

**TOWN OF THOMASTON
RETIREMENT PLAN**

**RESTATEMENT
EFFECTIVE
JANUARY 1, 2015**

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**TOWN OF THOMASTON
RETIREMENT PLAN**

PRELIMINARY MATTERS

The purpose of this Plan is to provide retirement benefits to Employees. This Plan is designated as a defined benefit pension plan.

This Plan is for the exclusive benefit of the Participants and their Beneficiaries, and it shall be interpreted and administered in a manner consistent with the provisions of the Internal Revenue Code of 1986, as amended. It shall be impossible at any time prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries under this Plan for any part of the assets, income, or forfeitures of this Plan to be used for, or diverted to, purposes other than the exclusive benefit of the Participants or their Beneficiaries.

This Plan shall be interpreted and administered in a manner that is uniformly and consistently applicable to all Participants under similar circumstances. At no time shall there be discrimination in favor of Employees who are Highly Compensated Employees whether or not they are Participants.

This Plan is intended to comply with all legislative and regulatory changes as reflected in the Cumulative List published by the Internal Revenue Service in Notice 2014-77.

Unless this document clearly states otherwise, the rights and benefits, if any, of Participants who are not Employees on the Effective Date of this restatement shall be determined in accordance with the terms and provisions of the Plan in effect on the date their employment terminated.

Although portions of this Plan may incorporate rules required by the Employee Retirement Income Security Act of 1974 (ERISA) for plans subject to ERISA, such incorporation shall not be deemed to be an election to subject this Plan, the Employer, fiduciaries and other persons to the requirements of ERISA. Rights and obligations under this Plan shall be determined only by reference to the terms of the Plan and laws which are applicable to the Plan.

HISTORY

WHEREAS, effective January 1, 1967, the Town established a pension plan known as the "Town of Thomaston Retirement Plan"; and

WHEREAS, effective January 1, 1979, the Plan was amended and restated in its entirety; and

WHEREAS, effective July 1, 1998, the Plan was amended and restated in its entirety; and

WHEREAS, effective January 1, 2011, the Plan was amended and restated in its entirety; and

WHEREAS, effective January 1, 2015, the Plan is amended and restated in its entirety by this 2015 Plan (herein called the "2015 Plan" or the "Plan"), as defined in Article I (General Definitions) herein; and

WHEREAS, a trust fund is maintained for the Plan and is governed by a separate trust document; and

WHEREAS, the effect of this 2015 Plan shall begin January 1, 2015 for all purposes, unless indicated otherwise herein.

INTENTION

It is the intention of the Employer to establish and maintain this governmental plan, as defined in Internal Revenue Code Section 414(d) and the Regulations thereunder, for the benefit of its eligible employees and their beneficiaries.

It is the intention of the Employer that if the terms of the Plan document and a Collective Bargaining Agreement conflict, the terms of the Collective Bargaining Agreement shall govern.

ARTICLE I – GENERAL DEFINITIONS

1.01 **Accrued Benefit** means, as of the date of determination, the benefit described in (a) subject further to any remaining paragraphs of this Section:

- (a) The Standard Retirement Benefit for any Participant which would be payable at the later of his Normal Retirement Date or the date of determination in the Normal Form of Benefit, based upon Credited Service for Benefit Accrual Purposes and Average Compensation as of the date of determination.
- (b) **Minimum Benefit**. In no event shall a Participant's Accrued Benefit be less than his Accrued Benefit determined as of December 31, 1978 based upon the provisions of the Plan in effect on that date.

1.02 **Actuarial Equivalent** means two or more forms of distribution which have the same actuarial present value on the date payment commences.

For purposes of establishing actuarial equivalence, the actuarial present value shall be determined by discounting all future payments for the following interest and mortality:

- (a) Pre-retirement interest means 7%;
- (b) Post-retirement interest means 7%;
- (c) Pre-retirement mortality means the UP-1984 Table with 1 year setback; and
- (d) Post-retirement mortality means the UP-1984 Table with 1 year setback.

1.03 **Actuary** means the person, firm or corporation appointed by the Town to render actuarial services in connection with the Plan.

1.04 **Administrator** means the committee or the person or group of persons designated by the Town as Administrator of the Plan, but if no committee or no other Administrator is specifically designated, the Town shall be considered the Administrator.

1.05 **Adopting Employer** means any entity which adopts this Plan with the consent of the Town and becomes a party to the Trust. In addition to all other terms and conditions in the Plan, Adopting Employers will be subject to, and must comply with, the terms and conditions set forth in Article XV (Adopting Employer Provisions), if applicable. An affiliate of the Town is not considered an Adopting Employer unless such affiliate has specifically adopted the Plan. If the Plan does not contain Article XV (Adopting Employer Provisions) setting forth the provisions for Adopting Employers, there will be no Adopting Employers of the Plan.

1.06 **Affiliated Employer or Affiliate of the Employer** means any parent, subsidiary or related corporation which is a member of a controlled group of corporations (as defined in Code Section 414(b)) of which an Employer is a member, and any trade or business, whether or not incorporated, which is considered to be under common control with the Employer (as defined in Code Section 414(c)), any organization (whether or not incorporated) which is a member of an affiliated service group with the Employer (as defined in Code Section 414(m)) and any other entity required to be aggregated with the Employer pursuant to regulations under Code Section 414(o). For purposes of Articles XI (Top-Heavy Status) and XII (Code Section 415 Limitations on Benefits), all affiliates of the Employer shall be treated as a single employer. An Affiliated Employer may also be an Adopting Employer.

1.07 **Anniversary Date** means each January 1 while the Plan is in effect.

1.08 **Annuity Starting Date** means the first day of the first period for which an amount is paid as an annuity or any other form.

The Annuity Starting Date for disability benefits is the date the disability benefits commence as long as the disability benefit is not an auxiliary benefit. An auxiliary benefit is a disability benefit that does not reduce the benefit payable at Normal Retirement Date.

If benefit payments in any form are suspended pursuant to Article III for rehired Participants who were receiving benefits from the Plan prior to rehire, the recommencement of benefit payments after the suspension is not treated as a new Annuity Starting Date.

1.09 **Average Compensation** means, the highest monthly average obtained when the sum of any 5 Plan Year Compensation amounts is divided by 60.

However, for members of the Thomaston Police Local #50 and Council #15 American Federation of State, County and Municipal Employees, the monthly average is obtained over the highest 5 years of service in the Police Department.

1.10 **Beneficiary** means any one or more primary or contingent beneficiaries designated by the Participant to receive any benefit payable under the Plan on or after the Participant's death. Upon the divorce of the Participant and Spouse, the Spouse is removed as Beneficiary under the Plan, if applicable, unless a Qualified Domestic Relations Order requires otherwise or a subsequent Beneficiary designation is made.

In the event that there is no Designated Beneficiary or that no Designated Beneficiary survives the Participant, such benefit shall be paid in the following order of priority, if living at the time of the Participant's death:

(a) The Participant's Spouse, if living at the time of the Participant's death;

- (b) The Participant's children, including adopted children, per stirpes;
- (c) The Participant's estate.

If the primary Beneficiary dies before receiving all benefits to which the Beneficiary is entitled, the balance of such payments shall be paid to the contingent Beneficiary, if any, designated by the Participant, or otherwise, the present value of such payments shall be paid to the estate of the primary Beneficiary.

The designation of Beneficiary shall be made, changed or revoked, in writing, in the form and manner prescribed by the Administrator.

- 1.11 **Board** means the Board of Selectmen for the Town of Thomaston or other governing body of the Town.
- 1.12 **Break in Service** means any Computation Period for eligibility and vesting purposes in which an Employee does not complete more than 500 Hours of Service.
- 1.13 **Code** means the Internal Revenue Code of 1986, as it may be amended from time to time.
- 1.14 **Code Section 401(a)(17) Compensation Limit** means, for any Plan Year or Limitation Year, the statutory limit that applies to each Participant's annual Compensation for a specific compensation determination period as determined under Code Section 401(a)(17) and the Regulations thereunder, including applicable cost of living adjustments. This limit was reset to \$200,000 as of January 1, 2002 by the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA") and has increased to \$265,000 in 2015 as a result of cost of living adjustments.

If a compensation determination period is less than 12 consecutive months (for example, a short Plan Year or a Plan that determines benefit accruals separately for each month), then the Code Section 401(a)(17) Compensation Limit will be multiplied by a fraction, the numerator of which is the number of months in the compensation determination period, and the denominator of which is 12.

If Compensation for any prior compensation determination period is used in determining a Participant's Plan benefits for the current Plan Year, then the annual Compensation for such prior compensation determination period is subject to the applicable Code Section 401(a)(17) Compensation Limit as in effect for that prior compensation determination period.

- 1.15 **Code Section 415 Safe Harbor Compensation** means the safe harbor alternative definition of Code Section 415(c)(3) compensation as set forth in Treasury Regulation Section 1.414(s)-1(c)(3). This definition is intended to be simplified Code Section 415 Safe Harbor Compensation as defined in Treasury Regulation 1.415(c)-2(d)(2).

A Participant's Code Section 415 Safe Harbor Compensation will comply with the definition in the Code and will include the following:

- (a) Wages, salaries, and fees for professional services and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer maintaining the Plan to the extent the amounts are includible in gross income.
- (b) Amounts that would have been received and includible in gross income but for an election under Code Section 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b).
- (c) Other compensation, including, but not limited to, bonuses, commissions paid to salespersons, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, certain income from tips, bonuses, fringe benefits, and reimbursements or other expense allowances under a nonaccountable plan as described in Treasury Regulation Section 1.62-2(c).

A Participant's Code Section 415 Safe Harbor Compensation will exclude the following types of compensation even if they are included in gross income:

- (a) Employer contributions (other than elective contributions described in § 402(e)(3), §408(k)(6), §408(p)(2)(A)(i), or § 457(b)) to a plan of deferred compensation (including a simplified employee pension described in §408(k) or a simple retirement account described in §408(p), and whether or not qualified) to the extent such contributions are not includible in the employee's gross income for the taxable year in which contributed, and any distributions (whether or not includible in gross income when distributed) from a plan of deferred compensation (whether or not qualified).
- (b) Amounts realized from the exercise of a nonstatutory stock option (that is, an option other than a statutory stock option as defined in §1.421-1(b) of the Income Tax Regulations), or when restricted stock (or property) held by the employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture.
- (c) Amounts realized from the sale, exchange or other disposition of stock acquired under a statutory stock option.
- (d) Other amounts that receive special tax benefits, such as premiums for group-term life insurance (but only to the extent that the premiums are not includible in the gross income of the employee and are not salary reduction amounts that are described in §125).
- (e) Other items of remuneration that are similar to any of the items listed in (a) through (d).

For Plan Years beginning after December 31, 2008, (i) an individual receiving a differential wage payment, as defined by Code Section 3401(h)(2), is treated as an Employee of the Employer making the payment, (ii) the differential wage payment is treated as compensation, and (iii) the Plan is not treated as failing to meet the requirements of any provision described in Code Section 414(u)(1)(C) by reason of any contribution or benefit which is based on the differential wage payment.

For Limitation Years beginning on or after the later of the original Effective Date of the Plan or July 1, 2007, Code Section 415 Safe Harbor Compensation includes Post-Severance Compensation.

For Plan Years beginning on or after the later of the original Effective Date of the Plan or January 1, 2002, amounts referenced under Code Section 125 include any amounts not available to a Participant in cash in lieu of group health coverage because the Participant is unable to certify that he has other health coverage. An amount will be treated as an amount under Code Section 125 only if the Employer does not request or collect information regarding the Participant's health coverage as part of the enrollment process for the health plan.

1.16 Collective Bargaining Agreement means the agreement(s) between the Employer and employee representatives under which retirement benefits were the subject of good faith bargaining. If there is a conflict between the terms of the Plan document and the Collective Bargaining Agreement, the Collective Bargaining Agreement shall govern.

1.17 Compensation means the following with respect to determining the amount of, and the allocation of, the various Employer contributions permitted under the terms of the Plan:

- (a) Compensation for Benefit Determination Purposes. In determining the amount of a Participant's Accrued Benefit and Standard Retirement Benefit (as defined in Article V), the term Compensation means a Participant's basic pay plus overtime and excluding special duty pay, lump sum payments for accrued sick time and unused vacation time received during a Plan Year.
- (b) Code Section 401(a)(17) Compensation Limit. In determining Compensation for all purposes, a Participant's Compensation for any compensation determination period will not exceed the Code Section 401(a)(17) Compensation Limit.
- (c) Compensation for Code Section 415 Purposes. In determining the limitation under Code Section 415, the term Compensation means a Participant's Code Section 415 Safe Harbor Compensation received during a Plan Year.

1.18 Computation Period means:

- (a) Eligibility: For purposes of service used for determining an Employee's eligibility for participation, the initial Computation Period will be the 12 consecutive month period beginning on the date an Employee first earns an Hour of Service

following his date of hire or rehire, if applicable. The second Computation Period will be the 12 consecutive month period beginning on the first day of the Plan Year which includes the first anniversary of the date of hire or rehire, if applicable. The third and subsequent Computations Periods will be the Plan Year.

An employee who is credited with a Year of Service in both the initial eligibility Computation Period and the first Plan Year that commences prior to the first anniversary of the Employee's initial eligibility Computation Period will be credited with 2 Years of Service for eligibility purposes.

- (b) Vesting: For purposes of service used for determining vesting, the Computation Period means the Plan Year.
- (c) Benefit Accruals: For purposes of service used for determining the Accrued Benefit, the Computation Period means the Plan Year.

1.19 Credited Service for Benefit Accrual Purposes means all Years of Service for benefit accrual purposes with the exception of any Years of Service excluded under the break in service rules as they apply to rehires.

1.20 Credited Service for Eligibility Purposes means all Years of Service for eligibility purposes with the exception of any Years of Service excluded under the break in service rules as they apply to rehires.

1.21 Credited Service for Vesting Purposes means all Years of Service for vesting purposes with the exception of any Years of Service excluded under the break in service rules as they apply to rehires.

1.22 Disability means either the inability of the Participant to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration, or the application and receipt by a Participant of permanent disability award under the Social Security Act defined in 42 U.S.C. §423(d)(1) as amended. The disability of a Participant shall be determined by 2 licensed physicians, one chosen by the Administrator and the other by the Participant. If the physicians fail to agree, then the disability of a Participant shall be determined by a licensed physician chosen by the Administrator and the decision shall be binding upon the Participant and all intended parties and in no manner subject to review. The determination shall be applied uniformly to all Participants.

The Participant shall not be deemed disabled if such disability is caused by or results from the following:

- (a) Chronic alcoholism or addiction to narcotics;
- (b) Contracted, suffered or received while engaged in felonious criminal enterprise;

- (c) Intentional, self-inflicted injuries; or
- (d) Military service for which the Participant received disability benefits from the United States government or any Department or agency thereof.

The Participant shall no longer be deemed Disabled upon the occurrence of the following events:

- (a) The Participant shall recover and no longer meet the definition of Disability set forth herein;
- (b) The Participant returns to work with the Employer; or
- (c) The Participant fails to take any required physical for the purpose of determining the status of his/her disability.

1.23 Disability Retirement Date means the first day of the month coinciding with or next following the date on which (prior to his Normal Retirement Date) a Participant's employment terminates because of his Disability after completion of 10 years of Credited Service for Vesting Purposes.

1.24 Earliest Retirement Age means, for purposes of determining the date on which death benefits commence, the first day of the month following the Participant's death.

1.25 Early Retirement Date means the first day of the month coinciding with or next following the date on which the Participant retires (prior to his Normal Retirement Date) after attaining age 55 and completing 10 years of Credited Service for Vesting Purposes.

1.26 Effective Date means, with respect to this 2015 Plan, January 1, 2015. The original effective date of the Plan is January 1, 1967.

1.27 Eligible Employee means each Employee who is actively employed by the Employer except the following classification(s) shall not be an Eligible Employee:

- (a) Any person covered by the Connecticut State Teachers Retirement Plan.
- (b) The First Selectman, effective January 1, 2010.
- (c) Any non-union Employee who is hired on or after May 1, 2010, any Employee who voluntarily transfers to a non-union position, other than a department head, on or after May 1, 2010, or any Employee who is rehired into a non-union position on or after May 1, 2010 with a Break in Service.
- (d) Public Works Employees who were not a Participant in the Plan as of July 1, 2013 and any Participant who transfers to Public Works on or after July 1, 2013.

