover Distributions

(a) Notwithstanding any other provision of the Plan to the contrary which would otherwise limit a Distributee's election under this Section 7.3, a Distributee may elect, at the time and in the manner permitted by the Retirement Committee, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

(b) Any portion of a distribution from the Plan on account of the death of a Participant may be paid in a direct trustee-to-trustee transfer to an "individual retirement plan" described in Clauses (i) or (ii) of Code Section 402(c)(8)(B), established for the purposes of receiving the distribution on behalf of an individual who is a Designated Beneficiary of such Participant and who is not the surviving spouse of such Participant. In such event:

- (1) Such transfer shall be treated as an Eligible Rollover Distribution;
- (2) Such individual retirement plan shall be treated as an inherited Individual Retirement Account or inherited Individual Retirement Annuity [within the meaning of Code Section 408(d)(3)(C)]; and
- (3) Code Section 401(a)(9)(B) [other than Clause (iv) thereof] shall apply to such individual retirement plan.

For purposes of this Section 7.3(b), to the extent provided in applicable regulations, a trust maintained for the benefit of one or more Designated Beneficiaries shall be treated in the same manner as a Designated Beneficiary.

7.4 Distributions to Terminated Participants of \$1,000 or More

If, pursuant to Section 7.1, the Account balance of a Participant whose employment has terminated is \$1,000 or more, and such Participant does not elect to receive a distribution of his Account balance directly or, pursuant to Section 7.3, to have a distribution of his Account balance paid to an Eligible Retirement Plan in a Direct Rollover, the Retirement Committee shall cause a distribution of his Account balance to be paid in a direct rollover to an Individual Retirement Account. If a Participant described in the preceding sentence has a Rollover Account, then:

- (a) The balance in such Rollover Account shall not be taken into account in determining whether the sum of his Account balance is \$1,000 or more;
- (b) Any payment to such Participant or as a Direct Rollover pursuant to an election by him shall include the balance in such Rollover Account; and
- (c) Any payment to such an Individual Retirement Account in lieu of an election by such Participant shall include the balance in such Rollover Account.

7.5 In-Service Distributions

(a) Upon or after attainment of age 59½ while still employed, a Participant may request that the Retirement Committee direct the Trustee to distribute all or any portion of the balance of his 401(k) Account and/or his Rollover Account. No more than one such request may be made during each Plan Year.

(b) Upon or after reaching his Normal Retirement Date while still employed, a Participant may request that the Retirement Committee direct the Trustee to distribute all or any portion of the balance of his Accounts. No more than one such request may be made during each Plan Year.

7.6 Hardship Withdrawals

(a) A Participant shall be permitted to make a hardship withdrawal of any amount attributable to all or a portion of his 401(k) Account, excluding any Plan earnings thereon, and all or any portion of his Rollover Account. Such amounts may be available for hardship withdrawal if such Participant establishes that an immediate and heavy financial need exists and the withdrawal is necessary to satisfy such financial need. A request for a hardship withdrawal shall be made in accordance with procedures adopted by the Retirement Committee, which shall have sole authority to authorize and direct a hardship withdrawal pursuant to the provisions in this Section 7.6.

(b) For purposes of this Section 7.6, an “immediate and heavy financial need” of a Participant is one which cannot reasonably be relieved by borrowing from commercial sources on reasonable commercial terms in an amount sufficient to satisfy the need. In any event, a withdrawal may not be requested in excess of the amount of the immediate and heavy financial need described in Section 7.6(c), including amounts necessary to pay any federal, state or local income taxes or penalties reasonably anticipated to result from the distribution.

(c) An immediate and heavy financial need of a Participant exists when the hardship withdrawal will be used to pay the following:

- (1) Expenses incurred or necessary for medical care that would be deductible under Code Section 213(d) (determined without regard to whether the expenses exceed 7.5% of adjusted gross income) of such Participant, his or her spouse, children and other dependents;
- (2) The cost directly related to the purchase (excluding mortgage payments) of the principal residence of such Participant;
- (3) Payment of tuition and related educational expenses (including but not limited to expenses associated with room and board) for up to the next 12 months of post-secondary education for such Participant, his or her spouse, children or other dependents [as defined in Code Section 152, without regard to Code Sections 152(b)(1), (b)(2) and (d)(1)(B)];

- (4) The need to prevent eviction of such Participant from, or a foreclosure on the mortgage of, such Participant's principal residence;
- (5) Payments for burial or funeral expenses for such Participant's deceased parent, spouse, child or dependent [as defined in Code Section 152, without regard to Code Section 152(d)(1)(B)]; or
- (6) Expenses for the repair of damage to such Participant's principal residence that would qualify for the casualty deduction under Code Section 165 (determined without regard to whether the loss exceeds 10% of adjusted gross income).

(d) A withdrawal shall not be treated as necessary to satisfy an immediate and heavy financial need of a Participant to the extent such need may be relieved from other resources that are reasonably available to such Participant. For purposes of this Section 7.6(d), a Participant's resources are deemed to include those assets of his spouse and minor children that are reasonably available to him. However, property held for a Participant's child under an irrevocable trust or under a Uniform Transfers to Minors Act (or comparable state law) shall not be treated as a resource of such Participant.

(e) If the Retirement Committee approves a Participant's request for a hardship withdrawal, liquidation of his Account assets for the purpose of a hardship withdrawal will be allocated on a pro-rata basis across all the investment alternatives in his 401(k) Account and/or Rollover Account, unless otherwise provided by a directive from the Retirement Committee or from such Participant.

(f) If Deferred Compensation is withdrawn from a Participant's 401(k) Account in a hardship withdrawal, such Participant shall be prohibited under a legally enforceable agreement from electing to defer his Compensation pursuant to Sections 3.2 and 3.3 and under all other plans maintained by the Town for at least 6 months after receipt of the hardship withdrawal. The phrase "plans maintained by the Town" shall mean all qualified and nonqualified plans of deferred compensation maintained by the Town, including a cash or deferred arrangement that is part of a cafeteria plan within the meaning of Code Section 125, but excluding the mandatory employee contribution portion of a defined benefit plan, a defined contribution plan or a health or welfare benefit plan (including one that is part of a cafeteria plan).

(g) The provisions of this Section 7.6 shall also apply to a Participant's Beneficiary in addition to his spouse or dependent. Such Beneficiary must have an unconditional right to all or a portion of the Participant's Account balance under the Plan upon the Participant's death.

7.7 Forms, Etc.

Each Participant who retires, resigns or is discharged, and the Beneficiary of any deceased Participant, shall be required to complete such administrative forms and furnish such proof as the Retirement Committee shall deem necessary and appropriate for purposes of administering the Plan.

7.8 Change of Address

It shall be the duty of each retired, resigned or discharged Participant, and any Beneficiary of any deceased Participant, to keep on file with the Retirement Committee a correct mailing address or to claim in person each benefit payment as it becomes due.

7.9 Incapacity

If the Retirement Committee determines that any retired, resigned or discharged Participant, or any Beneficiary of a deceased Participant, is unable to care for his affairs because of illness or injury or because he is a minor, any benefits due to him may be paid to the spouse or parent of such Participant or Beneficiary, or to his legal representative, duly-appointed guardian or some other person designated to receive such benefits on his behalf.

7.10 Assignment or Alienation of Benefits

(a) No benefit or interest available hereunder shall be subject to assignment or alienation, either voluntarily or involuntarily.

(b) Section 7.10(a) shall not apply to the creation, assignment or recognition of a right to any benefit payable as to a Participant's Account pursuant to a domestic relations order, unless such order is determined to be a Qualified Domestic Relations Order, or any domestic relations order entered before January 1, 1985. Distribution of all or part of a Participant's Account to an alternate payee under such an order may be made at any time, irrespective of whether such Participant has attained the "earliest retirement age" [within the meaning of Code Section 414(p)(4)(B)].

7.11 Death of Beneficiary

If any Beneficiary of a deceased Participant dies after having received less than all of such Beneficiary's entire interest in the Trust Fund, the undistributed portion thereof shall be paid to such person or persons as such Beneficiary shall have designated in a written instrument filed with the Retirement Committee. If no such designation was made, or if no such designated person is in existence at the time of such Beneficiary's death, such undistributed portion shall be paid to his surviving spouse; or if there is no surviving spouse, to his descendants who survive him, *per stirpes*, or if there are no such descendants, his surviving parents, in equal shares; or if there are no surviving parents; to his estate. The provisions of this Section 7.11 shall not apply in the event of the death of any person designated by a Beneficiary pursuant to this Section 7.11.

**ARTICLE VIII**

**REQUIRED MINIMUM DISTRIBUTIONS**

8.1 Requirements of Treasury Regulations Incorporated

All distributions required under this Article VIII shall be determined and made in accordance with the Treasury regulations under Code Section 401(a)(9).

8.2 Time and Manner of Distribution

(a) A Participant's entire vested interest in the Plan shall be distributed, or begin to be distributed, to him no later than his Required Beginning Date.

(b) If a Participant dies before his Required Beginning Date, his entire vested interest in the Plan shall be distributed, or begin to be distributed, no later than as follows:

- (1) If such Participant's surviving spouse is his sole Designated Beneficiary, then distributions to such surviving spouse shall begin by December 31 of the calendar year immediately following the calendar year in which such Participant died, or by December 31 of the calendar year in which such Participant would have attained age 70½, if later.
- (2) If such Participant's surviving spouse is not his sole Designated Beneficiary, then distributions to his Designated Beneficiary shall begin by December 31 of the calendar year immediately following the calendar year in which such Participant died.
- (3) If there is no Designated Beneficiary as of September 30 of the year following the year of such Participant's death, such Participant's entire vested interest in the Plan shall be distributed by December 31 of the calendar year containing the fifth anniversary of such Participant's death.
- (4) If such Participant's surviving spouse is his sole Designated Beneficiary and his surviving spouse dies after him but before distributions to such surviving spouse begin, this Section 8.2(b), other than Section 8.2(b)(1), shall apply as if such surviving spouse were such Participant.

For purposes of this Section 8.2(b) and Section 8.5, unless Section 8.2(b)(4) applies, distributions are considered to begin on a Participant's Required Beginning Date. If Section 8.2(b)(4) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse of a Participant under Section 8.2(b)(1).

(c) The required minimum distribution for a Participant's first Distribution Calendar Year

shall be made on or before his Required Beginning Date. The required minimum distribution for any Distribution Calendar Year, including the required minimum distribution for the Distribution Calendar Year in which the Participant's Required Beginning Date occurs, shall be made on or before December 31 of such Distribution Calendar Year.

### 8.3 Forms of Distribution

Unless a Participant's vested interest in the Plan is distributed in a single sum on or before his Required Beginning Date, as of the first Distribution Calendar Year distributions shall be made in accordance with Sections 8.4 and 8.5 of this Article VIII.

### 8.4 Required Minimum Distributions during Participant's Lifetime

(a) During the lifetime of a Participant, the minimum amount that shall be distributed for each Distribution Calendar Year is the lesser of:

- (1) The quotient obtained by dividing the vested balance in such Participant's Accounts by the distribution period in the Uniform Lifetime Table set forth in Treasury Regulation Section 1.401(a)(9)-9, using his age as of his birthday in such Distribution Calendar Year; or
- (2) If such Participant's sole Designated Beneficiary for the Distribution Calendar Year is his spouse, the quotient obtained by dividing the vested balance in such Participant's Accounts by the number in the Joint and Last Survivor Table set forth in Treasury Regulation Section 1.401(a)(9)-9, using his and spouse's attained ages as of their respective birthdays in such Distribution Calendar Year.

(b) Required minimum distributions as to a Participant shall be determined under this Section 8.4 beginning with the first Distribution Calendar Year and up to and including the Distribution Calendar Year that includes such Participant's date of death.

### 8.5 Required Minimum Distributions after Participant's Death

(a) If a Participant dies on or after his Required Beginning Date and there is a Designated Beneficiary as of September 30 of the year after the year of his death, the minimum amount which shall be distributed for each Distribution Calendar Year after the year of his death is the quotient obtained by dividing the vested balance in the Participant's Accounts by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of his Designated Beneficiary, determined as follows:

- (1) Such Participant's remaining life expectancy is calculated using his age in the year of death, reduced by one for each subsequent year.
- (2) If such Participant's surviving spouse is his sole Designated Beneficiary, the remaining life expectancy of such surviving spouse shall be calculated for

each Distribution Calendar Year after the year of his death using the surviving spouse's age as of such surviving spouse's birthday in such year. For Distribution Calendar Years after the year of such surviving spouse's death, the remaining life expectancy of such surviving spouse is calculated using the age of such surviving spouse as of such surviving spouse's birthday in the calendar year of such surviving spouse's death, reduced by one for each subsequent calendar year.

- (3) If such Participant's surviving spouse is not his sole Designated Beneficiary, the Designated Beneficiary's remaining life expectancy shall be calculated using the age of such Designated Beneficiary in the year following the year of such Participant's death, reduced by one for each subsequent year.

(b) If a Participant dies on or after his Required Beginning Date and there is no Designated Beneficiary as of September 30 of the year after the year of his death, the minimum amount which shall be distributed for each Distribution Calendar Year after the year of his death shall be the quotient obtained by dividing the vested balance in his Accounts by his remaining life expectancy calculated using his age in the year of death, reduced by one for each subsequent year.

