

**TOWNSHIP OF SALISBURY
LEHIGH COUNTY, PENNSYLVANIA**

Ordinance No. 05-2019-622

(Duly Adopted May 23, 2019)

AN ORDINANCE ELECTING TO AMEND THE SALISBURY TOWNSHIP NON-UNIFORMED EMPLOYEES DEFINED BENEFIT PENSION PLAN ADMINISTERED BY THE PENNSYLVANIA MUNICIPAL RETIREMENT SYSTEM PURSUANT TO ARTICLE IV OF THE PENNSYLVANIA MUNICIPAL RETIREMENT LAW TO CONFORM TO UPDATED SYSTEM PLAN DOCUMENTS, TO DESIGNATE REQUIRED EMPLOYEE CONTRIBUTIONS AS PRE-TAX CONTRIBUTIONS, AND TO CLOSE MEMBERSHIP IN THE PLAN SO THAT ONLY PERSONS EMPLOYED BEFORE JUNE 1, 2019 MAY BE COVERED BY THE PLAN; AGREEING TO BE BOUND BY ALL PROVISIONS OF THE PENNSYLVANIA MUNICIPAL RETIREMENT LAW AS AMENDED AND AS APPLICABLE TO MEMBER MUNICIPALITIES; FURTHER AMENDING THE NON-UNIFORMED EMPLOYEES DEFINED BENEFIT PENSION PLAN ADMINISTERED BY THE PENNSYLVANIA MUNICIPAL RETIREMENT SYSTEM SO THAT EMPLOYEE CONTRIBUTIONS FOR CALENDAR YEAR 2019 ARE REDUCED TO ONE PERCENT (1.0%) OF COMPENSATION; AND ESTABLISHING A NEW DEFINED CONTRIBUTION PENSION PLAN FOR FULL-TIME NON-UNIFORMED EMPLOYEES FIRST EMPLOYED BY THE TOWNSHIP ON OR AFTER JUNE 1, 2019, PROVIDING FOR EMPLOYER CONTRIBUTIONS OF EIGHT PERCENT (8.0%) OF COMPENSATION, NO EMPLOYEE CONTRIBUTIONS, FULL VESTING AFTER FIVE YEARS OF FULL-TIME SERVICE (WITH NO VESTING BEFORE), DISTRIBUTIONS AFTER SEPARATION FROM SERVICE, AND A PARTICIPANT-DIRECTED INVESTMENT PROGRAM.

WHEREAS, the Township of Salisbury, Lehigh County (“**Township**”) has established a defined benefit pension plan for its non-uniformed employees administered by the Pennsylvania Municipal Retirement System (“**PMRS**”); and

WHEREAS, this defined benefit pension plan is currently governed by ordinance 05-2006-526, codified at Code of Ordinances § 1-621 through § 1-627, and an Agreement dated May 11, 2006 between the Township and the governing board of PMRS; and

WHEREAS, PMRS has substantially revised its pension plan documentation and obtained an advisory letter from the Internal Revenue Service, and has requested the Township to update its Agreement with PMRS accordingly; and

WHEREAS, the Township and the Salisbury Township Public Works Employees Association (“**Association**”), the collective bargaining representatives of the Township’s non-managerial public works employees (“**PW Employees**”), have entered into a collective bargaining agreement (“**CBA**”) effective from January 1, 2019 through December 31, 2022; and

WHEREAS, the CBA makes changes to the pension program applicable to PW Employees, and the Board of Commissioners (“**Board**”) of the Township desires to comply with the CBA; and

WHEREAS, the Board desires to extend the pension program changes applicable to PW Employees to all non-uniformed employees of the Township; and

WHEREAS, the changes to the pension program include (1) designating employee contributions to the defined benefit plan as pre-tax contributions, (2) closing membership in the defined benefit plan so that only persons employed before June 1, 2019 may be covered by that plan, (3) reducing employee contributions for calendar year 2019 to one percent (1.0%) of compensation, and (4) establishing a new defined contribution plan for employees who first work an hour of service for the Township on or after June 1, 2019; and

WHEREAS, the new Salisbury Township Non-Uniformed Employees Defined Contribution Pension Plan provides contributions and benefits only for full-time non-uniformed employees of the Township (regularly scheduled for at least 35 hours per week) who first work on or after June 1, 2019, and provides for employer contributions of eight percent (8.0%) of compensation, no employee contributions, full vesting after

five years of full-time service (with no vesting before), distributions after separation from service, and a participant-directed investment program; and

WHEREAS, prior to the adoption of this Ordinance the Board reviewed the following cost estimate of the effect of the changes made herein:

The amendment to the defined benefit plan reducing the employee contribution rate for calendar year 2019 from three and one-half percent (3.5%) of compensation to one percent (1.0%) of compensation does not change the cost of the plan at all, but only the allocation of payment between the Township and the employees. So, for every dollar that the employee is not required to pay in to the plan, the Township will have to contribute an additional dollar. Accordingly, the reduction for 2019 means that the Township must pay an extra two and one-half percent (2.5%) of all members' compensation for 2019 more than it would have if there had been no reduction. However, for very many years before 2019, the Township eliminated all employee contributions each year, and so in 2019 the Township will actually be taking on a lesser portion of the "regular" employee contributions stated in the plan agreement than in previous years.

The amendment to the defined benefit plan designating employee contributions as pre-tax rather than after-tax contributions also has no effect on the cost of the plan. Employee contributions to the plan are in the same amount whether or not the employee pays tax on that income, and the total amount paid out by the plan with respect to any participant is the same whether or not the distributee pays or the plan withholds taxes.

The amendment of the defined benefit plan to conform to the language of the new PMRS base plan document and adoption agreement is not intended to make any actual change to the terms, conditions, and benefits of the plan, and so it has no effect on the cost of the plan.

The amendment of the defined benefit plan to close membership as of June 1, 2019 has no effect on the cost of the plan for existing plan members who continue in employment. However, if an existing member terminates, the normal cost that would have been associated with his/her compensation will no longer accrue and there will be no normal cost in the defined benefit plan associated with the compensation of any replacement employee. Thus, over time, it can be expected that the total compensation of members in the defined benefit plan will drop as members terminate employment, resulting in lower plan costs.

The establishment of the defined contribution plan will generally result in a cost to the Township of eight percent (8%) of the compensation of new non-uniformed full-time employees hired on or after June 1, 2019, although the long-term cost may actually be somewhat lower when employees leave with less than five years of full-time service and forfeit the amounts that were contributed by the Township to their accounts.

NOW, THEREFORE, be it **ORDAINED** and **ENACTED** by the Board of Commissioners of the Township of Salisbury, Lehigh County, Pennsylvania, as follows:

SECTION 1. Salisbury Township Code of Ordinances Chapter 1, Part 6(B), § 1-621 through § 1-627, and the Agreement dated May 11, 2006 between the Township and the Pennsylvania Municipal Retirement Board are hereby superseded by the following provisions of this Ordinance, effective as of January 1, 2019.

SECTION 2. Salisbury Township Code of Ordinances Chapter 1, Part 6 shall be amended by adding the following new subparts C and D:

C Non-Uniformed Employees' Defined Benefit Pension Plan (2019-)

§ 1-631 Amendment of Existing Plan.

Salisbury Township (the Township), having established a defined benefit pension plan for its non-uniformed employees administered by the Pennsylvania Municipal Retirement System (the System), hereby elects to amend its Non-Uniform Employees' Defined Benefit Pension Plan administered by the System in accordance with Article IV of the Pennsylvania Municipal Retirement Law, 53 P.S. §881.101 *et seq.* (Retirement Law), and does hereby agree to be bound by all the requirements and provisions of the Retirement Law and the Municipal Pension Plan Funding Standard and Recovery Act, 53 P.S. §895.101 *et seq.*, and to assume all obligations, financial and otherwise, placed upon member municipalities.

§ 1-632 Authorization of Adoption Agreement.

The Board of Commissioners of the Township hereby authorizes and directs the President or Vice President of the Board and the Township Manager to execute on behalf of the Township an Adoption Agreement in the form attached to Ordinance 05-2019-622 as Exhibit 2. When fully executed, this Adoption Agreement and the underlying System Base Plan Document referenced therein (attached to Ordinance 05-2019-622 as Exhibit 1), shall constitute the Contract between the Township and the System with respect to the Salisbury Township Non-Uniform Employees' Defined Benefit Pension Plan, effective as of January 1, 2019.

§ 1-633 Administration.

As part of this Ordinance, the Township agrees that the System shall administer and provide the benefits set forth in the Contract entered into between the Pennsylvania Municipal Retirement Board and the Township effective as of January 1, 2019.

§ 1-634 Acceptance of Contract and Financial Obligations.

The Township acknowledges that by passage and adoption of this Ordinance, the Township officially accepts the Contract and the financial obligations resulting from the administration of the Contract.

§ 1-635 Payments and Liability.

Payment for any obligation established by the adoption of this Ordinance and the Contract shall be made by the Township in accordance with the Retirement Law and the Municipal Pension Plan Funding Standard and Recovery Act. The Township hereby assumes all liability for any unfundedness created due to the benefit structure set forth in the Contract.

§ 1-636 Intent.

The Township intends this Ordinance to be the complete authorization of the Contract, as amended and it shall become effective as of the date specified in the adoption agreement, which is the effective date of the Contract, as amended.

§ 1-637 Filing with PMRS.

The Township shall file a duly certified copy of this Ordinance and an executed Contract with the System.

§ 1-638 Amendments Regarding Employee Contributions.

(a) **2019.** The Board of Commissioners of the Township hereby authorizes and directs the President or Vice President of the Board and the Township Manager to execute on behalf of the Township an Adoption Agreement Amendment in the form attached to Ordinance 05-2019-622 as Exhibit 3, in order to reduce employee contributions for calendar year 2019 only, subject to approval by the System. The Township shall file a duly certified copy of Ordinance 05-2019-622 and the executed Adoption Agreement Amendment with the System.

D Non-Uniformed Employees Defined Contribution Pension Plan

§ 1-641 Adoption.

The Board of Commissioners of Salisbury Township hereby establishes the Salisbury Township Nonuniformed Employees Defined Contribution Pension Plan in the form attached to Ordinance 05-2019-622 as Exhibit 4, effective June 1, 2019.

