

RETIREMENT PLAN
for
EMPLOYEES
of the
TOWN of VIENNA,
VIRGINIA

As Adopted
by the
Town Council
November 1, 1976

(Amended through November 8, 2004)
This plan is closed.
New employees are enrolled in the 401(a) plan

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ARTICLE I

As used herein and in the Trust Agreement attached hereto, the following words and phrases shall have the meanings indicated, unless otherwise required by the context:

- PLAN means the Retirement Plan for Employees of the Town of Vienna, Virginia, as contained herein or as duly amended.
- TOWN means the Town of Vienna, Virginia, or any municipal corporation successor thereto, or the authority of the Town having the power to appoint an employee to office or employment.
- COUNCIL means the Town Council of the Town of Vienna, Virginia.
- TRUSTEE means the financial institution appointed by Council to hold in trust and invest the Fund, as provided for in Article VII, which may, from time to time, be acting in that capacity under the terms of the Trust Agreement.
- TRUST AGREEMENT means the agreement entered into between the Town and the Trustee pertaining to the administration of the Fund.
- FUND means the trust fund created under the terms of the Trust Agreement, consisting of the cash, securities, and other assets held by the Trustee pursuant to the terms of the Plan.
- CONTRIBUTIONS means the payments to the Fund by the Town as provided for herein.
- ELIGIBLE EMPLOYEE means any person regularly employed by the Town on a fulltime basis, other than the Town Manager or a member of the Police Department having police powers, whose customary employment is for more than forty hours per week and for more than five months per year.
- PARTICIPANT means an Eligible Employee or a former Eligible Employee who has become eligible to participate in the Plan, as provided in Article II hereof, and is prospectively entitled to future benefits under the terms of the Plan.
- COMMITTEE means the Administrative Committee provided for in Article IX hereof.
- CREDITED SERVICE means, for any Participant as of any date, the period or periods prior thereto during which he shall have been in the full time employ of the Town. In addition to his period or periods of full time employment, the Credited Service of a Participant shall include the following periods:
 - A. Vacation, or any other absence from the employment of the Town for which the Participant shall have received full compensation.

- B. Leave of absence without pay specifically authorized by the Town under general rules uniformly applicable to all employees similarly situated.
 - C. Service in the Armed Forces of the United States required by law or durance, a period of war or national emergency provided the Participant entered such service directly from the employ of the Town, was discharged from such service and was re-employed by the Town within the period during which his employment rights are protected by law.
 - D. All accumulated sick leave (2080 Hours = 1 year of credited service).
- COMPENSATION means, for any eligible employee, the full base compensation paid to him by the Town excluding overtime or other compensation not a part of the set scale for an established normal working period and excluding contributions by the Town to this or any other employee benefit program. In cases where compensation includes maintenance or other perquisites, the Committee shall fix the value of that part of the compensation not paid in money.
 - AVERAGE FINAL COMPENSATION means for any Participant, as of any date, the average annual compensation of the Participant during the three consecutive years of his Credited Service during which his Compensation was highest, or during the entire period of his Credited Service if less than three years.
 - CONTINGENT ANNUITANT means the person designated by a Participant to receive retirement benefits, after the death of the Participant, under the Joint and Last Survivor Option of Article V.
 - RESERVE means the actuarially determined amount required, as of the date, to provide benefits under the Plan based on years of Credited Service, Average Final Compensation and ages of Participants and Contingent Annuitants as of said date.
 - ACTUARIAL EQUIVALENT means a benefit of equivalent value when computed on the basis of interest and mortality tables, as adopted by the Committee from time to time, for use in the computation of actuarial equivalents under the Plan.
 - EFFECTIVE DATE means November 1, 1976.

ARTICLE II

PARTICIPATION

Each Eligible Employee in the service of the Town or on authorized leave of absence on the Effective Date shall automatically become a Participant as of the Effective Date.

Each person who becomes an Eligible Employee after the Effective Date and who is not already a Participant shall automatically become a Participant on the first day of the month coinciding with or next following the date he becomes an Eligible Employee.

Each person who becomes a Participant hereunder shall continue to be a Participant so long as he remains an Eligible Employee, or is entitled to future benefits under the terms of the Plan.

