# TOWN OF ESSEX

# RETIREMENT PLAN

**EFFECTIVE AS OF**
**JULY 1, 2011**

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# TOWN OF ESSEX

# RETIREMENT PLAN

## Effective as of July 1, 2011

The Town of Essex adopted the Retirement Plan originally effective July 1, 1969. The Retirement Plan was amended and restated effective July 1, 1991. The Town hereby again amends and restates the Retirement Plan effective July 1, 2011.

The Plan is intended to qualify as a defined benefit pension plan under Code Section 401(a) and is a governmental plan under Code Section 414(d). The Plan is maintained for the exclusive benefit of eligible employees and their beneficiaries.

## SECTION 1

## DEFINITIONS

As used herein, the words and phrases below shall have the following meanings:

1.1 "Accrued Benefit" means that annual retirement pension payable to a Participant on his Normal Retirement Date which the Participant is deemed to have earned at any date prior thereto (hereinafter the "date of determination") which is that amount computed as described in Section 4 based upon the Participant's Average Annual Compensation as of the date of determination multiplied by the number of Years of Credited Service to the date of determination.

1.2 "Actuarial Equivalent" means a benefit of equivalent value when computed on the basis of the UP 1984 Mortality Table and a six percent (6%) pre and post-retirement interest assumption.

1.3 "Annual Compensation" means the Participant's wages, salaries, fees for services actually rendered during the calendar year in the course of employment with the Town (including, but not limited to overtime and longevity) as reported or to be reported on the Participant's Federal Income Tax Withholding Statement (Form W-2). The Form W-2 wages will then be subject to adjustment based on items as detailed in Schedule A. Schedule A items will be reviewed by the Retirement Board on a regular basis and updated as needed. Furthermore, Annual Compensation shall specifically not include amounts not paid by the Town (such as workers compensation), expense reimbursements, amounts paid for services not in the regular course of employment (i.e., compensation for services not included in the employees job description or services which have not been specifically permitted in writing by the First Selectman) or amounts which are imputed in income (See Schedule A). Annual Compensation shall not include Annual Compensation of an Employee in excess of $245,000 (increased as permitted under Section 401(a)(17) of the Code to reflect cost-of-living adjustments).

1.4 "Annuity Starting Date" means the first day of the first period for which an amount is received as an annuity whether by reason of retirement or by reason of disability.

1.5 "Average Annual Compensation" means for each Participant the highest average Annual Compensation during the five (5) consecutive calendar years within his last ten (10) calendar years of employment with the Town.

1.6 "Beneficiary" means the person or persons designated in writing by a Participant who may become entitled to receive a benefit hereunder in the event of the Participant's death.

1.7 "Break in Service" means a Plan Year during which a Participant completes fewer than 501 Hours of Service.

1.8 "Code" means the Internal Revenue Code of 1986 as it has been and as it may be amended from time to time and any regulations promulgated thereunder.

1.9 "Disability" means that the Participant becomes entitled to receive and is actually receiving disability insurance benefits under Title II of the Federal Social Security Act.

1.10 "Effective Date" of the Plan means July 1, 2011 unless otherwise provided herein.

1.11 "Employee" means a person appointed, elected or employed by the Town other than (i) those persons participating or eligible to participate in the State of Connecticut Teachers Retirement System, (ii) any employees who are eligible to participate in any other defined benefit plan contributed to by the Town or any defined contribution plan contributed to by the Town, including in the Municipal Employees Retirement Fund as an employee of the Town, (iii) cafeteria employees at the Board of Education, (iv) para-educators at the Board of Education, (v) seasonal employees and (vi) temporary employees. Notwithstanding the foregoing, individuals employed by the Town of Essex Police Department as a police officer and any other individuals eligible to participate in The Town of Essex Employees' Pension Plan (Police Retirement Fund) shall not be considered an Employee for purposes of this Plan.

1.12 "Hour of Service" means:

(a) Each hour for which a Participant is directly or indirectly paid or entitled to payment by the Town for the performance of his duties. These hours shall be credited to the computation period or periods in which the duties are performed.

(b) Each hour for which a Participant is directly or indirectly entitled to payment by the Town other than for the performance of his duties, such as vacation, holiday, illness, disability leave, termination leave, jury duty, military duty, and authorized periods of absence (irrespective of the date service terminates); provided that any employee who is absent from his work because of injury or disease sustained in the course of employment with the Town shall be credited with an hour of service only with respect to those periods for which he receives Workers' Compensation benefits.

(c) Solely for purposes of determining whether an Employee has a Break in Service, an Employee shall be credited with up to 501 Hours of Service for any Plan Year during which the Employee does not perform ay duties by reason of:

(i) the pregnancy of the Employee;

(ii) the placement of a child with the Employee in connection with the adoption of such child by such individual; or

(iii) the caring for such child for a period beginning immediately such birth or placement.

