

**Tax-Qualified Retirement Plan
Adoption/Participation Agreement**

by and between

Town of Palm Beach

and

The Palm Beach First Responders Foundation Inc.

This AGREEMENT ("Agreement"), effective as of December 31, 2021 (the "Effective Date"), by and between the Town of Palm Beach, Florida ("Town"), with a principal office at 360 South County Road, Palm Beach, FL 33480, and The Palm Beach First Responders Foundation, Inc. ("Foundation") with a principal office at 139 North Country Road, Suite 20C, Palm Beach, Florida 33480, addresses the establishment and operation of a new tax-qualified retirement plan in respect of certain Town employees.

RECITALS

WHEREAS, the Town employs a certain number of employees classified by the Town as members of the Town's Police and Fire Departments ("Police and Fire Employees");

WHEREAS, the Town provides its Police and Fire Employees with compensation and the opportunity to participate in a suite of employee benefits, as amended from time to time, including retirement benefits provided through and in connection with certain tax-qualified retirement plans sponsored by the Town ("Town Retirement Plans");

WHEREAS, the Foundation was established as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, for a number of purposes, including that it works to support the Town's efforts to recruit and retain qualified Police and Fire Employees by providing emergency assistance, scholarships, equipment, and training, among other things;

WHEREAS, the Town and the Foundation desire that the Foundation provide support in connection with the provision of additional tax-qualified retirement benefits for certain Police and Fire Employees;

WHEREAS, the Town hereby agrees, consents to and approves the establishment and operation of The Palm Beach First Responders Foundation, Inc. Sponsored Retirement Plan for the benefit of the Town of Palm Beach Police Department and Fire Department Employees ("Plan") by the Foundation, for the purpose of providing certain additional tax-qualified retirement benefits to certain Police and Fire Employees, as set forth in the Plan document;

WHEREAS, the Town acknowledges that the Foundation's provision of tax qualified retirement benefits to Police and Fire Employees will support the Town's efforts to recruit and retain these employees, and therefore fulfills a public purpose;

WHEREAS, the Town and Foundation, as applicable, agree to the provisions of the Plan document and each assumes certain responsibility and liability under the Plan, as set forth herein, in the Plan document, or as otherwise provided by applicable law; and

WHEREAS, the Town and Foundation desire to memorialize their agreement regarding the Plan, as provided in this Agreement and the terms of the Plan document.

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained in this Agreement, the Town and the Foundation (the "Party" or "Parties" as appropriate) hereby agree to the following:

- A. **Term of Agreement.** This Agreement shall be effective beginning on the Effective Date and shall remain in effect until terminated by either Party by providing the other Party with at least 30 days' written notice of

termination. Termination of the Agreement shall not, in and of itself, affect the operation of the Plan, provided that no further contributions shall be made to the Plan following termination of the Agreement. Notwithstanding the foregoing, the Town agrees not to terminate the Agreement during the period beginning on the Effective Date and ending on the sixth anniversary of such date, except in the event of "Cause," which is defined as a finding by a federal or state agency or a court of competent jurisdiction that the Foundation has been negligent in administering the Plan.

- B. General Responsibilities of the Foundation. The Foundation shall act as the Plan sponsor, execute the Plan document and be responsible for the funding, administration and operation of the Plan, in accordance with the terms of the Plan, as amended from time to time. Within 90 days following the end of each Plan year the Foundation shall provide a report to the Town reflecting the total contributions made to the Plan and the allocations made to each participant's account during the Plan year, together with the accumulated balance in each participant's account at the beginning and end of the Plan year.
- C. General Responsibilities of the Town. The Town shall provide to the Foundation information related to the compensation and benefits of Police and Fire Employees as necessary for the establishment, funding and operation of the Plan by the Foundation. Notwithstanding the foregoing, the Town will not release to the Foundation any Town records deemed confidential and exempt from disclosure under Chapter 119, *Florida Statutes*, provided that the Town will notify the Foundation in writing if such unreleased information cannot be disclosed. In such event, the Town shall cooperate with Foundation in the Foundation's efforts to collect such information.
- D. Amendment/Termination.
1. The Foundation shall have the exclusive right to amend and/or terminate the Plan at any time, provided that no amendment or resolution to terminate the Plan shall be effective prior to the date that is 60 days following the date the Foundation notifies the Town in writing of the amendment or the resolution to terminate the Plan; and provided further that such notice period shall be waived to the extent necessary in respect of a Plan amendment required for the Plan to maintain its compliance under applicable law. Notwithstanding the foregoing, an amendment to the Plan that impacts the administration or costs of the Town Retirement Plans, other than an amendment to the Plan required by applicable law, shall require the consent of the Town.
 2. The Town acknowledges the importance of the Foundation's tax exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code ("Tax Exempt Status"), and Town agrees to execute any amendments to this Agreement and to take such other or further actions reasonably required to preserve the Foundation's tax exempt status, provided the same do not materially increase the costs and risks, or materially reduce the rights and benefits of Town hereunder. If, as a result of a change in law or regulation or judicial or administrative decision or interpretation, the performance by Foundation of any provision of this Agreement should, as reasonably determined in good faith by Foundation, jeopardize the Foundation's Tax-Exempt Status, or constitute a violation or threatened violation of any statute, regulation, or ordinance, the Foundation may request that this Agreement be renegotiated to eliminate the jeopardy and, if agreement is not reached within sixty (60) days after such renegotiation commences, then the Foundation may terminate this Agreement on notice in writing to Town; provided, however, that in the event of any such termination, the parties may seek to find alternative means to carry out the objectives of this Agreement.
 3. The Foundation acknowledges that the Town is a governmental entity that operates qualified retirement plans for its employees. The Foundation agrees to execute any amendments to the Agreement and to take such other or further actions reasonably required, including but not limited to terminating the Plan, if operation of the Plan jeopardizes the qualified status of the Town's retirement plans.
- E. Plan Document. The Town hereby consents to and, to the extent necessary, approves the terms of the Plan, substantially in the form attached hereto as Exhibit A.