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ARTICLE III

RETIREMENT DATES

A. NORMAL RETIREMENT DATE

The normal retirement date of a Participant shall be:

1. The first day of the month coinciding with or next following the date on which the Participant attains the age of sixty-five (65); or,
2. The first day of any month that a Participant who has attained at least the age of fifty (50) and has at least thirty (30) years of Credited Service with the Town, so chooses.

B. EARLY RETIREMENT DATE

A Participant, between the ages of fifty (50) and sixty-five (65) with less than thirty (30) years of service, may retire from the employment of the Town prior to his normal retirement date on the first day of any month.

C. DISABILITY RETIREMENT DATE

A Participant who is under the age of sixty-five (65) and becomes totally and permanently disabled, as hereinafter defined, after the completion of five (5) years of Credited Service with the Town, may retire from the employment of the Town on the first day of any month thereafter prior to his normal retirement date.

Where the disability is compensable under Workers Compensation, disability retirement benefits can be approved for Participants with less than five (5) years of Credited Service. In addition, a vested Participant who terminates his employment with the Town may apply for regular disability retirement benefits within ninety (90) days of said termination date.

A Participant shall be deemed to be totally and permanently disabled if he has been totally incapacitated due to bodily injury or physical or mental disease to such an extent as to render it impossible for him to perform his customary or other duties with the Town; provided, that any such inability to perform his customary or other duties with the Town shall be determined by the Committee, in accordance with uniform principles consistently applied, on the basis of competent medical advice and such other evidence as the Committee may deem sufficient.

D. VESTING

A Participant becomes vested with five (5) years of full-time employment with the Town. Vesting entitles a Participant to monthly benefits at his normal retirement date, as defined in Article III(A) of the Plan. Vested Participants retain the right to such a benefit even if they terminate employment with the Town.

ARTICLE IV

RETIREMENT ALLOWANCES

A. NORMAL RETIREMENT ALLOWANCE

A Participant, upon retirement at his normal retirement date, in accordance with Section A of Article III, shall receive a monthly retirement allowance which shall commence on such retirement date and shall be continued on the first day of each month thereafter during his lifetime. The amount of such monthly retirement allowance shall be one-twelfth of the product of (1) multiplied by (2) below, where:

- (1) is one-quarter of one percent ($1/4\%$) of the Participant's Average Final Compensation at his date of retirement; and
- (2) is the number of years of Credited Service of the Participant at his date of retirement including completed months of Credited Service as a fractional part of a year.

B. EARLY RETIREMENT ALLOWANCE

A Participant, upon retirement at an early retirement date, in accordance with Section B of Article III, shall receive a monthly retirement allowance which shall commence on such retirement date and shall be continued on the first day of each month thereafter during his lifetime. The amount of such monthly retirement allowance shall be determined in the same manner, as for retirement at the Participant's normal retirement date, except that Credited Service and Average Final Compensation shall be computed as of his early retirement date, provided, however, that if the Participant has not completed thirty (30) years of Credited Service at his date of retirement, the amount of the monthly retirement allowance, so determined, shall be reduced by one-half of one percent ($1/2\%$) per complete month for the first 60 months between his early retirement date and the earlier of his normal retirement date or the date on which he would have completed thirty (30) years of Credited Service had he remained an Eligible Employee until such date. The amount of the Participant's monthly retirement allowance for each additional month shall be reduced by four-tenths of one percent ($4/10\%$).

C. DISABILITY RETIREMENT ALLOWANCE

A Participant, upon retirement for disability, in accordance with Section C of Article III, shall receive a monthly retirement allowance which shall commence on such retirement date and shall be continued on the first day of each month thereafter during his lifetime, subject to the provisions of Section D of this Article

IV. The amount of such monthly retirement allowance shall be determined in the same manner as for retirement at the Participant's normal retirement date except that Average Final Compensation shall be determined as of his disability retirement date and Credited Service shall be determined, in the case of a Participant who has attained the age of sixty (60) or more at his disability retirement date, his Credited Service at such date or, in the case of a Participant who has not attained the age of sixty (60) at his disability retirement date, the larger of:

- (a) his Credited Service at such date
or
- (b) the smaller of:
 - (i) twice the amount of his Credited Service at such date
or
 - (ii) the Credited Service he would have completed at age sixty (60) had he remained an Eligible Employee until such age.

