

TOWN OF NEW HARTFORD
RETIREMENT PLAN

As amended and restated
effective July 1, 2011

TOWN OF NEW HARTFORD

RETIREMENT PLAN

INTRODUCTION

Pursuant to ordinance adopted by the legislative body of the Town of New Hartford, a municipal corporation located in the County of Litchfield and State of Connecticut, at a special town meeting held on September 29, 1970, the Retirement Plan was adopted for the benefit of its employees. The Plan was most recently restated effective July 1, 2003.

This restatement of the Retirement Plan shall become effective July 1, 2011, and incorporates changes to certain provisions negotiated with the following New Hartford Employee Unions (the "Coalition Unions") effective July 1, 2011:

- Local 1303-014, Council 4, American Federation of State County and Municipal Employees, AFL-CIO (Public Works)
- Local 1303-336, Council 4, American Federation of State County and Municipal Employees, AFL-CIO (Custodians)
- Local 1303-367, Council 4, American Federation of State County and Municipal Employees, AFL-CIO (Paraprofessionals)
- Local 1303-386, American Federation of State County and Municipal Employees, AFL-CIO (Secretaries)
- NAGE, Local RI-231 (National Association of Government Employees) (Town Hall Employees)

Eligibility for and the amount of benefit payments for any employee, former employee, or the beneficiary of any such employee or former employee who retires, dies or terminates employment prior to July 1, 2011 shall be determined in accordance with the applicable provisions of the Retirement Plan, Minutes of the appropriate Selectmen and Town meetings, and collective bargaining agreements in effect at the time of such retirement, death, or termination of employment and shall not be effected by any provision of this restated Retirement Plan.

Effective July 1, 2011, certain Employees will not be permitted to become Members of the Plan, as set out in the collective bargaining agreements applicable to such Employees, or, for non-union Employees, as set out in the collective bargaining agreement that such Employees' employment conditions follow by custom. Reference is made to Article II of the Plan and the applicable collective bargaining agreements for further information.

It is the Town's intention that the Plan, as amended from time to time, as well as the provisions of any applicable collective bargaining agreements, as amended from time to time, shall collectively constitute a qualified pension plan under Internal Revenue Code Section 401(a).

To the extent that a provision of the Plan conflicts with any applicable collective bargaining agreement, the terms of the applicable collective bargaining agreement shall govern.

ARTICLE I
DEFINITIONS

The following words and phrases as used herein have the following meanings, unless a different meaning is specified or plainly required by the context:

SECTION 1.1 "Town" shall mean the Town of New Hartford.

SECTION 1.2 "Selectmen" shall mean the Board of Selectmen of the Town of New Hartford or a majority of such board.

SECTION 1.3 [Section Reserved.]

SECTION 1.4 "Annual Compensation" shall mean the salary or wages paid by the Town to an employee for his services for the previous calendar year as listed on the employee's W-2 form.

Notwithstanding the preceding sentence, for Members hired on or after July 1, 2002, payments made upon termination of employment for unused sick leave, vacation or other leave shall not be included in Annual Compensation for pension purposes.

For Plan Years 1989 through 1993, Annual Compensation taken into consideration under this Pension Plan will be limited to \$200,000 per year, in accordance with Sections 414(q)(6) and 401(a)(17) of the Internal Revenue Code (the "Code") and regulations issued thereunder, as adjusted from time to time by the Secretary of the Treasury. For Plan Years beginning during 1994 or later, Annual Compensation taken into consideration under this Pension Plan will be limited to \$150,000 per year, in accordance with Sections 414(q)(6) and 401(a)(17) of the Internal Revenue Code and regulations issued hereunder, as adjusted from time to time by the Secretary of the Treasury. The limitation will be prorated for any Plan Year of less than twelve months.

Notwithstanding the foregoing, the Annual Compensation taken into account under this Pension Plan in any Plan Year beginning after December 31, 2001 shall not exceed \$200,000. Annual Compensation means compensation during the Plan Year or such other consecutive 12-month period over which compensation is otherwise determined under the Plan (the "determination period"). For purposes of determining benefit accruals in a Plan Year beginning after December 31, 2001, compensation for any prior determination period shall be limited to \$150,000 for any determination period beginning in 1996 or earlier; \$160,000 for any

determination period beginning in 1997, 1998, or 1999; and \$170,000 for any determination period beginning in 2000 or 2001.

In determining an Employee's Annual Compensation for purposes of the limitations under the preceding paragraph, the rules under Code Section 401(a)(17)(B) shall apply. The cost-of-living adjustment in effect for a calendar year applies to Annual Compensation for the determination period that begins with or within such year.

Notwithstanding any provision of this Pension Plan to the contrary, Annual Compensation shall not be reduced by elective deferrals or by salary reduction amounts contributed to any cafeteria plan of the Town under Sections 125 (including, effective for Plan Year beginning after December 31, 1997, deemed Section 125 amounts not available to a Member in cash in lieu of group health coverage because the Member is unable to certify that he or she has other health coverage) or 132(f) of the Code, or by any salary reduction amounts pursuant to Section 402(g)(3) of the Code.

“Notwithstanding anything to the contrary, Annual Compensation shall include only the compensation earned for those periods of Credited Service prior to the Employee’s election cease active participation in the Plan as permitted in Section 2.5.”

SECTION 1.5

"Final Average Compensation" shall mean the average of the Annual Compensation of a Member over those five (5) consecutive calendar years of the ten (10) years prior to his Retirement Date, or other earlier date for Employees who elect to cease Plan participation, which averages the highest amount.

All salary, wages, and overtime constitute covered compensation. Fees are included if accounted for.