- (e) Thomaston Sewer Workers who were not a Participant in the Plan as of July 1, 2012 and any Participant who transfers to Thomaston Sewer Workers on or after July 1, 2012.
- (f) White Collar Union Employees who were not a Participant as of July 1, 2013 and any Participant who transfers to the White Collar Union on or after July 1, 2013.
- (g) Police Union Employees who were not a Participant as of November 1, 2011 and any Participant who transfers to the Police Union on or after November 1, 2011.

1.28 **Employee** means each employee of the Employer, including paid elected officials and any full time Police Officer of the Police Department, all ranks included, who work not less than 20 hours per week. Employee shall include Leased Employees only to the extent required by the Code and applicable regulations.

It is expressly intended that individuals not treated as common law employees by the Employer on its payroll records are not Employees even if a court or administrative agency determines that such individuals are common law employees.

For years beginning after December 31, 2008, an individual receiving a differential wage payment, as defined in Code Section 3401(h)(2), from the Employer shall be considered an Employee.

1.29 **Employer** means the Town, any Adopting Employer, and any successor which may adopt the Plan and become a party to the Trust. Any action or determination of the Employer under the Plan shall be by its Board.

1.30 **Employment Anniversary** means each anniversary of an employee's Employment Commencement Date.

1.31 **Employment Commencement Date** means the date on which an Employee first performs an Hour of Service for the Employer. If the Employee has more than one period of service with the Employer, Employment Commencement Date for purposes of this Plan means the most recent such date.

1.32 **Hour of Service** means:

- (a) **Determination of Hours.** The term Hour of Service means
 - (1) each hour for which an Employee is paid, or entitled to payment, for the performance of duties for the Employer or an Affiliated Employer, which will be credited to the Employee for the Computation Period in which the duties are performed;

- (2) each hour for which an Employee is paid, or entitled to payment, by the Employer or an Affiliated Employer 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, except that no more than 501 Hours of Service will be credited under this clause (2) for any single continuous period (regardless of whether such period occurs in a single Computation Period); and
- (3) each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Employer or an Affiliated Employer, except that the same Hours of Service will not be credited both under (1) or (2) above, as the case may be, and under this clause (3), and these Hours of Service will be credited to the Employee for the Computation Period or Periods to which the award or agreement pertains rather than the Computation Period in which the award, agreement or payment is made.

Hours of Service will be credited for any individual who is considered to be an Employee under Code Section 414(n) for purposes of this Plan.

- (b) Maternity or Paternity Leave. Solely for purposes of determining whether a Break in Service has occurred in a Computation Period for purposes of an Employee's eligibility for Plan participation, vesting, and benefit accrual/allocation, an individual on maternity or paternity leave will receive credit for up to 501 Hours of Service which would otherwise have been credited to such individual but for such absence, or in any case in which such hours cannot be determined, 8 Hours of Service per day of such absence. The Hours of Service credited for a maternity or paternity leave will be credited in the Computation Period in which the absence begins if the crediting is necessary to prevent a Break in Service in that Computation Period, or in all other cases, in the following Computation Period.

For purposes of this paragraph, an absence from work for maternity or paternity reasons means an absence

- (1) By reason of the pregnancy of the Employee,
 - (2) By reason of a birth of a child of the Employee,
 - (3) By reason of the placement of a child with the Employee in connection with the adoption of such child by the Employee, or
 - (4) For purposes of caring for such child for a period beginning immediately following such birth or placement.
- (c) Use of Equivalencies. Notwithstanding paragraph (a), the Administrator may elect for all Employees or for one or more different classifications of Employees

(provided such classifications are reasonable, are consistently applied, and are nondiscriminatory) to apply one or more of the following equivalency methods in determining an Employee's Hours of Service. Under such equivalency methods, an Employee will be credited with (1) 190 Hours of Service for each month that he or she is credited with at least one Hour of Service during that month; (2) 95 Hours of Service for each semi-monthly period that he or she is credited with at least one Hour of Service during that semi-monthly period; (3) 45 Hours of Service for each week that he or she is credited with at least one Hour of Service during that week; and/or (4) 10 Hours of Service for each day that he or she is credited with at least one Hour of Service during that day.

- 1.33 **Ineligible Employee** means an Employee who is not an Eligible Employee.
- 1.34 **Joint and Survivor Annuity** means an immediate annuity for the life of the Participant with a survivor annuity for the life of the Spouse equal to 50% of the amount of the annuity that is payable during the joint lives of the Participant and the Spouse.
- 1.35 **Late Retirement Date** means, in the case of a Participant who elects to continue his employment beyond his Normal Retirement Date, the date on which his employment terminates for any reason other than his death.
- 1.36 **Leased Employee** means any person (other than an employee of the recipient) who, pursuant to an agreement between the recipient and any other person ("leasing organization"), has performed services for the recipient (or for the recipient and related persons determined in accordance with Code 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 employer. Contributions or benefits provided a leased employee by the leasing organization which are attributable to services performed for the recipient employer shall be treated as provided by the recipient employer.

A leased employee shall not be considered an Employee of the recipient if both (a) and (b) below are satisfied:

- (a) Such employee is covered by a money purchase pension plan providing:
- (1) A nonintegrated employer contribution rate of at least 10% of compensation as defined in Code Section 415(c)(3), but including amounts contributed pursuant to a salary reduction agreement which are excludable from the employee's gross income under Code Sections 125, 402(a)(8), 402(h) or 403(b),
 - (2) Immediate participation, and
 - (3) Full and immediate vesting.

- (b) Leased employees do not constitute more than 20% of the recipient's non-highly compensated workforce.

In the case of an Employee who is a Leased Employee (as that term is defined in Code Sections 414(n) and (o) and the Regulations thereunder), such Leased Employee's interest in a leasing organization's qualified plan (i.e., any contributions, forfeitures or benefits of a leasing organization that are attributable to services performed for a recipient by the Leased Employee) is treated as provided under this Plan for purposes of applying the employee benefit requirements listed in Treasury Regulation §1.414(n)-3(a) (except for paragraph (a)(6) of that Section) to any qualified plan maintained by the Employer.

1.37 Limitation Year means the Plan Year. All qualified plans maintained by the Employer must use the same Limitation Year. If the Limitation Year is amended to a different 12-consecutive month period, the new Limitation Year must begin on a date within the Limitation Year in which the amendment is made.

1.38 Military Leave means an Employee's absence in the Armed Forces of the United States of America or any of its allies in time of war in which the United States of America shall be engaged, or in the Armed Forces of the United States of America during which period the Employee has reemployment rights under applicable law, provided that such Employee returns to employment with the Employer within 90 days, or such longer period as may be prescribed by applicable law, after discharge or release from such Armed Forces or from hospitalization continuing for a period of not more than 1-year after discharge or release from such Armed Forces. If, however, such Employee fails to return to the Employer's employ as specified, his absence shall not be deemed a Military Leave. Notwithstanding any provision of this Plan to the contrary, effective December 12, 1994, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Code Section 414(u).

1.39 Normal Form of Benefit means the form of benefit as defined as such in Article VI (Forms of Distribution).

1.40 Normal Retirement Age means:

- (a) for all police Employees of Thomaston Police Local #50 and Council #15, American Federation of State, County and Municipal Employees AFL-CIO and the Chief of Police, age 50 and the completion of 10 Years of Credited Service for Benefit Accrual Purposes, or the completion of 25 Years of Credited Service for Benefit Accrual Purposes.
- (b) for all highway Employees of 1303-172 of Council 4 American Federation of State, County and Municipal Employees AFL-CIO; sewer Employee members of CSEA, Inc./Local 2001, SEIU; and non-union employees employed after June 30, 1997, the earlier of age 65, or age 62 and 25 Years of Credited Service for Benefit Accrual Purposes. For those Employees hired before July 1, 1997, the earlier of

age 55 and 10 Years of Credited Service for Benefit Accrual Purposes, or the completion of 25 Years of Credited Service for Benefit Accrual Purposes.

- (c) for all non-certified Employees of the Thomaston Board of Education and all Employee members of Local 1303-097 of Counsel 4, AFL-CIO employed after January 1, 1998, the earlier of age 65, or age 62 and 25 Years of Credited Service for Benefit Accrual Purposes. For those Employees employed before January 1, 1998, the earlier of age 55 and 10 Years of Credited Service for Benefit Accrual Purposes, or the completion of 25 Years of Credited Service for Benefit Accrual Purposes.

1.41 Normal Retirement Date means the the first day of the month coincident with or next following the date on which the Participant reaches his Normal Retirement Age.

1.42 Participant means an Eligible Employee who qualifies to participate in the Plan as provided in Article II (Participation). Participant shall also include a former Participant whose benefits under the Plan have not been paid fully.

1.43 Participation Date means the date as of which an Employee becomes a Participant, as provided in Article II (Participation).

1.44 Plan means the Plan embodied herein (as it may be amended from time to time) and known as the Town of Thomaston Retirement Plan.

1.45 Plan Year means a period of 12 consecutive months beginning January 1 of each year and ending on the following December 31.

1.46 Post-Severance Compensation means the following amounts that are paid within the later of 2½ months after an Employee's severance from employment or the end of the Limitation Year that includes the Employee's severance from employment:

- (a) payments that, absent a severance from employment, would have been paid to the Employee while the Employee continued in employment with the Employer and are regular compensation for services during the Employee's regular working hours, compensation for services outside the Employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar compensation; and
- (b) payments for accrued bona fide sick, vacation, or other leave, but only if the Employee would have been able to use the leave if employment had continued; and
- (c) payments for deferred compensation if the compensation would have been included in the definition of Compensation if it had been paid prior to the Participant's severance from employment, and the compensation is received pursuant to a nonqualified unfunded deferred compensation plan, but only if the

payment would have been paid at the same time if the Participant had continued in employment with the Employer and only to the extent that the payment is includible in the Participant's gross income.

Any other payment that is not described in (a), (b), and (c) above is not considered Post-Severance Compensation if paid after severance from employment, even if it is paid within 2½ months following the time period described above. For example, Post-Severance Compensation does not include amounts paid after severance from employment that are severance pay, unfunded nonqualified deferred compensation, or parachute payments within the meaning of Code Section 280G(b)(2).

1.47 Pre-Retirement Survivor Annuity means

- (a) If a Participant dies on or after his Earliest Retirement Age, the Participant's Surviving Spouse, if any, will receive the same benefit that would be payable if the Participant had retired with an immediate Joint and Survivor Annuity benefit on the day before his date of death.
- (b) If a Participant dies before his Earliest Retirement Age, the Participant's Surviving Spouse, if any, will receive the same benefit that would be payable if the Participant had
 - (1) Separated from service on the date of death (or date of severance from employment, if earlier),
 - (2) Survived to the Earliest Retirement Age,
 - (3) Retired with an immediate Joint and Survivor Annuity at the Earliest Retirement Age, and
 - (4) Died on the day after the Earliest Retirement Age.

1.48 Qualified Military Service means any service in the uniformed services (as defined in Chapter 43 of Title 38 of the United States Code) by any individual who is entitled to reemployment rights under the Code with respect to the military service.

1.49 Severance Date means, in the case of a Participant whose employment terminates for any reason (other than his death) prior to his qualification for a disability, early, normal or late retirement benefit, the the first day of the month coincident with or next following the date on which his employment terminates.

1.50 Spouse or Surviving Spouse means the spouse or surviving spouse of the Participant as a result of a legal union that has been in effect for a 1-year period ending on the earlier of the date benefits commence or the Participant's death. A former spouse will be treated as the Spouse or Surviving Spouse and a current spouse will not be treated as the Spouse or

Surviving Spouse to the extent provided under a qualified domestic relations order as described in Section 414(p) of the Code.

1.51 **Town** means Town of Thomaston and any successor which may adopt the Plan and become a party to the Trust. Any action or determination of the Town under the Plan shall be by its Board or other governing body.

1.52 **Trust** means the Trust established according to the provisions of the separate trust agreement which is used in conjunction with the Plan.

1.53 **Trust Fund** means the fund as defined in the separate trust agreement which is used in conjunction with the Plan.

1.54 **Trustee** means the Trustee named in a separate trust agreement which is used in conjunction with the Plan.

1.55 **Year of Service.**

(a) For eligibility purposes, Year of Service means any consecutive 12-month Computation Period during which an employee has completed 1,250 or more Hours of Service. A Year of Service is earned at the end of the 12-month Computation Period.

Years of Service as an employee of an Employer or any affiliate as described in the definition of Employer shall be credited.

(b) For vesting purposes, Year of Service means any consecutive 12-month Computation Period during which an employee has completed 1,250 or more Hours of Service.

Years of Service as an employee of the Employer or any affiliate as described in the definition of Employer shall be credited. Only Years of Service earned on or after the Plan's original Effective Date, for Participants after January 1, 1967, and after the Employee becomes a Participant shall be credited.

(c) For benefit accrual purposes, Year of Service means any consecutive 12-month Computation Period during which an employee has completed 1,250 or more Hours of Service. If a Participant has less than 1,250 Hours of Service, the Participant shall earn a Year of Service as follows:

<u>Hours of Service during Plan Year</u>	<u>Year of Service</u>
500 or less	0
501 to 624	.4
625 to 749	.5
750 to 874	.6
875 to 999	.7

1000 to 1124	.8
1125 to 1249	.9

For an Employee who was hired on or before January 1, 2011 and who is still employed as of January 1, 2013, a partial Year of Service shall be granted pursuant to the above schedule for Years of Service prior to January 1, 2011, even if the Employee was not a Participant, if the Employee has less than 1,250 Hours of Service.

In addition to the partial Year of Service above, if in the Employee's initial or final Plan Year of employment, the Employee works fewer than 501 hours, the Employee shall earn a Year of Service as follows:

<u>Hours of Service during Plan Year</u>	<u>Year of Service</u>
0 to 125	0
126 to 250	.1
251 to 375	.2
376 to 500	.3

Only Years of Service as an Employee of the Employer will be credited.

- (d) The period of time that an employee is on Military Leave shall be included in Years of Service for all purposes.

ARTICLE II – PARTICIPATION

2.01 Participants in Plan on the Day Before the Effective Date of this Plan Restatement.

- (a) Each Eligible Employee of the Employer on the Effective Date of this Plan Restatement who was a Participant in the Plan on the day immediately preceding the Effective Date of this Plan Restatement shall continue as a Participant in the Plan; and his Participation Date shall be the date as of which he became a Participant in the prior Plan.
- (b) In the case of any former employee of the Employer who is no longer employed by the Employer on the Effective Date of this Plan Restatement, but who was a Participant in the prior Plan, any benefit to which he (or his Beneficiary) may be entitled shall be determined and payable (and, if payments have already begun, shall continue to be payable) in accordance with the provisions of the Plan which were in effect on the date of his retirement, death or other termination of employment.

2.02 New Participants in this Plan Restatement. Each Eligible Employee who was not a Participant in the Plan on the day immediately preceding the Effective Date of this Plan Restatement shall become a Participant in the Plan on the first day of the month coincident with or next following the satisfaction of the following requirement(s):

- (a) Completion of 1 year of Credited Service for Eligibility Purposes.

2.03 Election Not to Participate. An Employee may voluntarily make a one-time election in writing not to participate in the Plan, provided such election does not adversely affect the qualified status of the Plan. Any such election shall be binding upon the Employee's heirs, beneficiaries, administrators, executors and other persons who might otherwise be entitled to benefits by virtue of such Employee's participation under the Plan and must be made within 60 days of the date an Employee is required to begin making Employee Contributions as defined in Section 4.03 of the Plan. An Employee who is permitted to waive participation shall continue to accrue Years of Service for eligibility and vesting purposes under the Plan. If an Employee does not make an election not to participate in the Plan, such Employee will be deemed to have elected to participate.

