

**RETIREMENT PLAN FOR
NON-UNION AND NON-SUPERVISORY EMPLOYEES
OF THE TOWN OF WESTPORT, CONNECTICUT
As Amended and Restated Effective as of July 1, 2019
2019 Amendment and Restatement**

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PREAMBLE

The Retirement Plan for Non-Union and Non-Supervisory Employees of the Town of Westport (the "Plan") was originally adopted on July 1, 1981. It was subsequently amended effective as of July 1, 1986, effective as of July 1, 1998, effective as of November 1, 2005 and effective as of November 1, 2013. In accordance with Section 13.1 of the Plan, the Town of Westport, Connecticut hereby amends and restates the Plan to read as follows effective as of July 1, 2019 for persons who are actively employed on or after that date, except as otherwise provided herein. The purpose of this amendment and restatement is to reflect applicable amendments required under the 2015 Cumulative List (IRS Notice 2015-84), the 2016 Required Amendments List (IRS Notice 2016-80) and the 2017 Required Amendments List (IRS Notice 2017-72). 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 pension plan and the Trust being exempt from tax as aforesaid.

ARTICLE 1 DEFINITIONS

As used herein, the words and phrases below shall have the following meanings:

1.1 "Actuarial Equivalent" or "Equivalent Actuarial Value" means a benefit of equivalent value when computed on the basis of the rate of interest of 7% and mortality rates in accordance with the 1983 Group Annuity Mortality Table (unisex based on 50% male/50% female).

1.2 "Actuary" means the Enrolled Actuary retained by the Pension Committee in connection with the administration of the Plan.

1.3 "Approved Absence" means the period during which a Participant is on leave of absence approved in writing by the Employer. Approved Absence shall also include the period during which the Participant 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.

1.4 "Average Final Compensation" means, with respect to a Participant, the greater of (a) his Compensation during the calendar year in which his Compensation was the highest, or (b) his final 12 months of Compensation.

1.5 "Code" means the Internal Revenue Code of 1986, as amended.

1.6 "Compensation" means, with respect to a Participant, the following:

(A) For all purposes other than Section 4.6, the basic salary regularly paid by the Employer to such Participant,

(1) Exclusive of any overtime pay, bonuses, gratuities, commissions, retainer fees, benefits, severance pay, allowance for expenses or other special remuneration paid to such Participant; and

(2) Increased by any “pick-up” contributions with respect to such Participant which are designated as Employer contributions in accordance with Section 414(h)(2) of the Code.

(B) For purposes of Section 4.6, such Participant’s wages for the Plan Year paid by the Employer of the type reported in Box 1 of Form W-2. Such wages shall include amounts within the meaning of Section 3401(a) of the Code plus any other amounts paid to him by the Employer for which the Employer is required to furnish a written statement under Sections 6041(d) and 6051(a)(3) of the Code, determined without regard to any rules that limit the amount required to be reported based on the nature or location of the employment or services performed,

(1) Exclusive of any amounts paid or reimbursed by the Employer for moving expenses which the Employer reasonably believes at the time of such payment to be deductible by the Employee under Section 217 of the Code;

(2) Increased by the amount of any contributions made by the Employer under any salary reduction or similar arrangement to: (a) a qualified cash or deferred arrangement under Code Section 401(k); (b) a simplified employee pension plan described in Section 408(k) of the Code; (c) a SIMPLE arrangement under Code Section 408(p); (d) an annuity contract described in Section 403(b) of the Code; (e) a deferred compensation plan within the meaning of Section 457(b) of the Code; (f) a cafeteria plan under Code Section 125; and (g) a deferred compensation plan under Code Section 457; and

(3) Increased by any amounts contributed or deferred by the Employer at his election and which is not includable in his gross income under Section 132(f)(4) of the Code.

Compensation shall be limited as follows:

(X) In addition to any other applicable limitations set forth in the Plan and notwithstanding any other provision in the Plan to the contrary, for Plan Years beginning after January 1, 1989, and prior to January 1, 1994, the annual Compensation of each Participant taken into account under the Plan shall not exceed \$200,000, as adjusted by the Secretary for increases in the cost of living at the same time and in the same manner as under Section 415(d) of the Code (the “TRA 1986 Limit”). The cost-of-living adjustment for a calendar year shall apply to any period (a “Determination Period”) not exceeding 12 months, over which Compensation is determined, beginning in such calendar year. If a Determination Period consists of fewer than 12 months, the TRA 1986 Limit shall be multiplied by a fraction whose numerator is the number of months in the Determination Period and whose denominator is 12. If Compensation for any prior Determination Period is taken into account in determining any Participant’s benefits accruing in any Plan Year beginning after January 1, 1989, and prior to January 1, 1994, the Compensation for such prior Determination Period shall be subject to the TRA 1986 limit in effect for such prior Determination Period. For purposes of the preceding sentence, for Determination Periods beginning before the first day of the Plan Year beginning on or after January 1, 1989, the TRA 1986 Limit shall be \$200,000.

(Y) In addition to any other applicable limitations set forth in the Plan and notwithstanding any other provision in the Plan to the contrary, for Plan Years beginning on or after January 1, 1994, the annual Compensation of each Participant taken into account under the Plan shall not exceed \$150,000, as adjusted by the Secretary for increases in the cost of living in accordance with Section 401(a)(17)(B) of the Code (the "OBRA 1993 Limit"). The cost-of-living adjustment for a calendar year shall apply to any Determination Period beginning in such calendar year. If a Determination Period consists of fewer than 12 months, the OBRA 1993 Limit shall be multiplied by a fraction whose numerator is the number of months in the Determination Period and whose denominator is 12. If Compensation for any prior Determination Period is taken into account in determining any Participant's benefits accruing in the current Plan Year, the Compensation for such prior Determination Period shall be subject to the OBRA 1993 Limit in effect for such prior Determination Period. For purposes of the preceding sentence, for Determination Periods beginning before the first day of the Plan Year beginning on or after January 1, 1994, the OBRA 1993 Limit shall be \$150,000.

Notwithstanding the preceding provisions, the annual Compensation of each Participant taken into account in determining benefit accruals in any Plan Year beginning after December 31, 2001, shall not exceed \$200,000. The \$200,000 limit in the preceding sentence shall be adjusted for cost-of-living increases in accordance with Section 401(a)(17)(B) of the Code. The cost-of-living adjustment in effect for a calendar year applies to annual Compensation for the determination period that begins with or within such calendar year.

Effective for Limitation Years beginning after July 1, 2007, there shall be included in a Participant's Compensation for purposes of Subsections (A) and/or (B) above, as the case may be, any payment after termination of his employment only if such payment (i) 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; (ii) would have been paid to him before termination of employment if he had continued in employment with the Employer and if so paid, would have been included in "Compensation" under said Subsections (A) and/or (B), as the case may be; and (iii) is paid by the later of 21/2 months after termination of employment or the end of the Limitation Year including the date of termination of employment.

1.7 "Credited Service" means Years of Service during which a Participant is eligible for the Plan in accordance with the eligibility provisions set forth in Article 2, including any applicable probationary period, and during which such Participant makes the required contributions as set forth in Article 9.

(A) Prior to January 1, 2012, if such Participant was a participant in another pension plan to which the Town contributed immediately prior to such Participant's participation in this Plan, his years of Credited Service under this Plan shall include his years of credited service under such other plan, provided that all such Participant's contributions to such other plan with Interest are transferred to this Plan (the "Transfer"). The provisions of this Section 1.7 shall not apply to a Participant unless he shall have waived in writing the right to receive any benefit under such other plan. Such waiver must have been filed with the Town's Personnel Department no later than the later to occur of (1) 90 days after November 1, 2005 or (2) the date such Participant begins participation in this Plan. If the total of such Participant's contributions

to such other plan exceeds the total of what such Participant would have contributed to this Plan had he participated in this Plan during the time he was a participant in such other plan, after the Transfer the excess amount shall be applied against contributions otherwise required from such Participant under this Plan and until such excess amount has been fully so applied such Participant shall not be required to contribute to this Plan.