Notwithstanding the preceding two paragraphs, for Members who retire on or after July 1, 2002, "Final Average Compensation" shall mean the average of the Annual Compensation of a Member over those three (3) consecutive calendar years of the ten (10) years prior to his Retirement Date, or other earlier date for Employees who elect to cease Plan participation, which averages the highest amount.

All salary, wages and overtime constitute covered compensation. Fees are included if accounted for except that for Members hired on or after July 1, 2002, payments made upon termination for unused sick leave, vacation or other leave shall not be included in the final average compensation calculations.

- SECTION 1.6 "Appointing Authority" shall mean for Employees of the Board of Education, the Board of Education and for all other Employees, the Board of Selectmen.
- SECTION 1.7 "Total and Permanent Disability" shall mean a physical or mental condition arising as a result of bodily injury or disease, either occupational or non-occupational in cause, which, on the basis of medical evidence satisfactory to the Town, will wholly and permanently prevent an Employee from engaging in any occupation or employment for wage or profit except such employment as is found by the Town to be for the purpose of rehabilitation or not incompatible with the finding of total and permanent disability, but excluding disabilities resulting from (1) service in the armed forces of any country for which government disability pension is available, (2) chronic alcoholism or addiction to narcotic, (3) engaging in a felonious criminal act, or (4) an effort to bring about injury or illness of himself or another person.
- SECTION 1.8 "Effective Date of the Plan" shall mean July 1, 1969.
- SECTION 1.9 "Employee" shall mean any person elected, appointed or hired, regularly employed by the Town on a permanent basis (in a position requiring at least twenty (20) hours per week for a minimum of one thousand (1,000) hours of service per year) excluding any teacher or other employee who is currently eligible for membership in the Connecticut State Teachers' Retirement System or any other State Retirement System.
- SECTION 1.10 "Fund" shall mean the Trust Fund provided under Article X.
- SECTION 1.11 "Member" shall mean any Employee who qualifies and continues to be qualified under Article II. A Member who elects to cease further active participation in the Plan but has accrued a benefit under this Plan and has not received a distribution of such benefit, shall remain a Member of this Plan to the extent of such benefits that have been accrued.
- SECTION 1.12 "Plan" shall mean the Town of New Hartford Retirement Plan hereby established and as amended from time to time hereafter.
- SECTION 1.13 "Credited Service" shall mean the total period of employment as an Employee, provided that in order to receive Credited Service for a calendar year such Employee must complete at least one thousand (1,000) hours of service in said year. Such period of employment shall be based on the payroll records of the Town commencing on the date of the Employee's last employment and continuing to the date of his death, retirement or termination of such employment, except that in no event

shall periods during which a Member does not receive compensation from the Town be included in computation of Credited Service.

Except for the purposes of determining eligibility for an Earlier Retirement Date under Section 3.2 and in determining the Accrued Termination Benefit as provided in Section 7.2, any Member who elects to cease their active participation in this Plan as provided under Section 2.5, shall no longer receive Credited Service under this Plan as of the effective date of such election.

Any Employee who irrevocably waives becoming a Member of the Plan, as provided under Section 2.5, shall not be credited with additional Credited Service under this Plan as of the effective date of such election.

SECTION 1.14 "Plan Year" shall mean the period of time beginning from July 1 and ending June 30 of any calendar year.

SECTION 1.15 "Period of Absence" Periods of absence to the extent provided for and as defined in this Section shall not constitute a termination of employment of a member and shall not constitute an interruption in the Credited Service of such member. Periods of absence within the meaning of this Section are:

- (a) Approved leave not to exceed one (1) year;
- (b) Disability not to exceed six (6) months;
- (c) Voluntary or involuntary active service (but not periods of re-enlistment) in the armed forces of the United States while any law requiring military service is in effect.

If any employee fails to return to work on the date fixed by the Town and the Appointing Authority, with respect to any leave (or within ninety (90) days following military service or such required period as may be directed by law for the protection of his employment rights following military service), his Credited Service shall be determined to have ended on the date next preceding such absence.

SECTION 1.16 "Trustee" shall mean the bank or trust company designated as Trustee by the Board of Selectmen.

SECTION 1.17 "Coalition Union Employee" shall mean an Employee whose terms and conditions of employment are governed by a collective bargaining agreement between the Town of New Hartford or the New Hartford Board of Education and one of the following New Hartford Employee Unions:

- Local 1303-014, Council 4, American Federation of State County and Municipal Employees, AFL-CIO (Public Works)
- Local 1303-336, Council 4, American Federation of State County and Municipal Employees, AFL-CIO (Custodians)
- Local 1303-367, Council 4, American Federation of State County and Municipal Employees, AFL-CIO (Paraprofessionals)
- Local 1303-386, American Federation of State County and Municipal Employees, AFL-CIO (Secretaries)
- NAGE, Local RI-231 (National Association of Government Employees) (Town Hall Employees)

Wherever used in the Plan, the masculine pronoun includes the feminine pronoun and the singular includes the plural unless otherwise required by the text.

ARTICLE II
MEMBERSHIP IN THE PLAN

SECTION 2.1 Conditions of Membership. Subject to Section 2.4 herein, each Employee, as the term is defined by Section 1.9 hereof, employed by the Town on the Effective Date of the Plan who has then attained his twenty-fifth (25th) birthday and completed five (5) years of Credited Service, provided he was not over his sixtieth (60th) birthday when employed, will become a Member of the Plan as of the Effective Date.

SECTION 2.2 Subject to Section 2.4 herein, each other Employee on the Effective Date and each new Employee thereafter will become a Member on the July 1st as of which he shall have completed five (5) years of Credited Service with the Town.