D. CESSATION OF DISABILITY RETIREMENT ALLOWANCE

If a Participant in receipt of a disability retirement allowance shall, prior to his normal retirement date, recover to the extent that, in the view of the Committee, he is no longer disabled, his disability retirement allowance shall thereupon cease. If such a Participant should then return to the employ of the Town, he shall resume his status as an active Participant and the period during which he was in receipt of a disability retirement allowance shall be included in any subsequent determination of the amount of his Credited Service. If such a Participant should not then return to the employ of the Town, he shall be considered to have terminated his employment with the Town as of his date of recovery, with Credited Service determined as of his disability retirement date, and he shall then be eligible for the benefits to which he is entitled under the provisions of Article VII hereof, with the period during which he was in receipt of a disability retirement allowance being included in the amount of his Credited Service at date of termination.

In its administration of this Section, the Committee may require that any Participant in receipt of a disability retirement allowance, prior to his normal retirement date, undergo a medical examination by a physician or physicians approved by the Committee. Such examinations may be required not more often than once each year during the first five (5) years after the Participant's disability retirement date, and not more often than once every three (3) years thereafter. Should any Participant refuse to submit to any such medical examination, his retirement allowance shall be discontinued until his withdrawal of such refusal, and should such refusal continue for one (1) year, he shall be deemed to have recovered from his disability.

The provisions of this Section shall be administered by the Committee in accordance with a non-discriminatory policy uniformly applicable to all Participants similarly situated.

E. PARTICIPANTS RE-EMPLOYED AFTER RETIREMENT

If a Participant is re-employed by the Town as an Eligible Employee after the commencement of a retirement allowance under any of the provisions of the Plan, other than a disability retirement allowance which has terminated under the provisions of Section II D of this Article IV, his retirement allowance shall thereupon cease and his rights to any further payments thereunder shall be canceled. His rights to benefits under the Plan shall be subject to redetermination upon any subsequent termination of employment or retirement under the Plan, in accordance with the provisions of the Plan then in effect. Any benefits thereafter payable shall be reduced on an Actuarial Equivalent basis to reflect the value of the retirement allowance payments received by the Participant during his prior period of receipt of a retirement allowance.

F. SUPPLEMENTAL RETIREMENT ALLOWANCE

In addition to the monthly retirement allowance payable to a Participant under Sections A, B, or C of this Article IV, or to any optional allowance in lieu thereof that may have been elected under the provisions of Article V, or to any monthly allowance under Section A of Article VI, payable to the Participant or to his Contingent Annuitant, a supplemental retirement allowance shall be payable in accordance with the following provisions of this Section. Any such supplemental retirement allowance shall be subject to the same conditions of payment as are applicable to the allowance being supplemented.

The amount of any such supplemental retirement allowance shall not exceed 5% annually and shall be determined as a percentage of the allowance being supplemented, such percentage being determined as the percentage increase, if any, in the Consumer Price Index (U.S. Cities Average - All Items), as published by the Bureau of Labor Statistics of the United States Department of Labor, from its value for the month in which the allowance initially commenced upon the retirement or death prior to retirement of the Participant to its value for the month of March next preceding the dates of which the percentage is being determined. In no event, however, shall the application of this Section F serve to reduce the amount of retirement allowance that would be payable in any case were it not for this Section.

Amounts of supplemental retirement allowance shall be determined initially as of July 1, 1982, with respect to retirement allowances then in course of payment and successively annually thereafter on each July 1. No change in the amount of any supplemental retirement allowance shall be effected between determination dates except as necessary to reflect changes in the amount of the allowance

being supplemented to the end that any such supplement shall remain, until the following determination date, a constant percentage of the respective allowance being supplemented, nor shall any new supplements be commenced except as of a determination date. The supplemental retirement allowance determined, as of any determination date, shall become effective as of the payment date coinciding with such determination date, and shall be in lieu of any supplemental retirement allowance previously payable, which shall thereupon be terminated.