SECTION 3. The following exhibits are hereby incorporated into this Ordinance by reference:

Exhibit 1: Pennsylvania Municipal Retirement System Base Plan Document, together with—

Addendum A: Applicable State Laws
Addendum B: PMRS Policy Statements

Exhibit 2: Adoption Agreement 001 for PMRS Defined Benefit Base Plan Document.

Exhibit 3: Adoption Agreement Amendment to Reduce Employee Contributions to 1.0% for 2019 only.

Exhibit 4: Salisbury Township Nonuniformed Employees Defined Contribution Pension Plan.

DULY ORDAINED and **ENACTED** by the Board of Commissioners of the Township of Salisbury, Lehigh County, this 23rd day of May, 2019, in lawful session duly assembled.

BOARD OF COMMISSIONERS
TOWNSHIP OF SALISBURY

Robert Martucci, Jr., President

Attest:

Cathy Bonaskiewich, Secretary

EXHIBIT 1

**PENNSYLVANIA MUNICIPAL RETIREMENT SYSTEM
BASE PLAN DOCUMENT**

TABLE OF CONTENTS

	Page
ARTICLE I: DEFINITIONS	1
ARTICLE II: MEMBERSHIP	15
ARTICLE III: MUNICIPALITY CONTRIBUTIONS	17
ARTICLE IV: MEMBER CONTRIBUTIONS.....	18
ARTICLE V: SUPERANNUATION RETIREMENT PENSION.....	21
ARTICLE VI: EARLY RETIREMENT PENSION.....	24
ARTICLE VII: DISABILITY PENSION.....	26
ARTICLE VIII: DEFERRED VESTED PENSION.....	28
ARTICLE IX: DEATH BENEFITS	30
ARTICLE X: PAYMENT OF ACCRUED BENEFIT - OPTIONAL FORMS OF PAYMENT	32
ARTICLE XI: MISCELLANEOUS PROVISIONS AFFECTING THE CREDITING OF SERVICE.....	41
ARTICLE XII: MISCELLANEOUS PROVISIONS AFFECTING THE PAYMENT OF BENEFITS.....	49
ARTICLE XIII: ADMINISTRATIVE PROVISIONS.....	53
ARTICLE XIV: MEMBER ADMINISTRATIVE PROVISIONS	57
ARTICLE XV: PENNSYLVANIA MUNICIPAL RETIREMENT FUND	59
ARTICLE XVI: AMENDMENT	61
ARTICLE XVII: MISCELLANEOUS PROVISIONS	64
ADDENDUM A - APPLICABLE STATE LAWS	
ADDENDUM B - POLICY STATEMENTS	

Pennsylvania Municipal Retirement System Base Plan Document

Pursuant to Article IV of the Pennsylvania Municipal Retirement Law 53 P.S. § 881.101 et. seq., (“PMRL”), (Sections of the PMRL referenced in this Base Plan Document are attached hereto in Addendum A) and Sections 104 and 401 thereof, the Pennsylvania Municipal Retirement Board has adopted this “Base Plan Document” which, together with the applicable executed “Adoption Agreement” shall constitute the “Plan” of a Municipality. Each such Plan is intended to be a tax qualified governmental plan under Sections 401, 414(d) and 501 of the Internal Revenue Code of 1986, as amended.

This Base Plan Document and its related Adoption Agreements are important legal documents under the Internal Revenue Code and Pennsylvania law. The Municipality is urged to consult with its legal counsel regarding the adoption of these instruments.

ARTICLE I: DEFINITIONS

All capitalized terms set forth shall have the meaning set forth below.

- 1.01 Accrued Benefit** means, subject to Plan termination provisions in Article XVI of the Plan, a Member's Superannuation Retirement Pension under Section 5.02 of the Plan. The Accrued Benefit shall include the value of the Member Contribution Account, if applicable, based on the subcategory of the type of contribution. For Cash Balance Plans the minimum annual Accrued Benefit is one half of one percent (0.5%) of Compensation.
- 1.02 Accumulated Deductions** means the total amount deducted from the salary or compensation of the Member and paid over by the Municipality or paid by the Member or from any existing pension or retirement system directly into the Fund and credited to the appropriate subaccount within the Member's Contribution Account, together with Regular Interest thereon.
- 1.03 Active Member** means a Member who is accruing Credited Service under the Plan.
- 1.04 Actuarial Equivalence or Actuarial Equivalent** means a benefit of equal value to the normal form of benefit (as defined in Article X of the Plan) whether in the form of an annuity, a lump sum or otherwise, based on the following:
- (a) For Mortality:
 - (i) For Members under age 50:
 - (A) The RP-2000 Male Non-Annuitant and the RP-2000 Female Non-Annuitant Mortality Tables (as published by the Society of Actuaries) are used with a blend of seventy percent (70%) male and thirty percent (30%) female rates
 - 1. For male Members, the mortality table is projected 15 years with Scale AA mortality improvements
 - 2. For female Members, the mortality table is projected 15 years with Scale AA mortality improvements and also setback 5 years
 - (ii) For Members 50 years of age and older:
 - (A) The RP-2000 Male Annuitant and the RP-2000 Female Annuitant Mortality Tables (as published by the Society of Actuaries) are used with a blend of seventy percent (70%) male and thirty percent (30%) female rates
 - 1. For male Members, the mortality table is projected 5 years with Scale AA mortality improvements
 - 2. For female Members, the mortality table is projected 10 years with Scale AA mortality improvements
 - (b) For an Interest Rate, the rate of Regular Interest as defined in Section 1.77 of the Plan.
 - (c) With respect to benefits determined under a cash balance formula, (1) the Actual Equivalence shall be applied to the Member's Hypothetical Account Balance; and (2) lump sum payment and other benefits payable in a form that would be subject to the minimum present value requirements of Code Section 417(e)(3) (if applicable) will not be determined using the applicable mortality table and applicable latest rules under Code Section 417(e), this produces a benefit greater than the benefit determined using the Actual Equivalence assumption specified in this Section.
- 1.05 Actuarially Sound** means a plan which is being operated under supervision of an Actuary and which is being funded annually at a level not lower than the normal cost of the plan plus a

contribution towards the unfunded accrued liability sufficient to complete the funding thereof within thirty years of the effective date of the system. If the unfunded accrued liability is increased subsequent to the effective date of the system, such additional liability shall be funded within a period not to exceed thirty years from the effective date of the increase. If deemed advisable by the actuary, the initial liability and any increase thereof, may be combined and amortized over a period of years, not to exceed thirty.

1.06 Actuary means:

- (a) Member of the American Academy of Actuaries, and
- (b) an individual who has demonstrated to the satisfaction of the Insurance Commissioner of Pennsylvania that he had the educational background necessary for the practice of actuarial science and has had at least seven years of actuarial experience, or
- (c) a firm, partnership, or corporation of which one or more Members meets the requirements of subclauses (a) and (b) above.

1.07 Adoption Agreement means the document executed by each Municipality, and approved by the Board, electing to join the System and setting forth its applicable terms. The terms of this Plan and Trust as modified by the terms of an adopting Municipality's Adoption Agreement shall constitute a separate Plan and Trust to be construed as a single Plan. Each elective provision of the Adoption Agreement shall correspond by section reference to the section of the Base Plan Document that grants the election.

1.08 Alternate Payee means a spouse, former spouse, child or dependent of a Member, who is recognized by an Approved Domestic Relations Order as having a right to receive all or a portion of the money payable to the Member under the Plan.

1.09 Annuitant means a Member during the time period:

- (a) beginning with the effective date of the Member's Retirement; and
- (b) ending on the date of termination of the Member's annuity.

1.10 Approved Domestic Relations Order means a Domestic Relations Order which has been reviewed and approved by the Board.

1.11 Average Annual Compensation means the arithmetic annual average of Compensation paid to a Member by the Municipality for a specified number of consecutive years of Credited Service immediately preceding the Member's most recent Termination of Employment. The Municipality, in its Adoption Agreement, shall determine the years of Credited Service for use in the calculation and the maximum number of years of Credited Service to consider.

If a Member does not have a sufficient number of consecutive years of Credited Service as specified by the Municipality in its Adoption Agreement, the Average Annual Compensation shall be based on such actual lesser number of consecutive years of Credited Service.

If a Member (a) Terminates Employment and is later reemployed; or (b) has an unpaid Leave of Absence, the consecutive years of Credited Service prior to such Termination or Leave of Absence combined with the consecutive years of Credited Service after such Termination or Leave of Absence shall be considered consecutive for the purposes of this Section.

1.12 Average Monthly Compensation and Final Monthly Compensation means the arithmetic monthly average of Compensation paid to a Member by the Municipality for a specified number of consecutive months for purposes of determining the Member's Final Average Salary. The Municipality, in its Adoption Agreement, shall determine the maximum number of months of

Credited Service for use in the calculation and the specific months of Credited Service to consider (either the months producing the highest average or the final months immediately preceding Termination of Employment). If any partial months of Credited Service are within the maximum number of months of Credited Service considered, the partial months shall be included without adjustment.

If a Member does not have a sufficient number of consecutive months of Credited Service as specified by the Municipality in its Adoption Agreement, the Average Monthly Compensation or Final Monthly Compensation shall be based on such actual lesser number of consecutive months of Credited Service.

If a Member (a) Terminates Employment and is later reemployed; or (b) has an unpaid Leave of Absence, the consecutive months of Credited Service prior to such Termination or Leave of Absence combined with the consecutive months of Credited Service after such Termination or Leave of Absence shall be considered consecutive for the purposes of this Section.

- 1.13 Base Plan Document** means this document which sets forth the mandatory provisions of a Municipality's Plan.
- 1.14 Basic Benefit** means the pension benefit determined pursuant to the formula set forth in Section 5.02(a)(i) of the Plan.
- 1.15 Beneficiary** means a person last designated by a Member to receive benefits after the death of such Member.
- 1.16 Benefit Commencement Date** means, with respect to a Member, Survivor Annuitant, or Beneficiary the first day of the first period for which payment of the benefit under the Plan is scheduled to commence, either as a result of the Member's written election or by operation of the Plan, whichever is later.
- 1.17 Board** means the Pennsylvania Municipal Retirement Board as established pursuant to Section 103 of the PMRL. See Addendum A. The Board may act in the name of the System and shall designate, as appropriate, its Secretary to act on its behalf.
- 1.18 Break in Service** means,
- (a) with respect to an Employee:
 - (i) under the Hours of Service Method, any consecutive twelve (12) month period during which such Employee fails to complete at least fifty percent (50%) of the required number of hours designated in Section 1.40 of the Adoption Agreement for purpose of the Hours of Service Method. The consecutive twelve (12) month period shall be measured from the Employment Commencement Date or Reemployment Commencement Date and each anniversary thereof; and
 - (ii) under the Elapsed Time Method, a Period of Severance of twelve (12) consecutive months.
 - (b) For a Leave of Absence, including Military Leave under USERRA and FMLA Leave under the Family and Medical Leave Act of 1993, a Break in Service shall not be deemed to have occurred if the Employee returns to the Service of the Municipality following the Leave of Absence within the time required by the earlier of federal or state law.

