

*Robert J. Besik*

TOWN COUNCIL AGENDA  
TOWN COUNCIL CHAMBERS  
740 MAIN STREET  
EAST HARTFORD, CONNECTICUT  
AUGUST 6, 2013

2013 AUG -5 P 12: 52

TOWN CLERK  
EAST HARTFORD

7:00 P.M. Executive Session

**REVISED 08-05-13**

=====  
Announcement of Exit Locations (C.G.S. § 29-381)

Pledge of Allegiance

7:30 p.m.

1. CALL TO ORDER
2. AMENDMENTS TO AGENDA
3. RECOGNITIONS AND AWARDS
4. OPPORTUNITY FOR RESIDENTS TO ADDRESS THE COUNCIL ON AGENDA ITEMS
  - A. Other Elected Officials
  - B. Other Residents
  - C. Mayor
5. APPROVAL OF MINUTES
  - A. July 16, 2013 Executive Session/Various Tax Appeals
  - B. July 16, 2013 Regular Meeting
6. COMMUNICATIONS AND PETITIONS
  - A. Introduction of New Library Personnel
  - B. Resignation of Valerie Scheer from Fine Arts Commission
  - C. Hartford Foundation for Public Giving Library Grant Award
7. OLD BUSINESS
8. NEW BUSINESS
  - A. Youth Services Prevention Grant
  - B. Memorandum of Agreement Understanding: East Hartford Youth Services Department and the University of Connecticut School of Social Work
  - C. STP Urban System Project: Brewer Street Reconstruction
  - D. Refund of Taxes
  - E. Setting a Public Hearing Date of August 20, 2013 re: Section 2-3 – Mayor's Salary
  - F. Appointment of Jack Jacobs to the Inland/Wetlands Environment Commission
  - G. **East Hartford Police Officers' Association Arbitration Award re: Successor Pension Agreement – Second Arbitration Review**
9. OPPORTUNITY FOR COUNCILLORS TO DIRECT QUESTIONS TO THE ADMINISTRATION
10. COUNCIL ACTION ON EXECUTIVE SESSION MATTERS
  - A. Elba Caban v. John Dupont, et al
  - B. Tarawatti Tomby, Administratrix v. Marc Cottrell, et al

11. OPPORTUNITY FOR RESIDENTS TO SPEAK
  - A. Other Elected Officials
  - B. Other Residents
  - C. Mayor
  
12. ADJOURNMENT (next meeting: August 20, 2013)

*Richard F. Kehoe*

TOWN COUNCIL MAJORITY OFFICE

JULY 16, 2013

2013 JUL 22 A 11: 25

EXECUTIVE SESSION

TOWN CLERK  
EAST HARTFORD

PRESENT Chair Richard F. Kehoe, Majority Leader Barbara-Ann Rossi, Minority Leader Eric A. Thompson, Councillors Marc I. Weinberg, Linda A. Russo, Patricia Harmon and Esther B. Clarke

ABSENT Vice Chair William P. Horan, Jr. and Councillor Ram Aberasturia

ALSO Scott Chadwick, Corporation Counsel  
PRESENT Brian Smith, Assessor

CALL TO ORDER

Chair Kehoe called the meeting to order at 7:01 p.m.

MOTION By Eric Thompson  
seconded by Barbara Rossi  
to **go into** Executive Session to discuss the following tax appeal cases:

1. Lexham East Hartford, LLC v. Town of East Hartford, Docket No. CV-12-6016250-S
2. Beby, LLC v. Town of East Hartford, Docket No. CV-12-6016266-S
3. Isaac Properties, LLC v. Town of East Hartford, Docket CV-12-6015454-S
4. Governor Street Partners, LLC v. Town of East Hartford, Docket No. CV-12-6015453-S
5. Anthony Crane v. Town of East Hartford, Docket No. CV-12-6015452-S
6. Zelda Enterprises, LLC v. Town of East Hartford, Docket No. CV-12-6015449-S
7. 151 Roberts, LLC v. Town of East Hartford, Docket No. CV-12-60155069-S
8. Casper Enterprises, LLC v. Town of East Hartford, Docket No. CV-12-6015441-S
9. Jakiram, LLC v. Town of East Hartford, Docket No. CV-12-6015605-S
10. 764 Silver Lane, LLC v. Town of East Hartford, Docket No. CV-12-6015606-S
11. 20 Village Street, LLC v. Town of East Hartford, Docket No. CV-12-6015607-S
12. Zimba Enterprises, LLC v. Town of East Hartford, Docket No. CV-12-6015451-S

Motion carried 7/0.

MOTION By Eric Thompson  
seconded by Barbara Rossi  
to **go back to** Regular Session.  
Motion carried 7/0.

ADJOURNMENT

MOTION By Eric Thompson  
seconded by Barbara Rossi  
to **adjourn** ( 7:29 p.m.)  
Motion carried 7/0.

Attest

*Richard F. Kehoe*

Richard F. Kehoe  
Town Council Chair

*Robert J. Rossi*

EAST HARTFORD TOWN COUNCIL

2013 JUL 22 A 11: 01

TOWN COUNCIL CHAMBERS

TOWN CLERK  
EAST HARTFORD

JULY 16, 2013

PRESENT Chair Richard F. Kehoe, Vice Chair William P. Horan, Jr. (arrived 8:05 p.m.), Majority Leader Barbara-Ann Rossi, Minority Leader Eric A. Thompson, Councillors Marc I. Weinberg, Linda A. Russo, Patricia Harmon and Esther B. Clarke

ABSENT Councillor Ram Aberasturia

### CALL TO ORDER

Chair Kehoe called the meeting to order at 7:48 p.m. The Chair announced the exit locations in accordance with Connecticut General Statutes §29-381, after which the Council joined him in the pledge of allegiance.

The Chair called for a moment of silence to remember the lives of Robert and La'Andrew Swain, brothers who were killed in an automobile accident on Forest Street.

Chair Kehoe explained that Councillor Aberasturia's absence at tonight's meeting is due to the fact that he is escorting his father to the Cuba/Belize CONCACAF soccer game at Rentschler Field – the first time in over 30 years that Councillor Aberasturia's father has seen the Cuban soccer team play live since he and his family escaped Cuba.

Chair Kehoe said that any residents who wish to address the Council on the East Hartford Golf Course could speak at both the beginning of the meeting and after the presentation from the Mayor and the Finance Director.

### RECOGNITIONS AND AWARDS

#### June 2013 Beautification Commission Awards

Mary Mourey, longtime Beautification Commission member, presented the award for residential landscaping to the Burnham Family, represented by Donna Burnham, 1893 Main Street and the award for commercial landscaping to Gilbert Landscaping for their work at the CVS Plaza, at the corner of Main Street and Burnside Avenue.

The Council congratulated the recipients of this award and thanked them for making East Hartford a prettier place to live.

### OPPORTUNITY FOR RESIDENTS TO ADDRESS THE COUNCIL ON AGENDA ITEMS

None

## APPROVAL OF MINUTES

### June 18, 2013 Executive Session

MOTION By Barbara Rossi  
seconded by Eric Thompson  
to **approve** the minutes of the June 18, 2013 Executive Session.  
Motion carried 7/0.

### June 18, 2013 Regular Meeting – corrected June 27, 2013

MOTION By Barbara Rossi  
seconded by Pat Harmon  
to **approve** the minutes of the June 18, 2013 Regular Meeting – as  
corrected on June 27, 2013.  
Motion carried 7/0.

### June 24, 2013 Special Meeting/East Hartford Golf Course

MOTION By Barbara Rossi  
seconded by Pat Harmon  
to **approve** the minutes of the June 24, 2013 Special Meeting/East  
Hartford Golf Course.  
Motion carried 7/0.

### June 26, 2013 Special Meeting/East Hartford Golf Course

MOTION By Barbara Rossi  
seconded by Marc Weinberg  
to **approve** the minutes of the June 26, 2013 Special Meeting/East  
Hartford Golf Course.  
Motion carried 7/0.

## COMMUNICATIONS AND PETITIONS

### Town of East Hartford Code of Ordinances §10-10(b) Not Accepting the Lowest Bid re: Tilcon Connecticut CT: 2013 Road Improvement Project

Chair Kehoe stated that the town did not select the lowest bidder for the 2013 road improvement project because of performance concerns. The bid was awarded to the second lowest bidder.

### East Hartford Board of Education: State of the Schools Report

Chair Kehoe introduced Jeffrey Currey, Chair of the East Hartford Board of Education, who introduced Nathan Quesnel, Superintendent of Schools. The power point presentation provided a synopsis of what the public school system in East Hartford

affords each student. The State of the Schools Report is designed to give a brief overview of core work that the district has engaged in through the 2012-2013 school year. It is organized into five separate components that best categorize the work of the district. Those categories are: (1) District Strategy – provides a framework for developing vision, mission and expectations for the East Hartford Public School system; (2) District Overview – gives an overview of the context of the work in the East Hartford Public School system, including demographic information, school infrastructure and district internal organizational framework; (3) Academic Programming – provides a brief description of core academic work and programming designed to improve and grow student achievement; (4) Operations – maintains a bulleted list of budgetary issues and infrastructure work that has been part of the current school year; and (5) Culture and Climate – provides data collected from annual surveys and updates regarding school level discipline.

#### Update: East Hartford Golf Course

Mayor Leclerc gave a brief history of the golf course issue. She stated she recognized the need for repairs and renovations to the grounds at the clubhouse and the clubhouse itself when she first became Mayor. She allocated funding in the budget for roof repair, resurfacing of the driveway, painting the exterior of the clubhouse, and other minor repairs. Mayor Leclerc indicated that MDM – the current manager of the golf course – invested a significant amount of money to ensure that drainage was improved which resulted in better play of the greens. Due to financial issues, MDM has not maintained the golf course to the level that it should be kept. It was decided that an RFP would be developed and advertised, to which two individuals responded to the RFP – Billy Casper Golf and Billy Mudano/Roger Baral. Two special Town Council meetings were held for the purposes of sharing the responses to the RFP's and to hear public comment on the golf course issue. At the special meetings, Councillors asked for additional information which included what the impact would be, both financially and economically, to the town if the golf course was sold and to ask the responders of the RFP if they would consider modifying their response to include a longer term lease and less financial investment from the town. Mayor Leclerc stated that Billy Mudano/Roger Baral is not interested in revising his response to the RFP; Bill Casper Golf has not responded to the RFP revision request. However, another inquiry surfaced recently for managing the golf course – Mike Walsh has been in contact with this company and will report on that later.

In closing, Mayor Leclerc stated that she has never said that she wanted to sell the golf course. However, information on the financial impact to the town if a sale happens has been gathered and will be presented by Mike Walsh. Mayor Leclerc noted that a request for the disposition of the golf course would be initiated by the Mayor's office to the Town Council.

Michael Walsh, Finance Director, gave the Council a brief summary of what the financial impact would be to the town if the Administration were to sell the golf course. The golf course was purchased in 1973 for the sum of \$1,292,380.32 with the following funds: State \$323,095.08 (25%); Federal \$646,190.16 (50%) and Town \$323,095.14(25%). Any sale of the golf course would require (1) State and Federal approvals, and either: (i) the purchase of comparable open space with the sale proceeds, or (ii) the payment of 75% of the sale proceeds to the State and Federal government.

Mr. Walsh reiterated what the Mayor had stated – both of the bidders who responded to the original RFP were not interested in revising their responses. However, the modified RFP was emailed to the Connecticut Section of PGA Professionals – 363 members. That resulted in a response from Brown Golf Management. While they have interest, they have not submitted any concrete proposal.

Mayor Leclerc stated that she will work closely with the Chair, Majority and Minority Leaders of the Council to review other options for the golf course, which could include a revamped RFP to garner more responses. Chair Kehoe suggested that the new RFP should have broader, but clearer, terms as to what the town is looking for regarding long term lease and little town investment.

Mayor Leclerc stated that Ted Fravel, Parks and Recreation Director, will assume the responsibility of supervising conditions at the golf course.

At this point, the Chair invited public comment:

Frank Wojtyna, 28 Michael Avenue, does not believe that MDM is doing a good job managing the golf course. Also, Mr. Wojtyna stated that the course plays slow – taking him 3 ½ hours to play four holes – which is a reason why the course is losing players.

Jerry Ingallinera, 210 Colby Drive, believes that the right management of the golf course is critical. Additionally, Mr. Ingallinera thinks that RFP's should not be sent electronically, but through U.S. Mail – hard copied with the Town of East Hartford seal on it.

## NEW BUSINESS

### Assistance to Firefighters Grant Program

MOTION        By Marc Weinberg  
                      seconded by Barbara Rossi  
                      to **adopt** the following resolution:

**WHEREAS**, the Federal Fire Protection and Control Act of 1974 established a competitive financial assistance program through the Federal Emergency Management Agency (FEMA) entitled the "Assistance to Firefighters Grant Program"; and

**WHEREAS**, the East Hartford Fire Department has made application to this Program to support the modification and enhancement of its communication system and has received notice of a grant award; and

**WHEREAS**, the total of this award does not exceed \$ 324,189.00.

**NOW, THEREFORE, BE IT RESOLVED** that the Town Council of the Town of East Hartford recognizes the need for funding these items under the Assistance to Firefighters Grant Program

**AND FURTHER, BE IT RESOLVED** that the Town Council does support and authorize the acceptance of this grant award from FEMA and authorizes its Mayor, Marcia A. Leclerc, to act as representative of the Town and to enter into contract and make any amendments thereto to receive funding from FEMA.

On call of the vote, motion carried 8/0.

2013 Justice Assistance Grant (JAG) Program

MOTION      By Bill Horan  
                  seconded by Barbara Rossi  
                  to **adopt** the following resolution:

**WHEREAS**, the U.S. Department of Justice, Bureau of Justice Assistance, has funding available to the Town of East Hartford under the Edward Byrne Memorial Justice Assistance Grant (JAG) Program through the State of Connecticut JAG Grant Program; and

**WHEREAS**, these funds may be used to improve or enhance Law Enforcement Programs with no cash match by the Town of East Hartford; and

**WHEREAS**, the East Hartford Police Department desires to use these funds to purchase traffic enforcement equipment including several LIDAR Units and a Police Motorcycle to replace an existing motorcycle.

**NOW THEREFORE LET IT BE RESOLVED**; That Marcia A. Leclerc, Mayor of the Town of East Hartford, is authorized to make application to, and execute and approve on behalf of this corporation, any and all documents, contracts, and amendments as may be required by the U.S. Department of Justice as they pertain to this Justice Assistance Formula Grant.

On call of the vote, motion carried 8/0.

Commercial Property Assessed Clean Energy (C-PACE) Marketing Campaign Grant

MOTION      By Marc Weinberg  
                  seconded by Linda Russo  
                  to **adopt** the following resolution:

**RESOLVED** that Marcia A. Leclerc, Mayor of the Town of East Hartford is empowered to execute and deliver in the name and on behalf of this corporation, a certain Memorandum of Understanding between the Clean Energy Finance and Investment Authority and the Town of East Hartford and any amendments thereof for the fulfillment of the C-PACE Marketing Campaign grant, and is authorized to affix the Corporate Seal.

On call of the vote, motion carried 8/0.

Master Municipal Agreement for Construction Projects

MOTION      By Bill Horan  
                  seconded by Linda Russo  
                  to **adopt** the following resolution:

**RESOLVED**, that the Honorable Marcia A. Leclerc, Mayor, is hereby authorized to sign the Agreement Entitled "Master Municipal Agreement for Construction Projects".

**FURTHER BE IT RESOLVED** that the East Hartford Town Council endorses an amendment to the Master Contract to address the town employee indemnification provision in Section 16.2 of the Master Contract which is inconsistent with the provisions of Connecticut General Statute Sections 7-465 and 7-101a.

On call of the vote, motion carried 8/0.



Flood Protection System: Toe Drain Replacement Project, Phase II – Contract Modification

MOTION By Barbara Rossi  
seconded by Linda Russo  
to **modify** the professional services contract with GEI Consultants, Inc. for the Toe Drain Replacement Project – Phase II in the amount of \$46, 670.00, to cover the costs associated with the pipe cleaning of the toe drains, which amount will bring the contract total to \$529,445.00.  
Motion carried 8/0.

Real Estate Acquisition & Disposition Committee: Drainage Easement 12 Governor Street

MOTION By Linda Russo  
seconded by Eric Thompson  
that the East Hartford Town Council, acting as a Committee of the Whole for the Real Estate Acquisition & Disposition Committee, **approve** a drainage easement to the town at 12 Governor Street, as attached to a memo from Rich Gentile, Assistant Corporation Counsel, to Mayor Marcia Leclerc dated July 1, 2013.  
Motion carried 8/0.

Outdoor Amusement Permit Applications:

Riverfest 2013 - Rescheduled

MOTION By Linda Russo  
seconded by Eric Thompson  
to **approve** the updated revised outdoor amusement permit application, Riverfest 2013, filed on behalf of Riverfront Recapture, Inc. by Charles Myers, Director of Programs and Events, to conduct outdoor musical entertainment with food, vendors, and a fireworks show at Great River Park and Founders Plaza on Thursday, July 18, 2013 (rain date: Friday, July 19, 2013) – between the hours of 7PM and 10PM; subject to compliance with adopted codes and regulations of the State of Connecticut, the Town of East Hartford, and any other stipulations required by the Town of East Hartford or its agencies.  
Motion carried 8/0.

Goodwin College Summer Carnival

MOTION By Marc Weinberg  
seconded by Barbara Rossi  
to **approve** the outdoor amusement permit application, entitled "Goodwin College Summer Carnival" submitted by Jerry Emlet, CFO of Goodwin College Inc., to conduct a carnival with tents,

rides, entertainment, craft booths, etc, with food and music to be provided during the hours of operation on the grounds of Goodwin College, One Riverside Drive on Saturday, August 24, 2013 from 10AM to 10PM and Sunday, August 25, 2013 from 10AM to 6PM, subject to compliance with adopted codes and regulations of the State of Connecticut, the Town of East Hartford, and any other stipulations required by the Town of East Hartford or its agencies. Motion carried 8/0.

Appointments to Various Boards/Commissions:

MOTION By Linda Russo  
seconded by Barbara Rossi  
to **approve** the following appointments:

1. Building Board of Appeals  
Shelby J. Brown, 2 Sunset Ridge Drive, term to expire December 2017
2. Historic District Commission  
Mary E. Manns, 74 Lawrence Street, term to expire December 2018
3. Hockanum River Commission  
Micah J. London, 162 Arbutus Street, term to expire December 2014
4. Inland-Wetlands/Environment Commission - Alternate  
Ashley Brown, 2 Sunset Ridge Drive, term to expire December 2015
5. Patriotic Commission  
Gregory K. Simms, Jr., 245 Hollister Dr., term expires December 2013
6. Veterans Affairs Commission  
Gregory K. Simms, Jr., 245 Hollister Dr., term expires December 2015

Motion carried 8/0.

MOTION By Eric Thompson  
seconded by Esther Clarke  
to approve the following appointments:

1. Board of Ethics  
Jack W. Jacobs, 505 Burnside Avenue, term to expire December 2018
2. Pension & Retiree Benefit Board  
Robert J. Damaschi, Sr., 11 Hartz Lane, term to expire December 2013

Motion carried 8/0.

OPPORTUNITY FOR COUNCILLORS TO DIRECT QUESTIONS TO THE ADMINISTRATION

Esther Clarke asked what account a recent severance payment was drawn from. Mayor Leclerc answered that it was an administrative function handled by the Finance Department.

COUNCIL ACTION ON EXECUTIVE SESSION MATTERS

*It is noted that the following motions for the various tax appeals are the result of recommendations from the presiding Superior Court judge for tax assessment appeals.*

Lexham East Hartford, LLC v. Town of East Hartford, Docket No. CV-12-6016250-S

MOTION By Barbara Rossi  
seconded by Linda Russo  
to **accept** Corporation Counsel's recommendation to settle the pending real property tax appeal known as Lexham East Hartford, LLC v. Town of East Hartford, Docket No. CV-12-6016250-S, involving 940 Silver Lane for the fair market value of \$15,425,000.00.  
Motion carried 7/0. **Abstain:** Horan

Beby, LLC v. Town of East Hartford, Docket No. CV-12-6016266-S

MOTION By Barbara Rossi  
seconded by Marc Weinberg  
to **accept** Corporation Counsel's recommendation to settle the pending real property tax appeal known as Beby, LLC v. Town of East Hartford, Docket No. CV-12-6016266-S, involving 775 Silver Lane for the fair market value of \$1,700,000.00.  
Motion carried 7/0. **Abstain:** Horan

Isaac Properties, LLC v. Town of East Hartford, Docket No. CV-12-6015454-S

MOTION By Barbara Rossi  
seconded by Linda Russo  
to **accept** Corporation Counsel's recommendation to settle the pending real property tax appeal known as Isaac Properties, LLC v. Town of East Hartford, Docket No. CV-12-6015454-S, involving 28-34 Nelson Street for the fair market value of \$229,390.00.  
Motion carried 7/0. **Abstain:** Horan

Governor Street Partners, LLC v. Town of East Hartford, Docket No. CV-12-6015453-S

MOTION By Barbara Rossi  
seconded by Marc Weinberg  
to **accept** Corporation Counsel's recommendation to settle the pending

real property tax appeal known as Governor Street Partners, LLC v. Town of East Hartford, Docket No. CV-12-6015453-S, involving 298 Governor Street for the fair market value of \$350,000.00.  
Motion carried 7/0. **Abstain:** Horan

Anthony Crane v. Town of East Hartford, Docket No. CV-12-6015452-S

MOTION By Barbara Rossi  
seconded by Linda Russo  
to **accept** Corporation Counsel's recommendation to settle the pending real property tax appeal known as Anthony Crane v. Town of East Hartford, Docket No. CV-12-6015452-S, involving 640 Forbes Street for the fair market value of \$145,000.00.  
Motion carried 7/0. **Abstain:** Horan

Zelda Enterprises, LLC v. Town of East Hartford, Docket No. CV-12-6015449-S

MOTION By Barbara Rossi  
seconded by Marc Weinberg  
to **accept** Corporation Counsel's recommendation to settle the pending real property tax appeal known as Zelda Enterprises, LLC v. Town of East Hartford, Docket No. CV-12-6015449-S, involving 11 Nelson Street for the fair market value of \$138,000.00 and 17 Nelson Street for the fair market value of \$437,000.00, for a total of \$575,000.00.  
Motion carried 7/0. **Abstain:** Horan

151 Roberts, LLC v. Town of East Hartford, Docket No. CV-12-6015506-S

MOTION By Barbara Rossi  
seconded by Marc Weinberg  
to **accept** Corporation Counsel's recommendation to settle the pending real property tax appeal known as 151 Roberts, LLC v. Town of East Hartford, Docket No. CV-12-6015506-S, involving 151 Roberts Street for the fair market value of \$600,000.00.  
Motion carried 7/0. **Abstain:** Horan

Casper Enterprises, LLC v. Town of East Hartford, Docket No. CV-12-6015441-S

MOTION By Barbara Rossi  
seconded by Marc Weinberg  
to **accept** Corporation Counsel's recommendation to settle the pending real property tax appeal known as Casper Enterprises, LLC v. Town of East Hartford, Docket No. CV-12-6015441-S, involving 29-31 Nelson Street for the fair market value of \$100,000.00.  
Motion carried 7/0. **Abstain:** Horan

Jakiram, LLC v. Town of East Hartford, Docket No. CV-12-6015605-S

MOTION By Barbara Rossi  
seconded by Linda Russo  
to **accept** Corporation Counsel's recommendation to settle the pending real property tax appeal known as Jakiram, LLC v. Town of East Hartford, Docket No. CV-12-6015605-S, involving 160 and 182 Governor Street for the fair market value of \$525,000.00.  
Motion carried 7/0. **Abstain:** Horan

764 Silver Lane, LLC v. Town of East Hartford, Docket No. CV-12-6015606-S

MOTION By Barbara Rossi  
seconded by Marc Weinberg  
to **accept** Corporation Counsel's recommendation to settle the pending real property tax appeal known as 764 Silver Lane, LLC v. Town of East Hartford, Docket No. CV-12-6015606-S, involving 764 Silver Lane for the fair market value of \$90,000.00.  
Motion carried 7/0. **Abstain:** Horan

20 Village Street, LLC v. Town of East Hartford, Docket No. CV-12-6015607-S

MOTION By Barbara Rossi  
seconded by Linda Russo  
to **accept** Corporation Counsel's recommendation to settle the pending real property tax appeal known as 20 Village Street, LLC v. Town of East Hartford, Docket No. CV-12-6015607-S, involving 20 and 28 Village Street for the fair market value of \$350,000.00.  
Motion carried 7/0. **Abstain:** Horan

Zimba Enterprises, LLC v. Town of East Hartford, Docket No. CV-12-6015451-S

MOTION By Barbara Rossi  
seconded by Marc Weinberg  
to **accept** Corporation Counsel's recommendation to settle the pending real property tax appeal known as Zimba Enterprises, LLC v. Town of East Hartford, Docket No. CV-12-6015451-S, involving 23 Nelson Street for the fair market value of \$100,000.00.  
Motion carried 7/0. **Abstain:** Horan

OPPORTUNITY FOR RESIDENTS TO SPEAK

Mayor Leclerc (1) will introduce the new Library Director, the Assistant Library Director, the Library Administrative Assistant, and the new Reference Librarian/Cultural Assets Manager at the August 6<sup>th</sup> Council meeting; (2) said that on July 23<sup>rd</sup>, the town will begin to advertise for a new Chief of Police, whose contract with the town expires December 31<sup>st</sup>; and (3) said that mosquito control is ongoing and additional spraying was done on the catch basins.

ADJOURNMENT

MOTION By Eric Thompson  
seconded by Bill Horan  
to **adjourn** (10:57 p.m.).  
Motion carried 8/0.

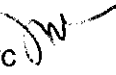
The Chair announced that the next meeting of the Town Council would be on August 6, 2013.

Attest Angela M. Attenello  
Angela M. Attenello  
TOWN COUNCIL CLERK

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T O W N O F E A S T H A R T F O R D  
O F F I C E O F T H E M A Y O R

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**DATE:** July 30, 2013  
**TO:** Richard Kehoe, Chair  
**FROM:** Mayor Marcia A. Leclerc   
**RE:** COMMUNICATION: Introduction/Library Employees

Please place on the Town Council Agenda for the August 6<sup>th</sup> meeting, the introduction of Susan Hansen, Library Director, Katherine LeGeyt, Assistant Library Director, Jason Pannone, Reference Librarian/Cultural Assets Manager and Elizabeth Morin, Administrative Aide.


Thank you.

**C:** S. Hansen, Library Director

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T O W N O F E A S T H A R T F O R D  
O F F I C E O F T H E M A Y O R

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**DATE:** July 18, 2013  
**TO:** Richard Kehoe, Chairman  
**FROM:** Mayor Marcia A. Leclerc   
**RE:** RESIGNATION: Fine Arts Commission

Attached is a copy of a letter received from Valerie Scheer who is resigning from the Fine Arts Commission.

Please place this communication on the Town Council agenda for August 6, 2013.  
Thank you.



June, 2013

Good Morning Mayor,

Unfortunately, due to many scheduling conflicts, I am unable to commit to the Fine Arts Commission, and must resign. I enjoyed my time on it, and the other commission members are an asset to the community.

Thank You,

Valerie Scheer

140 Ridgewood Road  
E.H. CT 06118

RECEIVED

JUN 19 2013

TOWN OF EAST HARTFORD  
OFFICE OF THE MAYOR

July 18, 2013

The Honorable Marcia A. Leclerc, Mayor  
Town of East Hartford  
740 Main Street  
East Hartford, CT 06108

**Grant Number 20121617**

Dear Mayor Leclerc:

I am pleased to inform you that the Hartford Foundation for Public Giving has approved a capital grant of \$300,000 to the Town of East Hartford over two years, for renovation of the Raymond Library, as presented in your proposal.

This grant is a “last dollars in” grant which requires documentation demonstrating that the balance of funding sufficient to complete the project has been raised, prior to the release of Hartford Foundation funding.

Once you have met the matching documentation requirement, please submit a completed *Hartford Foundation Capital Project Report* along with copies of invoices documenting capital expenses. The grant payment letter will include reporting instructions for subsequent payments.

To accept the terms of this grant, return a signed copy of this letter to the Foundation within 30 days of receipt. Signing and returning the grant award letter indicates your compliance with the procedures in the enclosed *Hartford Foundation Grant Payment and Reporting Procedures*.

You are welcome to, but we do not require efforts to communicate the good news about your grant. If you do decide to publicize the grant in any form, the text must be reviewed in advance by our Communications Department. To assist, guidelines for various forms of communications and a sample news release/newsletter story are available at <http://hfpg.org/GrantCommunication>.

10 Columbus Boulevard  
Hartford, CT 06106  
Phone: 860-548-1888  
Fax: 860-524-8346  
[www.hfpg.org](http://www.hfpg.org)

**Board of Directors**

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Farmington	West Hartford
Glastonbury	Wethersfield
Granby	Windsor
Hartford	Windsor Locks
Hebron	




**Here to help.  
Here to stay.**

The Honorable Marcia A. Leclerc  
July 18, 2013  
Page 2

We wish you the best on this important effort.