ARTICLE III – REHIRE AFTER TERMINATION OF EMPLOYMENT

3.01 Rules Relating to Plan Participation.

(a) Rehired Former Employee Who Was Not a Plan Participant.

- (1) A rehired Employee who was not a Participant, but who had satisfied the Plan's eligibility requirements when his employment terminated, shall become a Participant as of the reemployment date if he has not incurred a Break in Service. However, if the eligibility requirements have changed, the rehired Employee must satisfy the new requirements in order to re-enter the Plan.
- (2) A rehired Employee who was not a Participant, but who had satisfied the Plan's eligibility requirements when his employment terminated and incurred a Break in Service, shall have Credited Service for Eligibility Purposes earned during the prior period of employment disregarded following the Employee's rehire. Eligibility to participate in the Plan will be determined solely on the basis of service earned following the date of rehire.
- (3) A rehired Employee who was not a Participant, and who had not satisfied the eligibility requirements when his employment terminated, shall become a Participant after satisfaction of the Plan's eligibility requirements as set forth in Article II. Credited Service for Eligibility Purposes earned during the prior period of employment shall be added to Credited Service for Eligibility Purposes earned following rehire.

(b) Rehired Former Plan Participant.

- (1) A rehired Participant shall re-enter the Plan on his date of rehire. However, if the eligibility requirements have changed, the rehired Employee must satisfy the new requirements in order to re-enter the Plan.

3.02 Rules Relating to Vesting.

- (a) One-Year Break in Service Rule. If an Employee is rehired after incurring a 1-year Break in Service, Credited Service for Vesting Purposes earned prior to the 1-year Break in Service will not be taken into account for purposes of determining the Participant's vesting percentage until the Participant earns a Year of Service for vesting purposes subsequent to being rehired by the Employer. After the Participant earns a Year of Service for vesting purposes subsequent to being rehired, unless subsection (b) below applies, the prior Credited Service for Vesting Purposes will be reinstated for purposes of determining the vesting percentage for benefits accrued subsequent to rehire.
- (b) Rule of Parity. If a rehired non-vested Participant incurred a Break in Service, Credited Service for Vesting Purposes earned during the prior period of employment will not be taken into account for purposes of determining the Participant's vesting percentage for benefits accrued subsequent to rehire if the number of 1-year Breaks in Service exceeds the Years of Service for vesting purposes accumulated prior to the Break in Service.
- (c) Credited Service for Vesting Purposes After Rehire if Participant has Not Received a Distribution of His Prior Vested Accrued Benefit. If a rehired Participant had accrued a benefit during his prior period of employment, Credited Service for Vesting Purposes earned after rehire will be taken into account for purposes of determining the Participant's vesting percentage for benefits accrued prior to rehire as long as the prior accrued benefit has not been distributed to the Participant.
- (d) Credited Service for Vesting Purposes After Rehire if Participant Received a Distribution of His Prior Vested Accrued Benefit. If a rehired Participant received a distribution of his vested accrued benefit earned during his prior period of employment, Credited Service for Vesting Purposes earned during the prior period of employment will be not taken into account for purposes of determining the Participant's vesting percentage for benefits accrued after rehire.

3.03 Rules Relating to Benefit Accrual.

- (a) If a rehired non-vested Participant incurred a Break in Service, Credited Service for Benefit Accrual Purposes earned during the prior period of employment will not be taken into account for purposes of determining the Participant's benefit for benefits accrued subsequent to rehire if the number of 1-year Breaks in Service exceeds the Years of Service for vesting purposes accumulated prior to the Break in Service. If the Participant received a distribution, such distribution must be repaid in order for prior Credited Service for Benefit Accrual Purposes to apply.
- (b) A rehired Participant who was 100% vested upon leaving employment shall receive Credited Service for Benefit Accrual Purposes earned during the prior period of employment regardless of the number of Breaks in Service.

3.04 Effect of Reemployment After Commencement of Benefits on Distributions.

- (a) Suspension of Benefits that Commenced Prior to Normal Retirement Age. For any Participant who began receiving distributions prior to normal retirement and is reinstated as a Participant, the Plan shall suspend benefit payments during the Participant's period of reemployment unless the Participant is under age 62 when he is rehired. A Participant who is rehired prior to attaining age 62 shall have benefit payments suspended during the Participant's period of reemployment.

Credited Service for Benefit Accrual Purposes shall include the period of time during which the Participant has received benefit payments under the Plan prior to his reemployment.

Any benefits to which such reinstated Participant is subsequently entitled under the Plan shall be reduced by the actuarial equivalent of any retirement benefits, including disability retirement benefits, actually received. However, in no event shall such reinstated Participant receive a greater benefit than that which he would have received under the Plan had he not had an interruption of his Credited Service for Benefit Accrual Purposes. Furthermore, in no event shall there be duplication of benefits based on the same periods of Credited Service for Benefit Accrual Purposes.

- (b) Suspension of Benefits that Commenced After Normal Retirement Age. The Participant will continue to receive the portion of the benefit that does not exceed his Normal Retirement Benefit in the form of benefit previously elected. The portion of the benefit in excess of the normal retirement benefit will be suspended.

Credited Service for Benefit Accrual Purposes shall include the period of time during which the Participant has received benefit payments under the Plan prior to his reemployment.

Any benefits to which such reinstated Participant is subsequently entitled shall be determined in accordance with the Late Retirement Benefit provisions of Article VII (Distribution of Benefits), except that such benefit shall be reduced by 5/9% for each monthly payment already received. In no event shall the subsequent benefit be less than that received prior to the Participant's date of reemployment.

ARTICLE IV – FUNDING

4.01 Trust Fund.

- (a) All contributions under the Plan shall be paid or transferred into the Trust Fund to be held, managed, invested and distributed in accordance with the provisions of the Plan.
- (b) All benefits under the Plan shall be payable directly from the Trust Fund except those benefits for which the Employer has purchased an annuity contract.
- (c) The Employer shall have no liability (except as provided by law) for the payment of benefits other than the obligation to make contributions to the Trust Fund as provided in Section 4.02.

Article XIV (Trust Fund) or a separate trust agreement, whichever is applicable to the Plan, sets out the detailed provisions that apply with respect to the Trustee and the Trust Fund.

4.02 Employer Contributions. The Employer shall, from time to time, contribute to the Trust Fund such amounts as are estimated by the Actuary to be sufficient, based upon an actuarially sound basis, to provide the benefits under the Plan. Such contributions may be made in cash or in property which is an authorized investment of the Trust Fund (as provided in the Article XIV (Trust Fund) or a separate trust agreement, whichever is applicable to the Plan) or in a combination of cash and such property.

The benefits of the Plan shall be only such as can be provided by the assets of the retirement fund, and there shall be no liability or obligation on the part of the Employer to make any contributions to establish or maintain the Plan, whether in event of termination of the Plan or otherwise. No liability for the payment of benefits under the Plan shall be imposed upon the Employer except as expressly provided by law.

The Employer shall have no right, title or interest in the contributions made by it to the Plan and no part thereof shall revert to the Employer, except as provided in this Plan or after satisfaction of all liabilities of the Plan and then only to the extent that any balance is due to erroneous actuarial computations during the life of the Plan.

4.03 Employee Contributions. Employees shall make mandatory contributions under this Plan as required by their respective Collective Bargaining Agreements or by their employment agreement with the Employer. For purpose of this Plan, such contributions shall be classified as “mandatory Employee Contributions” and a “Collective Bargaining Agreement” with respect to any Participant means the collective bargaining agreement currently in force between the Employer and the Employee organization which represents said Participant.

An Eligible Employee who is employed on a full-time basis shall be required to begin making Employee Contributions under the Plan on the Eligible Employee's date of hire. An Eligible Employee who is employed on a part-time basis shall be required to begin making Employee Contributions on the January 1st following his completion of 1 year of Credited Service for Eligibility Purposes.

If permitted under the Collective Bargaining Agreement, a Participant who has military service time shall be eligible to purchase all years of military service under the conditions set forth in said Collective Bargaining Agreement. Military service time purchased shall not be taken into consideration in any manner under the Plan except for the purpose of determining the Participant's Accrued Benefit.

For years beginning after December 31, 2008, (i) an individual receiving a differential wage payment, as defined by Code Section 3401(h)(2), is treated as an employee of the employer making the payment, (ii) the differential wage payment is treated as compensation, and (iii) the Plan is not treated as failing to meet the requirements of any provision described in Code Section 414(u)(1)(C) by reason of any contribution or benefit which is based on the differential wage payment.

For those Employees who are Participants in the Plan, the Employer shall pick-up mandatory contributions pursuant to Internal Revenue Code Section 414(h)(2).

ARTICLE V – STANDARD RETIREMENT BENEFIT

5.01 Standard Retirement Benefit. The Standard Retirement Benefit to be provided for each Participant shall be a monthly pension payable in the Normal Form of Benefit for unmarried Participants commencing at his Normal Retirement Date, in a monthly amount equal to $1/12^{\text{th}}$ of 2% times Credited Service for Benefit Accrual Purposes, to a maximum of 50%, of final Average Compensation.

However, for all police Employee members of Thomaston Police Local #50 and Council #15, American Federation of State, County and Municipal Employees, and the Chief of Police, the Standard Retirement Benefit to be provided for each Participant effective July 1, 2001, shall be a monthly pension payable in the Normal Form of Benefit for unmarried Participants commencing at his Normal Retirement Date, in a monthly amount equal to $1/12^{\text{th}}$ of 2.25% times Credited Service for Benefit Accrual Purposes, to a maximum of 67.5%, of final Average Compensation.

For the Superintendent of Highways, Town of Thomaston, who was employed on April 18, 2002, the Standard Retirement Benefit to be provided for each Participant effective April 18, 2002, shall be a monthly pension payable in the Normal Form of Benefit for unmarried Participants commencing at his Normal Retirement Date, in a monthly amount equal to $1/12^{\text{th}}$ of 2.25% times Credited Service for Benefit Accrual Purposes, to a maximum of 67.5%, of final Average Compensation.

For any Participant who performs Qualified Military Service and dies on or after January 1, 2007, in determining the pension benefit the Participant is entitled to, such Participant will be deemed to have resumed employment with the Employer in accordance with the individual's reemployment rights under USERRA on the day preceding such death, and will be deemed to have terminated employment on the date of death.

ARTICLE VI – FORMS OF DISTRIBUTION

6.01 Normal Form of Distribution.

- (a) Normal Form of Distribution upon Retirement, Disability or Severance from Employment. Unless an optional form of benefit is selected, the Participant's Vested Accrued Benefit will be paid in the form of a life annuity.

- (b) Normal Form of Distribution upon Death.
 - (1) The Normal Form of Benefit upon Death payable to the Beneficiary as a result of the death of a married Participant will be a Pre-Retirement Survivor Annuity as defined in Article I (General Definitions).

 - (2) No death benefit will be payable to the Beneficiary of a Participant who does not have a Surviving Spouse at the time of his death.

- (c) Notice. At least 100 days before the date a Participant first becomes eligible for a Normal or Early Retirement Benefit, the Administrator shall notify him of his eligibility for retirement and of the options available to him. The notification shall be mailed or personally delivered to the Participant and shall include the following information:
 - (1) A general nontechnical explanation of the options available under the Plan and the circumstances under which he may elect the options.

 - (2) The option which will apply to him if he fails to elect otherwise.

 - (3) The availability of the additional information described in (A) below and how the information may be obtained:
 - (A) Within 30 days of a written request from a participant, the Administrator shall supply, by mail or personal delivery, (1) a written explanation in nontechnical language of the terms and conditions of any or all of the options available to him, and (2) the financial affect on his benefit payment of any or all of the options if he were to elect them.

6.02 Forms of Benefit.

- (a) If a Participant has elected not to receive his benefit as provided in Section 6.01 (Normal Form of Distribution), he may elect one of the following optional forms of benefit:

- (1) Life Annuity with Period Certain. A monthly pension payable during the Participant's lifetime with 120 payments guaranteed.
- (2) Joint and Survivor Annuity. A monthly pension payable during the Participant's lifetime in an adjusted level monthly amount with provision for continuing level monthly payments of 50%, 66 2/3% or 100% of such adjusted monthly amount for the lifetime of a contingent survivor designated by the Participant.
 - (i) A Participant shall not be entitled to elect a Joint and 66 2/3% Survivor Annuity or Joint and 100% Survivor Annuity if such election will reduce the payment to the Participant by more than 50%, unless his Spouse is designated as the Beneficiary.

In lieu of a periodic distribution paid from the Trust Fund, the Administrator may direct the Trustee to purchase an annuity for a specific Form of Benefit allowed above.

- (b) The value of any benefit under the terms of this Plan payable as a nondecreasing life annuity will be the Actuarial Equivalent of the Normal Form of Benefit for unmarried Participants. However, this Section (b) shall not apply to the extent it would cause the Plan to fail to satisfy the requirements of Article XII (Code Section 415 Limitations on Benefits) of the Plan.

The value of any distribution payable in a form other than a nondecreasing life annuity, if allowed by the Plan, will be determined according to the applicable assumptions specified in Article I (General Definitions).

6.03 Rules Governing Election of Optional Forms.

- (a) The Administrator shall prescribe uniform rules, procedures and forms, consistent with the provisions of this Article, with respect to Participants' elections, revocations or changes of optional forms of benefit and may require such medical evidence as it deems necessary and appropriate to determine which optional forms of benefit shall be available to each Participant.
- (b) The election by any Participant of an optional form of benefit shall be effective without any requirement of Administrator approval, but the election must comply with the provisions of Section 6.03(a).
- (c) Each Participant may revoke or change a prior election of an optional form of benefit prior to the commencement of such benefit, with the Administrator's written approval. A Participant who has effectively revoked or changed a prior election of an optional form of benefit may then elect to receive his benefit in the form described in Section 6.02 (Forms of Distribution) without the

Administrator's approval as long as the election complies with the provisions of Section 6.03(a).

- (d) Each Participant who does not elect an optional form of benefit shall be paid his benefit in the form described in Section 6.01 (Normal Form of Distribution).
- (e) Each Participant who has effectively elected an optional form of benefit shall be paid his benefit in such optional form.

6.04 Commencement of Benefits.

- (a) Unless the Participant elects otherwise, distribution of benefits will begin no later than the 60th day after the latest of the close of the Plan Year in which:
 - (1) The Participant attains age 65 (or Normal Retirement Date, if earlier);
 - (2) Occurs the 10th anniversary of the year in which the Participant commenced participation in the Plan; or
 - (3) The Participant terminates service with the Employer.
- (b) Notwithstanding the foregoing, the failure of a Participant to consent to a distribution while a benefit is immediately distributable shall be deemed to be an election to defer commencement of payment of any benefit sufficient to satisfy this Section.

A Participant's Accrued Benefit is immediately distributable if any part of the Accrued Benefit could be distributed to the Participant (or Surviving Spouse) before the Participant attains (or would have attained if not deceased) the later of his Normal Retirement Date or age 62.

- (c) If a Participant separates from service before satisfying the age requirement for early retirement, but has satisfied the service requirement, the Participant will be entitled to elect a reduced benefit upon satisfaction of such age requirement for early retirement.

6.05 Cash Out of Small Benefits and Consent Required for Distribution of Benefits.

- (a) Cash Out of Small Benefits. If a Participant terminates service, and the Participant's vested single sum Actuarial Equivalent of the Accrued Benefit derived from Employer and Employee contributions and any Rollover Contributions within the meaning of Code Sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(a)(16) is not greater than \$1,000, the Participant will receive a distribution of the vested portion of such single sum Actuarial Equivalent of the Accrued Benefit and the nonvested portion will be treated as a forfeiture. For purposes of this Section, if the Participant's vested single sum

Actuarial Equivalent of the Accrued Benefit is \$0.00, the Participant shall be deemed to have received a distribution of such vested single sum Actuarial Equivalent of the Accrued Benefit.

(b) Consent Required for Distribution of Benefits.

- (1) If a Participant's vested single sum Actuarial Equivalent of the Accrued Benefit derived from Employer and Employee Contributions exceeds \$1,000, and the Accrued Benefit is immediately distributable, the Participant must consent to any distribution of such Accrued Benefit.

