

**1. Requested Motion:**

**Meeting Date:** April 19, 2010

Update and authorize necessary changes to the Town's pension plan.

**Why the action is necessary:**

The existing pension plan needs to be updated to reflect changes in the federal law.

**What the action accomplishes:**

Updates current plan.

**2. Agenda:**

**3. Requirement/Purpose:**

**4. Submitter of Information:**

Consent  
 Administrative

Resolution  
 Ordinance  
 Other

Council  
 Town Staff  
 Town Attorney

**5. Background:**

The Town contracts with AIG/VALIC for the employee's pension plan. Periodically, the plan needs to be updated to reflect changes in the federal laws relating to pensions.

**6. Alternative Action:**

None recommended.

**7. Management Recommendations:**

Approve updates and changes to the pension plan as required by the Town's pension plan provider.

**8. Recommended Approval:**

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Cultural Resources Director	Town Clerk
(9/2)		<i>[Signature]</i>				

**9. Council Action:**

Approved     Denied     Deferred     Other

# VALIC

The Variable Annuity Life Insurance Company  
P.O. Box 15648  
Amarillo, TX 79105

Re: The Town of Fort Myers Beach Pension Plan, GA# 54526

Dear Retirement Plan Administrator:

VALIC has updated its Governmental Volume Submitter Plan, as required by IRS regulations, to incorporate the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA") and subsequent legislation and the IRS has approved the updated document. Plans that are currently using VALIC's Governmental Volume Submitter Plan document must adopt this updated version of the document by no later than **April 30, 2010**. Please review carefully this letter and the enclosed documents and note the action required.

- Adopting Resolution (Requires execution)
- Restated Adoption Agreement (Requires execution)
- Governmental Volume Submitter Basic Plan Document
- Copy of the IRS Opinion Letter

Failure to timely adopt this plan restatement by the deadline could result in disqualification of your plan (*i.e.*, contributions could become taxable to participants) as well as costly penalties if discovered upon IRS audit.

Please note that to date we have not received a signed copy of the Final 415 Regulations Amendment previously sent in October 2008. Since your Plan could have been considered to be individually designed at that time, under the Code, such plan was required to be amended for these changes depending on the plan's limitation year and when your governing body meets. Please ensure that we receive a copy of this signed Amendment.

It is important to note that the EGTRRA-updated Governmental Volume Submitter Plan reflects provisions that are widely used across the industry and provides for more flexibility in plan design. Since the options in the updated plan are not identical in all instances to the prior Prototype Plan, we have converted your existing plan provisions to comparable ones in this updated document. **It is imperative that the enclosed plan documents be reviewed closely to ensure that the provisions accurately reflect your current operation of the plan.** Please note the sections below in your review as they may differ from your current operation.

- Involuntary distributions (see Section N. of the Governmental Volume Submitter Plan Adoption Agreement and Appendix A)
- Plan entry date (see section F.3. of the Governmental Volume Submitter Plan Adoption Agreement and Appendix A)
- Normal Retirement Date (see Section K.1. of the Governmental Volume Submitter Plan Adoption Agreement, Appendix A, and Section 1.22 of the Governmental Volume Submitter Basic Plan Document)
- Early Retirement Age and Date (see Section K.2. of the Governmental Volume Submitter Plan Adoption Agreement, Appendix A, and Section 1.12 of the Governmental Volume Submitter Basic Plan Document)

If you wish to maintain your existing plan provisions that are not provided for within this Prototype Plan, please let us know.

Please sign and return one copy of the Board Resolution and Adoption Agreement to the address below. The other items should be maintained in your Plan records.

# VALIC

The Variable Annuity Life Insurance Company  
P.O. Box 15648  
Amarillo, TX 79105

VALIC, Implementation  
2929 Allen Parkway, L11-40  
Houston, Texas 77019

The IRS also requires that a separate "good faith" amendment be executed by the last day of the plan year beginning on or after January 1, 2009, to comply with the Pension Protection Act of 2006 ("PPA"). (The earliest deadline for this legislative update will be December 31, 2009 for calendar year plans.) In the upcoming months, we will provide this amendment to you for timely execution at no cost.

You should retain a signed copy of each of the documents with your Plan records. Should you have any questions please do not hesitate to contact our Plan Sponsor Service Team at 1-888-478-7020 or contact your VALIC financial advisor.

VALIC, Implementation

**AMENDMENT FOR THE FINAL 415 REGULATIONS**

**ARTICLE I  
PREAMBLE**

- 1.1 **Effective date of Amendment.** This Amendment is effective for limitation years and plan years beginning more than ninety (90) days after the close of the first regular legislative session (of the legislative body with authority to amend the Plan) that begins on or after July 1, 2007, except as otherwise provided herein.
- 1.2 **Superseding of inconsistent provisions.** This Amendment supersedes the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Amendment.
- 1.3 **Employer's election.** The Employer adopts all Articles of this Amendment, except those Articles that the Employer specifically elects not to adopt.
- 1.4 **Construction.** Except as otherwise provided in this Amendment, any reference to "Section" in this Amendment refers only to sections within this Amendment, and is not a reference to the Plan. The Article and Section numbering in this Amendment is solely for purposes of this Amendment, and does not relate to any Plan article, section or other numbering designations.
- 1.5 **Effect of restatement of Plan.** If the Employer restates the Plan, then this Amendment shall remain in effect after such restatement unless the provisions in this Amendment are restated or otherwise become obsolete (e.g., if the Plan is restated onto a plan document which incorporates the final Code §415 Regulation provisions).

**ARTICLE II  
EMPLOYER ELECTIONS**

The Employer only needs to complete the questions in Section 2.2 in order to override the default provisions set forth below. If the Plan will use all of the default provisions, then these questions should be skipped.

- 2.1 **Default provisions.** Unless the Employer elects otherwise in Section 2.2, the following defaults will apply:
- a. The provisions of the Plan setting forth the definition of compensation for purposes of Code § 415 (hereinafter referred to as "415 Compensation"), shall be modified by (1) including payments for unused sick, vacation or other leave and payments from nonqualified unfunded deferred compensation plans (Section 3.2(b)), (2) excluding salary continuation payments for participants on military service (Section 3.2(c)), and (3) excluding salary continuation payments for disabled participants (Section 3.2(d)).
  - b. The "first few weeks rule" does not apply for purposes of 415 Compensation (Section 3.3).
  - c. The provision of the Plan setting forth the definition of compensation for allocation purposes (hereinafter referred to as "Plan Compensation") shall be modified to provide for the same adjustments to Plan Compensation (for all contribution types) that are made to 415 Compensation pursuant to this Amendment.
- 2.2 **In lieu of default provisions.** In lieu of the default provisions above, the following apply: (select all that apply; if no selections are made, then the defaults apply)

**415 Compensation.** (select all that apply):

- a.  Exclude leave cashouts and deferred compensation (Section 3.2(b))
- b.  Include military continuation payments (Section 3.2(c))
- c.  Include disability continuation payments (Section 3.2(d)) for all participants, and the salary continuation will continue for the following fixed or determinable period: \_\_\_\_\_
- d.  Apply the administrative delay ("first few weeks") rule (Section 3.3)

**Plan Compensation.** (select all that apply):

- f.  No change from existing Plan provisions
- g.  Exclude all post-severance compensation
- h.  Exclude post-severance regular pay
- i.  Exclude leave cashouts and deferred compensation
- j.  Include post-severance military continuation payments

- k. [ ] Include post-severance disability continuation payments for all participants, and the salary continuation will continue for the following fixed or determinable period: \_\_\_\_\_
- l. [ ] Other (describe) \_\_\_\_\_

**Plan Compensation Special Effective Date.** The definition of Plan Compensation is modified as set forth herein effective as of the same date as the 415 Compensation change is effective unless otherwise specified:  
m. \_\_\_\_\_ (enter the effective date)