Sincerely,

  
Linda J. Kelly  
President

c: Rich Kehoe, Esq., Board Chair

Enclosures: *Hartford Foundation Capital Project Report*  
*Hartford Foundation Grant Payment and Reporting Procedures*

**Agreed to and accepted by:**


\_\_\_\_\_  
Signature of Agency Director

\_\_\_\_\_  
Signature Date

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T O W N O F E A S T H A R T F O R D  
O F F I C E O F T H E M A Y O R

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**DATE:** July 29, 2013  
**TO:** Richard Kehoe, Chairman  
**FROM:** Mayor Marcia A. Leclerc   
**RE:** RESOLUTION: Youth Services Prevention Grant

The Director of Youth Services has advised that the town is to be a recipient of a one-time non-matching grant opportunity from the State of Connecticut in the amount of \$85,240.75. This will be used for purposes of intervention programs.

Please place on the Town Council agenda of August 6, 2013 meeting and authorize the town's acceptance of these funds by adopting the attached Resolution.

Thank you

**C:** C. Nolen, Director, Youth Services  
M. Walsh, Director, Finance

TO: Marcia A. Leclerc, Mayor  
FROM: Cephus Nolen, Jr., Director of Youth Services  
CC: Clare Fravel, Grants Administrator  
SUBJ: Referral to Council – Youth Services Prevention Grant  
DATE: July 25, 2013

The East Hartford Youth Task Force has been identified in Public Act 13-247, Sec. 76 to be a recipient of an \$85,240.75 grant from the State of Connecticut Office of Policy and Management (OPM) for the purpose of Youth Services Prevention. This funding is for prevention and intervention programs to reduce youth violence and divert individuals from the Juvenile Justice System. No matching funds are required for this one-time opportunity.

I am requesting that the attached Resolution be placed on the Town Council agenda for their meeting to be held August 6, 2013. The Resolution will authorize you to execute the application and other documents as may be required by OPM.

Attachments: Resolution  
Application Information Form  
Budget Plan

MARCIA A. LECLERC  
MAYOR

# TOWN OF EAST HARTFORD

740 Main Street  
East Hartford, Connecticut 06108

(860) 291-7364

FAX (860) 289-8394

GRANTS ADMINISTRATION

## RESOLUTION OF MUNICIPAL LEGISLATIVE BODY

I, Angela M. Attenello, Council Clerk of the Town of East Hartford, a municipal corporation organized and existing under the laws of the State of Connecticut do hereby certify that the following is a true and correct copy of a resolution, duly adopted and ratified by the Town of East Hartford Town Council on August 6, 2013, in accordance with the constituent charter of the Town of East Hartford, and further certify that such resolution has not been modified, rescinded or revoked, and is, at present, in full force and effect.

RESOLVED, that the East Hartford Town Council approves the submittal of a grant application to the Office of Policy and Management in the amount of \$85,240.75 for the East Hartford Youth Task Force and that Marcia A. Leclerc, Mayor of the Town of East Hartford, is hereby authorized to sign and execute on behalf of this municipality said grant application and grant award and to file any amendments or reports as may be required to successfully complete the terms of the grant contract.

IN WITNESS WHEREOF, the undersigned has executed this certificate this \_\_\_\_ day of August, 2013.

\_\_\_\_\_  
Angela M. Attenello, Town Council Clerk

seal

**GRANT APPLICATION INFORMATION**

**DATE:** 7/25/13

**TITLE:** Youth Services Prevention Grant  
East Hartford Youth Task Force

**AMOUNT:** \$85,240.75

**SOURCE:** State of Connecticut Office of Policy and Management

**PURPOSE:** The East Hartford Youth Task Force has been identified in Public Act 13-247, Sec. 76 to be a recipient of an \$85,240.75 grant from the State of Connecticut for the purpose of Youth Services Prevention .This funding is for prevention and intervention programs to reduce youth violence and diverting them from the Juvenile Justice system.

**DEPARTMENT**

**RESPONSIBLE:** East Hartford Youth Services

**MATCHING FUNDS:** Not required

**GRANT PERIOD:** August 15, 2013- June 30, 2014

**PROPOSED BUDGET:** See attached

East Hartford Youth Services  
Youth At-Risk Task Force

YOUTH PREVENTION GRANT  
2013-14

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**Total Grant Funds: \$85,240.75**

Application & Spending Plan due on August 15, 2013

PROPOSAL:

- Police-Youth Adventure Plus Program
  - EHMS Program -- 7 one day sessions / one per month
  - Synergy Program -- 7 one day sessions / one per month
  - EHHS Program -- 7 one day sessions / one per month
    - 2 police officers, 8 students, 2 staff leaders per session
    - **Proposed Budget: \$30,000.00**
  
- Community Service / Court Ordered
  - Service learning opportunities to support court referred youth
  - One Outreach Worker, 6 hrs per wk (44 weeks)
    - **Proposed Budget: \$5,000.00**
  
- Synergy Adventure Leadership
  - Teambuilding Field Trips (3 -- full day events)
  - 3 Outreach Workers
    - **Proposed Budget: \$5,000.00**
  
- Community Adventure & Challenge Course Training
  - Northeast Adventure
  - Training for EHYS, EHPS, EHP&R, YMCA, local towns
    - **Proposed Budget: \$5,000.00**




- Girl's Circle
  - Current OJJDP model and evidence-based program
  - Addressing Aggression Among Girls (St. Joseph University, West Hartford, CT)
  - 1 - Outreach Worker, 1 Counseling Intern
    - **Proposed Budget: \$2,500.00**
  
- Boy's Circle
  - Companion model based on the "rites of passage" for males only
  - 1 - Outreach Worker, 1 Counseling Intern
    - **Proposed Budget: \$2,500.00**
  
- Charter Oak Club (One Act of Kindness)
  - Community-wide program to encourage and honor those youth doing good deeds
  - T-shirts & certificates issued monthly by Mayor & Police Chief at Town Council meeting, posted on EHYS Facebook page and local newspapers
    - **Proposed Budget: \$2,500.00**
  
- Community Mediation (OSS Alternative)
  - Mediated intervention by trained youths and adults
  - Referral by EHHS and EHMS administrations of OSS students
    - **Proposed Budget: \$15,000.00**
  
- Truancy Intervention / Prevention Survey (TIPS)
  - Truancy evaluation surveys, parental skills assessment
  - Two Outreach Workers – home & office visits to complete survey
  - Clients referred by schools, JRB, DCF
    - **Proposed Budget: \$7,500.00**
  
- Youth Outreach Workers
  - Various work assignments for current Outreach Worker staff
  - Staff assistance to other youth & family service agencies
    - **Proposed Budget: \$10,240.75**

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T O W N O F E A S T H A R T F O R D  
O F F I C E O F T H E M A Y O R

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**DATE:** July 18, 2013  
**TO:** Richard Kehoe, Chairman  
**FROM:** Mayor Marcia A. Leclerc   
**RE:** REFERRAL: Memorandum of Agreement  
University of Connecticut School of Social Work

Attached is the Memorandum of Agreement entering into an agreement with the University of Connecticut School of Social Work and the Department of Youth Services.

Also included is a memo from Assistant Corporation Counsel advising that the Town Risk Manager has signed off on insurance provisions.

Please place on the Town Council agenda for August 6, 2013 meeting.

Thank you

C: C. Nolen, Director, Youth Services

TO: Marcia A. Leclerc, Mayor

FROM: Cephus Nolen, Jr., Director of Youth Services *C.N.*

CC: Rich Gentile, Corporation Counsel  
Cindy Bennett, Risk Manager

SUBJ: Referral to Council – Memorandum of Understanding between University of Connecticut School of Social Work and East Hartford Department of Youth Services

DATE: July 22nd, 2013

I am requesting that the attached MOU between University of Connecticut School Of Social Work and East Hartford Department of Youth Services be placed on the July 16<sup>th</sup> Town council Agenda.

The Memorandum of Understanding is an affiliation agreement between the School of Social Work and the Town of East Hartford Department of Youth Services formalizing the conditions and responsibilities of each organization in the education and placement of graduate social work students. This agreement is in effect for a three year period unless otherwise agreed upon by the School and the Town.

The School of Social Work and the Town of East Hartford Department of Youth Services agree to collaborate in the education of graduate Social Work Students. This includes all of the planning, implementation, supervision, advisement and evaluation of the students. Whereas the University is authorized to enter this Agreement under Provisions of Sections 1 OA-1 04 and 1 OA- 108 of the General Statutes of the State of Connecticut, Revision of 1958, as amended to date.

The attached Memorandum of Understanding is due to University of Connecticut School of Social Work by August 9th ,2013.

**RECEIVED**  
**JUL 26 2013**  
TOWN OF EAST HARTFORD  
OFFICE OF THE MAYOR

# OFFICE OF CORPORATION COUNSEL

Date : June 13, 2013

To : Cephus Nolan

From : Richard Gentile



Re : MOU – School of Social Work

Cindy Bennett has signed off on the insurance provisions of this contract. I am OK with the terms of the MOU, but believe it requires Town Council approval under 3.4 (c) of the Town Charter (a contract for services with the State of Connecticut)). You should ask Mayor Leclerc to send this to the Council for approval.

MEMORANDUM OF UNDERSTANDING

THE UNIVERSITY OF CONNECTICUT  
School of Social Work  
1798 Asylum Avenue  
West Hartford, Connecticut 06117-2698

A FORMAL AFFILIATION AGREEMENT BETWEEN AGENCIES AND THE SCHOOL -  
THE "MEMORANDUM OF UNDERSTANDING"

This is a Memorandum of Understanding between the University of Connecticut School of Social Work and the following Agency:

\_\_\_\_\_ located at  
\_\_\_\_\_ in which we

agree to collaborate in the education of graduate Social Work Students. This includes all of the planning, implementation, supervision, advisement and evaluation of the students. Whereas the University is authorized to enter this Agreement under Provisions of Sections 1 OA-1 04 and 1 OA- 108 of the General Statutes of the State of Connecticut, Revision of 1958, as amended to date.

**EDUCATION AND SUPERVISION:** The School and the Agency will jointly conduct the education of the students according to the policies and procedures set forth in the Field Education Manual.

Agencies will provide each student with a Field Instructor who meets requirements of and is approved by the School.

The Agency agrees to advise the School of any and all changes in the agency, staff and/or program that might impact on the student's Field Education.

**STUDENTS:** The School will insure that each student meets the academic standards as are consistent with objectives and requirements of the program and the University. Each student will have the capability of meeting the objectives of the field practicum.

Both the School and the Agency will have the right to suspend a student from the placement for reasons of health, unsatisfactory performance or other reasonable cause. Such actions may be taken only after prior consultation between the Agency and the School. Suspended students will be referred to the Educational Review Committee by the Faculty Advisor or the Sequence Chair.

Students who are not employees of the Agency are not entitled to any Workers' Compensation benefits for any illness,<sup>1</sup> accident or injury arising out of their placement. Coverage for these medical issues is provided through the individual student's health insurance policy.

Students are to participate in the practicum in the status of trainees and are not to replace staff All duties performed by students are to be done under the educational supervision of their Field Instructor.

The Agency will inform students of all relevant policies, rules and regulations pertinent to the student's Field Education. Both the School and the Agency will require students to maintain confidentiality and to perform assignments in a manner in keeping with the standards of the profession of Social Work following the Code of Ethics of the National Association of Social Workers.

**NONDISCRIMINATION:** The Agency agrees and warrants that in the performance of this Agreement such Agency will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, gender, sexual preference, mental retardation, national origin, physical disability including but not limited to blindness, unless shown by such Agency that such disability prevents performance of the work involved in any manner prohibited by the laws of the United States or of the State of Connecticut, and further agrees to provide the Commissioner of Human Rights and Opportunities with such information requested by the Commission concerning employment practices and procedures of the Agency as related to the provisions of this Section.

**LIABILITY:** Liability coverage is provided by the State of Connecticut under Section 10-235 of the General Statutes entitled: "Indemnification of Teachers, Board Members and Employees in Damage Suits; Expenses of Litigation".

**THE SCHOOL'S USE OF THE AGENCY AND FIELD INSTRUCTOR'S NAME**

The Agency will allow the School to list its name and the name of the Field Instructor in catalogs, brochures and correspondence as affiliates of the practicum program.

**TERMS OF AGREEMENT:** The agreement period of this Memorandum of Understanding will be for a three year period commencing on September 1, 2013 (month/date/year). The agency or the School has the right to terminate this Agreement at any time in the future by sending a written notice to the other 30 days in advance.

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Director of Agency

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Date

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Salome Raheim, PhD, ACSW  
Dean and Professor  
University of Connecticut  
School of Social Work

---

Date

**MEMORANDUM OF UNDERSTANDING**

**THE UNIVERSITY OF CONNECTICUT**  
School of Social Work  
1798 Asylum Avenue  
West Hartford, Connecticut 06117-2698

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The Agency will inform students of all relevant policies, rules and regulations pertinent to the student's Field Education. Both the School and the Agency will require students to maintain confidentiality and to perform assignments in a manner in keeping with the standards of the profession of Social Work following the Code of Ethics of the National Association of Social Workers.

**CERTIFICATION OF AUTHORITY TO SIGN AGREEMENTS**

(Complete if applicable to Agency)

TO WHOM IT MAY CONCERN:

This is to certify that Article \_\_\_\_\_ Section \_\_\_\_\_ of the Bylaws of

\_\_\_\_\_  
Agency's Full Name

Adopted on \_\_\_\_\_ provides that

\_\_\_\_\_  
Name of Agency Representative

shall sign and make all contracts and agreements for the above-named Agency. Signed of this

\_\_\_\_\_ of 19 \_\_\_\_\_ in the State \_\_\_\_\_

County of \_\_\_\_\_.

\_\_\_\_\_  
Agency/Corporate Secretary

\_\_\_\_\_  
Date

AGENCY/CORPORATE SEAL:



CONTRACT REVIEW CHECKLIST

✓ Provide a short narrative description of your request MOV b/w WConn School of Social Work + East Hartford Youth Center

✓ Deadline for Review 6/21/2013

✓ Is the Mayor aware of this contract? Some MOV for the past 30 years

✓ If the contract involves funding, are funds available per Finance Director (including any necessary approvals?) No funds

✓ If Town fees are involved have they been approved by the Town Council Fees Committee? N/A

✓ Have insurance requirements been reviewed with Town Risk Manager? (provide sign off) CB

*only expenses  
some had under state  
see 1106 under state*

✓ Does the contract require a bid under the Town's bidding ordinances? No

\_\_\_\_\_ If so, has contract been bid?

\_\_\_\_\_ If not, has Town Council waiver of the bidding requirement been sought? \_\_\_\_\_

✓ Have you provided all necessary contact information concerning the contract? See attached

✓ Can you provide an electronic copy of the contract? No.

✓ If the contract involves personnel, has the Director of Human Resources signed off? (provide sign off) N/A

✓ If the contract involves sharing services with other towns or quasi-governmental agencies, has Town Council approval been received per Town Charter? N/A

Because of our part-time staffing, when a contract is ready for the Mayor's signature, the initiating department director may be called to pick it up and deliver it to the Mayor.

*ACT  
for  
Form 2*

Cynthia Poley  
Director/Assistant Director

*City*



University of Connecticut  
*School of Social Work*

Field Education Department

1<sup>st</sup> Notice  
 2<sup>nd</sup> Notice

May 20, 2013

Dear Colleague,

The Field Education Department is required to have and maintain informational documents on the field placement agencies where students will be placed and agencies who have requested to serve as placement sites. These documents include information on the placement agency and current or available field instructor/s (Application for Field Placement and Field Instructor Vitae Form). A formal contractual agreement between the School and the Agency is also required (Memorandum of Understanding). In reviewing our files, we found that the following document needs to be updated:

Memorandum of Understanding  
(Expired or Not on File)

Enclosed is the form that must be completed and returned to the Field Education Department by **June 29, 2013**. This form must be updated before a student can be placed in the fall. If you have any questions, please contact me at (860) 570-9161. Thank you in advance for your cooperation and expeditious response to this request.

Sincerely,

*Nancy Urcinas*

Nancy Urcinas  
Administrative Services Specialist II  
Field Education

*An Equal Opportunity Employer*

1798 Asylum Avenue  
West Hartford, Connecticut 06117-2698

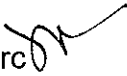
Telephone: (860) 570-9161  
Facsimile: (860) 570-9311  
web: [www.ssw.uconn.edu](http://www.ssw.uconn.edu)

RECEIVED  
MAY 29 2013  
BY: *[Signature]*

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T O W N O F E A S T H A R T F O R D  
O F F I C E O F T H E M A Y O R

---

**DATE:** July 29, 2013  
**TO:** Richard Kehoe, Chairman  
**FROM:** Mayor Marcia A. Leclerc   
**RE:** RESOLUTION: STP Urban System Project-Brewer Street Reconstruction

Attached is a memo from Tim Bockus advising that informational press and a public hearing has been held to satisfy the state's requirement before a state-town agreement can be drafted to fund the Brewer Street Reconstruction, Phase I and II.

Please place this Resolution on the the Town Council agenda for the August 6, 2013 meeting for your approval to allow the town to move forward.

Thank you

C: T. Bockus, Public Works Director  
D. Horan, Town Engineer

**RESOLUTION**  
**of the**  
**TOWN COUNCIL**  
**of the**  
**TOWN OF EAST HARTFORD, CT.**

**RE: Connecticut DOT Project 42-TBD**  
**Brewer Street Reconstruction**  
*Main Street (State Route 517) to 200' east of Glenn Road*  
*Approximately 2,013 LF of complete road reconstruction.*

WHEREAS, the Town of East Hartford has published a display advertisement, issued a press release to local news agencies, and mailed a formal letter to both abutting property owners and a number of officials and agencies, announcing the proposed STP Urban Transportation project known as Brewer Street Reconstruction Project #42-TBD; and

WHEREAS, a public informational meeting was held on Wednesday, May 29, 2013 at the Welling Conference Room, East Hartford Town Hall, 740 Main Street, East Hartford, CT from 6:00 PM to 8:00 PM at which meeting residents had an opportunity to voice their concerns; and

WHEREAS, the Capitol Region Council of Governments has selected this project as a regional priority and has agreed to utilize federal funds for right-of-way, preliminary engineering and construction activities; and

WHEREAS, the project is located on a municipally owned road, all phases (preliminary engineering, right of way and construction) will be performed by the Town of East Hartford or its consultant(s), utilizing 80% Federal funds, 10% state funds and 10% local funds for all phases, with the Town of East Hartford contributing additional non-participating costs; and

WHEREAS, the Town Council has considered the concerns of the residents from the public informational meeting and finds that the proposed Brewer Street Reconstruction project is in the best interest of the Town of East Hartford, and will promote the health,

safety and general welfare of its residents and provide for convenience and safety of the motoring public.

WHEREAS the Town of East Hartford, based on the above information, and by virtue of this resolution, hereby fully supports the proposed project.

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Richard F. Kehoe  
Town Council Chairman

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Date

**MEMORANDUM**

**TO:** Mayor Marcia A. Leclerc

**FROM:** Tim Bockus, Public Works Director 

**DATE:** July 17, 2013

**RE:** Referral to Town Council  
STP Urban System Project  
Brewer Street Reconstruction - Phase I & II

The Town is completing a public information effort to gauge support for the project before the state-town agreement is drafted to fund the project. The DOT requires the Town to confirm that there is no opposition to the project. To date, the Town issued a press release, ran a newspaper advertisement, issued a press release, mailed a notice to abutters and officials, and held a public informational meeting. No opposition to the project has been identified.

At this time, a Town Council resolution supporting the funding is required (see attached).

Please request that the resolution be placed on the upcoming Town Council agenda.  
Thank you for your assistance.

RECEIVED

JUL 19 2013

TOWN OF EAST HARTFORD  
OFFICE OF THE MAYOR

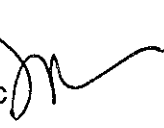
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T O W N O F E A S T H A R T F O R D  
O F F I C E O F T H E M A Y O R

---

**DATE:** July 30, 2013

**TO:** Richard Kehoe, Chair

**FROM:** Mayor Marcia A. Leclerc 

**RE:** REFUND OF TAXES

I recommend that the Town Council approve a total refund of taxes in the amount of \$9,715.93 as detailed in the attached listing from our Collector of Revenue.

Please place this item on the Town Council agenda for August 6, 2013 meeting.

**C:** M. Walsh, Director of Finance  
I. Laurenza, Tax Collector

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**INTEROFFICE MEMORANDUM**

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**TO:**           MARCIA A LECLERC, MAYOR  
                  MICHAEL WALSH, DIRECTOR OF FINANCE

**FROM:**       IRIS LAURENZA, COLLECTOR OF REVENUE  
                  ANNIE KOHLER, ASSISTANT TAX COLLECTOR

**SUBJECT:**   REFUND OF TAXES

**DATE:**       7/29/2013

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Under the provisions of Section 12-129 of the Connecticut General Statutes, the following persons are entitled to the refunds as requested. The total amount to be refunded is \$9,715.93 See attached list.



Bill	Name	Address	Prop Loc/Vehicle Info.	Over Paid
2012-03-0051160	ANAYA EDWIN O	28 DANIEL ST E HARTFORD CT 06108 2411	2004//JYARJ06E14A014766	\$ (21.47)
2012-03-0051161	ANDALUZ WASHINGTON E	145 RIDGEWOOD RD E HARTFORD CT 06118 1316	1994//1HGCD5635RA157287	\$ (41.48)
2011-01-0003217	AUSTIN JOHN D & CARMEL A	888 TOLLAND ST EAST HARTFORD CT 06108	888 TOLLAND ST	\$ (2,712.15)
2012-03-0056220	CHANTHAVATH PHETAROUNE	4 ROBIN TERR E HARTFORD CT 06108 2138	1998//JUN1CA21D5WT519921	\$ (20.32)
2012-03-0056719	CLAY PAMELA D ESTATE OF CLAY ROCHELLE AD	9 RETHAL ST SOUTHWINGTON CT 06489	2004//1FAFP34Z64W124055	\$ (42.67)
2011-01-0000590	CORELOGIC	PO BOX 961230 FORT WORTH TX 76161 0230 FILE NUMBER 66310030	8 RIDGEWOOD RD	\$ (3,037.02)
2012-03-0058417	DADONA JOSEPH J OR	30 DAVIS RD E HARTFORD CT 06118 3014	1997//1N4BU31D0VC114205	\$ (20.19)
2012-03-0058418	DADONA JOSEPH J OR	30 DAVIS RD E HARTFORD CT 06118 3014	1991//1FTCR10UXMUB34122	\$ (16.12)
2011-03-0058903	DAVIS CAITLIN M	1800 SILAS DEANE HWY APT 549 ROCKY HILL CT 06067 1356	2006//4T1CE38P86U749806	\$ (180.58)
2011-01-0004924	FAY THORNTON J & VIRGINIA E TRUSTEE	26204 NEWCOMBE CIR LEESBURG FL 34748	18 DEPIETRO DR	\$ (15.40)
2012-03-0063878	GLEASON TIMOTHY A	25 LAFAYETTE AVE E HARTFORD CT 06118 2628	2004//KMHWF25S54A017466	\$ (39.38)
2012-03-0064413	GOULET DONALD	15 SUMMERSET DR E HARTFORD CT 06118 1347	1998//2P4FP25B2WR813720	\$ (12.16)
2012-03-0064415	GOULET DONALD C OR GOULET MONIQUE M	15 SUMMERSET DR E HARTFORD CT 06118 1347	2000//1LNHM82WXYY828282	\$ (25.42)
2011-03-0065628	HANCOX JULIAN M	39 MELODY LN E HARTFORD CT 06118 2365	2001//2G1WF55E219304859	\$ (64.40)
2012-03-0065215	HANCOX JULIAN M	39 MELODY LN E HARTFORD CT 06118 2365	2001//2G1WF55E219304859	\$ (136.96)
2012-03-0068884	KNIGHT CEDRIC O	15 COLBY DR E HARTFORD CT 06108 1415	1995//4M2DV11WXSDJ00186	\$ (40.82)
2012-03-0069524	LAMPRECHT MARION	65 GREENLAWN ST E HARTFORD CT 06108 2952	1997//1G1NE52M2VY143098	\$ (22.04)
2011-03-0075280	NAPOLETANO VEDA M	82 SKITCHEWAUG ST WINDSOR CT 06095	2000//4A3AA46L2YE030025	\$ (35.27)
2011-03-0075828	NISSAN INFINITI L T	PO BOX 650214 DALLAS TX 75265 0214	2008//1N4AL21E98N539822	\$ (441.04)
2012-03-0075622	NUNEZ RICHARD	16 BELDEN ST 2ND FL E HARTFORD CT 06108 4027	1996//1HGCD5530TA272758	\$ (26.86)
2012-03-0076226	ORTIZ SAMUEL	1331 BURNSIDE AVE A/2 E HARTFORD CT 06108 1518	2002//3D7HU18N22G187839	\$ (45.44)
2012-03-0076485	PADILLA JOHN	17 CUMBERLAND DR E HARTFORD CT 06118 1158	2001//JUS1GN79A212100413	\$ (15.14)
2012-03-0078046	PINDI MITHILESH	130 NUTMEG LN 134 E HARTFORD CT 06118 1222	1998//4T1BG22K4WU371321	\$ (35.56)

2012-03-0079141	REBBALAPAL VENKATARAMA C	130 NUTMEG LN 218 E HARTFORD CT 06118 1223	2005//2HGES16595H528228	\$ (41.93)
2012-03-0080362	RODAS MODESTO E	107 OLMSTED ST E HARTFORD CT 06108 2311	2000//1N4DL01D9YC133558	\$ (20.81)
2011-03-0082049	RYDER TRUCK RENTAL INC	99 MURPHY RD HARTFORD CT 06114 2104	2004//1HTMMAAN14H619173	\$ (621.28)
2011-03-0082062	RYDER TRUCK RENTAL INC	99 MURPHY RD HARTFORD CT 06114 2104	2006//1FUJA6CK76LW22063	\$ (271.50)
2011-03-0082075	RYDER TRUCK RENTAL LT	99 MURPHY RD HARTFORD CT 06114 2104	1996//JALC4B1K1T7000354	\$ (10.19)
2012-03-0081636	SAKSENA ARTIK	30 NUTMEG LN #216 E HARTFORD CT 06118 1237	1997//1G2WP12K0VF244038	\$ (25.33)
2012-03-0082008	SANTIAGO LISA	285 BURNSIDE AVE E HARTFORD CT 06108 2366	2003//2G4WS52J831249044	\$ (38.19)
2011-04-0087328	SIKOSKI JEREMY M	49 FOREST LN E HARTFORD CT 06118 2024	1994//1GNDT13W2R0164451	\$ (31.65)
2011-03-0085063	SUNTRUST LEASING CORP	300 EAST JOPPA RD STE #700 TPWSPM MD 21286	2002//1GCCS14W328135781	\$ (114.47)
2012-01-0014364	THIBODEAU ROLAND & ANITA J	76 GREENBRIER RD EAST HARTFORD CT 06118	76 GREENBRIER RD	\$ (145.17)
2011-03-0087912	VW CREDIT LEASING LTD	1401 FRANKLIN BLVD LIBERTYVILLE IL	2009//NWA1KK78R19A024162	\$ (273.50)
2011-03-0087914	VW CREDIT LEASING LTD	1401 FRANKLIN BLVD LIBERTYVILLE IL 60048	2008//WVWKC71K08W269004	\$ (725.72)
2011-03-0087926	VW CREDIT LEASING LTD	1401 FRANKLIN BLVD LIBERTYVILLE IL 60048	2008//WVWVK73C88E224511	\$ (235.52)
2011-03-0088189	WARE N RICHARD	17 TIMOTHY RD E HARTFORD CT 06108 1851	2000//JT3HN86R8Y0272594	\$ (23.71)
2012-03-0087900	WHEELER DEBRA A	285 SANDRA DR E HARTFORD CT 06118 1950	2001//1HD1GDV161Y313421	\$ (56.28)
2011-03-0089338	YANTIN CIARRA L	41 LATIMER ST FL1 E HARTFORD CT 06108 2328	1999//JN1CA21D6XT814849	\$ (32.79)
<b>TOTAL</b>				<b>\$ (9,715.93)</b>

## OLD BUSINESS

### Code of Ethics

The Committee reviewed the existing code of ethics and determined that there were a number of provisions that they would look at, including a comparison with the city of New Britain's ethics statutes, a potential revision to the town's ordinances to require that any person contracting with the town indicate whether that person has contributed to a campaign of a town official and also that if the entity contracting with the town is an "LLC", the LLC must certify that none of the individuals who have ownership interest in the LLC have contributed to a town official's campaign, or if they have, to disclose such contribution.

The Corporation Counsel's office will review the ordinance for its applicability to members of the town's boards and commissions. The Committee will also review a handout which Councillor Thompson provided to the Committee which gives a general overview of ethics statutes. Once this information has been reviewed by Committee members, they will determine which provisions they would wish to pursue at a later date.