A Participant's Accrued Benefit is immediately distributable if any part of the Accrued Benefit could be distributed to the Participant (or Surviving Spouse, if applicable) before the Participant attains (or would have attained if not deceased) the later of his Normal Retirement Date or age 62.

- (2) The consent of the Participant shall not be required to the extent that a distribution is required to satisfy Code Section 401(a)(9) or Code Section 415.

6.06 Direct Rollovers.

- (a) This Section 6.06 applies to distributions made on or after December 31, 2001. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section 6.06, a distributee may elect, at the time and in the manner prescribed by the 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.

(b) Definitions.

- (1) Eligible rollover distribution. An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that 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; any distribution to the extent such distribution is required under Code Section 401(a)(9); and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to Employer securities).

A portion of the distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to (1) a traditional individual retirement account or annuity described in Code Section 408(a) or (b) (a "traditional IRA) or a Roth individual account or annuity described in Code Section 408A (a "Roth IRA"); or (2) to a qualified defined contribution, defined benefit or annuity plan described in Code Sections 401(a) or 403(a) or to an annuity contract described in Code Section 403(b), if such plan or contract provides for separate accounting for amounts so transferred (including interest thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

- (2) Eligible retirement plan. An eligible retirement plan is
- (i) A qualified defined benefit or defined contribution plan described in Code Sections 401(a) that accepts eligible rollover distributions;
 - (ii) An annuity plan described in Code Section 403(a);
 - (iii) An annuity contract described in Code Section 403(b);
 - (iv) An eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan; and
 - (v) A traditional IRA or Roth IRA.
- (3) Distributee. A distributee includes a Participant or former Participant. In addition, the Participant's or former Participant 's Surviving Spouse and the Participant 's or former Participant 's Spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p), are distributees with regard to the interest of the Spouse or former spouse.

A distributee includes the Participant's nonspouse Designated Beneficiary. In the case of a nonspouse Beneficiary, the direct rollover may be made only to a traditional IRA or Roth IRA that is established on behalf of the Designated Beneficiary and that will be treated as an inherited IRA pursuant to the provisions of Code Section 402(c)(11). Also, in this case, the determination of any required minimum distribution under Code Section 401(a)(9) that is ineligible for rollover shall be made in

accordance with Notice 2007-7, Q&A-17 and Q&A-18, 2007-5 I.R.B. 395.

- (4) Direct rollover. A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

6.07 Rollovers by a Non-Spouse Designated Beneficiary. A Beneficiary who (a) is other than the Participant's Spouse and (b) is considered to be a Designated Beneficiary under Code Section 401(a)(9)(E) (known as a "Non-Spouse Designated Beneficiary") may establish an individual retirement account under Code Section 408(a) or an individual retirement annuity under Code Section 408(b) (known as an "Inherited IRA") into which all or a portion of a death benefit (to which such Non-Spouse Designated Beneficiary is entitled) can be transferred in a direct trustee-to trustee transfer (a direct rollover). Notwithstanding the above, any amount payable to a Non-Spouse Designated Beneficiary that is deemed to be a required minimum distribution pursuant to Code Section 401(a)(9) may not be transferred into such Inherited IRA.

The Non-Spouse Designated Beneficiary may deposit into such Inherited IRA all or any portion of the death benefit that is deemed to be an eligible rollover distribution (but for the fact that the distribution is not an eligible rollover distribution because the distribution is being paid to a Non-Spouse Designated Beneficiary). In determining the portion of such death benefit that is considered to be a required minimum distribution that must be made from the Inherited IRA, the Non-Spouse Designated Beneficiary may elect to use either the 5-year rule or the life expectancy rule, pursuant to Regulation §1.401(a)(9)-3, Q&A-4(c). Any distribution made pursuant to this Section is not subject to the direct rollover requirements of Code Section 401(a)(31), the notice requirements of Code Section 402(f), or the mandatory withholding requirements of Code Section 3405(c).

If a Non-Spouse Designated Beneficiary receives a distribution from the Plan, then the distribution is not eligible for the "60-day" rollover rule, which is available to a Beneficiary who is a Spouse. If the Participant's Non-Spouse Designated Beneficiary is a trust, then the Plan may make a direct rollover to an IRA on behalf of the trust, provided the trust satisfies the requirements to be a Designated Beneficiary within the meaning of Code Section 401(a)(9)(E).

6.08 Post Retirement Benefit Increases. A Participant's Retirement Benefit may be increased, by majority vote of the Thomaston Pension Committee, for cost-of-living adjustments. Such benefit increase may be reviewed every year in accordance with past practices to determine the amount of cost-of-living increase, if any, to be granted.

ARTICLE VII – DISTRIBUTION OF BENEFITS

7.01 Normal Retirement Benefit. A Participant's employment shall terminate at his Normal Retirement Date unless he elects to continue employment until his Late Retirement Date. If the Participant elects to retire at his Normal Retirement Date rather than continuing employment, the Participant shall be entitled to his Accrued Benefit payable in the form provided in Article VI (Forms of Distribution), commencing on the first day of the month coincident with or next following his Normal Retirement Date, or such later date as selected by the Participant.

7.02 Late Retirement Benefit. Except as provided in Section 3.04, a Participant whose employment continues after his Normal Retirement Date shall not be entitled to receive any benefit under the Plan until his Late Retirement Date. At his Late Retirement Date, he shall be entitled to his Accrued Benefit determined as of his Late Retirement Date using Compensation and Years of Service as of his Late Retirement Date.

Such Late Retirement Benefit shall be payable in the form provided in Article VI (Forms of Distribution), commencing on the first day of the month coincident with or next following his Late Retirement Date, or such later date as selected by the Participant.

7.03 Early Retirement Benefit.

(a) At a Participant's Early Retirement Date, he shall be entitled to the vested portion of his Accrued Benefit determined as of his Early Retirement Date, reduced as specified below. Such benefit shall be payable in the form provided in Article VI commencing on the first day of the month coincident with or next following his Early Retirement Date, or such later date as selected by the Participant.

(b) Except as provided in (c) below, the benefit will be reduced actuarially, using actuarial assumptions in Article I (General Definitions) for nondecreasing life annuities, from the Participant's Normal Retirement Date to the date Early Retirement benefits commence.

(c) If a Participant's benefit ceases because of rehire, any subsequent benefit shall be reduced by 5/9% for each monthly payment paid to the Participant prior to his rehire. In no event shall the subsequent benefit be less than that received prior to his date of rehire.

7.04 Disability Retirement Benefit.

(a) At a Participant's Disability Retirement Date, he shall be entitled to the Accrued Benefit as of his Disability Retirement Date, reduced by any Workers Compensation payments received on or after the Disability Retirement Date. Such benefit shall be payable in the form provided in Article VI (Forms of Distribution) commencing on the first day of the month coincident with or next

following his Disability Retirement Date, or such later date as selected by the Participant.

- (b) The Accrued Retirement Benefit to be provided for such Participant at his Normal Retirement Date shall be determined in accordance with the provisions of Article V and shall include his Credited Service for Benefit Accrual Purposes prior to his Disability.

7.05 Death Benefit.

- (a) **Death Prior to Commencement of Benefits.** Notwithstanding the provisions of Article VI (Forms of Distribution), if a Participant dies prior to commencement of benefits from the Plan and is over age 55 with 10 years of Credited Service for Vesting Purposes, the Participant's Surviving Spouse, if any, shall receive the vested portion of a Pre-Retirement Survivor Annuity payable as soon as administratively possible after the applicable commencement date unless the Spouse elects to delay commencement of the benefit. If the Surviving Spouse elects to delay commencement of benefits, the amount of benefit payable to the Surviving Spouse will be adjusted to reflect the delayed payment.

The death benefit will be payable in the Normal Form of Benefit upon Death unless the Surviving Spouse elects to receive the benefit payable in an Optional Form of Benefit as allowed in Article VI (Forms of Distribution).

Notwithstanding the above, the minimum death benefit payable to the Participant's Beneficiary shall be equal to the Participant's Employee Contributions plus interest compounded annually at a rate of 5%.

- (b) **Death After Benefits Commence.** In the event of a Participant's death at any time after his benefit under the Plan has commenced, there shall be payable to his Beneficiary such benefit, if any, as may be payable under the form of benefit elected pursuant to Article VI (Forms of Distribution).

Notwithstanding the above, the minimum death benefit payable to the Participant's Beneficiary shall be equal to the Participant's Employee Contributions plus interest compounded annually at a rate of 5%.

- (c) **Death While Performing Qualified Military Service Prior to Commencement of Benefits.** The survivors of any Participant who dies while performing Qualified Military Service are entitled to the death benefit that would have been payable under the Plan had the Participant resumed employment on the day preceding the Participant's death and then terminated employment on account of death. In addition, the survivors of the Participant are entitled to any additional benefits (other than benefit accruals relating to the period of Qualified Military Service) provided under the Plan as if the Participant had resumed and then terminated employment on account of death.

7.06 Severance Benefit.

- (a) At a Participant's Severance Date he shall be entitled to receive his vested Accrued Benefit payable in the form provided in Article VI (Forms of Distribution) commencing on the first day of the month coincident with or next following his Normal Retirement Date. The vested percentage shall be the percentage determined in Section 7.07.
- (b) In lieu of receiving his benefit as described in (a) above, a Participant may elect to receive a reduced vested benefit commencing the first day of any month he specifies which is not later than the first day of the month coincident with or next following his Normal Retirement Date. If the benefit is payable prior to his Normal Retirement Date, it shall be reduced according to Section 7.03. The vested percentage shall be the percentage determined in Section 7.07 and the benefit shall be payable as provided in Article VI (Forms of Distribution).
- (c) If a Participant does not have a nonforfeitable interest in Employer Contributions at his Severance Date, then the Participant will receive a return of his Employee Contributions, plus earnings thereon, in a lump sum.

7.07 Vesting.

- (a) A Participant's Accrued Benefit is nonforfeitable upon the Participant's Normal Retirement Age.
- (b) Except as otherwise provided in this Section, the percentage of a Participant's Accrued Benefit which is nonforfeitable is determined upon the basis of his Credited Service for Vesting Purposes, and computed in accordance with the following schedule:

<u>Years of Credited Service For Vesting Purposes</u>	<u>Vested Percentage of Accrued Benefit</u>
Less than 10	0%
10 or more	100%

- (c) A Participant's Accrued Benefit derived from mandatory Employee contributions shall be 100% vested at all times.
- (d) If the plan's vesting schedule is amended or the Plan is amended in any way that directly or indirectly affects the computation of a Participant's vested percentage, or if the plan is deemed amended by an automatic change to or from a top-heavy vesting schedule, in the case of an Employee who is a Participant as of the later of the date such amendment or change is adopted or the date it becomes effective,

the vested percentage (determined as of such date) of the Participant's accrued benefit will not be less than the percentage computed under the Plan without regard to such amendment or change.

Furthermore, each Participant with at least 3 years of service with the Employer may elect within a reasonable period after the adoption of the amendment or change, to have his vested percentage computed under the Plan without regard to the amendment or change. The period during which the election may be made shall commence with the date the amendment is adopted or deemed to be made and shall end on the latest of:

- (1) 60 days after the amendment is adopted;
- (2) 60 days after the amendment becomes effective; or
- (3) 60 days after the Participant is issued written notice of the amendment by the Employer or Plan Administrator.

With respect to benefits accrued as of the later of the adoption or effective date of the amendment, the vested percentage of each Participant will be the greater of the vested percentage under the old vesting schedule or the vested percentage under the new vesting schedule.

7.08 In-Service Distributions. No in-service distributions shall be allowed from the Plan unless otherwise required by Section 7.02.

7.09 Forfeiture. Any forfeiture arising from termination of the Participant's employment, death, or for any reason, will not be applied to increase the benefits any other Participant would otherwise receive under the Plan at any time prior to the termination of the Plan. Any amounts forfeited will be used as soon as possible to reduce Employer contributions under the Plan.

ARTICLE VIII – ADMINISTRATION

- 8.01 **Administrator of the Plan.** The Plan’s Administrator is defined in Article I (General Definitions).
- 8.02 **Procedure.** The Administrator may authorize one or more persons to execute documents on its behalf and direct the Trustee in the performance of its duties. The Trustee, upon written notification of such authorization, shall accept and rely upon such documents and directions until notified in writing that the authorization has been revoked or changed by the Administrator.
- 8.03 **Powers and Duties.** The Administrator shall have the power and duty to do all things necessary or convenient to effect the intent and purposes of this Plan and not inconsistent with any of the provisions hereof, whether or not such powers and duties are specifically set forth herein. Not in limitation, but in amplification of the foregoing, the Administrator shall have power to:
- (a) Provide rules and regulations for the administration of the Plan, and, from time to time, to amend or supplement such rules and regulations.
 - (b) Construe the Plan which construction shall be final and binding.
 - (c) Correct any defect, supply any omission, or reconcile any inconsistency in the Plan in such manner and to such extent as it shall deem expedient to carry the Plan into effect.
 - (d) Determine all questions that may arise under the Plan including directions to and questions submitted by the Trustee on all matters necessary for it properly to discharge its powers and duties.
 - (e) Delegate to such other parties as are appropriate all or any part of the responsibilities specifically required of the Administrator under the terms of the Plan.
 - (f) The Administrator shall establish and carry out a funding policy consistent with the purposes of the Plan and the requirements of applicable law, as may be appropriate from time to time. As part of such funding policy, the Administrator shall, from time to time, direct the Trustee to exercise its investment discretion so as to provide sufficient cash assets in an amount determined by the Administrator under the funding policy then in effect, to be necessary to meet the liquidity requirements for the administration of the Plan.
- 8.04 **Finality of Action.** Except as provided in Section 8.05, the acts and determinations of the Administrator within the powers conferred by the Plan shall be final and conclusive

for all purposes of the Plan. The Employer, Employees, Participants, Beneficiaries, Trustee and all others having any interest under the Plan shall be bound thereby.

8.05 Claims Procedure.

(a) **Filing a Claim.** A Participant may file a written claim for benefits under the Plan with the Administrator. Written notice of the disposition of a claim must be furnished to the claimant within 90 days (45 days if the claim involves disability benefits) after the application is filed, or such period as is required by applicable law or Department of Labor regulation. In the event the claim is denied, the reasons for the denial shall be specifically set forth in the notice, in language calculated to be understood by the claimant. The notice should also include an explanation as to how the claimant can overcome the denial by perfecting the claim. The notice should cite pertinent provisions of the Plan where appropriate. In addition, the claimant shall be furnished with an explanation of the Plan's claims review procedure.

(b) **Claims Review Procedure.** Any Employee, former Employee, or Beneficiary of either, who has been denied a benefit by a decision of the Administrator under Section 8.05(a) shall be entitled to ask the Administrator to give the claim further consideration by filing a written request for a hearing with the Administrator. The request, together with a written statement of the reasons why the claimant believes the claim should be allowed, must be filed with the Administrator no later than 60 days after receipt of the written notification of the denial of the claim.

The Administrator shall then conduct a review within the next 60 days. A final decision as to the allowance of the claim shall be made by the Administrator within 60 days (45 days if the claim involves disability benefits) of receipt of the appeal (unless there has been an extension of 60 days (45 days if the claim involves disability benefits) due to special circumstances, provided the delay and the special circumstances causing it are communicated to the claimant within the 60-day period (45 days if the claim involves disability benefits)). The communication shall be written in a manner calculated to be understood by the claimant and shall include specific reasons for the decision and specific references to the pertinent Plan provisions on which the decision is based.

If the Administrator makes a final written determination denying a Participant's or Beneficiary's benefit claim, the Participant or Beneficiary must file an action with respect to the denied claim not later than 180 days following the date of the Administrator's final determination in order to preserve the claim.

(c) **Statute of Limitations.** The Plan has a contractual statute of limitations for bringing a lawsuit for a benefit claim. The statute of limitations is three years after the initial filing of the claim with the Plan Administrator.