### ARTICLE III FINAL SECTION 415 REGULATIONS

- 3.1 **Effective date.** The provisions of this Article III shall apply to limitation years beginning more than ninety (90) days after the close of the first regular legislative session (of the legislative body with the authority to amend the Plan) that begins on or after July 1, 2007.
- 3.2 **415 Compensation paid after severance from employment.** 415 Compensation shall be adjusted, as set forth herein and as otherwise elected in Article II, for the following types of compensation paid after a Participant's severance from employment with the Employer maintaining the Plan (or any other entity that is treated as the Employer pursuant to Code § 414(b), (c), (m) or (o)). However, amounts described in subsections (a) and (b) below may only be included in 415 Compensation to the extent such amounts are paid by the later of 2 1/2 months after severance from employment or by the end of the limitation year that includes the date of such severance from employment. Any other payment of compensation paid after severance of employment that is not described in the following types of compensation is not considered 415 Compensation within the meaning of Code § 415(c)(3), even if payment is made within the time period specified above.
- (a) **Regular pay.** 415 Compensation shall include regular pay after severance of employment if:
- (1) The payment is regular compensation for services during the participant's regular working hours, or compensation for services outside the participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments; and
  - (2) The payment would have been paid to the participant prior to a severance from employment if the participant had continued in employment with the Employer.
- (b) **Leave cashouts and deferred compensation.** Leave cashouts shall be included in 415 Compensation, unless otherwise elected in Section 2.2 of this Amendment, if those amounts would have been included in the definition of 415 Compensation if they were paid prior to the participant's severance from employment, and the amounts are payment for unused accrued bona fide sick, vacation, or other leave, but only if the participant would have been able to use the leave if employment had continued. In addition, deferred compensation shall be included in 415 Compensation, unless otherwise elected in Section 2.2 of this Amendment, if the compensation would have been included in the definition of 415 Compensation if it had been paid prior to the participant's severance from employment, and the compensation is received pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid at the same time if the participant had continued in employment with the Employer and only to the extent that the payment is includible in the participant's gross income.
- (c) **Salary continuation payments for military service participants.** 415 Compensation does not include, unless otherwise elected in Section 2.2 of this Amendment, payments to an individual who does not currently perform services for the Employer by reason of qualified military service (as that term is used in Code § 414(u)(1)) to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service.
- (d) **Salary continuation payments for disabled Participants.** Unless otherwise elected in Section 2.2 of this Amendment, 415 Compensation does not include compensation paid to a participant who is permanently and totally disabled (as defined in Code § 22(e)(3)). If elected, this provision shall apply to all participants for the period specified in Section 2.2 of this Amendment.
- 3.3 **Administrative delay ("the first few weeks") rule.** 415 Compensation for a limitation year shall not include, unless otherwise elected in Section 2.2 of this Amendment, amounts earned but not paid during the limitation year solely because of the timing of pay periods and pay dates. However, if elected in Section 2.2 of this Amendment,

415 Compensation for a limitation year shall include amounts earned but not paid during the limitation year solely because of the timing of pay periods and pay dates, provided the amounts are paid during the first few weeks of the next limitation year, the amounts are included on a uniform and consistent basis with respect to all similarly situated participants, and no compensation is included in more than one limitation year.

- 3.4 Inclusion of certain nonqualified deferred compensation amounts.** If the Plan's definition of Compensation for purposes of Code § 415 is the definition in Regulation Section 1.415(c)-2(b) (Regulation Section 1.415-2(d)(2) under the Regulations in effect for limitation years beginning prior to July 1, 2007) and the simplified compensation definition of Regulation 1.415(c)-2(d)(2) (Regulation Section 1.415-2(d)(10) under the Regulations in effect for limitation years prior to July 1, 2007) is not used, then 415 Compensation shall include amounts that are includible in the gross income of a Participant under the rules of Code § 409A or Code § 457(f)(1)(A) or because the amounts are constructively received by the Participant. [Note if the Plan's definition of Compensation is W-2 wages or wages for withholding purposes, then these amounts are already include in Compensation.]
- 3.5 Definition of annual additions.** The Plan's definition of "annual additions" is modified as follows:
- (a) **Restorative payments.** Annual additions for purposes of Code § 415 shall not include restorative payments. A restorative payment is a payment made to restore losses to a Plan resulting from actions by a fiduciary for which there is reasonable risk of liability for breach of a fiduciary duty under applicable federal or state law, where participants who are similarly situated are treated similarly with respect to the payments. Generally, payments are restorative payments only if the payments are made in order to restore some or all of the plan's losses due to an action (or a failure to act) that creates a reasonable risk of liability for such a breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the Plan). This includes payments to a plan made pursuant to a court-approved settlement to restore losses to a qualified defined contribution plan on account of the breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the Plan). Payments made to the Plan to make up for losses due merely to market fluctuations and other payments that are not made on account of a reasonable risk of liability for breach of a fiduciary duty are not restorative payments and generally constitute contributions that are considered annual additions.
- (b) **Other Amounts.** Annual additions for purposes of Code § 415 shall not include: (1) The direct transfer of a benefit or employee contributions from a qualified plan to this Plan; (2) Rollover contributions (as described in Code §§ 401(a)(31), 402(c)(1), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16)); (3) Repayments of loans made to a participant from the Plan; and (4) Repayments of amounts described in Code § 411(a)(7)(B) (in accordance with Code § 411(a)(7)(C)) and Code § 411(a)(3)(D) or repayment of contributions to a governmental plan (as defined in Code § 414(d)) as described in Code § 415(k)(3), as well as Employer restorations of benefits that are required pursuant to such repayments.
- (c) **Date of tax-exempt Employer contributions.** Notwithstanding anything in the Plan to the contrary, in the case of an Employer that is exempt from Federal income tax (including a governmental employer), Employer contributions are treated as credited to a participant's account for a particular limitation year only if the contributions are actually made to the plan no later than the 15th day of the tenth calendar month following the end of the calendar year or fiscal year (as applicable, depending on the basis on which the employer keeps its books) with or within which the particular limitation year ends.
- 3.6 Change of limitation year.** The limitation year may only be changed by a Plan amendment. Furthermore, if the Plan is terminated effective as of a date other than the last day of the Plan's limitation year, then the Plan is treated as if the Plan had been amended to change its limitation year.
- 3.7 Excess Annual Additions.** Notwithstanding any provision of the Plan to the contrary, if the annual additions (within the meaning of Code § 415) are exceeded for any participant, then the Plan may only correct such excess in accordance with the Employee Plans Compliance Resolution System (EPCRS) as set forth in Revenue Procedure 2006-27 or any superseding guidance, including, but not limited to, the preamble of the final §415 regulations.
- 3.8 Aggregation and Disaggregation of Plans.**
- (a) For purposes of applying the limitations of Code § 415, all defined contribution plans (without regard to whether a plan has been terminated) ever maintained by the Employer (or a "predecessor employer") under which the participant receives annual additions are treated as one defined contribution plan. The "Employer" means the Employer that adopts this Plan and all members of a controlled group or an affiliated service group that includes the Employer (within the meaning of Code §§ 414(b), (c), (m) or (o)), except that for purposes of this Section, the determination shall be made by applying Code § 415(h), and shall take into account tax-exempt organizations

under Regulation Section 1.414(c)-5, as modified by Regulation Section 1.415(a)-1(f)(1). For purposes of this Section:

(1) A former Employer is a "predecessor employer" with respect to a participant in a plan maintained by an Employer if the Employer maintains a plan under which the participant had accrued a benefit while performing services for the former Employer, but only if that benefit is provided under the plan maintained by the Employer. For this purpose, the formerly affiliated plan rules in Regulation Section 1.415(f)-1(b)(2) apply as if the Employer and predecessor Employer constituted a single employer under the rules described in Regulation Section 1.415(a)-1(f)(1) and (2) immediately prior to the cessation of affiliation (and as if they constituted two, unrelated employers under the rules described in Regulation Section 1.415(a)-1(f)(1) and (2) immediately after the cessation of affiliation) and cessation of affiliation was the event that gives rise to the predecessor employer relationship, such as a transfer of benefits or plan sponsorship.

(2) With respect to an Employer of a participant, a former entity that antedates the Employer is a "predecessor employer" with respect to the participant if, under the facts and circumstances, the employer constitutes a continuation of all or a portion of the trade or business of the former entity.

(b) **Break-up of an affiliate employer or an affiliated service group.** For purposes of aggregating plans for Code § 415, a "formerly affiliated plan" of an employer is taken into account for purposes of applying the Code § 415 limitations to the employer, but the formerly affiliated plan is treated as if it had terminated immediately prior to the "cessation of affiliation." For purposes of this paragraph, a "formerly affiliated plan" of an employer is a plan that, immediately prior to the cessation of affiliation, was actually maintained by one or more of the entities that constitute the employer (as determined under the employer affiliation rules described in Regulation Section 1.415(a)-1(f)(1) and (2)), and immediately after the cessation of affiliation, is not actually maintained by any of the entities that constitute the employer (as determined under the employer affiliation rules described in Regulation Section 1.415(a)-1(f)(1) and (2)). For purposes of this paragraph, a "cessation of affiliation" means the event that causes an entity to no longer be aggregated with one or more other entities as a single employer under the employer affiliation rules described in Regulation Section 1.415(a)-1(f)(1) and (2) (such as the sale of a subsidiary outside a controlled group), or that causes a plan to not actually be maintained by any of the entities that constitute the employer under the employer affiliation rules of Regulation Section 1.415(a)-1(f)(1) and (2) (such as a transfer of plan sponsorship outside of a controlled group).