(B) The Pension Committee, at its sole discretion, may allow a Participant to buy back all or part of his prior service which is Governmental and Other Related Service (as defined in Section 1.17) under the following provisions:

(1) For Governmental and Other Related Service immediately prior to employment with the Town: For any prior service allowed to be credited by the Town, such Participant must pay into the Town Plan (as hereinafter defined) the amount he would have paid in contributions for any such period had the Employee been a participant in the Town Plan, plus Interest thereon from the date of such prior service credit to the date payment is made to the Plan.

(2) For Governmental and Other Related Service not immediately prior to employment with the Town: For any prior service allowed to be credited by the Town, such Participant must pay into the Town Plan, an amount equal to the sum of Clauses (a) and (b) below:

(a) The amount he would have paid in contributions for any such period had the employee been a Participant in the Town Plan, plus Interest thereon from the date of such prior service credit to the date payment is made to the Plan.

(b) The amount the Town would have contributed for any such period had the employee been a Participant in the Town Plan, plus interest thereon from the date of such prior service credit to the date payment is made to the Plan. Interest on amounts described in this Section 1.7(2)(b) shall be calculated at the rate of assumed investment income used by the Actuary in determining Plan costs for investment purposes.

Payment of the required amount must be completed at least one year prior to such Participant's termination of employment on account of retirement or otherwise.

(3) A Participant may buy back up to 10 years of Governmental and other Related Service. The service which is bought back by a Participant pursuant to this Section 1.7 shall not be taken into account in determining his Normal Retirement Date under Section 3.1 nor his vested interest under Section 7.1(A).

(4) A Participant's pension attributable to years of Governmental and other Related Service bought back by him shall be treated as vested upon his having completed the vesting requirement in Section 7.1(A).

(5) Such Participant need not have been a participant in the plan of the other employer, but he must have been holding a position that would have qualified him for participation in the Town Plan if the Town were such other employer.

(6) Any benefits determined under the Town Plan shall be offset by any benefits to which such Participant is entitled from another employer's plan to the extent any Credited Service is granted under this provision.

(7) For the purposes of this Section 1.7, "Town Plan" shall mean this Plan for prior service on or after July 1, 1981 and the Retirement Plan for Municipal Employees of the Town for prior service before July 1, 1981.

(8) A Participant desiring to buy back prior service pursuant to this Section 1.7 shall submit a written request therefor to the Town's Personnel Department, which shall forward such request to the Pension Committee for its approval or disapproval in its sole discretion. Such request must be submitted no later than 30 days after the successful completion of his 6-month probationary period. The decision of the Pension Committee as to such a Participant's request shall be conclusive and binding on such Participant and, if any, his spouse, Joint Annuitant, and Designated Beneficiary. If the Pension Committee approves such a request by a Participant, he shall have 90 days from the date of approval to pay to the Plan the required amount of contributions and Interest, as determined by the Town's Finance Department.

(9) If a Participant's employment with the Town should terminate for any reason prior to the time he is fully vested under Section 7.1(A), the amount paid by such Participant pursuant to this Section 1.7 shall be returned to him, together with Interest thereon.

1.8 "Deferred Retirement Date" means the date specified in Section 3.2.

1.9 "Dependent" means a Participant's child (including an adopted child) who has not attained age 21. A person who is a Dependent under the preceding sentence shall cease to be a Dependent upon attaining age 21.

1.10 "Designated Beneficiary" means the beneficiary designated by a Participant, subject to change from time to time by such Participant, on forms provided by the Pension Committee; provided, however, that if there be no Designated Beneficiary at the date of death of the Participant (e.g., due to the earlier death of the Designated Beneficiary or due to failure of the Participant to designate a beneficiary) then the Pension Committee shall, for any death benefit that may be available under the Plan (other than a monthly benefit payable to any Joint Annuitant or surviving spouse), designate a beneficiary from the following list taken in priority order:

- (A) the Participant's legal spouse, or, if none survives;
- (B) the Participant's lineal descendants (including any children legally adopted) per stirpes; or if none survives;
- (C) the Participant's parents, share and share alike; or if none survives;
- (D) the Participant's estate,

subject to Sections 10.2 and 11.8. In the event any amount shall become payable from the Plan to a Designated Beneficiary or the executor or administrator of any deceased person and if, after written notice from the Pension Committee mailed to such person's last known address,

such person or such executor or administrator shall not have presented himself to the Pension Committee within two years after the mailing of such notice, the Pension Committee shall distribute such amount due to such Beneficiary or such executor or administrator among one or more of the spouse and blood relatives of such deceased person designated by the Pension Committee.

1.11 “Disabled” means, with respect to a Participant, having a Disability.

1.12 “Disability” means, with respect to a Participant, the inability to perform the duties of any occupation for which he is reasonably fitted by reason of training, education or experience.

1.13 “Effective Date” means July 1, 2019, as to Participants actively employed on or after that date, except as otherwise provided herein. The Original Effective Date was July 1, 1981.

1.14 “Employee” means any person who is employed on a permanent basis by the Town, Library, or Board of Education who is in a non-supervisory position as determined by the Employer, and who is not covered by a collective bargaining agreement, and excluding any teacher or other Employee who is eligible for membership in the Connecticut State Teachers Retirement System or is covered by the pension system established by Special Act No. 430 or its successor. The term “Employee” shall not include a “leased employee,” meaning, with respect to the Employer, any person (other than an employee of the Employer) who pursuant to an agreement between the Town and any other person has performed services for the Employer (or for the Employer and related persons determined in accordance with Section 414(n)(6) of the Code) and such services are performed under primary direction or control by the Employer.

1.15 “Employer” means the Town of Westport, Connecticut.

1.16 “Enrolled Actuary” means a person designated as an Enrolled Actuary by the Joint Board for Enrollment of Actuaries.

1.17 “Governmental And Other Related Service”, as used in Section 1.7 means, with respect to a Participant, employment with a municipal, state or federal government, or agency thereof, which is related, by nature of the work and the duties performed, to the work for which such Employee is hired by the Town; and which could reasonably be expected to have helped to prepare such Participant for his present job responsibilities with the Town.

1.18 “Interest,” when used in connection with a Participant’s contributions, means such rate per annum as may from time to time be fixed by the Town. Interest on a Participant’s Contributions during a Plan Year accrues from July 1 of the following Plan Year to the first of the month in which the pension payments commence, or death or termination of Service occurs, unless some other applicable date is specified in the Plan.

1.19 “Joint Annuitant” means the person designated by a Participant to receive benefits pursuant to Section 5.1(B)(1).

1.20 “Limitation Year” means the period July 1 to June 30.

1.21 "Medical Plan" means, collectively, the plan or plans maintained by the Town pursuant to which medical, prescription drug and/or dental benefits are made available to particular Employees, Retirees and their respective spouses and eligible Dependents. If any such plan is referred to herein by name, such reference shall also include any comparable successor plan.

1.22 "Normal Retirement" means termination of employment (except by death) of a Participant on the first day of the month coincident with or next following his Normal Retirement Date as set forth in Article 3.

1.23 "Participant" means an Employee satisfying the eligibility requirements set forth in Article 2.

1.24 "Pension Committee" means the Chairman of the Board of Finance, the First Selectman or First Selectwoman, one Elector appointed by the Board of Selectmen and one Participant of the Plan appointed by the First Selectman or First Selectwoman. The term of appointment of the Elector shall be 3 years.

1.25 "Pension Fund" means the trust forming a part of the Plan, as described in Article 9.

1.26 "Plan" means the Retirement Plan for Non-Union and Non-Supervisory Employees of the Town of Westport, Connecticut, as amended and restated as set forth herein, or as may be amended from time to time.

1.27 "Plan Year" means July 1 to June 30.

1.28 "Qualified Military Service" means 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.

1.29 "Retiree" means a Participant who retires on or after his Normal Retirement Date and who is eligible for pension benefits under the Plan.

1.30 "Retirement Date" means the date as of which a Participant's Normal or Deferred Retirement occurs under the Plan.

1.31 "Retirement Option" means the optional forms of pension as provided in Article 5.

