

# **TOWN OF KILLINGLY EMPLOYEES' RETIREMENT INCOME PLAN**

**November 10, 2015 Restatement**

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## **PREAMBLE**

The Town of Killingly Employees' Retirement Income Plan, originally effective as of April 1, 1967, is hereby amended and restated in its entirety. The Plan, as amended and restated hereby, is intended to qualify as a defined benefit pension plan under Code Section 401(a) and is a governmental plan under Code Section 414(d). The Plan is maintained for the exclusive benefit of eligible employees and their beneficiaries.

Except as otherwise specifically provided in the Plan, this amended and restated Plan shall be effective as of July 1, 2008, and the rights of any person who did not have an Hour of Service under the Plan on or after July 1, 2008, shall generally be determined in accordance with the terms of the Plan as in effect on the date for which he was last credited with an Hour of Service.

Notwithstanding the foregoing, the following special effective dates shall apply:

- (a) The change in the definition of "Actuarial Equivalent" in Section 1.1(d) to the table prescribed by Revenue Ruling 2001-62 is effective for lump sum distributions made on and after December 31, 2002.
- (b) The change in the definition of "Earnings" in Section 1.1(m) of the Plan to reflect the increase in the Code Section 401(a)(17) limit under EGTRRA is effective the first day of the first Plan Year beginning on or after January 1, 2002.
- (c) The change in the definition of "eligible retirement plan" in Section 11.4 to reflect the provisions of EGTRRA is effective January 1, 2002.
- (d) The change in the definition of "eligible retirement plan" in Section 11.4 to provide for rollovers by a Participant and his Spouse or former Spouse to a Roth IRA is effective for distributions made on and after January 1, 2008.
- (e) The changes in the 415 provisions in Article XII to comply with EGTRRA are effective the first day of the first limitation year ending after December 31, 2001; provided, however, that any increase in benefits resulting from such change shall apply only with respect to Participants who are active employees on or after that date.
- (f) The changes in the 415 provisions in Article XII to comply with final Treasury regulations are effective for limitation years beginning on and after July 1, 2007.
- (g) The provisions of the Appendix and other changes to comply with final regulations issued under Code Section 401(a)(9) are effective beginning with the 2003 calendar year.

## ARTICLE I DEFINITIONS

### 1.1 Plan Definitions

As used herein, the following words and phrases, when they appear with initial letters capitalized as indicated below, have the meanings hereinafter set forth:

- (a) A Participant's **"Accrued Benefit"** as of any date means the portion of his monthly normal retirement benefit accrued as of that date determined as provided in Article V, based on his years of Credited Service and his Average Annual Earnings determined as of that date.
- (b) An **"Active Participant"** means a Participant who is accruing Credited Service under the Plan in accordance with the provisions of Article III.
- (c) **"Accumulated Contributions"** as of any date means the total of an Employee's Mandatory Employee Contributions plus interest. Interest on a Participant's Mandatory Employee Contributions shall be credited for each full month from the July 1 following the date the contribution was paid to the Pension Fund to the date of determination at the rate of 4.5 percent per year, compounded each July 1.
- (d) The **"Actuarial Equivalent"** of a value means the actuarial equivalent determined using the 1971 Group Annuity Mortality Table for male lives, with ages set back one year for Participants and 5 years for Beneficiaries, and an interest rate of six percent, except that in determining present value for purposes of a single sum payment, the following factors shall be used: (i) the table prescribed in Revenue Ruling 2001-62 and (ii) the annual rate of interest on 30-year Treasury securities for the second calendar month preceding the Plan Year in which the distribution is made.

For a Participant who has reached Normal Retirement Date at the time present value is being determined, the present value of his Accrued Benefit shall be calculated based on the immediate annuity payable to the Participant as of his Annuity Starting Date. For a Participant who has not yet reached Normal Retirement Date at the time present value is being determined, the present value of his Accrued Benefit shall be calculated based on a deferred annuity payable commencing at Normal Retirement Date. For purposes of this paragraph, immediate and deferred annuities will be in the normal form applicable to unmarried Participants under Section 9.1 of the Plan.

- (e) The **"Actuary"** means an independent actuary selected by the Employer, who is an enrolled actuary as defined in Code Section 7701(a)(35), or a firm or corporation of

actuaries having such a person on its staff, which person, firm, or corporation is to serve as the actuarial consultant for the Plan.

- (f) The "**Administrator**" means the Employer unless the Employer designates another person or persons to act as such.
- (g) An "**Affiliated Company**" means any corporation or business which would be aggregated with the Employer for a relevant purpose under Code Section 414.
- (h) A Participant's, or Beneficiary's, if the Participant has died, "**Annuity Starting Date**" means the first day of the first period for which an amount is paid as an annuity or, in the case of a single sum payment, the first day on which all events have occurred which entitle the Participant, or his Beneficiary, if applicable, to such benefit.

If a Participant whose Annuity Starting Date has occurred is reemployed by the Employer resulting in a suspension of benefits in accordance with the provisions of Section 11.1, for purposes of determining the form of payment of such Participant's benefit upon his subsequent retirement, such prior Annuity Starting Date shall apply to benefits accrued both before and after the Participant's reemployment.

- (i) A Participant's "**Average Annual Earnings**" shall be defined as the participant's highest average annual earnings received during any five consecutive eligible earnings computation periods occurring during the last ten eligible earnings periods preceding the date the participant's employment terminates. Only earning periods in which the participant was making the mandatory employee contribution to the Plan shall be eligible for calculation.

Notwithstanding the foregoing, if a Participant does not have Earnings for five full consecutive Earnings Computation Periods, his Average Annual Earnings shall be determined using Earnings for the full Earnings Computation Periods available. If a Participant does not have Earnings for any full Earnings Computation Period, his Average Annual Earnings shall be determined by multiplying a fraction, the numerator of which is his total Earnings and the denominator of which is his total number of full calendar months of employment as an Employee, by 12.

- (j) A Participant's "**Beneficiary**" means any beneficiary who is entitled to receive a benefit under the Plan upon the death of the Participant.
- (k) The "**Code**" means the Internal Revenue Code of 1986, as amended from time to time. Reference to a Code section shall include (i) such section and any comparable section or sections of any future legislation that amends, supplements, or supersedes such section and (ii) all rulings, regulations, notices, announcements, and other pronouncements issued by the U.S. Treasury Department, the Internal Revenue Service, and any court of competent jurisdiction that relate to such section.



- (l) A Participant's "**Credited Service**" means his period of service for purposes of determining the amount of any benefit for which he is eligible under the Plan, as computed in accordance with the provisions of Article III.
- (m) The "**Earnings**" of a Participant for any Earnings Computation Period means basic compensation received from the Employer, excluding overtime, commissions, bonuses, and any other additional compensation. In addition, Earnings excludes reimbursements or other expense allowances, fringe benefits, moving expenses, deferred compensation (other than amounts deferred pursuant to Code Section 457), and welfare benefits.

With respect to an Employee who first becomes a Participant on or after July 1, 1996, in no event, shall the Earnings taken into account under the Plan for any Earnings Computation Period beginning on or after January 1, 2002, exceed the limit in effect under Code Section 401(a)(17) for such Earnings Computation Period (\$230,000 for Earnings Computation Periods beginning on and after January 1, 2008, subject to adjustment annually as provided in Code Section 401(a)(17)(B) and Code Section 415(d); provided, however, that the dollar increase in effect on January 1 of any calendar year, if any, is effective for limitation periods beginning in such calendar year). For purposes of determining benefit accruals in a Plan Year beginning after December 31, 2001, Earnings taken into account for any prior Earnings Computation Period shall not exceed \$200,000.

- (n) An "**Earnings Computation Period**" means each Plan Year.
- (o) An Employee's "**Eligibility Service**" means his period of service for purposes of determining his eligibility to participate in the Plan, as computed in accordance with the provisions of Article IV.
- (p) An "**Employee**" means any individual employed by the Employer other than (1) any elected or appointed official of the Employer, (2) any individual employed by the Employer as a teacher, or (3) any selectman.

For purposes of the Plan with respect to the provisions of Code Sections 415, any "leased employee," other than an excludable leased employee, shall be treated as an employee of the Employer; provided, however, that no "leased employee" shall become an Employee or shall accrue a benefit hereunder based on service as a "leased employee".

A "leased employee" means any person who performs services for the Employer or an Affiliated Entity (the "recipient") (other than an employee of the recipient) pursuant to an agreement between the recipient and any other person (the "leasing organization") on a substantially full-time basis for a period of at least one year, provided that such services are performed under the primary direction or control of the recipient. An "excludable leased employee" means any leased employee of the recipient who is (a) covered by a money purchase pension plan maintained by the leasing organization which provides for

- (i) a nonintegrated employer contribution on behalf of each participant in the plan equal to at least ten percent of compensation (as defined in Code Section 415(c)(3)), (ii) full and immediate vesting, and (iii) immediate participation by employees of the leasing organization or (b) performs substantially all of his services for the leasing organization or (c) whose compensation from the leasing organization in each Plan Year during the four-year period ending with the Plan Year is less than \$1,000. Notwithstanding the foregoing, a person shall not be treated as an excludable leased employee if leased employees (including any individual who would otherwise be considered an excludable leased employee) constitute more than 20 percent of the recipient's non-highly compensated work force. For purposes of this Section, contributions or benefits provided to a leased employee by the leasing organization that are attributable to services performed for the recipient shall be treated as provided by the recipient.
- (q) A Participant's **"Employee Derived Benefit"** as of any date means the portion of his Accrued Benefit that is attributable to his Mandatory Employee Contributions to the Plan. A Participant's Employee Derived Benefit shall be determined by multiplying his Accumulated Contributions as of the date of determination by ten percent.
- (r) The **"Employer"** means the Town of Killingly.
- (s) A Participant's **"Employer Derived Benefit"** as of any date means the excess, if any, of his Accrued Benefit as of such date over his Employee Derived Benefit as of such date. The Employer Derived Benefit shall be expressed as a single life annuity (without ancillary benefits) payable at Normal Retirement Date (or the determination date, if later). For purposes of determining a Participant's Employer Derived Benefit, the Participant's Accrued Benefit and Employee Derived Benefit shall be adjusted to the Actuarially Equivalent single life annuity payable at Normal Retirement Date (or the determination date, if later).
- (t) An Employee's **"Employment Commencement Date"** means the date he first completes an Hour of Service.
- (u) An Employee's **"Employment Severance Date"** means the earlier of (a) the date on which he retires, dies, or his employment as an Employee is otherwise terminated or (b) the first anniversary of the date on which he is absent from work with the Employer as an Employee for any other reason; provided, however, that the following special rules shall apply:
- (1) An Employee's Employment Severance Date shall not occur if he is absent from work with the Employer on account of service with the armed forces of the United States, he is eligible for reemployment rights under the Uniformed Services Employment and Reemployment Rights Act of 1994, and he returns to work with the Employer within the period during which he retains such reemployment rights,

but, if he does not return to work within such period, his Employment Severance Date shall be the earlier of the date which is one year after his absence commenced or the last day of the period during which he retains such reemployment rights.

- (2) An Employee's Employment Severance Date shall not occur if he is absent from work because of disability for which he is eligible for or receiving either (i) disability benefits under a benefit program funded by the Employer or (ii) Workers' Compensation benefits, provided that if he ceases to be eligible for or to collect disability benefits under such program prior to his Normal Retirement Date, he returns promptly to work with the Employer.
- (3) If the Employee is absent from work with the Employer on account of the birth of a child, pregnancy, the adoption of a child, or the caring for a child for a period beginning following the birth or adoption of such child (a "maternity/paternity absence"), beyond the first anniversary of the first day of such maternity/paternity absence, his Employment Severance Date shall be the second anniversary of the first day of such maternity/paternity absence.