(c) **Midyear Aggregation.** Two or more defined contribution plans that are not required to be aggregated pursuant to Code § 415(f) and the Regulations thereunder as of the first day of a limitation year do not fail to satisfy the requirements of Code § 415 with respect to a participant for the limitation year merely because they are aggregated later in that limitation year, provided that no annual additions are credited to the participant's account after the date on which the plans are required to be aggregated.

#### ARTICLE IV PLAN COMPENSATION

- 4.1 **Compensation limit.** Notwithstanding Amendment Section 4.2 or any election in Amendment Section 2.2., if the Plan is a 401(k) plan, then participants may not make elective deferrals with respect to amounts that are not 415 Compensation. However, for this purpose, 415 Compensation is not limited to the annual compensation limit of Code § 401(a)(17).
- 4.2 **Compensation paid after severance from employment.** Compensation for purposes of allocations (hereinafter referred to as Plan Compensation) shall be adjusted, unless otherwise elected in Amendment Section 2.2, in the same manner as 415 Compensation pursuant to Article III of this Amendment, except in applying Article III, the term "limitation year" shall be replaced with the term "plan year" and the term "415 Compensation" shall be replaced with the term "Plan Compensation."

4.3 **Option to apply Plan Compensation provisions early.** The provisions of this Article shall apply for Plan Years beginning more than ninety (90) days after the close of the first regular legislative session (of the legislative body with authority to amend the Plan) that begins on or after July 1, 2007, unless an earlier effective date is specified in Section 2.2. of this Amendment.

This amendment has been executed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Name of Plan: \_\_\_\_\_

Name of Employer: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**OVERVIEW OF FINAL SECTION 415 REGULATION CHANGES  
AND TIMING OF PLAN AMENDMENT**

**Background**

Section 415 of the Internal Revenue Code ("Code") limits the annual additions (i.e., contributions and/or forfeitures) that may be made to qualified defined contribution plans on behalf of a given participant to the lesser of (i) \$46,000 (2008 figure), or (ii) 100% of the participant's compensation for the plan year. In April of 2007, the IRS and the Department of Treasury issued final regulations under Code Section 415 clarifying the definition of "compensation" for purposes of the 100% of compensation limit, clarifying the definition of "annual addition," and providing guidance regarding the correction of excess annual additions.

The Section 415 limit is a key provision in qualified plans, as plans are required by statute to include provisions in the written plan document expressly prohibiting contributions to the plan in excess of the Section 415 limit. In addition, many plans define "compensation" for allocation purposes using a Section 415 definition of compensation.

The final 415 regulations have changed the definition of "compensation" for purposes of the limitation on annual additions. Under the final regulations, "415 Compensation" is now required to include certain amounts (such as bonuses, commissions, overtime or shift differential) that are paid after severance of employment, so long as they are paid by the later of 2 1/2 months after severance of employment or the last day of the limitation year which includes the date the participant terminates employment, and they are not paid "on account of" termination of employment. There are also four types of post-severance compensation that may be included in 415 Compensation, if the plan so provides (including certain cash-outs of unused sick or vacation leave, certain distributions from nonqualified plans, salary continuation to participants on military leave, and salary continuation for participants who are permanently disabled) so long as they are paid within the time frame described above, and they satisfy certain additional restrictions. However, the final regulations clarify that 415 Compensation does not include amounts that are paid on account of termination of employment (i.e., "severance pay") if such amounts are paid after severance of employment. Plans that use the "long-form" definition of 415 Compensation are also required to include amounts deferred under nonqualified plans that become taxable during the plan year on account of Section 409A, Section 457(f), or the doctrine of constructive receipt.

Under the Code, qualified plans are required to be amended for changes in the law or the regulations that affect the qualification requirements under Section 401(a) of the Code (including the final 415 regulations). For governmental employers, such "interim" amendments must generally be adopted by the 15<sup>th</sup> day of the tenth month after the close of the calendar year that includes the effective date of the new law or regulation.

**Effective Date**

For governmental plans, the final Section 415 regulations are effective for limitation years (which are generally the same as the plan year) beginning more than ninety (90) days after the close of the first regular legislative session (of the legislative body with authority to amend the plan) that begins on or after July 1, 2007. Thus, for calendar year plans, if the legislative body with authority to amend the plan met during the third quarter of 2007, the regulations are effective January 1, 2008. Such plans must be amended by October 15, 2009. However, plans whose plan year ends between September 30 and December 30 may have to be amended earlier. For example, if an employer's plan year/limitation year ends on November 30, and if the legislative body with authority to amend the plan met between July 1, 2007 and August 31, 2007, the final 415 regulations became effective on December 1, 2007, meaning the amendment may need to be executed by as early as October 15, 2008.

Thus, calendar year plans should adopt the Amendment (to comply with the final 415 regulations) no later than October 15, 2009. Non-calendar year plans should adopt the Amendment as soon as possible (as the deadline could be as soon as October 15, 2008).

**Execution of Amendment**

Enclosed you will find an "Amendment for the Final 415 Regulations," a sample resolution for proper authorization of the amendment by your governing body, and a section-by-section explanation of the Amendment. As explained in the enclosed materials, the amendment has certain "default" provisions (which are described in Section 2.1 of the Amendment), and a section (Section 2.2) in which you may elect to have different provisions apply. **You must execute the amendment, regardless of whether you choose to apply the default provisions in Section 2.1 or whether you elect one or more of the optional provisions in Section 2.2.**

**PARTICIPATION AGREEMENT**

[X] Check here if not applicable and do *not* complete this page

The undersigned, by executing this Participation Agreement, elects to become a Participating Employer in the Plan identified in Section B.1. of the accompanying Adoption Agreement, as if the Participating Employer were a signatory to that Adoption Agreement. The Participating Employer accepts, and agrees to be bound by, all of the elections granted under the provisions of the Plan as made by the Signatory Employer to the Adoption Agreement, except as otherwise provided in this Participation Agreement.

1. **EFFECTIVE DATE.** (Note: The Effective Date for a new Plan or the Restated Effective Date for a restated plan cannot be earlier than the first day of the Plan Year in which this plan or restatement is adopted. The Restated Effective Date must not be earlier than January 1, 2002. Restatements for the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) should be the first day of the Plan Year beginning on or after January 1, 2002. Section 414(h) Pick-up contributions must relate solely to Compensation for services rendered after the later of the adoption or effective date of this Plan or restatement.)

The effective date of the Plan for the Participating Employer is: \_\_\_\_\_.

2. **NEW PLAN/RESTATEMENT.** The Participating Employer's adoption of this Plan constitutes: *(Choose one of (a) or (b))*

- a.  The adoption of a new plan by the Participating Employer.
- b.  The adoption of an amendment and restatement of a plan currently maintained by the Participating Employer identified as: \_\_\_\_\_ and having an original effective date of: \_\_\_\_\_.

3. **PREDECESSOR EMPLOYER SERVICE.** In addition to the predecessor service credited by reason of Section E.1. of the Adoption Agreement, the Plan credits as Service under this Plan, service with this Participating Employer for purposes of: *(Choose one or more of (a) through (e) as applicable)*

- a.  Eligibility.
- b.  Vesting.
- c.  Contribution Accrual.
- d.  Early Retirement Age.
- e.  Normal Retirement Age.

Name of Plan:

\_\_\_\_\_

Name of Participating Employer:

\_\_\_\_\_

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Participating Employer's EIN: \_\_\_\_\_

**Acceptance by the Signatory Employer of the Adoption Agreement and by the Trustee, if applicable.**

Name of Signatory Employer: \_\_\_\_\_

Name(s) of Trustee: \_\_\_\_\_

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

Name/Title: \_\_\_\_\_

Name/Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

*[Note: Each Participating Employer must execute a separate Participation Agreement.]*

**VALIC Retirement Services Company  
Governmental Volume Submitter Plan**

**Adoption Agreement #002 – Money Purchase Pension Plan**

**Advisory Letter Number: M580454a**

The undersigned, Town of Fort Myers Beach ("Employer"), by executing this Adoption Agreement, elects to establish (or restate) a retirement plan (and trust, if applicable) (hereinafter, the "Plan") under the VALIC Retirement Services Company Governmental Volume Submitter Plan (the "Basic Plan Document"). The Employer, subject to the Employer's elections in this Adoption Agreement, adopts fully the Plan provisions (and if applicable, the Trust provisions). The Adoption Agreement and the Basic Plan Document together constitute the Employer's entire Plan (and Trust, if applicable) document. All section references within this Adoption Agreement are Adoption Agreement section references unless the Adoption Agreement or the context indicates otherwise. All "Article" references, and all "Plan Section" references, are references to the applicable article or section of the Basic Plan Document.