1.32 "RTM" means the Representative Town Meeting of the Town.

1.33 "Secretary" means the Secretary of the Treasury.

1.34 "Service" means the period during which a person is in the status of an Employee, including Approved Absence.

1.35 "Spouse" means any individual to whom the Participant is legally married under the laws of the state or country in which the marriage was celebrated, without regard to whether such marriage is recognized under the laws of the state or country in which the Participant resides.

1.36 "Town" means the Town of Westport in the County of Fairfield, State of Connecticut.

1.37 "Trustee" means such person or persons as trustee or trustees of the Pension Fund, as may be appointed by the Pension Committee.

1.38 "Vested Participant" means a Participant who has completed at least 10 Years of Service and is vested according to Section 7.1(A) but is not yet eligible for Retirement under Article 3.

1.39 "Year of Service" means, with respect to an Employee, a 12-consecutive-month period commencing with such Employee's date of employment and succeeding 12-consecutive-month periods during which such Employee was employed by the Employer. Each completed month of employment shall constitute 1/12 of a Year of Service. In the case of Employees who regularly work 9 months or more but less than 12 months per year, continuous employment for the period of approximately 9 months, which constitutes the entire school year of an Employee's normal work year, shall be deemed to constitute a Year of Service (with partial years to be credited based on complete months at the rate of 1/9 year per complete month). Upon retirement or other termination of employment, a Participant who has accrued at least 60 days of unused sick leave shall be entitled to use such accrual, up to a maximum of 120 days, as an additional fractional Year of Service, as follows:

<u>Accrued Unused Sick Days</u>	<u>Additional Fractional Year of Service</u>
At least 60 days but less than 80 days	1/4
At least 80 days but less than 100 days	1/3
At least 100 days but less than 120 days	5/12
120 or more days	1/2

**ARTICLE 2
ELIGIBILITY**

2.1 IN GENERAL.

(A) Each Employee shall become a Participant of the Plan provided he:

- (1) Works 20 or more hours per week on a consistent basis;
- (2) Works 9 months or more per year;
- (3) Has completed the probationary period required for his job classification; and
- (4) Is not a participant of another retirement plan to which the Employer contributes.

(B) Participation in the Plan is mandatory, except that an Employee hired at age 60 or over has the option of not participating.

(C) Notwithstanding the preceding provisions of this Section 2.1, no Employee who is hired or rehired on or after January 1, 2012 shall become a Participant.

2.2 REEMPLOYMENT FOLLOWING RETIREMENT.

A Retiree receiving a pension under the Plan who again becomes a Participant following his reemployment by the Town shall not have his pension discontinued.

**ARTICLE 3
RETIREMENT DATES**

3.1 NORMAL RETIREMENT.

A Participant's Normal Retirement Date is the first of the month coincident with or next following:

- (A) Age 55 and completion of at least 10 Years of Service; or
- (B) Completion of 25 Years of Service with no age requirement.

For purposes of this Section 3.1, "Years of Service" do not include any Credited Service bought back pursuant to Section 1.7.

3.2 DEFERRED RETIREMENT.

A Participant may defer retirement beyond his Normal Retirement Date. A Participant's Deferred Retirement Date is the first day of the month following termination of employment after Normal Retirement Date.

**ARTICLE 4
PENSION BENEFITS**

4.1 NORMAL OR DEFERRED RETIREMENT PENSION.

The monthly pension payable at a Participant's Normal Retirement Date or Deferred Retirement Date shall equal (i) 2% of the Participant's monthly Average Final Compensation multiplied by the number of his completed years and months (each month counting as 1/12 of a year) of Credited Service, including any Credited Service granted under the provisions of Section 1.7, to a maximum of 20 years; plus (ii) 2.25% of the Participant's monthly Average Final Compensation multiplied by the number of his completed years and months (each month counting as 1/12 of a year) of Credited Service in excess of 20; less (iii) the amount of monthly pension benefit that such Participant is entitled to receive from another plan (the "Other Plan") in which he participated, payable at its normal retirement date, to the extent any Credited Service is granted under this Plan for participation in such other plan. Notwithstanding the foregoing, if the benefit payable under this Section 4.1 without the offset required in the prior sentence, is greater than the combined benefit payable under this Section and the Other Plan, the Non-Public Safety Participant will receive the full benefit payable under this Section 4.1 and no benefit will be paid from the Other Plan.

4.2 MAXIMUM PENSION.

In no instance may the sum of (i) a Participant's monthly pension benefit from this Plan, (ii) his monthly pension benefit from any other Town retirement plan and (iii) his monthly pension benefit from another plan (other than a Town retirement plan) if Credited Service is granted under this Plan with respect to such other plan, as provided in Section 1.7, exceed 100% of such Participant's monthly Average Final Compensation.

4.3 MINIMUM PENSION.

Notwithstanding anything to the contrary contained herein, the minimum monthly pension payable at Normal Retirement Date or Deferred Retirement Date under the Plan for a Participant who has completed at least 10 Years of Service shall be \$83.33 per month, or \$1,000 per year.

4.4 COVERAGE UNDER MEDICAL PLAN FOR PARTICIPANTS RETIRING BEFORE NOVEMBER 1, 2005.

Each Participant retiring before November 1, 2005 shall be entitled to continue his coverage under the Medical Plan in effect at the time of his retirement for himself and his spouse and eligible Dependents by paying the total cost of such coverage until July 1 following the attainment of age 49 and thereafter by paying 50% of the cost of such coverage.

4.5 CONTINUED COVERAGE UNDER MEDICAL PLAN FOR PARTICIPANTS RETIRING ON OR AFTER NOVEMBER 1, 2005.

Notwithstanding Section 4.4, the following provisions concerning coverage under the Town's Medical Plan shall apply to all Participants retiring on or after November 1, 2005 and

who are immediately entitled to benefits under this Plan, and to the spouses and eligible Dependents of such Participants:

(A) Each Retiree shall be entitled to continue his coverage for himself and his spouse and eligible Dependents under the Town's Medical Plan in effect at the time of his retirement by paying the total cost of such coverage until the July 1 following the attainment of age 49. Effective as of July 1 following his attainment of age 49, such Retiree shall pay 40% of the cost of such coverage, as determined based upon the "allocation rate," except that the cost of coverage for any year shall not increase by more than 10% over the cost of coverage for the preceding year.

(B) In the event of a Retiree's death, his surviving spouse and surviving eligible Dependents shall pay 40% of the cost of coverage for them, as determined based upon the "allocation rate," except that the cost of coverage for any year shall not increase by more than 10% over the cost of coverage for the preceding year. For purposes of this Section 4.5, the term "Retiree" also includes a Participant with respect to whom a death benefit is payable pursuant to Section 7.2(A).

(C) At such time as such Retiree or the spouse of a Retiree reaches the age of eligibility for Medicare (even if such Retiree or spouse is not eligible for Medicare):

(1) Such Retiree or spouse shall no longer be able to participate in the Medical Plan, except as provided in Section 4.5(C)(3) and (4), then covering him and, provided that he has applied and been granted coverage under Medicare Part A and Part B, he shall instead be eligible to enroll in the Blue Cross/Blue Shield Century Carve Out Plan. Retirees and spouses shall pay 40% of the cost for such Blue Cross/Blue Shield Century Carve Out Plan, except that the cost of coverage for any year shall not increase by more than 10% over the cost of coverage for the preceding year. The term "Blue Cross/Blue Shield Century Carve Out Plan" includes any other health plan which the Town may offer in its place from time-to-time.

(2) Such Retiree or spouse shall be responsible for payment of the full premiums for any Medicare coverage, including without limitation Part B coverage and also Part A coverage (unless such Retiree or spouse is entitled to Part A coverage without the payment of premiums).

(3) Such Retiree or spouse may continue to be covered for the dental benefits under the Town's Medical Plan and the premium which he shall pay for such coverage shall be the amount he would be required to pay under Section 4.5(A) as if he had not reached the age of eligibility for Medicare, except that the cost of coverage for any year shall not increase by more than 10% over the cost of coverage for the preceding year. This Section 4.5(C)(3) shall apply only to a Retiree or spouse who was covered for such dental benefits at the time of such Retiree's retirement.