An Employee shall only be credited with the total Years of Credited Service accumulated to the date of his initial absence. These hours shall be credited on the basis of the numbers of hours the Employee would normally have worked during such period, but in no event not in excess of forty (40) hours per week prorated on a daily basis during the period he would normally have been scheduled to work for the Town during such period of absence to the Plan Year or Years during which such period of nonperformance occurred. A Participant shall be credited with only the number of Hours of Service necessary to prevent a Break in Service.

(d) Solely for purposes of determining whether an Employee has a Break in Service, an Employee shall be credited with up to 501 Hours of Service for any Plan Year during which the Employee does not perform any duties by reason of taking an authorized leave of absence under the Family and Medical Leave Act.

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

(f) Each hour for which back pay, irrespective of mitigation of damage, has been either awarded or agreed to by the Town. These hours shall 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 was made.

1.13 "Participant" means an Employee who is eligible to be and becomes a Participant pursuant to the provisions of Section 2 hereof.

1.14 "Plan" means the Town of Essex Retirement Plan, effective as of July 1, 2011.

1.15 "Plan Year" means the twelve (12) consecutive month period commencing each July 1st and ending the following June 30th.

1.16 "Post-Retirement Option" means one of the optional forms of pension after Retirement as provided in Section 6.

1.17 "Pre-Retirement Option" means the pension payable to a Spouse or designated Beneficiary as of the date of the Participant's death in accordance with the provisions of Section 7.

1.18 "Retirement" or "Retire" refers to an Employee's termination of employment with the Town, on or prior to one of the retirement dates specified in Section 3.

1.19 "Retirement Board" means the administering body appointed pursuant to Section 10.1.

1.20 "Spouse" means the legal spouse of a Participant as defined under the laws of the State of Connecticut.

1.21 "Town" means the Town of Essex, Connecticut.

1.22 "Trustee" shall mean the bank or trust company designated as Trustee by the Board of Selectman.

1.23 "Year of Credited Service" means a Plan Year during which an Employee who becomes a Participant completes not less than One Thousand (1,000) Hours of Service, provided, however, that if an Employee who becomes a Participant completes less than 1,000 Hours of Service in the first or last year he is employed by the Town, he shall receive credit for a pro rata Year of Credited Service based on the ratio of the number of completed months during such year to 12.

1.24 "Year of Vesting Service" means a Plan Year in which an Employee accumulates at least One Thousand (1,000) Hours of Service.

1.25 Wherever used in this Plan, the masculine pronoun shall be deemed to include the feminine and the singular shall include the plural.

## SECTION 2

## PARTICIPATION

2.1 Each Employee shall become a Participant in the Plan as of the later of his date of hire or the attainment of age 21. All Employees who were Participants in the Plan prior to the Effective Date shall continue uninterrupted as Participants in this Plan.

2.2 A Participant shall cease to be a Participant only as follows:

(a) if a non-vested Participant incurs a Break in Service in any Plan Year;

(b) if he dies prior to Retirement; or

(c) if he Retires under this Plan.

2.3 If a Participant ceases to be a Participant and again becomes a Participant, he shall be considered a new Participant for all purposes of the Plan, except in the case of a Participant who Retired and was eligible for pension benefits under this Plan; provided, however, that if a non-vested Participant later becomes a Participant in the Plan, then, for purposes of vesting and credited service, his pre-break Years of Vesting Service and Years of Credited Service shall be combined with his post-break Years of Vesting Service and Years of Credited Service if either (a) his pre-break Years of Vesting Service or Years of Credited Service, as the case may be, equals or exceeds the number of consecutive Break in Service years, or (b) the number of consecutive Break in Service years is less than five (5);

2.4 In the event any Participant receives a distribution of his entire benefits under the Plan and thereafter again becomes a Participant under the Plan, he may repay any amounts received, with interest, at the rate as the Secretary of the Treasury may determine pursuant to Section 411(c)(2)(D) of the Code. If the Participant elects not to repay such amounts, his benefit under the Plan subsequent to the date that he recommenced participation in the Plan shall only reflect his Years of Credited Service earned after such date.

2.5 A Participant shall file with the Retirement Board such information as shall be required to establish and/or maintain his eligibility for benefits under the Plan.

## SECTION 3

## RETIREMENT DATES

3.1 Normal Retirement Date. A Participant's Normal Retirement Date is the first day of the month coinciding with or next following the date upon which he has both attained age sixty-five (65) and completed five (5) Years of Credited Service. A Participant shall be fully vested on his Normal Retirement Date.

3.2 Early Retirement Date. A Participant's Early Retirement Date is the date upon which he has attained age fifty-five (55) and completed fifteen (15) Years of Credited Service.

3.3 Disability Retirement Date. A Participant's Disability Retirement Date is the date upon which he (a) the Employee incurs a Disability, as defined in Section 1.9, (b) has attained fifty-five (55), and (c) has completed at least fifteen (15) Years of Credited Service.

3.4 Deferred Retirement Date. A Participant may continue to work beyond his Normal Retirement Date in which case he shall continue to accrue Years of Credited Service (up to a maximum of forty (40) Years of Credited Service).

3.5 Rule of 90 Retirement Date. A Participant may retire as if he attained his Normal Retirement Date when the sum of the Participant's age and Years of Credited Service shall equal ninety (90) or more.