(c) For a Maternity or Paternity Leave, for purposes of determining when the measuring period for a Break in Service begins, the Employee shall receive additional Eligibility and Vesting Service as follows:

- (i) Under the Hours of Service Method, an Employee shall be credited with the greater of:
 - (A) the number of Hours of Service actually worked, or
 - (B) the number of Hours of Service he normally would have been credited but for the Maternity or Paternity Leave.

Provided, however, the maximum number of Hours of Service credited for purposes of this Section shall not exceed fifty percent (50%) of the required number of hours under designated in Section 1.40 of the Adoption Agreement for purpose of the Hours of Service Method. Hours of Service credited shall be applied only to the Plan Year in which the Maternity or Paternity Leave begins unless such Hours of Service are not required to prevent the Employee from incurring a Break in Service, in which event such Hours of Service shall be credited to the Employee in the immediately following year.

- (ii) Under the Elapsed Time Method, the Termination of Employment Date of an Employee who is absent from employment beyond the first anniversary of his first date of absence is the second anniversary of the first date of absence. The period between the first and second anniversaries is neither a Period of Service nor a Period of Severance.
- (iii) No Service shall be credited due to Maternity or Paternity Leave as described in this Section unless the Employee furnishes proof satisfactory to the Municipality:
 - (A) that his absence from work was due to a Maternity or Paternity Leave, and
 - (B) of the number of days he was absent due to the Maternity or Paternity Leave.
- (iv) No Service shall be credited due to Maternity and Paternity Leave in excess of the amount of time the Employee was actually absent due to such Maternity and Paternity Leave.
- (v) An Employee shall not earn Credited Service while on Maternity or Paternity Leave.

The Municipality shall prescribe uniform and nondiscriminatory procedures by which to make the determinations required in this Section.

1.19 **Cash Balance Contribution Credit** means the sum of (i) required Municipal contributions under Article III; (ii) required Member contributions under Article IV; and (iii) Optional After-Tax contributions (if permitted) under Section 4.02(b).

1.20 **Cash Balance Interest Credit** means the amount credited to the Member's Hypothetical Account Balance as provided in Section 5.06.

1.21 **Cash Balance Interest Crediting Rate** means the Regular Interest rate and in no event shall not exceed six percent (6%) annually.

1.22 **Code** means the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

1.23 **Compensation** means remuneration actually received for services rendered as a Municipal Employee, Municipal Firefighter or Municipal Police Officer:

- (a) The following items are excluded from compensation:
 - (i) Reimbursement for expenses incidental to employment;
 - (ii) Income derived directly or by formula from the collection of fees or taxes;
 - (iii) Severance payments; and
 - (iv) Payments related to services rendered during a Period of Service in which an individual is an Ineligible Employee or an Ineligible Member.
- (b) The following additional rules apply:
 - (i) Compensation shall be adjusted as appropriate pursuant to the terms of the Adoption Agreement.
 - (ii) For Members who are enrolled in a Plan that has adopted the provisions of Code Section 414(h), the term includes a contribution designated as a pickup contribution.
 - (iii) Compensation shall include payments pursuant to the Enforcement Officers Disability Benefits Law, 53 P.S. § 637. See Addendum A.
 - (iv) Notwithstanding any provision of this Plan to the contrary, a Member's Compensation shall not exceed the limitations under Code Section 401(a)(17), as adjusted in accordance with Code Section 401(a)(17)(B).
 - (A) The adjustment in effect for a calendar year applies to a period:
 - 1. which begins in the calendar year;
 - 2. which does not exceed twelve months; and
 - 3. over which Compensation is determined.
 - (B) If a determination period consists of fewer than twelve months, the Compensation limit shall be multiplied by a fraction:
 - 1. the numerator of which is the number of months in the determination period; and
 - 2. the denominator of which is twelve.

1.24 **Credited Service** means the measurement of a Member's Service that is used to determine the Member's Accrued Benefit. Credited Service shall not include Service while the individual is an Ineligible Employee or an Inactive Member unless otherwise specifically provided for by the Municipality in its Adoption Agreement.

- (a) Credited Service shall be determined, as specified in each Municipality's Adoption Agreement, by either the:
 - (i) Elapsed Time Method or
 - (ii) Hours of Service Method.
- (b) Each Municipality shall elect in its Adoption Agreement to include or exclude:
 - (i) A maximum number of years of Credited Service that will be used in Pension benefit calculations,
 - (ii) Service prior to the Original Effective Date of the Plan,

- (iii) Transferred and/or additional Credited Service as provided in Article XI,
- (iv) Service rendered under a Prior Plan of the Municipality; or
- (v) Unused sick leave and/or annual leave as specifically set forth in the Adoption Agreement.

- 1.25 Deferred Vested Pension** means, with respect to a Member, the benefit described in Article VIII of the Plan.
- 1.26 Disability or Disabled** means, upon certification by the Board, a Member who is unable to engage in any gainful employment by reason of any medically determinable physical or mental impairment.
- 1.27 Disability Date** means the date on which the Disability applicant became Disabled, as determined by the Board, provided however, that the Disability Date shall not be later than the Member's Termination of Employment.
- 1.28 Disability Pension** means, with respect to a Member, the benefit described in Article VII of the Plan.
- 1.29 Domestic Relations Order** means any judgment, decree or order, including approval of a property settlement agreement, entered into on or after the effective date of this definition by a court of competent jurisdiction pursuant to a domestic relations law which relates to the marital property rights of the spouse or former spouse of a Member, including the right to receive all or a portion of the money payable to that Member under the Plan, in furtherance of the equitable distribution of marital assets that satisfies the definition of a "qualified domestic relations order" under Code Section 414(p). The term includes an "order of support" under 23 Pa.C.S. § 4302 (relating to definitions) and an order for the enforcement of arrearages under 23 Pa.C.S. § 3703 (relating to enforcement of arrearages).
- 1.30 Early Retirement Date** means the date the Member becomes eligible for an Early Retirement Pension, as specified the Municipality's Adoption Agreement.
- 1.31 Early Retirement Pension** means, with respect to a Member, the benefit described in Article VI of the Plan.
- 1.32 Effective Date of Disability Retirement** means the later of (i) the date following the last day for which the Member is paid for services as an Employee; or (ii) the date on which the Member files an application for Disability Pension
- 1.33 Elapsed Time Method** means a method of computing Service by reference to the total time (years, months and days) that elapses between the Employee's Employment Commencement Date or Reemployment Commencement Date and the Employee's Termination of Employment. The total time need not be consecutive.

For the purpose of calculating Eligibility Service and Vesting Service, a Member shall accrue one day of Service for each day in which he is credited with one Hour of Service as an Employee of the Municipality and shall accrue one Year of Service for each three hundred and sixty-five (365) days. The calculations shall be subject to the Break in Service provisions of the Plan.

For the purpose of calculating Credited Service, a Member shall accrue one day of Service for each day in which he is credited with one Hour of Service as an Employee of the Municipality and shall

accrue one Year of Service for each three hundred and sixty-five (365) days. The calculations shall not be subject to the Break in Service provisions of the Plan.

- 1.34** **Eligibility Service** means the measurement of an Eligible Employee's Service for purposes of determining when the Employee is eligible for membership in the Plan and is measured from the Employee's Employment Commencement Date or Reemployment Commencement Date, as applicable, to the date the Employee satisfies the requirements in Article II of the Plan and the Municipality's Adoption Agreement. Eligibility Service shall not include the Period of Service for which the Employee was considered an Ineligible Employee.

Eligibility Service shall be determined, as specified in each Municipality's Adoption Agreement, by either the:

- (a) Elapsed Time Method or
- (b) Hours of Service Method.

- 1.35** **Employee** means an individual employed by the Municipality. Employees designated in the Municipality's Adoption Agreement as eligible to participate in the Plan shall be considered an "Eligible Employee." An Employee designated as ineligible to participate in the Plan or not otherwise identified in the Adoption Agreement as eligible to participate in the Plan shall be considered an "Ineligible Employee." Individuals paid by the Municipality wholly on a fee basis shall be considered "Ineligible Employees."

- 1.36** **Employment Commencement Date** means the date on which an Eligible Employee first performs an Hour of Service for the Municipality.

- 1.37** **Excess Interest** means additional assets which may result when investment earnings from the Fund exceed those necessary to cover the Regular Interest or all reserves for the covered Plans and the current market asset value exceeds the Reserve Accounts plus expenses. Excess Interest is determined and declared pursuant to the Board policies attached in Addendum B.

- 1.38** **Final Average Salary** means the Average Monthly Compensation or the Average Annual Compensation or Final Monthly Compensation as elected by the Municipality in its Adoption Agreement.

- 1.39** **Fund** means the Pennsylvania Municipal Retirement Fund created by the PMRL and consisting of all property of every kind invested and administered by the Board pursuant thereto.