ARTICLE V

OPTIONAL METHOD OF RETIREMENT PAYMENTS

Each Participant shall have the right to elect to have his retirement allowance paid under the option hereinafter set forth in this Article V in lieu of the retirement allowance otherwise provided for in Article IV. The Participant shall make such an election by written request to the Committee prior to the date benefit payments are to commence and such an election will be subject to the approval of the Committee. The amount of any optional retirement allowance shall be the Actuarial Equivalent, as shown in the Virginia Retirement System's "Joint and Survivor Factor" charts, of the amount of such retirement allowance that otherwise would have been payable to him as provided for in Article IV. After retirement allowance payments have commenced, no further election or adjustments in the amount of the retirement allowance will be permitted under any circumstances.

JOINT AND LAST SURVIVOR OPTION

A Participant may elect to receive a decreased retirement allowance during his lifetime and have such decreased retirement allowance (or a designated fraction thereof) continued after his death to a designated Contingent Annuitant, during the lifetime of the Contingent Annuitant.

In the event a Participant elects to have his retirement allowance paid under this option and the Contingent Annuitant is not the spouse of the Participant, the option shall be restricted so that the present value of the payments expected to be made to the Participant is more than fifty percent (50 %) of the present value of the total payments expected to be made to the Participant and his Contingent Annuitant.

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ARTICLE VI

BENEFITS ON DEATH

A. DEATH PRIOR TO RETIREMENT

All rights to any benefits under the Plan will cease upon a Participant's death prior to retirement, except as otherwise provided in the following paragraphs of this Section A.

In the event of the death of a Participant prior to actual retirement, but after he has either attained the age of sixty (60) or more or completed thirty (30) years or more of Credited Service, there shall be payable to his surviving spouse, if any, a monthly allowance as hereinafter defined.

Said monthly allowance shall be equal to the allowance that would have been payable to the Participant's Contingent Annuitant after the death of the Participant had the Participant survived and retired on the first day of the month coinciding with or next following the date of his death, having elected to have his retirement allowance payable under the Joint and Last Survivor Option of Article V with his spouse designated as Contingent Annuitant, with, in the case of a Participant who dies before his normal retirement date, one-half of the Participant's reduced allowance continued after his death to the Contingent Annuitant, and with, in the case of a Participant who dies after his normal retirement date, the entire amount of the Participant's reduced allowance continued after his death to the Contingent Annuitant assuming, in the case of a Participant who has not attained the age of sixty (60) at his date of death, that the attainment of such age was not a prerequisite for retirement and that the retirement allowance payable in such event would be reduced by one-half of one percent for each complete month in the period between the retirement date and the date on which the Participant would have attained the age of sixty (60). Said monthly allowance shall commence on the assumed date of retirement of the Participant and shall be continued to the surviving spouse on the first day of each month thereafter during the lifetime of the spouse.

Any person to whom such a monthly allowance has become payable shall be considered to be a Contingent Annuitant for all purposes under the Plan.

B. DEATH SUBSEQUENT TO RETIREMENT

In the event of the death of a Participant subsequent to retirement, all rights to any benefits under the Plan will cease, except as otherwise provided for in Option 1 of Article V.

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ARTICLE VII

BENEFITS ON TERMINATION OF EMPLOYMENT

A. TERMINATION OF RIGHTS TO BENEFITS

Other than as provided in the following Sections of this Article VII, all rights to benefits under the Plan with respect to any Participant, will cease upon his termination of employment with the Town prior to retirement, other than by death.

B. DEFERRED RETIREMENT ALLOWANCE

In the event of the termination of a Participant's employment with the Town, other than by death, prior to his retirement hereunder but after he has either attained the age of sixty (60) or more or completed five years or more of Credited Service, there shall be paid to such Participant a monthly retirement allowance determined as hereinbelow provided, commencing on his normal retirement date, if he is then alive, and continuing on the first day of each month thereafter during his lifetime.

The amount of the monthly retirement allowance payable hereunder shall be determined in the same manner as provided in Section A of Article IV hereof, except that Credited Service and Average Final Compensation shall be determined as the date of the Participant's termination of employment.