(c) If a Participant dies before his Required Beginning Date and there is a Designated Beneficiary as of September 30 of the year after the year of his death, the minimum amount which shall be distributed for each Distribution Calendar Year after the year of his death shall be the quotient obtained by dividing the vested balance in his Accounts by the remaining life expectancy of his Designated Beneficiary, determined as provided in Section 8.6(a).

(d) If a Participant dies before his Required Beginning Date and there is no Designated Beneficiary as of September 30 of the year after the year of his death, distribution of such Participant's entire vested interest in the Plan shall be completed by December 31 of the calendar year containing the fifth anniversary of his death.

(e) If:

- (1) A Participant dies before his Required Beginning Date,
- (2) His surviving spouse is his sole Designated Beneficiary; and
- (3) such surviving spouse dies before distributions are required to begin to such surviving spouse under Section 8.2(b)(1),

Sections 8.5(c) and 8.5(d) shall apply as if such surviving spouse were such Participant.



8.6 Miscellaneous

(a) Life expectancy shall be computed by use of the Single Life Table in Treasury Regulation Section 1.401(a)(9)-9.

(b) For purposes of a Distribution Calendar Year, the balance in a Participant's Accounts shall be determined as the balance as of the last Valuation Date in the Valuation Calendar Year as to such Distribution Calendar Year, increased by the amount of any contributions made and allocated to such balance as of dates in such Valuation Calendar Year after such Valuation Date and decreased by distributions made in such Valuation Calendar Year after such Valuation Date. An Account balance for a Valuation Calendar Year as to a Distribution Calendar Year shall include any amounts rolled over or transferred to the Plan either in such Valuation Calendar Year or in such Distribution Calendar Year if distributed or transferred in such Valuation Calendar Year.

ARTICLE IX

TRUST AND TRUSTEE

9.1 Establishment of Trust

The Trustee shall receive all contributions paid to it by the Town, and shall hold, manage, invest, reinvest and administer all such contributions in trust pursuant to the provisions of the Trust Agreement to which the Trustee is a party.

9.2 Resignation and Removal of Trustee

In accordance with the procedure specified in the Trust Agreement to which a Trustee is a party, such Trustee shall have the right to resign at any time by giving written notice to the Town which is a party to such agreement, and may be removed by the RTM upon written notice. In the event of removal of or resignation of a Trustee, the RTM may appoint a successor Trustee who shall have the same powers and duties conferred upon its predecessor.

9.3 Powers and Duties of Trustee

The Trustee shall have such powers and duties as are specified in the Trust Agreement to which it is a party.

9.4 Payment of Compensation and Expenses

Subject to the provisions of the Trust Agreement to which it is a party:

- (a) No Trustee who is an officer or employee of the Town shall be paid any compensation for serving as Trustee. Any institutional Trustee shall be paid such reasonable compensation as shall from time to time be agreed upon in writing by the Town and such Trustee, and such compensation shall be paid by the Town, unless the Retirement Committee directs that it be paid from the Trust Fund.
- (b) All taxes of any and all kinds whatsoever that may be levied or assessed under existing or future laws upon, or in respect of, the Trust Fund or the income thereof shall be paid from the Trust Fund. To the extent such expenses or taxes are paid from the Trust Fund, they shall be charged against Participant's Accounts *pro rata*.

**ARTICLE X**

**PARTICIPANT DIRECTION OF INVESTMENT OF ACCOUNTS**

10.1 Participant Direction

(a) Subject to a procedure established by the Investment Committee and applied by it in a uniform nondiscriminatory manner, all Participants shall be permitted to direct the Trustee as to the investment of their Account balances in specific investment funds permitted under the Trust Agreement and designated by the Investment Committee. For purposes of this Section 10.1, the term "Participant" includes the Beneficiary or Beneficiaries of a deceased Participant. To the extent so directed, the Trustee is relieved of any fiduciary responsibilities as to the investment of a Participant's Accounts.

(b) The Investment Committee and the Trustee shall not have any duty to question any direction of a Participant as to his investment directions as to his Accounts, and the Trustee shall comply as promptly as practicable with directions given by the Participant hereunder; provided, however, that the Trustee may refuse to comply with any direction from the Participant in the event the Trustee, in its sole and absolute discretion, deems such directions improper by virtue of applicable law.

(c) Notwithstanding Section 10.1(a), a Participant shall have the right to transfer multiples of 1% of the value of his accounts in such investment funds to any one or more of the other such investment funds on an unlimited basis, subject to any withdrawal or investment restrictions of any such investment fund.

10.2 Default Investment Choice

If a Participant fails to designate, in accordance with Section 10.1, how his Account balances should be invested, the Investment Committee shall direct the Trustee to invest such balances in an investment fund that the Investment Committee has specified for this purpose

10.3 Responsibility of Investment Committee and Trustee

The Investment Committee and the Trustee shall not be responsible or liable for any loss or expense which may arise from or result from compliance with any investment directions from the Participant nor shall the Investment Committee or the Trustee be responsible for, or liable for, any loss or expense which may result from the Trustee's refusal or failure to comply with any directions from the Participant.

10.4 Costs and Expenses

Any costs and expenses related to compliance with a Participant's investment directions pursuant to this Article X shall be borne by his Accounts.

ARTICLE XI

INVESTMENT COMMITTEE

11.1 Establishment of Investment Committee

(a) There is hereby established an Investment Committee consisting of the Town's First Selectman or First Selectwoman, the chair of the Town's Board of Finance, the Town's Finance Director and the Town's Personnel Director (the "Permanent Members") and one person designated from time to time by the Permanent Members (the "Appointed Member"). The chair of the Investment Committee shall be said Finance Director.

(b) The Appointed Member may resign at any time by giving at least 30 days' written notice to the Town. The Permanent Members may remove the Appointed Member any time with or without cause by giving him notice in writing to such effect. The Permanent Member may fill any vacancy in the membership of the Investment Committee attributable to the Appointed Member and shall give prompt written notice thereof to the Trustee. While there is a vacancy in the membership of the Investment Committee, the remaining Investment Committee members shall have the same powers as the full Investment Committee until the vacancy is filled.

11.2 Meetings of Investment Committee

(a) The Investment Committee shall meet at such time and for such periods for the transaction of necessary business as it may decide. All such meetings shall be at the determination of the Investment Committee.

(b) To constitute a quorum for the transaction of business, the attendance of a majority of the members of the Investment Committee shall be required. Decisions of the Investment Committee shall be made only by the concurring vote of a majority of all the members present.

11.3 Compensation and Expenses of Investment Committee

The members of the Investment Committee shall receive no compensation from the Trust Fund for any services performed hereunder, but shall be entitled to reimbursement for any reasonable expenses incurred in the performance of their duties.

11.4 Authority, Powers and Duties of Investment Committee

(a) The Investment Committee shall have the following powers, rights and duties in addition to those vested in it elsewhere in the Plan, to be exercised in its complete discretion, to-wit:

- (1) To develop an investment policy statement for purpose of selecting the specific investment funds to be made available to Participants for the investment of their Accounts pursuant to Article X and to select such funds in accordance with such statement;
- (2) To designate one such investment fund as the default investment fund in which shall be invested the Accounts of Participants who fail to select any such investment fund;
- (3) To monitor the performance of each such investment fund in accordance with the criteria specified in such investment policy statement and to report to the Retirement Committee not less than annually as to such performance;
- (4) To develop procedures for Participants to invest their Accounts among such investment funds;
- (5) To direct the Trustee as to the voting of shares of such investment funds held in the Trust Fund; and
- (6) To appoint an investment manager to assist the Investment Committee in the performance of its duties; provided, however, that the Investment Committee shall not appoint any person as investment manager other than (i) a person registered under the Investment Advisers Act of 1940 or (ii) a bank.

11.5 Protection of Investment Committee

(a) The Investment Committee and each individual member thereof shall be fully protected in acting upon any instrument, certificate, or paper believed by them to be genuine and to be signed or presented by the proper person or persons, and shall be under no duty to make any investigation or inquiry as to any statement contained in any such writing, but may accept the same as conclusive evidence of the truth and accuracy of the statements therein contained.

(b) The Investment Committee shall be entitled to rely upon all certificates and reports made by any duly-appointed advisors acting in the areas of their respective professional expertise and upon all opinions, advice and certifications given by any duly appointed legal counsel.

(c) The Investment Committee and each member thereof shall be fully protected, to the extent permitted by law, against any action taken in good faith in reliance upon any such certificates, reports, opinions or advice. All actions so taken shall be conclusive upon each of them and upon all persons having any interest under the Plan.

(d) No member of the Investment Committee shall be personally liable by virtue of any instrument executed by him or on his behalf as a member of the Investment Committee, or for any mistake or judgment made by himself or any other member thereof or for any neglect, omission or wrongdoing of any other member to the extent permitted by law.

(e) Each member of the Investment Committee shall be indemnified by the Town against expenses reasonably incurred by him in connection with any action to which he may be a party by reason of his membership on the Investment Committee except in relation to matters as to which he shall be adjudged in such action to be liable for gross negligence or willful misconduct in the performance of his duty as a member of the Investment Committee. The foregoing right of indemnification shall be in addition to any other rights to which the Investment Committee may be entitled as a matter of law.

(f) The Investment Committee may from time to time consult with legal counsel and shall be fully protected in acting and relying upon advice of such counsel to the extent permitted by law.

(g) The cost and expenses of any action, suit or proceeding brought by or against the Investment Committee or any of the members thereof (including counsel fees) may be paid from the Trust Fund, except in relation to matters as to which it shall be adjudged in such action, suit or proceeding, that such member of the Investment Committee was acting in bad faith in the performance of his duties hereunder.

(h) The Investment Committee shall not be bound by any notice, direction, requisition, advice or request, unless and until it shall have been received by the Investment Committee.

(i) The Investment Committee may seek judicial protection by any action or proceeding it may deem necessary to settle its accounts, or to obtain a judicial determination or declaratory judgment as to any question of construction of the Plan or instructions as to any action thereunder.

ARTICLE XII

RETIREMENT COMMITTEE

12.1 Establishment of Retirement Committee

(a) There is hereby established a Retirement Committee consisting of the Town's First Selectman or First Selectwoman, the chair of the Town's Board of Finance, the Town's Personnel Director, one Elector appointed by the Town's Board of Selectmen (the "Elector Member") and one Participant in the Plan appointed by the First Selectman or First Selectwoman (the "Participant Member"). The term of appointment of the Elector Member shall be 3 years. The chair of the Retirement Committee shall be said Personnel Director.

(b) The Elector Member or the Participant Member may resign at any time by giving at least 30 days' written notice to the Town. The Board of Selectmen may remove the Elector Member any time with or without cause by giving him notice in writing to such effect. The Board of Selectmen may fill any vacancy in the membership of the Retirement Committee attributable to the Elector Member and shall give prompt written notice thereof to the Trustee and the other Retirement Committee members. The First Selectman or First Selectwoman may remove the Participant Member any time with or without cause by giving him notice in writing to such effect. The First Selectman or First Selectwoman may fill any vacancy in the membership of the Retirement Committee attributable to the Participant Member and shall give prompt written notice thereof to the Trustee and the other Retirement Committee members. While there is a vacancy in the membership of the Retirement Committee, the remaining Retirement Committee members shall have the same powers as the full Retirement Committee until the vacancy is filled.

12.2 Meetings of Retirement Committee

(a) The Retirement Committee shall meet at such time and for such periods for the transaction of necessary business as it may decide. All such meetings shall be at the determination of the Retirement Committee.

(b) To constitute a quorum for the transaction of business, the attendance of a majority of the members of the Retirement Committee shall be required. Decisions of the Retirement Committee shall be made only by the concurring vote of a majority of all the members present.

12.3 Compensation and Expenses of Retirement Committee

The members of the Retirement Committee shall receive no compensation from the Trust Fund for any services performed hereunder, but shall be entitled to reimbursement for any reasonable expenses incurred in the performance of their duties.

12.4 Authority, Powers and Duties of Retirement Committee

(a) The Plan shall be administered by the Retirement Committee, which shall have the following powers, rights and duties in addition to those vested in it elsewhere in the Plan, to be exercised in its complete discretion, to-wit:

- (1) To promulgate and establish the rules, regulations and procedures dealing with applications for benefits, determination of eligibility, calculation of benefit amounts and authorization of benefit payments;
- (2) To interpret and apply the various provisions of the Plan, which shall be final and binding on Participants and Beneficiaries;
- (3) To request of the Town to retain legal counsel to advise the Retirement Committee concerning legal issues arising under the Plan and investment advisors in connection with the investment of the assets of the Trust Fund;
- (4) To request direction from the First Selectman or First Selectwoman, and on receipt of such direction in writing, the Retirement Committee shall be entitled to rely and act thereon;
- (5) To pay or authorize payment from the Trust Fund all reasonable expenses of administering the Plan, including, but not limited to, all expenses which may be incurred in connection with the establishment of the Plan, the purchase or lease of such office space, materials, supplies and equipment, and the employment of such administrative, legal, expert and clerical assistance as the Retirement Committee, in its discretion, finds necessary or appropriate in the performance of its duties;
- (6) To delegate any ministerial powers or duties to any agent or employee engaged by the Retirement Committee, or to any employee of the Town, or to any one or more of the members of the Retirement Committee;
- (7) To issue to any Participant upon his request a statement of his standing showing the amount of his contributions, Years of Service and such other pertinent data as the Retirement Committee deems proper;
- (8) To hear and determine any claims relating to the administration of the Plan pursuant to Section 12.7:
- (9) To advise and inform the Town as to the details of the administration of the Plan; and
- (10) To issue directions to the Trustee as to distributions to Participants and payment of the expense of administration of the Plan.



