

**TOWN OF FALMOUTH
DEPENDENT CARE ASSISTANCE PLAN**

(Plan No. 503)

Effective January 1, 2013

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TOWN OF FALMOUTH
DEPENDENT CARE ASSISTANCE PLAN

Article 1. Introduction.

This Plan establishes the Town of Falmouth Dependent Care Assistance Plan, effective January 1, 2013. This Plan is intended to qualify as a dependent care assistance program under section 129 of the Internal Revenue Code of 1986, as amended, and is to be interpreted in a manner consistent with the requirements of section 129. The purpose of the Plan is to provide Participants with payments or reimbursements of their dependent care expenses that are excludable from the Participants' gross income under section 129 of the Code.

Article 2. Definitions

Wherever used in this Plan, the singular includes the plural and the following words have the following meanings, unless a different meaning is clearly required by the context:

2.1. "Administrator" means the Town or such other person or committee as may be appointed from time to time by the Town to supervise the administration of the Plan.

2.2. "Benefit Eligible Employee" means a full-time or part-time Employee who is regularly scheduled to work at least 20 hours per week and whose contract year runs from January 1 through December 31. The term Benefit Eligible Employee does not include any individual who is employed in a division, department, unit, or job classification designated by an Employer as not eligible for benefits, regardless of the individual's work schedule or number of hours worked.

2.3. "Code" means the Internal Revenue Code of 1986, as amended from time to time. Reference to any section or subsection of the Code includes reference to any comparable or succeeding provisions of any legislation which amends, supplements or replaces such section or subsection.

2.4. "Dependent" means (a) a tax dependent of the Participant as defined in Code § 152 who is under the age of 13 and who is the Participant's qualifying child as defined in Code § 152(a)(1); (b) a tax dependent of Participant as defined in Code § 152, but determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof, who is physically or mentally incapable of self-care and who has the same principal place of abode as the Participant for more than half of the year; or (c) a Participant's Spouse who is physically or mentally incapable of self-care and who has the same principal place of abode as the Participant for more than half of the year. Notwithstanding the foregoing, in the case of divorced or separated parents, a Dependent who is a child shall, as provided in Code § 21(e)(5), be treated as a Dependent of the custodial parent (within the meaning of Code § 152(e)) and shall not be treated as a Dependent with respect to the noncustodial parent.

2.5. "Dependent Care Expenses" means expenses incurred by a Participant which (a) are incurred for the care of a Dependent of the Participant or for related household services, (b) are paid or payable to a Dependent Care Service Provider, and (c) are incurred to enable the

Participant to be gainfully employed for any period for which there are one or more Dependents with respect to the Participant. "Dependent Care Expenses" shall not include expenses incurred (i) for services outside the Participant's household for the care of a Dependent, unless such Dependent is described in Section 2.5(a) or regularly spends at least eight hours each day in the Participant's household, (ii) for services at a camp where the Dependent stays overnight, or (iii) before the Participant became a Participant. Dependent Care Expenses shall be deemed to be incurred at the time the services to which the expenses relate are rendered.

2.6. "Dependent Care Service Provider" means a person who provides care or other services described in Section 2.6(a) above, but shall not include (a) a dependent care center (as defined in Code section 21(b)(2)(D)), unless the requirements of Code section 21(b)(2)(C) are satisfied, or (b) a related individual described in Code section 129(c).

2.7. "Dependent Care Spending Account" means the account described in Article 5.

2.8. "Town" means Town of Falmouth and any successor to all or a major portion of its assets or business that assumes the obligations of Town of Falmouth under the Plan.

2.9. "Earned Income" shall have the meaning set forth in Code section 32(c)(2).

2.10. "Effective Date" means January 1, 2013.

2.11. "Employee" means any individual employed by an Employer.

2.12. "Employer" means the Town and each subsidiary or affiliated employer that adopts the Plan with the consent of the Administrator. A subsidiary or affiliated employer will become an Employer as of the date agreed upon pursuant to such adoption and consent.

2.13. "Flexible Benefits Plan" means the Town of Falmouth Flexible Benefits Plan, as amended from time to time.