F. Plan Allocations – Foundation Action. The Foundation may, from time to time, specify in writing to the Town (the “Contribution Notice”) a dollar amount (a “Proposed Lump Sum Retirement Amount”), if any, that is available to be deposited into the Plan by the Foundation, such amount to be determined by the Foundation in its sole discretion, subject to the following:

1. The specification of a Proposed Lump Sum Retirement Amount by the Foundation for one period shall have no bearing on whether a Proposed Lump Sum Retirement Amount shall be made by the Foundation for any other period, whether at the same or similar level or at all.
2. The Proposed Lump Sum Retirement Amount, once deposited into the Plan in accordance with Section G below, shall be allocated to the accounts of eligible Police and Fire Employees in respect of eligible compensation earned by such First Responders during a specified allocation period, such period to be proposed by the Foundation in the Contribution Notice, in its sole discretion, in accordance with the terms of the Plan.
3. The Proposed Lump Sum Retirement Amount, once deposited into the Plan in accordance with Section G below, shall be allocated to eligible Police and Fire Employees pursuant to the allocation formula under the Plan, subject to any further advice and counsel the Foundation may receive from its Plan advisors, as provided from time to time, as necessary or advisable to maintain the tax-qualified status of the Plan.
4. The Foundation shall be required to provide the funding for each Proposed Lump Sum Retirement Amount that is deposited into the Plan.
5. Any Contribution Notice by the Foundation to the Town shall specify the amount and allocation methodology of the Proposed Lump Sum Retirement Amount, either directly or by reference to the Plan document.
6. Any Contribution Notice by the Foundation to the Town shall be provided by the Foundation to the Town by email and verified with overnight mail.

G. Plan Allocations – Town Action. The Town hereby authorizes the Foundation to deposit any and all Proposed Lump Sum Retirement Amounts to the Plan, and to allocate the Proposed Lump Sum Retirement Amounts as provided by the foregoing provisions of this Agreement and the terms of the Plan, except as provided below.

1. Notwithstanding the foregoing, the Town may provide a written notice to the Foundation in response to its receipt of a Contribution Notice, within ten (10) business days from the date the Town receives such Contribution Notice, instructing the Foundation to not deposit the Proposed Lump Sum Retirement Amount to the Plan (a “Retirement Plan Declination Notice”).
2. The Town shall have the right to issue a timely Retirement Plan Declination Notice to the Foundation for any reason or no reason whatsoever, as determined by the Town in its sole discretion.
3. Any Retirement Plan Declination Notice provided by the Town to the Foundation shall only be effective insofar as a limited instruction to the Foundation to not deposit the Proposed Lump Sum Retirement Amount into the Plan at that time, in which case: (i) the Foundation shall not make such deposit to the Plan; (ii) the Proposed Lump Sum Retirement Amount shall be null and void; (iii) Plan participants shall have no right to share in any such Proposed Lump Sum Retirement Amount; (iv) any related funding to the Proposed Lump Sum Retirement Amount shall remain the exclusive property of the Foundation, without any obligation on the Foundation to specify any Proposed Lump Sum Retirement Amount in the future and (v) the Town shall, as before, have no rights in respect of directing, claiming or controlling such Proposed Lump Sum Retirement Amount, in any respect. The Plan shall remain in existence in all other respects. Further, the Town’s issuance of a Retirement Plan Declination Notice in respect of any Proposed Lump Sum Retirement Amount shall not (i) affect in any way prior contributions previously allocated to Plan participant account amounts, whether or not fully vested, under the Plan pursuant to this Agreement; nor shall (ii) it be deemed a discontinuance of future contributions under the Plan, which remain subject to the terms of this Agreement.