Notwithstanding the foregoing, if a person retires, dies, or his employment as an Employee is otherwise terminated during a period in which he is absent from work with the Employer for any reason other than service with the armed forces of the United States, his Employment Severance Date shall be the date of such retirement, death, or other termination of employment.

- (v) An "Entry Date" means the first day of each calendar month.
- (w) The "Funding Agent" means the person or persons which at the time shall be designated, qualified, and acting under the Funding Agreement and shall include (i) any trustee for a trust established pursuant to the Funding Agreement, (ii) any insurance company that issues an annuity or insurance contract pursuant to the Funding Agreement, or (iii) any person holding assets in a custodial account pursuant to the Funding Agreement. The Employer may designate a person or persons other than the Funding Agent to perform any responsibilities of the Funding Agent under the Plan, and the Funding Agent shall not be liable for the performance of such person in carrying out such responsibilities except as otherwise provided by applicable law. The term Funding Agent shall include any delegate of the Funding Agent as may be provided in the Funding Agreement.
- (x) The "Funding Agreement" means the agreement entered into between the Employer and the Funding Agent relating to the holding, investment, and reinvestment of the assets of the Plan, together with all amendments thereto and shall include any agreement establishing a trust, a custodial account, an annuity contract, or an insurance contract (other than a life, health or accident, property, casualty, or liability insurance contract) for

the investment of assets; provided, however, that any custodial account or contract established hereunder meets the requirements of Code Section 401(f).

- (y) An **"Hour of Service"** with respect to any Employee means an hour which is determined and credited as such in accordance with the provisions of Article II.
- (z) A Participant's **"Mandatory Employee Contributions"** mean the after-tax contributions required to be made by a Participant to accrue a benefit hereunder.
- (aa) A Participant's **"Normal Retirement Date"** means, for purposes of benefit eligibility, the date he attains age 65 and for all other purposes, the first day of the month coinciding with or immediately following such date.
- (bb) A **"Participant"** means any person who becomes eligible to participate in the Plan in accordance with the provisions of Article IV and who retains an Accrued Benefit under the Plan.
- (cc) The **"Pension Fund"** means the fund or funds maintained under the Funding Agreement for purposes of accumulating contributions made by the Employer and paying benefits under the Plan.
- (dd) The **"Plan"** means this Town of Killingly Employees' Retirement Income Plan, established effective April 1, 1967, as amended and restated by this instrument, with all amendments, modifications, and supplements hereafter made.
- (ee) A **"Plan Year"** means the 12-consecutive-month period ending each June 30.
- (ff) A Participant's **"Required Beginning Date"** means the April 1 following the calendar year in which occurs the later of the Participant's (i) attainment of age 70 1/2 or (ii) the date the Participant retire.
- (gg) A Participant's **"Service"** means his period of service for purposes of determining his eligibility for a benefit under the Plan, as computed in accordance with the provisions of Article III.
- (hh) A Participant's **"Spouse"** means the lawful wife of a male Participant or the lawful husband of a female Participant.

## 1.2 Construction

Where required by the context, the noun, verb, adjective, and adverb forms of each defined term shall include any of its other forms. Wherever used herein, the masculine pronoun shall include the feminine, the singular shall include the plural, and the plural shall include the singular.

## **ARTICLE II HOURS OF SERVICE**

### **2.1 Crediting of Hours of Service**

An Employee shall be credited with an Hour of Service under the Plan for each hour for which he is paid, or entitled to payment, for the performance of duties for the Employer as an Employee.

**ARTICLE III  
SERVICE & CREDITED SERVICE**

**3.1 Service and Credited Service Prior to July 1, 2008**

Each person who is an Employee on or after July 1, 2008, shall be credited with Service and Credited Service for purposes of the Plan for periods prior to such date equal to the Service and Credited Service with which he had been credited in accordance with the Plan provisions in effect immediately prior to such date.

**3.2 Service and Credited Service On or After July 1, 2008**

Each person who is an Employee on or after July 1, 2008, shall be credited with Service and Credited Service with respect to periods of employment on or after such date, for purposes of the Plan as follows:

- (a) He shall be credited with Service for the period beginning on the later to occur of (i) July 1, 2008 or (ii) his Employment Commencement Date and ending on his Employment Severance Date. Service shall be computed in completed whole years and full months.
- (b) In addition, if an Employee retires or terminates employment and is reemployed by the Employer within the 12-month period following his retirement or termination, Service, but not Credited Service, shall be credited for the period of time he was not employed by the Employer.
- (c) Notwithstanding the foregoing, no Service shall be credited to an Employee for periods in which he was eligible, but elected not, to make Mandatory Employee Contributions to the Plan.
- (d) Subject to any limitations set forth in Article V, he shall be credited with Credited Service for the period beginning on the later to occur of (i) July 1, 2008 or (ii) his Employment Commencement Date and ending on his Employment Severance Date. Credited Service shall be computed in completed whole years and full months.
- (e) Notwithstanding the foregoing, no Credited Service shall be credited to an Employee for the following periods:
  - (1) his first year of Service.
  - (2) periods in which he was eligible but elected not to make Mandatory Employee Contributions to the Plan.

- (3) periods that he is absent from work because of disability for which he is eligible for or receiving either (i) disability benefits under a non-governmental benefit program funded by the Employer or (ii) Workers' Compensation benefits.

### **3.3 Transfers**

Notwithstanding the foregoing, Service and Credited Service credited to a person shall be subject to the following:

- (a) Except as otherwise specifically provided in (c) below, any person who transfers or retransfers to employment with the Employer as an Employee directly from other employment (i) with the Employer in a capacity other than as an Employee or (ii) with any other Affiliated Company, shall be credited with Service and Credited Service beginning on his transfer date.
- (b) Except as otherwise specifically provided in (c) below, any person who transfers from employment with the Employer as an Employee directly to other employment with the Employer in a capacity other than as an Employee shall be deemed by such transfer not to lose his Service or Credited Service, and shall be deemed not to retire or otherwise terminate his employment as an Employee until such time as he is no longer in the employment of the Employer, at which time he shall become entitled to benefits if he is otherwise eligible therefore under the provisions of the Plan; provided, however, that up to such time he shall not receive credit for Service or Credited Service under the Plan.
- (c) Any person who is absent from employment as an Employee because of service as an elected official of the Employer and who subsequently returns to employment as an Employee shall be credited with Service, but not Credited Service for the period that he serves as an elected official of the Employer. Notwithstanding the foregoing, if upon his termination of employment as an Employee such person received a refund of his Accumulated Contributions as provided in Section 7.4, he shall not be credited with Service under this paragraph (c) unless he elects to repay such distribution as provided in Section 3.4.

### **3.4 Retirement or Termination and Reemployment**

If an Employee retires or otherwise terminates employment with the Employer, his eligibility for and the amount of any benefit to which he may be entitled under the Plan shall be determined based upon the Service and Credited Service with which he is credited at the time of such retirement or other termination of employment. If such retired or former Employee is reemployed by the Employer as an Employee, the Service and Credited Service with which he was credited at the time of such prior retirement or other termination of employment shall be aggregated with the Service and Credited Service with which he is credited following his reemployment.

Notwithstanding the foregoing, if the retired or former Employee received a refund of his Accumulated Contributions as provided in Section 7.4, his Service and Credited Service credited at the time of his prior retirement or termination of employment shall be lost and shall not be aggregated with the Service and Credited Service credited to the retired or former Employee following reemployment unless the retired or former Employee repays to the Plan the full amount of the distribution with interest. For purposes of this paragraph, interest shall accrue annually, beginning on the date of the single sum payment, at the rate applicable for determining a Participant's Accumulated Contributions under Section 1.1(c).

Notwithstanding any other provision of this Section, if a retired or former Employee returns to employment in a capacity other than as an Employee, his period of employment shall be treated for the purposes of the Plan solely in accordance with the transfer provisions of this Article III.

### **3.5 Finality of Determinations**

All determinations with respect to the crediting of Service and Credited Service under the Plan shall be made on the basis of the records of the Employer, and all determinations so made shall be final and conclusive upon Employees, former Employees, and all other persons claiming a benefit interest under the Plan. Notwithstanding anything to the contrary contained in this Article, there shall be no duplication of Service and Credited Service.



## **ARTICLE IV ELIGIBILITY FOR PARTICIPATION**

### **4.1 Participation**

Each Employee who was an Active Participant immediately prior to July 1, 2008, shall continue as an Active Participant hereunder. Each other person shall become an Active Participant as of the Entry Date coinciding with or immediately following the later of (i) the date he becomes an Employee or (ii) the date he completes one year of Eligibility Service.

Notwithstanding the foregoing, no person shall become an Active Participant hereunder unless he elects to make Mandatory Employee Contributions to the Plan as provided in Section 4.2.

### **4.2 Mandatory Employee Contributions**

An Employee who has met the eligibility requirements described above may elect in writing in accordance with rules prescribed by the Administrator to make Mandatory Employee Contributions to the Plan. If the Administrator receives such election in a form acceptable to it within 31 days of the Entry Date the Employee first becomes eligible to participate, the Employee shall become an Active Participant as of such initial Entry Date. Otherwise, an Employee shall become an Active Participant as of the Entry Date following the date the Administrator receives his election to make Mandatory Employee Contributions.

The amount of an Employee's Mandatory Employee Contributions shall be equal to the following, as applicable:

- (a) for any Employee who is covered by the collective bargaining agreement between the Employer and its Public Works Union, 4.5 percent of his Earnings;
- (b) for any Employee who is an Assistant Superintendent and has not elected to participate in the ICMA Plan, 4.5 percent of his Earnings; and
- (c) for any other Employee, 3.0 percent of his Earnings.

An eligible Employee's written election shall include his authorization for the Employer to withhold from his Earnings an amount equal to the amount of such Mandatory Employee Contributions and to contribute such amounts to the Plan.

### **4.3 Suspension of Mandatory Employee Contributions**

A Participant's Mandatory Employee Contributions shall automatically be suspended for any period during which he is not eligible to accrue Credited Service under the Plan. Such

Participant's Mandatory Employee Contributions shall automatically resume as of the date he is once more eligible to accrue Credited Service under the Plan, unless such Participant elects to suspend his Mandatory Employee Contributions as provided in the following paragraph.

An Active Participant who is making Mandatory Employee Contributions to the Plan or whose Mandatory Employee Contributions are scheduled to resume as provided in the preceding paragraph may elect to suspend such contributions at such time or times during the Plan Year as the Administrator may prescribe. A Participant whose Mandatory Employee Contributions are suspended in accordance with the provisions of this paragraph may elect to resume such contributions at such time or times during the Plan Year as the Administrator may prescribe by filing a new election with the Administrator such number of days prior to the date as of which Mandatory Employee Contributions are to be resumed as the Administrator shall prescribe; provided, however, that a Participant who elected to suspend his Mandatory Employee Contributions may not resume Mandatory Employee Contributions hereunder prior to the second anniversary of the date the elected suspension began.

A Participant whose Mandatory Employee Contributions are suspended pursuant to this Section shall not accrue a benefit hereunder for the period such suspension is in effect.

#### **4.4 Crediting Eligibility Service**

An Employee shall be credited with Eligibility Service for the period beginning on his Employment Commencement Date and ending on his Employment Severance Date. Eligibility Service shall be computed in completed whole years.