2.14. "Grace Period" means the two-and-one-half ($2\frac{1}{2}$) month period, commencing January 1 and ending March 15, immediately following each Plan Year. Dependent Care Expenses incurred during the Grace Period may be reimbursed from any balance remaining under the Participant's Dependent Care Assistance Account at the end of such immediately preceding Plan Year if the Participant applies for reimbursement of such expenses in accordance with the reasonable procedures prescribed by the Administrator on or before March 31st following the close of the Grace Period. The reimbursement of Dependent Care Expenses incurred during the Grace Period shall be made in accordance with IRS Notice 2005-42, 2005-43 I.R.B. 1204 and any subsequent guidance by the IRS with respect to such reimbursements.

2.15. "Participant" means each Employee who participates in the Plan in accordance with Article 3.

2.16. "Plan" means the Town of Falmouth Dependent Care Assistance Plan as set forth herein, together with any and all amendments and supplements hereto.

2.17. "Plan Year" means the year beginning January 1 and ending December 31.

2.18. "Spouse" means an individual who is legally married to a Participant as determined under applicable state law and who is treated as a spouse under the Internal Revenue Code. Notwithstanding the above, for purposes of the Plan the term Spouse shall not include (a) an individual legally separated from the Participant under a divorce or separate maintenance decree; or (b) an individual who, although married to the Participant, files a separate federal income tax return, maintains a principal residence separate from the Participant during the last six months of the taxable year, and does not furnish more than half of the cost of maintaining the principal place of abode of the Participant.

Article 3. Participation.

3.1. Date of Participation. Each Benefit Eligible Employee will become a Participant upon the effective date of an election under the Flexible Benefits Plan to receive dependent care assistance under this Plan.

3.2. Termination of Participation. A Participant will cease to be a Participant as of the earliest of:

- (a) the date on which the Plan terminates,
- (b) the end of the Plan Year, unless the Participant makes another election to receive benefits under this Plan for the next Plan Year,
- (c) the date on which the Participant ceases to be a Benefit Eligible Employee, or
- (d) the date on which his or her election to receive benefits under this Plan otherwise expires or is terminated under the Flexible Benefits Plan.

3.3. Reinstatement of Former Participant. If a former Participant who is eligible under Section 3.1 elects again under the Flexible Benefits Plan to receive dependent care assistance under the Plan, he or she will again become a Participant in this Plan on the effective date of such election or reinstatement.

Article 4. Dependent Care Assistance Benefits.

4.1. Election Procedure. In accordance with applicable collective bargaining agreements, individual employment contracts and employment policies, a Participant may elect to receive dependent care assistance under the Plan for any Plan Year by filing an election and salary reduction agreement in accordance with the procedures established under the Flexible Benefits Plan. An election to receive dependent care assistance shall not be revoked by the Participant during the Plan Year, except as provided in the Flexible Benefits Plan. However, such an

election may automatically terminate, or may be terminated or modified by action of the Flexible Benefits Plan Administrator, in accordance with the terms of the Flexible Benefits Plan.

4.2. Maximum Dependent Care Reimbursement. The maximum amount which the Participant may receive in any calendar year in the form of dependent care assistance under this Plan with respect to Dependent Care Expenses incurred in any calendar year and associated Grace Period shall be the least of (a) the Participant's Earned Income for the calendar year (after all reductions in compensation including the reduction related to dependent care assistance), (b) the actual or deemed Earned Income of the Participant's spouse for the calendar year, or (c) \$5,000. In the case of a spouse who is a full-time student at an educational institution or is physically or mentally incapable of caring for himself or herself, such spouse shall be deemed to have earned income of not less than \$200 per month if the Participant has one Dependent and \$400 per month if the Participant has two or more Dependents. In the case of two Participants who are married to each other and who file a joint federal income tax return for the calendar year, the \$5,000 limit in (c) above shall be reduced for each such Participant by the amount received for the calendar year under the Plan by the Participant's spouse. A Participant shall be treated as not married if the Participant is not considered as married under the special rules of Code section 21(e)(3) and (4).