4. The Town shall have the right to waive its right to issue a Declination Notice in respect of a Proposed Lump Retirement Amount prior to the expiration of the notice period provided herein.
5. The Foundation may make deposit of the Proposed Lump Sum Retirement Amount to the Plan upon the earlier of: (i) the expiration of the notice period within which the Town could issue a timely Retirement Plan Declination Notice; or (ii) the date upon which the Town waives its right to issue a Retirement Plan Declination Notice in respect of a Proposed Lump Retirement Amount.
6. The failure of the Town to issue a timely Retirement Plan Declination Notice to the Foundation in response to a Contribution Notice, or its waiver of its right to issue a Retirement Plan Declination Notice, as applicable, shall be conclusive evidence of the Town's review, approval and consent to the Proposed Lump Sum Retirement Amount and deposit and allocation of same, as if and to the same extent that the Town itself affirmatively made, funded and approved the contribution to the Plan, to the extent necessary under the terms of the Plan and applicable law.
7. Any Retirement Plan Declination Notice by the Town to the Foundation, or the Town's waiver of its right to issue such notice in respect of a Proposed Lump Retirement Amount, shall be provided by the Town to the Foundation by email and verified with overnight mail.
8. The Town hereby agrees to waive its right to issue a Retirement Plan Declination Notice in respect of any Proposed Lump Sum Retirement Amount, during the period beginning on the Effective Date and ending on the sixth anniversary of such date.

H. Representations of the Town. The Town hereby warrants and represents that:

1. It acknowledges that the Foundation has established the Plan, for the purpose of providing tax-qualified retirement benefits for certain First Responders as set forth in the Plan document.
2. It has reviewed the Plan document and approved of its design.
3. It acknowledges that the Foundation (and not the Town) is acting as the Plan Sponsor and the Plan Administrator, as defined under the Plan, with the authority to control the operation and administration of the Plan, including investment fund selection and oversight, plan interpretation, reporting, and disclosures, provided that the Foundation may delegate certain Plan responsibilities to other third parties.
4. It will provide the Foundation with any and all information and data (including compensation information; date of hire; date of termination) requested by the Foundation that is reasonably required to administer the Plan.
5. It remains exclusively responsible for the coordination of any allocations under this Plan with allocations under any other Town Retirement Plan and it will include, to the extent required by law, Plan allocations together with other allocations under the Town Retirement Plans.
6. It will not reduce other compensation and benefits of Plan participants on account of allocations made under the Plan, except as required by law.

I. Indemnification/ Limitation of Liability. The following shall apply throughout the term of this Agreement and shall survive termination or expiration of this Agreement.

1. Reliance on Representations of Others.

- a. The Town acknowledges and agrees that, in order to fulfill its duties under this Agreement, the Foundation must rely on oral or written representations of the Town's officers and employees, participants in the Plan, and any agents, and providers of services to the Plan and has no duty to verify or independently audit such information. The Town agrees to hold harmless the Foundation and its directors, officers and employees from and against any loss or damage to the Plan, the Town or the Foundation due to its good faith reliance on these oral or written representations.
- b. The Foundation acknowledges and agrees that, in order to fulfill its duties under this Agreement, the Town must rely on oral or written representations of the Foundation's

officers and employees, and any agents and providers of services to the Foundation and Plan, and has no duty to verify or independently audit such information. Nothing in this section H shall constitute a waiver of Town's rights under Section 768.28, *Florida Statutes*.