- 1.40** **Hour of Service** means the increments of time, described in sections (a), (b), (c), and (d) hereof (as applicable), subject to any limitations set forth herein:

- (a) Each hour for which the Municipality, either directly or indirectly, pays an Employee, or for which the Employee is entitled to payment, for the performance of duties during the Plan Year. The Municipality shall credit Hours of Service under this paragraph (a) to the Employees for the Plan Year(s) in which the Employee performs the duties, irrespective of when paid;
- (b) Each hour for back pay, irrespective of mitigation of damages, to which the Municipality has agreed or for which the Employee has received an award. The Municipality shall credit Hours of Service under this paragraph (b) to the Employee for the Plan Year(s) to which the award or the agreement pertains rather than for the Plan Year(s) in which the award, agreement or payment is made; and
- (c) Each hour for which the Municipality, either directly or indirectly, pays an Employee, or for which the Employee is entitled to payment (irrespective of whether the employment

relationship is terminated), for reasons other than for the performance of duties during a Plan Year, such as leave of absence, vacation, holiday, sick leave, illness, incapacity (including disability), layoff, jury duty, or military duty, provided:

- (i) A Municipality shall not credit more than fifty percent (50%) of the required number of hours under the Hours of Service Method to an Employee on account of any single continuous period during which the Employee does not perform any duties as an Employee (whether or not such period occurs during a single Plan Year);
 - (ii) An hour for which an Employee is directly or indirectly paid, or entitled to payment, on account of a period during which he performs no duties as an Employee shall not be credited as an Hour of Service if such payment is made or due under a plan maintained solely to comply with applicable workers' compensation, unemployment compensation, or disability insurance laws; and
 - (iii) Hours of Service shall not be credited to an Employee for a payment that solely reimburses such Employee for medical or medically related expenses incurred by him.
- (d) Each hour for which the Employee is required to be granted leave under USERRA.
- (e) A Municipality shall not credit an Hour of Service under more than one (1) of the above paragraphs (a), (b), (c) or (d). If the Service counted under this Section can be counted under more than one of these paragraphs, the rule crediting the greatest number of Hours of Service shall apply. The Municipality shall resolve any ambiguity with respect to the crediting of an Hour of Service in favor of the Employee.
- (f) The Municipality shall credit Hours of Service under this Section in accordance with Department of Labor Regulation Section 2530.200b-2(b) and (c), 29 CFR Part 2530, as amended, which the Plan, by this reference, specifically incorporates in full, or such other federal regulations as may from time to time be applicable.

- 1.41 Hours of Service Method** means a method for computing Service by reference to the number of Hours of Service performed by the Employee in a consecutive twelve (12) month period or any permitted equivalency. Any computations or calculations using the Hours of Service Method shall: (a) award a year of Service for any consecutive twelve (12) month period in which a Member is credited with the number of Hours of Service as set forth in the Adoption Agreement; and (b) be subject to the Break in Service provisions.
- 1.42 Hypothetical Account Balance** means the balance of a hypothetical account established for the benefit of a Member and credited with Cash Balance Contribution Credits and Cash Balance Interest Credits.
- 1.43 Inactive Member** means a Member who has experienced a Severance from Credited Service but has not received full payment of his Vested benefit under the Plan. A Member on Leave of Absence shall not be deemed an Inactive Member.
- 1.44 In-service Distribution** means a distribution of a Member's Accrued Benefit commencing after the Member's Normal Retirement Age and before the Member's Severance from Credited Service.
- 1.45 Joint Coverage Member** means a Member who shall have become a Member of the System subsequent to the last date permitted by the Municipality employing him for statement of preference concerning social security coverage, or who, having become a Member on or before such date, shall have filed with the Municipality a written statement that he elects social security coverage

under an agreement with the Federal Secretary of Health, Education and Welfare entered into by the Commonwealth of Pennsylvania.

1.46 Leave of Absence means a paid or unpaid excused leave of absence granted to an Employee in accordance with applicable federal or state law or the Municipality's personnel policies. Leave of Absence shall include the following:

(a) Military Leave

Employees who leave the service of a Municipality, voluntarily or involuntarily, to enter the Armed Forces of the United States and the Employee is legally entitled to certain rights under USERRA.

(b) FMLA Leave

Employees who leave the service of the Municipality under the provisions of the Family and Medical Leave Act of 1993 ("FMLA") provided that the Employee returns to active employment within the time required under the FMLA.

(c) Other Leave

Employees who leave the service of the Municipality under such other circumstances as approved by the Municipality and applied uniformly among Employees under similar circumstances.

1.47 Limitation Year means the calendar year.

1.48 Look Back Month means the December 1 immediately preceding a Stability Period.

1.49 Maternity or Paternity Leave means any period during which an Employee is absent from work with a Municipality by reason of (a) pregnancy of such Employee, (b) the birth of a child of such Employee, (c) the placement of a child with such Employee in connection with the adoption of a child by such Employee, or (d) for purposes of such Employee caring for such child immediately after such birth or placement.

1.50 Member means an individual that is:

(a) a Municipal Officer, Employee, Firefighter or Police Officer; or

(b) an Employee of a municipal government association, who satisfies the conditions for membership as set forth in Article II.

1.51 Member Contribution Account means the notional account and subaccounts thereunder established by the Board to reflect Accumulated Deductions and other contributions made by the Member to the Trust, if any, plus Regular Interest credited thereon as required under the Plan. In addition to any other accounts the Board shall establish, the Board shall establish the following subaccounts under the Member Contribution Account for each Member to be designated as follows:

(a) "Pick-Up Contribution Account" shall reflect a Member's interest in the Municipality pick-up contributions made under Section 4.01 of the Plan and shall include any payments made by the Member under Section 4.08 of the Plan to repay such account.

(b) "Required After Tax Contribution Account" shall reflect a Member's interest in required after-tax contributions made by the Member under Section 4.02(a) of the Plan and shall include any payments made by the Member under Section 4.08 of the Plan to repay such account.

(c) "Optional After-Tax Contribution Account" shall reflect a Member's interest in elective after-tax contributions made by the Member under Section 4.02(b) of the Plan and shall

include any payments made by the Member under Section 4.08 of the Plan to repay such account.

- (d) “Service Purchase Account” shall reflect a Member’s interest in payments made by the Member under Section 4.03(a) of the Plan for the purpose of purchasing eligible Credited Service under the Plan.
- (e) “Transferred Contribution Account” shall reflect a Member’s interest in amounts transferred by the Municipality under Section 4.03(b) of the Plan, from one or more of the Municipality’s tax-qualified plans, that have been merged or combined with the Plan, directly to the Fund.
- (f) “Terminated Contribution Account” shall reflect a Member’s interest in amounts transferred, at the election of the Member under Section 4.03(c) of the Plan, from one or more of the Municipality’s previously terminated Prior Plans directly to the Fund.

1.52 **Member’s Excess Investment Account** means the account maintained for each Member, to which shall be credited such Excess Interest deemed to be earned on the Member Contribution Account. For purposes of any distribution of the Member Contribution Account, said distribution shall include the Member’s Excess Investment Account.

1.53 **Membership Commencement Date** means the date a Member first commences participation under the Plan.

1.54 **Municipal Contribution Account** means, in the aggregate, the account and subaccounts thereunder established by the Board to reflect contributions made by the Municipality to the Trust, plus Regular Interest deemed to be earned by the Board thereon as required under the Plan. In addition to any other accounts the Board shall establish, the Board shall establish separate accounts for each Municipality to be designated as follows:

- (a) “Defined Benefit Contribution Account” shall reflect the Municipality’s required contributions and any additional contributions made by the Municipality under Sections 3.01 and 3.02 of the Plan.
- (b) “Cash Balance Contribution Account” shall reflect the Municipality’s contributions required Section 3.02 of the Plan.

1.55 **Municipal Employee** means a person holding an office or position, other than that of a Municipal Firefighter or Municipal Police Officer, under a Municipality or a municipal government association and paid on a regular salary or per diem basis. The term shall not include officers and employees paid wholly on a fee basis.

1.56 **Municipal Firefighter** means a person holding a full-time position in the fire department of a Municipality and who works for a stated salary or Compensation.

1.57 **Municipal Police Officer** means a person holding a full-time position in the police department of a Municipality and who works for a stated salary or Compensation.

1.58 **Municipality** means a city, borough, town, township, county, institution district, or any newly created governmental unit, or an authority created by a city, borough, town, township, county or county institution district, or jointly by any such political subdivisions, or an institution supported and maintained by a municipality or a municipal government association, or an industrial development agency which has adopted bylaws and the governing body of which is organized and holds regular public meetings.

- 1.59 **New Member** means a municipal officer, employee, firefighter or police officer, or an employee of a municipal government association who first becomes a Member after the date the Municipality by which he is employed establishes a Plan.
- 1.60 **Nonqualified Service Credit** means Permissive Service Credit other than service rendered as an employee of the Government of the United States, any State or political subdivision thereof, any agency of the foregoing, service as an employee of an educational organization described in Code Section 170(b)(1)(A)(ii), or military service (other than qualified military service under Code Section 414(u).
- 1.61 **Normal Retirement Age** means such age as may be stipulated by the Municipality in the Adoption Agreement at which a Member is eligible to commence receipt of his Superannuation Retirement Pension under Section 5.01 without actuarial or other reduction for early commencement. The above notwithstanding, Normal Retirement Age shall be interpreted consistent with the requirements of “normal retirement age” as set forth in Treasury Regulation § 1.401(a)-1(b).
- 1.62 **Original Member** means a Municipal Officer, Employee, Firefighter or Police Officer, or an employee of a municipal government association who was employed by the Municipality and becomes a Member in the Plan the date the Municipality establishes a Plan.
- 1.63 **Original Plan** means the tax-qualified plan of a Municipality that is (i) merged into this Plan; or (ii) administered by the Municipality or a third party other than Board, and is restated and superseded by this Plan document (provided that the corresponding assets of such plan are transferred into this Plan). If there is no such tax-qualified plan, then this Plan shall be the Original Plan of the Municipality.
- 1.64 **Original Plan Effective Date** shall mean the effective date of the Original Plan of the Municipality.
- 1.65 **Original Plan Service** means all service an Eligible Employee completed at the time the Municipality by which he is or was employed elected to join the System or the same Municipality under a prior name or classification elected to join the System.
- 1.66 **Period of Service** means for purposes of the Elapsed Time Method of counting Service, the Employee’s period of employment with the Municipality commencing with the Employment Commencement Date or the Reemployment Commencement Date, whichever is applicable, and ending on the Employee’s Termination of Employment date.
- 1.67 **Period of Severance** means, for purposes of the Elapsed Time Method of counting Service, a continuous period of time during which the Employee is not employed by the Municipality, commencing on the Employee’s Termination of Employment date and ending on the Employee’s Reemployment Commencement Date.
- 1.68 **Permissive Service Credit** means certain Credited Service that the Member may receive only by making a voluntary contribution which does not exceed the amount necessary to fund the benefit attributable to such service credit. Such service shall include service rendered as an employee of the Government of the United States, any State or political subdivision thereof, any agency of the foregoing, service as an employee of an educational organization described in Code Section 170(b)(1)(A)(ii), or military service (other than qualified military service under Code Section 414(u).
- 1.69 **Plan** means the plan as set forth in this document, including the executed Adoption Agreement through which a Municipality establishes a Plan. A Municipality shall designate the name of the Plan in the Adoption Agreement. The Board shall administer and maintain the Plan of each

adopting Municipality as a separate Plan and independent from the plan of any other Municipality, and any other plan offered by the adopting Municipality.