(b) The Retirement Committee shall maintain accounts showing the fiscal transactions of the Plan, and shall keep in convenient form such data as may be necessary for determination of benefits and actuarial valuations of the assets and liabilities of the Plan;

12.5 Modification of Plan

The Retirement Committee shall have no power to change or modify any provisions of the Plan.

12.6 Protection of Retirement Committee

(a) The Retirement Committee and each individual member thereof shall be fully protected in acting upon any instrument, certificate, or paper believed by them to be genuine and to be signed or presented by the proper person or persons, and shall be under no duty to make any investigation or inquiry as to any statement contained in any such writing, but may accept the same as conclusive evidence of the truth and accuracy of the statements therein contained.

(b) The Retirement Committee shall be entitled to rely upon all certificates and reports made by any duly-appointed advisors acting in the areas of their respective professional expertise and upon all opinions, advice and certifications given by any duly appointed legal counsel.

(c) The Retirement Committee and each member thereof shall be fully protected, to the extent permitted by law, against any action taken in good faith in reliance upon any such certificates, reports, opinions or advice. All actions so taken shall be conclusive upon each of them and upon all persons having any interest under the Plan.

(d) No member of the Retirement Committee shall be personally liable by virtue of any instrument executed by him or on his behalf as a member of the Retirement Committee, or for any mistake or judgment made by himself or any other member thereof or for any neglect, omission or wrongdoing of any other member to the extent permitted by law.

(e) Each member of the Retirement Committee shall be indemnified by the Town against expenses reasonably incurred by him in connection with any action to which he may be a party by reason of his membership on the Retirement Committee except in relation to matters as to which he shall be adjudged in such action to be liable for gross negligence or willful misconduct in the performance of his duty as a member of the Retirement Committee. The foregoing right of indemnification shall be in addition to any other rights to which the Retirement Committee may be entitled as a matter of law.

(f) The Retirement Committee may from time to time consult with legal counsel and shall be fully protected in acting and relying upon advice of such counsel to the extent permitted by law.

(g) The cost and expenses of any action, suit or proceeding brought by or against the Retirement Committee or any of the members thereof (including counsel fees) may be paid from the Trust Fund, except in relation to matters as to which it shall be adjudged in such action, suit or proceeding, that such member of the Retirement Committee was acting in bad faith in the performance of his duties hereunder.

(h) The Retirement Committee shall not be bound by any notice, direction, requisition, advice or request, unless and until it shall have been received by the Retirement Committee.

(i) The Retirement Committee may seek judicial protection by any action or proceeding it may deem necessary to settle its accounts, or to obtain a judicial determination or declaratory judgment as to any question of construction of the Plan or instructions as to any action thereunder.

(j) No person, partnership, corporation or association dealing with the Retirement Committee shall be obliged to see to the application of any funds, securities or other property paid or delivered to the Retirement Committee as a purchase price or otherwise, or to see that the terms of the Plan have been complied with, or be obliged to inquire into the authority of the Retirement Committee, or the necessity or expediency of any act of the Retirement Committee, and every instrument effected by the Retirement Committee shall be conclusive in favor of any person, partnership, corporation or association relying thereon that:

- (1) At the time of the delivery of said instrument the Plan was in full force and effect;
- (2) Said instrument was effected in accordance with the terms and conditions of the Plan; and
- (3) The Retirement Committee was duly authorized and empowered to execute such instrument.

12.7 Review Procedures of Retirement Committee

(a) Upon the Retirement Committee's receipt of a written request for benefits under the Plan as filed by a Participant or Beneficiary (a "Claimant") on a form furnished for that purpose, the Retirement Committee shall act thereon in accordance with the following:

- (1) In the event the Retirement Committee approves the request, such Claimant shall be so notified within a period not to exceed 90 days from the date of the filing of such request; or
- (2) In the event the Retirement Committee denies such request, in whole or in part, such Claimant shall be so notified by the Retirement Committee within a period not to exceed 90 days from the date of the filing of the request by such Participant or Beneficiary.

(b) The notice of denial by the Retirement Committee shall set forth the reasons for the denial of the request for benefits, citing:

- (1) The pertinent provisions of the Plan;
- (2) Any interpretation or rule relied upon by the Retirement Committee in making its decision;
- (3) A description of any additional material or reason required in connection with the request and the reasons therefor;
- (4) The right of such Claimant to inspect Plan documents pertinent to the request; and/or
- (5) A description of the steps that may be taken by such Claimant to obtain a review of the denial.

12.8 Final and Binding Decisions of Retirement Committee

All decisions of the Retirement Committee, including all those made in the interpretation and administration of the Plan, shall be conclusive, final and binding upon all Participants and Beneficiaries. No Participant or Beneficiary shall have or acquire any right, title or interest in or to the Trust Fund or any portion of the Trust Fund, except by the actual payment or distribution of a portion of the Trust Fund to him under the provisions of the Plan. The determination of the Retirement Committee as to the identity of the proper payee of any benefit under the Plan and the amount of such benefit properly payable shall be conclusive, and payment in accordance with such determination shall constitute a complete discharge of all obligations on account of such benefit. Any action to stay, confirm, set aside or modify a decision hereunder shall be brought in the courts of the State of Connecticut.

12.9 Retirement Committee Member Who Is a Participant

Any member of the Retirement Committee who is a Participant in the Plan may not decide any matter concerning distributions of any kind to be made to him unless such decision could be made by him under the Plan if he were not a member of the Retirement Committee.

**ARTICLE XIII**

**QUALIFIED MILITARY SERVICE**

13.1 In General

Effective December 12, 1994, notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit as to Qualified Military Service shall be provided in accordance with Section 414(u).

13.2 Death of Participant While Performing Qualified Military Service

Effective as to deaths occurring on or after January 1, 2007, in the case of a Participant who dies while performing Qualified Military Service, his survivors shall be entitled to any additional benefits (other than benefit accruals related to the period of Qualified Military Service) that may be provided under the Plan had he then resumed and terminated employment on account of death.

**ARTICLE XIV**

**AMENDMENT AND TERMINATION; NO REVERSION TO TOWN**

14.1 Amendment of Plan

The Town, acting through the RTM, shall have the right at any time, and from time to time, to amend, in whole or in part, any or all of the provisions of the Plan; provided, that no such amendment shall:

- (a) Authorize or permit any part of the Trust Fund to be used for or diverted to purposes other than for the exclusive benefit of the Participants or their Beneficiaries;
- (b) Cause any reduction in the amount theretofore credited to the Account of any Participant, or cause or permit any portion of the Trust Fund to revert to or become the property of the Town; or
- (c) In the case of any amendment which affects the rights, duties or responsibility of the Trustee, increase or otherwise change such rights, duties or responsibilities without the Trustee's prior written consent.

An amendment shall become effective upon authorization by resolutions of the RTM and execution by the Town of an appropriate written instrument and, if the rights or duties of the Trustee are affected, consent to the amendment by the Trustee. If any amendment changes any vesting schedule set forth in the Plan any Participant with 3 or more Years of Service may, by filing a written request with the Administrative Committee within 60 days after he has received notice of such amendment, elect to have the vested percentage of his Account determined by such schedule computed under the vesting schedule in effect prior to such amendment.

14.2 Termination of Plan; Discontinuance of Contributions

The Plan is voluntary on the part of the Town. The Town, acting through the RTM, reserves the right to terminate the Plan, in whole or in part, or the Trust Fund, or both, and to suspend, reduce or discontinue contributions at any time. Upon termination of the Plan, or upon the complete discontinuance of contributions, the Account balances of Participants to the date of such termination or discontinuance shall be nonforfeitable.

14.3 No Reversion to Town.

- (a) The Town shall have no beneficial interest in the Trust Fund and no part of the Trust Fund shall revert or be repaid to the Town, directly or indirectly.
- (b) Notwithstanding Section 14.3(a) or any other provision of the Plan, upon the Town's written request, a contribution which was made by a mistake of fact shall be returned to the Town by the Trustee within one year after the mistaken payment of such contribution. Earnings attributable to

a contribution which occurred due to a mistake of fact may not be returned to the Town and losses attributable thereto shall reduce the amount to be so returned.

**ARTICLE XV**

**MISCELLANEOUS**

15.1 Employment

Neither the establishment of the Plan or any amendment thereto, nor the creation of the Trust Fund or the payment of benefits hereunder, shall be construed as giving any Participant or Employee any right to be retained in the employ of the Town, and the Town hereby expressly retains the right to hire and discharge any Participant or Employee at any time, with or without cause, as if the Plan had not been adopted, and any such discharged Participant or Employee shall have only such rights or interests in the Trust Fund as may be specified herein.

15.2 Records

The records of the Town as to age, service, employment history, compensation, absences, illnesses, and all other relevant matters shall be conclusive for purposes of the administration of the Plan.

15.3 Usage

Pronouns and other similar words used herein in the masculine gender shall be read as the feminine gender where appropriate, and the singular form of words shall be read as the plural where appropriate.

15.4 Validity

The validity, construction and administration of this Plan shall be determined under the laws of the State of Connecticut, except to the extent such laws are preempted by federal law.

15.5 Counterparts

The Plan may be executed in any number of counterparts, each of which shall be considered an original but which together shall constitute a single plan.

15.6 Severability

In case any provision of the Plan shall be held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining provisions, but the illegal or invalid provision shall be fully severable and the plan shall be construed and enforced as if such provision had never been inserted herein.



15.7 Conditional Restatement

The provisions of the Plan as restated herein are subject to approval by the Internal Revenue Service confirming that the Plan continues to constitute a qualified plan under the Code and applicable rulings and regulations thereunder. No Participant or Beneficiary shall have any rights under the Plan as amended and restated herein unless and until such approval has been obtained, and the Town retains the right to make such amendments or changes in the Plan as may be necessary to obtain such approval.

15.8 Agent for Service of Process.

The Town shall be the agent for service of process as to the Plan.

*MCGUIREWOODS LLP DRAFT--8/15/12*

Dated this \_\_\_\_ day of \_\_\_\_\_, 2012.

THE TOWN OF WESTPORT,  
CONNECTICUT

By \_\_\_\_\_  
Gordon F. Joseloff  
First Selectman

The above and foregoing is a true and attested copy of the TOWN OF WESTPORT 401(k)  
PLAN, as amended and restated effective as of \_\_\_\_\_, 2012.

Attest: \_\_\_\_\_  
Patricia Strauss  
Town Clerk

39828530\_4

BACK UP MATERIAL  
RTM ITEM # 4

**TOWN OF WESTPORT  
DEFINED CONTRIBUTION RETIREMENT PLAN**

**Effective January 1, 2012**

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**PREAMBLE**

The Town of Westport, Connecticut hereby establishes the Town of Westport Defined Contribution Retirement Plan, effective as of January 1, 2012, except as otherwise provided herein, to read as follows:

**ARTICLE I**

**NAME, QUALIFIED STATUS AND EFFECTIVE DATE**

1.1 Name

The Plan shall be known as the “Town of Westport Defined Contribution Retirement Plan.”

1.2 Qualified Status

(a) It is intended that the Plan shall constitute a qualified profit-sharing plan and that the Trust shall be exempt from tax under the applicable provisions and the Treasury Regulations and rulings thereunder. If any provision of the Plan should be subject to more than one interpretation, such provision shall be interpreted in a manner which shall be consistent with the Plan being regarded as a qualified profit-sharing plan and the Trust being exempt from tax as aforesaid.

(b) Contributions to the Plan shall not be conditioned upon the existence of profits. The Plan shall nevertheless be a profit-sharing plan for all purposes under the Code, including without limitation Code Section 401(a)(11)(B)(ii).

1.3 Effective Date

The Plan, as set forth herein, shall be effective January 1, 2012, except as may otherwise be provided herein.

## ARTICLE II

### DEFINITIONS

For purposes of the Plan, the following words and phrases shall have the meanings indicated below unless the context clearly requires otherwise:

2.1 “Accounts” shall mean the individual bookkeeping accounts maintained for a Participant, consisting of one or more of the following: Pick-Up Account, Retirement Account and Matching Account.

2.2 “Annual Addition” shall mean, as to a Participant for any Limitation Year, the sum of:

- (a) Retirement Contributions allocated to the Retirement Account, and Matching Contributions allocated to the Matching Account, respectively, on behalf of such Participant for such Limitation Year under this Plan; and contributions by or on behalf of such Participant any other qualified defined contribution plan maintained by the Town [other than contributions by a participant to another retirement plan of the Town that are “picked up” by the Town pursuant to Code Section 414(h)(2)];
- (b) Forfeitures, if any, allocated to such Participant for such Limitation Year under any qualified defined contribution plan maintained by the Town;
- (c) Such Participant=s voluntary non-deductible contributions under any qualified plan of the Town for such Limitation Year;
- (d) Amounts allocated, after March 31, 1984, for such Limitation Year to an individual medical account, as defined in Code Section 415(l)(2), which is part of a pension or annuity plan maintained by the Town; and
- (e) Amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after said date, which are attributable to post-retirement medical benefits allocated for such Limitation Year to the separate account of a “key employee,” as defined in Code Section 419A(d)(3), under a welfare benefit fund, as defined in Code Section 419(e), maintained by the Town.