## SECTION 4

## AMOUNT OF PENSION

4.1 A Participant shall not be entitled to receive benefits under this Plan until he meets the age and service requirements and has Retired.

4.2 Normal Retirement Pension. The monthly Normal Retirement Pension shall be one-twelfth (1/12) of 1.4% of his Average Annual Compensation multiplied by his Years of Credited Service (not to exceed forty (40) years).

4.3 Early Retirement Pension. For a Participant who has attained his Early Retirement Date and elects to Retire and commence benefits prior to his Normal Retirement Date, the monthly Early Retirement Pension shall be an amount computed in accordance with the formula in Section 4.2 but based on his Accrued Benefit, calculated using his Average Annual Compensation and Years of Credited Service to actual retirement date and reduced in accordance with the following table:

| Age | Reduction Accrued Benefit | Age | Reduction Accrued Benefit |
|---|---|---|---|
| 64 | 6% | 59 | 36% |
| 63 | 12% | 58 | 42% |
| 62 | 18% | 57 | 48% |
| 61 | 24% | 56 | 54% |
| 60 | 30% | 55 | 60% |

4.4 Disability Pension. The amount of Disability Pension is an amount computed in accordance with the formula in Section 4.2 but based on his Accrued Benefit, calculated using his Average Annual Compensation and Years of Credited Service to the Disability Retirement Date; provided, however, that a Participant's Disability Pension Benefit shall be reduced by the amount of any Workers' Compensation benefits (except fixed statutory payments for the loss of any bodily member) payable to him with respect to his Disability to the extent that such benefits have been provided for the premiums or other payments paid by or at the expense of the Town; and further provided that deduction of such benefits shall be made only with respect to the period in which they are actually paid to such Employee. In the case of a lump sum settlement under Workers' Compensation, the lump sum shall be divided by the weekly payment to which he was entitled under the Workers' Compensation in order to determine the period with respect to which Workers' Compensation benefits are payable for the purposes of this Section.

Disability Pension benefits shall be terminated:

(a) If the retired Participant engages in any regular gainful occupation or employment for remuneration or profit (except for purposes of rehabilitation);

(b) If it is determined on the basis of a medical examination that he has sufficiently recovered to return to any regular work for the Town and refuses an offer of employment by the Town; or

(c) If he refuses to undergo a medical examination, provided that he may not be required to undergo medical examination more often that semiannually.

On and after attainment of age sixty-five (65), the existence of Disability shall not be a factor in determining such Employee's rights under the Plan.

4.5 Deferred Retirement Pension. The amount of Deferred Retirement Pension is an amount computed in accordance with the formula in Section 4.2 but based upon Average Annual Compensation and Years of Credited Service at the Deferred Retirement Date.

4.6 The Retirement Benefit of any retired Employee may continue as of the date of rehire if the Retired Employee is re-employed by the Town.

## SECTION 5

## VESTING

5.1 Except as otherwise provided herein, for each Year of Vesting Service, a Participant's nonforfeitable percentage of his Accrued Benefit shall be determined as follows:

| Years of Vesting Service | Percentage of Accrued Benefit |
|---|---|
| Less than 5 | None |
| 5 or more | 100% |

5.2 A Participant who ceases to be a Participant and whose vesting percentage is greater than zero percent (0%) shall be eligible for a Vested Deferred Pension to commence on the Normal Retirement Date. The amount of such Participant's deferred monthly pension shall be based on the Plan as in effect on the last day on which the Participant earned an Hour of Service and on Average Annual Compensation and Years of Credited Service to the date he ceased to be a Participant.

5.3 A Participant who is eligible for a Vested Deferred Pension benefit, and who has not attained the minimum age for early retirement at the time of separation from service but who had satisfied the Years of Credited Service requirement, may elect to commence benefits on his Early Retirement Date. Any such benefit shall be reduced as provided in Section 4.3 and be payable pursuant to terms of Section 6.

5.4 If the value of the Participant's Vested Deferred Pension benefit does not exceed $1,000, the Retirement Board shall immediately distribute such benefit in a lump sum without such Participant's consent in lieu of any other payments under the Plan.

5.5 Upon termination of the Plan, an affected Participant's right to his Accrued Benefit is one hundred percent (100%).

5.6 If a Participant has no vested interest in his Retirement Benefit at the time he has a separation from service, he shall not be entitled to receive any benefits under the Plan.

## SECTION 6

## OPTIONAL FORMS OF PENSION AFTER RETIREMENT

6.1 A Participant shall specify in his application whether he is applying for a Normal Retirement Pension (Section 4.2), Early Retirement Pension (Section 4.3), Disability Pension (Section 4.4), Deferred Retirement Pension (Section 4.5), or a Vested Deferred Pension (Section 5.1).

6.2 No application for a pension shall be accepted unless the Participant specifies in his application one of the following options to be effective on his Annuity Starting Date:

(a) Joint and One-Half (50%) Survivor Option: An actuarially reduced pension shall be paid to the Participant and continued each month for life with the provisions that after his death one-half of such reduced pension shall be continued to be paid monthly to his Beneficiary for life.