A terminated Participant, who is entitled to a deferred retirement allowance in accordance with the preceding provision of this Section B, may elect, by written notice to the Committee, to have such deferred monthly retirement allowance commence on the first day of any month prior to his normal retirement date but subsequent to the later of his date of termination of employment or his attainment of the age of sixty (60). The amount of the monthly retirement allowance payable at such earlier commencement date shall be equal to the amount of monthly allowance otherwise deferred to his normal retirement date reduced, in the case of a Participant who has not completed thirty years of Credited Service, by one-half of one percent for each complete month in the period between the earlier commencement date and the earlier of his normal retirement date or the date on which he would have completed thirty (30) years of Credited Service had he resumed his status as an Eligible Employee at such earlier commencement date and remained an Eligible Employee until he had completed thirty (30) years of Credited Service.

Any Participant becoming entitled to an allowance under the provisions of this Section shall be entitled to elect, at the time of commencement of such allowance, and subject to the approval of the Committee, to have his allowance paid under Option 1 or Option 2 (if applicable) of Article V.

C. RE-EMPLOYMENT AFTER TERMINATION OF EMPLOYMENT

In the event that a Participant entitled to a deferred retirement allowance under the provisions of Section B hereof should be later re-employed as an Eligible Employee prior to the commencement of such retirement allowance, his rights to any such retirement allowance shall thereupon be canceled. His rights to benefits under the Plan shall be subject to redetermination upon any subsequent termination of employment or retirement under the Plan, in accordance with the provisions of the Plan then in effect.

ARTICLE VIII

FUNDING

A. CONTRIBUTIONS BY THE TOWN

The cost of benefits under the Plan shall be borne by the Town through the Fund.

From time to time, but at least biennially, the Town shall retain an actuary to determine the amount of the annual Contributions by the Town that are necessary to meet its obligations under the Plan. The Town shall transmit its Contributions to the Trustee each year, in such amounts and at such times as it may deem appropriate, in the aggregate amount actuarially determined as necessary to provide the benefits of the Plan. Reserves in the Fund released through terminations of employment shall be applied to reduce the Town's future Contributions.

All Contributions by the Town shall be irrevocable, and may be used only for the benefit of Participants and their Contingent Annuitants, except as otherwise provided in Section B of Article X.

B. TRUST FUND

The Town, in order to establish a Fund for the payment of benefits under the Plan, will enter into an agreement with the Trustee, whereunder the Trustee will receive, invest, and administer, in trust, all Contributions made under the Plan, in accordance with the terms of the Trust Agreement. Said Trust Agreement is attached hereto and incorporated by reference as a part of the Plan. The Trust Agreement specifically provides, among other things, for the investment and reinvestment of the Fund and the income thereof, the management of the Fund, the responsibilities and immunities of the Trustee, removal of the Trustee and appointment of a successor, accounting by the Trustee, and the disbursement of the Fund.

It shall be impossible, at any time prior to the complete satisfaction of all liabilities with respect to Participants and their Contingent Annuitants under the Plan, for any part of the Fund to be used for, or diverted to, purposes other than for the exclusive benefit of the Participants and their Contingent Annuitants.

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ARTICLE IX

ADMINISTRATION OF THE PLAN

A. RESPONSIBILITY OF THE TOWN

Council shall be responsible for, and have control of, the operation and administration of the Plan and the adoption of such rules and regulations, as may be necessary for the efficient operation and administration of the Plan. Council shall appoint an Administrative Committee, to which it shall delegate such powers as it may see fit for the operation and administration of the Plan.

B. ADMINISTRATIVE COMMITTEE

Council shall appoint the original members of the Administrative Committee, who shall remain in office at the will of Council, and Council may from time to time remove any of said members with or without cause and shall appoint their successors. The Committee shall consist of a current member of the Town Council, the Director of Finance, and a member of the business community who is knowledgeable in banking, finance, and investments. The Town Attorney and Town Manager shall be ex-officio members of the Committee. Also appointed to this committee by the Town Manager shall be one full time, civilian employee. These same individuals shall also serve as the Committee members of the sworn pension plan, however the civilian employee representative shall have no voting rights on items pertaining to the sworn pension plan.

Any member of the Committee may resign at any time. Any vacancy except the civilian employee member shall be filled by the appointment by Council of a new member to the Committee.

The Town shall notify the Trustee, in writing, of every change in membership of the Committee.

The members of the Committee shall elect a Chairman. They shall also elect a Secretary who may be, but need not be, a member of the Committee. The Committee may appoint, from its membership, such subcommittees with such powers as the Committee shall determine and may authorize one or more of its members or any agent to make, execute, or deliver any instrument on behalf of the Committee. Any action of the Committee shall be determined by the vote or other expression of a majority of its members.