The Employer makes the following elections, as permitted under the corresponding provisions of the Basic Plan Document:

**A. VOLUME SUBMITTER PRACTITIONER INFORMATION.**

VALIC Retirement Services Company  
Attn: Implementation Services  
2929 Allen Parkway, L11-40  
Houston, Texas 77019  
888-478-7020

**B. PLAN INFORMATION.**

1. Plan Name: The Town of Fort Myers Beach Pension Plan
2. Plan Number (e.g., 001, 002, etc.): 001
3. Effective Date: *(Note: The Effective Date for a new Plan or the Restated Effective Date for a restated Plan cannot be earlier than the first day of the Plan Year in which this plan or restatement is adopted. The Restated Effective Date must not be earlier than January 1, 2002. Restatements for the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) should be the first day of the Plan Year beginning on or after January 1, 2002. Section 414(h) Pick-up contributions must relate solely to Compensation for services rendered after the later of the adoption or effective date of this Plan or restatement.)*
  - a.  This is a new Plan effective as of \_\_\_\_\_ (hereinafter "Effective Date").
  - b.  This amendment is a restatement of a previously established qualified plan which was effective April 1, 1996 (hereinafter "Effective Date"). The effective date of this restatement is January 1, 2002 (hereinafter "Restated Effective Date").
4. Plan Year/Limitation Year means the 12-consecutive month period (except for Short Plan Years) ending every (Check a. or b., and c. if applicable).
  - a.  December 31
  - b.  Other: \_\_\_\_\_
  - c.  Short Plan Year commencing on \_\_\_\_\_ and ending on \_\_\_\_\_.
5. Anniversary Date (annual Valuation Date):
  - a.  last day of the Plan Year
  - b.  first day of the Plan Year

**C. EMPLOYER INFORMATION.**

1. Name of Employer: Town of Fort Myers Beach
2. Address: 2523 Estero Blvd  
(Number and Street)  
Fort Myers Beach, Florida 33931  
(City) (State) (Zip Code)
3. Telephone Number: (239) 765-0202
4. Employer Identification Number: 65 - 0632342
5. By signing this Adoption Agreement, the Employer represents and affirms that it is a state or local governmental entity, as defined in Code section 414(d), and is a:
  - a.  K-12 educational organization
  - b.  higher educational organization
  - c.  city or county government
  - d.  state government
  - e.  other governmental entity (specify) \_\_\_\_\_
6. Employer's Fiscal Year: September 30

**D. TRUST ELECTION.**

1. All or a portion of this Plan shall be Trusteed pursuant to Article V of the Plan.
  - a.  No, this Plan shall be funded exclusively with annuity contracts pursuant to Article X.
  - b.  Yes, this Plan shall have a nondiscretionary Trustee (as described in Article V).
  - c.  Yes, this Plan shall have a discretionary Trustee (as described in Article V).

**E. SERVICE.**

1. PREDECESSOR EMPLOYER OR OTHER EMPLOYER.

This Plan shall recognize service with a predecessor Employer or other entity.

- a.  No
- b.  Yes, Service with \_\_\_\_\_ shall be recognized for purposes of (check all that apply):
  - (i)  eligibility
  - (ii)  vesting
  - (iii)  contribution accrual
  - (iv)  early retirement
  - (v)  normal retirement

2. SERVICE CREDITING METHODS.

If this Plan requires an annual service requirement to receive an Employer contribution as selected in Section G, the Hours of Service crediting method shall be used for this purpose, and the applicable computation period shall be the Plan Year (or Short Plan Year). The service crediting method for all other purposes shall be as follows:

- a. SERVICE CREDITING METHOD (select one)
  - (i)  Hours of Service crediting method
  - (ii)  elapsed time crediting method
- b. If the Hours of Service crediting method is selected in Section E.2.a.(i) above then the following must be completed, and shall apply to all Employees:
  - (i) Hours of Service crediting method (select one of the following):
    - (a)  actual hours
    - (b)  days worked
    - (c)  months worked
  - (ii) Year of Service means the applicable computation period during which an Employee has completed at least \_\_\_\_\_ Hours of Service. (May not exceed 2000 hours.)

c. Break in service rules will be applied under this Plan.

- (i)  No
- (ii)  Yes

d. If the Hours of Service Crediting Method is selected in E.2.a.(i) above, then the following computation period elections must be completed, and shall apply to all Employees (select all applicable):

- (i) If service is required for eligibility, the computation period for eligibility shall begin on the date an Employee first performs an Hour of Service and
  - (a)  each anniversary thereof.
  - (b)  shift to the Plan Year which includes the first anniversary of the date on which the Employee first performed an Hour of Service.
- (ii) If service is required for vesting, early retirement or normal retirement, the computation period for such purposes shall begin on the date an Employee first performs an Hour of Service and:
  - (a)  each anniversary thereof.
  - (b)  shift to the Plan Year which includes the first anniversary of the date on which the Employee first performed an Hour of Service.
  - (c)  end on the last day of each Plan Year.

**F. ELIGIBILITY REQUIREMENTS; INITIAL PLAN ENTRY; PLAN ENTRY DATE.**

1. EXCLUDED CLASSIFICATIONS OF EMPLOYEES shall mean all Employees of the Employer checked below: *(NOTE: This section F. must not be completed in a manner which results in Employees only becoming Participants in the year in which they terminate employment. Any exclusions selected for Employee nonelective (pick-up) contributions may not be broader than those exclusions selected for Special Pay contributions. Any classification under "other" must be objectively determinable, and free from employer discretion. Exclusions shall not apply to contributions under section G.3.b. of this Adoption Agreement.)*

<u>For all purposes of the Plan (Do not check items in additional columns if this column selected):</u>	<u>For purposes of Employee nonelective (414(h) pick up) contributions:</u>	<u>For purposes of Employer matching contributions:</u>	<u>For purposes of Special Pay contributions and Employer contributions, other than Employer matching contributions:</u>
<input checked="" type="checkbox"/> N/A. No exclusions	<input type="checkbox"/> N/A. No exclusions	<input type="checkbox"/> N/A. No exclusions	<input type="checkbox"/> N/A. No exclusions
<input type="checkbox"/> Hourly paid			
<input type="checkbox"/> Salaried	<input type="checkbox"/> Salaried	<input type="checkbox"/> Salaried	<input type="checkbox"/> Salaried
<input type="checkbox"/> union employees			
<input type="checkbox"/> non-resident aliens			
<input type="checkbox"/> leased employees			
<input type="checkbox"/> reclassified employees (as defined in basic plan document)	<input type="checkbox"/> reclassified employees (as defined in basic plan document)	<input type="checkbox"/> reclassified employees (as defined in basic plan document)	<input type="checkbox"/> reclassified employees (as defined in basic plan document)
<input type="checkbox"/> Employees who have not accumulated at least _____ (not to exceed 31) Special Pay days.	<input type="checkbox"/> Employees who have not accumulated at least _____ (not to exceed 31) Special Pay days.	<input type="checkbox"/> Employees who have not accumulated at least _____ (not to exceed 31) Special Pay days.	<input type="checkbox"/> Employees who have not accumulated at least _____ (not to exceed 31) Special Pay days.
<input type="checkbox"/> other (see limitations in "Note" above) _____	<input type="checkbox"/> other (see limitations in "Note" above) _____	<input type="checkbox"/> other (see limitations in "Note" above) _____	<input type="checkbox"/> other (see limitations in "Note" above) _____

2. CONDITIONS OF ELIGIBILITY (Plan Section 3.01)

Any Employee who is not a member of an excluded classification (Section F.1.) must satisfy the following minimum age and service requirements, if any, for participation in the Plan (other than contributions described in G.3.b.): (Check one of a. – d. May also check e. if applicable).

a.  No age or service required.

- b.  Attainment of age \_\_\_\_\_ (not to exceed 26).
- c.  Completion of \_\_\_\_\_ (not to exceed 5) Year(s) of Service.
- d.  Completion of \_\_\_\_\_ (not to exceed 60) Month(s) of Service.
- e.  FOR NEW PLANS ONLY – Regardless of any of the above age or service requirements, any Employee who was employed on the Effective Date of the Plan shall be eligible to participate in Employer contributions as of such date. (Must also elect 3.e. below.)

3. EFFECTIVE DATE OF PARTICIPATION (Plan Section 3.02)

An Employee who has satisfied the requirements, if any, of Section F shall become a Participant as of: (Check one of a – d; check e. if applicable.)

- a.  such Employee's first Hour of Service (no age or service requirements).
- b.  the first day of the first payroll period coinciding with or next following the date the eligibility requirements are satisfied.
- c.  the earlier of the first day of the Plan Year or the first day of the seventh month of the Plan Year coinciding with or next following the date on which the eligibility requirements are satisfied.
- d.  the first day of the Plan Year next following the date the eligibility requirements are satisfied.
- e.  FOR NEW PLANS ONLY – Any Employee who was employed on the Effective Date of the Plan shall become a Participant on the Effective Date of the Plan. All other Employees shall become Participants as of the date selected in 3.a. through 3.d. above. (Must also elect 2.e. above.)