(4) Such Retiree or spouse may continue to be covered for the prescription drug benefits under the Town's Medical Plan and the premium which he shall pay for such coverage shall be the amount he would be required to pay under Section 4.5(A) as if he had not reached the age of eligibility for Medicare, except that the cost of coverage for any year

shall not increase by more than 10% over the cost of coverage for the preceding year. This Section 4.5(C)(4) shall apply only to a Retiree or spouse who was covered for such prescription drug benefits at the time of such Retiree's retirement.

(D) A Retiree and the spouse of a Retiree shall be treated separately for purposes of this Section 4.5. For purposes of this Section 4.5, if a person is the spouse of a Retiree at the time of the Retiree's retirement, (i) such person shall continue to be treated as a spouse notwithstanding the termination of the marriage of such Retiree and spouse by reason of the death of such Retiree and (ii) such person shall not continue to be treated as a spouse in the event of the termination of the marriage of such Retiree and spouse by reason of divorce.

4.6 LIMITS ON BENEFITS.

Notwithstanding any other provision of the Plan, the benefits of a Participant hereunder shall be subject to the following limitation: The maximum Annual Benefit payable to a Participant under the Plan, and under any other defined benefit plan sponsored by the Employer (or any entity aggregated with the Employer pursuant to Section 414 of the Code), for any Limitation Year shall not exceed the limitation set forth in Section 415(b) of the Code. For purposes of Sections 415(b)(2)(E)(i) and Section 415(b)(2)(E)(iii) of the Code, the interest rate shall be 5% per annum, compounded annually. The term "Annual Benefit" shall mean a benefit payable annually in the form of a qualified joint and survivor annuity as defined in Section 417(b) of the Code and Treas. Reg. Sec. 1.401(a)-20, Q & A-25 (with no ancillary benefits) under a plan to which employees do not contribute and under which no rollover contributions are made.

ARTICLE 5
FORM OF RETIREMENT PAYMENT AND ELECTION PROCEDURES

5.1 RETIREMENT PAYMENT FORMS.

(A) The normal form of payment to a Retiree is a standard life annuity, payable monthly for his life. This benefit ceases with the death of the Retiree. Should the Retiree die before receiving benefits equal to his accumulated Employee contributions plus Interest, such remaining amount shall be paid in a lump sum to the Retiree's Designated Beneficiary.

(B) The following options, under each of which the amount of payment is the Equivalent Actuarial Value of the payment under the normal form, are available:

(1) Joint and Survivor Life Annuity: An annuity, under which payments are made to the Retiree until death, then continue to a specified Joint Annuitant (in same or reduced amount) until death of such Joint Annuitant. Should the Retiree and the Joint Annuitant both die before receiving benefits in the aggregate equal to the Retiree's accumulated Employee contributions plus Interest, such remaining amount shall be paid in a lump sum to the Retiree's Designated Beneficiary.

(2) Period Certain (5, 10 or 20 years) and Life Annuity: Payments are guaranteed for the lifetime of the Retiree with the provision that not less than 60, 120, or 240 equal monthly payments shall be made as designated by the Retiree, to him or a Designated Beneficiary. Should both parties die before receiving the guaranteed number of payments, the commuted value of the balance of the guaranteed payments shall be paid in a lump sum amount to the estate of the last survivor.

5.2 ELECTION AND REVOCATION OF OPTIONAL FORMS.

At least 3 months prior to his Retirement Date, a Participant should notify the Pension Committee of his anticipated Retirement Date. Subsequently, the Participant shall be notified of the benefit available under the various optional forms of payment as described in Section 5.1 and shall make an election. A Participant may revoke an election made by him at any time prior to his Retirement Date and make a new election subject to the limitations herein.

5.3 DEATH OF JOINT ANNUITANT.

If a Participant elects a joint and survivor annuity and the Joint Annuitant dies prior to the commencement of benefits, then the Participant shall receive his pension in the form of a life annuity.

5.4 UNCLAIMED BENEFITS.

The Pension Committee having made reasonable attempts to locate any Participant or beneficiary during the 7-year period following the date of first notice, may thereafter direct any benefit that may be due to be canceled.

5.5 DIRECT ROLLOVERS OF ELIGIBLE ROLLOVER DISTRIBUTIONS.

Notwithstanding any other provision of the Plan to the contrary which would otherwise limit a Distributee's election under this Section 5.5, a Distributee may elect, at the time and in the manner permitted by the Plan Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover. For purposes of this Section 5.5:

(A) "Direct Rollover" means a payment by the Plan to the Eligible Retirement Plan specified by a Distributee.

(B) "Distributee" means a Participant who is an Employee or former Employee. In addition, (1) such a Participant's spouse or former spouse who is the alternate payee under a "qualified domestic relations order," as defined in Section 414(p) of the Code, and (2) the surviving spouse of a deceased Participant who was an Employee or former Employee, are Distributees with regard to the interest of such spouse or former spouse in the Plan. A distributee includes the Participant's or former Participant's nonspouse designated beneficiary, in which case, the distribution can only be transferred to a traditional or Roth IRA established on behalf of the nonspouse designated beneficiary for the purpose of receiving the distribution.

(C) "Eligible Retirement Plan" means an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, or a qualified trust described in Section 401(a) of the Code, which accepts a Distributee's Eligible Rollover Distribution. However, in the case of an Eligible Rollover Distribution to a Distributee who is surviving spouse, an "Eligible Retirement Plan" means an individual retirement account or individual retirement annuity. The term "Eligible Retirement Plan" shall also include (i) an annuity contract described in Section 403(b) of the Code, (ii) an eligible plan which is maintained under Section 457(b) of the Code 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 and (iii) a Roth IRA described in Code Section 408A. The 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," as defined in Section 414(p) of the Code.

(D) "Eligible Rollover Distribution" means 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: (1) 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 Designated Beneficiary, or for a specified period of 10 years or more; (2) any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; and (3) the portion of any distribution which is not includible in gross income. 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. The term "Eligible Rollover Distribution" shall also include a direct trustee-to-trustee

transfer of all or any portion of a distribution from the Plan from the benefit of a deceased Participant to an individual retirement account described in Code Section 408(a), or an individual retirement annuity described in Code Section 408(b) (other than an endowment contract), established for the purposes of receiving such distribution or portion thereof on behalf of an individual who is a Designated Beneficiary, within the meaning of Section 8.7(B), who is not the surviving spouse of such Participant.

If, pursuant to Section 7.1, a distribution of more than \$1,000 is payable to a Participant whose employment has terminated, and such Participant does not elect to receive such distribution directly or, pursuant to this Section 5.5, to have such distribution paid to an Eligible Retirement Plan in a direct rollover, the Pension Committee shall cause such distribution to be paid in a direct rollover to an individual retirement account described in Section 408(a) of the Code or to an individual retirement annuity described in Section 408(b) of the Code.

5.6 QUALIFIED MILITARY SERVICE.

(A) 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) of the Code.

(B) 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 6
DISABILITY BENEFITS**

6.1 ELIGIBILITY AND DURATION.

A Participant who becomes Disabled and remains continuously Disabled for a period of at least 6 months shall be eligible for a Disability benefit. The Disability benefit shall commence after 6 months of Disability and be payable monthly during the time the Participant is Disabled and until the latest of the following shall occur:

- (A) The Participant's attainment of age 65;
- (B) The Participant's attainment of his Normal Retirement Date; or
- (C) 5 years from the commencement of Disability benefits.

During the period of Disability, Credited Service for the Disabled Participant shall continue to accrue and no contributions under Article 9 shall be required from him; provided, however, that during such period the benefit payable to him pursuant to Section 6.2 shall not increase on account of such Credited Service, and instead such Credited Service during the period of Disability shall be taken into account in determining the amount of his benefit payable under the Plan following the termination of his Disability benefit.