#### **4.5 Loss of Eligibility Service**

An Employee's Eligibility Service shall be lost if he retires or if his employment with an Employer terminates for any other reason, and if he thereafter returns to employment as an Employee, he shall be treated for Plan purposes as a new Employee.

#### **4.6 Termination of Participation**

A Participant shall remain an Active Participant as long as he continues in employment as an Employee and continues to make Mandatory Employee Contributions to the Plan. A person shall remain a Participant as long as he retains an Accrued Benefit under the Plan.

#### **4.7 Participation Upon Reemployment**

If a former Employee is reemployed as an Employee, solely for purposes of determining his eligibility to participate in the Plan under this Article IV, he shall be treated as a new Employee and become an Active Participant upon satisfying the requirements of Section 4.1.

#### **4.8 Finality of Determinations**

All determinations with respect to the eligibility of an Employee to become a Participant under the Plan shall be made on the basis of the records of the Employer, and all determinations so made shall be final and conclusive for all Plan purposes. Each Employee who becomes a Participant shall be entitled to the benefits, and be bound by all the terms, provisions, and conditions of the Plan and the Funding Agreement.

## **ARTICLE V NORMAL RETIREMENT**

### **5.1 Eligibility**

Each Participant who retires from employment with the Employer on or after his Normal Retirement Date shall be eligible for a normal retirement benefit.

### **5.2 Amount**

An eligible Participant's monthly normal retirement benefit shall be equal to 1/12th of the following, as applicable:

- (a) For any Participant who is covered by the collective bargaining agreement between the Employer and its Public Works Union, the sum of the following:
  - (1) one percent of the Participant's Average Annual Earnings multiplied by the number of his years of Credited Service for employment prior to April 1, 1987; plus
  - (2) 1.5 percent of the Participant's Average Annual Earnings multiplied by the number of his years of Credited Service for employment on and after April 1, 1987.

Notwithstanding any other provisions of this paragraph (a), no more than 30 years of Credited Service shall be taken into account in determining an eligible Participant's benefit hereunder. If an eligible Participant is credited with more than 30 years of Credited Service and earned Credited Service both prior to and after April 1, 1987, the 30 years used to calculate his benefit shall be allocated between (1) and (2) above in such manner as shall maximize the benefit to which he is entitled under this paragraph (a).

- (b) For any Participant who is an Assistant Superintendent and has not elected to participate in the ICMA Plan, the sum of the following:
  - (1) one percent of the Participant's Average Annual Earnings multiplied by the number of his years of Credited Service for employment prior to July 1, 1991; plus
  - (2) 1.5 percent of the Participant's Average Annual Earnings multiplied by the number of his years of Credited Service for employment on and after July 1, 1991, not in excess of 30 years.

Notwithstanding any other provisions of this paragraph (b), no more than 30 years of Credited Service shall be taken into account in determining an eligible Participant's benefit hereunder. If an eligible Participant is credited with more than 30 years of Credited Service and earned Credited Service both prior to and after July 1, 1991, the 30 years used to calculate his benefit shall be allocated between (1) and (2) above in such manner as shall maximize the benefit to which he is entitled under this paragraph (b).

- (c) For any other Participant, the product of (1) one percent of the Participant's Average Annual Earnings multiplied by (2) the number of his years of Credited Service, not in excess of 30 years.

In no event will a reduction in a Participant's Average Annual Earnings reduce the normal retirement benefit payable to him below the amount that would have been payable to him under the same form of payment had he retired prior to his Normal Retirement Date when eligible for an early retirement benefit.

### **5.3 Minimum Benefits**

Notwithstanding any other provision of the Plan to the contrary, in no event will the monthly normal retirement benefit payable to a Participant who has a vested Accrued Benefit under the Plan be less than his Employee Derived Benefit.

### **5.4 Payment**

A monthly normal retirement benefit shall be paid to an eligible Participant commencing as of the first day of the month following the month in which he retires.

## **ARTICLE VI EARLY RETIREMENT**

### **6.1 Eligibility**

Each Participant who retires from employment with the Employer at or after age 55, but prior to his Normal Retirement Date and who has at least 10 years of Service shall be eligible for an early retirement benefit.

### **6.2 Amount**

An eligible Participant's monthly early retirement benefit shall be equal to his vested Accrued Benefit on the date of his early retirement; provided, however, that the amount of such benefit shall be reduced by multiplying such amount by the appropriate early commencement factor determined as provided in the Adjustment Factors Addendum. A Participant's vested interest in his Accrued Benefit shall be determined in accordance with the schedule provided in Section 7.1.

In lieu of an early retirement benefit, an eligible Participant may elect to receive a refund of his Accumulated Contributions as provided in Section 7.4. A Participant who receives such a refund shall forfeit his Accrued Benefit and shall not be entitled to any further benefit under the Plan, unless he is reemployed and repays the full amount of the refund with interest, as provided in Section 7.4.

### **6.3 Payment**

A monthly early retirement benefit shall be paid to an eligible Participant commencing as of the first day of the month following the later of the month in which he retires or the month in which he makes written application for the benefit, but not later than his Normal Retirement Date.

## **ARTICLE VII VESTED RIGHTS**

### **7.1 Vesting**

A Participant's vested interest in his Employee Derived Benefit shall be at all times 100 percent.

A Participant's vested interest in his Employer Derived Benefit shall be determined in accordance with the following schedule, based upon the number of full years of Service credited to him; provided, however, that a Participant's vested interest in his Employer Derived Benefit shall be 100 percent if he is employed by the Employer or an Affiliated Company on his Normal Retirement Date, regardless of whether he has completed the number of years of Service required under the schedule for 100 percent vesting.

<b>Years of Service</b>	<b>Vested Interest</b>
less than 10	0%
10 or more	100%

### **7.2 Eligibility for Deferred Vested Retirement Benefit**

Each Participant who terminates employment with the Employer and all Affiliated Companies, who has a vested interest in his Employer Derived Benefit, and who is not eligible for a normal or early retirement benefit under the Plan shall be eligible for a deferred vested retirement benefit.

### **7.3 Amount of Deferred Vested Retirement Benefit**

An eligible Participant's monthly deferred vested retirement benefit shall be equal to his vested Accrued Benefit on the date of his termination of employment; provided, however, that if the Participant is eligible to elect to begin benefit payments before his Normal Retirement Date as provided in Section 7.5, the amount of such benefit shall be reduced for early commencement in the same way as provided in Section 6.2 with respect to an early retirement benefit.

### **7.4 Refund of Accumulated Contributions**

A Participant who terminates employment with the Employer before he has a vested interest in his Employer Derived Benefit shall receive a refund of his Accumulated Contributions. The Participant may elect to receive such payment at any time following his termination of employment.

A Participant who retires or terminates employment prior to his Normal Retirement Date for reasons other than death and who has a vested interest in his Employer Derived Benefit may elect to receive a refund of his Accumulated Contributions at any time prior to the date payment of his retirement benefit begins.

Any refund hereunder shall be made in a single sum payment and shall be equal to the Participant's Accumulated Contributions as of the date of distribution.

A Participant who receives a refund of his Accumulated Contributions in accordance with this Section shall forfeit his Accrued Benefit and shall not be entitled to any further retirement benefit from the Plan. If a Participant whose Accrued Benefit is forfeited as provided herein returns to employment with the Employer as an Employee, his Accrued Benefit shall be restored if he repays to the Plan the full amount of the refund, with interest. For purposes of this Section, interest shall accrue annually, beginning on the date of the refund, at the rate applicable for determining a Participant's Accumulated Contributions under Section 1.1(c).

#### **7.5 Payment**

A monthly deferred vested retirement benefit shall be paid to an eligible Participant commencing as of his Normal Retirement Date; provided, however, that a Participant who has 10 years of Service may elect to begin benefit payments as of the first day of any month following the month in which he attains age 55.



**ARTICLE VIII  
DISABILITY RETIREMENT BENEFIT**

**8.1 No Disability Retirement Benefits Payable Under Plan**

There shall be no disability retirement benefits payable under the Plan.

## ARTICLE IX FORMS OF PAYMENT

### 9.1 Normal Form of Payment

A Participant who is eligible to receive a normal, early or deferred vested retirement benefit under Section 5.1, 6.1, or 7.2 of the Plan shall receive payment of such benefit in the form of a single life annuity. Such Participant shall receive a monthly retirement benefit payable for his lifetime, the last monthly payment being for the month in which his death occurs.

A Participant may waive the normal form of payment applicable to him and elect to receive payment of his benefit in one of the optional forms of payment provided in Section 9.2.

### 9.2 Optional Forms of Payment

Within the election period described in Section 9.5, a Participant who is eligible to receive a normal, early, or deferred vested retirement benefit may elect to receive payment of such benefit in accordance with any one of the following options.

If the Participant's Beneficiary under an optional joint and survivor form of payment dies prior to the Participant's Annuity Starting Date, the election shall become inoperative and ineffective, and benefit payments, if any, shall be made under the normal form of payment provided in Section 9.1, unless the Participant elects another optional form of payment provided under the Plan prior to his Annuity Starting Date. Once a Participant's Annuity Starting Date occurs, however, the optional form of payment elected by the Participant will not change even if the Participant's Beneficiary predeceases him. If a Participant is reemployed by the Employer, any benefits he accrues under the Plan following his reemployment shall be payable in the form elected by the Participant as of his Annuity Starting Date.

The monthly payments made under any optional form of payment hereunder shall be the Actuarial Equivalent of the monthly benefit otherwise payable to the Participant in the single life annuity form described in Section 9.1.

- (a) **100% Joint and Survivor Annuity.** The Participant shall receive a reduced monthly retirement benefit payable for his lifetime, the last monthly payment being for the month in which his death occurs. If the Participant's Beneficiary survives him, then commencing with the month following the month in which the Participant's death occurs, his Beneficiary shall receive a monthly benefit for his or her remaining lifetime equal to the reduced amount payable during the Participant's lifetime, the last monthly payment being for the month in which the Beneficiary's death occurs.
- (b) **66 2/3% Joint and Survivor Annuity.** The Participant shall receive a reduced monthly retirement benefit payable for his lifetime, the last monthly payment being for the month in which his death occurs. If the Participant's Beneficiary survives him, then

commencing with the month following the month in which the Participant's death occurs, his Beneficiary shall receive a monthly benefit for his or her remaining lifetime equal to 66 2/3rds percent of the reduced amount payable during the Participant's lifetime, the last monthly payment being for the month in which the Beneficiary's death occurs.

- (c) **50% Joint and Survivor Annuity.** The Participant shall receive a reduced monthly retirement benefit payable for his lifetime, the last monthly payment being for the month in which his death occurs. If the Participant's Beneficiary survives him, then commencing with the month following the month in which the Participant's death occurs, his Beneficiary shall receive a monthly benefit for his or her remaining lifetime equal to one-half of the reduced amount payable during the Participant's lifetime, the last monthly payment being for the month in which the Beneficiary's death occurs.
- (d) **Ten-Year Certain and Life Annuity.** The Participant shall receive a reduced monthly retirement benefit payable for his lifetime, the last monthly payment being for the month in which his death occurs. If the Participant's death occurs prior to the end of the ten-year period commencing with his Annuity Starting Date, his Beneficiary shall receive a continued monthly benefit equal to such reduced amount for the remainder of such ten-year period. If the Participant's Beneficiary dies after becoming eligible to receive a benefit hereunder, but prior to the end of the ten-year period, the unpaid monthly benefit shall be paid to the Beneficiary designated by the Participant to receive payment in such event or, if none, in accordance with the provisions of Section 9.3.