(b) Joint and Full (100%) Survivor Option: An actuarially reduced pension shall be paid to the Participant and continued each month for life with the provision that after his death such reduced pension shall be continued to be paid monthly to his Beneficiary.

(c) Straight Life Option: A pension shall be paid to the Participant and continued each month for life with the provision that the last payment on his behalf shall be for the month in which death occurs.

(d) Lifetime Pension with 120 Payments Guaranteed Option: An actuarially reduced pension shall be paid to the Participant and continued each month for life with the provisions that after his death and before 120 monthly payments have been received by the Participant such reduced monthly pension shall be continued to his Beneficiary or Beneficiaries until the total number of pension payments on behalf of the Participant shall equal 120. In the event the Participant dies within the guaranteed pension payment period without leaving a surviving Beneficiary, or in the event the Beneficiary or Beneficiaries survive the Participant but nevertheless have all died within the guaranteed pension payment period, then the Actuarial Equivalent of the then remaining guaranteed monthly payments shall be payable to the estate of the last surviving Participant or Beneficiary, as the case may be.

6.3 The following rules and requirements must be met in order for optional forms of pension to be applicable:

(a) If a Joint and Survivor Option is elected, the sex and date of birth of the Participant's Beneficiary must be stated on the election form, and proof of said date of birth acceptable to the Retirement Board must be submitted within ninety (90) days after the election is filed.

(b) An option election may not be made nor will it be accepted by the Retirement Board, or if accepted it shall become null and void, if the pension to any payee under the option would be less than twenty-five dollars ($25) per month except when the Participant's Spouse is the designated Beneficiary under Option (a) in Section 6.2.

(c) If the Participant dies prior to the effective date of the option, or if a Joint and Survivor Option is elected and the Participant's Spouse dies before the effective date, the election shall become null and void. If a Lifetime Pension with 120 Payments Guaranteed Option is elected and the designated Beneficiary dies prior to the effective date, the Participant may cancel the option or name a new Beneficiary.

(d) The election of the Post-Retirement Option may be cancelled or modified anytime prior to the Annuity Starting Date; thereafter, no change or modification may be made except that in the case of a Lifetime Pension with 120 Payments Guaranteed Option, the designated Beneficiary or Beneficiaries can be changed at any time.

6.4 A Participant who is eligible for a Disability Pension shall receive, unless Option (c) of Section 6.2 is elected, a pension under Option (a) of Section 6.2 with his Spouse as designated Beneficiary.

6.5 Notwithstanding any other provision herein to the contrary, if the present value of any Participant's Accrued Benefit is less than $1,000, the, the Retirement Board shall direct the Trustee to distribute the Participant's Accrued Benefit in a lump sum without the Participant's consent in lieu of any other payments under the Plan.

6.6 The provisions of this Section 6, exclusive of Section 6.4, shall also apply to any vested Participant who terminated employment with the Town prior to the Effective Date, and has not yet received distribution of his Accrued Benefit. Such Accrued Benefit may be paid in the form elected under Section 6.2, subject to the requirements of Section 6.3.

6.7 Lump Sum Distribution Requirements. In the case of a lump sum distribution of all of a Participant's retirement benefit, the provisions of this Section shall apply.

(a) The Retirement Board shall furnish each Participant no less than thirty (30) days and no more than ninety (90) days prior to the date such Participant may receive a lump sum distribution with a written explanation of his right to elect a Direct Rollover and the withholding consequences of not making such election. A Participant may elect to waive the thirty (30) day time period set forth in the preceding sentence.

(b) Unless a Participant elects a Direct Rollover, twenty percent (20%) of the amount of the distribution shall be subject to Internal Revenue Service Income Tax Withholding. If a Participant's retirement benefit has a lump sum cash value of less than $200 (or such other amount as prescribed by

the Internal Revenue Service), the foregoing withholding requirement shall not apply.

(c) A "Direct Rollover" is an eligible rollover distribution (as defined in Treasury Regulations issued pursuant to Sections 401(a)(31) or 402(c) of the Code) that is paid directly to: (i) an individual retirement account described in Section 408(a) of the Code; (ii) an individual retirement annuity described in Section 408(b) of the Code; (iii) an annuity plan described in Section 403(b) of the Code; (iv) an eligible plan under Section 457(b) of the Code maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state; (v) a qualified plan described in Sections 401(a) and 403(a) of the Code that accepts the eligible rollover distribution; or (vi) a Roth individual retirement account described in Section 408A of the Code. A Participant may elect to have a portion of an eligible rollover distribution distributed to him and a portion distributed as a Direct Rollover. A Direct Rollover of a Participant's retirement benefit or a portion thereof may only be made to a single recipient plan. A Participant may not elect a Direct Rollover of a distribution less than $200. A Participant electing a Direct Rollover shall be required to furnish the Retirement Board with adequate information with respect to the recipient plan, including, but not limited to, the name of the recipient plan and a representation that the recipient plan is an eligible individual retirement plan or qualified defined contribution plan and that it will accept the Participant's Direct Rollover. If a Participant fails to elect a Direct Rollover or provide the Retirement Board with adequate information in order to make a Direct Rollover prior to the date distribution is to be made to such Participant, such Participant shall be deemed not to have elected a Direct Rollover.