6.2 AMOUNT OF BENEFIT.

The amount of the monthly Disability benefit shall be the greater of:

(A) 50% of the Participant's monthly Compensation immediately prior to the onset of Disability; or

(B) The amount of the pension computed under Section 4.1 based upon such Participant's Credited Service and Average Final Compensation, as if such pension were payable beginning at the onset of Disability,

reduced by any amounts paid or payable to the Participant from the following sources:

- (C) Disability benefits under any plan sponsored by the Employer;
- (D) Any wages or salary paid to the Participant attributable to periods of time when the Participant is receiving benefits hereunder;
- (E) Retirement benefits under this or any other plan to which the Employer contributes; and
- (F) Benefits under the Social Security or Railroad Retirement Acts.

6.3 DETERMINATION OF DISABILITY BENEFITS BY PENSION COMMITTEE.

The Pension Committee shall utilize such outside professional counsel as it deems necessary to assist it in determining a Participant's initial and continuing eligibility for Disability benefits. The decision of the Pension Committee shall be final.

6.4 ELECTION AS TO FORM OF PAYMENT.

Prior to the commencement of Disability benefits to a Participant, he shall elect a form of payment option under Section 5.1 as if he were retiring and receiving a pension pursuant to Section 4.1. The election which he shall make shall also apply to any normal retirement benefits payable under the Plan after the cessation of his Disability benefits if he does not return to active employment with the Employer following such cessation of his Disability benefits; accordingly, the form of payment option elected by such a Participant under Section 5.1 may not thereafter be changed for any reason.

ARTICLE 7
VESTED BENEFITS AND DEATH BENEFITS

7.1 VESTED BENEFITS.

The following provisions shall apply to a Participant who terminates employment for any reason other than death or Disability prior to his Normal Retirement Date:

(A) Such Participant shall be vested in his accrued pension determined in accordance with Section 4.1 after the completion of 10 Years of Service. Credited Service bought back pursuant to Section 1.7(B) shall not be taken into account in determining whether a Participant has completed 10 Years of Service for vesting purposes.

(B) A Vested Participant shall commence receiving his accrued pension determined in accordance with Section 4.1 at his Normal Retirement Date. Alternatively, a Vested Participant may elect to receive, upon termination of employment, his contributions with Interest in full satisfaction of his claims against the Plan.

(C) A Participant who terminates employment for any reason other than death or Disability prior to his Normal Retirement Date and is not vested in any portion of his accrued pension benefit pursuant to Section 7.1(A), shall receive his contributions with Interest in full satisfaction of his claims against the Plan.

7.2 DEATH BENEFITS PRIOR TO RETIREMENT.

(A) The death benefit of a Participant, whether or not actively employed by the Town, who dies prior to his Normal Retirement Date but on or after the date he had completed 10 or more years of Credited Service, excluding Credited Service bought back pursuant to Section 1.7(B) and who is survived by a spouse, or eligible Dependent or Dependents, shall be as follows:

(1) If the Participant is survived by a spouse, the survivor shall be entitled to receive an annual benefit, payable in equal monthly installments, equal to the greater of Clauses (i) and (ii) below:

(a) 50% of the Participant's Average Final Compensation as of the date of his death. In the event the Participant has not completed 25 years of Credited Service to the date of his death, such benefit shall be reduced by 1-1/2% for each year of Credited Service less than 25 years (adjusted for completed months in excess of completed years).

(b) The monthly pension computed under Section 4.1 based on the Participant's years of Credited Service and monthly Average Final Compensation as of the date of his death.

In the event the surviving spouse is more than 5 years younger than the deceased Participant, the benefits determined under this Section 7.2(A)(1) shall be reduced by 1/6 of one 1% for each month his age is more than 5 years younger than the Participant's age.

This death benefit shall be payable to the surviving spouse for life.

(2) If the Participant is survived by one or more eligible Dependents but no spouse, the death benefit determined under Section 7.2(A)(1) (one benefit per family) shall be payable monthly pro rata to those of such eligible Dependents who are under 21 years of age until the youngest eligible Dependent reaches age 21.

Notwithstanding the preceding provisions of this Section 7.2(A), no such death benefit shall be less than the Actuarial Equivalent of such Participant's contributions, with Interest thereon to the date of such Participant's death.

(B) The death benefit of a Participant, whether or not actively employed by the Town, who dies prior to his Normal Retirement Date and

(1) On or after the date he had completed 10 or more years of Credited Service, excluding Credited Service bought back pursuant to Section 1.7(B), but who is not survived by a spouse, or eligible Dependent or Dependents; or

(2) Before the date he had completed 10 or more years of Credited Service, excluding Credited Service bought back pursuant to Section 1.7(B),

shall be an amount equal to such Participant's contributions, with Interest thereon to the date of such Participant's death. Such death benefit shall be paid to such Participant's Designated Beneficiary.

7.3 DEATH BENEFITS AFTER RETIREMENT.

No further benefits shall be payable on behalf of a Retiree after his death, except as may be provided under an optional benefit form elected in accordance with Article 5.

ARTICLE 8 REQUIRED DISTRIBUTIONS

8.1 GENERAL RULES.

The provisions of this Article 8 shall take precedence over any inconsistent provisions of the Plan.

All distributions required under this Article 8 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, as determined pursuant to Section 7.1(A), shall be distributed, or begin to be distributed, to him no later than his Required Beginning Date.

(B) If a Participant dies before distributions begin, 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 the Participant would have attained age 70-1/2, 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 such surviving spouse dies after such Participant but before distributions to such surviving spouse begin, this Section 8.2(B), other than Section 8.2(B)(1), shall apply as if the surviving spouse were the Participant.

For purposes of this Section 8.2(B) and Section 8.5, distributions shall be considered to begin on a Participant's Required Beginning Date, or if Section 8.2(B)(4) applies, the date distributions are required to begin to the surviving spouse under Section 8.2(B)(1). If annuity payments irrevocably commence to a Participant before his Required Beginning Date, or to his surviving spouse before the date distributions are required to begin to such surviving spouse under Section 8.2(B)(1), the date distributions shall be considered to begin is the date distributions actually commence.

Unless a Participant's vested interest in the Plan is distributed in the form of an annuity purchased from an insurance company or 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 8.3, 8.4 and 8.5. If a Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder shall be made in accordance with the requirements of Code Section 401(a)(9) and the Treasury regulations.

8.3 DETERMINATION OF AMOUNT TO BE DISTRIBUTED EACH YEAR.

(A) If a Participant's interest is paid in the form of annuity distributions under the Plan, such distributions shall satisfy the following requirements:

(1) The annuity distributions shall be paid in periodic payments made at intervals not longer than one year;

(2) The distribution period shall be over a life (or lives) or over a period certain not longer than the period described in Sections 8.4 or 8.5;

(3) Once payments have begun over a period certain, the period certain shall not be changed even if the period certain is shorter than the maximum permitted; and

(4) Payments shall be non-increasing, or shall increase only to pay increased benefits that result from a Plan amendment.

(B) The amount which must be distributed on or before a Participant's Required Beginning Date, or if such Participant dies before distributions begin, the date distributions are required to begin under Sections 8.2(B)(1) or 8.2(B)(2), is the payment which is required for one Payment Interval. The second payment need not be made until the end of the next Payment Interval even if that Payment Interval ends in the next calendar year. All of a Participant's benefit accruals as of the last day of the first Distribution Calendar Year shall be included in the calculation of the amount of the annuity payments for Payment Intervals ending on or after his Required Beginning Date.

(C) Any additional benefits accruing to a Participant in a calendar year after the first Distribution Calendar Year shall be distributed beginning with the first Payment Interval ending in the calendar year immediately following the calendar year in which such amount accrues.

8.4 REQUIREMENTS FOR ANNUITY DISTRIBUTIONS COMMENCING DURING A PARTICIPANT'S LIFETIME.

If a Participant's vested interest in the Plan is being distributed in the form of a joint and survivor life annuity for the joint lives of the Participant and a non-spouse Joint Annuitant, annuity payments to be made on or after the Participant's Required Beginning Date to the Designated Beneficiary after the Participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the Participant using the table set forth in Q&A-2 of Treasury Regulation Section 1.401(a)(9)-6T.