Notwithstanding any other provision of the Plan to the contrary, distribution under an optional form of payment shall be made in accordance with Code Section 401(a)(9) and regulations issued thereunder, including the minimum distribution incidental benefit requirement, as described in the Appendix. If a Participant designates a person other than his Spouse as his Beneficiary under an optional form of payment, and if payments under the optional form elected would not meet the minimum distribution incidental benefit requirement, the election shall be ineffective and benefit payments, if any, shall be made under the normal form of payment provided in Section 9.1, unless the Participant elects another optional form of payment provided under the Plan prior to his Annuity Starting Date.

### **9.3 Designation of Beneficiary and Beneficiary in Absence of Designated Beneficiary**

A Participant's Beneficiary may be any individual or, in the case of a Beneficiary to receive payments for the remainder of a period-certain under the form of payment elected by the Participant, any individuals, trust, or estate, selected by the Participant. If payment is to be made to a Participant's surviving Beneficiary for the remainder of a period-certain under the form of

payment elected by the Participant and no Beneficiary survives or the Participant has not designated a Beneficiary, the Participant's Beneficiary shall be the Participant's surviving Spouse or, if none, the Participant's surviving children in equal shares or, if none, the Participant's estate.

#### **9.4 Elections**

A Participant may waive or revoke a waiver of the normal form of payment provided in Section 9.1 and elect, modify, or change an election of an optional form of payment provided in Section 9.2 by notice delivered to the Administrator in such form as the Administrator may require at any time during the election period specified by the Administrator.

The form in which a Participant shall receive payment of his retirement benefit shall be determined upon the later of his Annuity Starting Date or the date his election period ends, based upon any waiver and election in effect on such date. Except as otherwise specifically provided in the Plan, in no event shall the form in which a Participant's retirement benefit is paid be changed on or after such date.

#### **9.5 Death Prior to Annuity Starting Date**

Except as provided in Section 9.6, should a Participant die prior to his Annuity Starting Date neither he nor any person claiming under or through him shall be entitled to any retirement benefit under the Plan; and no benefit shall be paid under the Plan with respect to such Participant except any refund of Accumulated Contributions under the provisions of Article X.

#### **9.6 Preservation of Election of Optional Form of Payment**

If a Participant who continues employment after his Normal Retirement Date and dies before his Annuity Starting Date has elected optional form of payment under Section 9.2 that provides for a survivor benefit, his form of payment shall be given effect and payment shall be made to his Beneficiary in accordance with the provisions of Section 9.2. Any election hereunder must be made by notice delivered to the Administrator in such form as the Administrator may require during the election period specified by the Administrator.

#### **9.7 Effect of Reemployment**

Notwithstanding any other provision of the Plan, if a former Employee is reemployed, his prior election of a form of payment hereunder shall become ineffective, unless the Participant's Annuity Starting Date has occurred, in which case such election will continue to apply to benefits accrued both before and after reemployment.

## **ARTICLE X REFUND OF ACCUMULATED CONTRIBUTIONS UPON DEATH**

### **10.1 Death Prior to Commencement of Payments**

If a Participant dies prior to his Annuity Starting Date and no benefit is payable to his Beneficiary under an optional form of payment given effect under the provisions of Section 9.6, then the Participant's death beneficiary shall receive a death benefit, payable in a single sum, that is equal to the Participant's Accumulated Contributions on the Participant's date of death. No death benefit shall be payable hereunder if the Participant previously received a refund of his Accumulated Contributions as provided in Section 7.4.

### **10.2 Death On or After Commencement of Payments**

A Participant's death beneficiary may be eligible for a death benefit as provided below when either of the following requirements is met:

- (a) the Participant dies prior to his Annuity Starting Date, a benefit is payable to his Beneficiary under an optional form of payment that is given effect under the provisions of Section 9.6, and the Participant's Beneficiary dies; or
- (b) the Participant dies after his Annuity Starting Date and either the form of payment elected by the Participant under the provisions of Article IX does not provide for continued benefits in the event of the Participant's death or his Beneficiary also dies.

The Participant's death beneficiary shall receive a death benefit, payable in a single sum, that is equal to the excess, if any, of (i) the Participant's Accumulated Contributions, determined as of the date benefit payments commenced under the Plan, over (ii) the amount of all benefit payments made under the terms of the Plan to the Participant and/or his Beneficiary under the provisions of Article IX.

No refund shall be made in accordance with this Section if the Participant elected the 10-year certain and life annuity form.

### **10.3 Designation of Death Beneficiary**

Each Participant may designate in writing any one or more persons as his death beneficiary to receive payment of the death benefit provided under this Section. Such designation shall be filed with the Administrator and shall be in such form as the Administrator shall require. A Participant at any time and from time to time, whether before or after his retirement or other termination of employment, may change the death beneficiary previously designated by him by filing with the Administrator a new designation in such form as it shall require.

If no death beneficiary shall have been designated by a Participant, or if all persons designated by him as death beneficiary shall die before becoming entitled to a death benefit hereunder, then such Participant's death beneficiary shall be his surviving Spouse or, if none, his surviving children in equal shares or, if none, his estate. A death beneficiary designation under this Section shall be separate from any Beneficiary designation under the provisions of Article IX.

**ARTICLE XI**  
**GENERAL PROVISIONS & LIMITATIONS**  
**REGARDING BENEFITS**

**11.1 Suspension of Benefits**

If a Participant continues employment with the Employer or an Affiliated Entity after reaching his Normal Retirement Date or a retired or former Employee is reemployed by the Employer or an Affiliated Entity, any benefits payable to such Participant or retired or former Employee under the Plan shall be suspended during the period of such employment or reemployment, as applicable.

**11.2 Non-Alienation of Retirement Rights or Benefits**

Except as provided in Section 1.401(a)-13(b)(2) of the Treasury Regulations (relating to Federal tax levies) or as otherwise required by law, no benefit under the Plan at any time shall be subject in any manner to anticipation, alienation, assignment (either at law or in equity), encumbrance, garnishment, levy, execution, or other legal or equitable process; and no person shall have the power in any manner to anticipate, transfer, assign (either at law or in equity), alienate or subject to attachment, garnishment, levy, execution, or other legal or equitable process, or in any way encumber his benefits under the Plan, or any part thereof, and any attempt to do so shall be void. Notwithstanding the foregoing, retirement benefits hereunder may be reduced pursuant to a domestic relations order that meets the requirements for a qualified domestic relations order, as described in Code Section 414(p).

**11.3 Payment of Benefits to Others**

If any person to whom a retirement benefit is payable is unable to care for his affairs because of illness or accident, any payment due (unless prior claim therefore shall have been made by a duly qualified guardian or other legal representative) may be paid to the Spouse, parent, brother or sister, or any other individual deemed by the Administrator to be maintaining or responsible for the maintenance of such person. The monthly payment of a retirement benefit to a person for the month in which he dies shall, if not paid to such person prior to his death, be paid to his Spouse, parent, brother, sister, or estate as the Administrator shall determine. Any payment made in accordance with the provisions of this Section shall be a complete discharge of any liability of the Plan with respect to the benefit so paid.

**11.4 Direct Rollovers**

Notwithstanding any other provision of the Plan to the contrary, in lieu of receiving a single sum payment as provided in Section 7.4, a "qualified distributee" may elect in writing, in accordance with rules prescribed by the Employer, to have any portion or all of such payment that is an

"eligible rollover distribution" paid directly by the Plan to the "eligible retirement plan" designated by the "qualified distributee"; provided, however, that this provision shall not apply if the total distribution is less than \$200 and that a "qualified distributee" may not elect this provision with respect to any partial distribution that is less than \$500. Any such payment by the Plan to another "eligible retirement plan" shall be a direct rollover.

The Administrator shall provide a "qualified distributee" with a notice describing his right to make a direct rollover of his "eligible rollover distribution." A "qualified distributee" shall have a period of at least 30 days after receiving such notice to determine whether or not to roll over his "eligible rollover distribution." A Participant may waive this 30-day period if:

- (a) the Administrator clearly informs the Participant of his right to consider his form of payment election for a period of at least 30 days following his receipt of the explanation; and
- (b) the Participant, after receiving the explanation, affirmatively elects an early Annuity Starting Date.

For purposes of this Section, the following terms have the following meanings:

- (c) An "eligible retirement plan" means any of the following: (i) an individual retirement account described in Code Section 408(a), (ii) an individual retirement annuity described in Code Section 408(b), (iii) an annuity plan described in Code Section 403(a) that accepts rollover, (iv) a qualified trust described in Code Section 401(a) that accepts rollovers, (v) an annuity contract described in Code Section 403(b) that accepts rollovers, (vi) an eligible plan under Code Section 457(b) that is maintained by a state or political subdivision of a state and that agrees to separately account for amounts transferred into such plan from the Plan, or (vii) a Roth IRA, as described in Code Section 408A, provided, that for distributions made prior to January 1, 2010, such rollover shall be subject to the limitations contained in Code Section 408A(c)(3)(B). The portion of an "eligible rollover distribution" that is attributable to a Participant's Mandatory Employee Contributions may only be rolled over to an individual retirement account or annuity described in Code Section 408(a) or (b) or to a qualified defined contribution plan described in Code Section 401(a), 403(a), or 403(b) that agrees to separately account for amounts so transferred, 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.
- (d) An "eligible rollover distribution" means any distribution of all or any portion of a Participant's Accrued Benefit or a distribution of all or any portion of a survivor benefit under Article X; provided, however, that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments made not less frequently than annually for the life or life expectancy of the qualified



distributee or the joint lives or joint life expectancies of the qualified distributee and the qualified distributee's designated beneficiary, or for a specified period of ten years or more; and any distribution to the extent such distribution is required under Code Section 401(a)(9).

- (e) A "qualified distributee" means a Participant, his surviving Spouse, or his Spouse or former Spouse who is an alternate payee under a qualified domestic relations order, as defined in Code Section 414(p).

#### **11.5 Limitations on Commencement**

Notwithstanding any other provision of the Plan to the contrary, payment of a Participant's retirement benefit shall commence not later than his Required Beginning Date.

Distributions required to commence under this Section shall be made in accordance with Code Section 401(a)(9) and regulations issued thereunder, as provided in the Appendix. If payment of a Participant's retirement benefit does not commence until his Required Beginning Date, his Required Beginning Date shall be considered his Annuity Starting Date for all purposes of the Plan.

Subject to the requirements of Code Sections 401(a)(9) and 411(d)(6), no benefit payments shall commence under the Plan until the Participant, or his surviving Spouse, if applicable, makes written application therefore on a form satisfactory to the Administrator. If the amount of a monthly retirement benefit payable to a Participant cannot be determined for any reason (including lack of information as to whether the Participant is still living or his marital status) on the date payment of such benefit is to commence under this Section, payment shall be made retroactively to such date no later than 60 days after the date on which the amount of such monthly retirement benefit can be determined.

## **ARTICLE XII**

### **MAXIMUM RETIREMENT BENEFITS**

#### **12.1 Definitions**

For purposes of this Article XII, the following terms have the following meanings.