SECTION 2.3 Pensioners Under Special Acts. No person receiving or entitled to receive any retirement benefit under the provisions of any special legislation enacted in consideration of his services to the Town, shall be a Member of this Plan, and no such person shall receive any benefits by reason of the existence of this Plan.

SECTION 2.4 Plan Freeze Effective July 1, 2011 for Certain Employees. Reference is made to any applicable collective bargaining agreement to determine an Employee's eligibility to become and/or remain a Member of the Plan. Effective July 1, 2011, certain Employees hired by the Town on or after July 1, 2011 will not become Members of the Plan (the "Plan Freeze"). Such Plan Freeze is applicable to (i) certain Coalition Union Employees according to the terms of such Coalition Union Employees' applicable collective bargaining agreements, and (ii) all Employees other than Coalition Union Employees.

SECTION 2.5 Effective July 1, 2011, and subject to any applicable collective bargaining agreement of such Employee, an Employee who is an active Member of the Plan may elect to cease his or her further active participation in the Plan. Such election by a Member to cease their active participation in this Plan must be made in a form, and executed in a manner, acceptable to the Town. Any such election shall be effective only upon the acceptance of the election by the Town in accordance with its procedures.

An Employee who may become eligible to become a Member of this Plan may waive any active participation in, and not become a Member of, this Plan. Such election by an Employee to waive his or her active participation in this Plan must be made in a form, and executed in a manner, acceptable to the Town. Any such election shall be effective only

upon the acceptance of the election by the Town in accordance with its procedures.

Such election by a Member to cease active participation in this Plan, or of an Employee to waive becoming a Member of the Plan, shall be irrevocable.

ARTICLE III RETIREMENT DATES

SECTION 3.1 Normal Retirement Date. The Normal Retirement Date of a Member in the Plan shall be on the first day of the month coinciding with or next following his sixty-fifth (65th) birthday.

Notwithstanding the preceding sentence, for Members hired on or after July 1, 2002, the Normal Retirement Date of a Member in the Plan shall be the first day of the month coinciding with or next following his sixty-fifth (65th) birthday or, if later, the date of his normal eligibility for Social Security.

SECTION 3.2 Earlier Retirement Date. Any member who has attained his fifty-fifth (55th) birthday and completed ten (10) years of Credited Service may elect to retire as of the first day of any month thereafter, which date shall be hereinafter termed the "Earlier Retirement Date", and at his option, commence to receive his benefits commencing on such Earlier Retirement Date, or the first day of any subsequent month not later than his Normal Retirement Date.

Notwithstanding the preceding sentence, for Members hired on or after July 1, 2002, any member who has attained his fifty-fifth (55th) birthday, or if later, the birthday that is ten (10) years prior to his date of normal eligibility for Social Security, and completed ten (10) years of Credited Service may elect to retire as of the first day of any month thereafter, which date shall be hereinafter termed the "Earlier Retirement Date," and at his option, commence to receive his benefits commencing on such Earlier Retirement Date, or the first day of any subsequent month not later than his Normal Retirement Date.

SECTION 3.3 Deferred Retirement Date. A Member able to satisfactorily perform his duties may remain in active employment after his Normal Retirement Date. The first day of the calendar month following such actual retirement shall be his Deferred Retirement Date.

ARTICLE IV
AMOUNT OF BENEFIT

SECTION 4.1 Retirement at Normal Retirement Date. A Member who retires on his Normal Retirement Date, shall receive an annual retirement benefit equal to:

- (i) 1.1/4% of such Member's Final Average Compensation shall be determined, provided that 1.1/4% of a Member's Final Average Compensation shall not be less than Twenty Four Dollars (\$24.00).

- (ii) The amount determined in (i) shall be multiplied by such Member's years of Credited Service to such Member's Retirement Date (including 1/12th of a year for completed months in excess of completed years). Maximum years of Credited Service shall not exceed forty (40).

SECTION 4.2 Retirement at Earlier Retirement Date. The annual retirement benefit of a Member who retires on an Earlier Retirement Date and who elects to have his benefits commence on his Normal Retirement Date shall be computed in accordance with Section 4.1 based on his Credited Service to the Earlier Retirement Date. In the event a Member elects to have retirement benefit payments commence prior to his Normal Retirement Date, such retirement benefit shall be computed as though it were to have commenced on his Normal Retirement Date, reduced, however, by one-quarter of one percent for each of the first sixty (60) months by which such Member's Earlier Retirement Date precedes his Normal Retirement Date and an additional one-third of one percent for each month in excess of sixty (60) by which such Member's Earlier Retirement date precedes his Normal Retirement Date.

SECTION 4.3 Retirement at Deferred Retirement Date. The annual benefit of a Member who retires on a Deferred Retirement Date shall be the same formula as in Section 4.1 except that Final Average Compensation and Credited Service continues to accrue after his Normal Retirement Date to his Deferred Retirement Date.

SECTION 4.5 415 Limitation on Benefits. Effective for limitation years beginning on or after July 1, 2007, and notwithstanding any Pension Plan provisions to the contrary, in no event may the maximum annual retirement benefit payable to a Member under the Pension Plan and any other defined benefit plan of the Employer at any time within the limitation year exceed the limitations contained in Internal Revenue Code Section 415 (as amended from time to time, including by, without limitation, P.L. 108-218, the Pension Funding Equity Act of 2004, P.L. 109-280, the Pension Protection Act of 2006, and

P.L. 110-458, the Worker, Retiree and Employer Recovery Act of 2008) and the regulations and guidance issued thereunder, which are hereby incorporated by reference, including, without limitation, the definition of compensation as set out therein. The term “compensation” for purposes of compliance with the limitations under Internal Revenue Code Section 415 shall include the following:

(i) wages as reported for purposes of federal income tax on Form W-2;

(ii) elective deferrals as defined in Section 402(g)(3) of the Internal Revenue Code and salary reduction contributions of the Participant not includible in his or her gross income by reason of Section 125 (including amounts not available to a Participant in cash in lieu of group health coverage because the Participant is unable to certify that he or she has other health coverage) or Section 132(f) of the Internal Revenue Code; and

(iii) compensation paid after severance from employment as set out in Treas. Reg. § 1.415(c)-2(e)(3).