- 8.06 **Liability.** No fiduciary shall be directly or indirectly responsible or under any claim of liability as long as:
- (a) He has acted with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; and
 - (b) He did not knowingly conceal a breach of duty of any other fiduciary.
- 8.07 **Expenses.** The Administrator shall be entitled to receive its reasonable expenses incurred in administering the Plan. Fees and expenses incurred with respect to the operation of the Plan are the responsibility of the Town (in addition to its contributions under the Plan). However, the Town may, in its discretion, determine that all or part thereof shall be payable out of the Trust Fund, in which case the Town shall so direct the Trustee.
- 8.08 **Examination by Participants.** The Administrator shall make available to each Participant for examination a copy of the Plan and such of its records or copies thereof as may pertain to any benefits of such Participant under the Plan.
- 8.09 **Nondiscriminatory Action.** In the exercise of any power or discretion under the Plan, the Administrator shall not take any action or direct the Trustee to take any action with respect to any of the rights, benefits or obligations of Employees under the Plan which would be discriminatory in favor of Employees who are officers, shareholders or highly compensated as between such Employees and other Employees in substantially similar situations or under substantially similar sets of facts.

ARTICLE IX – AMENDMENT AND TERMINATION

9.01 Town May Amend Plan.

- (a) The Town shall have the right, except as provided below, in its sole and final discretion, to amend the Plan at any time and from time to time to any extent which it may deem advisable; provided, however, that no amendment (other than an amendment required by the Internal Revenue Service as a condition for its approval of the Plan and Trust as qualifying under Code Sections 401(a) and 501(a)) shall retroactively increase the duties or responsibilities of the Trustee, the Employer or the Administrator without its written consent.

Notwithstanding the foregoing, a Participant's Accrued Benefit, early retirement benefit, retirement-type subsidy, or optional form of benefit may be reduced to the extent permitted under the Code or to the extent permitted under Treasury Regulations §§1.411(d)-3 and 1.411(d)-4.

- (b) Unless clearly stated otherwise in the amendment, only Participants with an Hour of Service after the effective date of the amendment will be affected by any provision in the amendment increasing the Participant's Accrued Benefit or vested percentage.

9.02 Termination.

- (a) The Town shall have the right, pursuant to a vote by the electors and those persons eligible to vote in a Town meeting duly warned for such purpose, to terminate the Plan at any time. The Plan shall be terminated as of the date of termination specified in such vote.
- (b) Upon termination of the Plan or partial termination with respect to a group of Participants, the rights of all Participants (or all those Participants who are members of the group of Participants who cease to participate in the Plan as a result of a partial termination) to any Accrued Benefits to the date of such termination, to the extent then funded, shall be nonforfeitable.
- (c) Subject to the election and consent requirements of Article VI (Forms of Distribution), upon termination of the Plan, the Administrator shall determine, and so direct the Trustee, (or, if the Administrator fails to make such determination, the Trustee shall determine) the method, from among the following methods, of discharging and satisfying all obligations (in the order of priorities specified in subsection (b)) on behalf of Participants:
- (1) By the combination of the Trust Fund and the payment therefrom of benefits as they become due in accordance with the provision of the Plan in effect immediately prior to its termination; or

- (2) By annuities payable through an annuity purchased from an insurance company; or
 - (3) By the liquidation and distribution of the assets of the Trust Fund; or
 - (4) By any combination of such methods.
- (d) After the satisfaction of all fixed and contingent liabilities under the Plan, any overpayments made by the Employer into the Trust Fund as a result of erroneous actuarial computations shall be repaid to the Employer.

9.03 Termination of Employer Participation. Each Employer shall have the right, by vote of the electors and those persons eligible to vote in a Town meeting duly warned for such purpose, to terminate its participation in the Plan at any time. A certified copy of the resolution of the Board or other governing body shall be delivered to the Town and the Trustee, and the Plan with respect to such Employer shall be terminated as of the date of termination specified in such resolution. The provisions of Sections 9.02(b) and (c) shall apply to the Participants who are Employees of such terminating Employer, with the aggregate assets of the Trust Fund being used to determine the sufficiency to fully fund the Accrued Benefits of such Participants.

ARTICLE X – MISCELLANEOUS

- 10.01 Persons Under Legal Disability.** In the event that any benefit is payable to a minor or other person under legal disability, the Administrator, in its discretion, may determine that payment shall be made or applied for the benefit of such person, directly to such person or to the legal representative of such person or to some near relative of such person or directly for the support, maintenance or education of such person. The Trustee shall not be required to oversee the application by any third party of any payments made pursuant to this Section.
- 10.02 Forms and Proofs.** Each Participant or Beneficiary eligible to receive any benefit hereunder shall complete such forms and furnish such proofs, receipts and releases as shall be required by the Trustee or the Administrator.
- 10.03 Nondiversion.** Irrespective of anything contained in the Plan, as now expressed or hereafter amended, it shall be impossible for any part of the Trust Fund to be used for or diverted to any purpose not for the exclusive benefit of Participants or their Beneficiaries at any time prior to the satisfaction of all rights and liabilities, fixed and contingent, with respect to Participants or their Beneficiaries hereunder, either by the operation, amendment, revocation or termination of the Plan. No part of the Trust Fund shall be paid, distributed or made available to the Employer at any time, except as expressly provided by the Plan.
- 10.04 Limitation of Rights and Obligations.** Neither the establishment nor maintenance of the Plan or Trust Fund, nor any provision or amendment thereof, nor the purchase of any insurance or annuity contract, nor any act or omission under or resulting from the operation of the Plan or Trust Fund shall be construed:
- (a) As conferring upon any Employee, Participant, Beneficiary, or any other person, firm, corporation or association, any right or claim against the Employer, the Trustee or Administrator, except to the extent that such right or claim shall be specifically and expressly provided in the Plan or provided by law; nor against any shareholder, officer, employee or director of the Employer.
 - (b) As an agreement, consideration or inducement of employment or as affecting in any manner or to any extent whatsoever the rights or obligations of the Employer or any Employee to continue or terminate the employment relationship at any time.
 - (c) As creating any responsibility or liability of the Employer, Trustee, or Administrator for the validity or effect of the Plan or of any insurance or annuity contract or other investment at any time included in the Trust Fund.
- 10.05 Nonassignability.** No benefit under the Plan shall be liable for any debt, liability, contract, engagement or tort of any Participant or his Beneficiary, nor be subject to

charge, attachment, garnishment, execution or other voluntary or involuntary alienation or other legal or equitable process, nor transferability by operation of law; provided, however, that the preceding shall not apply to any benefit payable under Section 10.11 (Qualified Domestic Relations Order Procedure) with respect to a Participant pursuant to a qualified domestic relations order, as defined in Code Section 414(p). In the event that a Participant's benefit is payable to an alternate payee under a qualified domestic relations order prior to the Participant's termination of employment, the benefit to which the Participant becomes entitled on his termination of employment (by retirement or otherwise) shall be reduced to the extent necessary to reflect the value of the benefit previously paid to such alternate payee.

- 10.06 Merger, Consolidation or Transfer.** In the case of a merger or consolidation with, or transfer of assets or liabilities to, any other plan, each Participant of this Plan shall become a Participant in the successor plan and as of the date of such merger, consolidation or transfer, each Participant's benefit under the successor plan (if such plan then terminated) shall be equal to or greater than the Participant's benefit under this Plan (if this Plan had then terminated).
- 10.07 Treasury Approval.** The Plan is adopted and executed and Employer Contributions are made upon the express condition that the Plan and Trust shall be approved initially by the Internal Revenue Service as qualifying under Code Sections 401(a) and 501(a). In the event that the Internal Revenue Service shall fail or refuse to approve the Plan, the Town may revoke and terminate the Plan and direct the Trustee to return within 1-year of denial of qualification contributions theretofore made or to distribute the Trust Fund to the Town in cash, in kind, or in a combination of both, without regard to any prior allocations or accrued or vested rights which any Participant might otherwise have under the Plan; no rights or liabilities of the Employer, Trustee, Administrator, or any Participant or Beneficiary shall thereafter exist under the Plan; provided that the application for determination is made by the time prescribed by law for filing the Employer's return for the taxable year in which such Plan was adopted, or such later date as the Secretary of the Treasury may prescribe.
- 10.08 Social Security.** Subsequent to the date of a Participant's termination of employment, his benefits shall not be decreased by reason of any increase in the wage base or in benefit levels payable under Title II of the Social Security Acts.
- 10.09 Return of Contribution.** In the event that a contribution is made which is attributable to a good faith mistake of fact or a good faith mistake in determining the deductibility of such contribution, the Town shall direct the Trustee to return, within 1-year of the date of payment or the date the deduction is denied, whichever is applicable, the amount which equals the excess of the amount contributed over the amount that would have been contributed had there not occurred a mistake of fact or a mistake in determining the deduction. Earnings attributable to the excess contribution shall not be returned to the affected Employer but losses attributable thereto shall reduce the amount to be so returned.

10.10 Construction and Law Governing.

- (a) Words used herein in the masculine or feminine gender shall be construed as the feminine or masculine gender, respectively, where appropriate.
- (b) Words used herein in the singular or plural shall be construed as the plural or singular, respectively, where appropriate.
- (c) The Plan shall be construed, enforced and administered and the validity determined in accordance with applicable Federal law and the law of the State of Connecticut.
- (d) If any provision is determined to be void by any court of competent jurisdiction, the Plan will continue to operate, and, for the purposes of the jurisdiction of that court only, will be deemed not to include the provision determine to be void.

10.11 Qualified Domestic Relations Order Procedure.

- (a) All rights and benefits, including elections, provided to a Participant in this Plan shall be subject to the rights afforded to any “alternate payee” under a “Qualified Domestic Relations Order (QDRO)”.
- (b) For purposes of this Section 10.11, “alternate payee”, “Qualified Domestic Relations Order”, and “earliest retirement age” shall have the meanings set forth under Code Section 414(p).
- (c) A distribution to an “alternate payee” shall be permitted if such distribution is authorized by a “QDRO” only if the affected Participant has reached the “earliest retirement age” set forth under Code Section 414(p).
- (d) A domestic relations order that otherwise satisfies the requirements for a “QDRO” will not fail to be a QDRO:
 - (1) solely because the order is issued after, or revised, another domestic relations order or QDRO; or
 - (2) solely because of the time at which the order is issued, including issuance after the annuity starting date or after the Participant’s death.

A domestic relations order described in Section 10.11(c) is subject to the same requirements and protections that apply to QDROs.

- (e) In the case of any Domestic Relations Order (DRO) received by the Plan, its status under the Code shall be determined under the procedures in Code Section 414(p) unless the Administrator has established separate procedures.

ARTICLE XI – CODE SECTION 415 LIMITATIONS ON BENEFITS

11.01 General Limitations.

- (a) The Annual Benefit otherwise payable to a Participant under the Plan at any time shall not exceed the Maximum Permissible Benefit. If the benefit the Participant would otherwise accrue in a Limitation Year would produce an Annual Benefit in excess of the Maximum Permissible Benefit, the benefit shall be limited (or the rate of accrual reduced) to a benefit that does not exceed the Maximum Permissible Benefit.
- (b) If the Participant is, or has ever been, a Participant in another qualified defined benefit plan (without regard to whether the plan has been terminated) maintained by the Employer or a predecessor employer, the sum of the Participant's Annual Benefits from all such plans may not exceed the Maximum Permissible Benefit. Where the Participant's Employer-provided benefits under all such defined benefit plans (determined as of the same age) would exceed the Maximum Permissible Benefit applicable at that age, the benefits under this Plan will be reduced as needed so that the Employer-provided benefits provided under all such defined benefit plans (determined as of the same age) will not exceed the Maximum Permissible Benefit applicable at that age.
- (c) The application of the provisions of this Section shall not cause the Maximum Permissible Benefit for any Participant to be less than the Participant's accrued benefit under all defined benefit plans of the Employer or a predecessor employer as of the end of the last Limitation Year beginning before July 1, 2007 under provisions of the plans that were both adopted and in effect before April 5, 2007. The preceding sentence applies only if the provision of such defined benefit plans that were both adopted and in effect before April 5, 2007 satisfied the applicable requirements of statutory provisions, regulations, and other published guidance relating to Code Section 415 in effect as of the end of the last Limitation Year beginning before July 1, 2007, as described in Treasury Regulation §1.415(a)-1(g)(4).
- (d) If the Plan has mandatory Employee Contributions, the mandatory Employee Contributions shall be treated as contributions to a defined contribution plan pursuant to Treasury Regulation §1.415(c)-(1).

11.02 Other Rules.

- (a) **Benefits under Terminated Plans.** If a defined benefit plan maintained by the Employer has terminated with sufficient assets for payment of benefit liabilities of all Plan Participants and a Participant in the Plan has not yet commenced benefits under the Plan, the benefits provided pursuant to the annuities purchased to provide the Participant's benefits under the terminated plan at each possible

annuity starting date shall be taken into account in applying the limitations of this Section. If there are not sufficient assets for the payment of all Participants' benefit liabilities, the benefits taken into account shall be the benefits that are actually provided to the Participant in the terminated plan.

- (b) **Benefits Transferred from the Plan.** If a Participant's benefits under a defined benefit plan maintained by the Employer are transferred to another defined benefit plan maintained by the Employer and the transfer is not a transfer of distributable benefits pursuant to Treasury Regulation §1.411(d)-4, Q&A-3(c), the transferred benefits are not treated as being provided under the transferor plan (but are taken into account as benefits provided under the transferee plan). If a Participant's benefits under a defined benefit plan maintained by the Employer are transferred to another defined benefit plan that is not maintained by the Employer and the transfer is not a transfer of distributable benefits pursuant to Treasury Regulation §1.411(d)-4, Q&A-3(c), the transferred benefits are treated by the Employer's plan as if such benefits were provided under annuities purchased to provide benefits under a plan maintained by the Employer that terminated immediately prior to the transfer with sufficient assets to pay all Participants' benefit liabilities under the Plan. If a Participant's benefits under a defined benefit plan maintained by the Employer are transferred to another defined benefit plan in a transfer to distributable benefits pursuant to Treasury Regulation §1.411(d)-4, Q&A-3(c), the amount transferred is treated as a benefit paid from the transferor plan.
- (c) **Formerly Affiliated Plans of the Employer.** A formerly affiliated plan of the Employer shall be treated as a plan maintained by the Employer, but the formerly affiliated plan shall be treated as if it had been terminated immediately prior to the cessation of affiliation with sufficient assets to pay Participants' benefit liabilities under the plan and had purchased annuities to provide benefits.
- (d) **Plans of a Predecessor Employer.** If the Employer maintains a defined benefit plan that provides benefits accrued by a Participant while performing services for a predecessor employer, the Participant's benefits under a plan maintained by a predecessor employer shall be treated as provided under a plan maintained by the Employer. However, for this purpose, the plan of the predecessor employer shall be treated as if it has terminated immediately prior to the event giving rise to the predecessor employer relationship with sufficient assets to pay Participants' benefit liabilities under the plan, and had purchased annuities if they were a single employer immediately prior to such event and as unrelated employers immediately after the event, and if the event giving rise to the predecessor relationship is a benefit transfer, the transferred benefits shall be excluded in determining the benefits provided under the plan of the predecessor employer.

11.03 Special Rules. The limitations of this Section shall be determined and applied taking into account the rules in Treasury Regulations §§1.41(f)-1(d), (e), and (h).

11.04 Aggregation with Multiemployer Plans.

- (a) If the Employer maintains a multiemployer plan, as defined in Code Section 414(f), and the multiemployer plan so provides, only the benefits under the multiemployer plan that are provided by the Employer shall be treated as benefits under a plan maintained by the Employer for purposes of this Section.
- (b) Effective for Limitation Years ending after December 31, 2001, a multiemployer plan shall be disregarded for purposes of applying the compensation limit to a plan which is not a multiemployer plan.

11.05 Definitions.

- (a) **Annual Benefit** means a benefit that is payable annually in the form of a straight life annuity. Except as provided below, where a benefit is payable in a form other than a straight life annuity, the benefit shall be adjusted to an actuarially equivalent straight life annuity that begins at the same time as such other form of benefit and is payable on the first day of each month, before applying the limitations of this Section. For a Participant who has or will have distributions commencing at more than one annuity starting date, the Annual Benefit shall be determined as of each such annuity starting date (and shall satisfy the limitations of this Section as of each such date), actuarially adjusted for past and future distributions of benefits commencing at the other annuity starting dates. For this purpose, the determination of whether a new starting date has occurred shall be made without regard to Treasury Regulations §§1.415(b)-1(b)(iii)(B) and (C).