2.3 “Approved Absence” shall mean the period during which a Participant is on leave of absence approved in writing by the Town, and shall also include the period during which he is in military service with the Armed Forces of the United States (including Coast Guard and Merchant Marine Service) if he has reemployment rights under applicable laws and complies with the requirements of the law as to reemployment.

2.4 “Beneficiary” shall mean the person or persons designated by a Participant to receive any benefits payable under the Plan on account of the Participant=s death. If no person has been designated as a Beneficiary by a Participant, or if the designated Beneficiary or Beneficiaries (if more than one) are not in existence at the time of his death, the term “Beneficiary” shall mean the Participant=s surviving spouse, or if there is no surviving spouse, the Participant=s descendants who survive him, *per stirpes*; or if there are no such descendants, the Participant’s surviving parents, in equal shares; or of there are no surviving parents, the Participant=s estate. An Eligible Employee, upon becoming a Participant, may designate a Beneficiary of his own choosing, and may, in addition, designate a contingent Beneficiary. A Participant may at any time revoke his designation of a Beneficiary or change his Beneficiary previously designated. Any such designation, revocation or change shall be made in writing on forms provided for the purpose and filed with the Retirement Committee. Notwithstanding the preceding provisions of this Section 2.4, if a Participant is married at a time of his death, his vested interest in his Accounts shall be payable to his surviving spouse, unless he has designated some other Beneficiary and said surviving spouse has given her consent to the payment of such interest to such Beneficiary, which consent shall acknowledge the effect thereof. Any such consent (a) shall be in writing, (b) shall be witnessed by a notary public or by a representative of the Plan and (c) shall be effective only with respect to the spouse giving it. No consent shall be required where it is established to the satisfaction of the Retirement Committee that the Participant’s surviving spouse cannot be located.

2.5 “Code” shall mean the Internal Revenue Code of 1986, as amended from time to time.

2.6 “Compensation” shall mean, as to a Participant, “wages,” within the meaning of Code Section 3401(a) (for purposes of income tax withholding at the source), paid to him by the Town during the period he is a Participant, disregarding rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed [such as the exception for agricultural labor in Code Section 3401(a)(2)]. Notwithstanding the preceding sentence:

- (a) There shall be included in a Participant’s Compensation (1) any “elective deferral” [as defined in Code Section 402(g)(3)]; (2) any amount which is contributed or deferred by the Town at the election of such Participant and which is not includible in his gross income under Code Sections 125 or 132(f)(4); and (3) any Pick-Up Contributions.
- (b) There shall be excluded from a Participant’s Compensation all of the following: overtime, bonuses, commissions and all additions above base salary.
- (c) There shall be excluded from a Participant’s Compensation any amount paid after the termination of his employment, except that there shall be included in a Participant’s Compensation any payment after termination of his employment that is regular compensation for services during his regular working hours, or compensation for services outside such regular working hours (such as overtime), bonuses or other similar payments, if such payment

(1) would have been paid to him before termination of employment if he had continued in employment with the Town; and (2) is paid by the later of 2½ months after termination of employment or the end of the Limitation Year including the date of termination of employment.

- (d) The Compensation of each Participant taken into account for any Plan Year shall not exceed \$250,000 [subject to cost-of-living adjustments pursuant to Code Section 401(a)(17)(B)].

2.7 “Designated Beneficiary” shall mean, collectively, the individual or individuals who are designated as the beneficiary under Section 2.4 and who are the “designated beneficiary” under Code Section 401(a)(9) and Treasury Regulation Section 1.401(a)(9)-4, Q&A-1.

2.8 “Direct Rollover” shall mean a payment by the Plan to the Eligible Retirement Plan specified by a Distributee.

2.9 “Disability” shall mean, as to a Participant, his inability to perform any of the duties assigned by the Town because of a medically-determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of at least 12 months. **Notwithstanding the preceding sentence, “Disability” as to a Participant described in Section 2.13(b) shall mean total and permanent disability such that he is unable to perform his occupation at the onset of such disability.**

2.10 “Distributee” shall mean a Participant who is an Eligible Employee or former Eligible Employee. In addition, (a) such a Participant’s spouse or former spouse who is the alternate payee under a Qualified Domestic Relations Order, and (b) the surviving spouse of a deceased Participant who was an Employee or former Employee, shall be Distributees with regard to the interest of such spouse or former spouse in the Plan.

2.11 “Distribution Calendar Year” shall mean a calendar year for which a minimum distribution is required under Article IX. For distributions beginning before a Participant’s death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year which contains his Required Beginning Date. For distributions beginning after a Participant’s death (where he dies prior to his Required Beginning Date), the first Distribution Calendar Year is the calendar year in which distributions are required to begin under Section 9.2(b).

2.12 “Effective Date” shall mean January 1, 2012, except that Article III shall be effective \_\_\_\_\_, 2012.<sup>1</sup>

2.13 “Eligible Employee” shall mean:

- (a) An Employee who (1) first commenced employment with the Town after December 31, 2011; (2) regularly works for the Town for at least 20 hours

<sup>1</sup> The first day of the first payroll period after the approval of the plan by the RTM.

per week, and (3) is not covered by a collective bargaining agreement with the Town.

- (b) A full-time Employee of the Highway, Maintenance, Equipment Maintenance, Sewer Treatment Plant or Solid Waste Divisions of the Public Works Department of the Town who (1) first commenced employment with the Town after April 30, 2012 and (2) is either is a member of Local 1303-385, Council 4, American Federation of State, County and Municipal Employees, AFL-CIO or is eligible to become such a member.

2.14 “Eligible Retirement Plan” shall mean an Individual Retirement Account, an Individual Retirement Annuity, an annuity plan described in Code Section 403(a), or a qualified trust described in Code Section 401(a), which accepts a Distributee’s Eligible Rollover Distribution. The term “Eligible Retirement Plan” shall also include the following:

- (a) An annuity contract described in Code Section 403(b); and
- (b) An “eligible plan” which is maintained under Code Section 457(b) and which is maintained by a state or political subdivision of a state or instrumentality of a state and which agrees to separately account for amounts transferred to such plan from this Plan.

The foregoing definition of “Eligible Retirement Plan” shall apply in the case of a distribution to a surviving spouse of a Participant or to a spouse or former spouse of a Participant who is an alternate payee under a Qualified Domestic Relations Order.

2.15 “Eligible Rollover Distribution” shall mean any distribution of all or any portion of the balance to the credit of the Distributee under the Plan, except that an Eligible Rollover Distribution shall not include the following:

- (a) Any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee’s beneficiary, or for a specified period of 10 years or more;
- (b) Any distribution to the extent such distribution is required under Code Section 401(a)(9);
- (c) The portion of any distribution which is not includable in gross income; and
- (d) Any distribution which is made upon the hardship of a Participant.

The enumeration in the preceding sentence of any form of payment shall not imply that any person has the right to receive benefits under the Plan in such form unless otherwise specifically provided under the Plan.

2.16 “Employee” shall mean a person employed by and who receives Compensation from the Town. The term “Employee” shall not include (a) a Leased Employee; or (b) any person who is a nonresident alien and who receives no earned income [within the meaning of Code Section 911(d)(2)] which constitutes income from sources within the United States [within the meaning of Code Section 861(a)(3)].

2.17 “401(k) Plan” shall mean the Town of Westport 401(k) Plan.

2.18 “Hour of Service” shall mean each hour:

- (a) For which an Employee is paid, or entitled to payment, for the performance of duties for the Town during the applicable Plan Year;
- (b) For which an Employee, directly or indirectly, is paid, or entitled to payment, by the Town on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence; provided, however, that no more than 501 Hours of Service are required to be credited under this Section 2.18(b) to an Employee on account of any single continuous period during which such Employee performs no duties (whether or not such period occurs in a single Plan Year), and no Hours of Service are required to be credited to the Employee if such payment or entitlement to payment (i) is made or due under a plan maintained solely for the purpose of complying with applicable workers’ compensation, or unemployment compensation or disability insurance laws or (ii) solely reimburses such Employee for medical or medically-related expenses incurred by him; and
- (c) For which back pay, irrespective of mitigation of damages, is either awarded to an Employee or agreed by the Town to be paid to such Employee, with such hours to be credited to the Employee for the Plan Year or Plan Years to which the award or agreement pertains rather than the Plan Year in which the award, agreement or payment is made.

For purposes of this Section 2.18, a payment shall be deemed to be made by or due from the Town regardless of whether such payment is made by or due from the Town directly, or indirectly through, among others, a trust fund, or insurer, to which the Town contributes or pays premiums and regardless of whether contributions made or due to the trust fund, insurer or other entity are for the benefit of particular Employees or are on behalf of a group of Employees in the aggregate. The same Hours of Service shall not be credited under both Sections 2.18(a) or (b) and under Section 2.18(c). The special rules of the Department of Labor Regulations at 29 C.F.R. Sections 2530.200b-2(b) and

(c) relating to determining Hours of Service for reasons other than the performance of duties and crediting Hours of Service to computation periods are incorporated herein by this reference, even though such rules would not otherwise be applicable to the Plan. In the case of an Employee who is absent from work for any period (i) by reason of the Employee's pregnancy, the birth of a child of the Employee or the placement of a child with the Employee in connection with such child's adoption by the Employee or (ii) for purposes of caring for such child for a period beginning immediately following such birth or placement, the Plan shall treat as Hours of Service, solely in order to determine whether a One-Year Break in Service has occurred for purposes of eligibility, either (1) the Hours of Service which would normally have been credited to such Employee but for such absence, or (2) in any case in which the Plan is unable to determine the hours described in the preceding clause, 8 Hours of Service per day of such absence; provided, however, that the total number of hours treated as Hours of Service pursuant to this sentence by reason of any such pregnancy, birth or placement shall not exceed 501; and provided further that the Employee shall give the Retirement Committee such timely information as it may reasonably require to establish (i) that the absence from work is on account of one or more of the reasons enumerated above and (ii) the number of days for which there was such an absence. The hours described in the preceding sentence shall be treated as Hours of Service (A) only in the Plan Year in which the absence from work begins, if the Employee would be prevented from incurring a One-Year Break in Service in such period solely because periods of absence are treated as Hours of Service in accordance with the preceding sentence; or (B) in any other case, in the immediately following Plan Year.

2.19 "Individual Retirement Account" shall mean an account described in Code Section 408(a).

2.20 "Individual Retirement Annuity" shall mean an annuity described in Code Section 408(b).

2.21 "Investment Committee" shall mean the committee established pursuant to Section 12.1(a) having responsibility for the choice of investments to be available for Participant direction under Article XI.

2.22 "Leased Employee" shall mean any person (other than an employee of the recipient) who pursuant to an agreement between the recipient and any other person has performed services for the recipient [or for the recipient and related persons determined in accordance with Section 414(n)(6)] on a substantially full-time basis for a period of at least one year, and such services are performed under primary direction or control by the recipient.

2.23 "Limitation Year" shall mean the 12-month period for purposes of determining the limitation on Annual Additions, in accordance with Code Section 415, which period shall begin on July 1 and shall end on the following June 30.

2.24 "Matching Account" shall mean the Account established and maintained by the Retirement Committee for each Participant described in Section 5.2(a) as to his total interest in the Plan resulting from the Town's Matching Contributions on his behalf.



2.25 “Matching Contributions” shall mean the Town’s contributions to the Plan which are made pursuant to Section 5.2.

2.26 “Normal Retirement Date” shall mean the following:

(a) In the case of a Participant described in Section 2.13(a), the date he attains age 65.

(b) In the case of a Participant described in Section 2.13(b), the date he attains age 55.

2.27 “One-Year Break in Service” shall mean, as to a Participant, any Plan Year during which he fails to complete more than 500 Hours of Service.

2.28 “Participant” shall mean an Employee who has become a Participant in the Plan as provided in one or more of Articles III, IV and V and shall include any Participant no longer actively employed by the Town, and any Beneficiary of a deceased Participant, until all benefits due such Participant under the Plan shall have been fully distributed.

2.29 “Pick-Up Account” shall mean the Account established and maintained by the Retirement Committee for each Participant described in Section 3.2(a) as to his total interest in the Plan resulting from the Town’s Pick-Up Contributions on his behalf.

2.30 “Pick-Up Contributions” shall mean the Town’s contributions to the Plan which are made pursuant to Section 3.2.

2.31 “Plan” shall mean the Town of Westport Defined Contribution Retirement Plan, as set forth herein.

2.32 “Plan Year” shall mean the calendar year.

2.33 “Qualified Domestic Relations Order” shall mean an order described in Code Section 414(p)(1)(A).

2.34 “Qualified Military Service” shall mean any service in the “uniformed services” (as defined in Chapter 43 of Title 38, United States Code) by any individual if such individual is entitled to reemployment rights under such chapter as to such service.

2.35 “Required Beginning Date” shall mean, as to a Participant, April 1 of the calendar year following the later of (a) the calendar year in which he attains age 70½ or (b) the calendar year in which he retires.

2.36 “Retirement Account” shall mean the Account established and maintained by the Retirement Committee for each Participant described in Section 4.2 as to his total interest in the Plan resulting from the Town’s Retirement Contributions.

