

**TOWN OF WESTPORT
DEFINED CONTRIBUTION RETIREMENT PLAN**

**As Amended and Restated
Effective January 1, 2013**

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PREAMBLE

The Town of Westport, Connecticut (the "Town") established the Town of Westport Defined Contribution Retirement Plan (the "Plan") effective January 1, 2012. The Town hereby amends and restates the Plan, generally effective as of January 1, 2013, as follows:

ARTICLE I

NAME, QUALIFIED STATUS AND EFFECTIVE DATE

1.1 Name

The Plan as amended and restated herein shall continue to be known as the “Town of Westport Defined Contribution Retirement Plan.”

1.2 Qualified Status

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

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

1.3 Effective Date

The Plan, as set forth herein, shall be effective January 1, 2013, except as may otherwise be provided herein.

ARTICLE II

DEFINITIONS

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

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

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

- (a) Retirement Contributions allocated to the Retirement Account, and Matching Contributions allocated to the Matching Account, respectively, on behalf of such Participant for such Limitation Year under this Plan; and contributions by or on behalf of such Participant any other qualified defined contribution plan, or plan established under Code Section 403(b), maintained by the Town or by the Board of Education of the Town [other than contributions by a participant to another retirement plan of the Town that are “picked up” by the Town pursuant to Code Section 414(h)(2)];
- (b) Forfeitures, if any, allocated to such Participant for such Limitation Year under any qualified defined contribution plan maintained by the Town;
- (c) Such Participant’s voluntary non-deductible contributions under any qualified plan of the Town for such Limitation Year;
- (d) Amounts allocated, after March 31, 1984, for such Limitation Year to an individual medical account, as defined in Code Section 415(l)(2), which is part of a pension or annuity plan maintained by the Town; and
- (e) Amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after said date, which are attributable to post-retirement medical benefits allocated for such Limitation Year to the separate account of a “key employee,” as defined in Code Section 419A(d)(3), under a welfare benefit fund, as defined in Code Section 419(e), maintained by the Town.

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

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

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

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

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

continued in employment with the Town; and (2) is paid by the later of 2½ months after termination of employment or the end of the Limitation Year including the date of termination of employment.

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

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

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

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

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

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

2.12 “Effective Date” shall mean January 1, 2012, except that Article III shall be effective October 1, 2012.

2.13 “Eligible Employee” shall mean:

- (a) An Employee who (1) first commenced employment with the Town or with the Board of Education of the Town after December 31, 2011; (2) regularly works for the Town or for the Board of Education of the Town for at least 20 hours per week, and (3) is not covered by a collective bargaining agreement with the Town or with the Board of Education of the Town.

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

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

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

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

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

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

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

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

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

2.18 “Hour of Service” shall mean each hour:

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

For purposes of this Section 2.18, a payment shall be deemed to be made by or due from the Town regardless of whether such payment is made by or due from the Town directly, or indirectly through, among others, a trust fund, or insurer, to which the Town contributes or pays premiums and regardless of whether contributions made or due to the trust fund, insurer or other entity are for the benefit of particular Employees or are on behalf of a group of Employees in the aggregate. The same Hours of Service shall not be credited under both Sections 2.18(a) or (b) and under Section 2.18(c). The special rules of the Department of Labor Regulations at 29 C.F.R. Sections 2530.200b-2(b) and (c) relating to determining Hours of Service for reasons other than the performance of duties and crediting Hours of Service to computation periods are incorporated herein by this reference, even though such rules would not otherwise be applicable to the Plan. In the case of an Employee who is absent from work for any period (i) by reason of the Employee’s pregnancy, the birth of a child of the

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

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

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

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

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

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

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

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

2.26 “Normal Retirement Date” shall mean the following:

- (a) In the case of a Participant described in Section 2.13(a), the date he attains age 65.
- (b) In the case of a Participant described in Section 2.13(b), the date he attains age 55.

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

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

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

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

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

2.32 “Plan Year” shall mean the calendar year.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE III

PICK-UP CONTRIBUTIONS

3.1 Eligibility

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

- (1) October 1, 2012; or
- (2) The day he first commenced employment with the Town as an Eligible Employee.

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

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

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

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

3.2 Pick-Up Contributions

(a) For each Plan Year, each Eligible Employee described in Section 2.13(a) who is a Participant for purposes of this Article III shall contribute 3.5% of his Compensation to the Plan as a Pick-Up Contribution; provided, however, that his Compensation attributable to that portion of the Plan Year before he became a Participant for purposes of this Article III shall not be taken into account.