No actuarial adjustment to the benefit shall be made for (a) survivor benefits payable to a Surviving Spouse under a Joint and Survivor Annuity to the extent such benefits would not be payable if the Participant's benefit were paid in another form; (b) benefits that are not directly related to retirement benefits (such as a qualified disability benefit, pre-retirement incidental death benefits, and post-retirement medical benefits); (c) the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to Code Section 417(e)(3) and would otherwise satisfy the limitation of this Section, and the Plan provides that the amount payable under the form of benefit in any Limitation Year shall not exceed the limits of this Section applicable at the annuity starting date, as increased in subsequent years pursuant to Code Section 415(d). For this purpose, an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic periodic increases to the benefit paid in that form.

The determination of the Annual Benefit shall take into account social security supplements described in Code Section 411(a)(9) and benefits transferred from another defined benefit plan, other than transfers of distributable benefits pursuant to Treasury Regulation §1.411(d)-4, Q&A-3(c), but shall disregard benefits attributable to employee contributions and rollover contributions.

Effective for distributions in Plan Years beginning after December 31, 2003, the determination of actuarial equivalence of forms of benefit other than a straight life annuity shall be made in accordance with (1) or (2) below.

- (1) Benefit Forms not Subject to §417(e)(3): The straight life annuity that is actuarially equivalent to the Participant's form of benefit shall be determined under this paragraph (1) if the form of the Participant's benefit is either (1) a nondecreasing annuity (other than a straight life annuity) payable for a period of not less than the life of the Participant (or, in the case of a Pre-Retirement Survivor Annuity, the life of the Surviving Spouse), or (2) an annuity that decreases during the life of the Participant merely because of (a) the death of the survivor annuitant (but only if the reduction is not below 50% of the benefit payable before the death of the survivor annuitant), or (b) the cessation or reduction of Social Security supplements or qualified disability payments (as defined in Code Section 401(a)(11)).
 - (A) Limitation Years beginning before July 1, 2007. For Limitation Years beginning before July 1, 2007, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing on the same annuity starting date that has the same actuarial present value as the Participant's form of benefit computed using whichever of the following procedures produces the greater annual amount: (1) the interest rate and the mortality table (or other tabular factor) specified in Article I (General Definitions) for adjusting benefits in the same form; and (2) a 5% interest rate assumptions and the applicable mortality table under Code Section 417(e)(3) without reference to Rev. Rul. 2001-62.
 - (B) Limitation Years beginning on or after July 1, 2007. For Limitation Years beginning on or after July 1, 2007, the actuarially equivalent straight life annuity is equal to the greater of (1) the annual amount of the straight life annuity commencing the same annuity starting date that has the same actuarial present value as the Participant's form of benefit; and (2) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using a 5% interest rate assumptions and the applicable mortality table under Code Section 417(e)(3) without reference to Rev. Rul. 2001-62.
- (2) Benefit Forms Subject to Code Section 417(e)(3): The straight life annuity that is actuarially equivalent to the Participant's form of benefit shall be determined under this paragraph if the form of the Participant's benefit is other than a benefit in the form described in paragraph (1)

above. In this case, the actuarially equivalent straight life annuity shall be determined as follows:

- (A) Annuity Starting Date in Plan Years Beginning After 2005. If the annuity starting date of the Participant's form of benefit is in a Plan Year beginning after 2005, the actuarially equivalent straight life annuity is equal to the greatest of (1) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit computed using the interest rate and mortality table (or other tabular factor) specified in Article I (General Definitions) for adjusting benefits in the same form; (2) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using a 5.5% interest rate assumption and the applicable mortality table under Code Section 417(e)(3) without reference to Rev. Rul. 2001-62; and (3) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using the Applicable Interest Rate and applicable mortality table under Code Section 417(e)(3) without reference to Rev. Rul. 2001-62, divided by 1.05.
- (B) Annuity Starting Date in Plan Years Beginning in 2004 and 2005. If the annuity starting date of the Participant's form of benefit is in a Plan Year beginning in 2004 or 2005, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit computed using whichever of the following produces the greater annual amount: (1) the interest rate and mortality table (or other tabular factor) specified in Article I (General Definitions) for adjusting benefits in the same form; (2) a 5.5% interest rate assumption and the applicable mortality table under Code Section 417(e)(3) without reference to Rev. Rul. 2001-62.

If the annuity starting date of the Participant's benefit is on or after the first day of the first Plan Year beginning in 2004 and before December 31, 2004, the application of this paragraph (B) shall not cause the amount payable under the Participant's form of benefit to be less than the benefit calculated under the Plan taking into account the limitations of this Section, except that the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form

of benefit, computed using whichever of the following produces the greatest annual amount:

- (i) The interest rate and mortality table (or other tabular factor) specified in Article I for adjusting benefits in the same form;
 - (ii) The Applicable Interest Rate and the applicable mortality table under Code Section 417(e)(3) without reference to Rev. Rul. 2001-62; and
 - (iii) The Applicable Interest Rate defined in Article I (General Definitions) (as in effect on the last day of the last Plan Year beginning before January 1, 2004, under provisions of the Plan then adopted and in effect) and the applicable mortality table under Code Section 417(e)(3) without reference to Rev. Rul. 2001-62.
- (b) **Defined Benefit Dollar Limitation** means, effective for Limitation Years ending after December 31, 2001, \$160,000, automatically adjusted under Code Section 415(d), effective January 1 of each year, as published in the Internal Revenue Bulletin, and payable in the form of a straight life annuity. The new limitation shall apply to Limitation Years ending with or within the calendar year of the date of the adjustment, but a Participant's benefits shall not reflect the adjusted limit prior to January 1 of that calendar year.
- The automatic adjustment of the Defined Benefit Dollar Limitation under Code Section 415(d) shall not apply to Participants who have had a severance from employment.
- (c) **Employer** means, for purposes of this Section, the Employer that adopts this Plan, and all members of a controlled group of corporations (as defined in Code Section 414(b), as modified by Code Section 415(h)), all commonly controlled trades or businesses (as defined in Code Section 414(c), as modified, except in the case of a brother-sister group of trades or businesses under common control, by Code Section 415(h)), or affiliated service groups (as defined in Code Section 414(m)) of which the adopting employer is a part, and any other entity required to be aggregated with the employer pursuant to Code Section 414(o).
- (d) **Formerly Affiliated Plan of the Employer** means a plan that, immediately prior to the cessation of affiliation, was actually maintained by the Employer and, immediately after the cessation of affiliation, is not actually maintained by the Employer. For this purpose, cessation of affiliation means the event that causes an entity to no longer be considered the Employer, such as the sale of a member of a controlled group of corporations, as defined in Code Section 414(b), as modified by Code Section 415(h), to an unrelated corporation, or that causes a

plan not to be actually maintained by the Employer, such as transfer of plan sponsorship outside a controlled group.

- (e) **High Three-Year Average Compensation** means the average of Compensation for Code Section 415 Purposes (as defined in Article I (General Definitions)) for the three consecutive years of service (or, if the Participant has fewer than three consecutive Years of Service, the Participant's longest consecutive period of service, including fractions of years, but not less than one year) with the Employer that produces the highest average. In the case of a Participant who is rehired by the Employer after a severance from employment, the Participant's High Three-Year Average Compensation shall be calculated by excluding all years for which the Participant performs no services and receives no Compensation from the Employer (the break period) and by the years immediately preceding and following the break period as consecutive. A Participant's Compensation for a Year of Service shall not include Compensation in excess of the limitation under Code Section 401(a)(17) that is in effect for the calendar year in which such Year of Service begins.
- (f) **Limitation Year** means the Limitation Year as defined in Article I (General Definitions).
- (g) **Maximum Permissible Benefit**. The Defined Benefit Dollar Limitation (adjusted where required, as provided below).

- (1) **Adjustment for Fewer than 10 Years of Participation or Service**: If the Participant has fewer than 10 Years of Participation in the Plan, the Defined Benefit Dollar Limitation shall be multiplied by a fraction, the numerator of which is the number of Years of Participation (or part thereof, but not less than one year) in the Plan, and the denominator of which is 10.

In the case of a Participant who has fewer than 10 Years of Service with the Employer, the Defined Benefit Compensation Limitation shall be multiplied by a fraction, the numerator of which is the number of Years of Service (or part thereof, but not less than one year) in the Plan, and the denominator of which is 10.

However, in the case of a Participant who dies or becomes disabled by reason of personal injuries or sickness, the above paragraphs shall not apply.

- (2) **Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement Before Age 62 and After Age 65**: Effective for benefits commencing in Limitation Years ending after December 31, 2001, the Defined Benefit Dollar Limitation shall be adjusted if the annuity starting date of the Participant's benefit is before age 62 or after age 65. If the

annuity starting date is before age 62, the Defined Benefit Dollar Limitation shall be adjusted under paragraph (A), as modified by paragraph (C). If the annuity starting date is after age 65, the Defined Benefit Dollar Limitation shall be adjusted under paragraph (B), as modified by paragraph (C).

(A) Adjustment of Defined Benefit Dollar Limitation for Benefit Commencing Before Age 62:

(i) Limitation Years Beginning Before July 1, 2007. If the annuity starting date for the Participant's benefit is prior to age 62 and occurs in a Limitation Year beginning before July 1, 2007, the Defined Benefit Dollar Limitation for the Participant's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Participant's annuity starting date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted for fewer than 10 years of participation, if required) with actuarial equivalence computed using whichever of the following produces the smaller amount:

- a. the interest rate and mortality table (or other tabular factor) specified in Article I (General Definitions) for nondecreasing life annuities; or
- b. a 5% interest rate assumption and the applicable mortality table under Code Section 417(e)(3) without reference to Rev. Rul. 2001-62.

(ii) Limitation Years Beginning on or After July 1, 2007.

- a. Plan Does Not Have Immediately Commencing Straight Life Annuity Payable Both at Age 62 and the Age of Benefit Commencement. If the annuity starting date for the Participant's benefit is prior to age 62 and occurs in a Limitation year beginning on or after July 1, 2007, and the Plan does not have an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the Defined Benefit Dollar Limitation for the Participant's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Participant's annuity starting date that is the actuarial equivalent of the Defined Benefit Dollar

Limitation (adjusted for fewer than 10 Years of Participation, if required) with actuarial equivalence computed using a 5% interest rate and the applicable mortality table under Code Section 417(e)(3) without reference to Rev. Rul. 2001-62, expressing the Participant's age based on completed calendar months as of the annuity starting date.

- b. Plan Has Immediately Commencing Straight Life Annuity Payable at Both Age 62 and the Age of Benefit Commencement. If the annuity starting date for the Participant's benefit is prior to age 62 and occurs in a Limitation Year beginning on or after July 1, 2007, and the Plan has an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the Defined Benefit Dollar Limitation for the Participant's annuity starting date is the lesser of the limitation determined under paragraph (a) above and the Defined Benefit Dollar Limitation (adjusted for fewer than 10 Years of Participation, if required) multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under the Plan at the Participant's annuity starting date to the annual amount of the immediately commencing straight life annuity under the Plan at age 62, both determined without applying the limitations of this Section.

- (iii) Notwithstanding anything in this subsection (A) to the contrary, no age adjustment prior to age 62 is made for a qualified Participant.

A qualified Participant is a Participant who has at least 15 Years of Service under the plan as a full-time employee of any police department or fire department that is organized and operated by the state government or political subdivision maintaining such defined benefit plan to provide police protection, firefighting services, or emergency medical service for any area within the jurisdiction of such state or political subdivision or as a member of the Armed Forces of the United States.

- (iv) The age adjustment in (A) above shall not apply in the case of a Participant becoming disabled by reason of personal

injuries or sickness, or as a result of the death of the Participant.

(B) Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement After Age 65:

(i) Limitation Years Beginning Before July 1, 2007. If the annuity starting date for the Participant's benefit is after age 65 and occurs in a Limitation Year beginning before July 1, 2007, the Defined Benefit Dollar Limitation for the Participant's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Participant's annuity starting date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted for fewer than 10 Years of Participation, if required) with actuarial equivalence computed using whichever of the following produces the smaller benefit

- a. The interest rate and mortality table (or other tabular factor) specified in Article I (General Definitions) for nondecreasing life annuities, or
- b. A 5% interest rate and the applicable mortality table under Code Section 417(e)(3) without reference to Rev. Rul. 2001-62.

(ii) Limitation Years Beginning on or After July 1, 2007.

- a. Plan Does Not Have Immediately Commencing Straight Life Annuity Payable at Both Age 65 and the Age of Benefit Commencement. If the annuity starting date for the Participant's benefit is after age 65 and occurs in a Limitation Year beginning on or after July 1, 2007, and the Plan does not have an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the Defined Benefit Dollar Limitation at the Participant's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Participant's annuity starting date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted for fewer than 10 Years of Participation, if required), with actuarial equivalence computed using a 5% interest rate

assumption and the applicable mortality table under Code Section 417(e)(3) without reference to Rev. Rul. 2001-62 for that annuity starting date (and expressing the Participant's age based on completed calendar months as of the annuity starting date).

- b. Plan Has Immediately Commencing Straight Life Annuity Payable at Both Age 65 and the Age of Benefit Commencement. If the annuity starting date for the Participant's benefit is after age 65 and occurs in a Limitation Year beginning on or after July 1, 2007, and the Plan has an immediately commencing straight life annuity payable both at age 65 and the age of benefit commencement, the Defined Benefit Dollar Limitation at the Participant's annuity starting date is the lesser of the limitation determined under (a) above and the Defined Benefit Dollar Limitation (adjusted for fewer than 10 Years of Participation, if required) multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the Plan at the Participant's annuity starting date to the annual amount of the adjusted immediately commencing straight life annuity under the Plan at age 65, both determined without applying the limitations of this Section. For this purpose, the adjusted immediately commencing straight life annuity under the Plan at the Participant's annuity starting date is the annual amount of such annuity payable to the Participant, computed disregarding the Participant's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing straight life annuity under the Plan at age 65 is the annual amount of such annuity that would be payable under the Plan to a hypothetical Participant who is age 65 and has the same accrued benefit as the Participant.

- (C) Notwithstanding the other requirements of this definition, no adjustment shall be made to the Defined Benefit Dollar Limitation to reflect probability of a Participant's death between the annuity starting date and age 62, or between age 65 and the annuity starting date, as applicable, if benefits are not forfeited upon the death of the Participant prior to the annuity starting date. To the extent

benefits are forfeited upon the death of the Participant prior to the annuity starting date, such an adjustment shall be made. For this purpose, no forfeiture shall be treated as occurring upon the Participant's death if the Plan does not charge Participants for providing a Pre-Retirement Survivor Annuity, as defined in Code Section 417(c), upon the Participant's death.

- (3) Minimum Benefit Permitted. Notwithstanding anything else in this Section to the contrary, the benefit otherwise accrued or payable to a Participant under this Plan shall be deemed not to exceed the Maximum Permissible Benefit if:
- (A) the retirement benefits payable for a Limitation Year under any form of benefit with respect to such Participant under this Plan and under all other defined benefit plans (without regard to whether a plan has been terminated) ever maintained by the Employer do not exceed \$10,000 multiplied by a fraction, the numerator of which is the Participant's number of Years of Service (or part thereof, but not less than one year) (not to exceed 10) with the Employer, and the denominator of which is 10; and
 - (B) the Employer (or a predecessor employer) has not at any time maintained a defined contribution plan in which the Participant participated (for this purpose, mandatory employee contributions under a defined benefit plan, individual medical accounts under Code Section 401(h), and accounts for postretirement medical benefits established under Code Section 419A(d)(1) are not considered a separate defined contribution plan).
- (h) Predecessor Employer means, with respect to a Participant in the Plan, the former employer if the Employer maintains a Plan that provides a benefit which the Participant accrued while performing services for a former employer. A former entity that antedates the Employer is also a predecessor employer with respect to a Participant if, under the facts and circumstances, the Employer constitutes a continuation of all or a portion of the trade or business of the former entity.
- (i) Severance from Employment occurs when an Employee ceases to be an employee of the Employer maintaining the Plan. An Employee does not have a severance from employment if, in connection with a change of employment, the Employee's new employer maintains the Plan with respect to the Employee.