(d) The foregoing requirements of this Section apply to distributions made to the Spouse of a Participant as a result of the death of the Participant.

(e) The non-Spouse Beneficiary of a deceased Participant shall be eligible to directly roll over his or her interest in the Plan to an individual retirement account described in Section 408(a) of the Code.

## SECTION 7

## DEATH BENEFITS

7.1 Upon the death of a married Participant who has attained age fifty-five (55) and completed fifteen (15) Years of Credited Service and not yet commenced to receive benefits pursuant to Section 6, a death benefit shall be paid to his Spouse provided they have been married for at least one (1) year prior to the date of death. The death benefit payable shall be a survivor annuity payable to the Participant's Spouse for life as if the Participant had retired on the first day of the month in which he died with the benefit provided in Section 6.2(a).

7.2 In the case of a married Participant who has not attained age fifty-five (55) but who has completed fifteen (15) Years of Credited Service who dies before his Early Retirement Date, a death benefit shall be paid to his Spouse commencing on the first day of the month following the date the Participant would have attained age (55). The death benefit payable shall be a survivor annuity payable to the Participant's Spouse for life as if such Participant had separated from service on the date of death, survived to the Early Retirement Date, retired with the benefit provided pursuant to Section 6.2(a) on such date, and died on the day after the day on which the Participant attained his Early Retirement Date, provided they have been married for at least one (1) year prior to the date of death.

7.3 If the present value of the Participant's vested Accrued Benefit is less than $1,000, the Retirement Board shall direct the Trustee to pay the benefit in a lump sum distribution to the Participant's Beneficiary without such Beneficiary's consent in lieu of any other payments under the Plan.

7.4 If a married Participant dies while performing qualified military service (as defined in Code Section 414(u)) and was eligible to receive a death benefit pursuant to Section 7 because such Participant has fifteen (15) or more Years of Credited Service, such Participant shall be treated as if the Participant had resumed employment and then terminated due to his death.

## SECTION 8

## LIMITATIONS ON BENEFITS

8.1 Basic Limitation. Regardless of any other provision of this Plan other than Section 8.4, an annual benefit payable hereunder shall not exceed $195,000, or such other amount as may be prescribed under the Section 415(d) of the Code and Treasury Regulations issued thereunder. For purposes of this Section 8, "Compensation" shall be compensation as defined in Section 415 of the Code and Treasury Regulations issued thereunder.

8.2 Retirement After Age 65. In the case of a benefit beginning after the Participant attains age 65, the $195,000 limitation shall be actuarially increased so that it is equivalent (on the basis of an interest rate assumption not greater than the lesser of five percent (5%) or the rate specified in the Plan) to a benefit beginning at the Participant's attainment of age 65.

8.3 Retirement Before Age 62. In the case of a benefit beginning prior to the Participant's attainment of age 62, the $195,000 limitation shall be actuarially reduced so that it is equivalent (on the basis of an interest rate assumption not less than the greater of five percent (5%) or the rate specified in the Plan) to a $195,000 annual benefit beginning at age 62.

8.4 Exception to Basic Limitation. The limitation in Sections 8.1, 8.2 and 8.3 shall not be applied to reduce a Participant's benefit if the unreduced annual amount of such benefit is $10,000 or less, except in the case of a Participant who has at any time been a member in a defined contribution plan maintained by the Town as provided in this Section 8.

8.5 Secondary Limitation. The limitation in Section 8.1 shall be reduced, in the case of any Participant who has had less than ten (10) years of participation in the Plan, by multiplying the limitation by a fraction whose numerator is the number of years (or part thereof) of participation in the Plan and the denominator of which is ten (10).

8.6 Cost of Living Limitation Adjustment. If the Secretary of the Treasury shall, by regulations, have raised the $195,000 limitation of Section 8.1 to reflect increases in the cost-of-living, such new limitation at the time of a Participant's Annuity Starting Date.

## SECTION 9

## PAYMENT OF PENSIONS

9.1 Each application for any pension under the Plan shall be made in writing on a form provided by the Retirement Board and shall be filed with the Retirement Board. No application shall be valid until approved by the Retirement Board. A condition precedent to the payment of any pension under the Plan is the approval of the application by the Retirement Board. The Retirement Board may require any applicant for a pension to furnish to it such information as in its discretion it shall require.

9.2 All pension payments to Participants and Spouses shall be in monthly installments ceasing with the month in which the Participant or Spouse dies. Participants shall be entitled to pension payments beginning the month immediately following Retirement.

9.3 If the Retirement Board shall find that any person to whom a pension or benefit is payable under this Plan is adjudged incompetent, any payment due him (unless a prior claim shall have been made by a duly appointed guardian, committee or other legal representative) shall be made payable to his duly appointed guardian. Any such payment shall be a complete discharge of any liability under this Plan in respect of the amount of pension or benefit so paid.