Article 5. Dependent Care Spending Accounts.

5.1. Establishment of Accounts. The Town will cause to be established and maintained a Dependent Care Spending Account for each Plan Year with respect to each Participant who has elected to receive dependent care assistance for the Plan Year.

5.2. Crediting of Accounts. There shall be credited to a Participant's Dependent Care Spending Account for each Plan Year, as of each pay period for the Participant in such Plan Year, an amount equal to the reduction, if any, to be made in the Participant's compensation for such pay period in accordance with the Participant's dependent care election and salary reduction agreement under the Flexible Benefits Plan. All amounts credited to each such Dependent Care Spending Account shall be the property of the Town until paid out pursuant to Article 6.

5.3. Debiting of Accounts. A Participant's Dependent Care Spending Account for each Plan Year shall be debited from time to time in the amount of any payment under Article 6 to or for the benefit of the Participant for Dependent Care Expenses incurred during such year and associated Grace Period.

5.4. Forfeiture of Accounts. The amount credited to a Participant's Dependent Care Spending Account for any Plan Year shall be used only to reimburse the Participant for Dependent Care Assistance Expenses incurred during such Plan Year and associated Grace Period, and only if the Participant applies for reimbursement on or before the March 31st following the close of the Plan Year (or, if March 31st falls on a Saturday, Sunday or holiday, on or before the next following business day). If any balance remains in the Participant's Dependent Care Spending Account for any Plan Year after all reimbursements hereunder, such balance shall not be carried over to reimburse the Participant for any Dependent Care Assistance Expense incurred during a

subsequent Plan Year. Such balance shall not be available to the Participant in any other form or manner, but shall remain the property of the Town, and the Participant shall forfeit all rights with respect to such balance.

Article 6. Payment of Dependent Care Assistance.

6.1. Claims for Reimbursements. A Participant who has elected to receive dependent care assistance for a Plan Year may apply to the Administrator for reimbursement of Dependent Care Expenses incurred by the Participant during such Plan Year and associated Grace Period by submitting an application in writing to the Administrator, in such form as the Administrator may prescribe, setting forth:

- (a) the amount, date and nature of the expense with respect to which a reimbursement is requested;
- (b) the name of the person, organization or entity to which the expense was or is to be paid;
- (c) a statement that the expense (or the portion thereof for which reimbursement is sought under the Plan) has not been reimbursed and is not reimbursable under any other dependent care plan coverage; and
- (d) such other information as the Administrator shall from time to time require.

Such application shall be accompanied by a written statement from an independent third party, stating that the expense has been incurred and the amount of the expense, and by such other bills, invoices, receipts, canceled checks, or other documents showing the amounts of such expenses, together with any additional documentation which the Administrator may request. Such application may be made before or after the Participant has paid such expense, but not before the Participant has incurred such expense.

6.2. Reimbursement or Payment of Expenses. The Administrator shall pay or reimburse the Participant from the Participant's Dependent Care Spending Account, at such time and in such manner as the Administrator may prescribe, for Dependent Care Expenses incurred during the Plan Year and associated Grace Period for which the Participant submits a written application and documentation in accordance with Section 6.1. No reimbursement or payment under this Section 6.2 of expenses incurred during a Plan Year and associated Grace Period shall at any time exceed the balance of the Participant's Dependent Care Spending Account for the Plan Year and associated Grace Period at the time of the reimbursement or payment, nor shall any payment or reimbursement be made if the Participant's claim is for an amount less than the minimum claim amount established by the Administrator. The amount of any Dependent Care Expenses not reimbursed or paid as a result of the preceding sentence shall be carried over and reimbursed or paid only if and when the Participant's claim equals or exceeds such minimum and the balance in the Participant's Dependent Care Spending Account permits such reimbursement or payment.

6.3. Report to Participants on or Before January 31 of Each Year. On or before each January 31, and at such other times as the Administrator may determine, the Administrator shall furnish to each Participant (or former Participant) who has elected dependent care assistance under this Plan for the prior calendar year a written statement showing the amount of such assistance paid or payable during such year with respect to Dependent Care Expenses incurred by the Participant (or former Participant). If the amount of such Dependent Care Expenses is not yet known to the Administrator by January 31, the written statement shall show the amount of dependent care assistance elected by the Participant (or former Participant) for such year.