The Committee shall hold meetings upon such notice, at such place or places, and at such time or times as it may, from time to time, determine. Meetings may be called by the Chairman or any two members. A majority of the members of the

Committee, at the time in office, shall constitute a quorum for the transaction of business.

All acts and determinations of the Committee shall be duly recorded by the Secretary thereof and all such records, together with such other documents as may be necessary for the administration of the Plan, shall be preserved in the custody of such Secretary. Such records and documents shall, at all times, be open for inspection and for the purpose of making copies by any person designated by Council. The records of the proceedings of the Committee shall be conclusive proof of the facts of the operation of the Plan.

No fee or compensation shall be paid to any member of the Committee for his services as such. The Town shall pay the reasonable expenses of the Committee in the administration of the Plan. The Committee may employ such advisors, as it may require, in carrying out the provisions of the Plan, and pay the salaries, wages, fees, commissions, and charges incurred thereby from the Fund, unless such expenses are paid by the Town.

The Committee shall have the duty and authority to interpret and construe the provisions of the Plan, to decide any disputes which may arise with regard to the rights of employees, Participants or Contingent Annuitants under the terms of the Plan, and in general, to direct the administration of the Plan. However, the Committee shall have no power to modify, alter, add to, or subtract from any provisions of the Plan.

All disbursements from the Fund, except for the administrative expenses charged to it by the Trustee, shall be made upon, and in accordance with, the written directions of the Committee.

The Committee shall prepare and distribute to the Participants, at the expense of the Town and in such manner as it shall deem appropriate, information concerning the Plan.

A certification in writing by the Committee, signed by a duly authorized member thereof to the occurrence or happening of any event contemplated in the Plan, shall constitute conclusive evidence of such occurrence or happening and the Trustee shall be fully protected in accepting and relying on such certification and shall incur no liability or responsibility by doing so.

The Committee shall establish rules and procedures to be followed by the Participants and Contingent Annuitants in filing applications for benefits and for furnishing and verifying proofs necessary to establish age, years of Credited Service, Compensation, and any other matters required in order to establish the rights to benefits in accordance with the Plan.

The Committee shall receive all applications for benefits. Upon receipt by the Committee of such an application, it shall determine all facts that are necessary to establish the rights of the applicants to benefits under the provisions of the Plan and the amount thereof as herein provided. Upon request, the Committee will afford any applicant the rights of a hearing with respect to any finding of fact or determination.

The decision of the Committee, in any matter within its jurisdiction, shall be final, binding, and conclusive upon the Town and upon each employee, Participant, Contingent Annuitant, and any other party interested or concerned. Any decision made by the Committee in its administration of the Plan shall be made on a uniformly equitable and nondiscriminatory basis, equally applicable to all Participants in like circumstances.

No member of the Committee, who is a Participant of the Plan, shall have the right to vote or decide upon any matter relating solely to himself or to any of his rights or benefits under the Plan.

To enable the Committee to perform its functions, the Town shall supply full and timely information to the Committee of all matters relating to all Participants, their length of service, their retirement, death, or other cause for termination of employment, and such other pertinent facts as the Committee may require for the effective discharge of its duties; and the Committee shall advise the Trustee of such of the foregoing facts, as may be pertinent to its administration of the Fund.

The Committee shall adopt from time to time, mortality tables and all other necessary factors for use in all actuarial calculations required to determine the Town's Contributions hereunder.

Members of the Committee and the Town shall be entitled to rely upon all tables, valuations, certificates, and reports furnished by an actuary designated by the Committee or Council, upon all certificates and reports made by an accountant selected or approved by Council, and upon all opinions given by any counsel selected or approved by Council; the members of the Committee and Council and the Trustee shall be fully protected in respect to any action taken or suffered by them in good faith in reliance upon the advice or opinion of any such actuary, accountant, or counsel, and any action so taken or suffered shall be conclusive upon each of them and upon all employees, Participants, or other persons interested in the Plan.