- (a) An **"affiliated employer"** means any corporation or business, other than the Employer, which would be aggregated with the Employer for a relevant purpose under Code Section 414 as modified by Code Section 415(h).
- (b) A Participant's **"aggregate annual retirement benefit"** means the sum of his "annual retirement benefit" under the Plan and his "annual retirement benefit", if any, under any and all other "defined benefit plans" (whether or not terminated) maintained by the Employer, any "affiliated employer", or a "predecessor employer" that are required to be aggregated with the Plan in accordance with the provisions of Treasury Regulations Section 1.415(f)-1.
- (c) An **"annual addition"** with respect to a Participant for a "limitation year" means the sum of the following amounts made by the Participant or allocated to the Participant's account for the "limitation year":
  - (i) his Mandatory Employee Contributions to the Plan
  - (ii) all employer contributions allocated to the Participant's account under any qualified "defined contribution plan" maintained by the Employer or an "affiliated employer", including "elective contributions" and amounts attributable to forfeitures applied to reduce the employer's contribution obligation, but excluding "catch-up contributions"
  - (iii) all "employee contributions" allocated to the Participant's account under any qualified "defined contribution plan" maintained by the Employer or an "affiliated employer" or any qualified "defined benefit plan" maintained by the Employer or an "affiliated employer"
  - (iv) all forfeitures allocated to the Participant's account under any qualified "defined contribution plan" maintained by the Employer or an "affiliated employer"
  - (v) all amounts allocated to an individual medical benefit account, as described in Code Section 415(1)(2), established for the Participant as part of a pension or annuity plan maintained by the Employer or an "affiliated employer"
  - (vi) if the Participant is a key employee, as defined in Code Section 419A(d)(3), all amounts derived from contributions paid or accrued after December 31, 1985, in

taxable years ending after that date, that are attributable to post-retirement medical benefits allocated to the Participant's separate account under a welfare benefit fund, as defined in Code Section 419(e), maintained by the Employer or an "affiliated employer"

- (vii) all allocations to the Participant under a simplified employee pension

For purposes of defining "annual addition", a "catch-up contribution" means any elective deferral, as defined in Code Section 414(v)(2)(C), that is treated as a catch-up contribution in accordance with the provisions of Code Section 414(v). Any repayment of contributions (including interest) made to a governmental plan (as defined under Code Section 414(d)) to reinstate an amount previously refunded upon forfeiture of service credit under such plan or under another governmental plan maintained by a State or local government employer within the same State shall not be treated as an "annual addition" hereunder.

- (d) A Participant's **"annual retirement benefit"** means the amount of retirement benefit attributable to Employer contributions (including benefits attributable to contributions picked up by the Employer, as described in Code Section 414(h)(2), if any) which is payable to him annually under the Plan adjusted to the actuarially equivalent straight life annuity form using the factors prescribed in the following paragraphs if such benefit is to be paid in a manner other than to the Participant for his life only. A Participant's "annual retirement benefit" includes 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 Regulations Section 1.411(d)-4, Q&A-3(c), but shall not include the following: (A) benefits attributable to a Participant's "employee contributions;" (B) any repayment of contributions made by a Participant to the Plan with respect to an amount previously refunded upon the forfeiture of service credits under the Plan or another governmental plan maintained by a State or local governmental employer within the same State; or (C) benefits provided under a "qualified governmental excess benefit arrangement," as defined in Code Section 415(m)(3). If a Participant's retirement benefit under the Plan includes Mandatory Employee Contributions, it shall be adjusted to the actuarial equivalent of the retirement benefit attributable to the Employer's contributions using the factors prescribed in paragraph (c)(i) below.

For purposes of determining a Participant's "annual retirement benefit", the following shall apply:

- (i) If the Participant's retirement benefit includes Mandatory Employee Contributions, the portion of the Participant's retirement benefit that is attributable to Employer contributions shall be determined in accordance with the provisions of subparagraph (A) or (B) below, as applicable. If payment is to be made in a form other than to the Participant for his life only, and such form is not subject to

the requirements of Code Section 417(e)(3), the actuarially equivalent straight life annuity shall be determined in accordance with the provisions of subparagraph (A) or (B) below, as applicable.

- (A) For "limitation years" beginning before July 1, 2007, the annual amount of straight life annuity commencing on the same Annuity Starting Date with the same actuarial present value as the Participant's form of payment computed using the following factors, whichever produces the greater amount: (I) the interest rate and mortality table otherwise used under the Plan for purposes of determining Actuarial Equivalence of optional forms not subject to the requirements of Code Section 417(e)(3) or (II) the "applicable mortality table" and 5 percent.
  - (B) For "limitation years" beginning on and after July 1, 2007, the greater of (I) the annual amount of straight life annuity, if any, payable to the Participant under the Plan commencing at the same Annuity Starting Date as the Participant's form of payment or (II) the annual amount of straight life annuity commencing at the same Annuity Starting Date that has the same actuarially equivalent present value as the Participant's form of payment computed using the "applicable mortality table" and an interest rate of 5 percent.
- (ii) If payment is to be made to the Participant in a form that is subject to the requirements of Code Section 417(e)(3), the actuarially equivalent straight life annuity form shall be:
- (A) For distributions with an Annuity Starting Date in the 2004 or 2005 Plan Year, the annual amount of straight life annuity commencing on the same Annuity Starting Date that has the same actuarially equivalent present value as the Participant's form of payment determined using the following, whichever provides the greater annual amount: (I) the mortality table and interest rate otherwise used under the Plan for purposes of determining Actuarial Equivalence of such optional form or (II) the "applicable mortality table" and an interest rate of 5.5 percent
  - (B) For distributions with an Annuity Starting Date after the 2005 Plan Year, the annual amount of straight life annuity commencing on the same Annuity Starting Date that has the same actuarially equivalent present value as the Participant's form of payment determined using the following, whichever provides the greatest annual amount: (I) the mortality table and interest rate otherwise used under the Plan for purposes of determining Actuarial Equivalence of such optional form; (II) the "applicable mortality table" and an interest rate of 5.5 percent; or (III) the "applicable mortality table" and the "417(e) interest rate" determined as of the second calendar

month preceding the Plan Year in which the distribution is made, divided by 1.05. For purposes of this subparagraph (B), the "417(e) interest rate" means the following: (1) prior to the Plan Year beginning in 2008, the annual rate of interest for 30-year Treasury securities and (2) for Plan Years beginning on and after January 1, 2008, the adjusted first, second and third segment rates applied under Code Section 430(h)(2)(C), computed without regard to a 24 month average; provided, however, that for Plan Years beginning in 2008, 2009, 2010, and 2011, such rate shall be blended with the annual rate of interest for 30-year Treasury securities determined for the same period, as provided in Code Section 417(e)(3)(D)(ii) and (iii).

- (iii) A form of payment is not subject to the requirements of Code Section 417(e)(3) if the form of payment is either (A) a non-decreasing annuity (other than a straight life annuity) payable for a period not less than the life of the Participant (or in the case of a qualified preretirement survivor annuity (as defined in Code Section 417(c)), the life of the Participant's Spouse) or (B) an annuity that decreases during the life of the Participant merely because of (I) the death of the Participant's Beneficiary under a joint and survivor annuity, but only if the reduction is not below 50 percent of the benefit payable before the death of the Beneficiary or (II) cessation or reduction of Social Security supplements or qualified disability payments, as defined in Code Section 401(a)(11).
- (iv) No actuarial adjustment shall be made hereunder for (A) survivor benefits payable to a surviving Spouse under a qualified joint and survivor annuity (as defined in Code Section 417(b)) 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 qualified disability benefits, preretirement incidental death benefits, and post-retirement medical benefits), or (C) the inclusion in the form of payment of an automatic benefit increase feature, provided that (I) the form of payment is not subject to Code Section 417(e)(3) and would otherwise satisfy the limitations of this Article and (II) the Plan provides that the amount payable under the form of payment in any "limitation year" shall not exceed the limits of this Article applicable as of the Annuity Starting Date, increased in subsequent years pursuant to Code Section 415(d). For purposes of clause (C), an automatic benefit increase feature is included in a form of payment if the form of payment provides for automatic, periodic increases to benefits paid in that form.
- (v) If a Participant has or will have distributions commencing at more than one Annuity Starting Date, the "annual retirement benefit" shall be determined as of each Annuity Starting Date (and shall satisfy the limitations of this Article as of each such date), actuarially adjusting for past and future distributions of benefits commencing as of other Annuity Starting Dates. For purposes of this paragraph

(v), the determination of whether a new Annuity Starting Date has occurred shall be made without regard to Treasury Regulations Section 1.401(a)-20, Q&A 10(d), but with regard to Treasury Regulations Sections 1.415(b)-1(b)(1)(iii)(B) and (C).

- (e) The **"applicable mortality table"** means the following: (i) prior to the first day of the first Plan Year beginning on or after January 1, 2008, the table prescribed by the Secretary of the Treasury, which is the table specified in Revenue Ruling 2001-62 and (ii) on and after the first day of the first Plan Year beginning on or after January 1, 2008, the applicable Code Section 417(e)(3) mortality table.
- (f) **"Defined benefit plan"** and **"defined contribution plan"** have the meanings given such terms in Code Section 415(k).
- (g) **"Defined benefit dollar limitation"** means \$160,000, as adjusted, effective January 1 of each year, under Code Section 415(d) in such manner as the Secretary of the Treasury shall prescribe, and payable in the form of a straight life annuity. A limitation adjusted under Code Section 415(d) will apply to "limitation years" ending with or within the calendar year for which the adjustment applies. A Participant's "annual retirement benefit" shall not be adjusted to reflect increases in the "defined benefit dollar limitation" effective for "limitation years" beginning after the "limitation year" in which his severance from employment occurs.

The "defined benefit dollar limitation" shall be adjusted as follows:

- (i) If the Participant has fewer than 10 years of participation in the Plan, the "defined benefit dollar limitation" shall be multiplied by a fraction, (i) the numerator of which is the number of years (or part thereof, but not less than one) of participation in the plan and (ii) the denominator of which is 10. For purposes of this paragraph (i), a Participant is credited with a "year of participation" (computed to fractional years) for each year (or fraction of a year) of Credited Service with which he is credited under the Plan, provided that (A) he is included as a Participant under the eligibility provisions of the Plan for at least one day of each such year (or fraction of a year) and (B) the Plan is established no later than the last day of such year (or fraction of a year). No more than one year of participation shall be credited for any 12-consecutive-month period.

The adjustment provided in this paragraph (g)(i) shall not apply to the following:

- benefits payable to a Participant or his Beneficiary as a pension, annuity, or similar allowance as a result of the recipient becoming disabled due to personal injury or illness
- benefits payable to a Participant's Beneficiary as a result of the death of the Participant

(ii) If the benefit of a Participant begins prior to age 62, the "defined benefit dollar limitation" applicable to the Participant at such earlier age is an annual benefit payable in the form of a straight life annuity beginning at the Participant's Annuity Starting Date that is:

(A) For "limitation years" beginning before July 1, 2007, the actuarial equivalent of the "defined benefit dollar limitation" (adjusted under (i) above, if required) determined using the following factors, whichever produces the lesser annual amount: (I) the interest rate and mortality table (or other tabular factor) specified in Section 6.2 or 7.3, as applicable, for adjusting benefits for early commencement or (II) the "applicable mortality table" and an interest rate of 5 percent.

(B) For "limitation years" beginning on or after July 1, 2007, the following, as applicable:

(I) If the plan does not provide an immediately commencing straight life annuity commencing at both age 62 and the Participant's age at his Annuity Starting Date, the actuarial equivalent of the "defined benefit dollar limitation" (adjusted under (i) above, if required) determined using the "applicable mortality table" (expressing the Participant's age based on completed calendar months as of the Annuity Starting Date) and an interest rate of 5 percent.

(II) If the plan does provide an immediately commencing straight life annuity commencing at both age 62 and the Participant's age at his Annuity Starting Date, the lesser of: (a) the amount determined under (I) above or (b) the "defined benefit dollar limitation" (adjusted under (i) above, 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 Article.