2.37 “Retirement Committee” shall mean the committee established under Section 13.1(a) to administer the Plan.

2.38 “Retirement Contributions” shall mean the Town’s contributions to the Plan which are made pursuant to Section 4.2.

2.39 “RTM” shall mean the Representative Town Meeting of the Town.

2.40 “Town” shall mean the Town of Westport, Connecticut.

2.41 “Trust” shall mean the trust created pursuant to a Trust Agreement.

2.42 “Trust Agreement” shall mean the agreement between the Town and a corporation, establishing the Trust.

2.43 “Trustee” shall mean, as to a Trust Agreement, the corporation acting as trustee thereunder. As of the Effective Date, the Trustee is Wells Fargo Bank, N.A.

2.44 “Trust Fund” shall mean the cash, securities and any other property held by the Trustee pursuant to the provisions of the Trust Agreement, together with any earnings or income therefrom.

2.45 “Valuation Calendar Year” shall mean, as to a Distribution Calendar Year, the calendar year immediately preceding such Distribution Calendar Year.

2.46 “Valuation Date” shall mean each day as of which the assets of Trust are valued.

2.47 “Year of Service” shall mean, as to a Participant, a Plan Year during which he completes at least 1,000 Hours of Service. In determining the Years of Service of a Participant:

- (a) There shall be included all of his Years of Service with the Town.
- (b) His Years of Service prior to a One-Year Break in Service shall be disregarded until he has completed a Year of Service after his reemployment.
- (c) His Years of Service prior to any period of consecutive One-Year Breaks in Service shall be disregarded if he did not have a nonforfeitable right to any portion of his Accounts at the time his employment was terminated and the number of consecutive One-Year Breaks in Service within such period equals or exceeds the greater of (1) 5 or (2) the aggregate number of Years of Service before such period.
- (d) In the case of a Participant who has incurred a period of 5 consecutive One-Year Breaks in Service, Years of Service after such period shall not be taken

into account for purposes of determining the vested percentage of his Profit-Sharing Account which accrued before such period.

ARTICLE III

PICK-UP CONTRIBUTIONS

3.1 Eligibility

(a) Each Eligible Employee described in Section 2.13(a) shall become a Participant for purposes of this Article III as of the later of

- (1) \_\_\_\_\_, 2012;<sup>2</sup> or
- (2) The day he first commenced employment with the Town as an Eligible Employee.

(b) Each Eligible Employee described in Section 2.13(b) shall become a Participant for purposes of this Article III as of the later of:

- (1) \_\_\_\_\_, 2012;<sup>3</sup> or
- (2) The first payroll period following the later to occur of:
  - (i) His attainment of age 21; or
  - (ii) His completion of ~~six~~6 calendar months as an Eligible Employee, counting the first such month as a whole month regardless of when he began employment as an Eligible Employee.

(c) To participate for purposes of this Article III, an Eligible Employee must follow the procedures for enrollment specified by the Retirement Committee, which may involve completing enrollment forms and returning them to the Retirement Committee or completing the documents electronically. If an Eligible Employee fails to complete any such forms, the Retirement Committee may determine that he shall nevertheless be enrolled in the Plan.

(d) Once an Eligible Employee has become a Participant for purposes of this Article III, he does not have to meet eligibility requirements again. If a Participant for purposes of this Article III terminates employment with the Town and is later rehired as an Eligible Employee, he will again become an active Participant for purposes of this Article III as of his rehire date.

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<sup>2</sup> The first day of the first payroll period after the approval of the plan by the RTM.

<sup>3</sup> The first day of the first payroll period after the approval of the plan by the RTM.

3.2 Pick-Up Contributions

(a) For each Plan Year, each Eligible Employee described in Section 2.13(a) who is a Participant for purposes of this Article III shall contribute 3.5% of his Compensation to the Plan as a Pick-Up Contribution; provided, however, that Compensation, if any, earned between January 1, 2012 and \_\_\_\_\_, 2012<sup>4</sup> shall not be taken into account.<sup>5</sup>

(b) For each Plan Year, each Eligible Employee described in Section 2.13(b) who is a Participant for purposes of this Article III shall contribute 5% of his Compensation to the Plan as a Pick-Up Contribution; provided, however, that his Compensation attributable to that portion of the Plan Year before he became a Participant for purpose of this Article III shall not be taken into account.

(c) In accordance with Code Section 414(h)(2), the Town shall “pick up” the contributions required of Participants under this Section 3.2, such that the contributions so picked up shall be considered contributions of the Town rather than Participant contributions under the Code. Although such contributions are designated as Participant contributions, they shall be treated as being paid by the Town in lieu of contributions by Participants. No Participant shall have the option of choosing to receive the contributed amounts directly instead of having them paid by the Town to the Plan.

(d) A Participant’s Pick-up Contributions shall be credited to his Pick-Up Account.

3.3 Vesting

A Participant shall always be fully vested in the balance in his Pick-Up Account.

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<sup>4</sup> The first day of the first payroll period after the approval of the plan by the RTM.

<sup>5</sup> Pick-Up contributions cannot be made for the period between January 1 and the beginning of the payroll period after the plan is adopted by the RTM. Thus, compensation earned during that period is disregarded.

ARTICLE IV

RETIREMENT CONTRIBUTIONS

4.1 Eligibility

(a) Each Eligible Employee described in Section 2.13(a) shall become a Participant for purposes of this Article IV as of the later of

- (1) \_\_\_\_\_, 2012;<sup>6</sup> or
- (2) The day he first commenced employment with the Town as an Eligible Employee.

(b) Each Eligible Employee described in Section 2.13(b) shall become a Participant for purposes of this Article IV as of the later of:

- (1) \_\_\_\_\_, 2012;<sup>7</sup> or
- (2) The first payroll period following the later to occur of:
  - (i) His attainment of age 21; or
  - (ii) His completion of ~~six~~6 calendar months as an Eligible Employee, counting the first such month as a whole month regardless of when he began employment as an Eligible Employee.

(c) To participate for purposes of this Article IV, an Eligible Employee must follow the procedures for enrollment specified by the Retirement Committee, which may involve completing enrollment forms and returning them to the Retirement Committee or completing the documents electronically. If an Eligible Employee fails to complete any such forms, the Retirement Committee may determine that he shall nevertheless be enrolled in the Plan.

(d) Once an Eligible Employee has become a Participant for purposes of this Article IV, he does not have to meet eligibility requirements again. If a Participant for purposes of this Article IV terminates employment with the Town and is later rehired as an Eligible Employee, he will again become an active Participant for purposes of this Article IV as of his rehire date.

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<sup>6</sup> The first day of the first payroll period after the approval of the plan by the RTM.

<sup>7</sup> The first day of the first payroll period after the approval of the plan by the RTM.

4.2 Retirement Contributions

(a) For each Plan Year, the Town shall contribute to the Trust Fund 3.5% of the Compensation<sup>8</sup> of each Participant described in Section 2.13(a) who:

- (1) Is employed by the Town on the last day of such Plan Year; or
- (2) Retired (on or after his Normal Retirement Date), died or became Disabled during such Plan Year.

(b) For each Plan Year, the Town shall contribute to the Trust Fund 5% of the Compensation of each Participant described in Section 2.13(b) who:

- (1) Is employed by the Town on the last day of such Plan Year; or
- (2) Retired (on or after his Normal Retirement Date), died or became Disabled during such Plan Year;

provided, however, that his Compensation attributable to that portion of the Plan Year before he became a Participant for purpose of this Article IV shall not be taken into account.

(c) The Town's Retirement Contributions on behalf of a Participant shall be credited to his Retirement Account.

4.3 Vesting

A Participant shall be vested in the balance in his Retirement Account according to the following schedule:

<u>Years of Service</u>	<u>Vested Percentage</u>
Less than 1	0%
1	20%
2	40%
3	60%
4	80%
5 or more	100%

Notwithstanding the preceding schedule, a Participant shall be fully vested in his Retirement Account if he attains his Normal Retirement Date while employed by the Town, or in the event of his death or Disability while employed by the Town.

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<sup>8</sup> Unlike Pick-Up Contributions (Footnote 5), the Town's Retirement Contributions for 2012 can be made retroactive to the hire date of non-union employees hired in 2012

## ARTICLE V

### MATCHING CONTRIBUTIONS

#### 5.1 Eligibility

(a) Each Eligible Employee described in Section 2.13(a) shall become a Participant for purposes of this Article V as of the later of (a) January 1, 2012 or (b) the day he first commenced employment with the Town as an Eligible Employee.

(b) To participate for purposes of this Article V, an Eligible Employee described in Section 2.13(a) must follow the procedures for enrollment specified by the Retirement Committee, which may involve completing enrollment forms and returning them to the Retirement Committee or completing the documents electronically. If an Eligible Employee fails to complete any such forms, the Retirement Committee may determine that he shall nevertheless be enrolled in the Plan.

(c) Once an Eligible Employee has become a Participant for purposes of this Article V, he does not have to meet eligibility requirements again. If a Participant for purposes of this Article V terminates employment with the Town and is later rehired as an Eligible Employee, he will again become an active Participant for purposes of this Article V as of his rehire date.

#### 5.2 Matching Contributions

(a) For each Plan Year, the Town shall contribute to the Trust Fund 100% of the contributions to the 401(k) Plan of a Participant described in Section 5.1(a) during such Plan Year, excluding any such contributions greater than 3.5% of his Compensation during such Plan Year, provided that such Participant:

- (1) Is employed by the Town on the last day of such Plan Year; or
- (2) Retired (on or after his Normal Retirement Date), died or became Disabled during such Plan Year.

(b) The Town's Matching Contributions on behalf of a Participant shall be credited to his Matching Account.

#### 5.3 Vesting

A Participant shall be vested in the balance in his Matching Account according to the following schedule:



*McGUIREWOODS LLP DRAFT—VERSION OF 8/15/12 VS. VERSION OF 7/30/12*

<u>Years of Service</u>	<u>Vested Percentage</u>
Less than 1	0%
1	20%
2	40%
3	60%
4	80%
5 or more	100%

Notwithstanding the preceding schedule, a Participant shall be fully vested in his Matching Account if he attains his Normal Retirement Date while employed by the Town, or in the event of his death or Disability while employed by the Town.

**ARTICLE VI**

**LIMITS ON ANNUAL ADDITIONS**

6.1 Limits on Annual Additions

In no event shall any Annual Addition as to a Participant for a Limitation Year exceed the lesser of:

- (a) \$50,000, or such higher amount as may be permitted at the relevant time under Code Section 415(c) ; or
- (b) 100% of the Compensation paid to the Participant by the Town during such Limitation Year.

For purposes of Section 6.1(b), Compensation shall be determined without regard to Sections 2.6(a)(3) and 2.6(b).

6.2 Reduction of Annual Additions

Otherwise permissible Annual Additions as to a Participant under this Plan shall be reduced to the extent necessary, as determined by the Retirement Committee, to prevent disqualification of the Plan for exceeding the limits under Code Section 414. The Retirement Committee shall advise affected Participants of any reduction of their Annual Additions required by the preceding sentence.

6.3 Corrections of Excess Annual Additions

The correction of excess Annual Additions occurring due to a reasonable error in estimating Participants' Compensation shall be made pursuant to the terms of the correction methods provided for under Revenue Procedure 2008-50, or any subsequent Internal Revenue Service correction programs.

## ARTICLE VII

### ACCOUNTING AND ALLOCATIONS

#### 7.1 Individual Accounts

Adequate records shall be established and maintained to disclose the interest of each Participant in the Trust Fund. Such records shall be in the form of individual Accounts which shall be credited and charged in the manner provided in the Plan.

#### 7.2 Valuation of Trust Fund

The assets of the Trust Fund shall be valued at fair market value as of each Valuation Date. As to each investment fund subject to Participant direction in accordance with Section 11.1, the earnings or losses thereof since the preceding Valuation Date shall be allocated among the Accounts of Participants holding shares or units of such fund *pro rata*. Each Account shall be adjusted for distributions and repayments since the immediately preceding Valuation Date.

#### 7.3 Allocation of Contributions

(a) As of each Valuation Date, the Pick-Up Contributions received by the Trustee since the preceding Valuation Date shall be credited to the Pick-Up Accounts of the Participants on whose behalf such contributions were made.

(b) As of the last day of a Plan Year, the Retirement Contribution on behalf of each Participant entitled thereto under Section 4.2 shall be credited to the Retirement Account of such Participant, regardless of whether such contribution is received by the Trustee on that date or thereafter.

(c) As of the last day of a Plan Year, the Matching Contribution on behalf of each Participant entitled thereto under Section 5.2 shall be credited to the Matching Account of such Participant, regardless of whether such contribution is received by the Trustee on that date or thereafter.

#### 7.4 Statements of Accounts

Each Participant shall receive a statement of the balance in his Accounts not less than quarterly.

## ARTICLE VIII

### DISTRIBUTION OF BENEFITS

#### 8.1 Termination of Employment on Account of Retirement, Death or Disability

If a Participant's employment with the Town is terminated on or after he attains his Normal Retirement Date, or on account of death or Disability, the Retirement Committee shall as soon as practicable thereafter, direct the Trustee to distribute the entire balance in his Accounts to or for his benefit, or to or for the benefit of his Beneficiary, as the case may be, in the manner provided in Section 8.3.