9.4 No pension or benefit payable at any time under this Plan shall be subject in any manner to alienation, sale, transfer, assignment, pledge, attachment or encumbrance of any kind except pursuant to a Qualified Domestic Relations Order under Section 414(p) of the Code. Any attempt to otherwise alienate, sell, transfer, assign, pledge or otherwise encumber any such pension or benefit, whether presently or thereafter payable, shall be void. No pension or benefit, in any manner, shall be liable for or subject to the debts or liability of any Participant included in this Plan or of any designated Beneficiary. If any Employee included in this Plan or any Participant or designated Beneficiary shall attempt to or shall alienate, sell, assign, pledge, or otherwise encumber his rights, pension or benefits under this Plan or any part thereof, or if by reason of bankruptcy or otherwise the rights, pension or benefits of any Participant included in this Plan or of any designated Beneficiary would devolve upon anyone else or would not be enjoyed by him, then the Retirement Board, in its discretion may terminate his interest in any such right, pension or benefit and hold or apply it for his use or account or for the use or account of his Spouse, children or other dependents or any of them in such manner as the Retirement Board deems proper.

9.5 Notwithstanding anything to the contrary stated herein, unless the Participant makes a written election to have benefits commence at a later date, payment of benefits will commence not later than the sixtieth (60th) day after the latest of (1) the close of the Plan Year in which the Participant attains the Normal Retirement Date, (2) the close of the Plan Year during which occurs the tenth (10th) anniversary of the year in which the Participant commenced participation or (3) the close of the Plan Year in which the Participant terminates his service with the Town.

9.6 No distribution commencement date described under the Plan, either by Plan provision or by Participant election (or nonelection), can be later than the Participant's Required Beginning Date. A Participant's Required Beginning Date is the April 1 of the calendar year following the calendar year in which the Participant Retires. The method of payment elected must, as of the Required Beginning Date, satisfy the minimum distribution requirements under Code Section 401(a)(9) and the applicable Treasury regulations.

9.7 The benefits of each Participant shall not be decreased in the event this Plan merges or consolidates with any other Plan or there is a transfer of assets or liabilities to any other Plan. The benefit each Participant in this Plan would (if the Plan then terminated) receive immediately after the merger, consolidation or transfer of assets shall be equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation or transfer of assets (if the Plan had then been terminated).

## SECTION 10

## RETIREMENT BOARD

10.1 There shall be established a Retirement Board pursuant to Connecticut General Statutes Section 7-450.

(a) The Retirement Board shall consist of at least three (3) but not more than five (5) members appointed by the First Selectman for the purpose of administering the Plan.

(b) Appointment, terms of members. The First Selectman shall appoint members for five-year terms to fill vacancies created by the expiration of terms, provided, however, that each member of the Retirement Board shall continue to serve until his successor in office is appointed. Notwithstanding the foregoing, effective for appointments made and effective in 2010, the First Selectman shall appoint two individuals to serve for a one-year term, two individuals to serve for a three-year term and one individual to serve for a five-year term so that future appointments shall be staggered.

(c) Vacancies. Any vacancy in the Retirement Board shall be filled for the unexpired portion by the First Selectman.

(d) Removal of members. Members of the Retirement Board may be removed from office, for cause, after hearing, by the First Selectman.

10.2 It shall be the function of the Retirement Board to administer this Plan to the extent set forth herein. The Retirement Board shall meet at such times and places as may be agreed upon by its members for the expeditious transaction of business. There shall be required to be present at any meeting of the Retirement Board a majority of its members. Written and approved minutes of each meeting shall be kept by the Retirement Board. Decisions of the Retirement Board shall be made by a majority of the votes cast. The Retirement Board shall serve without compensation. The expenses of any expert or advisor selected by the Retirement Board shall be borne by the Town unless paid from the Plan. The Retirement Board and any member thereof shall be entitled to rely upon the correctness of any information furnished by the Town's records. Neither the Retirement Board nor any of its members nor any official of the departments shall be liable because of any act, or failure to act, on the part of the Retirement Board or any of its members to any person whatsoever, except that nothing herein shall be deemed to relieve any such individual from liability for his own fraud or bad faith.

10.3 The Retirement Board shall have the powers and duties with respect to the following matters or as specifically set forth elsewhere herein:

(a) To prescribe procedures to be followed by Employees in filing applications for benefits, and for the furnishing of evidence necessary to establish Employee's rights to such benefits.

(b) To make determinations as to the rights of any Employee applying for or receiving retirement benefits, and to afford any such individual dissatisfied with any such determination the right to a hearing.

(c) To adopt procedures for the establishment of the date of birth and Years of Credited Service of Employees, and after affording an Employee an opportunity to make objection with respect thereto, to establish such service conclusively in advance of retirement.

(d) To obtain from the Town or from the Employees such information as shall be necessary for the proper administration of benefit provisions of the Plan.

(e) To prepare and distribute information explaining the Plan.