**G. CONTRIBUTIONS AND FORFEITURES.**

1. EMPLOYEE NONELECTIVE CONTRIBUTIONS (414(h) pick up; Plan Section 4.01(c)):

- a.  N/A. No Employee nonelective contributions are allowed.
- b.  Employee nonelective contributions in the amount of \_\_\_\_\_ (must be greater than zero if selected) percent of Compensation shall be made to the Plan.

2. EMPLOYER MATCHING CONTRIBUTIONS:

a. Formulas (select all that apply):

- (i)  N/A. No Employer matching contributions in this Plan.
- (ii)  \_\_\_\_\_% of a Participant's elective deferral contributions. Elective deferral contributions in excess of \_\_\_\_\_% of a Participant's Compensation for the year shall not be matched. (Must also complete G.2.b. below.)
- (iii)  Equals the percentage of elective deferral contributions determined under the following schedule: (Must also complete G.2.b. below.)

Years of Service	Matching Percentage
_____	_____%
_____	_____%
_____	_____%
_____	_____%
_____	_____%

Elective deferral contributions in excess of \_\_\_\_\_% of a Participant's Compensation for the year shall not be matched.

- b. Employer matching contributions shall be made based on elective deferral (pre-tax) contributions to the following plan(s) of the Employer (insert name of Plan(s) to which the elective deferral contributions being matched will be made):

\_\_\_\_\_

3. EMPLOYER CONTRIBUTIONS (other than Employer matching contributions):

The Employer shall make the following contribution(s) to the Plan:

- a.  EMPLOYER CONTRIBUTIONS GENERALLY (choose all that apply): *Note: The applicable dollar amount or percentage of Compensation in this section G.3.a. must be greater than zero. In addition, contributions under this Section G.3.a. must be for the exclusive benefit of Employees or their Beneficiaries.*

- (i)  An amount equal to \$\_\_\_\_\_ on behalf of each Participant per period indicated below:

- (a)  calendar quarter
- (b)  month
- (c)  pay period
- (d)  week

- (ii)  An amount equal to \$\_\_\_\_\_ per Hour of Service up to \_\_\_\_\_ hours per Plan Year.
  - (iii)  An amount, equal to 10 % of each Participant's Compensation for the Plan Year, or \$\_\_\_\_\_ on behalf of each Participant for the Plan Year. (May select either percentage of Compensation or dollar amount, but not both.)
  - (iv)  An amount equal to \_\_\_\_\_% of each Participant's Compensation the Plan Year, plus \_\_\_\_\_% of such Compensation in excess of \$\_\_\_\_\_ (Must be an amount which is less than the applicable "annual compensation limit" as specified in Plan Section 1.08).
- b.  **CONTRIBUTIONS FOR PART-TIME, SEASONAL AND TEMPORARY EMPLOYEES:** An amount equal to 7.5% of the Participant's Compensation for the entire Plan Year, reduced by the Employee Nonelective Contributions described in G.1. actually contributed to the Participant's account during such Plan Year, provided that such Contribution shall be made solely for Part-time, Seasonal, or Temporary Employees who are not otherwise covered by another qualifying public retirement system as defined for purposes of Treasury Regulation Section 31.3121(b)(7)-2.
- c.  **SPECIAL PAY CONTRIBUTIONS:** [Note: If this option is selected, at least one additional Employer nonelective contribution must be selected under this section G. other than Employer Matching Contributions in G.2. or Contributions for Part-time, Seasonal and Temporary Employees in G.3.b.] An amount equal to the Employee's current daily rate of pay multiplied by the Participant's number of unused accumulated Special Pay Days in excess of \_\_\_\_\_ (enter 0 if no excluded days), but not to exceed \_\_\_\_\_ days (enter NA if no upper limit).

Special Pay Contributions shall be made with respect to:

- (i)  accumulated Vacation Pay Days
- (ii)  accumulated Sick Leave Days
- (iii)  both accumulated Vacation Pay and accumulated Sick Leave Days

Such contributions shall be made for a Plan Year:

- (i)  for any Employee who is terminating employment during such Plan Year and who has accumulated Special Pay Days described in this section G.3.c.
- (ii)  for any active or terminating Employee with accumulated Special Pay Days described in this section G.3.c. up to the maximum permitted days selected above or the total of all eligible Special Pay Days, whichever is less.

**4. HOURS REQUIRED TO SHARE IN ALLOCATION:** An active Participant must work a specified number of Hours of Service in order to share in:

a. Employer matching contributions.

- (i)  No minimum number of hours is required.
- (ii)  Yes, a Participant must work a minimum of \_\_\_\_\_ Hours of Service during such year. (May not exceed 2000 hours. This option not available if matching contributions are remitted to the Plan each pay-period.)

b. Employer Contributions described in G.3.a.

- (i)  No minimum number of hours is required.
- (ii)  Yes, a Participant must work a minimum of \_\_\_\_\_ Hours of Service during the Plan Year. (May not exceed 2000 hours. This option not available if Special Pay Contributions are elected in G.3.c. This option also not available if Employer contributions are remitted to the Plan each pay-period, or if an allocation period other than the Plan Year is selected in G.3.a.(i).)

**5. FORFEITURES (Plan Section 4.03(e)).**

Forfeitures of Employer contributions under G.2. and G.3.a. shall be:

- a.  N/A. Employer contributions are 100% Vested.
- b.  used to reduce future Employer contributions under this Plan.
- c.  allocated to all Participants eligible to share in the allocations in the same proportion that each Participant's Compensation for the Plan Year bears to the Compensation of all Participants for the year.

**6. CONTRIBUTIONS AND FORFEITURES ALLOCATED TO TERMINATED PARTICIPANTS (Plan Section 4.03(e)).**

For contributions described in G.2. only, a Terminated Participant shall share in the allocation of Employer matching contributions and forfeitures for the Plan Year as follows:

- a.  A Participant must be employed on the last day of the Plan Year in order to share in the allocation.
- b.  A Participant must be employed on the last day of the Plan Year in order to share in the allocation, unless termination was for reason of death, Total and Permanent Disability, early retirement or normal retirement.

- c.  A Participant must be employed on the last day of the Plan Year in order to share in the allocation, unless such Participant worked at least \_\_\_\_\_ Hours of Service during such year. (May not exceed 2000 hours.)
- d.  A Participant must be employed on the last day of the Plan Year in order to share in the allocation, unless termination was for reason of death, Total and Permanent Disability, early retirement or normal retirement, and such Participant worked at least \_\_\_\_\_ Hours of Service during such year. (May not exceed 2000 hours.)
- e.  A Participant is not required to be employed on the last day of the Plan Year or work a minimum number of hours in order to share in the allocation.

For contributions described in G.3.a. only, a Terminated Participant shall share in the allocation of Employer contributions (other than Employer matching contributions) for the Plan Year or other allocation period as follows. Notwithstanding the period selected in G.3.a.(i) forfeitures shall be allocated based on the Plan Year.

- a.  A Participant must be employed on the last day of such Plan Year (or other applicable period as selected in G.3.a.(i)) to share in the allocation of Employer contributions.
- b.  A Participant must be employed on the last day of the Plan Year (or other allocation period as selected in G.3.a.(i)) in order to share in the allocation, unless termination was for reason of death, Total and Permanent Disability, early retirement or normal retirement. Notwithstanding the period selected in G.3.a.(i) forfeitures shall be allocated to any Participant employed on the last day of the Plan Year, unless termination was for reason of death, Total and Permanent Disability, early retirement or normal retirement.
- c.  A Participant must be employed on the last day of the Plan Year (or other applicable period as selected in G.3.a.(i)) in order to share in the allocation, unless such Participant worked at least \_\_\_\_\_ Hours of Service during such year. (May not exceed 2000 hours.) If G.3.a.(i) is selected then the Hours of Service requirement is applicable to allocation of forfeitures only.
- d.  A Participant must be employed on the last day of the Plan Year (or other applicable period as selected in G.3.a.(i)) in order to share in the allocation, unless termination was for reason of death, Total and Permanent Disability, early retirement or normal retirement, and such Participant worked at least \_\_\_\_\_ Hours of Service during such year. (May not exceed 2000 hours.) If G.3.a.(i) is selected then the Hours of Service requirement is applicable to allocation of forfeitures only.
- e.  A Participant is not required to be employed on the last day of the Plan Year (or other applicable period as selected in G.3.a.(ii)) or work a minimum number of hours in order to share in the allocation.

#### 7. FROZEN PLAN:

- a.  N/A. Plan is not frozen.
- b.  This Plan is a frozen plan effective \_\_\_\_\_. No contributions will be made to the Plan with respect to any period following the stated date.