ARTICLE V
OPTIONS

SECTION 5.1 Standard Retirement Benefits. The retirement benefits provided for in Article IV herein, shall be monthly life annuity commencing as of the time specified in Article III and such retirement benefits shall terminate with the monthly payment coinciding with or next preceding the date of death of the Member. This form of annuity is sometimes herein referred to as the "Standard Retirement Benefit".

SECTION 5.2 Optional Retirement Benefits. In lieu of the "Standard Retirement Benefit", a Member may elect a form of benefit under Option A or Option B described herein provided such election is made in writing at least six (6) months before the Member becomes eligible for retirement or at any time before the Member becomes eligible for retirement.

Option A - Joint and Survivor Option

A Member may elect to receive a reduced retirement benefit payable monthly during his lifetime, after his retirement pursuant to the Plan, with benefits to continue after his death to a provisional payee designated by the Member and terminating with the first day of the month coinciding with or next preceding the date of death of the provisional payee. Such Member may elect to have either one hundred percent (100%) or fifty percent (50%) of his reduced retirement benefit continued to his provisional payee under this Option A. The reduced retirement benefit shall be the actuarial equivalent of (i) the Standard Retirement Benefit payable at retirement on his Normal Retirement Date; or (ii) the reduced amount payable at retirement on his Earlier Retirement Date, as the case may be.

If the provisional payee dies before the Member's Normal, or Deferred Retirement Date, whichever is applicable, the election of this Option shall be void, and the Member's retirement benefit shall be payable as if such election has not been made.

If the Member dies after his Normal Retirement Date, but prior to his Deferred Retirement Date, the retirement benefit payable to his provisional payee under this Option A shall be in the amount as if the Member has retired on the day before his death, and payments shall commence on the first day of the month coinciding with or next following the date of death of the Member.

Any benefit payable to a joint annuitant shall not exceed that purchasable by an amount equal to but no greater than the reserve which would be required to fund an annuity of equal monthly benefits for the spouse of a Member of such other joint annuitant.

Option B - 120 Months Certain Option

A Member may elect to receive a reduced retirement benefit which shall be payable monthly during his lifetime after his retirement pursuant to the Plan and continuing to the first day of the month in which the Member's death occurs, provided, however, that not less than 120 monthly payments, as the Member shall elect, shall be made to the Member and/or his surviving Beneficiary.

The reduced retirement benefit shall be the actuarial equivalent of: (I) the Standard Retirement Benefit payable at retirement on his Normal or Deferred Retirement Date, or (II) the reduced amount payable at retirement on his Earlier Retirement Date as the case may be.

At the time of making an election in accordance with this option, the Member shall designate to the Town in writing, on a form prescribed by the Town and delivered to it, a Beneficiary to receive the retirement benefit payable under this Option B in the event of the Member's death after his retirement, but before he has received the number of retirement benefit payments elected.

The election of this Option B may be rescinded at any time by the Member prior to his retirement on his Normal, Earlier, or Deferred Retirement Date. The designation of a Beneficiary may be revoked, amended or changed at any time prior to the Member's death. Any such action shall be evidenced in writing on a form prescribed by the Town and delivered to it. In the event of the death of the Member and his Beneficiary or Beneficiaries before the full number of payments elected have been made, the computed value of the balance of such payments shall be paid in a lump sum to the executor or administrator of the estate of the survivor of the Member and his Beneficiary. If a Member dies while on deferred retirement and has elected this Option B, his named Beneficiary shall be entitled to receive the reduced retirement benefit as though he has retired on the day before his death, payable for 120 months, and payments shall commence on the first day of the month coinciding with or next following the date of death of the Member.

SECTION 5.3 Binding Effect of Election. If the election of any of the options is not made within the above time limitation, such election may, nevertheless, be made at any time prior to the retirement or his Normal Retirement Date whichever is earlier. If the Member elects an option and dies before his Normal or Earlier Retirement Date, whichever is applicable, no retirement benefit shall be payable to his Provisional Payee or Beneficiary.

SECTION 5.4 Payment of Small Benefits. Notwithstanding any provisions in this Plan for the monthly payment of standard or optional retirement benefits to a Member, a Provisional payee or a Beneficiary, if such monthly payment has a lump sum value of less than \$3,500.00, it shall be paid. Notwithstanding the foregoing, to the extent that any mandatory distributions are made from the Pension Plan, effective March 28, 2005, such distributions shall be limited to lump sums valued at \$1,000 or less, determined as of the date of distribution or any date thereafter

SECTION 5.5

Actuarial Equivalent. A benefit of equivalent value when computed on the basis of the following actuarial assumptions:

Mortality: 1983 Group Annuity Mortality Table with gender neutral mortality.

Interest: Seven percent (7%)

Notwithstanding the foregoing, for purposes of determining any lump sum benefit payable pursuant to Section 5.4 hereof, the following assumptions shall be used:

Mortality: 1983 Group Annuity Mortality Table with gender neutral mortality.

Interest: The annual rate of interest on 30 year treasury securities for the December preceding the Plan Year during which the distribution is made.