- 1.70 **Plan Entry Date** means the date designated in the Municipality's Adoption Agreement as the Employee's Membership Commencement Date after satisfying the Plan eligibility requirements as specified in Article II of the Plan and the Municipality's Adoption Agreement.
- 1.71 **Plan Year** means the twelve (12) month period specified in the Adoption Agreement.
- 1.72 **PMRS Plan Effective Date** shall mean the date the Municipality establishes a plan with the Board pursuant to Sections 107 or 402 of the PMRL. See Addendum A.
- 1.73 **Policy Statement** means a statement of rule issued by the Board pursuant to its general powers under Section 104(10) of the PMRL. See Addendum A. In the event of a conflict between operative provisions of the Base Plan and a Policy Statement, the terms of the Base Plan shall control. All Policy Statements are incorporated by reference and attached at Addendum B.
- 1.74 **Prior Plan** means a tax-qualified plan established by a Municipality that has been terminated or frozen for future benefit accruals.
- 1.75 **Prior Plan Service** means all service recognized under a Prior Plan of the Municipality prior to the Original Plan.
- 1.76 **Reemployment Commencement Date** means the first date on which the Eligible Employee performs an Hour of Service that is required to be taken into account for Eligibility, Vesting or Credited Service, following a Break in Service or Period of Severance.
- 1.77 **Regular Interest** means the rate fixed by the Board (from time to time, and in effect on the Look Back Month), to be applied to the Member's notional accounts, to the Municipal Accounts and to the Retired Member's Reserve Account. Effective January 1, 2017, the Regular Interest rate is five and one-quarter percent (5.25%).
- 1.78 **Retire or Retirement** means Termination of Employment with the Municipality or Severance from Credited Service on or after (i) the Member's Early Retirement Date or Superannuation Retirement Date or Disability Date and (ii) the Member has filed an application to retire.
- 1.79 **Reserve Account** means separate accounts and subaccounts established for the aggregation of monies held in the Trust and to be used for specified purposes. The Board shall establish a minimum number of such accounts to be designated as follows:
- (a) **Disability Reserve Account**

This account is the aggregation of monies collected from Municipalities that offer a Disability Pension and is used to supplement monies transferred from one or more Municipality Accounts and one or more Member Contribution Accounts if such transferred monies are insufficient to equal the Actuarial Equivalence of such Member's Disability Pension through a transfer to the Retired Member's Reserve Account.
 - (b) **Member Reserve Account**

This account is the aggregation of each Member's Contribution Accounts and subaccounts and such monies are held in Trust for each Member. The monies are used to provide for the applicable Pension benefits provided to Members by their respective Municipality through transfers to the Retired Member's Reserve Account.

(c) Municipal Reserve Account

This account is the aggregation of each Municipality's accounts and subaccounts and such monies are held in Trust for each Municipality. The monies are used to provide for the applicable Pension benefits provided to Members by each such applicable Municipality through transfers to the Retired Member's Reserve Account.

(d) Retired Members' Reserve Account

This account is the aggregation of monies transferred from the other Reserve Accounts and held in Trust for each Retiree. The monies are used to provide for the applicable Pension benefits provided to Members by each such applicable Municipality.

- 1.80** Service means any period of time the Employee is in the employ of the Municipality, including any period the Employee is on a Leave of Absence authorized by the Municipality up to one (1) year, unless a longer period is required by law to be counted as Service. Notwithstanding any provision of this Plan to the contrary, contributions, benefits, Vesting, Eligibility and Credited Service with respect to qualified military service will be provided in accordance with USERRA and Code Section 414(u) and with respect to FMLA Leave will be provided in accordance with the Family and Medical Leave Act of 1993.
- 1.81** Service Connected Disability means total and permanent disability of a Member prior to eligibility for superannuation retirement resulting from a condition arising out of and incurred in the course of his employment, and which is compensable under the applicable provisions of the act of June 2, 1915 (P.L. 736, No. 338), known as "The Pennsylvania Workmen's Compensation Act," or the act of June 21, 1939 (P.L. 566, No. 284), known as "The Pennsylvania Occupational Disease Act." See Addendum A.
- 1.82** Service Increment Benefit means a supplemental benefit payable to a Member who has twenty-six (26) or more years of Credited Service as provided in the Municipality's Adoption Agreement.
- 1.83** Severance from Credited Service means an Employee's Termination of Employment or change in employment status (via election, appointment or otherwise) such that he is no longer an Eligible Employee under the Plan.
- 1.84** Single Coverage Member means a Member who shall become a Member of the System on or before the last date permitted by the municipality employing him for statement of preference concerning social security coverage and who either shall have filed with the Municipality a written statement that he does not elect social security coverage under any agreement with the Federal Secretary of Health, Education and Welfare entered into by the Commonwealth of Pennsylvania, or shall not have filed with the municipality any written statement.
- 1.85** Spouse or Surviving Spouse means the person to whom the Member is legally married for Federal tax purposes.
- 1.86** Stability Period means the calendar year during which Regular Interest will be in effect.
- 1.87** Superannuation Retirement Date means the date of the Member's Retirement after becoming eligible for a Superannuation Retirement Pension as specified in Section 5.01 of the Municipality's Adoption Agreement.
- 1.88** Superannuation Retirement Pension means, with respect to a Member, the benefit described in Section 5.02 of the Plan.
- 1.89** Survivor Annuitant means any person who has been named by a Member under a joint and survivor annuity option to receive an annuity upon the death of such Member. The term shall also

include a spouse, or child(ren) if applicable, for plans that have elected a life and 50% spouse benefit or life and 100% spouse benefit as specified in Section 10.01 of the Base Plan Document.

- 1.90** **System** means the Pennsylvania Municipal Retirement System, an agent multiple employer retirement system for purposes of Government Accounting Standards Board requirements created pursuant to the PMRL. The above notwithstanding, this Base Plan document and accompanying Adoption Agreements are approved by the Internal Revenue Service pursuant to Rev. Proc. 2015-36 solely for the purposes of establishing and maintaining an individual Plan by an adopting Municipality.
- 1.91** **Termination Contribution** means an amount transferred to this Plan pursuant to an Eligible Rollover Distribution (as defined in Article X) of a Member's account under a Prior Plan of the Municipality or the predecessor to the Municipality.
- 1.92** **Termination of Employment, Terminate Employment, Termination, or Terminated** means a termination of employment with the Municipality, including Retirement, resignation, discharge, and death except as otherwise provided by the Municipality as a Leave of Absence or any other leave of absence regulated by federal or state law. Unless otherwise provided by law, if an Employee on a Leave of Absence fails to return to active employment upon expiration of the Leave of Absence, the Employee will be considered Terminated as of the last day worked immediately preceding the Leave of Absence.
- 1.93** **Transfer Contribution** means an amount transferred to this Plan directly from a Member's account under an Eligible Retirement Plan (as defined in Article X) sponsored by the Municipality or the predecessor to the Municipality.
- 1.94** **Trust** means the agreement setting forth the terms and conditions with respect to the administration, investment and distribution of the Fund by the Board.
- 1.95** **USERRA** means the Uniform Services Employment and Reemployment Rights Act of 1994.
- 1.96** **Vested** means that portion of a Member's interests in this Plan that is vested pursuant to Article XIII or Section 16.06, if applicable.
- 1.97** **Vesting Service** means the measurement of a Member's Service that is used to determine the Member's Vested Accrued Benefit, and if the Member meets Service related requirements for all other benefits provided in the Plan. Vesting Service shall be measured from the Member's Employment Commencement Date or Reemployment Commencement Date and each anniversary thereof. Vesting Service shall not include the Period of Service for which the Employee was considered an Ineligible Employee.
- (a) Service shall be determined, as specified in each Municipality's Adoption Agreement, by either the:
 - (i) Elapsed Time Method or
 - (ii) Hours of Service Method.
 - (b) A Municipality shall elect in its Adoption Agreement to include or exclude:
 - (i) Service before the Original Plan Effective Date, or
 - (ii) Service before the PMRS Restatement Plan Date, or
 - (iii) unused sick leave and/or unused annual leave in accordance with the Municipality's personnel policies.

ARTICLE II: MEMBERSHIP

2.01 Initial Membership

(a) Mandatory Membership

Each Eligible Employee in a category selected for mandatory membership under Section 1.35 of the Adoption Agreement shall become a Member in the Plan on the Plan Entry Date (if actively employed on that date) coincident with or immediately following the date on which he meets the eligibility conditions selected by the Municipality in its Adoption Agreement.

(b) Optional Membership

(i) Each Eligible Employee in a category selected for optional membership under Section 1.35 of the Adoption Agreement must elect to become a Member by filing a written election with the Municipality within ninety (90) days of notification by the Municipality of membership eligibility. Such Eligible Employee shall become a Member effective on the date of filing of the written election and membership shall be prospective from such date. The election, or failure to elect membership shall be irrevocable for the duration of the Eligible Employee's service in the category of optional membership.

(ii) The above notwithstanding, if the Plan does not require pre-tax pick-up contributions pursuant to Code Section 414(h), then an Eligible Employee for optional membership may elect to become a Member by filing a written election with the Municipality within one year of notification by the Municipality.

(c) Ineligible Employee

An Ineligible Employee identified in the Municipality's Adoption Agreement shall not be eligible to become a Member in the Plan.

2.02 Membership Upon Reemployment

Upon an Employee's Reemployment Commencement Date, the Eligible Employee shall have the following status in the Plan based on his status as of his most recent Termination of Employment:

- (a) If the Eligible Employee was a Member, he shall reenter the Plan as a Member on his Reemployment Commencement Date.
- (b) If the Eligible Employee had satisfied the Plan's eligibility conditions but had not become a Member, he shall become a Member on the next Plan Entry Date after his Reemployment Commencement Date.
- (c) If the Eligible Employee had not satisfied the Plan's eligibility conditions, he shall receive all previous Eligibility Service and shall become a Member on the Plan Entry Date coincident with or immediately following his satisfying the Plan's eligibility conditions.
- (d) The above notwithstanding, the Eligible Employee's position upon reemployment (either optional membership or mandatory membership) shall determine the conditions of membership upon such reemployment.

2.03 Membership Upon Change in Employment Status

If an Eligible Employee has a change in employment status, the Period of Service when the Employee was an Ineligible Employee shall be not included in determining Eligibility Service.