#### H. COMPENSATION.

##### 1. COMPENSATION with respect to any Participant means:

- a.  Wages, tips and other Compensation on Form W-2.
- b.  415 safe-harbor compensation.
- c.  Code section 3401 wages (wages for Federal income tax withholding).

However, Compensation shall exclude:

- (i)  N/A. No exclusions
- (ii)  overtime
- (iii)  bonuses
- (iv)  commissions
- (v)  shift differential pay
- (vi)  other \_\_\_\_\_ (Must be objectively determinable and applied in a uniform, nondiscriminatory basis, i.e., taxable reimbursements or other fringe benefits.)

##### 2. Compensation shall be based on:

- a.  the Plan Year.
- b.  the Fiscal Year ending with or within the Plan Year.
- c.  the calendar year ending with or within the Plan Year.

##### 3. However, for an Employee's first year of participation, Compensation shall be recognized as of:

- a.  the first day of the period selected in 2. above.
- b.  the Participant's Effective Date of Participation (Section F.3.).

##### 4. In addition, Compensation shall include compensation that is not currently includible in the Participant's gross income (salary reduction amounts) by reason of the application of Code Sections 125, 402(g)(3) or 457, and 132(f)(4).

- a.  Yes



- b.  apply vesting schedule

**K. NORMAL RETIREMENT AGE; EARLY RETIREMENT AGE.**

1. NORMAL RETIREMENT AGE ("NRA") means:

- a.  attainment of age 65 (not to exceed 65).  
b.  the later of attainment of age \_\_\_\_\_ (not to exceed 65) or the \_\_\_\_\_ (not to exceed 10th) anniversary of the first day of the Plan Year in which participation in the Plan commenced.

2. EARLY RETIREMENT AGE ("ERA") means:

- a.  No Early Retirement provision.  
b.  attainment of age \_\_\_\_\_ (not to exceed 65).  
c.  the later of attainment of age \_\_\_\_\_ (not to exceed 65) or the \_\_\_\_\_ (not to exceed 10th) anniversary of the first day of the Plan Year in which participation in the Plan commenced.  
d.  the later of attainment of age \_\_\_\_\_ (not to exceed 65) or completion of \_\_\_\_\_ (not to exceed 10) Years of Service or \_\_\_\_\_ (not to exceed 120) Months of Service.

**L. DISTRIBUTIONS UPON TERMINATION OF EMPLOYMENT** (Plan Section 6.04(a)). Distributions upon termination of employment shall not be made unless the following conditions have been satisfied:

1.  N/A. Immediate distributions may be made at Participant's election.  
2.  The Participant has incurred \_\_\_\_\_ (not to exceed five (5)) 1-Year Break(s) in Service.  
3.  The Participant has reached Early or Normal Retirement Age.  
4.  Distributions may be made at the Participant's election on or after the Anniversary Date following termination of employment.

**M. RESTRICTIONS ON FORM OF DISTRIBUTIONS** (Plan Sections 6.05 and 6.06) If the Employer has designated one or more annuity contracts as eligible investments under the Plan, distributions under the Plan may be made in the form of an annuity. In all cases, distributions under the Plan may be made:

1.  in lump sums.  
2.  in lump sums or installments.

**N. INVOLUNTARY DISTRIBUTIONS**

An immediate distribution of a terminated Participant's Vested Interest in the Plan may be made without the consent of the Participant.

1.  No.  
2.  Yes, but only if the Participant's Vested Interest does not exceed \$1,000.  
3.  Yes, regardless of the amount. Employer must select an IRA provider for automatic rollovers. See Plan Section 6.05(b). Note: If any portion of the Participant's Vested Interest is attributable to contributions for Part-time, Seasonal or Temporary Employees under Section G.3.b., distribution may not be made without the Participant's consent if the Participant's Vested Interest is greater than the cash out limit in effect under Code Section 411(a)(11)(A) for the Plan Year that includes the date of distribution.

**O. LOANS TO PARTICIPANTS** (Plan Section 11.01)

Loans to Participants shall be made:

1.  No (must be selected for plans that select G.3.b.)  
2.  Yes, for any reason  
3.  Yes, but only on account of hardship or financial need

**P. DIRECTED INVESTMENT ACCOUNTS** (Plan Section 4.09) are permitted for the interest in any one or more accounts:

1.  Yes, but subject to the following restrictions:  
a.  No restrictions apply.  
b.  Only if accounts are 100% vested.  
2.  No

**Q. DOMESTIC RELATIONS ORDERS** (Plan Section 6.12) Distributions to an "alternate payee" may be made prior to the time when the Participant is entitled to a distribution under the terms of the Plan:

1.  No  
2.  Yes

**RESTRICTIONS ON USE OF ADOPTION AGREEMENT:** This Adoption Agreement may be used solely in conjunction with the VALIC Retirement Services Company Governmental Volume Submitter Plan (the Basic Plan Document). The Adoption Agreement and the Basic Plan Document together constitute the "volume submitter document" that is being adopted by the Employer.

**APPROVAL BY VOLUME SUBMITTER PRACTITIONER REQUIRED:** This volume submitter specimen document may be adopted only with the approval of the Volume Submitter Practitioner identified in Section A above. However, the adoption of this Plan, its qualification by the IRS, and the related tax consequences are the responsibility of the Employer and its independent tax and legal advisors. The Volume Submitter Practitioner will inform the adopting Employer of any amendments made to the volume submitter document, or of the discontinuance or abandonment of the volume submitter document.

**RELIANCE ON VOLUME SUBMITTER PLAN:** The adopting Employer may rely on an advisory letter issued to the Volume Submitter Practitioner by the Internal Revenue Service as evidence that the plan is qualified under Code Section 401 only if (1) the Employer's plan is identical to a volume submitter specimen plan with a currently valid favorable advisory letter, (2) the Employer has chosen only options permitted under the Adoption Agreement portion of the specimen document, (3) the Employer has followed the terms of the plan, and (4) all other conditions of section 19 of Revenue Procedure 2005-16 have been satisfied.

The Employer may not rely on an advisory letter in certain circumstances or with respect to certain qualification requirements as described in section 19 of Revenue Procedure 2005-16. For example, the Employer may not rely on the advisory letter with respect to the requirements of Section 415 if the Employer maintains or has ever maintained another plan covering some of the same participants. In those circumstances where an Employer is not permitted to rely on an advisory letter issued to the Volume Submitter Practitioner, either generally or with respect to a particular qualification requirement, the Employer may choose to apply to the Internal Revenue Service for a determination letter.

**CAUTION:** This volume submitter document has been designed for use solely by Employers that are state or local governmental entities. As such, it is designed solely for "governmental plans" that are exempt from Title I of ERISA and certain provisions of the Internal Revenue Code that otherwise apply to qualified plans. However, there may be restrictions under state or local law on a governmental Employer's right to establish its own qualified plan (or on the types of provisions that may be included in such plan). The Employer should consult with legal counsel to verify that the establishment of this plan (or the specific provisions elected in this Adoption Agreement) are not contrary to existing state law. Neither the Volume Submitter Practitioner nor its employees or representatives are authorized to provide legal or tax advice to the Employer or its employees or representatives. Failure to properly complete this Adoption Agreement may result in disqualification of the plan.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Name of Employer: Town of Fort Myers Beach

Signed: \_\_\_\_\_

Printed name and title: \_\_\_\_\_

Name of Trustee\*: \_\_\_\_\_

Signed: \_\_\_\_\_

Printed name and title: \_\_\_\_\_

Name of Co-Trustee\*: \_\_\_\_\_

Signed: \_\_\_\_\_

Printed name and title: \_\_\_\_\_

Mailing Address of Trustee(s)\*:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Approval of Volume Submitter Practitioner: The Employers' adoption of this volume submitter document is approved by the Volume Submitter Practitioner, VALIC Retirement Services Company.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**APPENDIX A  
SPECIAL EFFECTIVE DATES**

*Pursuant to Section 7.01(a) of the Basic Plan Document, the Employer may specify or change the effective date of one or more provisions of the Adoption Agreement by completing this Appendix A. The Employer may wish to specify one or more special effective dates if, for example, (i) certain Plan provisions will not be effective until a later date, or (ii) the Plan is being restated for EGTRRA (retroactive to the first Plan Year beginning on or after January 1, 2002, or the original effective date of the Plan, if later), and special effective dates are needed to reflect discretionary amendments to the Plan since that date. However, no special effective date may be earlier than the Effective Date (or the Restated Effective Date, in the case of a restatement) of the Plan, and no special effective date shall result in the delay of a Plan provision beyond the permissible effective date under any applicable law. For periods prior to the special effective date(s) specified below, the Plan terms in effect prior to its restatement under this Adoption Agreement will control for purposes of the designated provisions.*

**Special Effective Dates.** The following special effective dates apply: (select a. or all that apply)

- a.  **N/A.** The Employer is not electing any special effective dates.
- b.  **Eligibility Requirements.** The Eligibility and/or Entry Date provisions in Section F. are effective: \_\_\_\_\_
- c.  **Contributions and Forfeitures.** The Contribution and/or Forfeiture provisions in Section G. are effective: \_\_\_\_\_
- d.  **Compensation.** The Compensation provisions in Section H. are effective: \_\_\_\_\_
- e.  **Vesting.** The Vesting provisions in Section J. are effective: \_\_\_\_\_
- f.  **Other special effective date(s):** The Involuntary Distributions provision in Section N. and the Normal Retirement Age definition in Section 1.22 of the VALIC Retirement Services Company Governmental Volume Submitter Plan is effective January 1, 2010 or as soon thereafter as administratively feasible.