(f) To construe this Plan as it affects the Employees and to establish such rules, regulations, and policies as may be necessary to carry out the provisions of this Plan; providing such rules, regulations, and policies shall in no way discriminate among the Employees.

(g) To determine whether specific items not otherwise enumerated in the Plan are included in Annual Compensation.

(h) To appoint an investment advisor/consultant to assist the Retirement Board in the investment or reinvestment of any or all available funds and/or may invest or reinvest any or all available funds with an appropriate investment agency.

10.4 The Retirement Board shall have no power to add to or subtract from, or modify, any of the terms of this Plan, or to change or add to any benefit except as provided by this Plan, or to waive or fail to apply any requirement of eligibility for a benefit under this Plan. If the Retirement Board shall find that it has no power to rule on a particular case referred to it, it shall make a determination to that effect and shall make no other ruling with respect to such case. No ruling or decision of the Retirement Board on any one case shall create a basis for any adjustment in any other case. In making any ruling or decision, the Retirement Board shall act in such a way as not to discriminate in favor of any Employee or Employees or class or classes of Employees. There shall be no appeal from any ruling by the Retirement Board which is within its authority. Each such ruling shall be final and binding on any applicant, on the Town and on the Retirement Board.

## SECTION 11

## AMENDMENTS TO THE PLAN

The Town expressly reserves the right to amend, modify, suspend, or terminate the Plan by action of its voters at a duly called town meeting. No such action shall adversely affect the benefits of the Employees already retired and securing such benefits.

Dated at Essex, Connecticut as of this 15th day of June, 2011.

TOWN OF ESSEX

BY:

Philip J. Miller

Norman M. Needleman

Joel B. Marzi

SCHEDULE A

Items to be Added back to W-2 Wages

- Deferred Compensation Plan deductions
- Contributions to a cafeteria plan qualified under Section 125
  - Flexible Spending Account (FSA) deductions
  - Health & Dental Insurance premiums
- Elective contributions under Section 132(f)(4)
  - Qualified transportation deductions

Items to be Deducted from W-2 Wages

- Taxable portion of Workers Compensation
- Annual payout of sick time
- Payout of sick time at termination
- Payout of vacation time at termination
- Severance pay
- Paid suspension
- Payments in lieu of insurance

Imputed Income Examples

- Taxable value of employer provided life insurance in excess of $50,000
- Educational assistance above excluded amount
- Unsubstantiated employee business expenses includable in income

**AMENDMENT**
**TO THE**
**TOWN OF ESSEX RETIREMENT PLAN**

The Town of Essex Retirement Plan (the "Plan") is hereby amended, pursuant to Section 11 of the Plan, effective May 1, 2012, as follows:

I.

Section 1 of the Plan is amended by adding the following new sentence at the end of Section 1.7:

For purposes of an Employee who becomes a Participant on or after May 1, 2012, excluding any such Employee employed by the Essex Elementary Board of Education, Break in Serve shall mean a Plan Year during which such Participant completes fewer than 751 Hours of Service.

II.

Section 1 of the Plan is amended to delete the phrase "up to 501 Hours of Service" in Sections 1.12(c) and 1.12(d) and replace it with "the minimum requisite number of Hours of Service necessary to avoid a Break in Service".

III.

Section 1 of the Plan is amended by deleting Subsection 1.23 in its entirety and replacing it with the following new Subsection:

> 1.23 "Year of Credited Service" means a Plan Year during which an Employee who becomes a Participant completes not less than one thousand (1,000) Hours of Service; provided that an Employee who becomes a Participant on or after May 1, 2012, shall be credited with a Year of Credited Service if during the Plan Year such Participant completes not less than one thousand five hundred (1,500) Hours of Service. Notwithstanding the foregoing, an Employee who becomes a Participant on or after May 1, 2012, and is employed by the Essex Elementary Board of Education shall be credited with a Year of Credited Service if such Participant is an individual regularly scheduled to work at least 30 hours per week during the academic school year and is employed during the entire academic school year. If a Participant is not credited with a Year of Credited Service in the first or last year he is employed by the Town, he shall receive credit for a pro rata Year of Credited Service based on the ratio of the number of completed months during such year to twelve (12).

IV.

Section 1 of the Plan is amended by deleting Subsection 1.23 in its entirety and replacing it with the following new Subsection:

1.23 "Year of Vesting Service" means a Plan Year in which a Participant accumulates at least one thousand (1,000) Hours of Service; provided that an Employee who becomes a Participant on or after May 1, 2012, shall be credited with a Year of Vesting Service if during the Plan Year such Participant accumulates not less than one thousand five hundred (1,500) Hours of Service. Notwithstanding the foregoing, an Employee who becomes a Participant on or after May 1, 2012, and is employed full-time by the Essex Elementary Board of Education shall be credited with a Year of Vesting Service if such Participant is an individual regularly scheduled to work at least 30 hours per week during the academic school year and is employed during the entire academic school year.

V.

If there shall be any inconsistency between the provisions of this Amendment, and the provisions of the Plan, this Amendment shall control.