- (a) If the Employee had not previously satisfied the Plan's eligibility conditions, he shall become a Member on the Plan Entry Date coincident with or immediately following his satisfying the Plan's eligibility conditions as an Eligible Employee.
- (b) If, during one or more previous periods of Service in which he was an Eligible Employee, the Employee had previously satisfied the Plan's eligibility conditions but had not become a Member, he shall become a Member on the next Plan Entry Date coincident with or immediately after his most recent change in employment status.
- (c) If, during one or more previous periods of Service in which he was an Employee, the Employee was a Member, he shall reenter the Plan as a Member on date of his change in employment status.

Under no circumstances shall a person who is not an Eligible Employee, as defined by the Adoption Agreement, become a Member unless he is an Eligible Employee on the Plan Entry Date.

ARTICLE III: MUNICIPALITY CONTRIBUTIONS

3.01 Determination of Contribution

The Board will actuarially determine the normal cost of the benefits provided for in a Municipality's Plan and any amortization of unfunded liability associated with the actuarial experience of such benefits which shall be contributed annually by the Municipality. Additionally, the Board shall determine and the Municipality shall be charged an additional amount to be contributed annually toward a reserve account for any disability benefit if disability benefits are elected by the Municipality under the terms of its Adoption Agreement.

3.02 Amount

Unless otherwise provided in Article IV of its Adoption Agreement, the Municipality shall make the contributions required to fund the Municipality's cost of the benefits provided to its Members as set forth in Section 5.02 of the Plan.

3.03 Time of Payment of Contribution

(a) Defined Benefit Plan

Unless otherwise provided in the Municipality's Adoption Agreement, the Municipality shall pay its contribution for each Plan Year in one (1) annual payment. The Municipality must make its contribution to the Board no later than December 31 of the year for which the contribution was required.

(b) Cash Balance Plan

Unless otherwise provided in the Municipality's Adoption Agreement, the Municipality shall pay its contributions for each Plan Year in the same manner and frequency as it remits Member contributions in accordance with Section 4.04 of the Plan and Section 4.02 of the Municipality's Adoption Agreement. The above notwithstanding, the Municipality must complete its aggregate requirement contributions to the Board no later than December 31 of the year for which the contributions were required.

ARTICLE IV: MEMBER CONTRIBUTIONS

4.01 Pre-Tax Pick-Up Contributions

If the Municipality elects the application of this Section in its Adoption Agreement, it shall contribute to the Plan, to the credit of each Member, the amount of the required Member contribution (as a percentage of Compensation as specified in the Adoption Agreement) to fund the Member's cost of the benefit provided to the Member as set forth in Section 5.02(a) or (b) as applicable. The contributions are mandatory and no Member shall be entitled under any circumstances to receive such contributions in cash in lieu of having them contributed to the Trust by the Municipality in accordance with the preceding sentence. Such contributions shall be made pursuant to Code Section 414(h) and shall be treated as Municipality contributions in determining their federal income tax treatment under the Code.

4.02 After-Tax Member Contributions

(a) Required After-Tax Contributions

If the Municipality elects the application of this Section in its Adoption Agreement, it shall require a Member to make after-tax contributions by payroll deduction to the Trust. The Board shall allocate and credit such contribution made for a particular Plan Year to the Member's Required After-Tax Contribution Account as soon as administratively possible. The Board may establish appropriate procedures it deems necessary to facilitate Member payroll deduction contributions. Required after-tax contributions shall be allocated to the cost of the Member's benefit as set forth in Section 5.02(a) or (b) as applicable.

(b) Optional After-Tax Contributions

If the Municipality elects the application of this Section in its Adoption Agreement, it shall allow a Member to elect after-tax contributions by payroll deduction to the Trust. The Board shall allocate and credit such contribution made for a particular Plan Year to the Member's Optional After-Tax Contribution Account as soon as administratively possible. The Board may establish appropriate procedures it deems necessary to facilitate Member payroll deduction contributions and the Member's elected use of such contributions. Optional after-tax contributions may be (i) utilized for the purchase of Permissive Service Credit as provided in Section 11.07; or (ii) allocated to the Member's Hypothetical Account Balance pursuant to Section 5.06.

4.03 Other Member Contributions

(a) Service Purchase Contributions

If the Municipality elects in its Adoption Agreement to allow Members to purchase transferred, prior or additional service in accordance with Article XI of the Plan, the Member may make contributions to purchase such service. For the purchase of such service, the Plan may accept payment directly from the Member or through a plan-to-plan transfer or rollover contribution from any other allowable qualified retirement plan, Section 401(k) plan, Section 457(b) governmental deferred compensation plan or a Section 403(b) tax sheltered annuity. Any Service Purchase Contributions received from the sources specified in this subsection and used for service purchases shall be allocated to the Member Service Purchase Account.

(b) Transferred Contributions

If the Municipality elects in its Adoption Agreement to transfer funds from one or more of the Municipality's Prior Plans pursuant to a merger of such Prior Plan with this Plan, such funds may be: (i) utilized for the purchase of Permissive Service Credit as provided in Section 11.07; or (ii) allocated to a Member's Hypothetical Account Balance pursuant to

Section 5.06. Any such Transferred Contributions shall be allocated to the Member's Transferred Contribution Account.

(c) Terminated Contributions

If the Municipality elects in its Adoption Agreement to permit Members to transfer funds from one or more of the Municipality's Prior Plans where such plans have been previously terminated by the Municipality, such funds may be: (i) utilized for the purchase of Permissive Service Credit as provided in Section 11.07; or (ii) allocated to a Member's Hypothetical Account Balance pursuant to Section 5.06. Any Terminated Contributions shall be allocated to the Member's Terminated Contribution Account.

4.04 Time and Manner of Contribution

Contribution deductions from Member Compensation as specified in Sections 4.01 and 4.02 shall be made on a payroll basis and unless otherwise elected in the Adoption Agreement, the Municipality shall remit such contributions as of each payroll period as soon as administratively possible. Other Member contributions identified in Section 4.03 shall be remitted to the System as soon as administratively possible by the Municipality or representative acting on its behalf and, if applicable, by the Member or representative acting on its behalf.

4.05 Allocation of Contributions

The Board shall establish and maintain the Member Contribution Accounts and subaccounts to which all Member contributions shall be allocated. Each Member Contribution Account shall be credited with contributions, rollovers, transfers and earnings allocated to such Account if provided under the Adoption Agreement and debited with distributions made during the Plan Year.

4.06 Interest on Member Contribution Account

The Member Contribution Account described in this Article of the Plan shall be credited with Regular Interest.

4.07 Refund of Member Contribution Account

A Member or Beneficiary shall receive a refund or withdrawal of his Member Contribution Account if:

- (a) the Member Terminates Employment and, at the time of such Termination, does not have sufficient vesting Service to qualify for a vested Accrued Benefit in accordance with the vesting schedule specified in Section 8.05 of the Adoption Agreement, or
- (b) the Member or Beneficiary is receiving benefits under the Plan and dies before receiving Pension benefit payments in an amount equal to or greater than the Member Contribution Account, and no additional Pension benefits are due, then the Beneficiary (or estate, if no Beneficiary) shall receive the amount remaining in the Member Contribution Account, or
- (c) the Member Terminates Employment and, at the time of such Termination, requests the refund of his Member Contribution Account in lieu of retaining an Accrued Benefit, or
- (d) the Member dies before receiving any benefits under the Plan and the value of the death benefit payable to the Beneficiary is equal to or less than the Member Contribution Account, then the Beneficiary (or estate, if no Beneficiary) shall receive the amount remaining in the Member Contribution Account and no additional death benefits will be paid, or
- (e) an individual has been determined to be an Ineligible Employee and is ineligible to be a Member in the Plan.

Distribution of the Member Contribution Account shall be made only in a lump sum and for no less than 100% of the Member Contribution Account including interest earnings. Upon distribution of the Member Contribution Account, the Member or Beneficiary shall have no Accrued Benefit under the Plan.

4.08 Repayment of Member Contribution Account

(a) Restoration of Service

A Member who is reemployed with the Municipality after receiving a refund of amounts allocated to his Member Contribution Account:

- (i) shall have his Eligibility and Vesting Service restored in accordance with Article XI of the Plan, and
- (ii) shall have his Credited Service and any previous Accrued Benefits restored by repaying the Board the entire amount distributed under Section 4.07 plus interest at the Regular Interest rate. Interest shall begin on the first day of the month following the month of the previously refunded Member Contribution Account and shall end on the last day of the month preceding such repayment.

(b) Repayment Requirements

Unless otherwise provided in the Municipality's Adoption Agreement, the Member shall not:

- (i) repay the Member Contribution Account balance and interest later than ninety (90) days after the Member's Reemployment Commencement Date and
- (ii) repay less than 100% of the previously refunded Member Contribution Account plus interest.
- (iii) Upon 100% repayment, the Member shall have his Member Contribution Account restored along with the applicable Credited Service under Section 5.02.
- (iv) Upon less than 100% repayment, the Member shall have the respective subaccounts of his Member Contribution Account restored in the following order:
 - (A) Pick-up Contribution Account;
 - (B) Required After-Tax Contribution Account;
 - (C) Service Purchase Account (if any);
 - (D) Optional After-Tax Contribution Account (if any);
 - (E) Transferred Contribution Account (if any); and
 - (F) Terminated Contribution Account (if any).

The full amount of refund or withdrawal, plus interest, shall be restored to each sub account before restoration of the next sequential sub account. Credited Service under Section 5.02 attributed to such repaid contribution shall be determined upon completion of the repayment.

The Plan may accept any such repayment directly from the Member or through a plan-to-plan transfer from any other qualified retirement plan, Section 401(k) plan, Section 457(b) plan or a Section 403(b) tax sheltered annuity.

ARTICLE V: SUPERANNUATION RETIREMENT PENSION

5.01 Offering of Superannuation Retirement Pension

A Member who Retires on or after satisfaction of the conditions set forth in Section 5.01 of the Adoption Agreement, shall receive a Superannuation Retirement Pension.

5.02 Amount of Superannuation Retirement Pension

(a) Defined Benefit Plan

Subject to the maximum permissible amount limitations in Article XII, a Member's Superannuation Retirement Pension shall equal his Accrued Benefit. The Member's Accrued Benefit shall be the sum of:

- (i) his Basic Benefit as determined under Adoption Agreement; and
- (ii) his Service Increment Benefit if such benefit is authorized under the Adoption Agreement.