The members of the Committee, and each of them, shall be free from all liability, joint or several, for their acts, omissions, and conduct, and for the acts, omissions, and conduct of their duly constituted agents, in the administration of the Plan and the Town, shall indemnify and save them and each of them, harmless from the effects and consequences of their acts, omissions, and conduct in their official

capacity, except to the extent that such effects and consequences shall result from their own willful misconduct or gross negligence.

ARTICLE X

AMENDMENT AND TERMINATION OF THE PLAN

A. AMENDMENT OF THE PLAN

Council shall have the right at any time to modify, alter, or amend the Plan, in whole or in part; provided, however, that the amount of benefits, which at the time of any such modification, alteration, or amendment, shall have accrued for any Participant or Contingent Annuitant shall not be affected adversely thereby; and provided, further, that no such amendment shall have the effect of returning to the Town any part of the Fund held by the Trustee; and provided, further, that no amendment affecting the responsibilities or immunities of the Trustee shall be adopted without the written consent of the Trustee.

B. TERMINATION OF THE PLAN

The Town expects to continue the Plan indefinitely. However, the Town reserves the right to terminate the Plan, at any time, by action of Council. For the purposes of this Section, a complete discontinuation of the Town's Contributions shall constitute termination of the Plan. If the Town terminates the Plan, or it is otherwise terminated, the rights of the then Participants to benefits then accrued shall be nonforfeitable to the extent such benefits are then funded and the Trustee shall continue to administer the Fund as instructed by the Committee in accordance with the provisions hereof, and the expenses of the Trustee shall be paid out of the assets then remaining in the Fund.

In the event of termination of the Plan, as provided in this Section, the Fund shall be administered for the sole benefit of the then Participants, any Contingent Annuitants then receiving benefits in accordance with Article V or Article VI hereof and any Contingent Annuitants entitled to receive future benefits in accordance with Article V or Article VI hereof.

Subject to the provisions of the last paragraph of this Section, in the event of the termination of the Plan the Fund shall be allocated by the Committee in an equitable manner, subject to the approval of the Internal Revenue Service, to provide benefits for persons stated in the preceding paragraphs of this Section in accordance with the provisions of the Plan but based upon Reserves as of the date of termination of the Plan and in the following order:

1. For the benefit of Participants and Contingent Annuitants then receiving retirement allowances, and Contingent Annuitants already designated by such retired Participants, and active Participants who have attained their normal retirement dates, to the extent of the

then Reserves for such retirement allowances. If the Fund is insufficient to allocate the full amount of the then Reserves for such retirement allowances, the allocation of the Fund under this paragraph 1 among the distributees entitled thereto shall be in proportion to the respective individual amounts of such Reserves. Then, if any part of such portion of the Fund remains after the allocation provided for in this paragraph 1:

2. For the benefit of active Participants who, on the date of Plan termination, have not attained their normal retirement dates but have satisfied the age and service requirements for early retirement as set forth in Section B of Article III hereof, to the extent of the then Reserves of such retirement allowances. If the Fund is insufficient to allocate the full amount of the then Reserves for such retirement allowances, the allocations of the Fund under this paragraph 2 among the distributees entitled thereto shall be in proportion to the respective individual amounts of such Reserves. Then, if any part of such portion of the Fund remains after the allocation provided for in this paragraph 2:
3. For the benefit of all other Participants to the extent of the then Reserves for their retirement allowances, the allocation of the Fund under this paragraph 3, among the distributees entitled thereto, shall be in proportion to the respective individual amounts of such Reserves.
4. If any balance of the Fund remains after the allocations provided for in sub-sections 1, 2, and 3, as certified by a professionally qualified actuary selected by Council, then and not otherwise, the Trustee shall return such balance to the Town.

The allocation of the Fund provided for in this Section may be carried out, as determined by the Committee, through the continuance of the Fund. The Fund may be liquidated at any time, and insurance company contracts purchased to provide the benefits determined in accordance with this Section, or the Fund may be distributed in lump sum payments to the persons entitled to said benefits, or a combination of such methods may be employed,

The foregoing provisions to the contrary notwithstanding, if at any time during the first ten years after the initial adoption of the Plan or within ten years after the effective date of any amendment to the Plan which increases the amount of retirement benefits payable thereafter to a Participant, the Plan shall be terminated or if thereafter the full current costs of the Plan for the applicable ten-year period (consisting of the normal costs and interest on any accrued liability) shall not have been met, anything in the Plan to the contrary notwithstanding, the