- (j) **Year of Participation.** The Participant shall be credited with a Year of Participation (computed to fractional parts of a year) for each accrual Computation Period for which the following conditions are met:
- (1) The Participant is credited with at least the number of Hours of Service (or period of service if the elapsed time method is used) for benefit accrual purposes, required under the terms of the Plan in order to accrue a benefit for the accrual Computation Period, and
 - (2) The Participant is included as a Participant under the eligibility provisions of the Plan for at least one day or the accrual Computation Period.

If these 2 conditions are met, the portion of a Year of Participation credited to the Participant shall equal the amount of the benefit accrual service credited to the Participant for such accrual Computation Period. A Participant who is permanently and totally disabled within the meaning of Code Section 415(c)(3)(C)(i) for an accrual Computation Period shall receive a Year of Participation with respect to that period. In addition, for a Participant to receive a Year of Participation (or part thereof) for an accrual Computation Period, the Plan must be established no later than the last day of such accrual Computation Period. In no event shall more one Year of Participation be credited for any 12-month period.

- (k) **Year of Service.** For purposes of this Section, the Participant shall be credited with a Year of Service (computed to fractional parts of a year) for each accrual Computation Period for which the Participant is credited with at least the number of Hours of Service (or period of service if the elapsed time method is used) for benefit accrual purposes, required under the terms of the Plan in order to accrue a benefit for the accrual Computation Period, taking into account only service with the Employer or a predecessor employer.

ARTICLE XII – CODE SECTION 401(a)(9) DISTRIBUTION REQUIREMENTS

12.01 General Rules.

- (a) Precedence. The requirements of this Section shall take precedence over any inconsistent provisions of the Plan.
- (b) Requirements of Treasury Regulations Incorporated. All distributions required under this Section will be determined and made in accordance with Code Section 401(a)(9), including the incidental death benefit requirement in Code Section 401(a)(9)(G) and the Treasury Regulations Sections 1.401(a)(9)-2 through 1.401(a)(9)-9.
- (c) Limits on Distribution Periods. As of the first Distribution Calendar Year, distributions to a Participant, if not made in a single sum, may only be made over one of the following periods:
 - (1) The life of the Participant;
 - (2) The joint lives of the Participant and a Designated Beneficiary;
 - (3) A period certain not extending beyond the joint life and last survivor expectancy of the Participant and a Designated Beneficiary; or
 - (4) A period certain not extending beyond the joint life and last survivor expectancy of the Participant and a Designated Beneficiary.

12.02 Time and Manner of Distributions.

- (a) Distributions During Participant's Lifetime. The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date.
- (b) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
 - (1) If the Participant's Surviving Spouse is the Participant's sole Designated Beneficiary, then distributions to the Surviving Spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70½, if later.
 - (2) If the Participant's Surviving Spouse is not the Participant's sole Designated Beneficiary, then distributions to the Designated Beneficiary

will begin by December 31st of the calendar year immediately following the calendar year in which the Participant died.

- (3) If there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (4) If the Participant's Surviving Spouse is the Participant's sole Designated Beneficiary and the Surviving Spouse dies after the Participant but before distributions to the Surviving Spouse begin, then this Article XIII, other than Section 12.02(b)(1), will apply as if the Surviving Spouse were the Participant.

For purposes of this Section 12.02(b) and Section 12.05, distributions are considered to begin on the Participant's Required Beginning Date (or, if Section 12.02(b)(4) applies, the date distributions are required to begin to the Surviving Spouse under Section 12.02(b)(1)). If annuity payments irrevocably commence to the Participant before the Participant's Required Beginning Date (or to the Participant's Surviving Spouse before the date distributions are required to begin to the Surviving Spouse under Section 12.02(b)(1)), the date distributions are considered to begin is the date distributions actually commence.

- (c) **Form of Distribution.** Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first Distribution Calendar Year distributions will be made in accordance with Sections 12.03, 12.04 and 12.05. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code Section 401(a)(9) and the Regulations. Any part of the Participant's interest which is in the form of an individual account described in Code Section 414(k) will be distributed in a manner satisfying the requirements of Code Section 401(a)(9) and the Regulations that apply to individual accounts.

12.03 Determination of Amount to be Distributed Each Year.

- (a) **General Annuity Requirements.** If the Participant's interest is paid in the form of annuity distributions under the Plan, payments under the annuity will satisfy the following requirements:
 - (1) The annuity distributions will be paid in periodic payments made at intervals not longer than one year;
 - (2) The distribution period will be over a life (or lives) or over a period certain not longer than the period described in Section 12.04 and 12.05;

- (3) Once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted;
- (4) Payments will either be nonincreasing or increase only as follows:
 - (A) By an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the Bureau of Labor Statistics;
 - (B) To the extent of the reduction in the amount of the Participant's payments to provide for a survivor benefit upon death, but only if the Beneficiary whose life was being used to determine the distribution period described in Section 12.04 dies or is no longer the Participant's Beneficiary pursuant to a qualified domestic relations order within the meaning of Section 414(p);
 - (C) To provide cash refunds of employee contributions upon the Participant's death; or
 - (D) To pay increased benefits that result from a Plan amendment.
- (b) **Amount Required to be Distributed by Required Beginning Date.** The amount that must be distributed on or before the Participant's Required Beginning Date (or, if the Participant dies before distributions begin, the date distributions are required to begin under Section 12.02(b)(1) or (2)) is the payment that 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. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the Participant's benefit accruals as of the last day of the first Distribution Calendar Year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the Participant's Required Beginning Date.
- (c) **Additional Accruals After First Distribution Calendar Year.** Any additional benefits accruing to the Participant in a calendar year after the first Distribution Calendar Year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

12.04 Requirements For Annuity Distributions That Commence During Participant's Lifetime.

- (a) **Joint Life Annuities Where the Beneficiary Is Not the Participant's Spouse.** If the Participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the Participant and a nonspouse Beneficiary, 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 Regulation Section 1.401(a)(9)-6, Q&A-2. If the form of distribution combines a joint and survivor annuity for the joint lives of the Participant and a nonspouse Beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the Designated Beneficiary after the expiration of the period certain.

- (b) **Period Certain Annuities.** Unless the Participant's Spouse is the sole Designated Beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the Participant's lifetime may not exceed the applicable distribution period for the Participant under the Uniform Lifetime Table set forth in Treasury Regulation §1.401(a)(9)-9 for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the Participant reaches age 70, the applicable distribution period for the Participant is the distribution period for age 70 under the Uniform Lifetime Table set forth in Treasury Regulation §1.401(a)(9)-9 plus the excess of 70 over the age of the Participant as of the Participant's birthday in the year that contains the annuity starting date. If the Participant's Spouse is the Participant's sole Designated Beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the Participant's applicable distribution period, as determined under this Section 12.04(b), or the joint life and last survivor expectancy of the Participant and the Participant's Spouse as determined under the Joint and Last Survivor Table set forth in Treasury Regulation §1.401(a)(9)-9, using the Participant's and Spouse's attained ages as of the Participant's and Spouse's birthdays in the calendar year that contains the annuity starting date.

12.05 Requirements For Minimum Distributions Where Participant Dies Before Date Distributions Begin.

- (a) **Participant Survived by Designated Beneficiary and Life Expectancy Rule.** If the Participant dies before the date distribution of his interest begins and there is a Designated Beneficiary, the Participant's entire interest will be distributed, beginning no later than the time described in Section 12.02(b)(1) or (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 the Designated Beneficiary determined using the Beneficiary's age as of the Beneficiary's birthday in the calendar year immediately following the calendar year of the Participant's death; or
 - (2) If the annuity starting date is before the first Distribution Calendar Year, the life expectancy of the Designated Beneficiary determined using the

Beneficiary's age as of the Beneficiary's birthday in the calendar year that contains the annuity starting date.

- (b) **No Designated Beneficiary.** If the Participant dies before the date distributions begin and there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (c) **Death of Surviving Spouse Before Distributions to Surviving Spouse Begin.** If the Participant dies before the date distribution of his interest begins, the Participant's Surviving Spouse is the Participant's sole Designated Beneficiary, and the Surviving Spouse dies before distributions to the Surviving Spouse begin, this Section 12.05 will apply as if the Surviving Spouse were the Participant, except that the time by which distributions must begin will be determined without regard to Section 12.02(a).

12.06 **Definitions.**

- (a) **Designated Beneficiary** means the individual who is designated as the Beneficiary under the Plan and is the Designated Beneficiary under Code Section 401(a)(9) and Regulation Section 1.401(a)(9)-4.
- (b) **Distribution Calendar Year** means a calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin pursuant to Section 12.02.
- (c) **Life Expectancy** means the life expectancy as computed by use of the Single Life Table in Regulation Section 1.401(a)(9)-9.
- (d) **Required Beginning Date** means the April 1st of the calendar year following the later of:
 - (1) The calendar year in which the Participant attains age 70½, or
 - (2) If the Participant is not a "5 percent owner" at any time during the Plan Year ending with or within the calendar year in which the Participant attains age 70½, then the calendar year in which the Participant retires.

ARTICLE XIII – TRUST FUND

13.01 Conditions of Applicability. The provision of this Article shall not apply to this Plan unless the Trustee signs the document. If the Trustee does not sign the document, a separate trust agreement must be used unless the Plan is fully insured.

13.02 Establishment of Trust Fund.

- (a) The Employer hereby declares and establishes with the Trustee a Trust.
- (b) All contributions made under the terms of the Plan paid from time to time to the Trustee, all investments thereof and all earnings, profits, increments, additions and appreciation thereto and thereon accruing from time to time, shall be held by the Trustee under the Trust as a trust fund ("Trust Fund" or "Fund"), in accordance with the provisions of this Article. The Trustee shall maintain the indicia of ownership of all assets comprising the Trust Fund inside the jurisdiction of the district courts of the United States.
- (c) The Trustee shall have no power to inquire into the correctness of any contributions made under the terms of the Plan or to enforce the payment thereof.

13.03 Contributions to Trust Fund.

- (a) The Trustee shall accept contributions to the Trust Fund in accordance with Article IV (Funding). All such contributions shall be used for the exclusive benefit of the Participants (and their Beneficiaries), except where otherwise permitted in the Plan. Any contributions, once made, shall be returned to the Employer only under the conditions set forth in Article X (Miscellaneous).
- (b) However, the Employer may, by written notice to the Trustee, direct that all or part of the Trust Fund assets be transferred to a successor trustee under a trust which is for the exclusive benefit of the Participants (and their Beneficiaries) and which satisfies the requirements of Code Sections 401(a) and 501(a).

13.04 Investment of Trust Fund.

- (a) **Direction of Investments.** Consistent with any funding policy adopted for the Plan, the Trustee shall invest and reinvest the principal and income of the Trust and keep the same invested without distinction between principal and income. Except as otherwise provided in Section 15.04(c), the selection, retention and disposition of any specific investment from among the classes of authorized investments designated in Section 15.04(b) shall be made by the Trustee in its discretion and shall be subject to applicable law.

- (b) **Allowable Investments.** The Trustee will implement an investment program based on the Employer's investment objectives. In addition to powers given by law, the Trustee may do the following:
- (1) **Property.** The Trustee may invest in any form of property, including common and preferred stocks, exchange covered call options, bonds, money market instruments, mutual funds, savings accounts, certificates of deposit, Treasury bills, insurance policies and contracts, or in any other property, real or personal, foreign or domestic, having a ready market including securities issued by an institutional Trustee and/or affiliate of such Trustee. An institutional Trustee may invest in its own deposits if they bear a reasonable interest rate. The Trustee may retain, manage, operate, repair, improve and mortgage or lease for any period on such terms as it deems proper any real estate or personal property held by the Trustee, including the power to demolish any building or other improvements in whole or part. The Trustee may erect buildings or other improvements, make leases that extend beyond the term of this Trust, and foreclose, extend, renew, assign, release or partially release and discharge mortgages or other liens.
 - (2) **Registration of Securities.** The Trustee may cause any property of the Trust to be issued, held, or registered in its own name or in the name of a nominee, provided, however, that the nominee is (a) a bank or trust company that is subject to supervision by the United States or a State, or a nominee of such bank or trust company; (b) a broker or dealer registered under the Securities Exchange Act of 1934, or a nominee or such broker or dealer; or (c) a clearing agency as defined in section 3(a)(23) of the Securities Exchange Act of 1934, or its nominee. The Trustee may also hold any investments in bearer form if the Trustee at all times shows such investments as part of the Trust.
 - (3) **Other Investments.** The Trustee may accept and retain for such time as the Trustee deems advisable any securities or other property received or acquired as Trustee, whether or not such securities or property would normally be purchased as investments hereunder.
 - (4) **Pooled Funds.** The Trustee may transfer Trust assets to a collective trust established for the pooling of funds of separate pension and profit-sharing trusts or to any other common, collective, or commingled trust which has been or may hereafter be established and maintained by the Trustee and/or affiliates of an institutional Trustee. Such commingling of Trust assets with assets of other qualified trusts is specifically authorized, and to the extent of the investment of the Trust in such a group or collective trust, the terms of the instrument establishing the group or collective trust will be a part hereof as though set forth herein.

- (5) **Cash Reserves.** The Trustee may retain in cash as much of the Trust Fund as the Trustee may deem advisable to satisfy the liquidity needs of the Plan and to deposit any cash held in the Trust Fund in a bank account without liability for the highest rate of interest available. If a bank is acting as Trustee, such Trustee is specifically given authority to invest in deposits of such Trustee. The Trustee may also hold cash un-invested at any time and from time to time and in such amount or to such extent as the Trustee deems prudent, and the Trustee will not be liable for any losses which may be incurred as the result of the failure to invest same, except to the extent that may otherwise be provided herein.
- (c) **Direction of Investments.** The Administrator or Investment Manager may direct the Trustee in writing as to the investment of an applicable portion of Trust Fund assets. The Trustee shall comply with such written investment directions, and the Trustee shall have no duty to investigate or determine the advisability of or to make recommendations respecting the investment in, retention or disposition of any such investment.
- (d) **Investment in Insurance Contracts.** If any part of the Trust Fund is invested in individual or group annuity or insurance contracts, the rights and obligations of any Insurer shall be in accordance with the provisions of the annuity or insurance contract or contracts of such Insurer; and no Insurer shall be a party to or bound by the provisions of the Plan. An Insurer may rely upon any representation, certificate or other instrument executed by the Trustee and shall be fully discharged from liability by the release or acceptance of payments by the Trustee; and an Insurer shall have no responsibility respecting the distribution or further application of any monies paid by the Insurer to the Trustee.

13.05 Administrator to Direct Trustee Regarding Distribution of Benefits. The Trustee shall pay any benefits due to Participants (and their Beneficiaries) at the direction of the Administrator and in accordance with Article VII (Distribution of Benefits). Promptly after appointment of the Administrator and after any change thereof, the Employer shall give written notice to the Trustee of the name of the Administrator. The Trustee shall not be deemed to be on notice of any change in appointment of Administrator unless so notified.

13.06 Powers and Duties of the Trustee. The Trustee shall have the following powers in addition to the powers customarily vested in trustees by law and in no way in derogation thereof:

- (a) To invest the assets of the Plan in deposits in itself or in its affiliates and all such deposits shall bear a reasonable rate of interest.
- (b) To purchase or subscribe, with any cash at any time held by it, for any authorized investment and to retain such authorized investment in trust.