### Mayor's Salary – Section 2-3

The Committee reviewed documentation that indicated that the Mayor's salary has remained the same since 2008 and since that time, the Consumer Price Index (CPI) has increased between 13% and 16%. The Committee discussed the various options for addressing the erosion of the Mayor's salary due to inflation and determined that an amount equal to 50% of the CPI increase since 2008 would be appropriate and is equal to an annual increase of 1.6% since 2008.

MOTION        By Bill Horan  
                      seconded by Rich Kehoe  
                      to **send** the 07-15-13 draft of Section 2-3, entitled Mayor's Salary,  
                      which draft shall provide an 8% increase effective November 11, 2013,  
                      to the Town Council for the purposes of setting a public hearing date.  
                      Motion carried 2/1. **Nay:** Thompson

*Councillor Thompson indicated he would not support any increase in the Mayor's salary.*

### MAYOR'S SALARY *(Draft 07-15-13)*

Section 2-3 of the East Hartford Code of Ordinances is repealed and the following is substituted in lieu thereof:

Beginning November 11, 2013, the Mayor's salary shall be \$87,912, which represents an 8% increase – approximately half of the increase in the Consumer Price Index since 2008.

## NEW BUSINESS

### Relocation of Billboards: 275 Connecticut Boulevard

The Committee heard a presentation from Attorney Robert DeCrescenzo, regarding the removal of two billboards with a total of four facings comprising an aggregate total of 1396

**Mayor's Salary Ordinance**  
**August 6, 2013**


Section 2-3 of the Code of Ordinances of the Town of East Hartford is repealed and the following is substituted in lieu thereof:

Beginning November 14, 2007, the Mayor's salary shall be \$78,723, which is a zero increase and beginning on November 14, 2008, the Mayor's salary shall be \$81,400 which is an increase of 3.4%, representing the increase in the consumer price index for 2005. Beginning November 14, 2014 and annually thereafter, the Mayor's salary shall increase by fifty percent of the increase in the consumer price index-all urban consumers for the preceding calendar year, provided that the Mayor's salary for November 14, 2013 shall be increased by fifty percent of the consumer price index-all urban consumers for the calendar years 2006 through 2012 inclusive.

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T O W N O F E A S T H A R T F O R D  
O F F I C E O F T H E M A Y O R

---

**DATE:** 7/31/2013  
**TO:** RICHARD F. KEHOE, TOWN COUNCIL CHAIRMAN  
**FROM:** MAYOR MARCIA A. LECLERC   
**RE:** APPOINTMENTS- BOARDS AND COMMISSIONS

---

I am recommending the following appointments to Town Boards and Commissions.

**INLANDS/WETLANDS ENVIRONMENT COMMISSION (Alternate)**

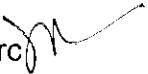
R Jack W. Jacobs                      505 Burnside Ave., C-14                      Term: 12/13

Please place on the Town Council Agenda for August 6th, 2013.  
Thank you

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T O W N O F E A S T H A R T F O R D  
O F F I C E O F T H E M A Y O R

---

**DATE:** August 5, 2013  
**TO:** Richard Kehoe, Chairman  
**FROM:** Mayor Marcia A. Leclerc   
**RE:** EAST HARTFORD POLICE OFFICERS ARBITRATION AWARD

Attached is the decision of the Second Arbitration Review Panel a Successor Police Pension Agreement and a memo from the Human Resources Director.

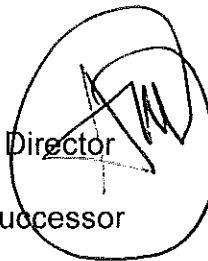
Please Place on the Town Council agenda for the August .6, 2013 meeting.

Thank you

C: S. Malave, Director, Human Resources  
M. Walsh, Finance Director

# OFFICE OF HUMAN RESOURCES

Date : August 2, 2013  
To : Marcia A. Leclerc, Mayor  
From : Santiago Malave, Human Resources Director  
Re : Second Arbitration Review Panel a Successor  
Police Pension Agreement



Attached for your review and submission to the Town Council for the August 6 Town Council meeting are the following:

- A transmittal memo from you to Richard F. Kehoe, Town Council Chairman.
- A copy of the Second Arbitration Panel Review Award regarding a Successor Police Pension Agreement
- A copy of April 5, 2013 memorandum to Richard F. Kehoe summarizing the First Arbitration Panel Award

Please note that the second panel award upheld the first arbitration panel award on all of the issues.

# OFFICE OF THE MAYOR

Date : 08/02/2013  
To : RICHARD F. KEHOE, TOWN COUNCIL CHAIRMAN  
From : MAYOR MARCIA A. LECLERC  
Re : EAST HARTFORD POLICE ASSOCIATION SECOND  
ARBITRATION PANEL PENSION AWARD

Attached is a copy of the second arbitration panel award transmitted to the Town on July 30, 2013. The Council had entered into executive session at the April 16, 2013 meeting and thereafter voted to reject the first arbitration award in accordance with Section 7-473c (12) and (13) of the General Statutes of the State of Connecticut.

The award by the second panel upheld the first arbitration panel award on all of the issues. I have attached a copy of memorandum to you dated April 5, 2013 regarding the first arbitration award which summarized all of the issues upheld by the second panel.

I ask that this item be placed on the Town Council agenda for the August 6, 2013 meeting for purposes of bringing to the Council's attention the second arbitration panel award.

The Town's Finance and Human Resources Directors will be present at the meeting scheduled for Tuesday, August 6, 2013 should there be any questions or concerns regarding the Second Panel Arbitrations Award.



# OFFICE OF HUMAN RESOURCES

Date            08/02/2013

To     :        RICHARD F. KEHOE, TOWN COUNCIL CHAIRMAN

From   :        MAYOR MARCIA A. LECLERC

Re     :        EAST HARTFORD POLICE ASSOCIATION SECOND  
                  ARBITRATION PANEL PENSION AWARD

Attached is a copy of the second arbitration panel award transmitted to the Town on July 30, 2013. The Council had entered into executive session at the April 16, 2013 meeting and thereafter voted to reject the first arbitration award in accordance with Section 7-473c (12) and (13) of the General Statutes of the State of Connecticut.

The award by the second panel on all of issues upheld the first arbitration panel award. I have attached a copy of memorandum to you dated April 5, 2013 regarding the first arbitration award which summarized all of the issues upheld by the second panel.

I ask that this item be placed on the Town Council agenda for the August 6, 2013 meeting for purposes of bringing to the Council's attention the second arbitration panel award.

The Town's Finance and Human Resources Directors will be present at the meeting scheduled for Tuesday, August 6, 2013 should there be any questions or concerns regarding the Second Panel Arbitrations Award.

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T O W N O F E A S T H A R T F O R D  
O F F I C E O F T H E M A Y O R

---

DATE: 4/5/2013  
TO: RICHARD F. KEHOE, TOWN COUNCIL CHAIRMAN  
FROM: MAYOR MARCIA A. LECLERC  
RE: EAST HARTFORD POLICE OFFICERS ASSOCIATION ARBITRATION  
AWARD

---

On March 27, 2013 the Town of East Hartford and the East Hartford Police Officers Association (hereinafter "Police Union") after reaching impasse entered into mandatory binding arbitration for a successor Pension Agreement, with a term of January 2011 through December, 2021. There were nine issues presented to the panel by the Town and Police Union. The following is a summary of each issue.

Issue 4, Subject: Final Average Salary

The Town's last best offer was selected by the arbitration panel. The Town's language will bring the police retirement plan in line with every other Town retirement plan. The method of calculating employee's final average salary will be based on the final thirty six (36) consecutive months of service with the Town.

Issue 5, Subject: Final Average Salary – Sick Leave Payment

The Union's last best offer was selected. The final average salary for employees will continue to include overtime, holiday, longevity payments, vacation *and any lump sum payment resulting from unused accrued terminal/ sick leave.*

Issue 6, Subject: Definition of Regular Compensation – Sick Leave Payment

The Union's last best offer was selected. The definition of Regular Compensation for employees will continue to include overtime, holiday, longevity payments, vacation pay *and lump sum payments resulting from unused terminal/ sick leave.*

Issue 7, Subject: Pension Eligibility for Employees Hired After January 1, 2013.

The Union's last best offer was selected. New Police Union members will continue to be part of the Town's Defined Benefit Pension Plan.

Issue 8, Subject: Exemption from Cap on Service Connected Disability

The Town's last best offer was selected. The Town's new language will allow it to cap disability benefits so that no retiree gets a pension and other benefits which exceeds his/her final average salary.

Issue 9, Subject: Vesting Period:

The Town's last best offer was selected. The vesting period for Police Union members will remain at 15 years.

Issue 10, Subject: Annual Report Due Date

The Town's last best offer was selected. The Town preserves the right to submit the pension annual report every year by March 31.

Issue 11, Subject: Arbitration Clause

The Town's last best offer was selected. The Town's Retirement and Pension Board maintains its status as the sole authority to interpret the Pension Agreement regarding any misunderstanding and ambiguity concerning the meaning of any of the provisions of the Town's Retirement System.

Issue 12, Subject: Deferred Retirement Option Plan – COLA Waiting Period

The Town's last best offer was selected. The cost of living waiting period for D.R.O.P. participants shall commence on the date that the employee separates from the Town and not the date the employee's D.R.O.P. period commences.

The Arbitration Award issued by the State Board of Mediation and Arbitration Panel was received by the Town on Thursday, March 27, 2013. According to Section 7-473 c (10) and (12) of the General Statutes of the State of Connecticut, within twenty-five days of receipt of the arbitration award, the Town Council may reject the award by a two-thirds majority vote.

The Town's Finance and Human Resources Directors will be present at the meeting scheduled for Tuesday, April 15, 2013 should there be any questions or concerns regarding the Arbitration Award.

Please place this item on the Town Council agenda for April 16, 2013

Thank you.

July 30, 2013

SECOND AWARD TRANSMITTAL MEMORANDUM

Town Of East Hartford  
-and-  
EHPOA

Case Number 2012-MBA-376

AWARD OF THE ARBITRATION PANEL

Attorney Susan E. Halperin, Chairperson  
Attorney Peter Blum  
Attorney Gerald T. Weiner

Representatives of the parties:

**Bud O'Donnell, Esquire**

**Stephen McEleney, Esquire**

Cc: File

Justin M. Richardson, Labor Relations Analyst, CCM  
John W. Olsen, President AFL-CIO  
Town Clerks Office – Town of East Hartford

2012-MBA-376

July 30, 2013

Ms. Catherine J. Serino, Director  
State Board of Mediation and Arbitration  
38 Wolcott Hill Road  
Wethersfield, Ct. 06109

HAND-DELIVERED

RE: CASE NO. 2013-MBA-376- E. Hartford/EHPOA

DECISION AND AWARD OF THE REVIEW PANEL

Dear Ms. Serino:

I am attaching eleven (11) copies of the Decision and Award of the Second Arbitration Review Panel in the above-matter.

Please see to it that the documents are transmitted in accordance with law.

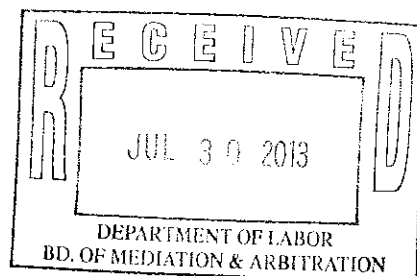
Thanking you in advance for your cooperation in this matter.

Sincerely,

*Attorney Susan E. Halperin*

Attorney Susan E. Halperin  
Chair-Second Arbitration Panel

CC: Panel Members  
File



2012-MBA-376

STATE OF CONNECTICUT  
CASE NO. 2012-MBA-376

BINDING ARBITRATION DECISION AND  
AWARD  
SECOND ARBITRATION REVIEW PANEL  
SUCCESSOR PENSION AGREEMENT  
Pursuant to the Connecticut General  
Statutes Section 7-473c (d) (13)

In the Matter of:

Town of East Hartford

and

East Hartford Police Officers Association

APPEARANCES

For the Town of East Hartford: Peter A. Janus, Esq.

For the Association: Stephen F. McEleney, Esq.

SECOND ARBITRATION REVIEW PANEL

Attorney Susan E. Halperin, Chairperson  
Attorney Peter R. Blum  
Attorney Gerald T. Weiner

AWARD DATE: July 30, 2013

2012-MBA-376

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SIGNATURE PAGE 89

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AGREED UPON LANGUAGE



2012-MBA-376

## PART I: THE STATUTE

### CONNECTICUT GENERAL STATUTES SECTION 7-473c (d)

\* \* \* \* \*

(12) Within twenty-five days of the receipt of an arbitration award issued pursuant to this section, the legislative body of the municipal employer may reject the award of the arbitrators or single arbitrator by a two-thirds majority vote of the members of such legislative body present at a regular or special meeting called and convened for such purpose.

(13) Within ten days after such rejection, the legislative body or its authorized representative shall be required to state, in writing, the reasons for such vote and shall submit such written statement to the State Board of Mediation and Arbitration and the municipal employee organization. Within ten days after receipt of such notice, the municipal employee organization shall prepare a written response to such rejection and shall submit it to the legislative body and the State Board of Mediation and Arbitration.

(14) Within ten days after receipt of such rejection notice, the State Board of Mediation and Arbitration shall select a review panel of three arbitrators or, if the parties agree, a single arbitrator, who are residents of Connecticut and labor relations arbitrators approved by the American Arbitration Association and not members of the panel who issued the rejected award. Such arbitrators or single arbitrator shall review the decision on each such rejected issue. The review conducted pursuant to this subdivision shall be limited to the record and briefs of the hearing pursuant to subsection (c) of this section, the written explanation of the reasons for the vote and a written response by either party. In conducting such review, the arbitrators or single arbitrator shall be limited to consideration of the criteria set forth in subdivision (9) of this subsection. Such review shall be completed within twenty days of the appointment of the arbitrators or single arbitrator. The arbitrators or single arbitrator shall accept the last best offer of either of the parties.

(15) Within five days after the completion of such review the arbitrators or single arbitrator shall render a decision with respect to each rejected issue which shall be final and binding upon the municipal employer and the employee organization except that a motion to vacate or modify such award may be made in accordance with sections 52-418 and 52-419. The decision of the arbitrators or single arbitrator shall be in writing and shall include specific reasons and standards used by each arbitrator in making a decision on each issue. The decision shall be filed with the parties. The reasonable costs of the arbitrators or single arbitrator and the cost of the transcript shall be paid by the legislative body. Where the legislative body of a municipal employer is the town meeting, the board of selectmen shall perform all of the duties and shall have all of the authority and responsibilities required of and granted to the legislative body under this subsection.

2012-MBA-376

## **PART II: THE PROCEEDINGS**

The Town of East Hartford (hereinafter the "Town") and the East Hartford Police Officers Association (hereinafter the "Association" or "Union") were parties to a collective bargaining agreement that expired on June 30, 2012 (hereinafter "Contract" or "Agreement") and a pension agreement that expired on December 31, 2010 (hereinafter the "Pension Agreement").

During these proceedings, the Contract is still in full force and effect pending negotiations of a successor contract.

Negotiations for a successor Pension Agreement, with a term of January 1, 2011 through December 31, 2021, commenced and subsequently reached impasse. As a result, the Parties selected an arbitration panel and proceeded to interest arbitration in accordance with Municipal Employee Relations Act's interest arbitration provisions, Connecticut General Statutes Section 7-473c (hereinafter "MERA") as administered by the State Board of Mediation and Arbitration hereinafter referred to as the "SBMA").

An initial hearing was held on the matter on December 1, 2011. At that hearing, the Parties made the First Panel aware of an arbitrability issue that was decided after the submission of stipulated exhibits and briefs. The First Panel issued a Ruling on the arbitrability of Issues 5 and 6 on March 5, 2012. That decision found Issues 5 and 6 arbitrable. By statute, this Decision and the First Panel Award are subject to review under Sections 52-418 and 52-419.

The Review Panel members included a review of the arbitrability matter as part of the record of the proceedings mandated for our review. Issues 5 and 6 are before this Panel based on that Ruling.

Based on our review of the documents related to the Ruling, we find the Ruling to be supported by a preponderance of the evidence on the record and concur with the decision of the First Panel as to Issues 5 and 6 being arbitrable.

2012-MBA-376

The Parties next appeared before the First Panel for hearings on the merits on March 15, April 16, June 7, September 21 and September 28, 2012.

The Parties waived all statutory time limits and procedural requirements applicable to the case. At said hearings the Parties submitted extensive witness testimony and documentary evidence in multiple exhibit binders which addressed the statutory factors, including the Town's financial capability and pension benefits of comparable groups of employees.

The Arbitration Statement was issued by the First Panel on November 5, 2012, which included a listing of nine (9) issues in dispute and the Parties' Agreed Language ( attached hereto as Appendix B) on all undisputed terms of the new pension agreement to cover the period January 1, 2011 through December 31, 2021.

On November 21, 2012 the Parties presented their respective Last Best Offers on the disputed issues. Written post-hearing briefs from both Parties were electronically sent to the First Panel on January 4, 2012. The First Panel met in executive session on February 19 and March 25, 2013 to deliberate the disputed issues. By agreement of the Parties the Award (hereinafter the First Panel Award) was issued by April 2, 2013.

Transcripts of the proceedings were taken and provided to the First Panel for its deliberations.

The First Panel found that the Parties were accorded full opportunity to adduce evidence, examine and cross examine witnesses, and present argument.

#### REVIEW PROCEEDINGS

At a special meeting of the East Hartford Town Council held on April 19, 2013, the Council by a 9 to 0 vote rejected the Arbitration Award issued on March 26, 2013.

The Town of East Hartford filed a written statement of its reasons for rejection, as provided by Connecticut General Statutes, § 7-473c (d) (13) on April 26, 2013 with the SBMA.

The East Hartford Police Officers Association filed a response, dated May 9, 2013, as provided by statute.

2012-MBA-376

The SBMA, pursuant to statute, appointed the Second Arbitration Panel, consisting of three neutral arbitrators from the Neutral Arbitrator Review Panel by letter dated May 21, 2013<sup>1</sup>. Susan E. Halperin was randomly designated Chairperson of the Panel.

The SBMA acted to secure the official record of the proceeding. It communicated to the Chairperson concerning receipt of the record of the proceedings and the Town's written statement for its rejection as well as the Union response. These items were provided to her for duplication and distribution to the Panel.

The Chair made arrangements to provide and disseminate said record at the Panel's first executive session on May 30, 2013. At the session, the Panel initially reviewed the record and established procedures for case administration; a timetable for proceedings, including, time for study; executive sessions on the merits; draft and review, etc. That timetable required to the Panel to request an extension beyond the deadline established by statute. MERA allows the Parties to mutually agree to waive the statutory provisions and the Panel requested and the Parties agreed to extensions for the Award in order for the Panel to receive and review said information.

The Panel Chairperson received the record on May 22, 2013. The process of providing same to the Panel was accomplished over the period May 22, 2013 to May 29, 2013.

The Panel requested and the Parties granted waivers of the statutory timelines to July 17, 2013 and July 30, 2013. The Panel held executive sessions on May 30, 2013; June 17, 2013; June 24, 2013; July 17, 2013; and, July 24, 2013. A draft of the Decision was developed; discussed; and reviewed in the interim and during the final executive session that was held on July 24, 2013. Subsequent to that executive session, the Panel issued its final decision on July 30, 2013 duly executed by its members.

The Panel submits that it carried out its responsibilities as required by MERA and all statutory requirements were met in the rendering of this Decision.

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<sup>1</sup> The Parties did not agree to the selection of a single arbitrator as the statute allows

2012-MBA-376

Each member of the panel, and the full Panel in executive sessions, reviewed; analyzed; and, discussed the record of the proceeding, the written explanation of the reasons for the Town's rejection of the Award and the Union's written response in light of the criteria set forth in subdivision (9) of §7-473 c (d) and arrived at the this Decision and Award in accordance with said criteria:

In arriving at a decision, the arbitration panel shall give priority to the public interest and the financial capability of the municipal employer, including consideration of other demands on the financial capability of the municipal employer. The panel shall further consider the following factors in light of such financial capability: (A) The negotiations between the parties prior to arbitration; (B) the interests and welfare of the employee group; (C) changes in the cost of living; (D) the existing conditions of the employee group and those of similar groups; and (E) the wages, salaries, fringe benefits, and other conditions of employment prevailing in the labor market, including developments in private sector wages and benefits.

The decisions on the individual issues, included in this Decision and Award, are the decisions agreed to by all members of the Second Panel. The specific reasons and standards used in said decisions are adopted by all members of this review panel.

The First Panel's Award including the Agreed upon language, that represents the contract provisions not in dispute, is incorporated and made part of this Decision and Award, in addition to the language of the last best offers Awarded by this Panel and are appended hereto as **Part IV** of this Award. The First Panel's awarded last best offers and Agreed upon Language represents the complete Pension Agreement between the Parties for the period January 1, 2011 through December 31, 2021.

2012-MBA-376

**PART III**

**DISCUSSION, DECISION AND AWARDS OF  
THE SECOND ARBITRATION REVIEW PANEL  
ON THE ISSUES**

2012-MBA-376

## ISSUES

- 4 Article I, Sec. 6 Final Average Salary-Plan Year Definition
- 5 Article I, Sec.6 Final Average Salary-Sick Leave Payment
- 6 Article 1, Sec. 15 Regular Compensation-Sick Leave Accrual
- 7 Article III, Sec. 2- Eligibility of Employees Hired After January 1, 2013
- 8 Article V Exemption from Cap on Service Connected Disability
- 9 Art. VII, Sec. 1-2 Vesting Period
- 10 Article X, Sec. 1 Annual Report Due Date
- 11 Article X, Sec.2-3 Arbitration Clause
- 12 Art. XIII, Sec. 3,6 DROP Provisions COLA Waiting Period.

2012-MBA-376

**Issue 4**

**Contract Provisions:** Article I, Section 6, paragraph 15

**Subject:** Final Average Salary - Plan Year Definition

**Current Language:**

which gave the highest average.

**Town's Last Best Offer:**

based on the Plan Year, which gave the highest average or the employee's final thirty-six (36) consecutive months of service with the Employer, whichever produces the highest average

**Union's Last Best Offer:**

which gave the highest average.



2012-MBA-376

### DISCUSSION, DECISION AND AWARD

This issue involves the calculation of an employee's final average salary for pension purposes. The Town proposes to change existing language to limit the calculation to one of two methods: (a) The final thirty six (36) months of the employee's salary prior to retirement; or (b) the employee may choose any other thirty six (36) consecutive months *based on the plan year* (emphasis added).

In the First Panel Decision, a majority of the Panel, the Public and Management Members, accepted the last best offer of the Town for Issue 4 based on its review of the statutory criteria. The Labor Member dissented on the same basis.

The language has been in existence since at least February 1996. The calculation utilized for unit members in the police contract has been administered consistently to allow the calculation based on whichever 36 consecutive months yields the highest Final Average Salary as identified by the employee to the Town benefits administrator irrespective of "plan year".

The Town Benefits Administrator testified that the current language is utilized so that a police unit employee to use any thirty six (36) consecutive month periods, without regard to plan year. The documentary and testimonial evidence establishes that the Town has administered the calculations with the identical language as the police contract differently with reference to the calculation for every other bargaining unit.

The Town's last best offer would codify the practice utilized with all the other bargaining units lending consistency to the administration of this calculation.

The Town indicated by letter dated April 2, 2012 (Union Exhibit 13) that there is no savings from the change proposed by its last best offer, therefore, there is no financial impact in retaining the current language codified in the Union's last best offer.

The Town's argument, which is adopted by the First Arbitration Panel, states that its position is consistent with the existing conditions of other bargaining units within East Hartford.

2012-MBA-376

We conclude that the Town's position is consistent with the calculation base for all other bargaining units in East Hartford and such calculations in comparable communities and bargaining units.

There was little evidence of either harm or lost benefits to the bargaining unit members, per se, and no cost to the Town. Evidence of cost savings was speculative.

The Town's last best offer on this issue is more consistent with the statutory criteria than the Union's last best offer and, by a preponderance of evidence on the record, is adopted by this Panel.

## **AWARD**

Based on a preponderance of the evidence submitted by the Parties as included in the record of the First Arbitration Panel and giving priority to the public interest and the financial capability of the Town, and, in consideration of the other statutory factors in light of that priority criterion, the Second Arbitration Review Panel unanimously concurs with the Award of the First Panel and awards the last best offer of the Town for Issue 4.

2012-MBA-376

## **ISSUE 5**

**Contract Provisions:** Article I, Section 6, paragraph 15

**Subject: Final Average Salary - Sick Leave Payment**

### **Current Language:**

The term "Final Average Salary" shall mean the employee's average annual pay, including overtime, holiday, longevity payments, vacation pay, and any lump sum payments resulting from unused accrued terminal/sick leave

### **Town's Last Best Offer:**

The term "Final Average Salary" shall mean the employee's average annual pay, including overtime, holiday, longevity payments and vacation pay, but not including any lump sum payments resulting from unused accrued terminal/sick leave,

### **Union's Last Best Offer:**

The term "Final Average Salary" shall mean the employee's average annual pay, including overtime, holiday, longevity payments, vacation pay, and any lump sum payments resulting from unused accrued terminal/sick leave

2012-MBA-376

## **Issue 6**

**Contract Provisions:** Article I, Section 15, Paragraph 28

**Subject:** Definition of Regular Compensation - Sick Leave Accrual

### **Current Language:**

Section 15. The term "Regular Compensation" shall mean the annual salary or wages of an Employee for services with the Town, including overtime, holiday, longevity payments, vacation pay and any lump sum payments resulting from unused accrued terminal/sick leave. It will also include any deferred salary or deferred wages that are considered annual salary or pay/wages during the period used to determine Final Average Salary.

### **Town's Last Best Offer:**

Section 15. The term "Regular Compensation" shall mean the annual salary or wages of an Employee for services with the Town, including overtime, holiday, longevity payments, and vacation pay, but not including any lump sum payments resulting from unused accrued terminal/sick leave. It will also include any deferred salary or deferred wages that are considered annual salary or pay/wages during the period used to determine Final Average Salary.

### **Union's Last Best Offer:**

Section 15. The term "Regular Compensation" shall mean the annual salary or wages of an Employee for services with the Town, including overtime, holiday, longevity payments, vacation pay and any lump sum payments resulting from unused accrued terminal/sick leave. It will also include any deferred salary or deferred wages that are considered annual salary or pay/wages during the period used to determine Final Average Salary.

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**DISCUSSION, DECISION AND AWARD****ISSUES 5 and 6**

As indicated in the record, the Parties and the First Panel discussed Issues 5 and 6 together as the Town last best offer on each issue seeks to eliminate "lump sum payments resulting from unused accrued terminal/sick leave" from inclusion in the definition of "Final Average Salary" and the term "Regular Compensation" included in the current Pension Agreement.<sup>2</sup>

In the First Panel Decision, a majority of the Panel, the Public and Labor Members, accepted the last best offers of the Union for Issues 5 and 6 based on its review of the statutory criteria. The Management Member dissented on the same basis.

The rejection letter sent on behalf of the Town indicates that the First Panel's consideration of the statutory criteria of financial capability and public interest as to this issue is the reason for the rejection of the Award.

The Union submitted a written response on February 12, 2010.

After our review in accordance with law, the Second Arbitration Panel unanimously agrees with the majority decision of the First Panel with reference to its acceptance of the Union's last best offers on Issues 5 and 6. We find that the evidence on the record supports the Award of the First Panel.

The Town has the burden of proof and the burden of persuasion that its last best offer should be adopted based on the statutory criteria since its last best offer changes the existing benefit definitions that directly affect the calculation of the pension benefit for the regular pension and the disability pension. Said calculation change results in the payment of a lower pension benefit to the retiree who has accumulated "unused accrued sick/terminal leave" during his/her employment with the Town.

Article XI, Section 3 of the Contract sets the terms for a Sick Leave Program that provides for sick leave to be accrued on the basis on one and one-quarter (1 1/4) days for each month of service, totaling fifteen (15) days per year.

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<sup>2</sup> The arbitrability of these issues as noted herein was the subject of a Ruling by the First Panel allowing the issues to be considered in the arbitration.

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Article XI, Section 4 continues such credited sick leave accumulated prior to the effective date of the contract towards future accredited leave. Section 5 allows such leave to accumulate indefinitely during certain leaves but disallows its accrual during a leave of absence without pay.

Article XI Sections 8 and 9 provide the Town oversight of the use of sick leave through various mechanisms and requirements.

Article XI Section 10 was the subject of the First Panel's arbitrability Ruling and reads as follows:

SECTION 10

(a) Any permanent employee of the Police Department who has accumulated sick leave as of the effective date of this contract, and who continues to accumulate sick leave in compliance with this contract shall, prior to the actual date of his/her retirement, meet with the Chief of Police, and, in writing, advise the Chief of his/her intention to retire from Town Service. The total accumulated sick days credited and due such employee shall be computed and determined, and the employee shall be paid for the actual number of approved accredited sick leave days, not to exceed twenty-three (23) weeks for employees hired before January 1, 2004 or eighteen (18) weeks for employees hired on or after January 1, 2004, in a lump sum payment upon separation from Town service for the reason of retirement. Such payment shall be included in the computation of the employee's final average earnings for the purpose of pension benefits in accordance with the pension agreement.