Any decrease in the "defined benefit dollar limitation" determined in accordance with this paragraph (ii) shall not reflect a mortality decrement if benefits are not forfeited upon the death of the Participant. If any benefits are forfeited upon death, the full mortality decrement is taken into account. For this purpose, no forfeiture is treated as occurring upon the Participant's death if the Plan does not charge Participants for providing a qualified preretirement survivor annuity (as defined in Code Section 417(c)).

The adjustment provided in this paragraph (g)(ii) shall not apply to the following:



- benefits payable to a Participant or his Beneficiary as a pension, annuity, or similar allowance as a result of the recipient becoming disabled due to personal injury or illness
  - benefits payable to a Participant's Beneficiary as a result of the death of the Participant
- (iii) If the benefit of a Participant begins after the Participant attains age 65, the "defined benefit dollar limitation" applicable to the Participant at the later age is an annual benefit payable in the form of a straight life annuity beginning at the Annuity Starting Date that is:
- (A) For "limitation years" beginning before July 1, 2007, the actuarial equivalent of the "defined benefit dollar limitation" (adjusted under (i) above, if required) determined using the following factors, whichever provides the lesser amount: (I) the interest rate and mortality table (or other tabular factor) used under the Plan to determine Actuarial Equivalence for purposes of delayed retirement or (II) the "applicable mortality table" and an interest rate of 5 percent.
  - (B) For "limitation years" beginning on or after July 1, 2007, the following, as applicable:
    - (I) If the plan does not provide an immediately commencing straight life annuity commencing at both age 65 and the Participant's age at his Annuity Starting Date, the actuarial equivalent of the "defined benefit dollar limitation" (adjusted under (i) above, if required) determined using the "applicable mortality table" (expressing the Participant's age based on completed calendar months as of the Annuity Starting Date) and an interest rate of 5 percent.
    - (II) If the plan does provide an immediately commencing straight life annuity commencing at both age 65 and the Participant's age at his Annuity Starting Date, the lesser of: (a) the amount determined under (I) above or (b) the "defined benefit dollar limitation" (adjusted under (i) above, 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 Article. The adjusted immediately commencing straight life annuity at the Participant's Annuity Starting Date is the annual amount of such annuity payable to the Participant computed disregarding accruals



after age 65, but including actuarial adjustments even if those 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 to a hypothetical Participant who is age 65 and has the same Accrued Benefit as the Participant.

Any adjustment to the "defined benefit dollar limitation" determined in accordance with this paragraph (iii) shall not reflect a mortality decrement if benefits are not forfeited upon the death of the Participant. If any benefits are forfeited upon death, the full mortality decrement is taken into account. For this purpose, no forfeiture is treated as occurring upon the Participant's death if the Plan does not charge Participants for providing a qualified preretirement survivor annuity (as defined in Code Section 417(c)).

- (h) An **"elective contribution"** means any employer contribution made to a plan maintained by the Employer or an "affiliated employer" on behalf of a Participant in lieu of cash compensation pursuant to his written election to defer under any qualified CODA as described in Code Section 401(k), any simplified employee pension cash or deferred arrangement as described in Code Section 402(h)(1)(B), or any plan as described in Code Section 501(c)(18), and any contribution made on behalf of the Participant by the Employer or an "affiliated employer" for the purchase of an annuity contract under Code Section 403(b) pursuant to a salary reduction agreement.
- (i) An **"employee contribution"** means any employee after-tax contribution contributed by a Participant under any qualified plan of the Employer or an "affiliated employer", including mandatory employee contributions, as defined in Code Section 411(c)(2)(C).
- (j) A Participant's **"415 compensation"** with respect to a "limitation year" means the Participant's remuneration for services, including (A) his wages, salaries, fees for professional service, and all other amounts received (without regard to whether such amounts are paid in cash) for personal services actually rendered in the course of employment with the Employer or an "affiliated employer" paid to him for such period, to the extent the amounts would have been received and includable in gross income, including, but not limited to, commissions paid to salesperson, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements or other expense allowances under a non-accountable plan described in Treasury Regulations Section 1.62-2(c) or (B) in case of a Participant who is an employee within the meaning of Code Section 401(c)(1), the Participant's earned income, as described in Code Section 401(c)(2) and regulations issued thereunder, but excluding (i) contributions (other than elective contributions described in Code Section 402(e)(3), 408(k)(6), 408(p)(2)(A)(i), or 457(b)) made on behalf of the Participant by the Employer or an "affiliated employer" to a plan of deferred compensation (including a simplified employee pension described in Code Section 408(k)

or a simple retirement account described in Code Section 408(p)), whether or not qualified, to the extent that, before application of the limitations of Code Section 415 to such plan, the contributions are not includable in the gross income of the Participant for the taxable year in which contributed, (ii) any distributions from a plan of deferred compensation, whether or not qualified, (except amounts received pursuant to an unfunded non-qualified plan in the year such amounts are includable in the gross income of the Participant), (iii) amounts realized from the exercise of a non-qualified option or when restricted stock or other property held by the Participant either becomes freely transferable or is no longer subject to substantial risk of forfeiture, (iv) amounts received from the sale, exchange or other disposition of stock acquired under a qualified stock option, (v) any 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 includable in the gross income of the Participant and are not salary reduction amounts that are described in Code Section 125), and (vi) other items that are similar to the items listed in (i) through (v) above.

"415 compensation" includes (i) any elective deferral, as defined in Code Section 402(g)(3) and (ii) any amount contributed or deferred by the Employer at the Participant's election which is not includable in the Participant's gross income by reason of Code Section 125, 132(f)(4), or 457.

If a Participant has a severance from employment (as defined in Treasury Regulations Section 1.415(a)-1(f)(5)) with the Employer and all "affiliated employers", "415 compensation" does not include amounts received by the Participant following such severance from employment except amounts paid before the later of (a) the close of the "limitation year" in which the Participant's employment terminates or (b) within 24 months of such severance if such amounts:

- (i) would otherwise have been paid to the Participant in the course of his employment and are regular compensation for services during the Participant's regular working hours, compensation for services outside the Participant's regular working hours (such as overtime or shift differential pay), commissions, bonuses, or other similar compensation
- (ii) are payments for accrued bona fide sick, vacation or other leave, but only if the Participant would have been able to use such leave if his employment had continued and such amounts would have been includable in "415 compensation" if his employment had continued
- (iii) are received by the Participant pursuant to a non-qualified, unfunded deferred compensation plan, but only if the Participant would have received such payments at the same time if he had continued in employment and only to the extent the payments are includable in the Participant's gross income

For purposes of this subsection, a Participant will not be considered to have incurred a severance from employment if his new employer continues to maintain the plan with respect to such Participant.

Notwithstanding the foregoing, effective for years beginning after December 31, 2008, amounts paid by the Employer or an "affiliated employer" to a Participant who is not performing services for the Employer or "affiliated employer" due to qualified military service (within the meaning of Code Section 414(u)(1)) shall be included as "415 compensation" to the extent such amounts do not exceed the amounts the Participant would have received if he had continued in employment with the Employer or "affiliated employer".

In no event, however, shall the "415 compensation" of a Participant for any "limitation year" exceed the Code Section 401(a)(17) limit in effect for such "limitation year" (\$230,000 for the "limitation year" beginning in 2008, subject to adjustment annually as provided in Code Section 401(a)(17)(B) and Code Section 415(d); provided, however, that the dollar increase in effect on January 1 of any calendar year, if any, is effective for "limitation years" beginning in such calendar year).

To be included in a Participant's "415 compensation" for a particular "limitation year", an amount must have been received by the Participant (or would have been received, but for the Participant's election under Code Section 125, 132(f)(4), 401(k), 402(h)(1)(B), 403(b), 408(p)(2)(A)(i), or 457) within such "limitation year".

- (k) The "limitation year" means the calendar year.
- (l) A "predecessor employer" means (1) any former employer with respect to which the Employer or "affiliated employer" maintains a plan that provides benefits that the Participant accrued while performing services for such other employer or (2) a former entity that antedates the Employer or an "affiliated employer" if under the facts and circumstances the Employer or "affiliated employer" constitutes a continuation of all or a part of the trade or business of the former entity.

## **12.2 Maximum Limitation on Annual Benefits**

The "aggregate annual retirement benefit" payable to a Participant may not at any time within any "limitation year" exceed the "defined benefit dollar limitation"; provided, however, that the "aggregate annual retirement benefit" payable to a Participant shall be deemed not to exceed such limits if both of the following requirements are met:

- (a) The Employer, all "affiliated employers", and any "predecessor employer" have not at any time maintained a separate "defined contribution plan" in which the Participant participated; and

- (b) The "aggregate annual retirement benefit" payable for a "limitation year" under any available form of payment does not exceed \$10,000; provided that if the Participant has fewer than 10 years of service, as defined below, such dollar amount shall be adjusted by multiplying it by a fraction, the numerator of which is the Participant's number of years of service (or part thereof, but not less than one) and the denominator of which is 10. The adjustment to the dollar amount provided under this paragraph (b) shall not apply to the following:
- benefits payable to a Participant or his Beneficiary as a pension, annuity, or similar allowance as a result of the recipient becoming disabled due to personal injury or illness
  - benefits payable to a Participant's Beneficiary as a result of the death of the Participant

For purposes of paragraph (b) above, a Participant is credited with a "year of service" (computed to fractional years) equal to the years of Credited Service with which he would have credited under the Plan, taking into account service with the Employer, any "affiliated employer", or a "predecessor employer."

If a Participant makes one or more contributions to the Plan for purposes of purchasing "permissive service credits," as defined in Code Section 415(n)(3), the requirements of Code Section 415 shall be satisfied if either:

- (c) the requirements of this Section 12.2 are satisfied including the accrued benefit derived from such contributions in the Participant's "aggregate annual retirement benefit;" or
- (d) the requirements of Code Section 415(c) are met for the "limitation year" in which the contributions are made, aggregating such contributions with other "annual additions," as defined in Code Section 415(c)(2) and regulations issued thereunder, made to plans maintained by the Employer and "affiliated employers."

### **12.3 Grandfather Prior Benefits**

Notwithstanding any other provision of this Article to the contrary, in no event will application of the limits contained in this Article reduce the "aggregate annual retirement benefit" payable to a Participant below the "aggregate annual retirement benefit" payable to the Participant as of the end of the last "limitation year" beginning before July 1, 2007 under the provisions of the Plan adopted and in effect before April 5, 2007, provided that such provisions satisfied the requirements of Code Section 415 and the regulations and published guidance issued thereunder in effect as of the end of the last "limitation year" beginning before July 1, 2007, as provided in Treasury Regulations Section 1.415(a)-1(g)(4).

#### **12.4 Maximum Limitation on Mandatory Employee Contributions**

Notwithstanding any other provision of the Plan to the contrary, the "annual addition" with respect to a Participant for a "limitation year" shall in no event exceed the lesser of (i) the dollar limitation in effect for the "limitation year" under Code Section 415(c)(1)(A), adjusted as provided in Code Section 415(d) (e.g., \$45,000 for the 2007 "limitation year") or (ii) 100 percent of the Participant's "415 compensation" for the "limitation year"; provided, however, that the limit in clause (i) shall be pro-rated for any short "limitation year". The limit in clause (ii) shall not apply to any contribution for medical benefits within the meaning of Code Section 401(h) or 419A(f)(2) after separation from service which is otherwise treated as an "annual addition" under Code Section 419A(d)(2) or 415(1)(1).