Date: July 19, 2012.

TOWN OF ESSEX

Norman M. Needleman, First Selectman

Stacia R. Libby, Selectman

Joel B. Marzi, Selectman

F. Ellen Whaley-Wexler, Retirement Board Chairman

**AMENDMENT #2**
**TO THE**
**TOWN OF ESSEX RETIREMENT PLAN**

Amendment #2 to the Town of Essex retirement plan was prepared for consideration but never moved to public hearing or Town meeting.

**AMENDMENT #3**
**TO THE**
**TOWN OF ESSEX RETIREMENT PLAN**

Amendment #3 to the Town of Essex retirement plan was brought to public hearing and Town meeting on September 5, 2012. The amendment was tabled/withdrawn at that meeting. Since then it has not been reconsidered.

# AMENDMENT NO. 4
# TO THE
# TOWN OF ESSEX RETIREMENT PLAN

The Town of Essex Retirement Plan (the "Plan") is hereby amended, pursuant to Section 11 of the Plan, effective July 1, 2013, as follows:

I.

Section 1 of the Plan is amended by deleting Section 1.4 in its entirety and replacing it with the following new Section 1.4:

> "Annuity Starting Date" means the first day of the first period for which an amount is received as an annuity whether by reason of retirement, commencement of benefits upon a Participant's In-Service Commencement Date, or by reason of disability.

II.

Section 1 of the Plan is amended by adding the following new paragraph to the end of Section 1.23:

> Notwithstanding the foregoing, for purposes of this Section, a Participant who receives a benefit on his In-Service Commencement Date (as described in Section 3.6) shall be treated as ifhe became a Participant after May 1, 2012 with regard to all Plan Years beginning on or after his In-Service Commencement Date. If a Participant's In-Service Commencement Date occurs on a date other than the last day of a Plan Year, the Participant's Years of Credited Service for such Plan Year shall be determined as follows:
>
> (a) with regard to the portion of the Plan Year occurring before the Participant's In-Service Commencement Date, the Participant shall receive credit for a pro rata Year of Credited Service based on the ratio of the number of completed months of such Plan Year occurring prior to the Participant's In-Service Commencement Date to twelve (12); and
>
> (b) with regard to the portion of the Plan Year occurring after the Participant's In-Service Commencement Date, the Participant shall receive credit for a pro-rata Year of Credited Service to the extent that the Participant's Hours of Service performed during the portion of the Plan Year occurring after the Participant's In-Service Commencement Date exceed one hundred twenty-five (125) times the number of completed months during such period.

III.

Section 3 of the Plan is hereby retitled "Benefit Commencement Dates."

IV.

Section 3 of the Plan is amended by deleting Section 3.4 in its entirety and replacing it with the following new Section 3.4:

3.4 Deferred Retirement Date. A Participant's Deferred Retirement Date is the date occurring after his Normal Retirement Date upon which he elects to retire. A Participant who opts to defer his retirement until after his Normal Retirement Date shall continue to accrue Years of Credited Service (up to a maximum of forty (40) Years of Credited Service).

V.

Section 3 of the Plan is amended by adding the following new Section 3.6:

3.6 In-Service Commencement Date. A Participant's In-Service Commencement Date is the date on which he elects to commence benefits while still working for the Town, even if he has not actually retired, provided that:

(a) the Participant has attained Normal Retirement Age as described in Section 3.1; and

(b) the Participant is regularly scheduled to work less than thirty (30) hours per week.

VI.

Section 4 of the Plan is amended by deleting Section 4.1 in its entirety and adding the following new Section 4.1:

4.1 A Participant shall not be entitled to receive benefits under this Plan until he meets the age and service requirements and has either: (a) Retired; or (b) elected to receive a benefit on his In-Service Commencement Date.

VII.

Section 4 of the Plan is amended by adding the following new Section 4.7 at the end thereof:

4.7 In-Service Commencement Benefit. The amount of a Participant's In-Service Commencement Benefit shall be equal to the Normal Retirement Pension described in Section 4.2 or Deferred Retirement Pension described in Section 4.5, whichever is applicable, that he would have received if he had opted to Retire on his In-Service Commencement Date.

VIII.

Section 6 of the Plan is amended by deleting Section 6.1 in its entirety and replacing it with the following new Section 6.1:

> 6.1 A Participant shall specify in his application whether he is applying for a Normal Retirement Pension (Section 4.2), Early Retirement Pension (Section 4.3), Disability Pension (Section 4.4), Deferred Retirement Pension (Section 4.5), Vested Deferred Pension (Section 5.1) or an In-Service Commencement Benefit (Section 4.7).

If there shall be any inconsistency between the provisions of this Amendment No. 4 and the provisions of the Plan, as previously amended through Amendment No. 3, this Amendment No. 4 shall control.

Date: August 7, 2013.

TOWN OF ESSEX

Norman M. Needleman, First Selectman

Stacia R. Libby, Selectman

Joel B. Marzi, Selectman

F. Ellen Whaley-Wexler, Retirement Board Chairman