The Superannuation Retirement Pension shall be expressed in the normal form of benefit as elected by the Municipality in Section 10.01 of the Adoption Agreement.

(b) Cash Balance Plan

Subject to the maximum permissible amount limitations of Article XII, a Member's Superannuation Retirement Pension shall be his Accrual Benefit as calculated pursuant to Section 5.06. The Superannuation Retirement Pension shall be expressed in the normal form of benefit as elected by the Municipality in Section 10.01 of the Adoption Agreement.

5.03 Computation and Payment of Superannuation Retirement Pension

(a) Computations

The Superannuation Retirement Pension shall be computed by the Board in the form of benefit selected by the Member. A Member shall select the form of benefit for his Superannuation Retirement Pension as either the normal form as elected by the Municipality in Section 10.01 of its Adoption Agreement or any eligible optional form as elected by the Municipality in Section 10.02 of its Adoption Agreement. If no optional form of benefit is selected by the Member, the Pension benefit shall be paid in the normal form.

(b) Payments

Payments shall begin no earlier than the Member's Superannuation Retirement Date and begin no later than the date specified in Section 10.04(b) of the Plan. Between the dates a Member is first eligible to receive Superannuation Retirement Pension and the Mandatory Commencement of Benefits date specified in Section 10.04(b), a Member must apply for benefits to commence. The Member's Benefit Commencement Date shall be the first day of the month coincident with or next following the later of (i) Member's Termination of Employment following the Superannuation Retirement Date; (ii) the date specified by the Member in his or her application, or (iii) the date the application is approved by the Board.

Payments for an annuity form of benefit shall continue until the last scheduled payment coincident with the month of the Member's death or, if applicable, the month of the death of the Survivor Annuitant.

The above notwithstanding, if a Member's Retirement arises due to a Severance from Credited Service, and the Member remains employed by the Municipality, payment shall

begin no earlier than the Member's Normal Retirement Age as set forth in Treasury Regulation § 1.401(a)-1(b).

5.04 Involuntary Lump Sum Payment of Superannuation Retirement Pension

If elected by the Municipality in its Adoption Agreement, a lump sum payment shall be made for a Superannuation Retirement Pension to Members, with the Member's consent, if the lump sum Actuarial Equivalent of the Member's vested Accrued Benefit is less than or equal to \$5,000.

However, effective as of January 1, 2006, if the mandatory distribution is greater than \$1,000 but less than \$5,000, and the Member does not elect to have such distribution paid directly to an Eligible Retirement Plan, specified by the Member in a direct rollover or to receive the distribution directly, then the Board will (i) pay the distribution in a direct rollover to an individual retirement plan designated by the Board; or (ii) retain the distributable amount until the Member elects to have such benefit paid provided, however, that such benefit shall commence on or before the Required Beginning Date as set forth under Section 10.04(b).

If such a lump sum payment is made or transferred to an Individual Retirement Account or an Eligible Retirement Plan, the Member's vested Accrued Benefit shall be disregarded and he shall not be entitled to any other Pension benefits under the Plan.

5.05 Late Retirement

Except as provided in Article X, a Member shall receive Credited Service for Service completed after the Member's Superannuation Retirement Date, until subsequent Termination of Employment.

5.06 Cash Balance Superannuation Retirement Pension

(a) Accrued Benefit

- (i) A Member's Accrued Benefit, as of any determination date (on or prior to the Superannuation Retirement Date), means a lifetime annuity in the normal form of benefits as described in Section 10.01 of the Plan commencing at a Participant's Superannuation Retirement Date, calculated by projecting the Member's Hypothetical Account Balance to Superannuation Retirement Age with interest at the Cash Balance Interest Crediting Rate in effect at the date of determination, and converting the projected account to an Actuarial Equivalent benefit payable in the normal form at the Member's Benefit Commencement Date.
- (ii) In the event of a change in the assumptions defined under Section 1.04, Actuarial Equivalence/ or Actuarial Equivalent such that the change would result in a lower projected Superannuation Retirement Pension, the Accrued Benefit will be determined as the last day of the Stability Period immediately preceding the Stability Period in which the assumption change takes effect. In no event will a Member's accrued benefit be less than the Accrued Benefit defined in this subsection

(b) Establishment of Hypothetical Account Balance.

A Hypothetical Account Balance shall be established and maintained for each Member. Additions to and reductions in the Hypothetical Account Balance shall be made in accordance with the provisions set forth below. This Hypothetical Account Balance shall be a hypothetical account for bookkeeping purposes only and neither the maintenance nor the adding of credits thereto shall be construed as an allocation of assets of the Plan to, or a segregation of such assets in, any such Hypothetical Account Balance, or otherwise creating a right for any individual to receive specific assets of the Plan. Benefits provided under the

Plan shall be paid from the general assets of the Trust in the amounts, in the forms, and at the times provided, under the terms of the Plan. When applying any statutory or Plan limitation and/or minimum benefit that is expressed in terms of an annuity to the benefit derived from the Hypothetical Account Balance, the limit shall be applied to the annuity derived from the Hypothetical Account Balance that is payable at the time and in the form corresponding to the Plan limitation or minimum benefit, determined under the terms of the Plan.

(c) Cash Balance Contribution Credits

As of the last day of each Plan Year, a Cash Balance Contribution Credit amount as set forth in the Adoption Agreement shall be credited to such Member's Hypothetical Account. If the Member is employed for a period of less than the full Plan Year, the Cash Balance Contribution Credit shall be equal to the ratio of (i) the number of days in which the Member is employed in the Plan Year; to (ii) 365.

(d) Cash Balance Interest Credits

At the end of each Cash Balance Interest Credit Period, a Cash Balance Interest Credit shall be credited to the Hypothetical Account Balance. The Cash Balance Interest Credit shall be calculated by multiplying the balance in the Member's Hypothetical Account Balance at the beginning of the Cash Balance Interest Credit Period by the Cash Balance Interest Crediting Rate applicable for such Cash Balance Interest Credit Period, based upon the Stability Period and the Lookback Month that applies for the Cash Balance Interest Credit Period. No Cash Balance Interest Credits shall accrue to any portion of the Hypothetical Account Balance after the annuity starting date that applies to that portion.

(e) Cash Balance Interest Credit Period

The Cash Balance Interest Credit Period shall be each calendar quarter.

ARTICLE VI: EARLY RETIREMENT PENSION

6.01 Offering of Early Retirement Pension

The Municipality shall elect in its Adoption Agreement whether to offer an Early Retirement Pension. If the Municipality elects to offer an Early Retirement Pension, a Member who satisfies the eligibility criteria specified in Section 6.02 of its Adoption Agreement and who Retires on or after the Early Retirement Date, but before the Superannuation Retirement Date, may elect to receive an Early Retirement Pension.

6.02 Eligibility for Early Retirement Pension

If the Municipality elects to provide an Early Retirement Pension, its Adoption Agreement shall specify the following eligibility criteria:

- (a) The minimum age, if any, for a Member to be eligible for an Early Retirement Pension,
- (b) The minimum years of Vesting Service, if any, required to be completed to be eligible for an Early Retirement Pension, and
- (c) The minimum age and years of Vesting Service combined (expressed as a single cumulative number), if any, required to be completed to be eligible for an Early Retirement Pension,

The Municipality may elect to provide for more than one method of determining Member eligibility for the Early Retirement Pension under (a), (b) and (c).

If a Member must satisfy a minimum age and Vesting Service requirement for an Early Retirement Pension, a Member who has a Termination of Employment after satisfying the Vesting Service requirement but not the minimum age requirement may elect to receive an Early Retirement Pension upon satisfying the minimum age requirement.

6.03 Amount of Early Retirement Pension

Subject to the maximum permissible amount limitations of Article XII of the Plan, if the Municipality elects to provide an Early Retirement Pension, it shall equal the Member's vested Accrued Benefit or the Actuarial Equivalent of the vested Accrued Benefit as of the Early Retirement Date.

The formula specified by the Municipality in Section 5.02 of the Adoption Agreement shall be used to calculate the Early Retirement Pension in the normal form of benefit as elected by the Municipality in Section 10.01 of the Adoption Agreement. The above notwithstanding, the Early Retirement Pension payable from a Cash Balance Plan shall be the Actuarial Equivalent of his Hypothetical Account Balance determined as of the Benefit Commencement Date.

The Early Retirement Pension shall be adjusted by any reductions elected by the Municipality in its Adoption Agreement for a reduced Early Retirement Pension when the Member's Benefit Commencement Date is prior to his Superannuation Retirement Date.

6.04 Computation and Payment of Early Retirement Pension

(a) Computations

The Early Retirement Pension shall be computed by the Board in the form of benefit selected by the Member. A Member shall select the form of benefit for his Early Retirement Pension as either the normal form as elected by the Municipality in Section 10.01 of its Adoption Agreement or any eligible optional form as elected by the Municipality in Section 10.02 of

its Adoption Agreement. If no optional form of benefit is selected by the Member, the Pension benefit shall be paid in the normal form.

(b) Payments

Payments shall begin no earlier than the Early Retirement Date and begin no later than the date specified in Section 10.04(b) of the Plan. Between the dates a Member is first eligible to receive the Early Retirement Pension and the Mandatory Commencement of Benefits date specified in Section 10.04(b), a Member must apply for benefits to commence. The Member's Benefit Commencement Date shall be the first day of the month coincident with or next following the later of (i) the Member's Termination of Employment following Early Retirement Date; (ii) the date the application is approved by the Board; or (iii) the date specified by the Member in his or her application. The above notwithstanding, if a Member's Retirement arises due to a Severance from Credited Service, and the Member remains employed by the Municipality, payment shall begin no earlier than the Member's Normal Retirement Age as set forth in Treasury Regulation § 1.401(a)-1(b).

Payments for an annuity form of benefit shall continue until the last scheduled payment coincident with the month of the Member's death or, if applicable, the month of the death of the Survivor Annuitant.

6.05 Limited Offering of Early Retirement Pension Under Alternative Eligibility Requirements

The Municipality may amend this Plan to provide for different eligibility requirements for an Early Retirement Pension as part of a bona fide retirement incentive program ("Program"). Prior to the implementation of any such Program, the Municipality shall:

- (a) submit to the System a proposed addendum as an amendment to its Adoption Agreement specifying the proposed Program's terms and conditions as tentatively approved by the Municipality's governing authority; and
- (b) provide a draft of the disclosure documents to be provided to eligible Members explaining the Program and an illustration of the Program's impact on a typical Member; and
- (c) provide an explanation of the Municipality's reason for the Program including the expected Municipality benefits; and
- (d) request the System to complete an actuarial cost study of the proposed Program.