6.4. Limitation on Reimbursements or Payments With Respect to Certain Participants. Not more than 25 percent of the total amounts reimbursed or paid under the Plan during any Plan Year may be reimbursed or paid with respect to the class of individuals who own more than five percent of the stock of the Employer (or their spouses or dependents). Notwithstanding any other provision of the Plan, the Administrator may limit the amounts contributed, reimbursed or paid with respect to any Participant who is a highly compensated employee (within the meaning of Code Section 414(q)), to the extent that the Administrator deems such limitation to be advisable to assure compliance with any nondiscrimination provision of the Code. Such limitation may be imposed whether or not it results in a forfeiture under Section 5.4.

6.5. Fees. Notwithstanding any other language in this plan, the Town shall be responsible for paying first-term set up fees, presentation fees authorized by the Town, and reasonable annual renewal fees while all monthly administration fees shall be paid by the Participants, provided such fees are to be paid in such manner according to the applicable collective bargaining agreement, individual employment contract, or employment policy. In all cases, fees shall be paid as directed by the applicable collective bargaining agreement, individual employment contract, or employment policy.

Article 7. Cessation of Coverage.

In the event that a Participant ceases to be a Participant in the Plan during a Plan Year for any reason, the Participant's salary reduction agreement relating to dependent care assistance shall terminate. The Participant shall be entitled to reimbursement or payment only for Dependent Care Expenses only if the Participant (or his or her estate) applies for such reimbursement or payment in accordance with Section 6.1. In the event of the Participant's death, the Participant's spouse (or, if none, the Participant's executor or administrator) may apply on the Participant's behalf for reimbursements permitted under this Article 7. No reimbursement or payment under this Article 7 shall exceed the remaining balance, if any, in the Participant's Dependent Care Spending Account for the Plan Year in which the expenses were incurred.

Article 8. Administration.

8.1. Plan Administrator. The administration of the Plan shall be under the supervision of the Administrator. It shall be a principal duty of the Administrator to see that the Plan is carried out, in accordance with its terms, for the exclusive benefit of persons entitled to participate in the

Plan without discrimination among them. The Administrator will have full power and discretion to administer the Plan in all of its details, subject to applicable requirements of law. For this purpose, the Administrator's discretionary powers will include, but will not be limited to, the following authority, in addition to all other powers provided by this Plan:

- (a) To make and enforce such rules and regulations as it deems necessary or proper for the efficient administration of the Plan;
- (b) To interpret the Plan;
- (c) To decide all questions concerning the Plan and the eligibility of any person to participate in the Plan;
- (d) To compute the amount of benefits which will be payable to any Participant or other person in accordance with the provisions of the Plan, and to determine the person or persons to whom such benefits will be paid;
- (e) To authorize the payment of benefits;
- (f) To appoint such agents, counsel, accountants, consultants and other persons as may be required to assist in administering the Plan; and
- (g) To delegate its responsibilities under the Plan and to designate other persons to carry out any of its responsibilities under the Plan, any such delegation or designation to be by written instrument and in accordance with applicable requirements of law.

Any determination by the Administrator, or any authorized delegate, shall be final and conclusive on all persons, in the absence of clear and convincing evidence that the Administrator or delegate acted arbitrarily and capriciously.

8.2. Examination of Records. The Administrator will make available to each Participant such of its records under the Plan as pertain to the Participant, for examination at reasonable times during normal business hours; *provided, however*, the Administrator shall have no obligation to disclose any records or information which the Administrator, in its sole discretion, determines to be of a privileged or confidential nature.

8.3. Reliance on Tables, etc. In administering the Plan, the Administrator will be entitled to the extent permitted by law to rely conclusively on all tables, valuations, certificates, opinions and reports which are furnished by any accountant, counsel or other expert who is employed or engaged by the Administrator.