Town's Contribution which may be used for the benefit of any one of the twenty-five highest paid employees on the date of such adoption or such amendments, as the case may be, whose anticipated annual retirement allowance at his normal retirement date would exceed \$1,500 shall not exceed the largest of the following:

- (a) the Town's Contributions, if any, or funds attributable thereto, which would have been applied to provide benefits if the Plan, as in effect on the day preceding the date of such amendments, had been continued without change,
- (b) \$20,000
or
- (c) the sum of:
 - (i) the Town's Contributions, if any, or funds attributable thereto, which would have been applied to provide benefits for the employee if the Plan had been terminated on the day preceding the date of such amendments, plus
 - (ii) an amount computed by multiplying the smaller of \$10,000 or twenty percent of such employee's average annual compensation during the last five years of service by the number of years since the date of such adoption of such amendments, as the case may be. If at the end of the ten-year period, following the date of such adoption or said amendments as the case may be, the full current costs of the Plan for such period have not been met, the preceding rotation shall continue to apply until the full current costs have been met for the first time. In the event that it shall hereafter be determined by statute, ruling by the Commissioner of Internal Revenue, or otherwise, that the provisions of this paragraph are not then necessary to qualify the Plan under the Internal Revenue Code, this paragraph shall be ineffective without the necessity of further amendment of the Plan.

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ARTICLE XI

MISCELLANEOUS

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

In the construction of the Plan, the masculine shall include the feminine and the singular the plural, in all cases where such meanings are indicated by the context.

The Plan shall be construed in accordance with the laws of the Commonwealth of Virginia, and all Contributions hereunder shall be deemed to have been made in that Commonwealth.

Participation in the Plan shall not give any employee the right to be retained in the Town's employ nor, upon dismissal or upon his voluntary termination of employment, to have any right or interest in the Fund other than as is herein provided. The Town shall not be liable for the payment of any benefit provided for herein; all benefits hereunder shall be payable only from the Fund, and only to the extent that such is sufficient therefor.

Any payment to a Participant or Contingent Annuitant, or to their legal representatives, in accordance with the provisions of the Plan shall, to the extent thereof, be in full satisfaction of all claims hereunder against the Trustee, the Committee, and the Town, any or whom may require such recipient, as a condition precedent to such payment, to execute a receipt and release therefor in such form as shall be determined by the Trustee, the Committee, or the Town, as the case may be.

If any retirement allowance payable under the Plan would be at a rate of less than \$100.00 per month, such allowance may be, at the discretion of the Committee, paid at less frequent intervals, including a single lump sum payment, in such amounts, so that the value of such payments is the Actuarial Equivalent of the monthly allowance that otherwise would be payable. The Committee will not approve the election of any optional method of payment under Article V if the resultant monthly allowance would be less than \$100.00 before or after the death of the Participant.

Except insofar as may be contrary to any applicable law, no benefit hereunder shall be subject in any manner to alienation, anticipation, sale, transfer, assignment, pledge, encumbrance, garnishment, attachment, execution, or levy of any kind.

If a Participant or Contingent Annuitant is a minor, or is, in the judgment of the Committee, otherwise legally incapable of personally receiving, and giving a valid receipt for any payment due him under the Plan, the Committee may, unless and until claim, shall have been made by a duly appointed guardian or committee of such person,

make such payment of any part thereof to such person's spouse, child, brother, or sister or other person deemed by the Committee to have incurred expense for, or assumed responsibility for the expenses of such person. Any payment so made shall be a complete discharge of any liability under the Plan for such payment.

No payment of any benefit, Contribution, or other sum that would constitute a violation of any applicable wage control law shall be made hereunder.

The Plan is intended to be a qualified employees' pension plan under the provisions of Section 401(a) of the Internal Revenue Code and, notwithstanding anything to the contrary herein, this Plan, and the accompanying Trust Agreement, shall be construed to reach such result.

ARTICLE XII

ADOPTION OF PLAN

As evidence of its adoption of the Plan, the Town has caused this instrument to be signed by the Mayor and the members of Council, this 25th day of January, 1982.

THE TOWN OF VIENNA, VIRGINIA