2. **Mutual Indemnification.** The Town agrees to indemnify and hold harmless the Foundation and its directors, officers, employees, affiliates, and agents (Collectively "Foundation Parties") from and against all claims, liabilities, lawsuits, settlements, judgments, damages, costs, fines, penalties, and expenses, including attorneys' fees and costs, which are or may be incurred by an Foundation Party arising out of or in connection with (i) the Town's duties and obligations under this Agreement, or (ii) the establishment, adoption, and administration of the Plan, to the extent not directly caused by the Foundation's negligence, willful misconduct, and fraud. A Foundation Party may retain, at its own expense, an attorney of its choice to represent it in any action described above without impairing in any way the indemnification contained in this section. Foundation agrees to indemnify and hold harmless the Town from and against all claims, liabilities, lawsuits, settlements, judgments, damages, costs, fines, penalties, and expenses, including attorneys' fees and costs, which are or may be incurred by the Town arising out of or in connection with i) the Foundation's duties and obligations under this Agreement or (ii) the establishment, adoption, and administration of the Plan, to the extent not directly caused by the Town's negligence, willful misconduct, and fraud.
 3. **Limitation of Liability.** Neither the Foundation nor the Town shall be liable, under any circumstances, for any indirect, special, consequential, punitive or exemplary damages, or similar damages arising out of or relating to this Agreement, the Plan, or the relationship of the Parties under this Agreement.
- J. **Notices.** All notices, requests, and other communications shall be in writing and mailed, postage prepaid, to the other Party at the addresses set forth in the first paragraph of this Agreement. All notices pursuant to this Agreement shall be effective and deemed received upon the earlier of actual receipt by an officer of the Party to whom the notice is addressed or three days after the notice is either deposited in first class mail or mailed by certified or registered mail, postage prepaid. Any documents, certificates, termination notice or other written communications will be delivered promptly to the policyholders' upon request and instructions of the Town. Additionally, notice via email may be provided by the Foundation to the Town, provided such notice is provided to an email address previously verified by the Town as pertaining to the subject matter discussed herein.
- K. **Independence.** In performing its obligations hereunder, the Foundation, its directors, officers, employees, and agents shall be deemed to be acting as an independent contractor. Neither the Foundation, its directors, officers, employees, and agents, nor the Town shall have the power or authority to act for or on behalf of or to bind the other Party, except as otherwise set forth herein. Furthermore, the Parties acknowledge and agree that neither this Agreement or the Plan is intended to create, and shall not create, an employment relationship between the Foundation and any First Responder or any other employee of the Town and the Town shall not represent that such a relationship may exist.
- L. **Waiver.** Failure to enforce any provision of this Agreement does not alter or waive the provision or affect the future enforceability of the provision.
- M. **Governing Law.** This Agreement shall be construed and governed in accordance with applicable federal law. To the extent such federal law does not govern, this Agreement shall be governed by the laws of the State of Florida, without regard to its conflicts of laws provisions, and the courts in such state shall have sole and exclusive jurisdiction of any dispute related hereto or arising hereunder. Venue shall be in Palm Beach County.

- N. Third Party Beneficiaries. This Agreement shall not confer any rights, remedies, claims or obligations on third parties except as expressly provided herein.
- O. Entire Agreement. This Agreement contains the entire agreement between the Parties and supersedes any and all prior or contemporaneous oral or written communications or proposals not expressly included herein. This Agreement may be amended only by writing signed by duly authorized representatives of both Parties. By executing this Agreement, both Parties acknowledge and agree that they have reviewed all terms and conditions incorporated herein and intends to be legally bound by the same.
- P. Severability. The invalidity of any provision of this Agreement shall not impair the validity of any other provision. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable, that provision will be deemed severable and the Agreement will be enforced with that provision severed or as modified by the court; provided, however, that if such severance or modification has or will have a material adverse effect on either Party, the Party so affected shall have the right to terminate this Agreement upon at least 30 days' prior written notice to the other Party.
- Q. Public Records. In accordance with the Florida Public Records Act (Fla. Stat. § 119.0701), the Foundation shall:
1. Keep and maintain public records required by the Foundation to perform the service.
 2. Upon request from the Town's custodian of public records, provide the Town with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
 3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Foundation does not transfer the records to the Town.
 4. Upon completion of the contract, transfer, at no cost, to the Town all public records in possession of the Foundation or keep and maintain public records required by the Town to perform the service. If the Foundation transfers all public records to the Town upon completion of the contract, the Foundation shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Foundation keeps and maintains public records upon completion of the contract, the Foundation shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Town, upon request from the Town's custodian of public records, in a format that is compatible with the information technology systems of the Town.

IF THE FOUNDATION HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS BY EMAIL AT qnieves@townofpalmbeach.com; BY TELEPHONE AT (561) 838-5416 ; OR BY MAIL AT TOWN CLERK, 360 S. COUNTY ROAD, PALM BEACH, FL 33480

AGREED by the parties through their undersigned representatives.

Town of Palm Beach, Florida

By: _____

Its: _____

Date: _____

The Palm Beach First Responders
Foundation, Inc.

By:  _____

Its: Timothy Moran, 2nd VP

Date: December 30, 2021