8.5 REQUIREMENTS FOR MINIMUM DISTRIBUTIONS WHERE PARTICIPANT DIES BEFORE DATE DISTRIBUTIONS BEGIN.

(A) . If a Participant dies before the date distribution of his vested interest in the Plan begins and there is a Designated Beneficiary, such Participant's entire vested interest shall be distributed, beginning no later than the time described in Sections 8.2(b)(1) or 8.2(b)(2), over the life of the Designated Beneficiary or over a period certain not exceeding:

(1) Unless the Annuity Starting Date is before the first distribution calendar year, the life expectancy of such Designated Beneficiary determined using his age as of his birthday in the calendar year immediately following the calendar year of such Participant's death; or

(2) If the Annuity Starting Date is before the first Distribution Calendar Year, the life expectancy of such Designated Beneficiary determined using his age as of his birthday in the calendar year which contains the Annuity Starting Date.

(B) If a Participant dies before the date distribution of his entire vested interest in the Plan begins and there is no Designated Beneficiary as of September 30 of the year following the year of such Participant's 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 such Participant's death.

(C) If a Participant dies before the date distribution of his entire vested interest in the Plan begins and his surviving spouse is the Participant's sole Designated Beneficiary, and such surviving spouse dies before distributions to such surviving spouse begin, this Section 8.5 shall apply as if such surviving spouse were the Participant, except that the time by which distributions must begin shall be determined without regard to Section 8.2(B)(1).

8.6 LIFE EXPECTANCY.

For purposes of this Article 8, life expectancy shall be computed by use of the Single Life Table in Treasury Regulation Section 1.401(a)(9)-9.

8.7 DEFINITIONS.

For purposes of Sections 8.1 to 8.6:

(A) "Annuity Starting Date" means: (1) The first day of the first period for which an amount is payable as an annuity or other distribution under the Plan; or (2) In the case of a benefit not payable in the form of an annuity, the first day on which all events have occurred which entitle the recipient to such benefit.

(B) "Designated Beneficiary" means the individual who is designated as the beneficiary under Section 1.6 of the Plan and is the "designated beneficiary" under Code Section 401(a)(9) and Treasury Regulation Section 1.401(a)(9)-4, Q&A-1.

(C) “Distribution Calendar Year” means a calendar year for which a minimum distribution is required under this Article 8. For distributions beginning before a Participant’s death, the first Distribution Calendar Year shall be the calendar year immediately preceding the calendar year which contains his Required Beginning Date. For distributions beginning after a Participant’s death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin pursuant to Section 8.2(b).

(D) “Payment Intervals” means the periods for which payments are received, such as bi-monthly, monthly, semi-annually or annually.

(E) “Required Beginning Date” means, with respect to a Participant, April 1 of the calendar year following the later of (i) the calendar year in which such Participant attains age 70-1/2 or (ii) the calendar year in which such Participant retires. The benefit of a Participant which does not commence by April 1 of the calendar year following the calendar year in which he attains age 70-1/2 shall be actuarially increased for the period beginning April 1 of the calendar year following the calendar year in which he attains age 70-1/2 and ending on the date after retirement that his benefits commence in an amount sufficient to satisfy the requirements of Section 401(a)(9) of the Code. The amount of actuarial increase payable as of the end of such period shall equal the Actuarial Equivalent of such Participant’s pension benefit which would have been payable as of the date such actuarial increase must commence plus the Actuarial Equivalent of additional benefits accrued after such date, and reduced by the Actuarial Equivalent of any benefits paid after such date.

**ARTICLE 9
CONTRIBUTIONS AND PENSION FUND**

9.1 PARTICIPANT CONTRIBUTIONS.

(A) Each Employee eligible to participate shall be required as a condition of employment to make contributions to the Plan. Contributions so required are 4% of Compensation. Notwithstanding the preceding sentence, no contributions shall be required with respect to the time a Participant was a probationary Employee.

(B) In accordance with Section 414(h)(2) of the Code, the Employer shall "pick up" the contributions required of Participants hereunder, such that the contributions so picked up shall be considered contributions of the Employer rather than Participant contributions under the Code. Although such contributions are designated as Participant contributions, they shall be treated as being paid by the Employer 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 Employer to the Plan.

9.2 EMPLOYER CONTRIBUTIONS.

The Employer shall make such contributions to the Fund for each fiscal year to insure sufficient funds in the Plan to pay all benefits required to be paid by the Plan in that fiscal year.

9.3 PENSION FUND.

Contributions of Participants and the Employer together with any transferred from any other plan or paid into the Plan in accordance with Section 1.7 shall be placed in a trust, referred to hereunder as the "Pension Fund," to be administered and invested by the Pension Committee or its designated agents in accordance with the terms and provisions of the Plan.

9.4 RESTORATION OF FORFEITURE.

The accrued pension attributable to a terminated Participant shall be restored if such Participant:

(A) Resumes employment with the Employer before the expiration of:

- (1) In the case of layoff, 5 years; or
- (2) In the case of Approved Absence, one year; or
- (3) In the case of termination due to other non-voluntary causes, or to voluntary causes, 5 years from the date of his termination; and

(B) Repays to the Plan, within the first 12 months following reemployment, or within the first 12 months of a revision of this Section 9.4 which would permit, for the first time, restoration of accrued pension to a current employee, the full amount of the total distributions

received pursuant to Section 7.1(B), together with Interest from the date of the distribution to such Participant, to the date of repayment to the Plan by him.

ARTICLE 10
ALIENATION, FACILITY OF PAYMENT AND REEMPLOYMENT

10.1 ALIENATION.

Except as may be contrary to the laws of the United States or any state having jurisdiction in the premises:

(A) No pension or benefit payable at any time under the Plan shall be subject in any manner to alienation, sale, transfer, assignment, pledge, attachment or encumbrance of any kind. Any attempt to alienate, sell, transfer, assign, pledge or otherwise encumber any such pension or benefit, whether presently or thereafter payable, shall be void. No pension or benefit, nor the Plan nor Fund shall, in any manner, be liable for or subject to the debts or liability of any Participant or Retiree or of any Joint Annuitant, surviving spouse or Designated Beneficiary.

(B) If any Participant, Retiree, Joint Annuitant, surviving spouse or Designated Beneficiary shall attempt to, or shall, alienate, sell, transfer, assign, pledge, or otherwise encumber his benefits under the Plan or any part thereof, or if by reason of his bankruptcy or other event happening at any time, such benefit would devolve upon anyone else or would not be enjoyed by such Participant, Retiree or Joint Annuitant, surviving spouse or Designated Beneficiary, then the Pension Committee, in its sole discretion may terminate his interest in any such benefit and hold or apply it to or for the benefit of such person, his spouse or children or any of them, in such manner as the Pension Committee, in its sole discretion, may deem proper.

10.2 FACILITY OF PAYMENT.

If the Pension Committee finds that any person to whom a pension or benefit is payable under the Plan is adjudged incompetent or is a minor, then any payment due shall be made payable to the duly appointed guardian, committee or other court appointed representative upon receipt of a valid release. Any such payment shall be a valid and complete discharge of any liability under the Plan in respect of the amount of pension or benefit so paid.

10.3 SUSPENSION OF BENEFITS.

No Participant shall be eligible for any pension benefit payment under this Plan while in the employ of the Employer.

**ARTICLE 11
ADMINISTRATION OF PLAN**

11.1 PENSION COMMITTEE.

(A) The general management and administration of the Plan shall be the responsibility of the Pension Committee.

(B) No person shall act as a member of the Pension Committee unless notice of his appointment has been given in writing by the appointing party to the Pension Committee and the other party.

(C) The Employer may at any time remove for cause a member of the Pension Committee appointed by it, by giving written notice of such action to the Pension Committee and the other party.

(D) Any member of the Pension Committee may resign by written notification of his resignation to the Pension Committee.

11.2 MEETINGS OF PENSION COMMITTEE.

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

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

11.3 COMPENSATION OF PENSION COMMITTEE

The members of the Pension Committee shall receive no compensation from the Pension 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 PENSION COMMITTEE.