SECTION 5.6

Required Minimum Distributions. Pursuant to Code Section 401(a)(9), certain minimum required distributions shall be made from the Pension Plan. The following provisions are intended as a reasonable and good faith interpretation of Code Section 401(a)(9), consistent with the special rule for governmental plans in the final regulations under Section 401(a)(9). Distributions shall be made in accordance with sections 1.401(a)(9)-1 through 1.401(a)(9)-9 of the Treasury regulations, to the extent applicable to governmental plans. This section of the Plan overrides any other section of the Plan to the extent inconsistent with Section 401(a)(9), as applicable to governmental plans.

(a) General Rules.

(i) For Plan Years beginning prior to January 1, 1997, the required beginning date of a member shall be the first day of April of the calendar year following the calendar year in which the member attains age 70-½;

(ii) On or after January 1, 1997, the required beginning date of a member who attains age 70-½ in 1997 or later shall be the first day of April of the calendar year following the later of the calendar year in which the member attains age 70-½ or terminates employment;

(iii) A member shall commence his or her benefit distributions (in amounts which at least satisfy the minimum required distributions of Section 401(a)(9) of the Code) no later than the required beginning date applicable to such member.

- (b) Special Rule. For any member who attains age 70-½ on or after January 1, 1997, and on or before December 31, 2002, unless such member elects to commence or continue receiving his or her benefit distributions in accordance with the time set forth in subsection (a)(i) above, then the benefit distributions to the member (in amounts which at least satisfy the minimum required distributions of Section 401(a)(9) of the Code) shall be deferred until such time as is required by subsection (a)(ii) above.

- (c) Overall General Rule. Payment of benefits shall commence not later than the 60th day after the close of the Plan Year in which the latest of the following events have occurred:
 - (i) The member has attained the earlier of age 65 or the normal retirement age;
 - (ii) The tenth anniversary of the year in which a member first became a member has occurred; or
 - (iii) The member has terminated service with the Employer.

ARTICLE VI
DEATH BENEFITS

SECTION 6.1 Benefit Prior to Satisfaction of Earlier Retirement Eligibility Requirements. No death benefits shall be payable under this Plan prior to the satisfaction of the "Earlier Retirement Eligibility Requirements" unless the Member dies after having satisfied the eligibility requirements for Accrued Termination Benefits. If a Member dies after having satisfied the eligibility requirements for Accrued Termination Benefits, but before he satisfies the Earlier Retirement Eligibility Requirements, fifty percent (50%) of the benefit that would have been paid to the Member if he had retired on the first day of the month coinciding with or next following his Earliest Retirement Date and had elected a fifty percent (50%) Joint and Survivor Option without the ten (10) year age differential limit will be payable to the Qualified Spouse of the Member for at least one (1) year. Benefit will commence on the first day of the month coinciding with or next following the Member's earliest retirement date.

SECTION 6.2 Benefit Between the Date the Earlier Retirement Eligibility Requirements are Satisfied and Normal Retirement Date. If a Member dies between the date he satisfies the Earlier Retirement Eligibility Requirements and his Normal Retirement Date while in the active service of the Town, fifty percent (50%) of the benefit that would be paid to the Member if the Member had retired on the first day of the month coinciding with or next following his date of death and had elected a fifty percent (50%) Joint and Survivor Option without the ten (10) year age differential limit will be payable to the Qualified Spouse of the Member. A Qualified Spouse is a spouse who has been legally married to the Member for at least one (1) year. Benefits will commence on the first day of the month coinciding with or next following the Member's date of death.

SECTION 6.3 Benefit Between Normal Retirement Date and Deferred Retirement Date. In the event a Member continues in the active service of the Town after his Normal Retirement Date, as provided in Section 3.3 of Article III hereof, and Member dies before his actual retirement on a Deferred Retirement Date, the Beneficiary or spouse of such Member shall be entitled to receive benefits as provided in Article V, whichever is applicable if an option has been selected. If no option has been selected by a deceased Member, only a Qualified Spouse will receive a benefit; such benefit will be equal to the benefit that would be payable to the spouse of a Member who elected a Joint and Survivor option (Option A) with a fifty percent (50%) continuation of benefits.

SECTION 6.4 Benefits After Actual Retirement. If a Member dies after his retirement benefits commence, the Beneficiary or spouse of such Member shall be

entitled to receive the benefits as provided in Article V, whichever is applicable if an option has been selected.

ARTICLE VII
TERMINATION OF EMPLOYMENT

SECTION 7.1 Benefit Upon Termination. Subject to the provisions of Article XII hereof, a Member whose employment with the Town is terminated for any reason other than death or retirement shall be entitled, at his election, either to the accrued termination benefit described in Section 7.2 below commencing at Normal Retirement Date, or an Earlier Retirement Date on an actuarially reduced benefit.

SECTION 7.2 Accrued Termination Benefit. The Accrued Termination Benefit to Employees hired prior to July 1, 1979, shall be an annual benefit commencing at Normal Retirement Date equal to the percentage set forth below of the accrued retirement benefit determined as provided in Section 4.1 hereof. Such percentage shall be based upon the years of Credited Service of the Member with the Town prior to the date of his termination of employment as follows:

<u>YEARS OF CREDITED SERVICE WITH THE TOWN</u>		
<u>At Least</u>	<u>But Less Than</u>	<u>Percentage of Accrued Benefit</u>
6	7	10%
7	8	20%
8	9	30%
9	10	40%
10 or more		100%

The Accrued Termination Benefit for Employees hired on or after July 1, 1979 shall be one hundred percent (100%) of the accrued retirement benefits determined as provided in Section 4.1 hereof commencing at Normal Retirement Date if such Employees have completed ten (10) years of Credited Service with the Town. The Accrued Termination Benefit shall be zero if such Employees have completed less than ten (10) years of Credited Service with the Town.