8.4. Indemnification of Administrator. The Town agrees to indemnify and to defend to the fullest extent permitted by law any Employee serving as the Administrator or as a member of a committee designated as Administrator or acting for the Administrator in connection with the Plan, including any Employee or former Employee who formerly served or acted in such a capacity, against all liabilities, damages, costs and expenses (including attorneys' fees and

amounts paid in settlement of any claims approved by the Town) occasioned by any act or omission to act in connection with the Plan, if such act or omission is in good faith.

Article 9. Amendment or Termination of Plan.

9.1. Amendment of Plan. The Town reserves the power to amend the provisions of the Plan at any time or times, to any extent that it may deem advisable. Any amendment to the Plan shall be effected by a written instrument signed by an officer of the Town, or his or her authorized delegate, and delivered to the Administrator. Unless otherwise provided, any such amendment will be effective for all Participants, whether or not employed by an Employer.

9.2. Termination of Plan. The Town has established the Plan with the bona fide intention and expectation that it will be continued indefinitely, but has no obligation whatsoever to maintain the Plan for any given length of time. The Town may discontinue or terminate the Plan at any time without liability, by a written instrument signed by an officer of the Town, or his or her authorized delegate, and delivered to the Administrator. Upon termination or discontinuance of the Plan, all elections and reductions in compensation relating to the Plan shall terminate, and reimbursements shall be made only in accordance with Article 7.

Article 10. Miscellaneous.

10.1. Communication to Employees. Promptly after the Plan is adopted, each Employer will notify its Employees of the availability and terms of the Plan.

10.2. Limitation of Rights. Neither the establishment of the Plan nor any amendment thereof will be construed as giving to any Participant or other person any legal or equitable right against the Administrator or any Employer, except as expressly provided herein, and in no event will the terms of employment or service of any Participant be modified or in any way be affected hereby.

10.3. Benefits Solely From General Assets. The benefits provided hereunder will be paid solely from the general assets of the Town. Nothing herein will be construed to require the Town or the Administrator to maintain any fund or segregate any amount for the benefit of any Participant, and no Participant or other person shall have any claim against, right to, or security or other interest in any fund, account or asset of the Town from which any payment under the Plan may be made.

10.4. Nonassignability of Rights. The right of any Participant to receive any reimbursement under the Plan shall not be alienable by the Participant by assignment or any other method, and will not be subject to be taken by his or her creditors by any process whatsoever, and any attempt to cause such right to be so subjected will not be recognized, except to such extent as may be required by law.

10.5. No Guarantee of Tax Consequences. Neither the Administrator nor the Employers make any commitment or guarantee that any amounts paid to or for the benefit of a Participant under

the Plan will be excludable from the Participant's gross income for federal or state income tax or Social Security tax purposes, or that any other federal or state tax or Social Security tax treatment will apply to or be available to any Participant. It shall be the obligation of each Participant to determine whether each payment under the Plan is excludable from the Participant's gross income for federal and state income tax and Social Security tax purposes, and to notify his or her Employer if the Participant has reason to believe that any such payment is not so excludable.

10.6. Indemnification of the Employers by Participants. If any Participant receives one or more payments or reimbursements under the Plan that are not for Dependent Care Expenses, such Participant shall indemnify and reimburse his or her Employer for any liability it may incur for failure to withhold federal or state income tax or Social Security tax from such payments or reimbursements. However, such indemnification and reimbursement shall not exceed the amount of additional federal and state income tax that the Participant would have owed if the payments or reimbursements had been made to the Participant as regular cash compensation, plus the Participant's share of any Social Security tax that would have been paid on such compensation, less any such additional income and Social Security tax actually paid by the Participant.

10.7. Governing Law. To the extent not preempted by ERISA or any other federal statutes or regulations, this Plan will be construed, administered and enforced according to the laws of State of Maine. Please note that as a governmental plan, this plan is exempt from ERISA.

IN WITNESS WHEREOF, the Town has caused this Plan to be executed in its name and on its behalf by an officer or a duly authorized delegate:

TOWN OF FALMOUTH

By: _____

Title: Nathan A. Poore, Town Manager

Date: _____