(b) In the event of an employee's death, his/her spouse and/or minor children shall receive, on the basis of the employee's current wages full compensation for any of the employee's unused accumulation of sick leave up to a maximum of twenty-three (23) weeks for employees hired before January 1, 2004 or eighteen (18) weeks for employees hired on or after January 1, 2004.

The Town's rejection letter states that the reasons for the rejection of the award was "based on the Panel's failure to give proper considerations pursuant to C.G.S. Section 7-473c (d) (9) to the financial capability of the Town...and to the public interest as required by C.G.S. 7-473c (d) (9)."

The public interest criterion in MERA has equal priority to the financial capability criterion, inclusive of consideration of other demands on the financial capability and other factors. In this case, it must be discussed with reference to the lower priority criteria of the history of negotiations and salary and benefit comparability of other Town employee groups-Union and non-union- as well as other comparable similar employees.

The Town claims that its last best offers on these issues best satisfy the statutory factor of

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the Town's financial capability and the public interest as outlined in its rejection letter<sup>3</sup> based on the record evidence.

The Union maintains that the its last best offers are supported by the First Panel's determination of the Town's financial capability as outweighed by the public interest criterion and is supported by a preponderance of evidence in the record. It emphasizes that the First Panel found that the public interest is also furthered by the recruitment and retention of highly qualified officers; that the employees' salaries are not as competitive as some neighboring municipalities; and, that the public interest is served as the employees retiring under the benefit have spent many years in reliance on the benefit.

We note that the evidence demonstrates and the Union emphasizes that Town residents carry a minimal amount of the Town's tax burden that is mostly carried by commercial taxpayers.

The residents of the Town of East Hartford carry only 56.4% of the tax burden on residential property, as opposed to a 71.3% average for the rest of the State. (Municipal Fiscal Indicators, Town Exhibit 47, p. b22-b24). Examination of this exhibit shows East Hartford among the lowest residential taxpayers and among the highest for commercial and industrial contribution.

(Union brief, p. 65)

Our review of the Contract terms under which such accumulated sick/terminal leave has been calculated shows that the Parties have negotiated over the terms of sick leave accumulation over a period of years that has resulted in strict terms for unused sick leave accumulation and Town oversight.

In fact, the maximum unused accumulated sick leave benefit maxed out for unit members hired before January 1, 2004 at Twenty-three (23) weeks and was reduced for future unit employees after January 1, 2004 to eighteen (18) weeks resulting in already diminished accumulated leave for members of the unit.

The Review Panel finds that the public interest is embodied in the public policy continuum

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<sup>3</sup> See pages 3 to 6 of the April 26, 2013 Rejection Letter that reiterates the basis of its argument as submitted by the Town in pages 3 to 7 of the January 4, 2013 Post Hearing Brief, including the discussion of wealth indicators as well as other pension and health demands; and, the Town's general liabilities.

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represented by the provisions of the Municipal Employees' Relations Act that incorporates a series of steps in the collective bargaining process including negotiations, non-mandatory mediation and binding interest arbitration to ensure that the recognized bargaining units and the municipal employers move in a timely manner toward a binding settlement of labor issues concerning wages, hours and working conditions. The law prohibits strikes by public employees.

That public policy framework acknowledges that the Parties reached agreements over a history of bargaining and mandates that evidence of both the financial capability in light of other factors and the public interest determine the outcome of the process.

The Parties both presented evidence with regard to the financial capability of the Town that must be viewed in light of its negotiations with this unit; other Town personnel; and, other similar employees in like communities with similar financial capability.

We were not persuaded by the record evidence that the Town's last best offer on either Issue 5 or Issue 6 should be adopted. We emphasize that it is primary in consideration of public interest for the Town to employ and retain a qualified and highly trained police force. The fact that the unit members have accumulated accrued sick leave shows the commitment of the existing unit members.

The Town's evidence establishes the impact that its last best offers will have on selected examples of employees for normal retirement, non-service connected disability retirement and service connected disability retirement.<sup>4</sup> One example is a Police Officer hired in 1978 who will retire with a normal pension at the age of 62. The Town's last best offer would result in a 10.6% difference in his/her pension benefit for the remainder of his life. Current members do not pay into Social Security. The benefit, per contract, is provided to the employee's beneficiaries in the event of an employee's death.

The evidence shows that the Town's last best offer would result in the treatment of these unit members differently than other Town employees—both Union and non-union. All employees are included in the same Town pension plan but the evidence shows that the Town minimized its exposure with other Town units with reference to accumulated accrued sick leave by elimination of the sick leave buyout for only new hires. That was done with this unit in 2004.

The evidence also establishes that the unit members existing salaries are not as

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<sup>4</sup> Town Exhibits 3-5, Tr. 3/15, p 38-55.



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competitive as those in comparable municipalities. We find that the attraction and retention of highly qualified police personnel are certainly in the public interest.

The fact that the Town claims some minimal annual savings in the Town's annual budget must be weighed against the interest in retaining the benefit for those employees who have not utilized the sick leave benefit and have relied on the benefit outlined in the current language. We find that claimed annual savings to be speculative, whereas adoption of the change in benefit will undoubtedly affect the existing and future employees benefit payment, as well as employee morale, etc.

Based on the foregoing, we find that the Town has the financial capability to pay the continued benefits as awarded by the First Panel and it is in the public interest for the Town to retain and continue the existing benefit for existing employees who have relied on this accrued sick leave benefit to be included in calculation of the retirement benefit. We note that the evidence shows that the Town has accomplished some savings in this area by eliminating the benefit for future hires as it relates to other bargaining units.

## **AWARD**

Based on a preponderance of the evidence submitted by the Parties as included in the record of the First Arbitration Panel and giving priority to the public interest and the financial capability of the Town, and, in consideration of the other statutory factors in light of that priority criterion, the Second Arbitration Review Panel unanimously concurs with the Award of the First Panel and awards the last best offer of the Union for Issues 5 and 6.

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## **Issue 7**

**Contract Provisions:** Article III, Sections 2-3, Paragraphs 53-57, 148

**Subject:** Pension Eligibility for Employees Hired After January 1, 2013

### **Current Language:**

- 53 Section 2. An Employee who enters the service of the Employer on or after October 1, 1972, will become an eligible Employee if the following conditions are met:
- 54 (a) Under age 45 -- as a condition of employment, it is mandatory that an Employee becomes covered under the Retirement System within 3 months after his or her employment commences.
- 55 (b) He or she has reached his or her 45th birthday -- as a condition of employment, it is not mandatory that an Employee becomes covered under the Retirement System; however, he or she must apply within 3 months of entering the service of the Town. If such Employee does not apply then, he or she must do so within 2 years of his or her employment date, and in order to be credited with such service, he or she must pay all back contributions with Interest thereon.
- 56 (c) All Employees must make their Employee contributions while eligible to do so. No credit will be granted during any period when the Employee does not make the necessary contributions to the Retirement System.

### **Town's Last Best Offer:**

Section 2. An Employee who enters the service of the Employer on or after October 1, 1972 and before January 1, 2013 will become an eligible Employee if the following conditions are met:

- (a) Under age 45 -- as a condition of employment, it is mandatory that an Employee becomes covered under the Retirement System within 3 months after his or her employment commences.
- (b) He or she has reached his or her 45th birthday -- as a condition of employment, it is not mandatory that an Employee becomes covered under the Retirement System; however, he or she must apply within 3 months of entering the service of the Town. If such Employee does not apply then, he or she must do so within 2 years of his or her employment date,

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and in order to be credited with such service, he or she must pay all back contributions with Interest thereon.

- (c) All Employees must make their Employee contributions while eligible to do so. No credit will be granted during any period when the Employee does not make the necessary contributions to the Retirement System.

Section 3. Employees who enter the service of the Employer on or after January 1, 2013 will become a member of the Defined Contribution Plan for Full-Time Employees of the Police Department of the Town of East Hartford (the "Defined Contribution Plan") attached hereto as Appendix A. However, such employees will be eligible to receive benefits equal to the disability benefit and service connected death benefit set forth in Article V and Article VIII, Section 1, respectively, of this Agreement, in accordance with the rules of those articles and sections. Any disability benefits awarded in accordance with this paragraph will be reduced by the value of the Employer's contribution to the Defined Contribution Plan, including investment earnings, through the date of disability and reduced by disability benefits awarded to the Employee under social security, if any.

The Town's last best offer (Issue 7, paragraph 148):

## **APPENDIX A**

### **DEFINED CONTRIBUTION PLAN FOR FULL-TIME EMPLOYEES OF THE POLICE DEPARTMENT OF THE TOWN OF EAST HARTFORD**

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**DEFINED CONTRIBUTION PLAN  
FOR FULL-TIME EMPLOYEES OF THE TOWN OF EAST HARTFORD**

**WITNESSETH:**

WHEREAS, the Town of East Hartford (herein referred to as the "Employer") wishes to establish a Profit Sharing Plan effective January 1, 2013, (hereinafter called the "Effective Date") known as Defined Contribution Plan for Full-Time Employees of the Police Department of the Town of East Hartford (herein referred to as the "Plan") in recognition of the contribution made to its successful operation by its Employees and for the exclusive benefit of its Eligible Employees; and

WHEREAS, the Plan is a "governmental Plan" within the meaning of the Code Section 414(d) and any provisions in this volume submitter specimen Plan which are inapplicable to a governmental Plan shall be disregarded.

NOW THEREFORE, effective January 1, 2013, the Employer hereby establishes the Plan for the exclusive benefit of the Participants and their beneficiaries, to provide as follows:

**ARTICLE I  
DEFINITIONS**

1.1 "Account" means any separate notational account established and maintained by the Administrator for each Participant under the Plan. The term "Participant's Account" or "Participant's Account Balance" generally means the sum of all Accounts being maintained for the Participant, which represents the Participant's total interest in the Plan. Section 6.8 contains a definition of "Participant's Account Balance" for purposes of that Section. To the extent applicable, a Participant may have any (or all) of the following notational Accounts:

- (a) the Employee Mandatory Contribution Account
- (b) the Employer Contribution Account
- (c) the Rollover Account
- (d) the Transfer Account

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(c) any other account, including an overlapping account or sub-account, necessary for the administration of the Plan

1.2 **[THIS SECTION IS RESERVED FOR FUTURE USE]**

1.3 **[THIS SECTION IS RESERVED FOR FUTURE USE]**

1.4 **[THIS SECTION IS RESERVED FOR FUTURE USE]**

1.5 **"Administrator"** means the Employer unless another person or entity has been designated by the Employer pursuant to Section 2.2 to administer the Plan on behalf of the Employer.

1.6 **"Affiliated Employer"** means any corporation which is a member of a controlled group of corporations (as defined in Code Section 414(b)) which includes the Employer; any trade or business (whether or not incorporated) which is under common control (as defined in Code Section 414(c)) with the Employer; any organization (whether or not incorporated) which is a member of an affiliated service group (as defined in Code Section 414(m)) which includes the Employer; and any other entity required to be aggregated with the Employer pursuant to Regulations under Code Section 414(o).

1.7 **"Anniversary Date"** means the last day of the Plan Year.

1.8 **"Annual Additions"** means, for purposes of applying the limitations of Code Section 415, the sum credited to a Participant's Accounts for any Limitation Year of (1) Employer contributions, (2) employee after-tax contributions, (3) forfeitures, (4) amounts allocated to an individual medical account, as defined in Code Section 415(l)(2) which is part of a pension or annuity plan maintained by the Employer, (5) amounts derived from contributions paid or accrued which are attributable to post-retirement medical benefits allocated to the separate account of a key employee (as defined in Code Section 419A(d)(3)) under a welfare benefit plan (as defined in Code Section 419(e)) maintained by the Employer and (6) allocations under a simplified employee pension plan.

Annual Additions do not include the transfers of funds from one plan to another. In addition, the following are not Annual Additions for the purposes of this definition: (1) rollover contributions as defined in Code Sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3) and 457(e)(16); (2) repayments of loans made to a Participant from the Plan; (3) repayment of distributions received by an Employee pursuant to Code Section 411(a)(7)(B) (cash-outs); (4) repayment of distributions received by an Employee pursuant to Code Section 411(a)(3)(D) (mandatory contributions); and (5) employee contributions to a simplified employee pension excludable from gross income under Code Section 408(k)(6).

1.9 **"Beneficiary"** means the person (or entity) to whom the share of a deceased Participant's interest in the Plan is payable. Section 6.8 contains a definition of "designated Beneficiary" for purposes of that Section.

1.10 **"Code"** means the Internal Revenue Code of 1986, as amended or replaced from time to time.

1.11 **"Compensation"** means, with respect to any Participant and except as otherwise provided herein, such Participant's base salary, including overtime payments.

For purposes of this Section, the determination of Compensation shall be made by:

(a) including amounts which are contributed by the Employer pursuant to a salary reduction agreement and which are not includible in the gross income of the Participant under Code Sections 125, 132(f)(4), 402(e)(3), 402(h)(1)(B), 403(b) or 457(b), and employee contributions described in Code Section 414(h)(2) that are treated as Employer contributions. For this purpose, effective January 1, 1998, amounts not includible in gross income under Code Section 125 shall be deemed to



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include any amounts not available to a Participant in cash in lieu of group health coverage because the Participant is unable to certify that the Participant has other health coverage, provided the Employer does not request or collect information regarding the Participant's other health coverage as part of the enrollment process for the health plan.

(b) excluding pre-participation Compensation paid during the Plan Year while not a Participant.

(c) excluding lump sum sick leave and accrued vacation paid at the separation of employment.

For Plan Years beginning on or after January 1, 2002, Compensation in excess of \$200,000 (or such other amount provided in the Code) shall be disregarded for all purposes. Such amount shall be adjusted for increases in the cost-of-living in accordance with Code Section 401(a)(17)(B), except that the dollar increase in effect on January 1 of any calendar year shall be effective for the Plan Year beginning with or within such calendar year. For any "determination period" of less than twelve (12) months, the Compensation limit shall be an amount equal to the Compensation limit for the calendar year in which the "determination period" begins multiplied by the ratio obtained by dividing the number of full months in the short "determination period" by twelve (12). A "determination period" is not less than twelve (12) months solely because a Participant's Compensation does not include Compensation paid during a "determination period" while the Participant was not a Participant in the Plan.

If any Employees are excluded from the Plan, then Compensation for any such Employees who become eligible or cease to be eligible to participate in the Plan during a Plan Year shall only include Compensation while such Employees are Eligible Employees of the Plan.

For purposes of this Section, if the Plan is a plan described in Code Section 413(c) or 414(f) (a plan maintained by more than one Employer), the limitation applies separately with respect to the Compensation of any Participant from each Employer maintaining the Plan.

If, in connection with the adoption of any amendment, the definition of Compensation has been modified, then, except as otherwise provided herein, for Plan Years prior to the Plan Year which includes the adoption date of such amendment, Compensation means compensation determined pursuant to the terms of the Plan then in effect.

1.12 "Contract" or "Policy" means any life insurance policy, retirement income policy or annuity contract (group or individual) issued pursuant to the terms of the Plan. In the event of any conflict between the terms of this Plan and the terms of any contract purchased hereunder, the Plan provisions shall control.

1.13 **[THIS SECTION IS RESERVED FOR FUTURE USE]**

1.14 "Custodian" means a person or entity that has custody of all or any portion of the Plan assets.

1.15 "Designated Investment Alternative" means a specific investment identified by name by the Employer (or such other Fiduciary who has been given the authority to select investment options) as an available investment under the Plan to which Plan assets may be invested by the Trustee pursuant to the investment direction of a Participant.

1.16 "Directed Account" means that portion of a Participant's interest in the Plan with respect to which the Participant has directed the investment in accordance with the Participant Direction Procedures.

1.17 "Directed Investment Option" means a Designated Investment Alternative and any other investment permitted by the Plan and the Participant Direction Procedures to which Plan assets may be invested by the Trustee pursuant to the investment direction of a Participant.

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1.18 **"Early Retirement Date."** This Plan does not provide for a retirement date prior to Normal Retirement Date.

1.19 **"Earned Income"** means with respect to a Self-Employed Individual, the net earnings from self-employment in the trade or business with respect to which the Plan is established, for which the personal services of the individual are a material income-producing factor. Net earnings will be determined without regard to items not included in gross income and the deductions allocable to such items. Net earnings are reduced by contributions by the Self-Employed Individual to a qualified Plan to the extent deductible under Code Section 404. In addition, net earnings shall be determined with regard to the deduction allowed to the Self-Employed Individual by Code Section 164(f).

If any combination of bonuses, commissions, tips, overtime, moving expenses, fringe benefits, or any other element of compensation is excluded from Compensation for the purpose of determining any contribution, then for the purpose of determining the amount of such contribution on behalf of any Self-Employed Individual, such person's Earned Income will be reduced in the same proportion that the "includible compensation" of "common law participants" bears to the "total compensation" of all "common law participants."

For purposes of the preceding paragraph, "common law participant" means a Participant who is neither a Highly Compensated Employee nor a Self-Employed Individual, "includible compensation" means the amount of Compensation taken into account in determining the amount of such contribution for "common law participants," and "total compensation" means the amount of Compensation that would have been taken into account in determining such contribution for "common law participants" if (1) no element of Compensation had been excluded in determining such contribution, and (2) all of the following are included in Compensation: any amount which is contributed by the Employer at the election of the Participant pursuant to a salary reduction agreement and which is not includible in the gross income of the Participant by reason of Code Sections 125, 132(f)(4), 402(e)(3), 402(h)(1)(B), 403(b) or 457(b), and employee contributions described in Code Section 414(h)(2) that are treated as Employer contributions.

However, to the extent that the amount of "includible compensation" for "common law participants" includes any amount which is contributed by the Employer at the election of the Participant pursuant to a salary reduction agreement and which is not includible in the gross income of the Participant by reason of Code Sections 125, 132(f)(4), 402(e)(3), 402(h)(1)(B), 403(b) or 457(b), and employee contributions described in Code Section 414(b)(2) that are treated as Employer contributions, then those amounts shall be added back to Earned Income after making the adjustment described in the preceding paragraph.

1.20 **"Eligible Employee"** means any full-time active Employee who is in the uniformed or investigatory service of the East Hartford Police Department with the authority to exercise police powers, except as provided in any other particular provision for the limited purposes of that provision, who is either (i) hired on or after January 1, 2013, or (ii) was hired prior to January 1, 2013 but elected to transfer his account balance under the Retirement Plan to this Plan, in accordance with Section 3.1.

1.21 **"Employee"** means any common law employee, Self-Employed Individual, Leased Employee or other person to the extent that the Code treats such an individual as an employee of the Employer for purposes of the Plan, such as (for certain purposes) any person who is employed by an Affiliated Employer.

1.22 **"Employee Contribution"** means the amount a Participant is required to contribute to the Plan pursuant to Section 4.10.

1.23 **"Employee Contribution Account"** means the account established by the Administrator for each Participant with respect to the Participant's total interest in the Plan resulting from the Participant's mandatory contributions made pursuant to Section 4.10 of the Plan.

1.24 **"Employee Mandatory Contribution"** means any Employee contribution that is required as a condition of participation and that is made to the Plan by the Participant pursuant to Section 4.10.

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1.25 **"Employee Mandatory Contribution Account"** means the separate account established and maintained by the Administrator for each Participant with respect to the Participant's total interest in the Plan resulting from Employee Mandatory Contributions. **"Employer" or "Town"** means Town of East Hartford. The Employer is a municipal government organization, with principal offices in the State of Connecticut.

1.26 **"Employer Contribution"** means any Employer contribution that is made to the Plan pursuant to Section 4.1.

1.27(a) **"Employer Contribution Account"** means the separate account established and maintained by the Administrator for each Participant with respect to the Participant's total interest in the Plan resulting from Employer Contributions.

1.27 **"Fiduciary"** means any person who (a) exercises any discretionary authority or discretionary control respecting management of the Plan or exercises any authority or control respecting management or disposition of its assets, (b) renders investment advice for a fee or other compensation, direct or indirect, with respect to any monies or other property of the Plan or has any authority or responsibility to do so, or (c) has any discretionary authority or discretionary responsibility in the administration of the Plan.

1.28 **"Fiscal Year"** means the Employer's accounting year of 12 months commencing on July 1 of each year and ending the following June 30.

1.29 **"Forfeiture"** means that portion of a Participant's Account that is not Vested, and which becomes a Forfeiture at the time described below:

The earlier of:

(a) the distribution of the entire Vested portion of the Participant's Account of a former Participant who has severed employment with the Employer, or

(b) the last day of the Plan Year in which a former Participant who has severed employment with the Employer incurs a number of consecutive 1-Year Breaks in Service in excess of his or her pre-break Period of Service.

In addition, the term "Forfeiture" shall also include amounts deemed to be Forfeitures pursuant to any other provisions of this Plan.

Regardless of the preceding provisions, if a Participant is eligible to share in the allocation of Forfeitures in the year in which the Forfeiture would otherwise occur, then the Forfeiture will not occur until the end of the subsequent Plan Year.

For purposes of this Plan, any Forfeiture will be disposed of in the Plan Year in which the Forfeiture arises.

1.30 **"Former Employee"** means an Employee who had a severance from employment with the Employer or an Affiliated Employer.

1.31 **"415 Compensation"** with respect to any Participant means such Participant's wages as defined in Code Section 3401(a) and all other payments of compensation by the Employer (in the course of the Employer's trade or business) for a Plan Year for which the Employer is required to furnish the Participant a written statement under Code Sections 6041(d), 6051(a)(3) and 6052. 415 Compensation must be determined without regard to any rules under Code Section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for

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agricultural labor in Code Section 3401(a)(2)). 415 Compensation for any Self-Employed Individual shall be equal to such individual's Earned Income.

Notwithstanding the above, the determination of 415 Compensation shall be made by:

(a) including any amount which is contributed by the Employer at the election of the Participant pursuant to a salary reduction agreement and which is not includible in the gross income of the Participant by reason of Code Sections 125, 132(f)(4), 402(e)(3), 402(h)(1)(B), 403(b) or 457(b), and employee contributions described in Code Section 414(h)(2) that are treated as Employer contributions. For this purpose, effective January 1, 1998, amounts not includible in gross income under Code Section 125 shall be deemed to include any amounts not available to a Participant in lieu of group health coverage because the Participant is unable to certify that the Participant has other health coverage, provided the Employer does not request or collect information regarding the Participant's other health coverage as part of the enrollment process for the health plan.

1.32 including Post-Severance Compensation. "414(s) Compensation" means 415 Compensation or any other definition of compensation that satisfies the nondiscrimination requirements of Code Section 414(s) and the Regulations thereunder. The period for determining 414(s) Compensation must be either the Plan Year or the calendar year ending with or within the Plan Year. An Employer may further limit the period taken into account to that part of the Plan Year or calendar year in which an Employee was a Participant. The period used to determine 414(s) Compensation must be applied uniformly to all Participants for the Plan Year.

1.33 **[THIS SECTION IS RESERVED FOR FUTURE USE]**

1.34 **[THIS SECTION IS RESERVED FOR FUTURE USE]**

1.35 "Hour of Service" means (1) each hour for which an Employee is directly or indirectly compensated or entitled to Compensation by the Employer for the performance of duties (these hours will be credited to the Employee for the computation period in which the duties are performed); (2) each hour for which an Employee is directly or indirectly compensated or entitled to compensation by the Employer (irrespective of whether the employment relationship has terminated) for reasons other than performance of duties (such as vacation, holidays, sickness, jury duty, disability, lay-off, military duty or leave of absence) during the applicable computation period (these hours will be calculated and credited pursuant to Department of Labor regulation 2530.200b-2, which is incorporated herein by reference); (3) each hour for which back pay is awarded or agreed to by the Employer without regard to mitigation of damages (these hours will be credited to the Employee for the computation period or periods to which the award or agreement pertains rather than the computation period in which the award, agreement or payment is made). The same Hours of Service shall not be credited both under (1) or (2), as the case may be, and under (3).

Notwithstanding (2) above, (i) no more than 501 Hours of Service are required to be credited to an Employee on account of any single continuous period during which the Employee performs no duties (whether or not such period occurs in a single computation period); (ii) an hour for which an Employee is directly or indirectly paid, or entitled to payment, on account of a period during which no duties are performed is not required to be credited to the Employee if such payment is made or due under a plan maintained solely for the purpose of complying with applicable worker's compensation, or unemployment compensation or disability insurance laws; and (iii) Hours of Service are not required to be credited for a payment which solely reimburses an Employee for medical or medically related expenses incurred by the Employee.

For purposes of (2) above, a payment shall be deemed to be made by or due from the Employer regardless of whether such payment is made by or due from the Employer directly, or indirectly through, among others, a trust fund, or insurer, to which the Employer contributes or pays premiums and regardless of whether contributions made or due to the trust fund, insurer, or other entity are for the benefit of particular Employees or are on behalf of a group of Employees in the aggregate.

Each Employee shall be credited with such Employee's actual Hours of Service.

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For purposes of this Section, Hours of Service will be credited for employment with any Affiliated Employers. The provisions of Department of Labor regulations 2530.200b-2(b) and (c) are incorporated herein by reference.

1.36 **[THIS SECTION IS RESERVED FOR FUTURE USE]**

1.37 **"Investment Manager"** means any Fiduciary described in Act Section 3(38).

1.38 **"Late Retirement Date"** means a Participant's actual Retirement Date after having reached Normal Retirement Date.

1.39 **"Leased Employee"** means any person (other than an Employee of the recipient Employer) who, pursuant to an agreement between the recipient Employer and any other person or entity ("leasing organization"), has performed services for the recipient (or for the recipient and related persons determined in accordance with Code Section 414(n)(6)) on a substantially full time basis for a period of at least one year, and such services are performed under primary direction or control by the recipient Employer. Contributions or benefits provided a Leased Employee by the leasing organization which are attributable to services performed for the recipient Employer shall be treated as provided by the recipient Employer. Furthermore, Compensation for a Leased Employee shall only include Compensation from the leasing organization that is attributable to services performed for the recipient Employer.

A Leased Employee shall not be considered an employee of the recipient Employer if: (a) such employee is covered by a money purchase pension plan providing: (1) a non-integrated employer contribution rate of at least ten percent (10%) of compensation, as defined in Code Section 415(c)(3), (2) immediate participation, and (3) full and immediate vesting; and (b) leased employees do not constitute more than twenty percent (20%) of the recipient Employer's nonhighly compensated work force.

1.40 **"Limitation Year"** means the Plan Year. However, the Employer may elect a different Limitation Year by amending the Plan. All qualified plans maintained by the Employer must use the same Limitation Year. Furthermore, unless there is a change to a new Limitation Year, the Limitation Year will be a twelve (12) consecutive month period. In the case of an initial Limitation Year, the Limitation Year will be the twelve (12) consecutive month period ending on the last day of the initial Plan Year. If the Limitation Year is amended to a different twelve (12) consecutive month period, the new Limitation Year must begin on a date within the Limitation Year in which the amendment is made.

1.41 **[THIS SECTION IS RESERVED FOR FUTURE USE]**

1.42 **[THIS SECTION IS RESERVED FOR FUTURE USE]**

1.43 **[THIS SECTION IS RESERVED FOR FUTURE USE]**

1.44 **"Normal Retirement Age"** means the later of a Participant's 50th birthday and completion of a five-year Period of Service.

1.45 **"Normal Retirement Date"** means the date a Participant attains Normal Retirement Age.

1.46 **"1-Year Break in Service"** means, for purposes of vesting, a Period of Severance of at least 12 consecutive months.

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1.47 **[THIS SECTION IS RESERVED FOR FUTURE USE]**

1.48 **"Participant"** means any Employee or Former Employee who has satisfied the requirements of Sections 3.1 and 3.2 and entered the Plan and is eligible to accrue benefits under the Plan. In addition, the term "Participant" also includes any individual who was a Participant (as defined in the preceding sentence) and who must continue to be taken into account under a particular provision of the Plan (e.g., because the Participant has an Account Balance in the Plan).

1.49 **"Participant Direction Procedures"** means such instructions, guidelines or policies, the terms of which are incorporated herein, as shall be established pursuant to Section 4.11 and observed by the Administrator and applied and provided to Participants who have Participant Directed Accounts.

1.50 **"Participating Employer"** means an Employer who adopts the Plan pursuant to Section 9.1.

1.51 **"Period of Service"** means each twelve (12) month period of service commencing with the Employee's first day of employment or reemployment with the Employer or Affiliated Employer and ending on the date a 1-Year Break in Service begins. The first day of employment or reemployment is the first day the Employee performs an Hour of Service. An Employee who incurs a Period of Severance of twelve (12) months or less will also receive service-spanning credit for all such Periods of Severance. Fractional periods of a year will be expressed in terms of days. A Participant's whole year Periods of Service is equal to the sum of all full and partial periods of service, whether or not such service is continuous or contiguous, and whether or not such service is actual service or imputed service (under the service-spanning rule above), expressed in the number of whole years represented by such sum.

Periods of Service with any Affiliated Employer shall be recognized. Furthermore, Periods of Service with any predecessor employer that maintained this Plan shall be recognized.

In the event the method of crediting service is amended from the hour-of-service method to the elapsed-time method, an Employee will receive credit for a Period of Service consisting of:

- (a) A number of years equal to the number of Years of Service credited to the Employee before the computation period during which the amendment occurs; and
- (b) The greater of (1) the Periods of Service that would be credited to the Employee under the elapsed-time method for service during the entire computation period in which the amendment occurs or (2) the service taken into account under the hour-of-service method as of the date of the amendment.