The Accrued Termination Benefit for Employees employed by the Town (on or after July 1, 1995) shall be one hundred percent (100%) of the Accrued Retirement Benefits determined as provided in Section 4.1 hereof commencing at Normal Retirement Date, if such employees have completed five (5) years of service with the Town. The Accrued Termination Benefit shall be zero (0) if such employees have completed less than five (5) years of service with the Town.

SECTION 7.3 Re-Employment after Termination. If a Member's employment with the Town terminates for any reason and he is later re-employed by the Town or Board of Education, upon proof of such prior employment satisfactory

to the Town, such prior employment with the Town or Board of Education shall be counted for purposes of the Plan.

ARTICLE VIII
CONTRIBUTIONS

SECTION 8.1

Town's Contributions. The Town shall contribute such amounts as may be determined by its actuarial advisor as sufficient to provide the retirement benefits provided under the Plan. Payments by the Town shall be subject to annual budgetary and appropriation requirements of the Connecticut General Statutes and/or any Charter adopted by the Town, and the Town shall incur no liability to any person for the failure to make such payment or payments. The Town shall not directly or indirectly receive any refund of any contribution made by it, nor shall the Town directly or indirectly participate in the distribution by the Trustee, at any time prior to the satisfaction of all liabilities to Members and their Beneficiaries.

ARTICLE IX
ADMINISTRATION OF THE PLAN

SECTION 9.1 The general administration of the Plan and the responsibility for carrying out the provisions of the Plan shall be placed in the Town.

SECTION 9.2 The Town may construe this Plan and its constructions hereof and action hereon in good faith shall be final and conclusive. It may correct any defect or supply any omission or reconcile any inconsistency in such manner and to such extent as it shall deem expedient to carry the same into effect.

SECTION 9.3 The Town shall provide rules and regulations not inconsistent with the terms and provisions hereof for the administration of the Plan and from time to time may amend or supplement such rules and regulations.

SECTION 9.4 The Town may retain employees, agents, actuarial advisors and counsel who may, but need not be, counsel for the Town.

ARTICLE X
TRUST FUND

- SECTION 10.1 Fund. All contributions hereunder made by the Town shall be held and administered by the Trustee in trust for use in accordance with the Plan. The responsibility for the holding and investment of the Fund shall lie with the Trustee.
- SECTION 10.2 Designation of Trustee. The Trustee shall be a bank or trust company having the power to act as Trustee in the State of Connecticut. The designation of such bank or trust company shall be made by the Board of Selectmen.
- SECTION 10.3 Designation of Funds. The Trustee shall hold contributions made hereunder by the Town upon being forwarded to the Trustee by the Town Treasurer in accordance with the terms of a written agreement between the Town and the Trustee. The Trustee shall have all rights, privileges, duties and immunities conferred upon it by the Trust Agreement.
- SECTION 10.4 Rights of Refund. No part of the corpus or income of the Fund shall be used for, or directed, or diverted to, any purpose, subject to the payment of expenses, other than for the exclusive benefit of the Members and their Beneficiaries prior to the satisfaction of all liabilities for benefits under the Plan; and provided further that no person shall have any interest in or right to any part of the earnings or principal of the Fund, or any rights in, to, or under the Trust Agreement, except as and to the extent expressly provided in the Plan and in the Trust Agreement.
- SECTION 10.5 Expenses of Plan. Expenses of administration of the Plan including actuarial fees shall be paid out of the Trust Fund upon direction by the Town.

ARTICLE XI
AMENDMENT AND TERMINATION

SECTION 11.1 Amendment. The Town shall have the right by action of the Selectmen (which action shall not be effective until approved by the legislative body of the Town) to amend the Plan at any time provided that no amendment shall: (i) cause or permit any portion of the Fund to become the property of the Town until liabilities to Members and Beneficiaries are satisfied, or (ii) deprive any Member or Beneficiary retroactively of rights already accrued under the Plan.

SECTION 11.2 Termination. The Town shall have the right by action of the Selectmen (which action shall not be effective until approved by the legislative body of the Town) to terminate the Plan at any time, subject to the following:

(a) If the Plan is terminated in its entirety, or if the Town Contributions are discontinued (not merely a suspension thereof), the Fund shall be used, subject to the payment of expenses, for the benefit of Members and Beneficiaries and for no other purpose until all liabilities to Members and Beneficiaries for benefits under the Plan to the date of termination or discontinuance of contributions have been satisfied.

(b) If the Fund is sufficient to satisfy all liabilities in full, then the assets of the Fund shall be applied in the following order:

First: To provide retirement benefit payments to retired Members, and other Members who have attained Normal Retirement Date and those spouses receiving benefits pursuant to Section 6.1 of the Plan;

Second: To provide retirement benefit payments to Members who are eligible to retire at Earlier Retirement Date but have not retired;

Third: To provide retirement benefit payments to all remaining Members who have terminated employment with the Town, or could have terminated such employment , with a right to Termination Benefits for themselves or their Beneficiaries under Article VII hereof; and

Fourth: To provide retirement benefit payments to all remaining Members. Each of the foregoing categories with the exception of the FIRST shall be determined as of the date of termination of the Plan, and such categories are hereinafter referred to as "Classes."

(c) If upon the application of the assets of the Fund in the order of priority to provide payment in part of liabilities to Members and Beneficiaries in one of the three (3) classes, there are assets available for that Class but not sufficient to satisfy such liabilities in full, the assets available for that Class shall be applied on the Basis of the proportions which the available assets bear to the present values of the accrued retirement benefits of all Members and Beneficiaries in that Class.