#### **12.5 Manner of Reduction**

If a Participant's "annual retirement benefit" payable for a "limitation year" would otherwise exceed the limitations specified in this Article, his "annual retirement benefit" payable for such "limitation year" shall be reduced to the extent necessary. If a Participant is also covered by another "defined benefit plan" required to be aggregated with the Plan under Treasury Regulations Section 1.415(f)-1 and his "aggregate annual retirement benefit" payable for a "limitation year" would exceed the limitations of this Section, his "annual retirement benefit" payable for such "limitation year" shall be reduced by an amount equal to the amount by which his "aggregate annual retirement benefit" payable for such "limitation year" would exceed the limitations of this Section multiplied by a fraction, the numerator of which is his "annual retirement benefit" (determined without regard to this Section) and the denominator of which is his "aggregate annual retirement benefit" (determined without regard to the limitations of this Section or any corresponding limitation in any other "defined benefit plan" maintained by the Employer, any "affiliated employer," or any predecessor employer").

If the "annual addition" to the Plan of a Participant in any "limitation year" would otherwise exceed the amount that may be applied for his benefit under the limitation contained in the preceding Section, the limitation shall be satisfied by reducing the Participant's Mandatory Employee Contributions to be made to the Plan to the extent necessary. If a Participant is covered by any other qualified "defined contribution plan" (whether or not terminated) maintained by the Employer or an "affiliated employer" concurrently with the Plan, and if the "annual addition" for the "limitation year" would otherwise exceed the amount that may be applied for the Participant's benefit under the limitation contained in the preceding Section, such excess shall be reduced first by reducing the "employee contributions" to be made by the Participant for the "limitation year" under all "defined contribution plans", to the extent necessary in the order prescribed by the Administrator. If the limitation contained in the preceding Section still is not satisfied after reducing all of the "employee contributions" to be made by the Participant under all such other plans, the excess shall be reduced by reducing the "elective contributions" to be made on the Participant's behalf for the "limitation year" under all such other plans, to the extent necessary, in the order prescribed by the Administrator. If the limitation contained in the preceding Section still is not satisfied after reducing all of the "elective contributions" to be made on the

Participant's behalf under all such other plans, the portion of the employer contributions and forfeitures for the "limitation year" under all such other plans that are to be allocated to the Participant thereunder shall be reduced to the extent necessary, in the order prescribed by the Administrator, but first under any "defined contribution plan" that is not a money purchase pension plan and, if the limitation still is not satisfied, then under such money purchase pension plan. If the limitation contained in the preceding Section still is not satisfied after all employer contributions and forfeitures to be allocated under all such "defined contributions plans" are reduced for the "limitation year", the limitation shall be satisfied by reducing contributions to be made under the Plan as provided in this Section.

If the limitations contained in this Article are nevertheless exceeded with respect to a Participant for any "limitation year," correction shall be made in accordance with the Employee Plans Compliance Resolution System, as set forth in Revenue Procedure 2006-27, or any superseding guidance.

## **ARTICLE XIII PENSION FUND**

### **13.1 Pension Fund**

The Pension Fund is maintained by the Funding Agent for the Plan under a Funding Agreement with the Employer. Subject to applicable law, benefits under the Plan shall be only such as can be provided by the assets of the Pension Fund, and no liability for payment of benefits shall be imposed upon the Employer or any Affiliated Company, or any of their officers, employees, directors, or stockholders.

### **13.2 Contributions by the Employer**

So long as the Plan continues, contributions will be made by the Employer at such times and in such amounts as the Employer in its sole discretion shall from time to time determine, based on the advice of the Actuary and consistent with the funding policy for the Plan. Subject to the provisions of Section 13.5, all such contributions shall be delivered to the Funding Agent for deposit in the Pension Fund.

### **13.3 Expenses of the Plan**

The expenses of administration of the Plan, including the expenses of the Administrator and fees of the Funding Agent and any investment advisor, shall be paid from the Pension Fund, unless the Employer elects to make payment.

### **13.4 No Reversion**

The Pension Fund shall be for the exclusive benefit of Participants and persons claiming under or through them. All contributions pursuant to Section 13.2 hereof shall be based on the facts then understood by the Employer. All such contributions shall be irrevocable and such contributions as well as the Pension Fund, or any portion of the principal or income thereof, shall never revert to or inure to the benefit of the Employer or any Affiliated Company except that:

- (a) the residual amounts specified in Article XVI may be returned to the Employer; and
- (b) any contributions which are made under a mistake of fact may be returned to the Employer within one year after the contributions were made.

The Employer shall determine, in its sole discretion, whether the contributions described in paragraph (b) above shall be returned to the Employer. If any such contributions are to be returned, the Employer shall so direct the Funding Agent, in writing, no later than ten days prior to the last day upon which they may be returned.

### **13.5 Forfeitures Not to Increase Benefits**

Any forfeitures arising from the termination of employment or death of an Employee, or for any other reason, shall be used to reduce Employer contributions to the Pension Fund, and shall not be applied to increase the benefits any Participant otherwise would receive under the Plan at any time prior to the termination of the Plan.

### **13.6 Change of Funding Medium**

The Employer shall have the right to change at any time the means through which benefits under the Plan shall be provided. No such change shall constitute a termination of the Plan or result in the diversion to the Employer of any funds previously contributed in accordance with the Plan.



## **ARTICLE XIV ADMINISTRATION**

### **14.1 Authority of the Employer**

The Employer, which shall be the plan administrator for purposes of the Code, shall have all the powers and authority expressly conferred upon it herein and further shall have the sole discretionary right, authority, and power to interpret and construe the Plan, and to determine any disputes arising thereunder, subject to the provisions of Section 14.3. In exercising such powers and authority, the Employer at all times shall exercise good faith, apply standards of uniform application, and refrain from arbitrary action. The Employer may employ such attorneys, agents, and accountants as it may deem necessary or advisable to assist it in carrying out its duties hereunder. The Employer may designate a person or persons to carry out any of its powers, authority, or responsibilities for the operation and administration of the Plan, except that no designation by the Employer with respect to any of such powers, authority, or responsibilities to such other person shall become effective unless such allocation or designation shall first be accepted by such other person in a writing signed by it and delivered to the Employer.

### **14.2 Action of the Employer**

Any act authorized, permitted, or required to be taken by the Employer under the Plan, which has not been delegated in accordance with Section 14.1, may be taken by a majority of the members of the committee appointed to act on behalf of the Employer, either by vote at a meeting, or in writing without a meeting or by the employee or employees of the Employer designated by the committee to carry out such acts on behalf of the Employer. All notices, advice, directions, certifications, approvals, and instructions required or authorized to be given by the Employer under the Plan shall be in writing and signed by either (i) a majority of the members of the committee appointed to act on behalf of the Employer, or by such member or members as may be designated by an instrument in writing, signed by all the members thereof, as having authority to execute such documents on its behalf, or (ii) the employee or employees of the Employer who have the authority to act on behalf of the Employer.

### **14.3 Domestic Relations Order Approval Procedures**

The Administrator shall establish reasonable procedures to determine the status of domestic relations orders and to administer distributions under domestic relations orders which it determines satisfy the requirements for a qualified domestic relations order, as described in Code Section 414(p)(11).

#### **14.4 Indemnification**

In addition to whatever rights of indemnification the members of the committee appointed act on behalf of the Employer or any employee or employees to whom any power, authority, or responsibility is delegated pursuant to Section 14.2, may be entitled under the organizational authority, regulations, or bylaws of the Employer, under any provision of law, or under any other agreement, the Employer shall satisfy any liability actually and reasonably incurred by any such person or persons, including expenses, attorneys' fees, judgments, fines, and amounts paid in settlement (other than amounts paid in settlement not approved by the Employer), in connection with any threatened, pending, or completed action, suit, or proceeding which is related to the exercise or failure to exercise by such person or persons of any of the powers, authority, responsibilities, or discretion as provided under the Plan and the Funding Agreement, or reasonably believed by such person or persons to be provided thereunder, and any action taken by such person or persons in connection therewith, unless the same is judicially determined to be the result of such person's or persons' gross negligence or willful misconduct.

#### **14.5 Actions Binding**

Subject to the provisions of Section 14.3, any action taken by the Employer which is authorized, permitted, or required under the Plan shall be final and binding upon the Employer, the Funding Agent, all persons who have or who claim an interest under the Plan, and all third parties dealing with the Employer or the Funding Agent.

**ARTICLE XV**  
**ADOPTION BY OTHER ENTITIES**

**15.1 No Adoption by Other Entities**

No other entity may become an Employer hereunder.

**ARTICLE XVI  
AMENDMENT & TERMINATION OF PLAN**

**16.1 Employer's Right of Amendment**

The Employer reserves the right at any time and from time to time, by means of a written instrument executed in the name of the Employer by its duly authorized representatives, to amend or modify the Plan and, to the extent provided therein, to amend or modify the Funding Agreement. No pension or other benefit granted prior to the time of any amendment or modification of the Plan shall be reduced, suspended, or discontinued as a result thereof, except to the extent necessary to enable the Plan to meet the requirements for qualification under the Code or the requirements of any governmental authority. Moreover, no such action shall operate to recapture for the Employer any contributions made to the Pension Fund, except as provided in Section 13.4 or Section 16.7.

**16.2 Termination of the Plan**

The Employer reserves the right, by means of a written instrument executed in the name of the Employer by its duly authorized representatives, at any time to terminate the Plan. In the event of termination, no further benefits shall accrue, no further contributions shall be made and all assets remaining in the Pension Fund, after provision has been made for payment of the expenses of administration and liquidation in connection with the termination, shall be allocated by the Funding Agent upon the advice of the Actuary, among the Participants and Beneficiaries of the Plan, in the following manner and order of precedence:

- (a) First there shall be allocated an amount necessary to provide each Participant's Employee Derived Benefit.
- (a) Second, there shall be allocated an amount necessary to provide retirement benefits for those Participants whose Annuity Starting Dates occurred prior to the Plan termination date but whose retirement benefits had not been guaranteed by means of purchase or otherwise prior to such date.
- (b) Third, there shall be allocated an amount necessary to provide retirement benefits for those Participants who have reached Normal Retirement Date, but have not yet retired.
- (c) Fourth, there shall be allocated an amount necessary to provide retirement benefits for those Participants age 60 or over.
- (d) Fifth, there shall be allocated an amount necessary to provide retirement benefits for those Participants ages 55 to 59, inclusive.

- (e) Sixth, there shall be allocated an amount necessary to provide retirement benefits for those Participants with ages 45 to 54, inclusive.
- (f) Seventh, there shall be allocated an amount necessary to provide retirement benefits for those Participants under age 45.

The amount necessary to provide the retirement benefits specified in each of the above categories shall be determined in accordance with annuity purchase rate assumptions selected by the Employer in accordance with such government regulations as may apply.

In lieu of the allocation formula specified above, the Employer may specify in writing that an alternative formula be used.

### **16.3 Adjustment of Allocation**

Amounts allocated on a Participant's behalf under any category above shall be appropriately adjusted if:

- (a) An amount has been allocated on the Participant's behalf under a prior category; and/or
- (b) All or a portion of the Participant's retirement benefit has been guaranteed under an insurance company contract prior to the Plan termination date.

### **16.4 Assets Insufficient for Allocation**

If the assets available for allocation under any paragraph of Section 16.2 are insufficient to satisfy in full the benefits of all individuals which are described in that paragraph, the assets shall be allocated pro rata among such individuals on the basis of the present value (as of the date of termination of the Plan) of their respective benefits described in that paragraph.