In addition, the Employee will receive credit for service subsequent to the amendment commencing on the day after the last day of the computation period in which the amendment occurs.

1.52 **"Period of Severance"** means a continuous period of time during which an Employee is not employed by the Employer. Such period begins on the date the Employee retires, quits or is discharged, or if earlier, the twelve (12) month anniversary of the date on which the Employee was otherwise first absent from service. In the case of an individual who is absent from work for maternity or paternity reasons, the twelve (12) consecutive month period beginning on the first anniversary of the first day of such absence shall not constitute a 1-Year Break in Service. For purposes of this paragraph, an absence from work for maternity or paternity reasons means an absence (a) by reason of the pregnancy of the individual, (b) by reason of the birth of a child of the individual, (c) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or (d) for purposes of caring for such child for a period beginning immediately following such birth or placement.

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1.53 "Plan" means this instrument, including all amendments thereto.

1.54 "Plan Year" means the Plan's accounting year of twelve (12) months commencing on January 1 of each year and ending the following December 31.

1.55 "Post-Severance Compensation" means payments made within 2 1/2 months after severance from employment (within the meaning of Code Section 401(k)(2)(B)(i)(I)) if they are payments that, absent a severance from employment, would have been paid to the Employee while the Employee continued in employment with the Employer and are regular compensation for services during the Employee's regular working hours, compensation for services outside the Employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar compensation, and payments for accrued bona fide sick, vacation or other leave, but only if the Employee would have been able to use the leave if employment had continued. Any payments not described above are not considered compensation if paid after severance from employment, even if they are paid within 2 1/2 months following severance from employment, except for payments to an individual who does not currently perform services for the Employer by reason of qualified military service (within the meaning of Code Section 414(u)(1)) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service.

1.56 **[THIS SECTION IS RESERVED FOR FUTURE USE]**

1.57 **[THIS SECTION IS RESERVED FOR FUTURE USE]**

1.58 "Regulation" means the Income Tax Regulations as promulgated by the Secretary of the Treasury or a delegate of the Secretary of the Treasury, and as amended from time to time.

1.59 "Retirement Date" means the date as of which a Participant retires whether such retirement occurs on a Participant's Normal Retirement Date or Late Retirement Date.

1.60 "Rollover Account" means the separate account established and maintained by the Administrator for each Participant with respect to such Participant's interest in the Plan resulting from amounts that are rolled over from another plan or Individual Retirement Account in accordance with Section 4.9. Amounts in the Rollover Account are not forfeitable when made.

A separate accounting shall be maintained with respect to any portion of the Rollover Account that is attributable to after-tax employee contributions.

1.61 "Self-Employed Individual" means an individual, other than an independent contractor, who has Earned Income for the taxable year from the trade or business for which the Plan is established, and, also, an individual who would have had Earned Income but for the fact that the trade or business had no net profits for the taxable year. A Self-Employed Individual shall be treated as an Employee.

1.62 **[THIS SECTION IS RESERVED FOR FUTURE USE]**

1.63 "Terminated Participant" means a person who has been a Participant, but whose employment has been terminated other than by death or retirement.

1.64 "Total Vested Benefit" means the total Participant's Vested Account balances derived from Employer and Employee Mandatory Contributions, including rollover contributions, whether vested before or upon death.

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1.65 "Transfer Account" means the separate account established and maintained by the Administrator for each Participant with respect to the Participant's total interest in the Plan resulting from amounts transferred to this Plan from a direct plan-to-plan transfer in accordance with Section 4.8. To the extent that the Plan is a direct or indirect transferee of a defined benefit or defined contribution pension plan, then the funds transferred to this Plan from such other plan shall be treated as funds that are subject to a life annuity form of payment as well as the survivor annuity requirements of Code Sections 401(a)(11) and 417 (and are part of the Participant's Qualified Pre-Retirement Survivor Annuity Account). The preceding sentence does not apply to amounts rolled over into a Participant's Rollover Account, even if from a pension plan. "Trustee" means the person or entity named as trustee herein or in any separate trust forming a part of this Plan, and any successors, effective upon the written acceptance of such person or entity to serve as Trustee.

1.66 "Trust Fund" means the assets of the Plan and Trust as the same shall exist from time to time.

1.67 "Valuation Date" means the Anniversary Date and may include any other date or dates deemed necessary or appropriate by the Administrator for the valuation of the Participants' Accounts during the Plan Year, which may include any day that the Trustee, any transfer agent appointed by the Trustee or the Employer or any stock exchange used by such agent, is open for business. Nothing in this Plan requires or implies a uniform Valuation Date for all Accounts; thus certain valuation provisions that apply to an Account that is not valued on each business day will have no application, in operation, to an Account that is valued on each business day.

1.68 "Vested" means the nonforfeitable portion of any account maintained on behalf of a Participant.

## **ARTICLE II ADMINISTRATION**

### **2.1 POWERS AND RESPONSIBILITIES OF THE EMPLOYER**

- (a) **Appointment of Trustee and Administrator.** In addition to the general powers and responsibilities otherwise provided for in this Plan, the Employer shall be empowered to appoint and remove the Trustee and the Administrator from time to time as it deems necessary for the proper administration of the Plan to ensure that the Plan is being operated for the exclusive benefit of the Participants and their Beneficiaries in accordance with the terms of the Plan and the Code. The Employer may appoint counsel, specialists, advisers, agents (including any nonfiduciary agent) and other persons as the Employer deems necessary or desirable in connection with the exercise of its fiduciary duties under this Plan. The Employer may compensate such agents or advisers from the assets of the Plan as fiduciary expenses (but not including any business (settlor) expenses of the Employer), to the extent not paid by the Employer.
- (b) The Employer shall establish a "funding policy and method," i.e., it shall determine whether the Plan has a short run need for liquidity (e.g., to pay benefits) or whether liquidity is a long run goal and investment growth (and stability of same) is a more current need, or shall appoint a qualified person to do so. The Employer or its delegate shall communicate such needs and goals to the Trustee, who shall coordinate such Plan needs with its investment policy. The communication of such a "funding policy and method" shall not, however, constitute a directive to the Trustee as to the investment of the Trust Funds. Such "funding policy and method" shall be consistent with the objectives of the Plan.
- (c) The Employer shall periodically review the performance of any Fiduciary or other person to whom duties have been delegated or allocated by it under the provisions of this Plan or pursuant to procedures established hereunder. This requirement may be satisfied by formal periodic review by the Employer or by a qualified person specifically



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designated by the Employer, through day-to-day conduct and evaluation, or through other appropriate ways.

- (d) The Employer shall establish a procedure by which mandatory Employee Contributions are to be made to the Trustee pursuant to the Plan. Such procedure may be by payroll deduction or such other method as determined by the Employer.

## **2.2 DESIGNATION OF ADMINISTRATIVE AUTHORITY**

The Employer shall be the Administrator. The Employer may appoint any person, including, but not limited to, the Employees of the Employer, to perform the duties of the Administrator. Any person so appointed shall signify acceptance by filing written acceptance with the Employer. Upon the resignation or removal of any individual performing the duties of the Administrator, the Employer may designate a successor.

## **2.3 ALLOCATION AND DELEGATION OF RESPONSIBILITIES**

If more than one person is serving as Administrator, the responsibilities of each Administrator may be specified by the Employer and accepted in writing by each Administrator. In the event that no such delegation is made by the Employer, the Administrators may allocate the responsibilities among themselves, in which event the Administrators shall notify the Employer and the Trustee in writing of such action and specify the responsibilities of each Administrator. The Trustee thereafter shall accept and rely upon any documents executed by the appropriate Administrator until such time as the Employer or the Administrators file with the Trustee a written revocation of such designation.

### **POWERS AND DUTIES OF THE ADMINISTRATOR**

The primary responsibility of the Administrator is to administer the Plan for the exclusive benefit of the Participants and their Beneficiaries, subject to the specific terms of the Plan. The Administrator shall administer the Plan in accordance with its terms and shall have the power and discretion to construe the terms of the Plan and to determine all questions arising in connection with the administration, interpretation, and application of the Plan. Benefits under this Plan will be paid only if the Administrator decides in its discretion that the applicant is entitled to them. Any such determination by the Administrator shall be conclusive and binding upon all persons. The Administrator may establish procedures, correct any defect, supply any information, or reconcile any inconsistency in such manner and to such extent as shall be deemed necessary or advisable to carry out the purpose of the Plan; provided, however, that any procedure, discretionary act, interpretation or construction shall be done in a nondiscriminatory manner based upon uniform principles consistently applied and shall be consistent with the intent that the Plan shall continue to be deemed a qualified plan under the terms of Code Section 401(a). The Administrator shall have all powers necessary or appropriate to accomplish the Administrator's duties under the Plan.

The Administrator shall be charged with the duties of the general administration of the Plan as set forth under the terms of the Plan, including, but not limited to, the following:

- (a) the discretion to determine all questions relating to the eligibility of Employees to participate or remain a Participant hereunder and to receive benefits under the Plan;
- (b) the authority to review and settle all claims against the Plan, including claims where the settlement amount cannot be calculated or is not calculated in accordance with the Plan's benefit formula. This authority specifically permits the Administrator to settle disputed claims for benefits and any other disputed claims made against the Plan;
- (c) to compute, certify, and direct the Trustee with respect to the amount and the kind of benefits to which any Participant shall be entitled hereunder;

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- (d) to authorize and direct the Trustee with respect to all discretionary or otherwise directed disbursements from the Trust;
- (e) to maintain all necessary records for the administration of the Plan;
- (f) to interpret the provisions of the Plan and to make and publish such rules for regulation of the Plan as are consistent with the terms hereof;
- (g) to determine the size and type of any Contract to be purchased from any insurer, and to designate the insurer from which such Contract shall be purchased;
- (h) to compute and certify to the Employer and to the Trustee from time to time the sums of money necessary or desirable to be contributed to the Plan;
- (i) to consult with the Employer and the Trustee regarding the short and long-term liquidity needs of the Plan in order that the Trustee can exercise any investment discretion (if the Trustee has such discretion) in a manner designed to accomplish specific objectives;
- (j) to prepare and implement a procedure for notifying prospective Eligible Employees of their requirement to make Employee Mandatory Contributions to the Plan as a condition of eligibility;
- (k) to determine the validity of, and take appropriate action with respect to, any qualified domestic relations order received by it; and
- (l) to assist any Participant regarding the Participant's rights, benefits, or elections available under the Plan.

#### **2.4 RECORDS AND REPORTS**

The Administrator shall keep a record of all actions taken and shall keep all other books of account, records, policies, and other data that may be necessary for proper administration of the Plan.

#### **2.5 APPOINTMENT OF ADVISERS**

The Administrator, or the Trustee with the consent of the Administrator, may appoint counsel, specialists, advisers, agents (including no fiduciary agents) and other persons as the Administrator or the Trustee deems necessary or desirable in connection with the administration of this Plan, including but not limited to agents and advisers to assist with the administration and management of the Plan, and thereby to provide, among such other duties as the Administrator may appoint, assistance with maintaining Plan records and the providing of investment information to the Plan's investment fiduciaries and to Plan Participants.

#### **2.6 PAYMENT OF EXPENSES**

All reasonable expenses of administration may be paid out of the Plan assets unless paid by the Employer. Such expenses shall include any expenses incident to the functioning of the Administrator, or any person or persons retained or appointed by any

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named Fiduciary incident to the exercise of their duties under the Plan, including, but not limited to, fees of accountants, counsel, Investment Managers, agents (including no fiduciary agents) appointed for the purpose of assisting the Administrator or the Trustee in carrying out the instructions of Participants as to the directed investment of their accounts (if permitted) and other specialists and their agents, and other costs of administering the Plan. Until paid, the expenses shall constitute a liability of the Trust Fund. In addition, unless specifically prohibited under statute, regulation or other guidance of general applicability, the Administrator may charge to the Account of an individual Participant a reasonable charge to offset the cost of making a distribution to the Participant, Beneficiary, or alternate payee under a qualified domestic relation order, as defined in Code Section 414(p). If liquid assets of the Plan are insufficient to cover the fees of the Trustee or the Plan Administrator, then Plan assets shall be liquidated to the extent necessary for such fees. In the event any part of the Plan assets becomes subject to tax, all taxes incurred will be paid from the Plan assets. Until paid, the expenses shall constitute a liability of the Trust Fund.

### **ARTICLE III**

#### **ELIGIBILITY**

##### **3.1 CONDITIONS OF ELIGIBILITY**

Eligibility.

(a) An Eligible Employee who was hired on or after January 1, 2013 shall be eligible to participate hereunder on the date such Employee completes an Hour of Service.

(b) An Eligible Employee who was hired before January 1, 2013 shall only be eligible to participate hereunder if he makes an irrevocable election to transfer his account under the Retirement Plan to this Plan in accordance with procedures established by the Administrator for that purpose.

##### **3.2 EFFECTIVE DATE OF PARTICIPATION**

An Eligible Employee shall become a Participant effective as of the date on which such Employee satisfies the eligibility requirements of Section 3.1.

##### **3.3 DETERMINATION OF ELIGIBILITY**

The Administrator shall determine the eligibility of each Employee for participation in the Plan based upon information furnished by the Employer. Such determination shall be conclusive and binding upon all persons, as long as the same is made pursuant to the Plan.

##### **3.4 TERMINATION OF ELIGIBILITY**

In the event a Participant shall go from a classification of an Eligible Employee to an ineligible Employee with respect to the Plan, then such Participant shall continue to Vest in the Plan for each Period of Service completed while an ineligible Employee, until such time as the Participant's Account is forfeited or distributed pursuant to the terms of the Plan. Additionally, the Participant's interest in the Plan shall continue to share in the earnings of the Trust Fund.

##### **3.5 [THIS SECTION IS RESERVED FOR FUTURE USE]**

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3.6 [THIS SECTION IS RESERVED FOR FUTURE USE]

3.7 [THIS SECTION IS RESERVED FOR FUTURE USE]

**3.8 OMISSION OF ELIGIBLE EMPLOYEE; INCLUSION OF INELIGIBLE EMPLOYEE**

If, in any Plan Year, any Employee who should be included as a Participant in the Plan is erroneously omitted and discovery of such omission is not made until after a contribution by the Employer for the year has been made and allocated, or any person who should not have been included as a Participant in the Plan is erroneously included, then the Employer shall apply the principles described by, and take corrective actions consistent with, the IRS Employee Plans Compliance Resolution System.

**ARTICLE IV  
CONTRIBUTION AND**

**ALLOCATION**

**4.1 FORMULA FOR DETERMINING EMPLOYER CONTRIBUTION**

For each Plan Year, the Employer shall contribute to the Plan:

(a) **Employer Contribution.** The Employer shall contribute to the Plan an amount equal to 4% of a Participant's Compensation each payroll period. The Employer shall not contribute on behalf of any Participant who does not make their Employee Mandatory Contribution.

(b) **Form of contribution.** All contributions by the Employer shall be made in cash.

**4.2 TIME OF PAYMENT OF EMPLOYER CONTRIBUTION**

Unless otherwise provided by contract or law, the Employer may make its contribution to the Plan for a particular Plan Year at such time as the Employer, in its sole discretion, determines. If the Employer makes a contribution for a particular Plan Year after the close of that Plan Year, then the Employer will designate to the Administrator the Plan Year for which the Employer is making its contribution.

**4.3 ALLOCATION OF CONTRIBUTION AND USAGE OF FORFEITURES AND EARNINGS**

(a) **Separate accounting.** The Administrator shall establish and maintain an account in the name of each Participant to which the Administrator shall credit as of each Anniversary Date, or other Valuation Date, all amounts allocated to a particular Account of each such Participant as set forth herein.

(b) **Allocation of contributions.** The Employer shall provide the Administrator with all information required by the Administrator to make a proper allocation of the Employer contributions for each Plan Year. Within a reasonable period of time after the date of receipt by the Administrator of such information, the Administrator shall allocate such contribution as follows:

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(1) **Employer Contributions.** The Administrator shall allocate such contribution to each Participant's Employer Contribution Account in accordance with Section 4.1(a).

(2) **Entitlement to Employer Contribution.** Any Participant employed during the Plan Year shall be eligible to share in the Employer Contribution for the year.

(c) **Usage of Forfeitures.** On or before each Anniversary Date, any Forfeitures may be made available to reinstate previously forfeited Account balances of Participants, if any, in accordance with Section 3.5(d), and any remaining Forfeitures may be used to satisfy any contribution that may be required pursuant to Section 3.8 or 6.10, or be used to pay any administrative expenses of the Plan. The remaining Forfeitures, if any, shall be allocated in the following manner:

(1) Forfeitures shall be used to reduce the Employer contribution for the Plan Year.

(d) **Allocation of earnings.** As of each Valuation Date, before the current valuation period allocation of Employer contributions, any earnings or losses (net appreciation or net depreciation) of the Trust Fund shall be allocated in the same proportion that each Participant's non-segregated accounts bear to the total of all Participants' non-segregated accounts as of such date. Earnings or losses with respect to a Participant's Directed Account shall be allocated in accordance with Section 4.11.

(e) **Incoming transfers and rollovers.** Participants' transfers from other qualified plans and rollovers deposited in the general Trust Fund shall share in any earnings and losses (net appreciation or net depreciation) of the Trust Fund in the same manner provided above. Each segregated account maintained on behalf of a Participant shall be credited or charged with its separate earnings and losses.

(f) **Delay in processing transactions.** Notwithstanding anything in this Section to the contrary, all information necessary to properly reflect a given transaction may not be available until after the date specified herein for processing such transaction, in which case the transaction will be reflected when such information is received and processed. Subject to express limits that may be imposed under the Code, the processing of any contribution, distribution or other transaction may be delayed for any legitimate business reason or force majeure (including, but not limited to, failure of systems or computer programs, failure of the means of the transmission of data, the failure of a service provider to timely receive values or prices, and the correction for errors or omissions or the errors or omissions of any service provider). The processing date of a transaction will be binding for all purposes of the Plan.

#### 4.4 **[THIS SECTION IS RESERVED FOR FUTURE USE]**

#### 4.5 **[THIS SECTION IS RESERVED FOR FUTURE USE]**

#### 4.6 **MAXIMUM ANNUAL ADDITIONS**

(a) **Maximum permissible amount.** Notwithstanding the foregoing, for Limitation Years beginning after December 31, 2001, the maximum Annual Additions credited to a Participant's Accounts for any Limitation Year shall equal the lesser of:

(1) \$40,000 adjusted annually as provided in Code Section 415(d) pursuant to the Regulations, or

(2) one-hundred percent (100%) of the Participant's 415 Compensation for such Limitation Year.

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The percentage limitation in paragraph (2) above shall not apply to: (1) any contribution for medical benefits (within the meaning of Code Section 419A(f)(2)) after separation from service which is otherwise treated as an annual addition, or (2) any amount otherwise treated as an annual addition under Code Section 415(l)(1).

For any short Limitation Year, the dollar limitation in paragraph (1) above shall be reduced by a fraction, the numerator of which is the number of full months in the short Limitation Year and the denominator of which is twelve (12).

(b) **Reasonable estimate permissible.** Prior to determining the Participant's actual 415 Compensation for the Limitation Year, the Employer may determine the maximum permissible amount for a Participant on the basis of a reasonable estimation of the Participant's 415 Compensation for the Limitation Year, uniformly determined for all Participants similarly situated. As soon as is administratively feasible after the end of the Limitation Year, the maximum permissible amount for the Limitation Year will be determined on the basis of the Participant's actual 415 Compensation for the Limitation Year.

(c) **Excess Annual Additions defined.** For purposes of this Article, the term "Excess Annual Additions" for any Participant for a Limitation Year means a Participant's Annual Additions under this Plan and such other plans of the Employer or Affiliated Employer that are in excess of the maximum permissible amount of Section 4.6 for a Limitation Year. The Excess Annual Additions will be deemed to consist of the Annual Additions last allocated, except that Annual Additions attributable to a simplified employee pension will be deemed to have been allocated first, followed by Annual Additions to a welfare benefit fund or individual medical account, and then by Annual Additions to a plan subject to Code Section 412, regardless of the actual allocation date.

(d) **Annual Additions can cease when maximum permissible amount reached.** If the Employer contribution that would otherwise be contributed or allocated to the Participant's Accounts would cause the Annual Additions for the Limitation Year to exceed the maximum permissible amount, then the amount that would otherwise be contributed or allocated will be reduced so that the Annual Additions for the Limitation Year will equal the maximum permissible amount, and any such amounts which would have been allocated to such Participant may be allocated to other Participants.

(e) **All DC plans treated as one plan.** For the purpose of this Section, all qualified defined contribution plans (regardless of whether such plan has terminated) maintained by the Employer during a Limitation Year shall be treated as one defined contribution plan.

(f) **All Employees of Related Employers treated as employed by one Employer.** For the purpose of this Section, if the Employer is a member of a controlled group of corporations, trades or businesses under common control (as defined by Code Section 1563(a) or Code Section 414(b) and (c) as modified by Code Section 415(h)), is a member of an affiliated service group (as defined by Code Section 414(m)), or is a member of a group of entities required to be aggregated pursuant to Regulations under Code Section 414(o), then all Employees of such Employers shall be considered to be employed by a single Employer.

(g) **413(e) Plan.** If this is a plan described in Code Section 413(c) (other than a plan described in Code Section 414(f)), then all of the benefits or contributions attributable to a Participant from all of the Employers maintaining this Plan shall be taken into account in applying the limits of this Section with respect to such Participant. Furthermore, in applying the limitations of this Section with respect to such a Participant, the total 415 Compensation received by the Participant from all of the Employers maintaining the Plan shall be taken into account.

(h)(1) **DC Plans with same/different Anniversary Dates.** If a Participant participates in more than one defined contribution plan maintained by the Employer that have different Anniversary Dates, then the maximum permissible amount under this Plan shall equal the maximum permissible amount for the Limitation Year minus any Annual Additions previously credited to such Participant's Accounts during the Limitation Year.

(2) If a Participant participates in both a defined contribution plan subject to Code Section 412 and a defined

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contribution plan not subject to Code Section 412 maintained by the Employer which have the same Anniversary Date, then Annual Additions will be credited to the Participant's Accounts under the defined contribution plan subject to Code Section 412 prior to crediting Annual Additions to the Participant's Accounts under the defined contribution plan not subject to Code Section 412.

(3) If a Participant participates in more than one defined contribution plan not subject to Code Section 412 maintained by the Employer which have the same Anniversary Date, then the maximum permissible amount under this Plan shall equal the product of (A) the maximum permissible amount for the Limitation Year minus any Annual Additions previously credited under subparagraphs (1) or (2) above, multiplied by (B) a fraction (i) the numerator of which is the Annual Additions which would be credited to such Participant's Accounts under this Plan without regard to the limitations of Code Section 415 and (ii) the denominator of which is such Annual Additions for all plans described in this subparagraph.

#### 4.7 ADJUSTMENT FOR EXCESS ANNUAL ADDITIONS

(a) **Disposal of Excess Annual Additions.** Allocation of Annual Additions to a Participant's Account for a Limitation Year generally will cease in accordance with Section 4.6(d) once the maximum permissible amount of Section 4.6 has been reached for such Limitation Year. However, if, as a result of a reasonable error in estimating a Participant's Compensation, a reasonable error in determining the amount of elective deferrals (to some other plan) (within the meaning of Code Section 402(g)(3)) that may be made with respect to any Participant with respect to the maximum permissible amount of Section 4.6 or other facts and circumstances to which Regulation 1.415-6(b)(6) shall be applicable, the Annual Additions under this Plan would cause Excess Annual Additions for any Participant, then the Excess Annual Additions will be disposed of in one of the following ways, as uniformly determined by the Administrator for all Participants similarly situated.

(1) Any Employee mandatory contributions made pursuant to Section 4.10 and Employer contributions which relate to such Employee mandatory contributions, will be proportionately reduced to the extent they would reduce the "excess amount." The Employee mandatory contributions (and any gains attributable to such Employee Mandatory Contributions) will be distributed to the Participant and the Employer Contributions (and any gains attributable to such Employer contributions) will be used to reduce any Employer contribution in the next "limitation year";

(2) If the Participant is covered by the Plan at the end of the Limitation Year, then the Excess Annual Additions will be used to reduce the Employer contribution for such Participant in the next Limitation Year, and each succeeding Limitation Year if necessary;

(3) If the Participant is not covered by the Plan at the end of the Limitation Year, then the Excess Annual Additions will be held unallocated in a "Section 415 suspense account." The "Section 415 suspense account" will be applied to reduce future Employer contributions for all remaining Participants in the next Limitation Year, and each succeeding Limitation Year if necessary;

(4) If a "Section 415 suspense account" is in existence at any time during the Limitation Year pursuant to this Section, then the "Section 415 suspense account" will not participate in the allocation of investment gains and losses of the Trust Fund. If a "Section 415 suspense account" is in existence at any time during a particular Limitation Year, then all amounts in the "Section 415 suspense account" must be allocated and reallocated to Participants' Accounts before any Employer contributions or any Employee contributions may be made to the Plan for that Limitation Year. Except as provided above, Excess Annual Additions may not be distributed to Participants.

(b) **Section 415 suspense account defined.** For purposes of this Section, the term "Section 415 suspense account" means an unallocated account equal to the sum of Excess Annual Additions for all Participants in the Plan during the Limitation Year.

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**4.8 PLAN-TO-PLAN TRANSFERS (OTHER THAN ROLLOVERS) FROM QUALIFIED PLANS**

(a) **Transfers into this Plan.** With the consent of the Administrator (such consent must be exercised in a nondiscriminatory manner and applied uniformly to all Participants), amounts may be transferred (within the meaning of Code Section 414(l)) to this Plan from other tax qualified plans under Code Section 401(a), provided that the plan from which such funds are transferred permits the transfer to be made, the funds are not subject to the notice and consent requirements of Code Section 417 (i.e., qualified joint and survivor annuity requirements), and the transfer will not jeopardize the tax exempt status of the Plan or Trust or create adverse tax consequences for the Employer. Prior to accepting any transfers to which this Section applies, the Administrator may require satisfactory evidence that the amounts to be transferred meet the requirements of this Section. The transferred amounts shall be allocated to the Transfer Account of the Participant.

Except as permitted by Regulations (including Regulation 1.411(d)-4), amounts attributable to elective contributions (as defined in Regulation 1.401(k)-6), including amounts treated as elective contributions, which are transferred from another qualified plan in a plan-to-plan transfer (other than a direct rollover) shall be subject to the distribution limitations provided for in Regulation 1.401(k)-1(d).

At the time of the transfer, the nonforfeitable percentage of the funds under the transferor plan shall apply, but thereafter shall increase (if applicable) for each Period of Service that the Participant completes after such transfer in accordance with the Vesting provisions of this Plan applicable to the type of Account represented by the transferred funds (e.g., transferred nonelective funds will be subject to the vesting schedule applicable to Nonelective Contributions under this Plan). If the vesting schedule applicable to a Transferred Account changes as a result of this paragraph, such change will be treated as an amendment to the vesting schedule for each affected Participant.

(b) **Accounting of transfers.** The Transfer Account of a Participant shall be held by the Trustee pursuant to the provisions of this Plan and may not be withdrawn by, or distributed to the Participant, in whole or in part, except as provided in paragraph (c) of this Section. The Trustee shall have no duty or responsibility to inquire as to the propriety of the amount, value or type of assets transferred, nor to conduct any due diligence with respect to such assets; provided, however, that such assets are otherwise eligible to be held by the Trustee under the terms of this Plan.

(c) **Distribution of Transfer Account.** At Normal Retirement Date, or such other date when the Participant or the Participant's Beneficiary shall be entitled to receive benefits, the Transfer Account of a Participant shall be used to provide additional benefits to the Participant or the Participant's Beneficiary. Any distributions of amounts held in the Transfer Account shall be made in a manner which is consistent with and satisfies the provisions of Sections 6.5 and 6.6, including, but not limited to, all notice and consent requirements of Code Section 411(a)(11) and the Regulations thereunder. Furthermore, the Transfer Account shall be considered as part of a Participant's benefit in determining whether an involuntary cash-out of benefits may be made without Participant consent.

(d) **Segregation.** The Administrator may direct that Employee transfers made after a Valuation Date be segregated into a separate account for each Participant until such time as the allocations pursuant to this Plan have been made, at which time they may remain segregated or be invested as part of the general Trust Fund or be directed by the Participant pursuant to Section 4.11.

(e) **Protected benefits.** Notwithstanding anything herein to the contrary, a transfer directly to this Plan from another qualified plan (or a transaction having the effect of such a transfer) shall only be permitted if it will not result in the elimination or reduction of any "Section 411(d)(6) protected benefit" as described in Section 7.1(e).

(f) **Separate Accounts.** With respect to each Participant's Transfer Account, separate sub-accounts shall be maintained to the extent necessary to carry out the provisions of this Plan.