(d) Upon the termination of the Plan, the Fund may be continued in existence and the assets applied to the benefit of the several Classes above set forth, or the Fund may be distributed in the manner set forth in Classes 1 and 2 below, or a combination thereof:

1. By the distribution to each Member or of the present value of what such Member or Beneficiary is entitled to receive, either in one lump sum or in installments over a period of not more than five (5) years; or

2. By the purchase of annuity contracts of such type(s) as the Town shall determine for the Members and Beneficiaries from an insurance company or companies.

SECTION 11.3

Provision to Prevent Discrimination

(a) In the event that the Plan is terminated, or the full current cost thereof has not been met at any time before July 1, 1979, the value of benefits which any of the twenty-five (25) highest paid Employees, as hereinafter determined, may receive, shall not exceed the larger of the following amounts:

(1) \$20,000.00; or

(2) Twenty percent (20%) of the first \$50,000.00 of the Employee's average annual compensation for the first five (5) years preceding the date of termination multiplied by the number of years since July 1, 1969.

(b) These conditions shall not restrict the current of full retirement benefits of any retired Member while the Plan is in full effect and its full current costs have been met. In the event that any funds are realized by operation of the restrictions set forth herein, they shall be used to reduce subsequent Town contributions of the Plan, but if the Town has ceased its contributions, they shall be used for the benefit of Members other than the twenty-five (25) highest paid Employees on a basis which shall not result in substantial

discrimination in favor of the more highly compensated Employees.

- (c) For the purpose of this Section, the twenty-five (25) highest Employees as of July 1, 1969, including any such highly paid Employees who are not Members at that time but who may later become Members, but excluding any Employees whose annual retirement benefit provided by the Town contributions will not exceed \$1,500.00.

SECTION 11.4

Funds Remaining After Distribution of all Benefits. After the fulfillment of all obligations to Members and their Beneficiaries provided for in this Article XI, any portion of the Fund remaining as a result of actuarial error may be returned to the Town.

ARTICLE XII
MISCELLANEOUS

The Town or its designated appointee shall administer this Article XII, Miscellaneous, as noted below.

SECTION 12.1 Incompetents. If the Town determines that any person to whom such benefit is payable is incompetent by reason of physical or mental disability, any payment due (unless a proper claim therefor shall have been made by a duly appointed guardian, conservator or legal representative) may be made to the spouse, a child, a parent or a brother or sister of such person, or to any person deemed by the Town to have incurred expenses for such person otherwise entitled to payment. Any such payment shall be a complete discharge of any liability for such payment under the Plan.

SECTION 12.2 Fraud and Dishonesty. If any Member in the course of employment with the Town shall commit any act of fraud or dishonesty resulting in involuntary termination of employment, in the discretion of the Town, he shall forfeit to the fund any and all payments and benefits due or becoming due to him from the Fund.

Any forfeiture under the provisions of this paragraph shall be forfeited to the Town and treated hereafter as amounts contributed by the Town in the current or next succeeding year.

SECTION 12.3 Non-Assignability of Benefits. Members and Beneficiaries shall be entitled to all the benefits specifically set out under the terms of the Plan, but to the extent permitted by law, said benefits or any of the property rights therein shall not be assignable or distributable to any creditor or other claimant of such Member or his Beneficiary. No Member or his Beneficiary shall have the right to anticipate, assign, pledge, accelerate, or in any way dispose of any of the monies or benefits or other property which may be payable to him.

SECTION 12.4 Non-Liability of Town. All benefits under the Plan shall be paid or provided for solely from the Fund and the Town assumes no liabilities or responsibilities therefor.

SECTION 12.5 Tenure of Employment. Neither the action of the Town in the establishment or administration of the Plan, nor any action taken by it, any designee or by any contracted party, shall be construed as giving any Employee the right to be retained in the employ of the Town or any other right whatsoever except to the extent of the benefits provided by the Plan to be paid or made available from the Fund.

SECTION 12.6 Separability of Provisions. If any provisions of this Plan shall be held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining parts of the Plan but the Plan shall be construed and endorsed as if said illegal or invalid provisions had never been inserted herein.

SECTION 12.7 Unclaimed Benefits. Whenever reasonable efforts fail to locate any Member or Beneficiary entitled to benefits under the Plan within four (4) years from the time notice is first received that he is not to be found at the address in the records of the Town, or the Trustee, the Town may direct that any benefits to which [he] may be entitled shall thereupon be cancelled and no payment shall be made thereafter to anyone with respect to the benefits so cancelled.

SECTION 12.8 Forfeitures. Forfeitures arising from death, termination of employment or otherwise under the Plan shall not be applied to increase the benefit any Member would otherwise receive under the Plan prior to the Plan's termination but shall be used as soon as possible to reduce the Town's contributions.

SECTION 12.9 Applicable Law. The validity of the provisions of this Plan shall be determined under and said provision shall be construed according to the laws of the State of Connecticut.

SECTION 12.10 Approval by Internal Revenue Service. No rights shall accrue under the plan until it has been approved by the Internal Revenue Service as a qualified Plan.

SECTION 12.11 Rollovers.

(a) Right to Elect Direct Rollover. This Section applies to distributions made on or after January 1, 1993. A Distributee may elect, at the time and in the manner prescribed by the Plan Administrator in accordance with applicable regulations, to have all, or any portion that is equal to at least \$500, of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

(b) Definitions. The following definitions will apply to this Section.