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

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

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

3.3 Vesting

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

ARTICLE IV

RETIREMENT CONTRIBUTIONS

4.1 Eligibility

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

- (1) January 1, 2012; or
- (2) The day he first commenced employment with the Town as an Eligible Employee.

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

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

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

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

4.2 Retirement Contributions

(a) For each Plan Year, the Town shall contribute to the Trust Fund 3.5% of the Compensation of each Participant described in Section 2.13(a).

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

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

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

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

4.3 Vesting

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

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

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

ARTICLE V

MATCHING CONTRIBUTIONS

5.1 Eligibility

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

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

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

5.2 Matching Contributions

(a) For each Plan Year, the Town shall contribute to the Trust Fund 100% of the contributions to the 401(k) Plan of a Participant described in Section 5.1(a) during such Plan Year, excluding any such contributions greater than 1.5% of his Compensation during such Plan Year.

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

5.3 Vesting

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

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

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

ARTICLE VI

LIMITS ON ANNUAL ADDITIONS

6.1 Limits on Annual Additions

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

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

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

6.2 Reduction of Annual Additions

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

6.3 Corrections of Excess Annual Additions

The correction of excess Annual Additions occurring due to a reasonable error in estimating Participants' Compensation shall be made pursuant to the terms of the correction methods provided for under Revenue Procedure 2013-12, or any subsequent Internal Revenue Service correction programs.

ARTICLE VII

ACCOUNTING AND ALLOCATIONS

7.1 Individual Accounts

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

7.2 Valuation of Trust Fund

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

7.3 Allocation of Contributions

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

(b) As of each Valuation Date, the Retirement Contributions on behalf of each Participant entitled thereto under Section 4.2(a) received by the Trustee since the preceding Valuation Date shall be credited to the Retirement Account of such Participant.

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

(d) As of each Valuation Date, the Matching Contributions on behalf of each Participant entitled thereto under Section 5.2 received by the Trustee since the preceding Valuation Date shall be credited to the Matching Account of such Participant.

7.4 Statements of Accounts

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

ARTICLE VIII

DISTRIBUTION OF BENEFITS

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

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

8.2 Other Termination of Employment

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

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

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

8.3 Method of Making Distributions

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

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

8.4 Direct Rollovers of Eligible Rollover Distributions

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

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

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

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

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

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

8.6 In-Service Distributions

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

8.7 Hardship Withdrawals

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

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

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

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

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

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

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

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

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

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

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

8.8 Forms, Etc.

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

8.9 Change of Address

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

8.10 Incapacity

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

8.11 Assignment or Alienation of Benefits

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

(b) Section 8.11(a) shall not apply to the creation, assignment or recognition of a right to any benefit payable as to a Participant's Account pursuant to a domestic relations order, unless such order is determined to be a Qualified Domestic Relations Order, or any domestic relations order entered before January 1, 1984. Distribution of all or part of a Participant's Account to an alternate payee under such an order may be made at any time, irrespective of whether such Participant has attained the "earliest retirement age" [within the meaning of Code Section 414(p)(4)(B)].

8.12 Death of Beneficiary

If any Beneficiary of a deceased Participant dies after having received less than all of such Beneficiary's entire interest in the Trust Fund, the undistributed portion thereof shall be paid to such person or persons as such Beneficiary shall have designated in a written instrument filed with the Retirement Committee. If no such designation was made, or if no such designated person is in existence at the time of such Beneficiary's death, such undistributed portion shall be paid to his surviving spouse; or if there is no surviving spouse, to his descendants who survive him, *per stirpes*, or if there are no such descendants, his surviving parents, in equal shares; or if there are no surviving parents; to his estate. The provisions of this Section 8.12 shall not apply in the event of the death of any person designated by a Beneficiary pursuant to this Section 8.12.

ARTICLE VIII A

LOANS TO PARTICIPANTS

8A.1 In General.

(a) In the sole discretion of the Retirement Committee, the Retirement Committee may direct the Trustee to make a *bona fide* loan to a Participant who is an Employee; provided, however, that all loans granted hereunder:

- (1) Are available to all potential borrowers on an equivalent basis; and
- (2) Are made in accordance with and subject to all the provisions of this Article VIII A.

(b) The minimum initial amount of any loan shall be \$1,000.