- (c) To sell for cash or on credit, convert, redeem, exchange for another authorized investment, or otherwise dispose of any authorized investment at any time held by it.
- (d) To retain uninvested all or any part of the Fund, where appropriate, and in the manner and to the extent permitted by law.
- (e) To exercise any options appurtenant to any authorized investment in which the Fund is invested for conversion thereof into another authorized investment, or to exercise any rights to subscribe for additional authorized investments, and to make all necessary payments therefore.
- (f) To join in, consent to, dissent from, oppose or deposit in connection with the reorganization, recapitalization, consolidation, sale merger, foreclosure, or readjustment of the finances of any corporations or properties in which the Fund may be invested, or the sale, mortgage, pledge or lease of any such property or the property of any such corporation upon such terms and conditions as may be advisable; to do any act (including the exercise of options, making of agreements or subscriptions, and payment of expenses, assessments or subscriptions) which may be deemed necessary or advisable in connection therewith; and to accept any authorized investment which may be issued in or as a result of any such proceeding and thereafter to hold the same.
- (g) To vote, in person or by general or limited proxy, at any election of any corporation in which the Fund is invested, and similarly to exercise, personally, or by a general or limited power of attorney, any right appurtenant to any authorized investment held in the Fund.
- (h) To sell, option to sell, mortgage, lease for a term of years less than or continuing beyond the possible date of the termination of the Trust, partition or exchange any real property which may from time to time or at any time constitute a portion of the Fund, either at public or private sale, for such prices and upon such terms as it may deem best, and to make, execute, and deliver to the purchaser thereof good and sufficient deeds of conveyance therefore, and all assignments, transfers and other legal instruments, either necessary or convenient for passing the title and ownership thereof to the purchaser, free and discharged of all trusts without liability on the part of such purchasers to see to the proper application of the purchase price.
- (i) To repair, alter, or improve any building which may be on any real estate forming part of the Fund, or to erect entirely new structures thereon.
- (j) To renew or extend or participate in the renewal or extension of any mortgage, upon such terms as may be deemed advisable and to agree to a reduction in the rate of interest on any mortgage or to any other modification or change in the terms of any mortgage or of any guarantee pertaining thereto, in any manner and

to any extent that may be deemed advisable for the protection of the Fund or the preservation of the value of the investment; to waive any default, whether in the performance of any covenant or condition of any mortgage or in the performance of any guarantee, or to enforce any such default in such manner and to such extent as may be deemed advisable; to exercise and enforce any and all rights of foreclosure, to bid in property on foreclosure, to take a deed in lieu of foreclosure with or without paying a consideration therefore, and in connection therewith to release the obligation on the bond secured by such mortgage; and to exercise and enforce in any action, suit or proceeding at law or in equity any rights or remedies in respect to any mortgage or guarantee.

- (k) To purchase authorized investments at a premium or discount.
- (l) To employ suitable agents and counsel and to pay their reasonable expenses and compensation.
- (m) To borrow or raise monies for the purposes of the Trust in such amount and upon such terms and conditions as the Trustee in its discretion may deem advisable, and for any sum so borrowed to issue its promissory note as Trustee and to secure the repayment thereof by pledging or mortgaging all or any part of the Fund. No person lending money to the Trustee shall be bound to see to the application of the money lent or to inquire into the validity, expediency or propriety of any such borrowing.
- (n) To cause any securities or other property in the Fund to be registered in or transferred into the Trustee's own name or the name of a nominee or in the street name provided such securities or other property are held on behalf of the Plan by (i) a bank or trust company, (ii) a broker or dealer registered under the Securities Exchange Act of 1934, or a nominee of such broker or dealer, or (iii) a clearing agency as defined in Section 3(a)(23) of the Securities Exchange Act of 1934.
- (o) To sue, defend, compromise, arbitrate or settle any suit or legal proceeding or any claim due it or on which it may be liable.
- (p) To do all acts which it may deem necessary or proper and to exercise any and all powers of the Trustee under this Article XIV (Trust Fund) upon such terms and condition as it may deem for the best interests of the Fund.
- (q) To apply for, purchase, transfer, pay premiums on, surrender and exercise all incidents of ownership of any group or individual annuity or insurance contract or contracts in which the Fund may be invested or by which any benefit contemplated by the Plan may be provided under the terms of the Plan. Before surrendering any annuity or insurance contract or portion thereof, the Trustee shall offer to sell such contract or portion thereof to the Participant upon such terms and conditions as the Administrator shall direct.

- (r) To do all such acts and exercise all such rights, although not specifically mentioned herein, as the Trustee deems necessary to carry out the purposes of the Plan. The Trustee is not restricted to securities or other property of the character expressly authorized by applicable law for trust investments or that would normally be purchased as trust investments, subject to the requirement that the Trustee discharge his or her duties with the care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of similar character and with similar aims by diversifying investments in order to minimize the risks of large losses, unless under the circumstances it is clearly prudent not to do so.

13.07 Division of Duties and Indemnification. The division of duties and the indemnification of the Trustees of this Plan will be governed by the following provisions:

- (a) No Guarantee Against Loss. The Trustees have the authority and discretion to manage and control the Trust Fund to the extent provided in this instrument, but they do not guarantee the Fund against investment loss or depreciation in asset value, or guarantee the adequacy of the Fund to meet and discharge all or any liabilities of the Plan. Furthermore, the Trustees will not be liable for the making, retention or sale of any investment or reinvestment made by it, as herein provided, or for any loss to or diminution of the Trust Fund, or for any other loss or damage which may result from the discharge of its duties hereunder, except to the extent it is judicially determined that the Trustees have failed to exercise the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and like aims.
- (b) Representations of the Town. The Town warrants that all directions issued to the Trustees by it or the Administrator will be in accordance with the terms of the Plan.
- (c) Directions By Others. The Trustees are not answerable for an action taken pursuant to any direction, consent, certificate, or other paper or document on the belief that the same is genuine and signed by the proper person. All directions by the Town, a Participant or Administrator must be in writing. The Administrator will deliver to the Trustee (1) certificates evidencing the individual or individuals authorized to act as the Administrator and (2) specimens of their signatures.
- (d) Duties and Obligations Limited by the Plan. The duties and obligations of the Trustee are limited to those expressly imposed upon it by the Plan or subsequently agreed upon by the parties. Responsibility for administrative duties required under the Plan or applicable law not expressly imposed upon or agreed to by the Trustee, will rest solely with the Town and Administrator.

- (e) Indemnification of the Trustees. The Trustees will be indemnified and saved harmless from and against any and all liability to which the Trustees may be subjected, including all expenses reasonably incurred in its defense, for any action or failure to act resulting from compliance with the instructions of the Town, the employees or agents of the Town, the Administrator, or any other fiduciary to the Plan, and for any liability arising from the actions or non-actions of any predecessor Trustees or other fiduciary of the Plan.
- (f) Trustees Not Responsible for Application of Payments. The Trustees will not be responsible in any way for the application of any payments they are directed to make or for the adequacy of the Fund to meet and discharge any and all liabilities under the Plan.
- (g) Multiple Trustees. If more than one Trustee is appointed, any single Trustee may act independently in undertaking any act and/or transaction on behalf of the Trustees, including signing documents or checks, unless the Town requires that all acts and/or transactions taken on behalf of the Trust, including signing documents or checks, must have the consent of a majority of the Trustees. The Employer may from time to time also place other restrictions on the Trustees.
- (h) Trustees as Participants or Beneficiaries. Trustees will not be prevented from receiving any benefits to which they may be entitled as Participants or Beneficiaries as long as the benefits are computed and paid on a basis consistent with the terms of the Plan as applied to other Participants and Beneficiaries.
- (i) Limitation of Liability. No Trustee will be liable for the act of any other Trustee or fiduciary unless the Trustee has knowledge of such act.
- (j) No Self-Dealing. The Trustees will not (1) deal with the assets of the Trust in their own interest or for their own account; (2) in their individual or in any other capacity, act in any transaction involving the Trust on behalf of a party (or represent a party) whose interests are adverse to the interests of the Plan, or its Participants or Beneficiaries; or (3) receive any consideration for their own personal accounts from any party dealing with the Plan in connection with a transaction involving assets of the Trust.

13.08 Accounting and Valuation by the Trustee. The Trustee shall have the following powers in addition to the powers customarily vested in trustees by law and in no way in derogation thereof:

- (a) The Trustee shall keep accurate and detailed records and accounts of all investments, receipts, disbursements, and other transactions hereunder, including such specific records as shall be agreed upon in writing between the Administrator and the Trustee. All accounts, books and records relating thereto shall be open to inspection and audit by any person or persons designated by the Administrator, at all reasonable times.

- (b) Within 60 days following the close of each Plan Year, and within 60 days after the removal or resignation of the Trustee, the Trustee shall file with the Administrator a written account of its administration of the Trust Fund during such Plan Year or during the period from the close of the last preceding Plan Year to the date of such removal or resignation, setting forth all investments, receipts and disbursements and other transactions effected by it, including a description of all securities and investments purchased and sold with the cost or net proceeds of such purchases or sales (accrued interest paid or receivable being shown separately), and showing all cash, securities and other property held at the end of such Plan Year or as of the date of such removal or resignation, as the case may be. The Trust Fund must be valued at least annually as of last day of each Plan Year while the Plan is in effect. The Administrator can elect to have all or any portion of the assets of the Trust Fund valued more frequently, including, but not limited to, semi-annually, quarterly, monthly, or daily.
- (c) As of the last day of each Plan Year and any other date as requested by the Plan Administrator, the Trustee will determine the net worth of the Trust Fund. The fair market value of securities that are listed on a registered stock exchange will be the prices at which they were last traded on such exchange preceding the close of business on the valuation date. If the securities were not traded on the valuation date, or if the exchange on which they are traded was not open for business on the valuation date, then the securities will be valued at the prices at which they were last traded prior to the valuation date. Any unlisted security will be valued at its bid price next preceding the close of business on the valuation date, which bid price will be obtained from a registered broker or an investment banker. To determine the fair market value of assets other than securities for which trading or bid prices can be obtained, the Trustee may use any reasonable method to determine the value of such assets, or may elect to employ one or more appraisers for that purpose and rely on the values established by such appraiser or appraisers.

13.09 Responsibility of Fiduciaries.

- (a) The Trustee shall act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims in the performance of its duties and in the exercise of its powers, authority, rights and privileges as Trustee; provided, however, that the Trustee shall incur no liability to anyone for any reasonable and prudent action taken pursuant to a direction, request or approval given by the Administrator under the powers conferred upon the Administrator under the Plan. Any such direction, request or approval shall be evidenced by delivery to the Trustee of a statement in writing signed by the Administrator.
- (b) The Trustee shall not be answerable for any reasonable and prudent action taken pursuant to any direction, consent, request, or other paper or document on the reasonable belief that the same is genuine and signed by the proper person or persons.

- (c) The Trustee shall have authority to enforce this Article XIV (Trust Fund) on behalf of any and all persons having or claiming any interest in the Trust Fund or under the Plan. In any action or proceeding affecting the Trust Fund or any property constituting part or all thereof, the Town and the Trustee shall be the only necessary parties and no Employee, Participant, Beneficiary or other person having or claiming to have an interest in the Fund or under the Plan shall be entitled to any notice or process; and any judgment that may be entered in such action or proceeding shall be binding and conclusive on all persons having or claiming to have any interest in the Fund or under the Plan.
- (d) The Town shall indemnify the Trustee against its prospective costs, expenses and liability with respect to any litigation arising in connection with the Plan or the Fund, except when the litigation is occasioned by or involves a question of the failure of the Trustee to discharge properly its duties under this Article XIV (Trust Fund) or applicable law; provided, however, that the Employer's obligation to indemnify the Trustee shall be conditioned on the Trustee notifying the Employer of any claims or threatened claims for which the Employer is obligated to indemnify the Trustee within 10 days after the Trustee is informed of the claim or threat, and the Trustee shall permit the Employer to assume the defense of the claim.
- (e) The Trustee may consult with legal counsel, who may be legal counsel for the Employer, with respect to any of its duties or obligations hereunder, and shall be protected, to the extent permitted by law, in acting or refraining from acting in accordance with the advice of such counsel.
- (f) Each fiduciary shall have only those specific powers, duties, responsibilities and obligations which are specifically given them under this Article XIV (Trust Fund) applicable law.
- (g) It shall be the responsibility of the Town to make the contribution required under the Plan, and to amend and to terminate the Plan.
- (h) It shall be the responsibility of the Town to appoint and remove the Trustee.
- (i) It shall be the responsibility of the Administrator to administer the Plan.
- (j) It shall be the responsibility of the Trustee to administer the Trust Fund and to manage the assets under the Trust Fund.
- (k) Each fiduciary may delegate to such other parties as are appropriate pursuant to applicable law all or any part of the responsibilities specifically required of such fiduciary under the terms of the Plan or this Article XIV (Trust Fund).

13.10 Compensation and Expenses of Trustee.

- (a) The Trustee shall be entitled to receive such reasonable compensation for its services rendered hereunder as shall be agreed upon between the Town and the Trustee.
- (b) The Trustee shall also be entitled to receive its reasonable expenses incurred in and about the administration and execution of the Trust, including, but not limited to, reasonable expenses for attorneys' fees, actuarial fees, consultants' fees, accountants' fees, and any other ordinary and necessary expense associated with the operation of this Plan and Trust.
- (c) The Town shall pay such compensation and expenses (in addition to its contributions); provided, however, that the Town may, in its discretion, determine that such compensation and expenses shall be payable out of the Trust Fund and shall so direct the Administrator who shall then so direct the Trustee.
- (d) Any expenses which are incident to the establishment and termination of the Plan and Trust and/or are in the nature of "settlor" functions which are other than day-to-day operational expenses shall be paid exclusively by the Town.
- (e) In the event such compensation and expenses are not paid by the Town, after the Town has agreed to do so, such compensation and expenses shall become a liability of the Trust. The Trustee may then seek reimbursement therefore from the Town.

13.11 Resignation and Removal of Trustee and Appointment of Successor.

- (a) The Trustee, or any successor Trustee, shall have the right to resign as Trustee upon 30 days prior written notice to the Employer (unless the requirement of such notice is waived by the Town).
- (b) The Employer may at any time remove the Trustee upon 30 days prior written notice to the Trustee (unless the requirement of such notice is waived by the Trustee). If the Plan has more than one individual trustee, the Town may remove one of the Trustees without notice.
- (c) If only one Trustee remains after the resignation or removal of the Trustee, a successor Trustee shall be appointed by the Town. Any successor Trustee shall execute and deliver to the Employer an instrument accepting such appointment; and such successor Trustee without any further act, deed or conveyance shall become vested with all rights, powers, duties and obligations with respect to the Trust Fund assets and the Trust hereunder with like effect as if originally named as Trustee herein. Nevertheless, on the written request of the Employer, the

Trustee, ceasing to act, shall execute and deliver an instrument transferring to such successor Trustee all the rights, powers and Trust Fund assets.

13.12 Amendment or Termination of Trust.

- (a) This Article XIV (Trust Fund) may be amended any time and from time to time and to any extent by a written instrument executed by the Employer and the Trustee; provided, however, that no amendment shall be made that causes the Trust Fund to be used for any purpose other than the exclusive benefit of Participants and beneficiaries and the payment of reasonable expenses of the Plan and Trust, except as otherwise permitted by the Code and other applicable law.
- (b) Termination of the Plan and Trust is governed by the provisions of Article IX (Amendment and Termination).
- (c) If the Trust is terminated, the Trustee may reserve from the Trust Fund such reasonable amount as it shall deem necessary to provide for any sums which may be chargeable against the Trust Fund for which the Trust may be liable, including, but not limited to, reasonable expenses for attorneys' fees, actuarial fees, consultants' fees, accountants' fees, and any other ordinary and necessary expense associated with the operation of this Plan and Trust. However, no vested portion of a Participant's Account (determined as of the date of termination or partial termination of the Plan, but before allocation of any previously unencumbered or unallocated funds shall have been made) shall be reduced. In the event the assets of the Trust Fund are insufficient to pay for any such sums chargeable against the Trust Fund, the Employer shall be liable to pay the aforementioned charges.
- (d) From and after the date of termination of the Trust and until final distribution of the Trust Fund, the Trustee shall continue to have all such powers provided under the Plan, including the provisions of this Article XIV (Trust Fund), as are necessary and expedient for the orderly liquidation and distribution of the Trust Fund.

EXECUTION PAGE

I certify that the foregoing is a true and exact copy of the TOWN OF THOMASTON
RETIREMENT PLAN as adopted by the Employer on December 15, 2015.

TOWN OF THOMASTON

By: 

Title: First Selectman