(A) The Pension Committee shall have such powers as are necessary and proper for the administration of the Plan including, but not limited to the following:

(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, Retirees, Joint Annuitants, surviving spouses and Designated Beneficiaries;

(3) To request of the Town to retain (i) an Actuary for purposes of examining into the actuarial soundness of the Plan, assisting the parties in the establishment of pension benefits, and aid in determining specific questions of individual benefits; (ii) legal counsel to advise the Pension Committee concerning legal issues arising under the Plan; and (iii) investment advisors in connection with the investment of the assets of the Pension Fund;

(4) To request direction from the First Selectman or First Selectwoman, and on receipt of such direction in writing, the Pension Committee shall be entitled to rely and act thereon;

(5) To pay or authorize payment from the Pension 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 Pension 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 Pension Committee, or to any employee of the Town, or to any one or more of the members of the Pension Committee;

(7) To issue to any Participant upon his request a statement of his standing showing the amount of his contributions, Credited Service and such other pertinent data as the Pension Committee deems proper;

(8) To hear and determine any claims or complaints relating to the administration of the Plan pursuant to Section 11.7;

(9) To advise and inform the Employer as to the details of the administration of the Plan;

(10) To monitor the performance of the Pension Fund; and

(11) To issue directions to its agents as appointed by the Pension Committee pursuant to Section 9.3 as to the making of retirement benefit payments, refunds of contributions, and payment of the expense of administration of the Plan.

(B) The Pension 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;

(C) After considering the recommendations of the Actuary, the Pension Committee shall, from time to time, adopt actuarial tables to be used as the basis for all actuarial calculations. The Actuary shall, as an aid to the Pension Committee in adopting tables and in recommending the contributions payable by the Town to the Plan, make periodic actuarial valuations of the assets and liabilities of the Plan and shall certify to the Pension Committee the recommended tables and rates of contributions.

11.5 MODIFICATION OF PLAN.

The Pension Committee shall have no power to change or modify any provisions of the Plan, except as provided in Section 11.4(A)(4).

11.6 PROTECTION OF PENSION COMMITTEE.

(A) The Pension 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. The Pension Committee shall be entitled to rely upon all tables, valuations, certificates and reports furnished by the Actuary; 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, and certifications given by any duly appointed legal counsel. The Pension 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 tables, valuations, certificates, reports, opinions or advises. All actions so taken shall be conclusive upon each of them and upon all persons having any interest under the Plan. No member of the Pension Committee shall be personally liable by virtue of any instrument executed by him or on his behalf as a member of the Pension 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. Each member of the Pension Committee shall be indemnified by the Plan 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 Pension 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 Pension Committee. The foregoing right of indemnification shall be in addition to any other rights to which the Pension Committee may be entitled as a matter of law.

(B) The Pension 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.

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

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

(E) The Pension 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.

(F) No person, partnership, corporation or association dealing with the Pension Committee shall be obliged to see to the application of any funds, securities or other property paid or delivered to the Pension 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 Pension Committee, or the necessity or expediency of any act of the Pension Committee, and every instrument effected by the Pension 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; and
- (2) Said instrument was effected in accordance with the terms and conditions of the Plan; and
- (3) The Pension Committee was duly authorized and empowered to execute such instrument.

11.7 REVIEW PROCEDURES OF PENSION COMMITTEE.

(A) Upon the Pension Committee's receipt of a written request for benefits under the Plan as filed by a Participant (or claimant who is a surviving spouse, Joint Annuitant or Designated Beneficiary) on a form furnished for that purpose, the Pension Committee shall act thereon in accordance with the following:

(1) In the event the Pension Committee approves the request, the Participant (or other claimant) shall be so notified within a period not to exceed 90 days from the date of the Participant's (or claimant's) filing of the request; or

(2) In the event the Pension Committee denies the request, in whole or in part, the Participant (or other claimant) shall be so notified by the Pension Committee within a period not to exceed 90 days from the date of the filing of the request by the Participant (or other claimant).

(B) The notice of denial by the Pension 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 Pension 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 the Participant (or other claimant) to inspect Plan documents pertinent to the request; and/or

(5) A description of the steps which may be taken by the Participant (or other claimant) to obtain a review of the denial.

11.8 FINAL AND BINDING DECISIONS OF PENSION COMMITTEE.

All decisions of the Pension Committee, including all those made in the interpretation and administration of the Plan, shall be conclusive, final and binding upon all Participants, Retirees, Joint Annuitants, surviving spouses and Designated Beneficiaries. No Participant, Retiree or other person shall have or acquire any right, title or interest in or to the Pension Fund or any portion of the Pension Fund, except by the actual payment or distribution of a portion of the Pension Fund to him under the provisions of the Plan. The determination of the Pension 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.

ARTICLE 12
RETIREE MEDICAL EXPENSES

12.1 EFFECTIVE DATE.

This Article 12 shall apply to Medical Expenses incurred on or after the date specified by resolution of the Pension Committee for implementation of this Article 12.

12.2 PAYMENT OF RETIREE MEDICAL EXPENSES.

The Plan may provide for the payment of any or all Medical Expenses of Retirees and their spouses and eligible Dependents in accordance with Code Section 401(h). Payments will occur within a reasonable time after a Claimant has submitted a claim for payment under the Medical Plan.

12.3 SEPARATE ACCOUNT.

A separate account shall be established and maintained under the Plan with respect to contributions to fund Medical Expenses under the arrangement set forth in this Article 12. Such contributions shall come from the Employer and from Retirees and spouses and eligible Dependents. Such separate account shall be for recordkeeping purposes only, and the Trust Funds allocated to such account need not be separately invested. The Employer's contributions to such separate account shall be reasonable and ascertainable and at the time a contribution to the Plan is made by the Employer, the Employer shall designate that portion of such contribution which is allocable to the funding of Medical Expenses. The aggregate actual contributions to the Plan for Medical Expenses shall not exceed 25% of the total actual contributions to the Plan (other than contributions to fund past service credits) after the date this Article 12 is implemented. It shall be impossible, at any time prior to the satisfaction of all liabilities under the Plan to provide Medical Expenses, for any part of the principal or income of such separate account to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of Medical Expenses. Notwithstanding the provisions of Section 401(h)(2) of the Code, upon the satisfaction of all liabilities under the Plan to provide Medical Expenses, any amount remaining in such separate account shall be returned to the Employer.

12.4 KEY EMPLOYEE.

In the case of a Retiree who is a "key employee," within the meaning of Section 416(i) of the Code, at any time during the Plan Year or any preceding Plan Year during which contributions were made by the Employer on behalf of him or his spouse and eligible Dependents, if any, a separate account shall be established and maintained for Medical Expenses payable to him (and his spouse and eligible Dependents, if any) and such benefits (to the extent attributable to Plan Years beginning after March 31, 1984, for which such Retiree is a "key employee") shall only be payable to or on behalf of such Retiree (and his spouse and eligible Dependents, if any) from such separate account.

12.5 CO-ORDINATION WITH OTHER COVERAGE.

If Medical Expenses are paid from other sources as well as from the Plan, the benefits payable from the Plan shall be paid before any other sources are used.

12.6 USE OF FORFEITURES.

In the event an individual's interest in such separate account shall be forfeited prior to the termination of the Plan, an amount equal to the amount of such forfeiture shall be applied as soon as possible to reduce the Employer's contributions to the Plan to fund Medical Expenses.