#### 8.2 Other Termination of Employment

(a) Upon the termination of a Participant's employment for any reason other than as specified in Section 8.1, the Retirement Committee shall as soon as practicable thereafter, direct the Trustee to distribute the entire vested balance in his Accounts to or for his benefit, or to or for the benefit of his Beneficiary, as the case may be, in the manner provided in Section 8.3. Upon payment of such amount, any nonvested portion of his Retirement Account and/or Matching Account shall be immediately forfeited. Forfeited amounts shall be used to reduce the Town's Retirement Contributions and Matching Contributions.

(b) The forfeited portion of the Retirement Account or Matching Account of a terminated Participant shall be restored if such Participant:

- (1) Resumes employment with the Town before the expiration of:
  - (i) In the case of layoff, 5 years; or
  - (ii) In the case of Approved Absence, one year; or
  - (iii) In the case of termination due to other non-voluntary causes, or to voluntary causes, 5 years from the date of his termination; and
- (2) Repays to the Plan, within the first 12 months following reemployment, the vested portion of his Retirement Account or Retirement Account and Matching Account that was distributed to him.

#### ~~8.3~~8.2 Method of Making Distributions

(a) Distribution of the vested credit balance in a Participant's Accounts shall be made to or for his benefit, or to or for the benefit of his Beneficiary, by payment in a lump sum, except as provided in ~~Section~~Sections 8.2(b) and 9.3.

(b) In lieu of a distribution of the vested balance in his Accounts in a lump sum, a Participant described in Section 2.13(b) may elect to receive the distribution of the vested balance in his Accounts in monthly, quarterly, semi-annual or annual installments commencing on a date selected by him and over a period not greater than (1) 10 years or (2) his life expectancy [determined using the “Single Life Table” in Treasury Regulation Section 1.401(a)(9)-1, Q&A-1 in the year in which such installments commence].

#### 8.4 Direct Rollovers of Eligible Rollover Distributions

(a) Notwithstanding any other provision of the Plan to the contrary which would otherwise limit a Distributee's election under this Section 8.4, a Distributee may elect, at the time and in the manner permitted by the Retirement Committee, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

(b) Any portion of a distribution from the Plan on account of the death of a Participant may be paid in a direct trustee-to-trustee transfer to an “individual retirement plan” described in Clauses (i) or (ii) of Code Section 402(c)(8)(B), established for the purposes of receiving the distribution on behalf of an individual who is a Designated Beneficiary of such Participant and who is not the surviving spouse of such Participant. In such event:

- (1) Such transfer shall be treated as an Eligible Rollover Distribution;
- (2) Such individual retirement plan shall be treated as an inherited Individual Retirement Account or inherited Individual Retirement Annuity [within the meaning of Code Section 408(d)(3)(C)]; and
- (3) Code Section 401(a)(9)(B) [other than Clause (iv) thereof] shall apply to such individual retirement plan.

For purposes of this Section 8.4(b), to the extent provided in applicable regulations, a trust maintained for the benefit of one or more Designated Beneficiaries shall be treated in the same manner as a Designated Beneficiary.

#### 8.5 Distributions to Terminated Participants of \$1,000 or More

If, pursuant to Sections 8.1 or 8.2, the sum of the vested Account balances of a Participant whose employment has terminated is \$1,000 or more, and such Participant does not elect to receive a distribution of his vested Account balances directly or, pursuant to Section 8.4, to have a distribution of his vested Account balances paid to an Eligible Retirement Plan in a Direct Rollover, the Retirement Committee shall cause a distribution of his vested Account balances to be paid in a direct rollover to an Individual Retirement Account.

8.6 In-Service Distributions

Upon or after reaching his Normal Retirement Date while still employed, a Participant may request that the Retirement Committee direct the Trustee to distribute all or any portion of the balance of his Accounts. No more than one such request may be made during each Plan Year.

**8.7 Hardship Withdrawals**

**(a) For purposes of this Section 8.7, the term “Participant” means a Participant described in Section 2.13(b).**

**(b) A Participant shall be permitted to make a hardship withdrawal of any amount attributable to all or a portion of his Pick-Up Account, excluding any Plan earnings thereon. Such amount may be available for hardship withdrawal if such Participant establishes that an immediate and heavy financial need exists and the withdrawal is necessary to satisfy such financial need. A request for a hardship withdrawal shall be made in accordance with procedures adopted by the Retirement Committee, which shall have sole authority to authorize and direct a hardship withdrawal pursuant to the provisions in this Section 8.7.**

**(c) For purposes of this Section 8.7, an “immediate and heavy financial need” of a Participant is one which cannot reasonably be relieved by borrowing from commercial sources on reasonable commercial terms in an amount sufficient to satisfy the need. In any event, a hardship withdrawal may not be requested in excess of the amount of the immediate and heavy financial need described in Section 7.6(d), including amounts necessary to pay any federal, state or local income taxes or penalties reasonably anticipated to result from the withdrawal.**

**(d) An immediate and heavy financial need of a Participant exists when the hardship withdrawal will be used to pay the following:**

- (1) Expenses incurred or necessary for medical care that would be deductible under Code Section 213(d) (determined without regard to whether the expenses exceed 7.5% of adjusted gross income) of such Participant, his or her spouse, children and other dependents;**
- (2) The cost directly related to the purchase (excluding mortgage payments) of the principal residence of such Participant;**
- (3) Payment of tuition and related educational expenses (including but not limited to expenses associated with room and board) for up to the next 12 months of post-secondary education for such Participant, his or her spouse, children or other dependents [as defined in Code Section 152, without regard to Code Sections 152(b)(1), (b)(2) and (d)(1)(B)];**
- (4) The need to prevent eviction of such Participant from, or a foreclosure on the mortgage of, such Participant's principal residence;**
- (5) Payments for burial or funeral expenses for such Participant's deceased parent, spouse, child or dependent [as defined in Code Section 152, without regard to Code Section 152(d)(1)(B)]; or**
- (6) Expenses for the repair of damage to such Participant's principal residence that would qualify for the casualty deduction under Code**

Section 165 (determined without regard to whether the loss exceeds 10% of adjusted gross income).

(e) A withdrawal shall not be treated as necessary to satisfy an immediate and heavy financial need of a Participant to the extent such need may be relieved from other resources that are reasonably available to such Participant. For purposes of this Section 7.6(e), a Participant's resources are deemed to include those assets of his spouse and minor children that are reasonably available to him. However, property held for a Participant's child under an irrevocable trust or under a Uniform Transfers to Minors Act (or comparable state law) shall not be treated as a resource of such Participant. No withdrawal shall be made to a Participant pursuant to this Section 8.7 unless he has first obtained the maximum hardship withdrawal from the 401(k) Plan and such hardship withdrawal is insufficient to satisfy his immediate and heavy financial need. The preceding sentence shall not apply to a Participant who does not have any account balance in the 401(k) Plan.

(f) If the Retirement Committee approves a Participant's request for a hardship withdrawal, liquidation of his Pick-Up Account assets for the purpose of a hardship withdrawal will be allocated on a pro-rata basis across all the investment alternatives in his Pick-Up Account, unless otherwise provided by a directive from the Retirement Committee or from such Participant.

(g) Such Participant shall be prohibited under a legally enforceable agreement from electing to defer his Compensation pursuant to all other plans maintained by the Town for at least 6 months after receipt of the hardship withdrawal. The phrase "plans maintained by the Town" shall mean all qualified and nonqualified plans of deferred compensation maintained by the Town, including a cash or deferred arrangement that is part of a cafeteria plan within the meaning of Code Section 125, but excluding the mandatory employee contribution portion of a defined benefit plan, a defined contribution plan or a health or welfare benefit plan (including one that is part of a cafeteria plan).

(h) The provisions of this Section 8.7 shall also apply to a Participant's Beneficiary in addition to his spouse or dependent. Such Beneficiary must have an unconditional right to all or a portion of the Participant's Account balance under the Plan upon the Participant's death.

(i) Notwithstanding the preceding provisions of this Section 8.7, no withdrawals shall be permitted under this Section 8.7 before the Internal Revenue Service has issued a favorable determination letter for the Plan.

8.8 Forms, Etc.

Each Participant who retires, resigns or is discharged, and the Beneficiary of any deceased Participant, shall be required to complete such administrative forms and furnish such proof as the Retirement Committee shall deem necessary and appropriate for purposes of administering the Plan.



8-88.9 Change of Address

It shall be the duty of each retired, resigned or discharged Participant, and any Beneficiary of any deceased Participant, to keep on file with the Retirement Committee a correct mailing address or to claim in person each benefit payment as it becomes due.

8-98.10 Incapacity

If the Retirement Committee determines that any retired, resigned or discharged Participant, or any Beneficiary of a deceased Participant, is unable to care for his affairs because of illness or injury or because he is a minor, any benefits due to him may be paid to the spouse or parent of such Participant or Beneficiary, or to his legal representative, duly-appointed guardian or some other person designated to receive such benefits on his behalf.

8-108.11 Assignment or Alienation of Benefits

(a) No benefit or interest available hereunder shall be subject to assignment or alienation, either voluntarily or involuntarily.

(b) Section ~~8-108.11~~(a) shall not apply to the creation, assignment or recognition of a right to any benefit payable as to a Participant's Account pursuant to a domestic relations order, unless such order is determined to be a Qualified Domestic Relations Order, or any domestic relations order entered before January 1, 1984. Distribution of all or part of a Participant's Account to an alternate payee under such an order may be made at any time, irrespective of whether such Participant has attained the "earliest retirement age" [within the meaning of Code Section 414(p)(4)(B)].

8-118.12 Death of Beneficiary

If any Beneficiary of a deceased Participant dies after having received less than all of such Beneficiary's entire interest in the Trust Fund, the undistributed portion thereof shall be paid to such person or persons as such Beneficiary shall have designated in a written instrument filed with the Retirement Committee. If no such designation was made, or if no such designated person is in existence at the time of such Beneficiary's death, such undistributed portion shall be paid to his surviving spouse; or if there is no surviving spouse, to his descendants who survive him, *per stirpes*, or if there are no such descendants, his surviving parents, in equal shares; or if there are no surviving parents; to his estate. The provisions of this Section ~~8-118.12~~ shall not apply in the event of the death of any person designated by a Beneficiary pursuant to this Section ~~8-118.12~~.

## ARTICLE IX

### REQUIRED MINIMUM DISTRIBUTIONS

#### 9.1 Requirements of Treasury Regulations Incorporated

All distributions required under this Article IX shall be determined and made in accordance with the Treasury regulations under Code Section 401(a)(9).

#### 9.2 Time and Manner of Distribution

(a) A Participant's entire vested interest in the Plan shall be distributed, or begin to be distributed, to him no later than his Required Beginning Date.

(b) If a Participant dies before his Required Beginning Date, his entire vested interest in the Plan shall be distributed, or begin to be distributed, no later than as follows:

- (1) If such Participant's surviving spouse is his sole Designated Beneficiary, then distributions to such surviving spouse shall begin by December 31 of the calendar year immediately following the calendar year in which such Participant died, or by December 31 of the calendar year in which such Participant would have attained age 70½, if later.
- (2) If such Participant's surviving spouse is not his sole Designated Beneficiary, then distributions to his Designated Beneficiary shall begin by December 31 of the calendar year immediately following the calendar year in which such Participant died.
- (3) If there is no Designated Beneficiary as of September 30 of the year following the year of such Participant's death, such Participant's entire vested interest in the Plan shall be distributed by December 31 of the calendar year containing the fifth anniversary of such Participant's death.
- (4) If such Participant's surviving spouse is his sole Designated Beneficiary and his surviving spouse dies after him but before distributions to such surviving spouse begin, this Section 9.2(b), other than Section 9.2(b)(1), shall apply as if such surviving spouse were such Participant.

For purposes of this Section 9.2(b) and Section 9.5, unless Section 9.2(b)(4) applies, distributions are considered to begin on a Participant's Required Beginning Date. If Section 9.2(b)(4) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse of a Participant under Section 9.2(b)(1).

(c) The required minimum distribution for a Participant's first Distribution Calendar Year

shall be made on or before his Required Beginning Date. The required minimum distribution for any Distribution Calendar Year, including the required minimum distribution for the Distribution Calendar Year in which the Participant's Required Beginning Date occurs, shall be made on or before December 31 of such Distribution Calendar Year.

9.3 Forms of Distribution

Unless a Participant's vested interest in the Plan is distributed in a single sum on or before his Required Beginning Date, as of the first Distribution Calendar Year distributions shall be made in accordance with Sections 9.4 and 9.5 of this Article IX.

9.4 Required Minimum Distributions during Participant's Lifetime

(a) During the lifetime of a Participant, the minimum amount that shall be distributed for each Distribution Calendar Year is the lesser of:

- (1) The quotient obtained by dividing the vested balance in such Participant's Accounts by the distribution period in the Uniform Lifetime Table set forth in Treasury Regulation Section 1.401(a)(9)-9, using his age as of his birthday in such Distribution Calendar Year; or
- (2) If such Participant's sole Designated Beneficiary for the Distribution Calendar Year is his spouse, the quotient obtained by dividing the vested balance in such Participant's Accounts by the number in the Joint and Last Survivor Table set forth in Treasury Regulation Section 1.401(a)(9)-9, using his and spouse's attained ages as of their respective birthdays in such Distribution Calendar Year.