**AMENDMENT FOR THE FINAL 415 REGULATIONS**

**ARTICLE I  
PREAMBLE**

- 1.1 **Effective date of Amendment.** This Amendment is effective for limitation years and plan years beginning more than ninety (90) days after the close of the first regular legislative session (of the legislative body with authority to amend the Plan) that begins on or after July 1, 2007, except as otherwise provided herein.
- 1.2 **Superseding of inconsistent provisions.** This Amendment supersedes the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Amendment.
- 1.3 **Employer's election.** The Employer adopts all Articles of this Amendment, except those Articles that the Employer specifically elects not to adopt.
- 1.4 **Construction.** Except as otherwise provided in this Amendment, any reference to "Section" in this Amendment refers only to sections within this Amendment, and is not a reference to the Plan. The Article and Section numbering in this Amendment is solely for purposes of this Amendment, and does not relate to any Plan article, section or other numbering designations.
- 1.5 **Effect of restatement of Plan.** If the Employer restates the Plan, then this Amendment shall remain in effect after such restatement unless the provisions in this Amendment are restated or otherwise become obsolete (e.g., if the Plan is restated onto a plan document which incorporates the final Code §415 Regulation provisions).

**ARTICLE II  
EMPLOYER ELECTIONS**

The Employer only needs to complete the questions in Section 2.2 in order to override the default provisions set forth below. If the Plan will use all of the default provisions, then these questions should be skipped.

- 2.1 **Default provisions.** Unless the Employer elects otherwise in Section 2.2, the following defaults will apply:
- a. The provisions of the Plan setting forth the definition of compensation for purposes of Code § 415 (hereinafter referred to as "415 Compensation"), shall be modified by (1) including payments for unused sick, vacation or other leave and payments from nonqualified unfunded deferred compensation plans (Section 3.2(b)), (2) excluding salary continuation payments for participants on military service (Section 3.2(c)), and (3) excluding salary continuation payments for disabled participants (Section 3.2(d)).
  - b. The "first few weeks rule" does not apply for purposes of 415 Compensation (Section 3.3).
  - c. The provision of the Plan setting forth the definition of compensation for allocation purposes (hereinafter referred to as "Plan Compensation") shall be modified to provide for the same adjustments to Plan Compensation (for all contribution types) that are made to 415 Compensation pursuant to this Amendment.
- 2.2 **In lieu of default provisions.** In lieu of the default provisions above, the following apply: (select all that apply; if no selections are made, then the defaults apply)
- 415 Compensation.** (select all that apply):
- a.  Exclude leave cashouts and deferred compensation (Section 3.2(b))
  - b.  Include military continuation payments (Section 3.2(c))
  - c.  Include disability continuation payments (Section 3.2(d)) for all participants, and the salary continuation will continue for the following fixed or determinable period: \_\_\_\_\_
  - d.  Apply the administrative delay ("first few weeks") rule (Section 3.3)
- Plan Compensation.** (select all that apply):
- f.  No change from existing Plan provisions
  - g.  Exclude all post-severance compensation
  - h.  Exclude post-severance regular pay
  - i.  Exclude leave cashouts and deferred compensation
  - j.  Include post-severance military continuation payments
  - k.  Include post-severance disability continuation payments for all participants, and the salary continuation will continue for the following fixed or determinable period: \_\_\_\_\_
  - l.  Other (describe) \_\_\_\_\_
- Plan Compensation Special Effective Date.** The definition of Plan Compensation is modified as set forth herein effective as of the same date as the 415 Compensation change is effective unless otherwise specified:
- m. \_\_\_\_\_ (enter the effective date)

**ARTICLE III  
FINAL SECTION 415 REGULATIONS**

- 3.1 **Effective date.** The provisions of this Article III shall apply to limitation years beginning more than ninety (90) days after the close of the first regular legislative session (of the legislative body with the authority to amend the Plan) that begins on or after July 1, 2007.
- 3.2 **415 Compensation paid after severance from employment.** 415 Compensation shall be adjusted, as set forth herein and as otherwise elected in Article II, for the following types of compensation paid after a Participant's severance from employment with the Employer maintaining the Plan (or any other entity that is treated as the Employer pursuant to Code § 414(b), (c), (m) or (o)). However, amounts described in subsections (a) and (b) below may only be included in 415 Compensation to the extent such amounts are paid by the later of 2 1/2 months after severance from employment or by the end of the limitation year that includes the date of such severance from employment. Any other payment of compensation paid after severance of employment that is not described in the following types of compensation is not considered 415 Compensation within the meaning of Code § 415(c)(3), even if payment is made within the time period specified above.
- (a) **Regular pay.** 415 Compensation shall include regular pay after severance of employment if:
- (1) The payment is regular compensation for services during the participant's regular working hours, or compensation for services outside the participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments; and
- (2) The payment would have been paid to the participant prior to a severance from employment if the participant had continued in employment with the Employer.
- (b) **Leave cashouts and deferred compensation.** Leave cashouts shall be included in 415 Compensation, unless otherwise elected in Section 2.2 of this Amendment, if those amounts would have been included in the definition of 415 Compensation if they were paid prior to the participant's severance from employment, and the amounts are payment for unused accrued bona fide sick, vacation, or other leave, but only if the participant would have been able to use the leave if employment had continued. In addition, deferred compensation shall be included in 415 Compensation, unless otherwise elected in Section 2.2 of this Amendment, if the compensation would have been included in the definition of 415 Compensation if it had been paid prior to the participant's severance from employment, and the compensation is received pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid at the same time if the participant had continued in employment with the Employer and only to the extent that the payment is includible in the participant's gross income.
- (c) **Salary continuation payments for military service participants.** 415 Compensation does not include, unless otherwise elected in Section 2.2 of this Amendment, payments to an individual who does not currently perform services for the Employer by reason of qualified military service (as that term is used in Code § 414(u)(1)) to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service.
- (d) **Salary continuation payments for disabled Participants.** Unless otherwise elected in Section 2.2 of this Amendment, 415 Compensation does not include compensation paid to a participant who is permanently and totally disabled (as defined in Code § 22(e)(3)). If elected, this provision shall apply to all participants for the period specified in Section 2.2 of this Amendment.
- 3.3 **Administrative delay ("the first few weeks") rule.** 415 Compensation for a limitation year shall not include, unless otherwise elected in Section 2.2 of this Amendment, amounts earned but not paid during the limitation year solely because of the timing of pay periods and pay dates. However, if elected in Section 2.2 of this Amendment, 415 Compensation for a limitation year shall include amounts earned but not paid during the limitation year solely because of the timing of pay periods and pay dates, provided the amounts are paid during the first few weeks of the next limitation year, the amounts are included on a uniform and consistent basis with respect to all similarly situated participants, and no compensation is included in more than one limitation year.
- 3.4 **Inclusion of certain nonqualified deferred compensation amounts.** If the Plan's definition of Compensation for purposes of Code § 415 is the definition in Regulation Section 1.415(c)-2(b) (Regulation Section 1.415-2(d)(2) under the Regulations in effect for limitation years beginning prior to July 1, 2007) and the simplified compensation definition of Regulation 1.415(c)-2(d)(2) (Regulation Section 1.415-2(d)(10) under the Regulations in effect for limitation years prior to July 1, 2007) is not used, then 415 Compensation shall include amounts that are includible in the gross income of a Participant under the rules of Code § 409A or Code § 457(f)(1)(A) or because the amounts are constructively received by the Participant. [Note if the Plan's definition of Compensation is W-2 wages or wages for withholding purposes, then these amounts are already included in Compensation.]
- 3.5 **Definition of annual additions.** The Plan's definition of "annual additions" is modified as follows:
- (a) **Restorative payments.** Annual additions for purposes of Code § 415 shall not include restorative payments. A restorative payment is a payment made to restore losses to a Plan resulting from actions by a fiduciary for which there is reasonable risk of liability for breach of a fiduciary duty under applicable federal or state law, where participants who are similarly situated are treated similarly with respect to the payments. Generally, payments are restorative payments only if the payments are made in order to restore some or all of the plan's losses due to an action (or a failure to act) that creates a reasonable risk of liability for

such a breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the Plan). This includes payments to a plan made pursuant to a court-approved settlement to restore losses to a qualified defined contribution plan on account of the breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the Plan). Payments made to the Plan to make up for losses due merely to market fluctuations and other payments that are not made on account of a reasonable risk of liability for breach of a fiduciary duty are not restorative payments and generally constitute contributions that are considered annual additions.