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**4.9 ROLLOVERS FROM OTHER PLANS**

(a) **Acceptance of rollovers into the Plan.** This Section applies to a rollover from an eligible retirement plan into this Plan made on or after January 1, 2002. With the consent of the Administrator (such consent must be exercised in a nondiscriminatory manner and applied uniformly to all Participants), the Plan may accept a rollover by Participants, excluding Participants who are no longer employed as an Employee and including Eligible Employees, provided the rollover will not jeopardize the tax-exempt status of the Plan or create adverse tax consequences for the Employer. The rollover amounts shall be allocated to the Rollover Account of the Participant. The Rollover Account of a Participant shall be 100% Vested at all times and shall not be subject to Forfeiture for any reason.

(b) **Treatment of Rollover Account in the Plan.** The Rollover Account shall be held by the Trustee pursuant to the provisions of this Plan and may not be withdrawn by, or distributed to the Participant, in whole or in part, except as provided in paragraph (c) of this Section. The Trustee shall have no duty or responsibility to inquire as to the propriety of the amount, value or type of assets transferred, nor to conduct any due diligence with respect to such assets; provided, however, that such assets are otherwise eligible to be held by the Trustee under the terms of this Plan.

(c) **Distribution of rollovers.** At such date when the Participant or the Participant's Beneficiary shall be entitled to receive benefits, the Rollover Account of a Participant shall be used to provide additional benefits to the Participant or the Participant's Beneficiary. Furthermore, amounts in the Participant's Rollover Account shall be considered as part of a Participant's benefit in determining whether the \$5,000 threshold has been exceeded for purposes of the timing or form of payments under the Plan as well as for the Participant consent requirements. Any distributions of amounts that are held in the Rollover Account shall be made in a manner which is consistent with and satisfies the provisions of Sections 6.5 and 6.6, including, but not limited to, all notice and consent requirements of Code Section 411(a)(11) and the Regulations thereunder.

(d) **Limits on accepting rollovers.** Prior to accepting any rollovers to which this Section applies, the Administrator may require the Employee to provide evidence that the amounts to be rolled over to this Plan meet the requirements of this Section. The Employer may instruct the Administrator, operationally and on a nondiscriminatory basis, to limit the source of rollovers that may be accepted by the Plan.

(e) **Rollovers maintained in a separate account.** The Administrator may direct that rollovers received after a Valuation Date be segregated into a separate account for each Participant until such time as the allocations pursuant to this Plan have been made, at which time they may remain segregated or be invested as part of the general Trust Fund or be directed by the Participant pursuant to Section 4.11.

(f) **Definitions.** For purposes of this Section, the following definitions shall apply:

(1) The term "rollover" means: (i) amounts transferred to this Plan directly from another "eligible retirement plan;" (ii) distributions received by an Employee from other "eligible retirement plans" which are eligible for tax-free rollover to an "eligible retirement plan" and which are transferred by the Employee to this Plan within sixty (60) days following receipt thereof; and (iii) any other amounts which are eligible to be rolled over to this Plan pursuant to the Code.

(2) The term "eligible retirement plan" means an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b) (other than an endowment contract), a qualified trust (an employees' trust described in Code Section 401(a) which is exempt from tax under Code Section 501(a)), an annuity plan described in Code Section 403(a), an eligible deferred compensation plan described in Code Section 457(b) which is maintained by an eligible employer described in Code Section 457(e)(1)(A), and an annuity contract described in Code Section 403(b).

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#### **4.10 EMPLOYEE MANDATORY CONTRIBUTIONS**

(a) **Employee Mandatory Contributions Requirement.** As a condition for sharing in Employer Contributions, each Participant shall agree to contribute 4% of Compensation to the Trustee. Such contribution shall be credited to the Participant's Employee Contribution Account and shall share in Trust Fund earnings and losses.

(b) Participant contributions made pursuant to subsection (a) of this Section 4.2 shall be picked-up by the Employer within the meaning of Code Section 414(h)(2). Employer picked-up contributions shall be credited to a Participant's Account and shall share in Trust Fund earnings and losses. In no event, however, shall any Participant have the option to receive such amounts in cash. Employer picked-up contributions shall not be included in the gross income of the Participant, but shall be taxable to the Participant at the time of distribution from the Plan.

(c) **100% vesting.** The Employee Contribution Account shall be fully Vested at all times.

(d) **No Employee Mandatory Contribution distributions permitted prior to termination of employment.** Withdrawals of Employee Contributions are not permitted prior to termination of employment.

(e) **Employee Mandatory Contribution Account used for additional benefits.** At Normal Retirement, or such other date when the Participant or the Participant's Beneficiary shall be entitled to receive benefits, the fair market value of the Employee Contribution Account shall be used to provide additional benefits to the Participant or the Participant's Beneficiary.

#### **4.11 PARTICIPANT DIRECTED INVESTMENTS**

(a) **Directed Investments allowed.** Participants may, subject to a procedure established by the Administrator (the Participant Direction Procedures) and applied in a uniform nondiscriminatory manner, direct the Trustee, in writing (or in such other form which is acceptable to the Trustee), to invest their entire Accounts in specific assets, specific funds or other investments permitted under the Plan and the Participant Direction Procedures. That portion of the interest of any Participant so directing will thereupon be considered a Participant's Directed Account.

(b) **Establishment of Participant Direction Procedures.** The Administrator will establish Participant Direction Procedures, to be applied in a uniform and nondiscriminatory manner, setting forth the permissible investment options under this Section, how often changes between investments may be made, and any other limitations and provisions that the Administrator may impose on a Participant's right to direct investments.

(c) **Administrative discretion.** The Administrator may, in its discretion, include or exclude by amendment or other action from the Participant Direction Procedures such instructions, guidelines or policies as it deems necessary or appropriate to ensure proper administration of the Plan, and may interpret the same accordingly.

(d) **Allocation of earnings.** As of each Valuation Date, all Participant Directed Accounts shall be charged or credited with the net earnings, gains, losses and expenses as well as any appreciation or depreciation in the market value using publicly listed fair market values when available or appropriate as follows:

(1) to the extent that the assets in a Participant's Directed Account are accounted for as pooled assets or investments, the allocation of earnings, gains and losses of each Participant's Directed Account shall be based upon the total amount of funds so invested in a manner proportionate to the Participant's share of such pooled investment; and

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(2) to the extent that the assets in the Participant's Directed Account are accounted for as segregated assets, the allocation of earnings, gains and losses from such assets shall be made on a separate and distinct basis.

(c) **Plan will follow investment directions.** Investment directions will be processed as soon as administratively practicable after proper investment directions are received from the Participant. No guarantee is made by the Plan, Employer, Administrator or Trustee that investment directions will be processed on a daily basis, and no guarantee is made in any respect regarding the processing time of an investment direction. Notwithstanding any other provision of the Plan, the Employer, Administrator or Trustee reserves the right to not value an investment option on any given Valuation Date for any reason deemed appropriate by the Employer, Administrator or Trustee. Furthermore, the processing of any investment transaction may be delayed for any legitimate business reason or force majeure (including, but not limited to, failure of systems or computer programs, failure of the means of the transmission of data, the failure of a service provider to timely receive values or prices, and correction for errors or omissions or the errors or omissions of any service provider). The processing date of a transaction will be binding for all purposes of the Plan and considered the applicable Valuation Date for an investment transaction.

(f) **Investment disclosure provisions.** The Participant Direction Procedures shall provide an explanation of the circumstances under which Participants and their Beneficiaries may give investment instructions, including, but not limited to, the following to the extent required under the Department of Labor regulations or guidance:

(1) the conveyance of instructions by the Participants and their Beneficiaries to invest Participant Directed Accounts in Directed Investment Options;

(2) the name, address and phone number of the Fiduciary (and, if applicable, the person or persons designated by the Fiduciary to act on its behalf) responsible for providing information to the Participant or a Beneficiary upon request relating to the Directed Investment Options;

(3) applicable restrictions on transfers to and from any Designated Investment Alternative;

(4) any restrictions on the exercise of voting, tender and similar rights related to a Directed Investment Option by the Participants or their Beneficiaries;

(5) a description of any transaction fees and expenses which affect the balances in Participant Directed Accounts in connection with the purchase or sale of Directed Investment Options; and

(6) general procedures for the dissemination of investment and other information relating to the Designated Investment Alternatives as deemed necessary or appropriate, including but not limited to a description of the following:

(i) the investment vehicles available under the Plan, including specific information regarding any Designated Investment Alternative;

(ii) any designated Investment Managers; and

(iii) a description of the additional information which may be obtained upon request from the Fiduciary designated to provide such information.

(g) **Other documents.** Any information regarding investments available under the Plan, to the extent not required to be described in the Participant Direction Procedures, may be provided to the Participant in one or more written documents (or in any other form including, but not limited to, electronic media) which are separate from the Participant Direction

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Procedures and are not thereby incorporated by reference into this Plan.

(h) **Instructions, guidelines or policies.** The Administrator may, in its discretion, include or exclude by amendment or other action from the Participant Direction Procedures such instructions, guidelines or policies as it deems necessary or appropriate to ensure proper administration of the Plan, and may interpret the same accordingly.

#### **4.12 QUALIFIED MILITARY SERVICE**

Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service will be provided in accordance with Code Section 414(u).

### **ARTICLE V VALUATIONS**

#### **5.1 VALUATION OF THE TRUST FUND**

The Administrator shall direct the Trustee, as of each Valuation Date, to determine the net worth of the assets comprising the Trust Fund as it exists on the Valuation Date. In determining such net worth, the Trustee shall value the assets comprising the Trust Fund at their fair market value as of the Valuation Date and shall deduct all expenses for which the Trustee has not yet obtained reimbursement from the Employer or the Trust Fund. The Trustee may update the value of any shares held in the Participant Directed Account by reference to the number of shares held by that Participant, priced at the market value as of the Valuation Date.

#### **5.2 METHOD OF VALUATION**

In determining the fair market value of securities held in the Trust Fund which are listed on a registered stock exchange, the Administrator shall direct the Trustee to value the same at the prices they were last traded on such exchange preceding the close of business on the Valuation Date. If such securities were not traded on the Valuation Date, or if the exchange on which they are traded was not open for business on the Valuation Date, then the securities shall be valued at the prices at which they were last traded prior to the Valuation Date. Any unlisted security held in the Trust Fund shall be valued at its bid price next preceding the close of business on the Valuation Date, which bid price shall be obtained from a registered broker or an investment banker. In determining the fair market value of assets other than securities for which trading or bid prices can be obtained, the Trustee may appraise such assets itself, or in its discretion, employ one or more appraisers for that purpose and rely on the values established by such appraiser or appraisers.

### **ARTICLE VI**

#### **DETERMINATION AND DISTRIBUTION OF BENEFITS**

#### **6.1 DETERMINATION OF BENEFITS UPON RETIREMENT**

Every Participant may terminate employment with the Employer and retire for the purposes hereof on the Participant's Normal Retirement Date. However, a Participant may postpone the termination of employment with the Employer to a later date, in which event the participation of such Participant in the Plan, including the right to receive allocations pursuant to Section 4.3,

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shall continue until such Participant's Late Retirement Date. Upon a Participant's Retirement Date, or as soon thereafter as is practicable, the Administrator shall direct the distribution, at the election of the Participant, of the Participant's entire Vested interest in the Plan (or any portion thereof), in accordance with Section 6.5.

## **6.2 DETERMINATION OF BENEFITS UPON DEATH**

(a) **100% Vesting on death.** Upon the death of a Participant before the Participant's Retirement Date or other termination of employment, all amounts credited to such Participant's Account shall become fully vested.

(b) **Distribution upon death.** Upon the death of a Participant, the Administrator shall direct, in accordance with the provisions of Sections 6.6 and 6.7, the distribution of any remaining amounts credited to the accounts of the deceased Participant to such Participant's Beneficiary.

(c) **Determination of death benefit by Administrator.** The Administrator may require such proper proof of death and such evidence of the right of any person to receive payment of the value of the account of a deceased Participant as the Administrator may deem desirable. The Administrator's determination of death and of the right of any person to receive payment shall be conclusive. **Beneficiary designation.** The Beneficiary of the death benefit payable pursuant to this Section shall be the Participant's surviving spouse. Except, however, the Participant may designate a Beneficiary other than the spouse. In such event, the designation of a Beneficiary shall be made on a form satisfactory to the Administrator. A Participant may at any time revoke a designation of a Beneficiary or change a Beneficiary by filing written notice (or in such other form as permitted by the Internal Revenue Service) of such revocation or change with the Administrator.

(d) **Beneficiary if no beneficiary elected by Participant.** In the event no valid designation of Beneficiary exists with respect to all or a portion of the death benefit, or if the Beneficiary of such death benefit is not alive at the time of the Participant's death and no contingent Beneficiary has been designated, then such death benefit will be paid in the following order of priority to:

- (1) the Participant's surviving spouse;
- (2) the Participant's children, including adopted children, per stirpes;
- (3) the Participant's surviving parents, in equal shares; or
- (4) the Participant's estate.

If the Beneficiary does not predecease the Participant, but dies prior to distribution of the death benefit, the death benefit will be paid to the Beneficiary's designated Beneficiary (or there is no designated Beneficiary, to the Beneficiary's estate).

(e) **Divorce revokes spousal beneficiary designation.** Notwithstanding anything in this Section to the contrary, if a Participant has designated the spouse as a Beneficiary, then a divorce decree or a legal separation that relates to such spouse shall revoke the Participant's designation of the spouse as a Beneficiary unless the decree or a qualified domestic relations order (within the meaning of Code Section 414(p)) provides otherwise or a subsequent beneficiary designation is made.

(f) **Additional death benefits.** The distribution of the remaining account balance of a deceased Participant in accordance with this Section 6.2 is the sole death benefit payable under the Plan. Additional pre-retirement death benefits, if any, may be provided under the Retirement Plan for Full-Time Employees of the Police Department of the Town of East Hartford.

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### 6.3 **DISABILITY RETIREMENT BENEFITS**

No disability benefits, other than those payable upon termination of employment, are provided in this Plan. Disability retirement benefits, if any, may be provided under the Retirement Plan for Full-Time Employees of the Police Department of the Town of East Hartford.

### 6.4 **DETERMINATION OF BENEFITS UPON TERMINATION**

(a) **Payment on termination of employment.** If a Participant's employment with the Employer is terminated for any reason other than death or retirement, then such Participant shall be entitled to such benefits as are provided hereinafter pursuant to this Section 6.4.

Distribution of the funds due to a Terminated Participant shall be made on the occurrence of an event which would result in a distributable event had the Terminated Participant remained in the employ of the Employer (upon the Participant's death or Normal Retirement). However, at the election of the Participant, the Administrator shall direct the distribution of the entire Vested portion of the Terminated Participant's Account be payable to such Terminated Participant as soon as administratively feasible after termination of employment. Any distribution under this paragraph shall be made in a manner which is consistent with and satisfies the provisions of Section 6.5, including, but not limited to, all notice and consent requirements of Code Section 411(a)(11) and the Regulations thereunder.

If the value of a Terminated Participant's Total Vested Benefit does not exceed \$5,000, then the Participant's Vested benefit shall be paid to such Participant in a single lump sum as soon as administratively feasible after termination of employment.

For purposes of this Section 6.4, if the value of a Terminated Participant's Vested benefit is zero, the Terminated Participant shall be deemed to have received a distribution of such Vested benefit. **Vesting schedule.** The Vested portion of the Account of any Participant attributable to Employer contributions shall be a percentage of the total amount credited to the Participant's Accounts determined on the basis of the Participant's number of whole year Periods of Service according to the following schedule(s):

The Vested portion of the Employer Contribution Account shall be determined in accordance with the following vesting schedule:

Vesting Schedule	
Periods of Service	Percentage
Less than 5	0 %
5 or more	100 %

(b) **No reduction in Vested percentage due to change in vesting schedule.** Notwithstanding the vesting schedule above, the Vested percentage of a Participant's Account shall not be less than the Vested percentage attained as of the later of the effective date or adoption date of this amendment and restatement.

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(c) **Time of application of vesting schedule liberalization.** In the absence of any provision to the contrary, any direct or indirect increase to a Participant's vested percentage (at any point on a vesting schedule) will not apply to a Participant unless and until such Participant completes an Hour of Service after the effective date of such amendment.

(d) **100% Vesting on partial or full Plan termination.** Notwithstanding the vesting schedule above, upon the complete discontinuance of the Employer contributions to the Plan or upon any full or partial termination of the Plan, all amounts then credited to the account of any affected Participant shall become 100% Vested and shall not thereafter be subject to Forfeiture.

(e) **Continuation of old schedule upon subsequent amendment if 3 years of service.** The computation of a Participant's nonforfeitable percentage of such Participant's interest in the Plan shall not be reduced as the result of any direct or indirect amendment to this Plan. In the event that the Plan is amended to change or modify any vesting schedule, or if the Plan is amended in any way that directly or indirectly affects the computation of the Participant's nonforfeitable percentage, then each Participant with an Hour of Service after such change and who has at least three (3) whole year Periods of Service as of the expiration date of the election period may elect to have such Participant's nonforfeitable percentage computed under the Plan without regard to such amendment or change. If such a Participant fails to make such election, then such Participant shall be subject to the new vesting schedule. The Participant's election period shall commence on the date the amendment is adopted or deemed to be made and shall end sixty (60) days after the latest of:

- (1) the adoption date of the amendment,
- (2) the effective date of the amendment, or
- (3) the date the Participant receives written notice of the amendment from the Employer or Administrator.

## 6.5 **DISTRIBUTION OF BENEFITS**

(a) The Administrator, pursuant to the election of the Participant, shall direct the Trustee to distribute to a Participant or such Participant's Beneficiary the amount (if any) to which the Participant (or Beneficiary) has become entitled under the Plan in one lump-sum payment in cash.

(b) Any distribution to a Participant who has a Total Vested Benefit which exceeds \$5,000 shall require such Participant's written consent (or in such other form as permitted by the Internal Revenue Service) if such distribution occurs during the time the benefit is "immediately distributable." A benefit is "immediately distributable" if any part of the benefit could be distributed to the Participant (or surviving spouse) before the Participant attains (or would have attained if not deceased) the later of the Participant's Normal Retirement Age or age 62.

(c) Effective with respect to distributions made on or after January 1, 2006, if a mandatory distribution greater than \$1,000 is made in accordance with the provisions of the Plan providing for an automatic distribution to a Participant without the Participant's consent, and the Participant does not elect to have such distribution paid directly to an eligible retirement plan specified by the Participant in a direct rollover (in accordance with the direct rollover provisions of the Plan) or to receive the distribution directly, then the Administrator shall direct that the distribution be made in a direct rollover to an Individual Retirement Account described in Code Section 408(a) or an Individual Retirement Annuity described in Code Section 408(b), as designated by the Administrator. The Administrator may operationally implement this provision with respect to distributions that are \$1,000 or less.

(d) If a distribution is made to a Participant who has not severed employment and who is not fully Vested in the Participant's Account and the Participant may increase the Vested percentage in such account, then, at any relevant time the Participant's Vested portion of the account will be equal to an amount ("X") determined by the formula:

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$$X \text{ equals } P(\text{AB plus D}) - D$$

For purposes of applying the formula: P is the Vested percentage at the relevant time, AB is the account balance at the relevant time, and D is the amount of distribution, and the relevant time is the time at which, under the Plan, the Vested percentage in the account cannot increase.

(c) Required minimum distributions (Code Section 401(a)(9)). Notwithstanding any provision in the Plan to the contrary, the distribution of a Participant's benefits shall be made in accordance with the requirements of Section 6.8.

### **6.6 DISTRIBUTION OF BENEFITS UPON DEATH**

(a) The death benefit payable pursuant to Section 6.2 shall be paid to the Participant's Beneficiary in one lump-sum payment in cash subject to the rules of Section 6.8.

(b) Notwithstanding any provision in the Plan to the contrary, distributions upon the death of a Participant shall comply with the requirements of Section 6.8.

(c) In the event that less than 100% of a Participant's interest in the Plan is distributed to such Participant's spouse, the portion of the distribution attributable to the Participant's Employee Mandatory Contribution Account shall be in the same proportion that the Participant's Employee Mandatory Contribution Account bears to the Participant's total interest in the Plan.

### **6.7 TIME OF DISTRIBUTION**

Except as limited by Section 6.8, whenever a distribution is to be made, or a series of payments are to commence, the distribution or series of payments may be made or begun as soon as practicable. However, unless a Participant elects in writing to defer the receipt of benefits (such election may not result in a death benefit that is more than incidental), the payment of benefits shall begin not later than the sixtieth (60th) day after the close of the Plan Year in which the latest of the following events occurs: (a) the date on which the Participant attains the earlier of age 65 or the Normal Retirement Age specified herein; (b) the tenth (10th) anniversary of the year in which the Participant commenced participation in the Plan; or (c) the date the Participant terminates service with the Employer.

Notwithstanding the foregoing, the failure of a Participant and, if applicable, the Participant's spouse, to consent to a distribution that is immediately distributable (within the meaning of Section 6.5), shall be deemed to be an election to defer the commencement of payment of any benefit sufficient to satisfy this Section.

### **6.8 REQUIRED MINIMUM DISTRIBUTIONS**

#### **(a) General Rules**

(1) **Effective Date.** Unless otherwise specified, the provisions of this Section will apply for purposes of determining required minimum distributions for calendar years beginning with the 2002 calendar year.

(2) **Precedence.** The requirements of this Section shall apply to any distribution of a Participant's interest in the Plan and take precedence over any inconsistent provisions of the Plan.



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(3) **Requirements of Treasury Regulations Incorporated.** All distributions required under this Section will be determined and made in accordance with the Regulations under Code Section 401(a)(9) and the minimum distribution incidental benefit requirement of Code Section 401(a)(9)(G).

**(b) Time and manner of distribution**

- (1) **Required beginning date.** The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's required beginning date.
- (2) **Death of Participant before distributions begin.** If the Participant dies before distributions begin, the Participant's entire death benefit will be distributed, or begin to be distributed, as follows:

(i) Distribution of the Participant's death benefit shall be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death, or, if the Participant's surviving spouse is the Participant's designated beneficiary, 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, and be payable over the life (or over a period not exceeding the life expectancy) of such surviving spouse.

(ii) 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 6.8(b), other than this paragraph, will apply as if the surviving spouse were the Participant. Thus, in all such cases, the time at which distributions must commence (or be completed by) shall be determined solely by reference to the year that the Participant died, and not the year in which the Participant would have attained age 70 1/2.

For purposes of this Section 6.8(b), unless a surviving spouse is electing to commence benefits based upon the date that the Participant would have attained age 70 1/2, distributions are considered to begin on the Participant's required beginning date. If the surviving-spouse election applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 6.8(b).

(3) **Forms of distribution.** Unless the Participant's interest is distributed 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 6.8(c) and 6.8(d). All distributions under this Section shall be made in a manner which is consistent with and satisfies the provisions of Section 6.5, including, but not limited to, all notice and consent requirements of Code Section 411(a)(11) and the Regulations thereunder.

**(c) Required minimum distributions during Participant's lifetime**

(1) **Amount of required minimum distribution for each distribution calendar year.** During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:

(i) the quotient obtained by dividing the Participant's Account balance by the distribution period in the Uniform Lifetime Table set forth in Regulation Section 1.401(a)(9)-9, using the Participant's age as of the Participant's birthday in the distribution calendar year; or

(ii) if the Participant's sole designated beneficiary for the distribution calendar year is the Participant's spouse and the spouse is more than 10 years younger than the Participant, the quotient obtained by dividing the Participant's Account balance by the number in the Joint and Last Survivor Table set forth in Regulation Section 1.401(a)(9)-9, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.

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(2) **Lifetime required minimum distributions continue through year of Participant's death.** Required minimum distributions will be determined under this Section 6.8(c) beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

**(d) Required minimum distributions after Participant's death**

**(1) Death on or after date distributions begin.**

(i) **Participant survived by designated beneficiary.** If the Participant dies on or after the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated beneficiary, determined as follows:

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

(B) If the Participant's surviving spouse is the Participant's sole designated beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

(C) If the Participant's surviving spouse is not the Participant's sole designated beneficiary, the designated beneficiary's remaining life expectancy is calculated using the age of the beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

(ii) **No designated beneficiary.** If the Participant dies on or after the date distributions begin and there is no designated beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

**(2) Death before date distributions begin.**

(i) **Participant survived by designated beneficiary.** Except as provided in Section 6.8(b)(3), if the Participant dies before the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account balance by the remaining life expectancy of the Participant's designated beneficiary, determined as provided in Section 6.8(d)(1).

(ii) **No designated beneficiary.** If the Participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

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(iii) **Death of surviving spouse before distributions to surviving spouse are required to begin.** If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole designated beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under Section 6.8(b), this Section 6.8(d)(2) will apply as if the surviving spouse were the Participant.

(c) **Definitions.** For purposes of this Section, the following definitions apply:

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

(2) "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 6.8(b). The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's "required beginning date." The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's "required beginning date" occurs, will be made on or before December 31 of that distribution calendar year.

(3) "Life expectancy" means the life expectancy as computed by use of the Single Life Table in Regulation Section 1.401(a)(9)-9, Q&A-1.

(4) "Participant's account balance" means the "Participant's account balance" as of the last Valuation Date in the calendar year immediately preceding the Distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or Forfeitures allocated to the account balance as of dates in the valuation calendar year after the Valuation Date and decreased by distributions made in the valuation calendar year after the Valuation Date. For this purpose, the Administrator may exclude contributions that are allocated to the account balance as of dates in the valuation calendar year after the Valuation Date, but that are not actually made during the valuation calendar year. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the Distribution calendar year if distributed or transferred in the valuation calendar year.

(5) "Required beginning date" means, with respect to any Participant, April 1 of the calendar year following the later of the calendar year in which the Participant attains age 70 1/2 or the calendar year in which the Participant retires, except that benefit distributions to a 5-percent owner must commence by April 1 of the calendar year following the calendar year in which the Participant attains age 70 1/2.

(6) "5-percent owner" means a Participant who is a 5-percent owner as defined in Code Section 416 at any time during the Plan Year ending with or within the calendar year in which such owner attains age 70 1/2. Once distributions have begun to a 5-percent owner under this Section they must continue to be distributed, even if the Participant ceases to be a 5-percent owner in a subsequent year.

(f) **Transition rules**

(1) **Rules for plans in existence before 1997.** Any required minimum distribution rights conferred on participants in order to comply with (or as a means of complying with) the changes to Code Section 401(a)(9) made by the Small Business Jobs Protection Act of 1996 that were still in effect immediately prior to this restatement shall be preserved.

(2) **Applicable regulations.** Notwithstanding any Plan provision to the contrary, required minimum distributions before 2003 were made as follows:

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(i) **2001.** Required minimum distributions for calendar year 2001 were made pursuant to the proposed Regulations under Code Section 401(a)(9) published in the Federal Register on January 17, 2001 (the "2001 Proposed Regulations"). If distributions were made in 2001 under the 1987 Proposed Regulations prior to the date in 2001 the plan began operating under the 2001 Proposed Regulations, the special transition rule in Announcement 2001-82, 2001-2 C.B. 123, applied.

(ii) **2002.** Required minimum distributions for calendar year 2002 were made pursuant to the Final and Temporary Regulations under Code Section 401(a)(9) published in the Federal Register on April 17, 2002, (the "2002 Final and Temporary Regulations") which are described in Sections (b) through (f) of this Section. If distributions were made in 2002 under either the 1987 Proposed Regulations or the 2001 Proposed Regulations prior to the date in 2002 the Plan began operating under the 2002 Final and Temporary Regulations, the special transition rule in Section 1.2 of the model amendment in Revenue Procedure 2002-29, 2002-1 C.B. 1176, applied.

**(g) Statutory (TEFRA) Transition Rules**

(1) Notwithstanding the other provisions of this Section, other than the spouse's right of consent afforded under the Plan, distributions may be made on behalf of any Participant, including a five percent (5%) owner, who has made a designation in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and in accordance with all of the following requirements (regardless of when such distribution commences):

(i) The distribution by the Plan is one which would not have disqualified such plan under Code Section 401(a)(9) as in effect prior to amendment by the Deficit Reduction Act of 1984.

(ii) The distribution is in accordance with a method of distribution designated by the Participant whose interest in the plan is being distributed or, if the Participant is deceased, by a Beneficiary of such Participant.

(iii) Such designation was in writing, was signed by the Participant or the Beneficiary, and was made before January 1, 1984.

(iv) The Participant had accrued a benefit under the Plan as of December 31, 1983.

(v) The method of distribution designated by the Participant or the Beneficiary specifies the time at which distribution will commence, the period over which distributions will be made, and in the case of any distribution upon the Participant's death, the Beneficiaries of the Participant listed in order of priority.

(2) A distribution upon death will not be covered by the transitional rule of this subsection unless the information in the designation contains the required information described above with respect to the distributions to be made upon the death of the Participant.