(c) No more than one loan from the Plan may be outstanding at any time.

(d) Each loan shall be charged against the borrower's Pick-Up Account.

(e) Any origination and maintenance fees in connection with a loan shall be deducted from the borrower's Pick-Up Account.

8A.2 Interest.

All loans pursuant to this Article VIII A shall be considered Trust Fund investments, and as such shall bear interest at the "prime rate" as set forth in the first edition of *The Wall Street Journal* during the month in which the loan is requested, rounded to the nearest ¼%.

8A.3 Maximum to be Loaned.

A loan to a borrower made pursuant to this Article VIII A [when added to the outstanding balance of all other loans made to such borrower by any other qualified plans maintained by the Town ("Other Plans")] shall be limited to the lesser of:

- (a) \$50,000, reduced by the excess (if any) of the highest outstanding balance of loans from this Plan and Other Plans to the borrower during the one-year period ending on the day before the date on which such loan from this Plan is made, over the outstanding balance of loans to the borrower from this Plan and Other Plans on the date on which such loan was made; or
- (b) One half of the balance of the borrower's Pick-Up Account.

For purposes of the above limits, all qualified plans of the Town shall be considered one plan.

8A.4 Repayment.

The period for repayment of any loan shall be arrived at by mutual agreement between the Retirement Committee and the borrower pursuant to a uniform, nondiscriminatory policy, but in no event shall the term of any such loan exceed a period of 5 years from the effective date of the loan, except that a longer period of up to 15 years may apply to any loan used to acquire any dwelling unit that within a reasonable time is to be used (determined at the time the loan is made) as the principal residence of the borrower. The repayment of any loan shall be fully amortized over the term of the loan and shall be made by payroll deductions as wages are paid by the Town to the borrower. Repayment of a loan shall be credited to the borrower's Pick-Up Account.

8A.5 Truth-in-Lending.

Where required by law, each borrower receiving a loan hereunder shall receive a statement clearly reflecting the charges involved in each loan transaction, which statement shall also include the dollar amount and annual interest rate of any finance charge.

8A.6 Purpose of Loan.

All applications for loans shall state the purpose for which the loan is sought. The Retirement Committee may approve a loan for any reasonable purpose, provided that the Retirement Committee is satisfied as to the potential borrower's ability to repay the loan and provided further that the Retirement Committee's decision to approve or deny a loan shall not be based upon any criteria which have the effect of discriminating for or against any group or groups of potential borrowers

8A.7 Collateral Security.

Notwithstanding any other provision of the Plan to the contrary, in the event of a loan the Retirement Committee shall require or take such security from the borrower as shall be available, feasible or practical under all of the circumstances, uniformly administered, but in any and all events and whether or not any other security shall be obtained or shall be obtainable, the Retirement Committee shall always take and have as collateral security a security interest in one half of said borrower's entire vested right, title and interest in his Accounts in this Plan and in this connection the Retirement Committee shall also have the right (i) upon default in payment of any installment due under the terms of repayment of such loan to accelerate (with or without notice) the unpaid indebtedness of any such loan and to offset the amount of such indebtedness against any distribution then due or to become due to the borrower, but if no distribution is then due, or becoming due, then upon notice to the borrower, to debit the borrower's vested Accounts in this Plan by any such amount; and (ii) upon termination of the borrower's employment with the Town or other event permitting or requiring distribution, to accelerate (with or without notice) such indebtedness and to pay or cause payment to the Trust of the entire unpaid amount of principal and accrued interest from any benefits then payable or distributable to the borrower. If such applications do not fully satisfy the borrower's indebtedness, he shall remain liable for and continue to make payments on any unpaid

balance still due.

8A.8 Rules and Regulations.

The Retirement Committee shall have the authority to prescribe rules and regulations for the administration of this Article VIIIA. All such rules and regulations shall be in writing, shall be communicated to all Participants and shall be considered part of the Plan.

ARTICLE IX

REQUIRED MINIMUM DISTRIBUTIONS

9.1 Requirements of Treasury Regulations Incorporated

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

9.2 Time and Manner of Distribution

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

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

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

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

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

9.3 Forms of Distribution

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

9.4 Required Minimum Distributions during Participant's Lifetime

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

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

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

9.5 Required Minimum Distributions after Participant's Death

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

- (1) Such Participant's remaining life expectancy is calculated using his age in the year of death, reduced by one for each subsequent year.