(b) Required minimum distributions as to a Participant shall be determined under this Section 9.4 beginning with the first Distribution Calendar Year and up to and including the Distribution Calendar Year that includes such Participant's date of death.

9.5 Required Minimum Distributions after Participant's Death

(a) If a Participant dies on or after his Required Beginning Date and there is a Designated Beneficiary as of September 30 of the year after the year of his death, the minimum amount which shall be distributed for each Distribution Calendar Year after the year of his death is the quotient obtained by dividing the vested balance in the Participant's Accounts by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of his Designated Beneficiary, determined as follows:

- (1) Such Participant's remaining life expectancy is calculated using his age in the year of death, reduced by one for each subsequent year.
- (2) If such Participant's surviving spouse is his sole Designated Beneficiary, the remaining life expectancy of such surviving spouse shall be calculated for

each Distribution Calendar Year after the year of his death using the surviving spouse's age as of such surviving spouse's birthday in such year. For Distribution Calendar Years after the year of such surviving spouse's death, the remaining life expectancy of such surviving spouse is calculated using the age of such surviving spouse as of such surviving spouse's birthday in the calendar year of such surviving spouse's death, reduced by one for each subsequent calendar year.

- (3) If such Participant's surviving spouse is not his sole Designated Beneficiary, the Designated Beneficiary's remaining life expectancy shall be calculated using the age of such Designated Beneficiary in the year following the year of such Participant's death, reduced by one for each subsequent year.

(b) If a Participant dies on or after his Required Beginning Date and there is no Designated Beneficiary as of September 30 of the year after the year of his death, the minimum amount which shall be distributed for each Distribution Calendar Year after the year of his death shall be the quotient obtained by dividing the vested balance in his Accounts by his remaining life expectancy calculated using his age in the year of death, reduced by one for each subsequent year.

(c) If a Participant dies before his Required Beginning Date and there is a Designated Beneficiary as of September 30 of the year after the year of his death, the minimum amount which shall be distributed for each Distribution Calendar Year after the year of his death shall be the quotient obtained by dividing the vested balance in his Accounts by the remaining life expectancy of his Designated Beneficiary, determined as provided in Section 9.6(a).

(d) If a Participant dies before his Required Beginning Date and there is no Designated Beneficiary as of September 30 of the year after the year of his death, distribution of such Participant's entire vested interest in the Plan shall be completed by December 31 of the calendar year containing the fifth anniversary of his death.

(e) If:

- (1) A Participant dies before his Required Beginning Date,
- (2) His surviving spouse is his sole Designated Beneficiary; and
- (3) such surviving spouse dies before distributions are required to begin to such surviving spouse under Section 9.2(b)(1),

Sections 9.5(c) and 9.5(d) shall apply as if such surviving spouse were such Participant.

#### 9.6 Miscellaneous

(a) Life expectancy shall be computed by use of the Single Life Table in Treasury Regulation Section 1.401(a)(9)-8.

(b) For purposes of a Distribution Calendar Year, the balance in a Participant's Accounts shall be determined as the balance as of the last Valuation Date in the Valuation Calendar Year as to such Distribution Calendar Year, increased by the amount of any contributions made and allocated to such balance as of dates in such Valuation Calendar Year after such Valuation Date and decreased by distributions made in such Valuation Calendar Year after such Valuation Date. An Account balance for a Valuation Calendar Year as to a Distribution Calendar Year shall include any amounts rolled over or transferred to the Plan either in such Valuation Calendar Year or in such Distribution Calendar Year if distributed or transferred in such Valuation Calendar Year.

## ARTICLE X

### TRUST AND TRUSTEE

#### 10.1 Establishment of Trust

The Trustee shall receive all contributions paid to it by the Town, and shall hold, manage, invest, reinvest and administer all such contributions in trust pursuant to the provisions of the Trust Agreement to which the Trustee is a party.

#### 10.2 Resignation and Removal of Trustee

In accordance with the procedure specified in the Trust Agreement to which a Trustee is a party, such Trustee shall have the right to resign at any time by giving written notice to the Town which is a party to such agreement, and may be removed by the RTM upon written notice. In the event of removal of or resignation of a Trustee, the RTM may appoint a successor Trustee who shall have the same powers and duties conferred upon its predecessor.

#### 10.3 Powers and Duties of Trustee

The Trustee shall have such powers and duties as are specified in the Trust Agreement to which it is a party.

#### 10.4 Payment of Compensation and Expenses

Subject to the provisions of the Trust Agreement to which it is a party:

- (a) No Trustee who is an officer or employee of the Town shall be paid any compensation for serving as Trustee. Any institutional Trustee shall be paid such reasonable compensation as shall from time to time be agreed upon in writing by the Town and such Trustee, and such compensation shall be paid by the Town, unless the Retirement Committee directs that it be paid from the Trust Fund.
- (b) All taxes of any and all kinds whatsoever that may be levied or assessed under existing or future laws upon, or in respect of, the Trust Fund or the income thereof shall be paid from the Trust Fund. To the extent such expenses or taxes are paid from the Trust Fund, they shall be charged against Participants= Accounts *pro rata*.

## ARTICLE XI

### PARTICIPANT DIRECTION OF INVESTMENT OF ACCOUNTS

#### 11.1 Participant Direction

(a) Subject to a procedure established by the Investment Committee and applied by it in a uniform nondiscriminatory manner, all Participants shall be permitted to direct the Trustee as to the investment of their Account balances in specific investment funds permitted under the Trust Agreement and designated by the Investment Committee. For purposes of this Section 11.1, the term “Participant” includes the Beneficiary or Beneficiaries of a deceased Participant. To the extent so directed, the Trustee is relieved of any fiduciary responsibilities as to the investment of a Participant’s Accounts.

(b) The Investment Committee and the Trustee shall not have any duty to question any direction of a Participant as to his investment directions as to his Accounts, and the Trustee shall comply as promptly as practicable with directions given by the Participant hereunder; provided, however, that the Trustee may refuse to comply with any direction from the Participant in the event the Trustee, in its sole and absolute discretion, deems such directions improper by virtue of applicable law.

(c) ~~Any investment direction by a Participants may be of a continuing nature or otherwise and may be revoked by the Participant at any time in such form as the Trustee may require.~~ **Notwithstanding Section 11.1(a), a Participant shall have the right to transfer multiples of 1% of the value of his accounts in such investment funds to any one or more of the other such investment funds on an unlimited basis, subject to any withdrawal or investment restrictions of any such investment fund.**

#### 11.2 Default Investment Choice

If a Participant fails to designate, in accordance with Section 11.1, how his Account balances should be invested, the Investment Committee shall direct the Trustee to invest such balances in an investment fund that the Investment Committee has specified for this purpose

#### 11.3 Responsibility of Investment Committee and Trustee

The Investment Committee and the Trustee shall not be responsible or liable for any loss or expense which may arise from or result from compliance with any investment directions from the Participant nor shall the Investment Committee or the Trustee be responsible for, or liable for, any loss or expense which may result from the Trustee’s refusal or failure to comply with any directions from the Participant.

11.4 Costs and Expenses

Any costs and expenses related to compliance with a Participant=s investment directions pursuant to this Article XI shall be borne by his Accounts.



ARTICLE XII

INVESTMENT COMMITTEE

12.1 Establishment of Investment Committee

(a) There is hereby established an Investment Committee consisting of the Town's First Selectman or First Selectwoman, the chair of the Town's Board of Finance, the Town's Finance Director and the Town's Personnel Director (the "Permanent Members") and one person designated from time to time by the Permanent Members (the "Appointed Member"). The chair of the Investment Committee shall be said Finance Director.

(b) The Appointed Member may resign at any time by giving at least 30 days= written notice to the Town. The Permanent Members may remove the Appointed Member any time with or without cause by giving him notice in writing to such effect. The Permanent Member may fill any vacancy in the membership of the Investment Committee attributable to the Appointed Member and shall give prompt written notice thereof to the Trustee. While there is a vacancy in the membership of the Investment Committee, the remaining Investment Committee members shall have the same powers as the full Investment Committee until the vacancy is filled.

12.2 Meetings of Investment Committee

(a) The Investment Committee shall meet at such time and for such periods for the transaction of necessary business as it may decide. All such meetings shall be at the determination of the Investment Committee.

(b) To constitute a quorum for the transaction of business, the attendance of a majority of the members of the Investment Committee shall be required. Decisions of the Investment Committee shall be made only by the concurring vote of a majority of all the members present.

12.3 Compensation and Expenses of Investment Committee

The members of the Investment Committee shall receive no compensation from the Trust Fund for any services performed hereunder, but shall be entitled to reimbursement for any reasonable expenses incurred in the performance of their duties.

12.4 Authority, Powers and Duties of Investment Committee

(a) The Investment Committee shall have the following powers, rights and duties in addition to those vested in it elsewhere in the Plan, to be exercised in its complete discretion, to-wit:

- (1) To develop an investment policy statement for purpose of selecting the specific investment funds to be made available to Participants for the investment of their Accounts pursuant to Article XIII and to select such funds in accordance with such statement;

- (2) To designate one such investment fund as the default investment fund in which shall be invested the Accounts of Participants who fail to select any such investment fund;
- (3) To monitor the performance of each such investment fund in accordance with the criteria specified in such investment policy statement and to report to the Retirement Committee not less than annually as to such performance;
- (4) To develop procedures for Participants to invest their Accounts among such investment funds;
- (5) To direct the Trustee as to the voting of shares of such investment funds held in the Trust Fund; and
- (6) To appoint an investment manager to assist the Investment Committee in the performance of its duties; provided, however, that the Investment Committee shall not appoint any person as investment manager other than (i) a person registered under the Investment Advisers Act of 1940 or (ii) a bank.

#### 12.5 Protection of Investment Committee

(a) The Investment Committee and each individual member thereof shall be fully protected in acting upon any instrument, certificate, or paper believed by them to be genuine and to be signed or presented by the proper person or persons, and shall be under no duty to make any investigation or inquiry as to any statement contained in any such writing, but may accept the same as conclusive evidence of the truth and accuracy of the statements therein contained.

(b) The Investment Committee shall be entitled to rely upon all certificates and reports made by any duly-appointed advisors acting in the areas of their respective professional expertise and upon all opinions, ~~advises~~advice and certifications given by any duly appointed legal counsel.

(c) The Investment Committee and each member thereof shall be fully protected, to the extent permitted by law, against any action taken in good faith in reliance upon any such certificates, reports, opinions or ~~advises~~advice. All actions so taken shall be conclusive upon each of them and upon all persons having any interest under the Plan.

(d) No member of the Investment Committee shall be personally liable by virtue of any instrument executed by him or on his behalf as a member of the Investment Committee, or for any mistake or judgment made by himself or any other member thereof or for any neglect, omission or wrongdoing of any other member to the extent permitted by law.

(e) Each member of the Investment Committee shall be indemnified by the Town against expenses reasonably incurred by him in connection with any action to which he may be a party by reason of his membership on the Investment Committee except in relation to matters as to which he shall be adjudged in such action to be liable for gross negligence or willful misconduct in the

performance of his duty as a member of the Investment Committee. The foregoing right of indemnification shall be in addition to any other rights to which the Investment Committee may be entitled as a matter of law.

(f) The Investment Committee may from time to time consult with legal counsel and shall be fully protected in acting and relying upon advice of such counsel to the extent permitted by law.

(g) The cost and expenses of any action, suit or proceeding brought by or against the Investment Committee or any of the members thereof (including counsel fees) may be paid from the Trust Fund, except in relation to matters as to which it shall be adjudged in such action, suit or proceeding, that such member of the Investment Committee was acting in bad faith in the performance of his duties hereunder.

(h) The Investment Committee shall not be bound by any notice, direction, requisition, advice or request, unless and until it shall have been received by the Investment Committee.

(i) The Investment Committee may seek judicial protection by any action or proceeding it may deem necessary to settle its accounts, or to obtain a judicial determination or declaratory judgment as to any question of construction of the Plan or instructions as to any action thereunder.

**ARTICLE XIII**

**RETIREMENT COMMITTEE**

13.1 Establishment of Retirement Committee

(a) There is hereby established a Retirement Committee consisting of the Town's First Selectman or First Selectwoman, the chair of the Town's Board of Finance, the Town's Personnel Director, one Elector appointed by the Town's Board of Selectmen (the "Elector Member") and one Participant in the Plan appointed by the First Selectman or First Selectwoman (the "Participant Member"). The term of appointment of the Elector Member shall be 3 years. The chair of the Retirement Committee shall be said Personnel Director.

(b) The Elector Member or the Participant Member may resign at any time by giving at least 30 days= written notice to the Town. The Board of Selectmen may remove the Elector Member any time with or without cause by giving him notice in writing to such effect. The Board of Selectmen may fill any vacancy in the membership of the Retirement Committee attributable to the Elector Member and shall give prompt written notice thereof to the Trustee and the other Retirement Committee members. The First Selectman or First Selectwoman may remove the Participant Member any time with or without cause by giving him notice in writing to such effect. The First Selectman or First Selectwoman may fill any vacancy in the membership of the Retirement Committee attributable to the Participant Member and shall give prompt written notice thereof to the Trustee and the other Retirement Committee members. While there is a vacancy in the membership of the Retirement Committee, the remaining Retirement Committee members shall have the same powers as the full Retirement Committee until the vacancy is filled.