(3) For any distribution which commences before January 1, 1984, but continues after December 31, 1983, the Participant, or the Beneficiary, to whom such distribution is being made, will be presumed to have designated the method of distribution under which the distribution is being made if the method of distribution was specified in writing and the distribution satisfies the requirements in (1)(i) and (1)(v) of this subsection. If a designation is revoked, any subsequent distribution must satisfy the requirements of Code Section 401(a)(9) and the Regulations thereunder. If a designation is revoked subsequent to the date distributions are required to begin, the Plan must distribute by the end of the calendar year following the calendar year in which the revocation occurs the total amount not yet distributed which would have been required to have been distributed to satisfy Code Section 401(a)(9) and the Regulations thereunder,

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but for the Section 242(b)(2) election. For calendar years beginning after December 31, 1988, such distributions must meet the minimum distribution incidental benefit requirements. Any changes in the designation will be considered to be a revocation of the designation. However, the mere substitution or addition of another Beneficiary (one not named in the designation) under the designation will not be considered to be a revocation of the designation, so long as such substitution or addition does not alter the period over which distributions are to be made under the designation, directly or indirectly (for example, by altering the relevant measuring life).

(4) In the case in which an amount is transferred or rolled over from one plan to another plan, the rules in Regulation Section 1.401(a)(9)-8, Q&A-14 and Q&A-15, shall apply.

#### **6.9 DISTRIBUTION FOR MINOR OR INCOMPETENT INDIVIDUAL**

In the event a distribution is to be made to a minor or incompetent individual, then the Administrator may direct that such distribution be paid to the court-appointed legal guardian or any other person authorized under state law to receive such distribution, or if none, then in the case of a minor Beneficiary, to a parent of such Beneficiary, or to the custodian for such Beneficiary under the Uniform Gift to Minors Act or Gift to Minors Act, if such is permitted by the laws of the state in which said Beneficiary resides. Such a payment to the guardian, custodian or parent of a minor or incompetent individual shall fully discharge the Trustee, Employer, and Plan from further liability on account thereof.

#### **6.10 LOCATION OF PARTICIPANT OR BENEFICIARY UNKNOWN**

In the event that all, or any portion, of the distribution payable to a Participant or Beneficiary hereunder shall, at the later of the Participant's attainment of age 62 or Normal Retirement Age, remain unpaid solely by reason of the inability of the Administrator, after sending a registered letter, return receipt requested, to the last known address, and after further diligent effort, to ascertain the whereabouts of such Participant or Beneficiary, the amount so distributable shall be treated as a Forfeiture pursuant to the Plan. Notwithstanding the foregoing, effective with respect to distributions made after March 28, 2005, if the Plan provides for mandatory distributions and the amount to be distributed to a Participant or Beneficiary does not exceed \$1,000, then the amount distributable may, in the sole discretion of the Administrator, either be treated as a Forfeiture, or be paid directly to an individual retirement account described in Code Section 408(a) or an individual retirement annuity described in Code Section 408(b) at the time it is determined that the whereabouts of the Participant or the Participant's Beneficiary cannot be ascertained. In the event a Participant or Beneficiary is located subsequent to the Forfeiture, such benefit shall be restored, first from Forfeitures, if any, and then from an additional Employer contribution if necessary. Upon Plan termination, the portion of the distributable amount that is an eligible rollover distribution as defined in Plan Section 6.12 may be paid directly to an individual retirement account described in Code Section 408(a) or an individual retirement annuity described in Code Section 408(b). However, regardless of the preceding, a benefit that is lost by reason of escheat under applicable state law is not treated as forfeiture for purposes of this Section nor as an impermissible forfeiture under the Code.

#### **6.11 QUALIFIED DOMESTIC RELATIONS ORDER DISTRIBUTION**

All rights and benefits, including elections, provided to a Participant in this Plan shall be subject to the rights afforded to any alternate payee under a qualified domestic relations order. Furthermore, a distribution to an alternate payee shall be permitted if such distribution is authorized by a qualified domestic relations order, even if the affected Participant has not separated from service and has not reached the earliest retirement age. For the purposes of this Section, the terms "alternate payee," "qualified domestic relations order" and "earliest retirement age" shall have the meaning set forth under Code Section 414(p).

#### **6.12 DIRECT ROLLOVER**

(a) **Right to direct partial rollover.** Notwithstanding any provision of the Plan to the contrary that would otherwise limit

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a distributee's election under this Section, effective for Plan Years beginning on or after January 1, 2002, a distributee may elect, at the time and in the manner prescribed by the Administrator, to have only a portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. However, the minimum partial rollover must equal at least \$500.

(b) For purposes of this Section the following definitions shall apply:

(1) An "eligible rollover distribution" means any distribution described in Code Section 402(c)(4) and generally includes any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's Designated Beneficiary, or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); the portion of any other distribution(s) that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and any other distribution reasonably expected to total less than \$200 during a year. Any amount that is distributed on account of hardship shall not be an eligible rollover distribution and the distributee may not elect to have any portion of such a distribution paid directly to an eligible retirement plan.

Notwithstanding the above, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of Employee Contributions which are not includible in gross income. However, such portion may be transferred only 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) or 403(a) 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.

(2) An "eligible retirement plan" is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), (other than an endowment contract), a qualified trust (an employees' trust) described in Code Section 401(a) which is exempt from tax under Code Section 501(a) and which agrees to separately account for amounts transferred into such plan from this Plan, an annuity plan described in Code Section 403(a), an eligible deferred compensation plan described in Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality thereof which agrees to separately account for amounts transferred into such plan from this Plan, and an annuity contract described in Code Section 403(b) that accepts the distributee's eligible rollover distribution. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in Code Section 414(p).

(3) A "distributee" includes an Employee or Former Employee. In addition, the Employee's or Former Employee's surviving spouse and the Employee's or Former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p), are distributees with regard to the interest of the spouse or former spouse.

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

(c) **Participant Notice.** A Participant entitled to an eligible rollover distribution must receive a written explanation of his/her right to a direct rollover, the tax consequences of not making a direct rollover, and, if applicable, any available special income tax elections. The notice must be provided within the same 30-to-90 day timeframe applicable to the Participant consent notice. The direct rollover notice must be provided to all Participants, unless the total amount the Participant will receive as a distribution during the calendar year is expected to be less than \$200.

## 6.13 TRANSFER OF ASSETS FROM A MONEY PURCHASE PLAN

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Notwithstanding any provision of this Plan to the contrary, to the extent that any optional form of benefit under this Plan permits a distribution prior to the Employee's attainment of Normal Retirement Age, death, disability, or severance from employment, and prior to Plan termination, the optional form of benefit is not available with respect to benefits attributable to assets (including the post-transfer earnings thereon) and liabilities that are transferred, within the meaning of Code Section 414(l), to this Plan from a money purchase pension plan qualified under Code Section 401(a) (other than any portion of those assets and liabilities attributable to after-tax voluntary employee contributions or to a direct or indirect rollover contribution).

#### **6.14 CORRECTIVE DISTRIBUTIONS**

Nothing in this Article shall preclude the Administrator from making a distribution to a Participant, to the extent such distribution is made to correct a qualification defect in accordance with the corrective procedures under any voluntary compliance program.

### **ARTICLE VII**

#### **AMENDMENT, TERMINATION AND MERGERS**

##### **7.1 AMENDMENT**

(a) **General rule on Employer amendment.** The Employer shall have the right at any time to amend this Plan, subject to the limitations of this Section. However, any amendment which affects the rights, duties or responsibilities of the Trustee or Administrator may only be made with the Trustee's or Administrator's written consent. Any such amendment shall become effective as provided therein upon its execution. The Trustee shall not be required to execute any such amendment unless the amendment affects the duties of the Trustee hereunder.

(b) **Permissible amendments without affecting reliance.** The Employer may make the modifications described below without affecting reliance on the terms of the Plan. An Employer that amends the Plan for any other reason may not rely on the advisory letter that the terms of the Plan meet the qualification requirements of the Code. Permitted changes include: adding options permitted by the Plan; adding or deleting provisions that are optional under the volume submitter specimen plan; changing effective dates within the parameters of the volume submitter specimen plan; correcting obvious and unambiguous typographical errors; correcting cross-references that do not in any way change the original intended meaning of the provisions; adding a list of benefits that must be preserved as protected benefits within the meaning of Code Section 411(d)(6) and the regulations thereunder; amending provisions dealing with the administration of the Trust; a change to the name of the Plan, Employer, Trustee, custodian, Plan Administrator or any other fiduciary, the Plan Year; and any sample or model amendment published by the IRS (or other required good-faith amendments) which specifically provide that their adoption will not cause the plan to be treated as an individually designed plan.

(c) **Sponsoring practitioner amendments.** Effective March 31, 2008, the Employer (and every Participating Employer) expressly delegates authority to the sponsoring organization of this Volume Submitter Plan the right to amend the Plan by submitting a copy of the amendment to each Employer (and Participating Employer) who has adopted this Volume Submitter Plan, after first having received a ruling or favorable determination from the Internal Revenue Service that the Volume Submitter Plan as amended qualifies under Code Section 401(a) (unless a ruling or determination is not required by the IRS). However, the volume submitter practitioner shall cease to have the authority to amend on behalf of an Employer that adopts an impermissible plan type or impermissible plan provision (as described in IRS Announcement 2005-37 and any subsequent guidance). The volume submitter practitioner will maintain a record of the Employers that have adopted the Plan, and the practitioner will make reasonable and diligent efforts to ensure that adopting Employers adopt new documents when necessary. This subsection supersedes other provisions of the Plan to the extent those other provisions are inconsistent with this subsection.

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(d) **Impermissible amendments.** No amendment to the Plan shall be effective if it authorizes or permits any part of the Trust Fund (other than such part as is required to pay taxes and administration expenses) to be used for or diverted to any purpose other than for the exclusive benefit of the Participants or their Beneficiaries or estates, or causes any reduction in the amount credited to the account of any Participant, or causes or permits any portion of the Trust Fund to revert to or become property of the Employer.

## **7.2 TERMINATION**

(a) **Termination of Plan.** The Employer shall have the right at any time to terminate the Plan by delivering to the Trustee and Administrator written notice of such termination. Upon any full or partial termination, all amounts credited to the affected Participants' Accounts shall become 100% Vested as provided in Section 6.4 and shall not thereafter be subject to forfeiture.

(b) **Distribution of assets.** Upon the full termination of the Plan, the Employer shall direct the distribution of the assets of the Plan to Participants in a manner which is consistent with the provisions of Section 6.5 except that no Participant or spousal consent is required. Distributions to a Participant shall be made in cash or through the purchase of irrevocable nontransferable deferred commitments from an insurer.

## **7.3 MERGER, CONSOLIDATION OR TRANSFER OF ASSETS**

This Plan may be merged or consolidated with, or its assets and/or liabilities may be transferred to any other plan and trust, only if the benefits which would be received by a Participant of this Plan, in the event of a termination of the Plan immediately after such transfer, merger or consolidation, are at least equal to the benefits the Participant would have received if the Plan had terminated immediately before the transfer, merger or consolidation.

# **ARTICLE VIII MISCELLANEO US**

## **8.1 PARTICIPANT'S RIGHTS**

This Plan shall not be deemed to constitute a contract between the Employer and any Participant or to be a consideration or an inducement for the employment of any Participant or Employee. Nothing contained in this Plan shall be deemed to give any Participant or Employee the right to be retained in the service of the Employer or to interfere with the right of the Employer to discharge any Participant or Employee at any time regardless of the effect which such discharge shall have upon the Employee as a Participant of this Plan.

## **8.2 ALIENATION OF BENEFITS**



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(a) **General rule.** Subject to the exceptions provided below, and as otherwise permitted by the Code, no benefit which shall be payable to any person (including a Participant or the Participant's Beneficiary) shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, or charge the same shall be void; and no such benefit shall in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements, or torts of any such person, nor shall it be subject to attachment or legal process for or against such person, and the same shall not be recognized, except to such extent as may be required by law.

(b) **Exception for QDRO.** Subsection (a) shall not apply to a qualified domestic relations order defined in Code Section 414(p), and those other domestic relations orders permitted to be so treated by the Administrator under the provisions of the Retirement Equity Act of 1984. The Administrator shall establish a written procedure to determine the qualified status of domestic relations orders and to administer distributions under such qualified orders. Further, to the extent provided under a qualified domestic relations order, a former spouse of a Participant shall be treated as the spouse or surviving spouse for all purposes under the Plan.

(c) **Exception for certain debts to Plan.** Subsection (a) shall not apply to an offset to a Participant's accrued benefit against an amount that the Participant is ordered or required to pay the Plan with respect to a judgment, order, or decree issued, or a settlement entered into in accordance with Code Sections 401(a)(13)(C) and (D).

### **8.3 CONSTRUCTION AND INTERPRETATION OF PLAN**

(a) **Applicable state laws.** This Plan shall be construed and enforced according to the Code and the laws of the State of Connecticut, other than its laws respecting choice of law, to the extent not pre-empted by Federal law.

(b) **Single subsections.** This Plan may contain single subsections. The existence of such single subsections shall not constitute scrivener's errors.

(c) **Separate Accounts.** Unless otherwise specified by a particular provision, the term "separate account" does not require a separate fund, only a notational entry in a recordkeeping system.

### **8.4 GENDER AND NUMBER**

(a) **Masculine and feminine.** Wherever any words are used herein in the masculine, feminine or neuter gender, they shall be construed as though they were also used in another gender in all cases where they would so apply.

(b) **Singular and plural.** Whenever any words are used herein in the singular or plural form, they shall be construed as though they were also used in the other form in all cases where they would so apply.

### **8.5 LEGAL ACTION**

In the event any claim, suit, or proceeding is brought regarding the Trust and/or Plan established hereunder to which the

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Trustee, the Employer or the Administrator may be a party, and such claim, suit, or proceeding is resolved in favor of the Trustee, the Employer or the Administrator, they shall be entitled to be reimbursed from the Trust Fund for any and all costs, attorney's fees, and other expenses pertaining thereto incurred by them for which they shall have become liable.

#### **8.6 PROHIBITION AGAINST DIVERSION OF FUNDS**

(a) **General rule.** Except as provided below and otherwise specifically permitted by law, it shall be impossible by operation of the Plan or of the Trust, by termination of either, by power of revocation or amendment, by the happening of any contingency, by collateral arrangement or by any other means, for any part of the corpus or income of any Trust Fund maintained pursuant to the Plan or any funds contributed thereto to be used for, or diverted to, purposes other than the exclusive benefit of Participants or their Beneficiaries.

(b) **Mistake of fact.** In the event the Employer shall make an excessive contribution under a mistake of fact, the Employer may demand repayment of such excessive contribution at any time within one (1) year following the time of payment and the Trustees shall return such amount to the Employer within the one (1) year period. Earnings of the Plan attributable to the contributions may not be returned to the Employer but any losses attributable thereto must reduce the amount so returned.

#### **8.7 EMPLOYER'S AND TRUSTEE'S PROTECTIVE CLAUSE**

The Employer, Administrator and Trustee, and their successors, shall not be responsible for the validity of any Contract issued hereunder or for the failure on the part of the insurer to make payments provided by any such Contract, or for the action of any person which may delay payment or render a Contract null and void or unenforceable in whole or in part.

#### **8.8 INSURER'S PROTECTIVE CLAUSE**

Except as otherwise agreed upon in writing between the Employer and the insurer, an insurer which issues any Contracts hereunder shall not have any responsibility for the validity of this Plan or for the tax or legal aspects of this Plan. The insurer shall be protected and held harmless in acting in accordance with any written direction of the Trustee, and shall have no duty to see to the application of any funds paid to the Trustee, nor be required to question any actions directed by the Trustee. Regardless of any provision of this Plan, the insurer shall not be required to take or permit any action or allow any benefit or privilege contrary to the terms of any Contract which it issues hereunder, or the rules of the insurer.

#### **8.9 RECEIPT AND RELEASE FOR PAYMENTS**

Any payment to any Participant, the Participant's legal representative, Beneficiary, or to any guardian or committee appointed for such Participant or Beneficiary in accordance with the provisions of the Plan, shall, to the extent thereof, be in full satisfaction of all claims hereunder against the Trustee and the Employer.

#### **8.10 ACTION BY THE EMPLOYER**

Whenever the Employer under the terms of the Plan is permitted or required to do or perform any act or matter or thing, it shall be done and performed by a person duly authorized by its legally constituted authority.

#### **8.11 HEADINGS**

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The headings and subheadings of this Plan have been inserted for convenience of reference and are to be ignored in any construction of the provisions hereof.

#### **8.12 APPROVAL BY INTERNAL REVENUE SERVICE**

Notwithstanding anything herein to the contrary, if, pursuant to an application for qualification filed by or on behalf of the Plan by the time prescribed by law for filing the Employer's return for the taxable year in which the Plan is adopted, or such later date that the Secretary of the Treasury may prescribe, the Commissioner of Internal Revenue Service or the Commissioner's delegate should determine that the Plan does not initially qualify as a tax-exempt plan under Code Sections 401 and 501, and such determination is not contested, or if contested, is finally upheld, then if the Plan is a new plan, it shall be void ab initio and all amounts contributed to the Plan by the Employer, less expenses paid, shall be returned within one (1) year after the date the initial qualification is denied, and the Plan shall terminate, and the Trustee shall be discharged from all further obligations. If the disqualification relates to an amended plan, then the Plan shall operate as if it had not been amended.

#### **8.13 ELECTRONIC MEDIA**

The Administrator may use telephonic or electronic media to satisfy any notice requirements required by this Plan, to the extent permissible under regulations (or other generally applicable guidance). In addition, a Participant's consent to an immediate distribution may be provided through telephonic or electronic means, to the extent permissible under regulations (or other generally applicable guidance). The Administrator also may use telephonic or electronic media to conduct plan transactions such as enrolling Participants, electing (and changing) investment allocations, applying for Plan loans, and other transactions, to the extent permissible under regulations (or other generally applicable guidance).

#### **8.14 PLAN CORRECTION**

The Administrator in conjunction with the Employer may undertake such correction of Plan errors as the Administrator deems necessary, including correction to preserve tax qualification of the Plan under Code Section 401(a) or to correct a fiduciary breach. Without limiting the Administrator's authority under the prior sentence, the Administrator, as it determines to be reasonable and appropriate, may undertake correction of Plan document, operational, demographic and employer eligibility failures under a method described in the Plan or under the IRS Employee Plans Compliance Resolution System ("EPCRS") or any successor program to EPCRS. The Administrator, as it determines to be reasonable and appropriate, also may undertake or assist the appropriate Fiduciary or Plan official in undertaking correction of a fiduciary breach.

#### **8.15 UNIFORMITY**

All provisions of this Plan shall be interpreted and applied in a uniform, nondiscriminatory manner. In the event of any conflict between the terms of this Plan and any Contract purchased hereunder, the Plan provisions shall control.

### **ARTICLE IX PARTICIPATING EMPLOYERS**

#### **9.1 ADOPTION BY OTHER EMPLOYERS**

Notwithstanding anything herein to the contrary, with the consent of the Employer and Trustee, any other corporation or entity, whether an Affiliated Employer or not, may adopt this Plan and all of the provisions hereof, and participate herein and be

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known as a Participating Employer, by a properly executed document evidencing said intent and will of such Participating Employer.

## **9.2 REQUIREMENTS OF PARTICIPATING EMPLOYERS**

- (a) **Same Trustee for all.** Each such Participating Employer shall be required to use the same Trustee as provided in this Plan.
- (b) **Holding and investing assets.** The Trustee may, but shall not be required to, commingle, hold and invest as one Trust Fund all contributions made by Participating Employers, as well as all increments thereof.
- (c) **Payment of expenses.** Unless the Employer otherwise directs, any expenses of the Plan which are to be paid by the Employer or borne by the Trust Fund shall be paid by each Participating Employer in the same proportion that the total amount standing to the credit of all Participants employed by such Employer bears to the total standing to the credit of all Participants.

## **9.3 DESIGNATION OF AGENT**

Each Participating Employer shall be deemed to be a party to this Plan; provided, however, that with respect to all of its relations with the Trustee and Administrator for the purpose of this Plan, each Participating Employer shall be deemed to have designated irrevocably the Employer as its agent. Unless the context of the Plan clearly indicates the contrary, the word "Employer" shall be deemed to include each Participating Employer as related to its adoption of the Plan.

## **9.4 EMPLOYEE TRANSFERS**

In the event an Employee is transferred between Participating Employers, accumulated service and eligibility shall be carried with the Employee involved. No such transfer shall effect a termination of employment hereunder, and the Participating Employer to which the Employee is transferred shall thereupon become obligated hereunder with respect to such Employee in the same manner as was the Participating Employer from whom the Employee was transferred.

## **9.5 PARTICIPATING EMPLOYER CONTRIBUTION AND FORFEITURES**

Any contribution or Forfeiture subject to allocation during each Plan Year shall be determined and allocated separately by each Participating Employer, and shall be allocated only among the Participants eligible to share of the Employer or Participating Employer making the contribution or by which the forfeiting Participant was employed. On the basis of the information furnished by the Administrator, the Trustee shall keep separate books and records concerning the affairs of each Participating Employer hereunder and as to the accounts and credits of the Employees of each Participating Employer. The Trustee may, but need not, register Contracts so as to evidence that a particular Participating Employer is the interested Employer hereunder, but in the event of an Employee transfer from one Participating Employer to another, the employing Employer shall immediately notify the Trustee thereof.

## **9.6 AMENDMENT**

Any Participating Employer that is an Affiliated Employer hereby authorizes the Employer to make amendments on its behalf, unless otherwise agreed among all affected parties. If a Participating Employer is not an Affiliated Employer, then

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amendment of this Plan by the Employer at any time when there shall be a Participating Employer shall, unless otherwise agreed to by the affected parties, only be by the written action of each and every Participating Employer and with the consent of the Trustee where such consent is necessary in accordance with the terms of this Plan.

### **9.7 DISCONTINUANCE OF PARTICIPATION**

Any Participating Employer shall be permitted to discontinue or revoke its participation in the Plan at any time. At the time of any such discontinuance or revocation, satisfactory evidence thereof and of any applicable conditions imposed shall be delivered to the Trustee. The Employer shall have the right to discontinue or revoke the participation in the Plan of any Participating Employer by providing 45 days notice to such Participating Employer. The Trustee shall thereafter transfer, deliver and assign Contracts and other Trust Fund assets allocable to the Participants of such Participating Employer to such new Trustee as shall have been designated by such Participating Employer, in the event that it has established a separate qualified retirement plan for its employees provided, however, that no such transfer shall be made if the result is the elimination or reduction of any Section 411(d)(6) protected benefits as described in Section 7.1(e). If a separate plan has not been established, at the time of such continuance or revocation for whatever reason, the assets and liabilities, Contracts and other Trust Fund assets allocable to such Participating Employer's participation in this Plan shall be spun off pursuant to Code Section 414(l) and such spun off assets shall constitute a retirement plan of the Participating Employer with such Participating Employer becoming sponsor and the individual who has signed the Supplemental Participation Agreement on behalf of the Participating Employer becoming Trustee for this purpose. Such individual shall agree to this appointment by virtue of signing the Supplemental Participation Agreement. If such individual is no longer an Employee of the Participating Employer, then the Participating Employer shall appoint a Trustee. If no successor is designated, the Trustee shall retain such assets for the Employees of said Participating Employer pursuant to the provisions of the Trust. In no such event shall any part of the corpus or income of the Trust Fund as it relates to such Participating Employer be used for or diverted for purposes other than for the exclusive benefit of the Employees of such Participating Employer.

### **9.8 ADMINISTRATOR'S AUTHORITY**

The Administrator shall have authority to make any and all necessary rules or regulations, binding upon all Participating Employers and all Participants, to effectuate the purpose of this Article.

### **9.9 [THIS SECTION IS RESERVED FOR FUTURE USE]**

### **9.10 [THIS SECTION IS RESERVED FOR FUTURE USE]**

### **9.11 SERVICE**

An Employee's service includes all Hours of Service and Years of Service with any and all Participating Employers and their Affiliated Employers. An Employee who terminates employment with one Participating Employer and immediately commences employment with another Participating Employer has not separated from service and has not had a severance from employment.

### **9.12 REQUIRED MINIMUM DISTRIBUTIONS**

If a Participant is a 5-percent owner (under Section 6.8(c)(6)) of any Participating Employer for which the Participant is an Employee in the Plan Year the Participant attains age 70 1/2, then the Participant's required beginning date under Section 6.8 shall be the April 1 of the calendar year following the close of the calendar year in which the Participant attains age 70 1/2.

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IN WITNESS WHEREOF, this Plan has been executed this \_\_\_\_\_ day of \_\_\_\_\_, by Town of East Hartford.

Signed and delivered in the presence of:

Town of East Hartford

WITNESS

EMPLOYER

This Agreement represents part of the Arbitration Panel's Award in Case No. 2012-MBA-376.

Union's Last Best Offer:

57 Section 2. An Employee who enters the service of the Employer on or after October 1, 1972, will become an eligible Employee if the following conditions are met:

58 (a) Under age 45 -- as a condition of employment, it is mandatory that an Employee becomes covered under the Retirement System within 3 months after his or her employment commences.

59 (b) He or she has reached his or her 45th birthday -- as a condition of employment, it is not mandatory that an Employee becomes covered under the Retirement System; however, he or she must apply within 3 months of entering the service of the Town. If such Employee does not apply then, he or she must do so within 2 years of his or her employment date, and in order to be credited with such service, he or she must pay all back contributions with interest thereon.

60 (c) All Employees must make their Employee contributions while eligible to do so. No credit will be granted during any period when the Employee does not make the necessary contributions to the Retirement System.

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61 No Such Language or new Section

148 No Such Language, new Section(s) or Document(s).

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### DISCUSSION, DECISION AND AWARD

This issue involves the elimination of the Defined Benefit Pension Plan for Police Officers hired on or after January 13, 2012 and the institution of a defined contribution plan. Those hired after January 1, 2013 would participate in Social Security.

The Union is seeking to retain the existing Plan.

In the First Panel Decision, a majority of the Panel, the Public and Labor Members, accepted the last best offer of the Union for Issue 7 based on its review of the statutory criteria. The Management Member dissented on the same basis.

The record indicates that the Town's proposal provides for an optional four (4%) contribution from the employee that will be matched up to four (4%) from the Town. The employee would vest 100% of his/her own contributions from day one, and vest 100% of employer contributions after 5 years. The employee takes all vested contributions with him/her upon leaving employment at any time.

A "new hire" would be eligible for a disability benefit and service connected death benefit under the terms of the current Defined Benefit Plan. However, any disability benefit is reduced by disability benefits awarded under Social Security, if any.

We reviewed the record evidence concerning the Town's last best offer. The Town called various witnesses to testify to the First Panel regarding the terms of its last best offer.

The Town's Last Best Offer, which was amended several times during the proceedings, is extremely detailed because to implement its proposal it must exclude the new employees from the existing defined benefit plan and create a new and complete "Defined Contribution Plan For Full-Time Employees of the Police Department of the Town of East Hartford."



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As the First Panel notes, unlike most public and private sector defined benefit plans, the Town's proposed defined contribution plan includes some unique and more beneficial provisions to police employees.

Unlike with most Defined Contribution Plans, the Town's last best offer provides participants in the plan with disability coverage and service connected death benefits. Participants in the Defined Contribution Plan will receive benefits equal to the disability benefit and service connected death benefit set forth in Article V and Article VIII, Section 1, respectively, of the Retirement Plan, in accordance with the rules of those articles and sections. Any disability benefits would be reduced by the value of the Employer's contribution to the Defined Contribution Plan, including investment earnings, through the date of disability and reduced by any disability benefits awarded to the employee under social security. (Tr. 6/7/12, pp. 210-212; Town brief, p. 72)

The purpose of the Town's proposal, like most employers who transition to defined contribution pension plans, is to save money and reduce financial risk, including the risk of lower than anticipated investment returns on pension funds.

As to the comparability factor, the Town acknowledges that defined benefit plans predominate among police department employees, but notes an increasing number of defined contribution plans. It identified at least eleven other municipalities that offer defined contribution plans for public safety employees. Those municipalities are Avon, Berlin, Bloomfield, Coventry, East Lyme, New London, Old Lyme, South Windsor, Tolland, Torrington and West Haven. (Town Ex. 16; Town brief, p. 73).

The Town provided certain expert witnesses in support of its offer that is contained in the transcripts of the proceedings.

The transcripts of the hearings demonstrate that said witnesses testified on cross-examination that certain provisions of the Plan representing the Town's last best offer "creates an ambiguity" in the language.

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The Union emphasizes that said witnesses testimony established that the Town's proposed Plan creates "ambiguity and debate as to how, on what basis, under what standards, based on what assumptions, etc. the calculation of the 'employer contributions' and Social Security disability benefits would impact the benefit". (Union brief, p.20).

We conclude, after review of the record, that the Union's last best offer to retain the current contract language should be adopted.

The moving party has the burden of persuasion based on a preponderance of the evidence regarding the statutory criteria that its last best offer should be adopted. We find that the Town's last best offer by its terms is defective based on a review of the Town's witnesses' testimony; the Union's arguments related thereto; and, our analysis of the testimony of the Town's experts. Last best offer arbitration requires that we adopt one of the last best offers submitted by the Parties on each issue. It is certainly not in the public interest to adopt a defective last best offer. It is also noted that the evidence on comparability to other bargaining units in the Town and State clearly indicates that the existing language is in the vast majority of contracts.

Based on the above finding, we will limit here our discussion of the statutory criteria on this issue.