12.7 EXCESS PENSION ASSETS.

There may be transferred to the separate account referred in Section 12.3 "excess pension assets" of the Plan, within the meaning of Section 420(e)(2) of the Code, subject to the following provisions:

- (A) Only one transfer may be made in a taxable year of the Employer.
- (B) The amount transferred shall not exceed the amount which is reasonably estimated to be the amount the Employer will pay out (whether directly or through reimbursement) of such separate account during the taxable year of the transfer for "qualified current retiree health liabilities," within the meaning of Code Section 420(e)(1).
- (C) No such transfer shall be made after December 31, 2013.
- (D) Any assets transferred, and any income allocable to such assets, shall be used only to pay "qualified current retiree health liabilities" for the taxable year of transfer.
- (E) Any amounts transferred to such separate account (and income attributable to such amounts) which are not used to pay "qualified current retiree health liabilities" shall be transferred back to the defined benefit portion of the Plan.
- (F) Amounts paid out of such separate account shall be treated as paid first out of transferred assets and income attributable to such assets.
- (G) The accrued pension benefits for Participants and Beneficiaries of the Plan shall become nonforfeitable as if the Plan had terminated immediately prior to the transfer (or in the case of a Participant who separated during the one-year period ending on the date of transfer immediately before such separation).
- (H) A transfer will be permitted only if the Medical Plan provides that the "applicable employer cost" for each taxable year during the "cost maintenance period" shall not be less than the higher of the "applicable employer costs" for each of the two taxable years immediately preceding the taxable year of the "qualified transfer" within the meaning of Code Section 420(b)(1). For purposes of the preceding sentence:

(1) The term “applicable employer cost” means, with respect to any taxable year, the amount determined by dividing

(a) The “qualified current retiree health liabilities,” within the meaning of Code Section 420(e)(1)(A), of the Employer for such taxable year determined (I) without regard to any reduction under Code Section 420 (e)(1)(B), and (II) in the case of a taxable year in which there was no “qualified transfer,” in the same manner as if there had been such a transfer at the end of the taxable year,

by

(b) The number of individuals to whom coverage for “applicable health benefits,” within the meaning of Code Section 420(e)(1)(C), was provided during such taxable year.

(2) The term “cost maintenance period” means the period of five taxable years beginning with the taxable year in which the “qualified transfer” occurs. If a taxable year is in two or more overlapping “cost maintenance periods,” the preceding sentence shall be applied by taking into account the highest “applicable employer cost” required to be taken into account for purposes of the first sentence of Section 12.7(h) for such taxable year.

(I) The requirements of Code Section 420(c)(3) shall be satisfied separately with respect to individuals eligible for benefits under Title XVIII of the Social Security Act at any time during the taxable year and with respect to individuals not so eligible.

(J) Transferred assets may not be used to provide Medical Expenses for “key employees” and their spouses and eligible Dependents, if any.

12.8 DEFINITIONS.

As used in this Article 12, the following terms shall have the meanings indicated:

(A) “Claimant” means a Retiree, or his spouse or eligible Dependent child, who has submitted a claim for benefits under the Medical Plan.

(B) “Medical Expense” means an expense which is payable under the Medical Plan and which is an expense for “medical care” under Code Section 213(d)(1).

(C) “Medical Plan” means the plan or plans maintained by the Town, pursuant to which Retirees and their spouses and eligible Dependents receive medical, prescription drug and dental benefits.

12.9 ANNUAL LIMITATIONS.

For any Limitation Year, the Annual Additions on behalf of any Participant shall not exceed, in the aggregate, the lesser of (i) 100% of such Participant’s Compensation for such Limitation Year; or (ii) \$40,000, subject to cost-of-living adjustments under Section

415(d)(1)(C) of the Code. The term “Annual Addition” shall mean, for purposes of this Section 12.9, the sum of the following:

(A) Employer contributions allocable to such Participant for such Limitation Year under any qualified defined contribution plan maintained by the Employer;

(B) Forfeitures, if any, allocable to such person for such Limitation Year under any qualified defined contribution plan maintained by the Employer;

(C) Such person’s voluntary non-deductible contributions under any other qualified plan of the Employer for such Limitation Year;

(D) Amounts allocated, after March 31, 1984, to an individual medical account, as defined in Section 415(1)(2) of the Code, which is part of a pension or annuity plan maintained by the Employer; 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 to the separate account of such Participant, under a welfare benefit fund, as defined in Section 419(e) of the Code, maintained by the Employer.

The term “Compensation,” for purposes of this Section 12.9, shall mean “Compensation” within the meaning of Section 1.6(B) of the Plan.

ARTICLE 13
AMENDMENT, TERMINATION, BENEFIT LIMITATIONS, MERGER AND
APPROVAL OF PLAN

13.1 AMENDMENT OF PLAN.

Only upon the previously written direction from the Town, or to the extent required by any applicable statute, may the Pension Committee revoke, modify, alter or amend the Plan, provided, however, that the Pension Committee shall not be required to adopt any amendment which would conflict with any applicable state or federal legislation or regulation. No amendment shall increase the duties or responsibilities of the Pension Committee without their consent thereto in writing. No amendment shall have the effect of revesting the Employer, in whole or in part, in any of the assets of the Plan or of diverting any part of the assets to purposes other than for the exclusive benefit of the Participants, Joint Annuitants, surviving spouses, and Designated Beneficiaries at any time prior to the satisfaction of all the liabilities under the Plan with respect to such persons. No amendment shall reduce the amount of, or restrict the payment of, vested benefits accrued hereunder prior to the effective date of such amendment, and for this purpose only, vested benefits accrued as of such date shall be deemed to be those payable from the Pension Fund as then constituted in the event each Participant terminated employment on the day immediately preceding the effective date of the amendment.

13.2 TERMINATION OR PARTIAL TERMINATION OF PLAN.

The Plan is voluntary on the part of the Employer. The Employer reserves the right to terminate the Plan, in whole or in part, or the Pension 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 accrued benefits of Participants to the date of such termination or discontinuance shall be nonforfeitable to the extent then funded.

13.3 ALLOCATION OF ASSETS UPON PLAN TERMINATION.

(A) In the event of the termination of the Plan, the Pension Committee, after reserving an amount sufficient to pay all expenses of the Plan and Agreement and Declaration of Trust, shall allocate all assets of the Plan or their proceeds in order of preference as hereinafter set forth (but only to the extent that an individual's pension benefit is not fully funded):

(1) The portion derived from a Participant's own contributions, with Interest (if any).

(2) In the case of the pension benefit of a Participant, Joint Annuitant, surviving spouse or Designated Beneficiary, the benefit which was in pay status as of the date of such termination.

(3) To provide benefits to Participants who were eligible to retire in accordance with Article 3 as of the date of such termination.

(4) To all other vested pension benefits (if any) under the Plan.

(5) To all other nonforfeitable pension benefits under the Plan.

(B) If the assets in the Pension Fund applicable to any of the categories listed in Section 13.3(A) are insufficient to provide for all persons listed in such categories, then the assets shall be allocated among those persons in the last category to which the assets are available in the same proportion which the present value, as determined by the Actuary, of each person's benefit bears to the present value of all benefits attributable to that category.

13.4 INVALID PROVISIONS.

If any provision of the Plan is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions hereof, and the Plan shall be construed and enforced as if such invalid or unenforceable provisions had not been included.

13.5 NO GUARANTY OF EMPLOYMENT; EFFECT OF DENIAL OF BENEFITS.


The Employer, in establishing and maintaining this Plan, assumes no responsibility or liability for continued employment of the Participants hereunder. In the event of any denial of benefits hereunder, the Employer shall be held blameless.

13.6 USAGE.

Wherever any words are used herein in the masculine gender they shall be construed as though they were also in the feminine gender, in all cases where they would so apply. Wherever any words are used herein in the singular form, they shall be construed as though they were used in the plural form, and vice versa, in all cases where they would so apply.

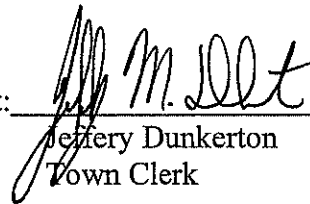
Dated this 13th day of July, 2021.

THE TOWN OF WESTPORT,
CONNECTICUT

By 

Jina Marpe
First Selectman

The above and foregoing is a true and attested copy of the RETIREMENT PLAN FOR NON-UNION AND NON-SUPERVISORY EMPLOYEES OF THE TOWN OF WESTPORT, CONNECTICUT as amended and restated effective as of July 1, 2019.

Attest: 

Jeffery Dunkerton
Town Clerk