(i) An "**Eligible Rollover Distribution**" is any distribution of all or any portion of the balance of the credit of the Distributee, except that an Eligible Rollover Distribution does not include:

(A) any distribution that is one of a series of substantially equal periodic payments (at least annually) made for the life (or the 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 years or more;

- (B) any distribution to the extent such distribution is required under Section 401(a) (9) of the Internal Revenue Code; and
- (C) the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); provided, however, that, effective for distributions made after December 31, 2001, a portion of a distribution shall not fail to be an eligible rollover distributions merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be paid only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in section 401(a) or 403(a) of the Code 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.

A distribution of less than \$200 that would otherwise be an Eligible Rollover Distribution with the meaning of (a)(i) shall not be an Eligible Rollover Distribution if it is reasonable to expect that all such distributions to the Distributee from the Pension Plan during the same calendar year will total less than \$200.

For distributions made after December 31, 2007, a Member may elect to roll over directly an Eligible Rollover Distribution to a Roth IRA described in Code Section 408A(b).

- (ii) An "***Eligible Retirement Plan***" is an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code or a qualified trust described in Section 401(a) of the Internal Revenue Code, that accepts the Distributee's Eligible Rollover Distribution. However, in the case of an Eligible Rollover Distribution to the surviving spouse, an Eligible Retirement Plan is an individual retirement account or individual retirement annuity. Effective for distributions made after December 31, 2001, an eligible retirement plan shall also mean an

annuity contract described in Section 403(b) of the Code and an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan. Also effective for distributions made after December 31, 2001, 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 relations order, as defined in section 414(p) of the Code.

- (iii) 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 Section 414(p) of the Internal Revenue Code, are Distributees with regard to the interest of the spouse or former spouse.
- (iv) A "***Direct Rollover***" is a payment by the Pension Plan to the Eligible Retirement Plan specified by the Distributee.

(c) Deemed Elections.

- (i) A Distributee who is entitled to elect a Direct Rollover with respect to all or any portion of a distribution but who does not make any election shall be deemed to have rejected the Direct Rollover option.
- (ii) A Distributee who elects a Direct Rollover with respect to any Eligible Rollover Distribution that is one in a series of installment payments made at least annually over a period of less than 10 years shall be deemed to have made the same election with respect to all subsequent Eligible Rollover Distributions in the series unless and until the Distributee changes the election. A change of election shall be accomplished by notifying the Plan Administrator of the change in the form and manner prescribed by the Plan Administrator.

- (d) Notice to Employee. Within a reasonable period of time before an Eligible Rollover Distribution is to be made, and in accordance with section 402(f) of the Internal Revenue Code and applicable regulations, the Plan Administrator shall provide to the Distributee an explanation of the right to elect a Direct Rollover, the federal tax withholding consequences of failing to elect a Direct Rollover, the tax effects of

making a rollover (other than a Direct Rollover) to an Eligible Retirement Plan, and the tax rules applicable to lump sum distributions, if applicable.

SECTION 12.12

Non-Spouse Beneficiary Rollover Right. Effective January 1, 2010, a non-spouse Beneficiary who is a “designated beneficiary” under Code Section 401(a)(9)(E), by a Direct Rollover may roll over all or any portion of his or her distribution to an individual retirement account that the Beneficiary established for purposes of receiving the distribution. In order to roll over the distribution, the distribution otherwise must satisfy the definition of an Eligible Rollover Distribution. Any distribution made prior to January 1, 2010 is not subject to the direct rollover requirements of Code Section 401(a)(31) (including Code Section 401(a)(31)(B), the notice requirements of Code Section 402(f), or the mandatory withholding requirements of Code Section 3405(c)). If the Member dies before his or her required beginning date and the non-spouse Beneficiary rolls over to an IRA the maximum amount eligible for rollover, the Beneficiary may elect to use either the 5-year rule or the life expectancy rule, pursuant to Treas. Reg. § 1.401(a)(9)-3, A-4(c), in determining the required minimum distributions from the IRA that receives the non-spouse Beneficiary’s distribution.

SECTION 12.13

USERRA.

General. Effective December 12, 1994, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Code.

Death Benefits. In the case of a death or disability occurring on or after January 1, 2007, if a Member dies while performing qualified military service (as defined in Code Section 414(u)), the survivors of the Member are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the Member had resumed and then terminated employment on account of death.

Benefit Accrual. For benefit accrual purposes, the Plan treats an individual who, on or after January 1, 2007, dies or becomes disabled (as defined under the terms of the Plan) while performing qualified military service with respect to the Town as if the individual had resumed employment in accordance with the individual’s reemployment rights under USERRA, on the day preceding death or disability (as the case may be) and terminated employment on the actual date of death or disability. With respect to the period of said individual’s qualified military service,

the Plan will treat said service as counting toward said individual's Years of Credited Service under the Plan.

Determination of Benefits. To the extent the Plan requires employee contributions in order for the Member to accrue benefits under the Plan, then the Plan will determine the amount of employee contributions of an individual treated as reemployed under these provisions for purposes of applying Code Section 414(u)(8)(C) on the basis of the individual's average actual employee contributions for the lesser of: (i) the 12-month period of service with the Town immediately prior to qualified military service; or (ii) if service with the Town is less than such 12-month period, the actual length of continuous service with the Town.

Differential Wage Payments. For years beginning after December 31, 2008, (1) an individual receiving a differential wage payment from the Town, as defined by Code Section 3401(h)(2), shall be treated as an Employee of the Town making the payment, (2) the differential wage payment shall be treated as compensation, and (3) the Plan shall not be treated as failing to meet the requirements of any provision described in Code Section 414(u)(1)(C) by reason of any contribution or benefit which is based on the differential wage payment.

TOWN OF NEW HARTFORD

DATED: _____

By: _____

Daniel V. Jerram
Its: First Selectman