## **AWARD**

Based on a preponderance of the evidence submitted by the Parties as included in the record of the First Arbitration Panel as discussed above; and, giving priority to the public interest and the financial capability of the Town; and, in consideration of the other statutory factors in light of the financial capability priority criterion, the Second Arbitration Review Panel unanimously concurs with the Award of the First Panel and awards the last best offer of the Union for Issue 7.

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## **Issue 8**

**Contract Provisions:** Article V, Section 3, Paragraph 69

**Subject:** Exemption from Cap on Service Connected Disability

### **Current Language:**

Section 3. Service Connected Disability -- Any Employee covered under this Retirement System who becomes Permanently and Totally Disabled during the performance of essential duties pertaining to his or her employment shall be eligible to retire and receive a Service Connected Disability Pension equal to fifty percent (50%) of the disabled Employee's Final Average Salary or his or her annual rate of Regular Compensation at the time of such disability (whichever is greater) if the Employee has completed less than 20 years of Credited Service. If the Employee has completed 20 or more years of Credited Service at his or her date of disability, the amount of the Service Connected Disability Pension shall be determined in the same manner as his or her Normal Pension as described in Article IV, Section 1 hereof using Credited Service and Final Average Salary or Regular Compensation as of the date of disability. In no event shall payments under this section, together with any regular benefits awarded under the Connecticut Workers' Compensation Act, (excluding any special awards such as loss of limb, eye, etc., provided for in Section 31-308 and 31-308a of the Connecticut General Statutes) exceed one hundred percent (100%) of the Final Average Salary or the Regular Compensation being paid to the disabled Employee at the time of his or her disability.

### **Town's Last Best Offer:**

Section 3. Service Connected Disability -- Any Employee covered under this Retirement System who becomes Permanently and Totally Disabled during the performance of essential duties pertaining to his or her employment shall be eligible to retire and receive a Service Connected Disability Pension equal to fifty percent (50%) of the disabled Employee's Final Average Salary or his or her annual rate of Regular Compensation at the time of such disability (whichever is greater) if the Employee has completed less than 20 years of Credited Service. If the Employee has completed 20 or more years of Credited Service at his or her date of disability, the amount of the Service Connected Disability Pension shall be determined in the same manner as his or her Normal Pension as described in Article IV, Section 1 hereof using Credited Service and Final Average Salary or Regular Compensation as of the date of disability. In no event shall payments under this section, together with any regular benefits awarded under the Connecticut Workers' Compensation Act, exceed one hundred percent (100%) of the

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Final Average Salary or the Regular Compensation being paid to the disabled Employee at the time of his or her disability.

**Union's Last Best Offer:**

- 69 Section 3. Service Connected Disability -- Any Employee covered under this Retirement System who becomes Permanently and Totally Disabled during the performance of essential duties pertaining to his or her employment shall be eligible to retire and receive a Service Connected Disability Pension equal to fifty percent (50%) of the disabled Employee's Final Average Salary or his or her annual rate of Regular Compensation at the time of such disability (whichever is greater) if the Employee has completed less than 20 years of Credited Service. If the Employee has completed 20 or more years of Credited Service at his or her date of disability, the amount of the Service Connected Disability Pension shall be determined in the same manner as his or her Normal Pension as described in Article IV, Section 1 hereof using Credited Service and Final Average Salary or Regular Compensation as of the date of disability. In no event shall payments under this section, together with any regular benefits awarded under the Connecticut Workers' Compensation Act, (excluding any special awards such as loss of limb, eye, etc., provided for in Section 31-308 and 31-308a of the Connecticut General Statutes) exceed one hundred percent (100%) of the Final Average Salary or the Regular Compensation being paid to the disabled Employee at the time of his or her disability.

**DISCUSSION, DECISION AND AWARD**

This issue involves a Town proposal to cap pension benefits in a manner that ensures that no unit employee gets a pension and other benefits which exceeds his/her final average salary. The specific issue involves language in the Pension Agreement that currently exempts certain workers' compensation awards from being considered in pension calculations for those employees with a service connected disability pension.

In the First Panel Decision, a majority of the Panel, the Public and Management Members, accepted the last best offer of the Town based on its review of the statutory criteria. The Labor Member dissented on the same basis.

In its brief, the Town explains what and why they are proposing changes: Article V, Section 3, contains a built-in "cap" where workers' compensation benefits are involved. Pursuant to this cap, a member's retirement benefit

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together with any regular benefits awarded under the Connecticut workers' compensation statutes may not exceed one hundred percent of the member's Final Average salary or Regular Compensation. However, certain types of workers' compensation are excluded from the cap. In particular, "special awards such as loss of limb, eye, etc., provided for in Section 31-308 and [31-308a] of the Connecticut General Statutes" are not included when calculating whether a member's benefit triggers the cap. (Joint Ex. A-1, p.8).

Connecticut General Statute, Section 31-308 benefits compensate a workers' compensation claimant for permanent loss of a body part or organ attributable to a compensable injury. Section 31-308a provides additional benefits for partial permanent disability, based upon wage loss attributable to the injury; specifically, a portion of the difference between the earnings of an employee in a position that is comparable to the position held by the injured employee prior to his injury and the weekly amount that the injured employee earns thereafter. (Town Ex. 13).

The Town's last best offer strikes the language that exempts special awards under said statutory provisions from the cap and argues that there should be no circumstances under which a retiree earns greater than 100% of his/her final average salary or regular compensation.

The Union's last best offer retains the current language in the successor Pension Agreement.

After a review of the record in light of the statutory criteria, we find that it is not in the public interest to have retirees receive a benefit while not working that exceeds the benefit that he/she received as a paid employee.

A preponderance of the evidence on the record indicates that the existing benefit is out of line in both public sector and private sector plans. In fact, the exemptions at issue were eliminated from the Town Firefighter's contract in 2005.

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Although the record does not show a cost savings for the Town, the perception of an employee receiving more money retired than working is persuasive.

The Union, on the other hand did not provide any evidence that supports a finding that any current retiree would have been harmed if the proposal had been in effect at the time of his/he retirement.

We conclude that the possibility of a future expense for this benefit based on the evidence of the Town's financial capability and the public interest is not justified by the evidence reviewed in light of the statutory criteria. We adopt the Town's last best offer on Issue 8.

### **AWARD**

Based on a preponderance of the evidence submitted by the Parties as included in the record of the First Arbitration Panel and giving priority to the public interest and the financial capability of the Town, and, in consideration of the other statutory factors in light of that priority criterion, the Second Arbitration Review Panel unanimously concurs with the Award of the First Panel and awards the last best offer of the Town for Issue 8.

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## Issue 9

**Contract Provisions:** Article VII, Sections 1-2, Paragraphs 80, 81, 83

**Subject:** Vesting Period

**Current Language:**

80 5 (five)

81 5 (five)

### *Town's Last Best Offer:*

The Town's last best offer (Paragraph 80): 15

The Town's last best offer (Paragraph 81): 15

The Town's last best offer (Paragraph 83): No New Language

### *Union's Last Best Offer:*

80 5 (five)

81 5 (five)

83 An employee may not receive both the Non-Service Connected Disability Benefit and the Normal Retirement Benefit.

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### DISCUSSION, DECISION AND AWARD

This issue involves the Union's last best offer to reduce the vesting period for normal retirement from fifteen (15) to five (5) years. The Town proposes no change in the existing language

A majority of the First Panel, the Public Member and the Management Member selected the Town's last best offer based on a review of the record evidence based on the statutory criteria. The Labor Member dissented based on his review of the evidence based on the statutory criteria.

The Union points out that if an employee leaves Town employment before the pension benefit has vested that the benefits is limited to the employee's pension contribution plus 4% interest. The Union proposal has no impact on disability or death benefits.

Our review of the record finds that the Town's actuaries calculated the annual cost of the Union's offer at \$4,000.00. (Union Exhibit 7). A second hidden cost, the cost of health insurance for retirees, is foreseeable. Lowering the vesting period from fifteen to five years introduces a whole new class of vested terminated employees (those who leave Town service with 5 to 14 years) who would be eligible for such benefits upon their retirement date.

The Union relies on the minimal cost of this benefit improvement:

The Town's actuaries, Segal Company, were asked to cost this proposal. Segal estimates the cost to the Town at \$4,000 per year. Ms. Riley conceded this cost represents one and one half tenth of one percent of the annual required contribution (Tr. 7/21, p. 442). Ms. Riley characterized this cost as "pretty minimal" and "insignificant" (Tr. 7/21, p. 469,470).

It also relies on the record evidence of comparability with other Town units developed by the Town's actuaries. (Town Exhibit 18). Fire and dispatchers have



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five (5) year vesting periods and other Town general employees and paraprofessionals have ten (10) years vesting. It emphasizes that the vesting periods in ten municipalities that it considers comparable to the Town--every municipality but East Hartford has ten (10) year vesting. The Town's Exhibit 7 identifies nine municipalities that it considers comparable—none of which have a five (5) year vesting period. In the Union's comparison group, Hartford County, six (6) of the nineteen (19) Towns where data was presented have a five (5) year vesting and the rest ten (10) years.

Based on the above cited evidence, the Union in its brief contends that the "public interest" is irrelevant to this issue:

It is respectfully submitted the public has no interest in this proposal. This proposal will obviously have no real impact on the Town's budget, its ARC, or anything else. (Union brief, p. 44)

We reviewed the record evidence in light of the statutory criteria. Based on that review we find that the Town's last best offer should be adopted. With reference to the financial capability of the Town, the record shows that under all the current actuarial assumptions the cost to the Town will be \$4,000 per year and weighs in favor of a finding for the Town.

With reference to the most relevant other statutory factor, the comparability factor; it does not support the Union's position. None of the comparable municipalities identified by the Town had a five (5) year vesting period and a minority of the Hartford County municipalities identified by the Union has five (5) year vesting provisions.

Based on the preponderance of the evidence on the record, we find that the Town's last best offer retaining the current pension vesting period is more consistent with the statutory factors.

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## **AWARD**

Based on a preponderance of the evidence submitted by the Parties as included in the record of the First Arbitration Panel and giving priority to the public interest and the financial capability of the Town, and, in consideration of the other statutory factors in light of that priority criterion, the Second Arbitration Review Panel unanimously concurs with the Award of the First Panel and awards the last best offer of the Town for Issue 9.

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## **Issue 10**

**Contract Provisions:** Article X, Section 1, Paragraph 95

**Subject:** Annual Report Due Date

**Current Language:**

March 31st

**Town's Last Best Offer:**

March 31st

**Union's Last Best Offer:**

95 December 31<sup>st</sup>

### **DISCUSSION, DECISION AND AWARD**

This issue involves a Union proposed last best offer to change the date that the pension Annual Report is required to be submitted from March 31<sup>st</sup> to December 31<sup>st</sup> of the prior year. The Town proposes no change to the existing language.

The record evidence is clear that some of the additional time between the current submission date and the earlier date proposed by the Union is utilized by the Town to have influence on the final report, especially the assumed investment return that directly leads to the Town's contribution into the pension fund.

As the Union evidence reveals, the actuarial report for years ending June 30, 2007 and 2008 were prepared and submitted, respectively, on January 18, 2008 and January 21, 2009.

The actuarial report for the period ending June 30, 2010 was not submitted until April 15, 2011.

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We reviewed the record evidence in light of the statutory criteria. This issue has no financial impact on the negotiations of the Parties because any negotiation of contracts--or indeed, the instant Pension Agreement—materially takes place many months after the Annual Report is actually received by the Parties.

As to the public interest criterion, it is also not substantially material to the public interest when the public receives the information because MERA negotiations, etc. and the attendant other processes, as in this case, can take well more than a year beyond either of the dates in the last best offers of the Parties.

We note that, although not a statutory criterion or related factor, the political reality of municipal government plays a part in the issuance of the Annual Report. We agree with the Town's argument that the political and budgetary role played by the Town in the pension funding process is a legitimate and proper role in a democracy. We find that moving the publication date back three months would not prevent the Town budgetary and political officials from exercising exactly the same discretion over the pension funding that they do today.

We find no evidence on the record that the Union's failure to get the annual report at an earlier date has interfered with the Parties collective bargaining history.

The Union did not meet its burden of proof that its last best offer should be awarded based on our analysis of the statutory criteria.

Based on the foregoing, we find that the Town's last best offer representing current language should be adopted.

## **AWARD**

Based on a preponderance of the evidence submitted by the Parties as included in the record of the First Arbitration Panel and giving priority to the public interest and the financial capability of the Town, and, in consideration of the other statutory factors in light of that priority criterion, the Second Arbitration Review Panel unanimously concurs with the Award of the First Panel and awards the last best offer of the Town for Issue 10.

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## Issue 11

**Contract Provisions:** Article X, Section 2-3, Paragraphs 96, 98

**Subject:** Arbitration Clause

**Current Language:**

Section 2. If any misunderstanding or ambiguity should arise concerning the meaning of any of the provisions of the Retirement System, the Retirement Board shall have the sole right to construe such provisions, and the Retirement Board's decision shall be final. The Retirement Board may establish such rules and regulations supplementing the Retirement System as it considers desirable.

Section 3. The finding of facts by the Retirement Board as to matters relating to an Employee's employment record are binding on him or her for the purposes of the Retirement System. The Retirement System shall confer no right upon any Employee to be retained as an Employee by the Employer.

**Town's Last Best Offer:**

**The Town's last best offer (paragraph 96):**

Section 2. If any misunderstanding or ambiguity should arise concerning the meaning of any of the provisions of the Retirement System, the Retirement Board shall have the sole right to construe such provisions, and the Retirement Board's decision shall be final. The Retirement Board may establish such rules and regulations supplementing the Retirement System as it considers desirable.

**The Town's last best offer (paragraph 98):**

Section 3. The finding of facts by the Retirement Board as to matters relating to an Employee's employment record are binding on him or her for the purposes of the Retirement System. The Retirement System shall confer no right upon any Employee to be retained as an Employee by the Employer.

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**Union's Last Best Offer:**

- 96 Section 2. (a) Any dispute between the parties concerning the application and/or interpretation of this Retirement Plan agreement, including arbitrability, but excluding the exercise of the Retirement Board's sole and absolute discretion on the basis of medical evidence as described in § 1 of Article V hereof, shall be resolved through the grievance arbitration process set forth in this section.
- 96 (b) (1) Step 1 – Any Employee, or East Hartford Police Officers Association on behalf of similarly aggrieved Employees, shall, within twenty (20) calendar days of the occurrence or event giving rise to the grievance, reduce the grievance to writing and submit it to the Town Director of Human Resources, or his designee. The grievance shall contain a statement of the pertinent facts involved, allegation of the specific provision of this Retirement Plan document and the remedy requested. The Director of Human Resources, or his designated representative, shall meet with the interested parties: (i) within fifteen (15) calendar days of the receipt of the grievance; or (ii) at such later date as mutually agreed in writing. The Town Director of Human Resources shall render his decision in writing within ten (10) calendar days of the completion of such meeting.
- 96 (2) Step 2 – If the grievance is not settled at Step 1, it shall be presented in writing to the Town Retirement Board within twenty (20) calendar days after the decision of the Town Director of Human Resources. The Town Retirement Board shall meet with the interested parties: (i) within thirty (30) calendar days of the receipt of the grievance; or
- (ii) At such later date as mutually agreed in writing. The Town Retirement Board shall render its decision in writing within forty-five (45) calendar days of the completion of such meeting. If this decision does not resolve the dispute, then the question may be processed to Step 3.
- 96 (3) Step 3 – Either party may request the State Board of Mediation and Arbitration to provide arbitration services within fifteen (15) calendar days following the written decision of the Town Retirement Board or, if there is no written decision, within the timelines specified (d) below. The Decision of the

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State Board of Mediation and Arbitration shall be final and binding on both parties. The authority of the arbitrator(s) shall be limited to the application and interpretation of this Retirement Plan agreement. The arbitrator(s) shall have no authority to add to or subtract from said agreement. The cost of the arbitration mutually incurred shall be shared equally by both parties. Costs incurred by the parties as individuals shall be borne by the party incurring the cost.

- 96 (c) Notwithstanding the foregoing, within ten (10) calendar days following receipt of notice of filing for arbitration, either party may exercise its right to transfer the arbitration proceedings to the American Arbitration Association (AAA). Arbitration(s) transferred to AAA will be administered by and under the rules of the American Arbitration Association. In any case, the party that elects to utilize the services of the American Arbitration Association shall bear 100% of the administrative costs and pay 100% of the arbitrator's fees and expenses in connection with such arbitration.
- 96 (d) Failure by any representative of the Town of East Hartford to render a written decision within the time limit(s) prescribed in this Grievance procedure shall provide the grievant/Union the option to file to the next successive step of the Grievance Procedure:
- (i) within forty-five (45) calendar days of the filing of the grievance (if proceeding to Step 2); and/or (ii) within one hundred and five (105) calendar days of the filing of the original grievance (if proceeding to Step 3). Failure by the grievant or the Union to proceed to the next level within the time limits prescribed in sections 2 and 3 of this agreement or, if applicable, as set forth in the preceding sentence, shall constitute a denial of the grievance and acceptance of such denial by the grievant/Union. However, all time limits expressed herein may be waived by an agreement confirmed in writing by both parties.
- 96 (e) Upon mutual agreement, both parties may request mediation with the State Board of Arbitration and Mediation.

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- 98 Section 3. The Retirement System shall confer no right upon any Employee to be retained as an Employee by the Employer. The Retirement Board may establish such rules and regulations supplementing the Retirement System as it considers desirable, provided said rules and regulations shall not substantively change or reduce any benefits provided for herein.

### **DISCUSSION, DECISION AND AWARD**

This issue involves the substitution of an arbitration process for the current decision of the Retirement Board with reference to "any misunderstanding or ambiguity" concerning the meaning of any provision of the Retirement Contract. It proposes that disputes under the successor Pension Agreement, which currently are resolved by the Retirement Board, should be decided by a three step grievance arbitration process.

The Town's last best offer retains current language.

The Union has the burden of proof that its last best offer should be adopted based on the statutory criteria. It argues on the merits that the same dispute resolution process that applies to the collective bargaining Contract should apply to the Pension Agreement, claiming "[I]t is rare that any agreement in the public sector involving collective bargaining is not subject to grievance arbitration in the event of a dispute".

Its Exhibit 6 sets forth the appeal process for all of the Towns for which the documentation could be obtained in Hartford County. All of the Towns provided for grievance arbitration in the event of a dispute over pension, except for Rocky Hill and those Towns that are in MERS. By statute, any dispute concerning benefits under MERS is subject to appeal to the Retirement Services Division, and ultimately the courts, under C.G.S. § 4-176 and Connecticut Regulations § 5-155a-1. (Union Brief, p. 49).

It argues, further, that the public interest is best served by resolution of disputes through arbitration as the process is expeditious, cost effective and impartial. The Union



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posits that arbitration is faster and less expensive than litigation and labor arbitrators have far more knowledge of the workings of a collective bargaining contract than the Courts.

With reference to financial impact, the Union claims there is no impact because there have been few disputes about interpretations of the Pension Agreement. None are anticipated, in fact, because there have been very few disputes over the years that the Agreement has been in existence--many years without serious dispute over its interpretation.

As to comparability data, the Union argues that "all the Town's comparison groups have a grievance arbitration process for pension benefits." (Union brief, p. 51).

The Town's brief states that under the current language of the Pension Agreement the Retirement Board, not the courts, have the sole authority to interpret the Pension Agreement and cites the relevant provision of the Agreement:

Article X, Section 2 currently provides, in relevant part, "[i]f any misunderstanding or ambiguity should arise concerning the meaning of any of the provisions of the Retirement System, the Retirement Board shall have the sole right to construe such provisions, and the Retirement Board's decision shall be final."

The Town also argues that the Retirement Board is likely to have more expertise in interpreting East Hartford's Pension Agreement than would most arbitrators and maintains that there is no compelling case for the change in contract language:

The Union's proposal also fails to acknowledge that bodies like the Retirement Board, which are devoted to administering a particular plan, gain a certain expertise that an arbitration panel will never have. The Town and its employees should not be deprived of such expertise absent some compelling reason. This is especially true where the complex issues such as disability pensions are involved. (Town brief, p. 86).

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We find that the history of the lack of disputes in this area militates against the adoption of the Union's last best offer. It has not met the burden of proof based on a preponderance of the evidence presented regarding the statutory criteria.

As to the financial impact of this proposal, cost savings of arbitration versus litigation in the Courts is speculative. The Union could provide no evidence with reference to this criterion or to its representation that arbitration would be a better process to resolve pension disputes.

Finally, we are not persuaded a change is in order for this bargaining unit as pension disputes for all Town employees in all other bargaining units under the Plan are resolved in the current manner to the Retirement Board.

## **AWARD**

Based on a preponderance of the evidence submitted by the Parties as included in the record of the First Arbitration Panel and giving priority to the public interest and the financial capability of the Town, and, in consideration of the other statutory factors in light of that priority criterion, the Second Arbitration Review Panel unanimously concurs with the Award of the First Panel and awards the last best offer of the Town for Issue 11.

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## Issue 12

**Contract Provisions:** Article XIII, Sections 3 & 6, Paragraphs 126, 132

**Subject:** Deferred Retirement Option Plan – C.O.L.A. Waiting Period

**Current Language:**

Section 3. Any member electing the D.R.O.P. will be considered retired with respect to the Pension Plan but will not have separated from Town service. The commencement of the D.R.O.P. period will be considered the commencement date for the waiting period for the C.O.L.A. Notwithstanding any other provision within the Retirement Plan to the contrary, a member does not need to leave Town Service to qualify for Pension Benefits as long as that member has elected the D.R.O.P. The member who has elected the D.R.O.P may remain in Town Service at their current rank, with all the benefits of the Collective Bargaining Agreement, including promotional opportunities, through and including the completion of their D.R.O.P period.

**Town's Last Best Offer:**

**The Town's last best offer (paragraph 126):**

**Section 3.** Any member electing the D.R.O.P. will be considered retired with respect to the Pension Plan but will not have separated from Town service. Notwithstanding any other provision within the Retirement Plan to the contrary, a member does not need to leave Town Service to qualify for Pension Benefits as long as that member has elected the D.R.O.P. The member who has elected the D.R.O.P may remain in Town Service at their current rank, with all the benefits of the Collective Bargaining Agreement, including promotional opportunities, through and including the completion of their D.R.O.P period.

**The Town's last best offer (paragraph 132):**

- (c) The C.O.L.A. waiting period shall commence on the date that the employee separates from Town service, and not on the date that the employee's D.R.O.P. period commences.

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**Union's Last Best Offer:**

- 126 Section 3. Any member electing the D.R.O.P. will be considered retired with respect to the Pension Plan but will not have separated from Town service. The commencement of the D.R.O.P. period will be considered the commencement date for the waiting period for the C.O.L.A. Notwithstanding any other provision within the Retirement Plan to the contrary, a member does not need to leave Town Service to qualify for Pension Benefits as long as that member has elected the D.R.O.P. The member who has elected the D.R.O.P may remain in Town Service at their current rank, with all the benefits of the Collective Bargaining Agreement, including promotional opportunities, through and including the completion of their D.R.O.P period.
- 132 No New Language

**DISCUSSION, DECISION AND AWARD**

The Town's Pension Plan contains a unique feature known as Deferred Retirement Option Plan (hereinafter "D.R.O.P.") The feature, rarely found in pension plans, especially private sector plans, allows a retiree to collect a pension and continue working.

The Town proposes new language whereby a Cost of living adjustment (hereinafter "C.O.L.A.") waiting period starts when the employee separates from Town Service and not when the D.R.O.P. period starts as is the current situation. The result would be that employees who exercise the option to join D.R.O.P. commence the four year waiting period for the pension C.O.L.A. when they actually stop work with the Town and start collecting a pension check rather than when they exercise their D.R.O.P option.

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The Town's actuary indicated that the change would result in savings for the Town of \$115,000.00, although the figure is disputed by the Union. We find that the Town proposal is supported by the priority criterion financial capability.

The Segal Company, which is the Town's actuaries, estimated that the Town will save \$115,000 annually by commencing the COLA waiting period upon separation of service, rather than upon commencement of DROP. Moreover, that figure is expected to increase by 4% per year. (Union Ex. 21, Town brief, p. 88)

The only other employees in the Town who have the benefit are the firefighter unit. That benefit includes the language proposed by the Town in its last best offer on this issue.

We find that although it may be in the public interest to retain qualified police and fire personnel beyond the time when he/she are eligible to retire, it is also in the bargaining unit's welfare to collect a pension and a paycheck-- an extremely unique and mutually satisfying benefit for both the Union members and the Town—even without a C.O.L.A..

The Town's last best offer does not disturb the main and unique feature of the current benefit. Although the savings is not substantive and delays the C.O.L.A. increase to the unit members, the Town's last best offer is reasonable in light of the Town's financial capability and in the public interest.

Moreover, if a retiree is troubled by the Town's proposal, he/she does not have to elect the benefit and he/she will not be affected by the change in the language.

## **AWARD**

Based on a preponderance of the evidence submitted by the Parties as included in the record of the First Arbitration Panel and giving priority to the public interest and the financial capability of the Town, and, in consideration of the other statutory factors in light of that priority criterion, the Second Arbitration Review Panel unanimously concurs with the Award of the First Panel and awards the last best offer of the Town for Issue 12.

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SIGNATURE PAGE

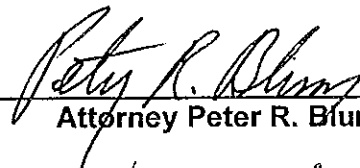
CASE NO. 2012-MBA-376

TOWN OF EAST HARTFORD  
-AND-  
EAST HARTFORD POLICE OFFICERS ASSOCIATION

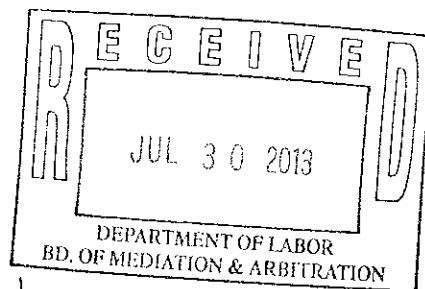
SECOND ARBITRATION REVIEW PANEL

Respectfully submitted:

  
\_\_\_\_\_  
Attorney Susan E. Halperin, Chairperson

  
\_\_\_\_\_  
Attorney Peter R. Blum

  
\_\_\_\_\_  
Attorney Gerald T. Weiner



hand-delivered by:  
Susan Halperin, Esq.

2012-MBA-376

**PART IV-ATTACHMENTS**

**AWARD OF THE FIRST ARBITRATION PANEL**

**AGREED UPON LANGUAGE**

**Attenello, Angela**

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**From:** Scott Chadwick [src@chadwickstone.com]

**Sent:** Friday, July 19, 2013 1:52 PM

**To:** Attenello, Angela

**Subject:** Town Council--Exexecutive Session

Angela,

I have a proposed settlement of a matter that I would like added to the agenda of the next Town Council meeting. It is the pending federal court action known as Elba Caban v. John Dupont, et al., 3:09 cv 0786(WWE). I may have other matters as well, but I wanted to get this one to you as soon as I knew.

Thanks,

Scott R. Chadwick  
Chadwick & Stone, LLP  
111 Founders Plaza  
Suite 1702  
East Hartford, CT 06108  
Tel. (860) 610-4500  
Fax (860) 610-4504



**Attenello, Angela**

---

**From:** Scott Chadwick [src@chadwickstone.com]  
**Sent:** Wednesday, July 31, 2013 3:55 PM  
**To:** Attenello, Angela  
**Subject:** RE:

Yes, please. The case is the Superior Court action known as Tarawatti Tomby, Administratrix v. Marc Cottrell, et al., Docket No. CV-11-6025477-S.

Thanks--Scott

-----Original Message-----

**From:** Aattenello@easthartfordct.gov [mailto:Aattenello@easthartfordct.gov]  
**Sent:** Wednesday, July 31, 2013 2:57 PM  
**To:** src@chadwickstone.com  
**Subject:**

Hey Scott:

Cindy Bennett said that you might be adding another case to executive session.... Waneeza Shaw??

Angela Attenello  
Town Council Clerk  
740 Main Street  
East Hartford CT 06108  
Office: (860)291-7208  
Fax: (860)291-7389

OFFICE OF THE  
TOWN COUNCIL

TOWN OF EAST HARTFORD

740 Main Street  
East Hartford, Connecticut 06108

*Robert J. Paetz*

2013 AUG -2 A 8:31  
(860) 291-7208

TOWN CLERK  
EAST HARTFORD  
FAX (860) 291-7389

DATE: July 31, 2013

TO: Town Council Members

FROM: Rich Kehoe, Chair

**REVISED 08-02-13**

RE: Tuesday, August 6, 2013 7:00 p.m. Town Council Majority Office

In accordance with Section 3.3 (a) of the Town Charter, a Special Meeting of the Town Council will be held as follows:

Tuesday, August 6, 2013

7:00 p.m.

Town Council Majority Office

The purpose of the meeting is to meet in executive session to discuss **(1)** the pending federal court action known as Elba Caban v. John Dupont, et al; and **(2)** the Superior Court action known as Tarawatti Tomby, Administratrix v. Marc Cottrell, et al., Docket No. CV-11-6025477-S.

cc: Mayor Leclerc  
Scott Chadwick, Corporation Counsel  
Cindy Bennett, Risk Manager