- (2) If such Participant's surviving spouse is his sole Designated Beneficiary, the remaining life expectancy of such surviving spouse shall be calculated for each Distribution Calendar Year after the year of his death using the surviving spouse's age as of such surviving spouse's birthday in such year. For Distribution Calendar Years after the year of such surviving spouse's death, the remaining life expectancy of such surviving spouse is calculated using the age of such surviving spouse as of such surviving spouse's birthday in the calendar year of such surviving spouse's death, reduced by one for each subsequent calendar year.
- (3) If such Participant's surviving spouse is not his sole Designated Beneficiary, the Designated Beneficiary's remaining life expectancy shall be calculated using the age of such Designated Beneficiary in the year following the year of such Participant's death, reduced by one for each subsequent year.

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

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

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

(e) If:

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

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

9.6 Miscellaneous

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

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

ARTICLE X

TRUST AND TRUSTEE

10.1 Establishment of Trust

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

10.2 Resignation and Removal of Trustee

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

10.3 Powers and Duties of Trustee

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

10.4 Payment of Compensation and Expenses

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

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

ARTICLE XI

PARTICIPANT DIRECTION OF INVESTMENT OF ACCOUNTS

11.1 Participant Direction

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

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

(c) Notwithstanding Section 11.1(a), a Participant shall have the right to transfer multiples of 1% of the value of his accounts in such investment funds to any one or more of the other such investment funds on an unlimited basis, subject to any withdrawal or investment restrictions of any such investment fund.

11.2 Default Investment Choice

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

11.3 Responsibility of Investment Committee and Trustee

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

11.4 Costs and Expenses

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

ARTICLE XII

INVESTMENT COMMITTEE

12.1 Establishment of Investment Committee

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

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

12.2 Meetings of Investment Committee

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

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

12.3 Compensation and Expenses of Investment Committee

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

12.4 Authority, Powers and Duties of Investment Committee

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

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

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

12.5 Protection of Investment Committee

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

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

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

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

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

shall be adjudged in such action to be liable for gross negligence or willful misconduct in the performance of his duty as a member of the Investment Committee. The foregoing right of indemnification shall be in addition to any other rights to which the Investment Committee may be entitled as a matter of law.

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

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

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

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

ARTICLE XIII

RETIREMENT COMMITTEE

13.1 Establishment of Retirement Committee

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

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

13.2 Meetings of Retirement Committee

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

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

13.3 Compensation and Expenses of Retirement Committee

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

13.4 Authority, Powers and Duties of Retirement Committee

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

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

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

13.5 Modification of Plan

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

13.6 Protection of Retirement Committee

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

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

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

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

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

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

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

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

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

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

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

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

13.7 Review Procedures of Retirement Committee

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

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

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

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

13.8 Final and Binding Decisions of Retirement Committee

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

13.9 Retirement Committee Member Who is a Participant

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

ARTICLE XIV

QUALIFIED MILITARY SERVICE

14.1 In General

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

14.2 Death of Participant While Performing Qualified Military Service

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

ARTICLE XV

AMENDMENT AND TERMINATION; NO REVERSION TO TOWN

15.1 Amendment of Plan

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

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

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

15.2 Termination of Plan; Discontinuance of Contributions

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

15.3 No Reversion to Town.

- (a) The Town shall have no beneficial interest in the Trust Fund and no part of the Trust Fund shall revert or be repaid to the Town, directly or indirectly.
- (b) Notwithstanding Section 15.3(a) or any other provision of the Plan, upon the Town's written request, a contribution which was made by a mistake of fact shall be returned to the Town by

the Trustee within one year after the mistaken payment of such contribution. Earnings attributable to a contribution which occurred due to a mistake of fact may not be returned to the Town and losses attributable thereto shall reduce the amount to be so returned.

ARTICLE XVI

MISCELLANEOUS

16.1 Employment

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

16.2 Records

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

16.3 Usage

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

16.4 Validity

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

16.5 Counterparts

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

16.6 Severability

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

16.7 Conditional Restatement

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

16.8 Agent for Service of Process.

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

Dated as of this _____ day of _____, 2014.

THE TOWN OF WESTPORT,
CONNECTICUT

By _____
Jim Marpe
First Selectman

The above and foregoing is a true and attested copy of the TOWN OF WESTPORT
DEFINED CONTRIBUTION RETIREMENT PLAN, as amended and restated effective as of
January 1, 2013.

Attest: _____
Patricia Strauss
Town Clerk

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