If a Participant elects a refund of his Accumulated Contributions after his termination of employment, there will remain to his credit the amount of the Employer purchased portion of his Prior Benefit coverage plus any additional retirement income provided by the allocation described in the preceding paragraph.

### **16.5 Residual Assets**

Subject to the provisions of Section 16.7 and of any applicable collective bargaining agreement, any residual assets of the Plan shall be distributable to the Employer if:

- (a) all liabilities of the Plan to Participants and their beneficiaries have been satisfied; and
- (b) the distribution does not contravene any provision of law.

#### **16.6 Payments by the Funding Agent**

The Funding Agent shall make the payments specified in a written direction of the Employer in accordance with the provisions of Section 16.2 until the same shall be superseded by a further written direction. The obligation of the Funding Agent to make any payment hereunder in all events shall be limited to the amount of the Pension Fund at the time any such payment shall become due.

#### **16.7 Residual Assets Distributable to the Employer**

Upon written notice from the Employer that any residual assets of the Plan are distributable to the Employer in accordance with the provisions of Section 16.5, then the Funding Agent shall pay over such residual assets, or an amount equal to the fair market value of that portion of such residual assets which are not so paid, to the Employer; provided, however, that, under no circumstances or conditions other than as set forth in this Section and in Section 13.4, shall any contribution of the Employer, or any portion of the proceeds or avails thereof, ever revert, be paid, or inure to the benefit, directly or indirectly, of the Employer or any Affiliated Entity; nor shall any portion of the principal or the income from the Pension Fund ever be used for or diverted to any purpose other than for the exclusive benefit of Participants and persons claiming under or through them pursuant to the Plan.

## **ARTICLE XVII MISCELLANEOUS**

### **17.1 No Commitment as to Employment**

Nothing contained herein shall be construed as a commitment or agreement on the part of any person to continue his employment with the Employer, or as a commitment on the part of the Employer to continue the employment, compensation, or benefits of any person for any period, and all employees of the Employer shall remain subject to discharge, layoff, or disciplinary action to the same extent as if the Plan had never been put into effect.

### **17.2 Claims of Other Persons**

Nothing in the Plan or Funding Agreement shall be construed as giving any Participant or any other person, firm, or corporation, any legal or equitable right as against the Employer, their officers, employees, or directors, or as against the Funding Agent, except such rights as are specifically provided for in the Plan or Funding Agreement or hereafter created in accordance with the terms and provisions of the Plan.

### **17.3 Governing Law**

Except as provided under Federal law, the provisions of the Plan shall be governed by and construed in accordance with the laws of the State of Connecticut.

### **17.4 Non-forfeitability of Benefits Upon Termination or Partial Termination**

Notwithstanding any other provision of the Plan, in the event of the termination or a partial termination of the Plan, including the complete discontinuation of contributions to the Plan, the rights of all Employees who are affected by such termination to benefits accrued to the date of such termination, to the extent funded as of such date, shall be non-forfeitable.

### **17.5 Funding Agreement**

The Funding Agreement and the Pension Fund maintained thereunder shall be deemed to be a part of the Plan as if fully set forth herein and the provisions of the Funding Agreement are hereby incorporated by reference into the Plan.

### **17.6 Benefit Offsets for Overpayments**

If a Participant or Beneficiary receives benefits hereunder for any period in excess of the amount of benefits to which he was entitled under the terms of the Plan as in effect for such period, such

overpayment shall be offset against current or future benefit payments, as applicable, until such time as the overpayment is entirely recouped by the Plan.


#### **17.7 Veterans Reemployment Rights**

Notwithstanding any other provision of the Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service shall be provided in accordance with Code Section 414(u).

\* \* \*

EXECUTED AT KILLINGLY, CT, this 8<sup>TH</sup>  
day of JANUARY, 2016

TOWN OF KILLINGLY

By:   
Title: TOWN MANAGER

#### **IMPORTANT NOTE**

Prudential Retirement Insurance and Annuity Company, its contractors, and any employees of Prudential Retirement Insurance and Annuity Company or its contractors cannot provide you with legal advice in connection with the execution of this document. Prior to execution of this document, you should consult your attorney on whether this document is appropriate for you.



## **APPENDIX B**

### **CODE SECTION 401(a)(9) COMPLIANCE**

This Appendix to the Plan is intended solely to comply with final and temporary regulations issued under Code Section 401(a)(9). The provisions of this Appendix are intended to comply with the required commencement and minimum distribution rules applicable under the Code. Nothing hereunder is intended to create a form of payment or death benefit that is not otherwise provided under the Plan.

#### **SECTION I**

#### **DEFINITIONS**

##### **1.1 Definitions**

For purposes of this Appendix the following terms have the following meanings. Except as otherwise specifically provided herein, any term defined in Section 1.1 of the Plan has the meaning given such term in such Section.

- (a) A Participant's **"designated beneficiary"** means the individual who is designated as the Participant's Beneficiary under the Plan and is the designated beneficiary under Code Section 401(a)(9) and Section 1.401(a)(9)-4, of the Treasury regulations.
- (b) A **"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 under Section 3.2 of this Appendix.
- (c) A Participant's or Beneficiary's **"life expectancy"** means his life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury regulations.

#### **SECTION II**

#### **GENERAL RULES**

##### **2.1 Effective Date**

The provisions of this Appendix will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.

## **2.2 Precedence**

The requirements of this Appendix B will take precedence over any inconsistent provisions of the Plan.

## **2.3 Requirements of Treasury Regulations Incorporated**

All distributions required under this Appendix B will be determined and made in accordance with the Treasury regulations under Code Section 401(a)(9).

# **SECTION III TIME AND MANNER OF DISTRIBUTION**

## **3.1 Required Beginning Date**

A Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date.

## **3.2 Death of Participant Before Distributions Begin**

If a Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

- (a) If the Participant's surviving Spouse is the Participant's sole "designated beneficiary", then, except as provided in Section VII of this Appendix B, 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 70 1/2, if later.
- (b) If the Participant's surviving Spouse is not the Participant's sole "designated beneficiary", then, except as provided in Section VII of this Appendix B, distributions to the "designated beneficiary" will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
- (c) 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.
- (d) 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, this Section 3.2, other than Section 3.2(a), will apply as if the surviving Spouse were the Participant.

For purposes of this Section 3.2 and Section VI of this Appendix B, distributions are considered to begin on the Participant's Required Beginning Date (or, if Section 3.2(d) of this Appendix B applies, the date distributions are required to begin to the surviving Spouse under Section 3.2(a) of this Appendix B). If annuity payments irrevocably commence to a 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 3.2(a) of this Appendix B), the date distributions are considered to begin is the date distributions actually commence.

### **3.3 Form of Distribution**

Unless a 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 IV, V and VI of this Appendix B. If a 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 Treasury regulations.

## **SECTION IV DETERMINATION OF AMOUNT TO BE DISTRIBUTED EACH YEAR**

### **4.1 General Annuity Requirements**

If a Participant's interest is paid in the form of annuity distributions under the Plan, payments under the annuity will satisfy the following requirements:

- (a) the annuity distributions will be paid in periodic payments made at intervals not longer than one year;
- (b) the distribution period will be over a life (or lives) or over a period certain not longer than the period described in Section V or VI of this Appendix B;
- (c) 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;
- (d) payments will either be non-increasing or increase only as follows:
  - (1) 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;

- (2) 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 V of this Appendix B dies or is no longer the Participant's Beneficiary pursuant to a qualified domestic relations order within the meaning of Code Section 414(p); or
- (3) to pay increased benefits that result from a Plan amendment.

#### **4.2 Amount Required to be Distributed by Required Beginning Date**

The amount that must be distributed on or before a Participant's Required Beginning Date (or, if the Participant dies before distributions begin, the date distributions are required to begin under Section 3.2(a) or (b) of this Appendix B) 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.

#### **4.3 Additional Accruals After First Distribution Calendar Year**

Any additional benefits accruing to a 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.

### **SECTION V REQUIREMENTS FOR ANNUITY DISTRIBUTIONS THAT COMMENCE DURING PARTICIPANT'S LIFETIME**

#### **5.1 Joint Life Annuities Where the Beneficiary Is Not the Participant's Spouse**

If a Participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the Participant and a non-Spouse 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 Q&A-2 of Section 1.401(a)(9)-6 of the Treasury regulations; provided, however, that the table in Q&A-2(c)(2) of Section 1.401(a)(9)-6 of the Treasury Regulations may be used for calendar years 2003, 2004 and 2005. If the form of distribution combines a joint and survivor annuity for the joint lives of the Participant and a non-Spouse 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.

**SECTION VI**  
**REQUIREMENTS FOR MINIMUM DISTRIBUTIONS WHERE PARTICIPANT DIES**  
**BEFORE DATE DISTRIBUTIONS BEGIN**

**6.1 Participant Survived by Designated Beneficiary**

Except as provided in Section VII of this Appendix B, if a Participant dies before the date distribution of his or her 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 3.2(a) or (b) of this Appendix B, over the life of the "designated beneficiary" or over a period certain not exceeding:

- (a) 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
- (b) 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.

**6.2 No Designated Beneficiary**

If a 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.

**6.3 Death of Surviving Spouse Before Distributions to Surviving Spouse Begin**

If a Participant dies before the date distribution of his or her 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 VI 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 3.2(a) of this Appendix B.

## ADDENDUM

Re: Adjustment Factors

### Early Commencement Reduction Factors

Number of Years and Months from Annuity Starting Date  
to Normal Retirement Date

Months:	0 Years	1 Year	2 Years	3 Years	4 Years	5 Years
0	100.0%	93.3%	86.7%	80.0%	73.3%	66.7%
1	99.4%	92.8%	86.1%	79.4%	72.8%	66.4%
2	98.9%	92.2%	85.6%	78.9%	72.2%	66.1%
3	98.3%	91.7%	85.0%	78.3%	71.7%	65.8%
4	97.8%	91.1%	84.4%	77.8%	71.1%	65.6%
5	97.2%	90.6%	83.9%	77.2%	70.6%	65.3%
6	96.7%	90.0%	83.3%	76.7%	70.0%	65.0%
7	96.1%	89.4%	82.8%	76.1%	69.4%	64.7%
8	95.6%	88.9%	82.2%	75.6%	68.9%	64.4%
9	95.0%	88.3%	81.7%	75.0%	68.3%	64.2%
10	94.4%	87.8%	81.1%	74.4%	67.8%	63.9%
11	93.9%	87.2%	80.6%	73.9%	67.2%	63.6%

**Number of Years and Months from Annuity Starting Date  
to Normal Retirement Date**

<b>Months:</b>	<b>6 Years</b>	<b>7 Years</b>	<b>8 Years</b>	<b>9 Years</b>	<b>10 Years</b>
<b>0</b>	63.3%	60.0%	56.7%	53.3%	50.0%
<b>1</b>	63.1%	59.7%	56.4%	53.1%	
<b>2</b>	62.8%	59.4%	56.1%	52.8%	
<b>3</b>	62.5%	59.2%	55.8%	52.5%	
<b>4</b>	62.2%	58.9%	55.6%	52.2%	
<b>5</b>	61.9%	58.6%	55.3%	51.9%	
<b>6</b>	61.7%	58.3%	55.0%	51.7%	
<b>7</b>	61.4%	58.1%	54.7%	51.4%	
<b>8</b>	61.1%	57.8%	54.4%	51.1%	
<b>9</b>	60.8%	57.5%	54.2%	50.8%	
<b>10</b>	60.6%	57.2%	53.9%	50.6%	
<b>11</b>	60.3%	56.9%	53.6%	50.3%	

Note: When a partial year is involved, the factor will be appropriately adjusted.