13.2 Meetings of Retirement Committee

(a) The Retirement Committee shall meet at such time and for such periods for the transaction of necessary business as it may decide. All such meetings shall be at the determination of the Retirement Committee.

(b) To constitute a quorum for the transaction of business, the attendance of a majority of the members of the Retirement Committee shall be required. Decisions of the Retirement Committee shall be made only by the concurring vote of a majority of all the members present.

13.3 Compensation and Expenses of Retirement Committee

The members of the Retirement Committee shall receive no compensation from the Trust Fund for any services performed hereunder, but shall be entitled to reimbursement for any reasonable expenses incurred in the performance of their duties.

13.4 Authority, Powers and Duties of Retirement Committee

(a) The Plan shall be administered by the Retirement Committee, which shall have the following powers, rights and duties in addition to those vested in it elsewhere in the Plan, to be exercised in its complete discretion, to-wit:

- (1) To promulgate and establish the rules, regulations and procedures dealing with applications for benefits, determination of eligibility, calculation of benefit amounts and authorization of benefit payments;
- (2) To interpret and apply the various provisions of the Plan, which shall be final and binding on Participants and Beneficiaries;
- (3) To request of the Town to retain legal counsel to advise the Retirement Committee concerning legal issues arising under the Plan and investment advisors in connection with the investment of the assets of the Trust Fund;
- (4) To request direction from the First Selectman or First Selectwoman, and on receipt of such direction in writing, the Retirement Committee shall be entitled to rely and act thereon;
- (5) To pay or authorize payment from the Trust Fund all reasonable expenses of administering the Plan, including, but not limited to, all expenses which may be incurred in connection with the establishment of the Plan, the purchase or lease of such office space, materials, supplies and equipment, and the employment of such administrative, legal, expert and clerical assistance as the Retirement Committee, in its discretion, finds necessary or appropriate in the performance of its duties;
- (6) To delegate any ministerial powers or duties to any agent or employee engaged by the Retirement Committee, or to any employee of the Town, or to any one or more of the members of the Retirement Committee;
- (7) To issue to any Participant upon his request a statement of his standing showing the amount of his contributions, Years of Service and such other pertinent data as the Retirement Committee deems proper;
- (8) To hear and determine any claims relating to the administration of the Plan pursuant to Section 13.7;
- (9) To advise and inform the Town as to the details of the administration of the Plan; and
- (10) To issue directions to the Trustee as to distributions to Participants and payment of the expense of administration of the Plan.

(b) The Retirement Committee shall maintain accounts showing the fiscal transactions of the Plan, and shall keep in convenient form such data as may be necessary for determination of benefits and actuarial valuations of the assets and liabilities of the Plan;

13.5 Modification of Plan

The Retirement Committee shall have no power to change or modify any provisions of the Plan.

13.6 Protection of Retirement Committee

(a) The Retirement Committee and each individual member thereof shall be fully protected in acting upon any instrument, certificate, or paper believed by them to be genuine and to be signed or presented by the proper person or persons, and shall be under no duty to make any investigation or inquiry as to any statement contained in any such writing, but may accept the same as conclusive evidence of the truth and accuracy of the statements therein contained.

(b) The Retirement Committee shall be entitled to rely upon all certificates and reports made by any duly-appointed advisors acting in the areas of their respective professional expertise and upon all opinions, ~~advises~~advice and certifications given by any duly appointed legal counsel.

(c) The Retirement Committee and each member thereof shall be fully protected, to the extent permitted by law, against any action taken in good faith in reliance upon any such certificates, reports, opinions or ~~advises~~advice. All actions so taken shall be conclusive upon each of them and upon all persons having any interest under the Plan.

(d) No member of the Retirement Committee shall be personally liable by virtue of any instrument executed by him or on his behalf as a member of the Retirement Committee, or for any mistake or judgment made by himself or any other member thereof or for any neglect, omission or wrongdoing of any other member to the extent permitted by law.

(e) Each member of the Retirement Committee shall be indemnified by the Town against expenses reasonably incurred by him in connection with any action to which he may be a party by reason of his membership on the Retirement Committee except in relation to matters as to which he shall be adjudged in such action to be liable for gross negligence or willful misconduct in the performance of his duty as a member of the Retirement Committee. The foregoing right of indemnification shall be in addition to any other rights to which the Retirement Committee may be entitled as a matter of law.

(f) The Retirement Committee may from time to time consult with legal counsel and shall be fully protected in acting and relying upon advice of such counsel to the extent permitted by law.

(g) The cost and expenses of any action, suit or proceeding brought by or against the Retirement Committee or any of the members thereof (including counsel fees) may be paid from the

Trust Fund, except in relation to matters as to which it shall be adjudged in such action, suit or proceeding, that such member of the Retirement Committee was acting in bad faith in the performance of his duties hereunder.

(h) The Retirement Committee shall not be bound by any notice, direction, requisition, advice or request, unless and until it shall have been received by the Retirement Committee.

(i) The Retirement Committee may seek judicial protection by any action or proceeding it may deem necessary to settle its accounts, or to obtain a judicial determination or declaratory judgment as to any question of construction of the Plan or instructions as to any action thereunder.

(j) No person, partnership, corporation or association dealing with the Retirement Committee shall be obliged to see to the application of any funds, securities or other property paid or delivered to the Retirement Committee as a purchase price or otherwise, or to see that the terms of the Plan have been complied with, or be obliged to inquire into the authority of the Retirement Committee, or the necessity or expediency of any act of the Retirement Committee, and every instrument effected by the Retirement Committee shall be conclusive in favor of any person, partnership, corporation or association relying thereon that:

- (1) At the time of the delivery of said instrument the Plan was in full force and effect;
- (2) Said instrument was effected in accordance with the terms and conditions of the Plan; and
- (3) The Retirement Committee was duly authorized and empowered to execute such instrument.

### 13.7 Review Procedures of Retirement Committee

(a) Upon the Retirement Committee's receipt of a written request for benefits under the Plan as filed by a Participant or Beneficiary (a "Claimant") on a form furnished for that purpose, the Retirement Committee shall act thereon in accordance with the following:

- (1) In the event the Retirement Committee approves the request, such Claimant shall be so notified within a period not to exceed 90 days from the date of the filing of such request; or
- (2) In the event the Retirement Committee denies such request, in whole or in part, such Claimant shall be so notified by the Retirement Committee within a period not to exceed 90 days from the date of the filing of the request by such Participant or Beneficiary.

(b) The notice of denial by the Retirement Committee shall set forth the reasons for the denial of the request for benefits, citing:

- (1) The pertinent provisions of the Plan;
- (2) Any interpretation or rule relied upon by the Retirement Committee in making its decision;
- (3) A description of any additional material or reason required in connection with the request and the reasons therefor;
- (4) The right of such Claimant to inspect Plan documents pertinent to the request; and/or
- (5) A description of the steps that may be taken by such Claimant to obtain a review of the denial.

13.8 Final and Binding Decisions of Retirement Committee

All decisions of the Retirement Committee, including all those made in the interpretation and administration of the Plan, shall be conclusive, final and binding upon all Participants and Beneficiaries. No Participant or Beneficiary shall have or acquire any right, title or interest in or to the Trust Fund or any portion of the Trust Fund, except by the actual payment or distribution of a portion of the Trust Fund to him under the provisions of the Plan. The determination of the Retirement Committee as to the identity of the proper payee of any benefit under the Plan and the amount of such benefit properly payable shall be conclusive, and payment in accordance with such determination shall constitute a complete discharge of all obligations on account of such benefit. Any action to stay, confirm, set aside or modify a decision hereunder shall be brought in the courts of the State of Connecticut.

13.9 Retirement Committee Member Who Is a Participant

Any member of the Retirement Committee who is a Participant in the Plan may not decide any matter concerning distributions of any kind to be made to him unless such decision could be made by him under the Plan if he were not a member of the Retirement Committee.



**ARTICLE XIV**

**QUALIFIED MILITARY SERVICE**

14.1 In General

Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit as to Qualified Military Service shall be provided in accordance with Section 414(u).

14.2 Death of Participant While Performing Qualified Military Service

In the case of a Participant who dies while performing Qualified Military Service, his survivors shall be entitled to any additional benefits (other than benefit accruals related to the period of Qualified Military Service) that may be provided under the Plan had he then resumed and terminated employment on account of death.

**ARTICLE XV**

**AMENDMENT AND TERMINATION; NO REVERSION TO TOWN**

15.1 Amendment of Plan

The Town, acting through the RTM, shall have the right at any time, and from time to time, to amend, in whole or in part, any or all of the provisions of the Plan; provided, that no such amendment shall:

- (a) Authorize or permit any part of the Trust Fund to be used for or diverted to purposes other than for the exclusive benefit of the Participants or their Beneficiaries;
- (b) Cause any reduction in the amount theretofore credited to the Account of any Participant, or cause or permit any portion of the Trust Fund to revert to or become the property of the Town; or
- (c) In the case of any amendment which affects the rights, duties or responsibility of the Trustee, increase or otherwise change such rights, duties or responsibilities without the Trustee's prior written consent.

An amendment shall become effective upon authorization by resolutions of the RTM and execution by the Town of an appropriate written instrument and, if the rights or duties of the Trustee are affected, consent to the amendment by the Trustee. If any amendment changes any vesting schedule set forth in the Plan any Participant with 3 or more Years of Service may, by filing a written request with the Administrative Committee within 60 days after he has received notice of such amendment, elect to have the vested percentage of his Account determined by such schedule computed under the vesting schedule in effect prior to such amendment.

15.2 Termination of Plan; Discontinuance of Contributions

The Plan is voluntary on the part of the Town. The Town, acting through the RTM, reserves the right to terminate the Plan, in whole or in part, or the Trust Fund, or both, and to suspend, reduce or discontinue contributions at any time. Upon termination of the Plan, or upon the complete discontinuance of contributions, the Account balances of Participants to the date of such termination or discontinuance shall be nonforfeitable.

15.3 No Reversion to Town.<sup>9</sup>

(a) The Town shall have no beneficial interest in the Trust Fund and no part of the Trust Fund shall revert or be repaid to the Town, directly or indirectly.

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<sup>9</sup> The prohibition in this section against reversions of Trust Fund assets to the Town does not preclude the use of forfeitures to reduce the Town's Retirement Contributions and Matching Contributions, per Sec. 8.2(a).

(b) Notwithstanding Section 15.3(a) or any other provision of the Plan, upon the Town's written request, a contribution which was made by a mistake of fact shall be returned to the Town by the Trustee within one year after the mistaken payment of such contribution. Earnings attributable to a contribution which occurred due to a mistake of fact may not be returned to the Town and losses attributable thereto shall reduce the amount to be so returned.

**ARTICLE XVI**

**MISCELLANEOUS**

16.1 Employment

Neither the establishment of the Plan or any amendment thereto, nor the creation of the Trust Fund or the payment of benefits hereunder, shall be construed as giving any Participant or Employee any right to be retained in the employ of the Town, and the Town hereby expressly retains the right to hire and discharge any Participant or Employee at any time, with or without cause, as if the Plan had not been adopted, and any such discharged Participant or Employee shall have only such rights or interests in the Trust Fund as may be specified herein.

16.2 Records

The records of the Town as to age, service, employment history, compensation, absences, illnesses, and all other relevant matters shall be conclusive for purposes of the administration of the Plan.

16.3 Usage

Pronouns and other similar words used herein in the masculine gender shall be read as the feminine gender where appropriate, and the singular form of words shall be read as the plural where appropriate.

16.4 Validity

The validity, construction and administration of this Plan shall be determined under the laws of the State of Connecticut, except to the extent such laws are preempted by federal law.

16.5 Counterparts

The Plan may be executed in any number of counterparts, each of which shall be considered an original but which together shall constitute a single plan.

16.6 Severability

In case any provision of the Plan shall be held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining provisions, but the illegal or invalid provision shall be fully severable and the plan shall be construed and enforced as if such provision had never been inserted herein.

16.7 Conditional Adoption

The provisions of the Plan as set forth herein are subject to approval by the Internal Revenue Service confirming that the Plan constitutes a qualified plan under the Code and applicable rulings and regulations thereunder. No Participant or Beneficiary shall have any rights under the Plan as set forth herein unless and until such approval has been obtained, and the Town retains the right to make such amendments or changes in the Plan as may be necessary to obtain such approval.

16.8 Agent for Service of Process.

The Town shall be the agent for service of process as to the Plan.

*MCGUIREWOODS LLP DRAFT—VERSION OF 8/15/12 vs. VERSION OF 7/30/12*

Dated this \_\_\_ day of \_\_\_\_\_, 2012.

TOWN OF WESTPORT

APPROVED:

LOCAL 1303-385, Council 4, AMERICAN  
FEDERATION OF STATE, COUNTY  
AND MUNICIPAL EMPLOYEES,  
AFL-CIO

By: \_\_\_\_\_  
Gordon F. Joseloff, First Selectman

By: \_\_\_\_\_, President

\_\_\_\_\_  
\_\_\_\_\_, Council 4, AFSCME,  
AFL-CIO Representative

The above and foregoing is a true and attested copy of the TOWN OF WESTPORT  
DEFINED CONTRIBUTION RETIREMENT PLAN, effective as of January 1, 2012.

Attest: \_\_\_\_\_  
Patricia Strauss  
Town Clerk

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