(b) **Other Amounts.** Annual additions for purposes of Code § 415 shall not include: (1) The direct transfer of a benefit or employee contributions from a qualified plan to this Plan; (2) Rollover contributions (as described in Code §§ 401(a)(31), 402(c)(1), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16)); (3) Repayments of loans made to a participant from the Plan; and (4) Repayments of amounts described in Code § 411(a)(7)(B) (in accordance with Code § 411(a)(7)(C)) and Code § 411(a)(3)(D) or repayment of contributions to a governmental plan (as defined in Code § 414(d)) as described in Code § 415(k)(3), as well as Employer restorations of benefits that are required pursuant to such repayments.

(c) **Date of tax-exempt Employer contributions.** Notwithstanding anything in the Plan to the contrary, in the case of an Employer that is exempt from Federal income tax (including a governmental employer), Employer contributions are treated as credited to a participant's account for a particular limitation year only if the contributions are actually made to the plan no later than the 15th day of the tenth calendar month following the end of the calendar year or fiscal year (as applicable, depending on the basis on which the employer keeps its books) with or within which the particular limitation year ends.

3.6 **Change of limitation year.** The limitation year may only be changed by a Plan amendment. Furthermore, if the Plan is terminated effective as of a date other than the last day of the Plan's limitation year, then the Plan is treated as if the Plan had been amended to change its limitation year.

3.7 **Excess Annual Additions.** Notwithstanding any provision of the Plan to the contrary, if the annual additions (within the meaning of Code § 415) are exceeded for any participant, then the Plan may only correct such excess in accordance with the Employee Plans Compliance Resolution System (EPCRS) as set forth in Revenue Procedure 2006-27 or any superseding guidance, including, but not limited to, the preamble of the final §415 regulations.

3.8 **Aggregation and Disaggregation of Plans.**

(a) For purposes of applying the limitations of Code § 415, all defined contribution plans (without regard to whether a plan has been terminated) ever maintained by the Employer (or a "predecessor employer") under which the participant receives annual additions are treated as one defined contribution plan. The "Employer" means the Employer that adopts this Plan and all members of a controlled group or an affiliated service group that includes the Employer (within the meaning of Code §§ 414(b), (c), (m) or (o)), except that for purposes of this Section, the determination shall be made by applying Code § 415(h), and shall take into account tax-exempt organizations under Regulation Section 1.414(c)-5, as modified by Regulation Section 1.415(a)-1(f)(1). For purposes of this Section:

(1) A former Employer is a "predecessor employer" with respect to a participant in a plan maintained by an Employer if the Employer maintains a plan under which the participant had accrued a benefit while performing services for the former Employer, but only if that benefit is provided under the plan maintained by the Employer. For this purpose, the formerly affiliated plan rules in Regulation Section 1.415(f)-1(b)(2) apply as if the Employer and predecessor Employer constituted a single employer under the rules described in Regulation Section 1.415(a)-1(f)(1) and (2) immediately prior to the cessation of affiliation (and as if they constituted two, unrelated employers under the rules described in Regulation Section 1.415(a)-1(f)(1) and (2) immediately after the cessation of affiliation) and cessation of affiliation was the event that gives rise to the predecessor employer relationship, such as a transfer of benefits or plan sponsorship.

(2) With respect to an Employer of a participant, a former entity that antedates the Employer is a "predecessor employer" with respect to the participant if, under the facts and circumstances, the employer constitutes a continuation of all or a portion of the former entity.

(b) **Break-up of an affiliate employer or an affiliated service group.** For purposes of aggregating plans for Code § 415, a "formerly affiliated plan" of an employer is taken into account for purposes of applying the Code § 415 limitations to the employer, but the formerly affiliated plan is treated as if it had terminated immediately prior to the "cessation of affiliation." For purposes of this paragraph, a "formerly affiliated plan" of an employer is a plan that, immediately prior to the cessation of affiliation, was actually maintained by one or more of the entities that constitute the employer (as determined under the employer affiliation rules described in Regulation Section 1.415(a)-1(f)(1) and (2)), and immediately after the cessation of affiliation, is not actually maintained by any of the entities that constitute the employer (as determined under the employer affiliation rules described in Regulation Section 1.415(a)-1(f)(1) and (2)). For purposes of this paragraph, a "cessation of affiliation" means the event that causes an entity to no longer be aggregated with one or more other entities as a single employer under the employer affiliation rules described in Regulation Section 1.415(a)-1(f)(1) and (2) (such as the sale of a subsidiary outside a controlled group), or that causes a plan to not actually be maintained by any of the entities that constitute the employer under the employer affiliation rules of Regulation Section 1.415(a)-1(f)(1) and (2) (such as a transfer of plan sponsorship outside of a controlled group).

(c) **Midyear Aggregation.** Two or more defined contribution plans that are not required to be aggregated pursuant to Code § 415(f) and the Regulations thereunder as of the first day of a limitation year do not fail to satisfy the requirements of Code § 415 with respect to a participant for the limitation year merely because they are aggregated later in that limitation year,

provided that no annual additions are credited to the participant's account after the date on which the plans are required to be aggregated.

**ARTICLE IV  
PLAN COMPENSATION**

- 4.1 **Compensation limit.** Notwithstanding Amendment Section 4.2 or any election in Amendment Section 2.2., if the Plan is a 401(k) plan, then participants may not make elective deferrals with respect to amounts that are not 415 Compensation. However, for this purpose, 415 Compensation is not limited to the annual compensation limit of Code § 401(a)(17).
- 4.2 **Compensation paid after severance from employment.** Compensation for purposes of allocations (hereinafter referred to as Plan Compensation) shall be adjusted, unless otherwise elected in Amendment Section 2.2, in the same manner as 415 Compensation pursuant to Article III of this Amendment, except in applying Article III, the term "limitation year" shall be replaced with the term "plan year" and the term "415 Compensation" shall be replaced with the term "Plan Compensation."
- 4.3 **Option to apply Plan Compensation provisions early.** The provisions of this Article shall apply for Plan Years beginning more than ninety (90) days after the close of the first regular legislative session (of the legislative body with authority to amend the Plan) that begins on or after July 1, 2007, unless an earlier effective date is specified in Section 2.2. of this Amendment.

**[Volume Submitter Practitioner's signature and Adoption Date are on file with Volume Submitter Practitioner]**

This amendment has been executed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Name of Plan: The Town of Fort Myers Beach Pension Plan

Name of Employer: Town of Fort Myers Beach

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**RESOLUTION AUTHORIZING  
AMENDMENT AND RESTATEMENT OF RETIREMENT PLAN  
VIA ADOPTION OF VALIC RETIREMENT SERVICES COMPANY GOVERNMENTAL VOLUME SUBMITTER PLAN**

**WHEREAS**, Town of Fort Myers Beach (hereinafter, the "Employer"), previously established the The Town of Fort Myers Beach Pension Plan (hereinafter, the "Plan") for the exclusive benefit of its employees and their beneficiaries, which Plan was originally effective as of April 1, 1996; and

**WHEREAS**, the Employer retained the power to amend and/or terminate the Plan; and

**WHEREAS**, the Employer now desires to amend and restate the Plan by adopting the VALIC Retirement Services Company Governmental Volume Submitter Plan document; and

**NOW THEREFORE, BE IT RESOLVED** that the Employer hereby amends and restates that Plan, effective January 1, 2002, by adopting the document titled "VALIC Retirement Services Company Governmental Volume Submitter Plan," in the form and substance as the document heretofore presented to the governing body of the Employer; and

**RESOLVED FURTHER**, that the appropriate representatives of the Employer be, and the same hereby are, authorized and directed to: (i) execute the adoption agreement to the VALIC Retirement Services Company Governmental Volume Submitter Plan document as approved; (ii) execute all other documents and to do all other things as may be necessary or appropriate to make the VALIC Retirement Services Company Governmental Volume Submitter Plan document effective January 1, 2002, including the execution of any amendments required by the Internal Revenue Service in order to continue and maintain the qualified and exempt status of the Plan; and (iii) execute any other documents required to obtain reliance on advisory letters issued to the VALIC Retirement Services Company Governmental Volume Submitter Plan by the Internal Revenue Service.

**CERTIFICATION**

I, \_\_\_\_\_, do hereby certify that the above resolutions were unanimously adopted by the governing body of the Employer at a meeting duly held at Fort Myers Beach,, Florida, on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_