Upon completion of the actuarial cost study, the System shall provide the Municipality the cost study results and may request additional information from the Municipality. If the Municipality elects to amend the Plan to implement the Program, it shall provide the System with an ordinance or resolution (i) authorizing an amendment of the Plan in the form of a proposed addendum; (ii) a copy of the disclosure documents for each eligible Member; and (iii) identifying the Program's final terms and conditions, the estimated annual and total additional costs to the Municipality's Plan and any other information requested by the System.

Such Program shall be permitted only upon a determination by the Board that (i) additional benefits thereunder, when added to all other benefits provided under the plan do not exceed the limitation on benefits set forth under Code Section 415(b); and (ii) the Program does not otherwise violate any tax qualification provisions of the Code.

ARTICLE VII: DISABILITY PENSION

7.01 Offering of Disability Pension

The Municipality may elect in its Adoption Agreement to provide a disability benefit under the Plan. If the Municipality elects to provide such benefit, an active Member who, prior to satisfying the requirements for a Superannuation Retirement Pension, becomes Disabled and who satisfies the eligibility criteria established in Section 7.02 of the Municipality's Adoption Agreement shall receive a Disability Pension.

7.02 Eligibility for Disability Pension

If the Municipality elects to provide a disability benefit, the Municipality shall also elect the eligibility criteria for Member submission of an application for a non-service connected Disability Pension. Where the disability of a Member is determined to be a Service Connected Disability, no minimum period of service, nor minimum age, shall be required for eligibility. In addition to any other criteria elected by the Municipality which shall be non-discretionary and applied on a uniform basis, a Member may become eligible for a Disability Pension only if he is an Eligible Employee on his Disability Date.

7.03 Amount of Disability Pension

Subject to the Maximum Permissible Dollar Limitations of Article XII of the Plan, if the Municipality elects to provide a Disability Pension, its Adoption Agreement shall establish the amount of a Member's Disability Pension including any adjustments or offsets for payment made to the Member for the same disability. The Municipality shall be allowed to establish a different benefit amount if the Member is determined to have a Service Connected Disability.

The above notwithstanding, the Disability Pension payable from a Cash Balance Plan shall be the Actuarial Equivalence of his Hypothetical Account Balance determined as of the Benefit Commencement Date.

7.04 Computation and Payment of Disability Pension

(a) Benefit Commencement Date

- (i) The Benefit Commencement Date shall be no earlier than the later of the first day of the month coincident with or next following the Member's Termination of Employment; or
- (ii) the first day of the first month coincident with or next following the Disability Date as determined by the Board.

(b) Program Computations

The Disability Pension shall be computed by the Board in the Single Life form of benefit.

(c) Payments

- (i) Shall be in accordance with Article X of the Plan.
- (ii) Payments shall continue until earlier of:
 - (A) the last scheduled payment coincident with the month the Member has been determined to no longer be Disabled, or
 - (B) the last scheduled payment coincident with the month of the Member's death.

7.05 Recovery from Disability

If a Member recovers from Disability and is reemployed as an Employee under the Plan, the Member's Credited Service shall be restored up to the Benefit Commencement Date of his Disability Pension. The Member then shall commence to accrue benefits under the Plan based upon his Credited Service before the Benefit Commencement Date of his Disability Pension and after his Reemployment Commencement Date.

7.06 Application and Continuing Evidence of Total Disability

- (a) A Member may, upon application or on application of one acting on the Member's behalf, or upon application of a responsible official of the Municipality, be retired by the Board on a disability retirement following a review of the application and any supporting medical records and other documentation submitted with the application certifies to the Board that the Member is unable to engage in any gainful employment and that said Member ought to be retired.
- (b) The Board may require a Disabled Member to undergo medical examination by a physician designated by the Board at least once per year prior to the Member's Superannuation Retirement Date. Such examination shall be made at the place of residence of the Member or other place mutually agreed upon. Should the physician report and certify to the Board that such Disabled Member is no longer physically or mentally incapacitated for the performance of duty and is able to engage in a gainful occupation, then his disability retirement allowance shall be discontinued, and in lieu thereof an early involuntary retirement allowance shall at that time be granted as if such person had been retired not voluntarily, if such provision is selected by the Municipality in Section 6.01 of the Adoption Agreement and if the Member shall have had the required number of years of total service as stated in the Adoption Agreement.
- (c) Should a Disabled Member refuse to submit to a medical examination as provided above, his Disability Pension shall be discontinued until the withdrawal of such refusal, and should such refusal continue for one year, then all his right in and to any disability retirement allowance or for early involuntary retirement allowance shall be forfeited.
- (d) Should a Disabled Member die before the amount payable under this section equals the total amount allocated to his Member Contribution Account, plus the balance in the Member's Excess Investment Account as of the Effective Date of Disability Retirement, the Board shall pay to the Beneficiary (if living, or if the Beneficiary predeceased the Disabled Member, or no Beneficiary was named, then to the Disabled Member's estate) an amount equal to the difference between such amounts paid under this Section and the Member Contribution Account and the balance in the Member's Excess Investment Account. If such difference is less than one hundred dollars (\$100) and no letters have been taken out on the estate within six (6) months after the Disabled Member's death, such difference may be paid to the undertaker or to any person or Municipality who or which shall have paid the claim of the undertaker.

ARTICLE VIII: DEFERRED VESTED PENSION

8.01 Offering of Deferred Vested Pension

A Member who meets the eligibility criteria specified in Section 8.02 shall receive a Deferred Vested Pension.

8.02 Eligibility for Deferred Vested Pension

A Member is eligible to receive a Deferred Vested Pension provided that: (a) the Member has completed the minimum amount of Vesting Service specified in Section 8.05 of the Municipality's Adoption Agreement; and (b) the Member Terminated Employment but has not yet Retired.

8.03 Amount of Deferred Vested Pension

The Member's Deferred Vested Pension shall equal his Vested Accrued Benefit as of the date of his Termination of Employment.

8.04 Computation and Payment of Deferred Vested Pension

(a) Computations

The Deferred Vested Pension shall be computed by the Board in the form of benefit selected by the Member. A Member shall select the form of benefit for his Deferred Vested Pension as either the normal form as elected by the Municipality in Section 10.01 of its Adoption Agreement or any eligible optional form as elected by the Municipality in Section 10.02 of its Adoption Agreement. If no optional form of benefit is selected by the Member, the Pension benefit shall be paid in the normal form.

(b) Payments

Payments shall begin no earlier than the Member's Early Retirement Date and begin no later than the date specified in Section 10.04(b) of the Plan. Between the dates a Member is first eligible to receive his Early Retirement Pension and the Mandatory Commencement of Benefits date specified in Section 10.04(b), a Member must apply for benefits to commence; provided however, the Member's Benefit Commencement Date shall be the first day of the month coincident with or next following the later of (1) the Member's Termination from Employment; or (2) the date the application is approved by the Board.

Payments for an annuity form of benefit shall continue until the last scheduled payment coincident with the month of the Member's death or, if applicable, coincident with the month of the death of the Survivor Annuitant.

(c) Voluntary Lump Sum Payment of Deferred Vested Pension

Notwithstanding the provisions of paragraphs (a) and (b), if elected by the Municipality in its Adoption Agreement, a lump sum payment shall be made for a Deferred Vested Pension to Members, at any time on or after the Member's Termination of Employment with the Member's consent, if the lump sum Actuarial Equivalent of the Member's vested Accrued Benefit is less than \$5,000.

If such a lump sum payment is made or transferred to an Individual Retirement Account or an Eligible Retirement Plan, the Member's vested Accrued Benefit shall be disregarded and he shall not be entitled to any other benefits under the Plan.

(d) Involuntary Lump Sum Payment of Deferred Vested Pension

Notwithstanding the provisions of paragraphs (a), (b) and (c), if elected by the Municipality in its Adoption Agreement, a lump sum payment shall be made for a Deferred Vested Pension

to Members, at any time on or after the Member's Termination of Employment and without the Member's consent, if the lump sum Actuarial Equivalent of the Member's vested Accrued Benefit is less than or equal to \$5,000 or such other higher amount as the Board may approve from time to time.

However, effective as of January 1, 2006, if the mandatory distribution is greater than \$1,000, and the Member does not elect to have such distribution paid directly to an Eligible Retirement Plan, specified by the Member in a direct rollover or to receive the distribution directly, then the Board will (i) pay the distribution in a direct rollover to an individual retirement plan designated by the Board; or (ii) retain the distributable amount until the Member elects to have such benefit paid provided, however, that such benefit shall commence on or before the Required Beginning Date set forth under Section 10.04(b).

If such a lump sum payment is made or transferred to an Individual Retirement Account or an Eligible Retirement Plan, the Member's vested Accrued Benefit shall be disregarded and he shall not be entitled to any other Pension benefits under the Plan.

8.05 Vesting Schedule

A Member's Accrued Benefit derived from Municipality contributions shall be one hundred percent (100%) vested:

- (a) on and after his Superannuation Retirement Date (if employed on or after that date),
- (b) if his employment Terminates as a result of:
 - (i) death, provided the member has satisfied the death benefit eligibility criteria elected by the Municipality in Section 9.01 of its Adoption Agreement; or
 - (ii) Disability, provided the member has satisfied the Disability benefit eligibility criteria elected by the Municipality in Section 7.01 of its Adoption Agreement;
- (c) if there is a complete termination of the Plan, but only to the extent the benefits are funded.

For all other circumstances other than those applicable above, a Member shall receive a vested percentage of his Accrued Benefit derived from Municipality contributions equal to the percentage of completed vesting service designated in the Municipality's Adoption Agreement.

8.06 Member Contribution Forfeitability

A Member shall be one hundred percent (100%) vested at all times in the amounts allocated to his Member Contribution Account.

ARTICLE IX: DEATH BENEFITS

9.01 Pre-Retirement Death Benefit

(a) Eligibility and Amount

If a Member dies while an Employee of the Municipality, the Member's designated Beneficiary shall be entitled to an immediate death benefit equal to Actuarial Equivalent of his Vested Accrued Benefit, provided the Member, prior to his death, satisfied the death benefit eligibility criteria elected by the Municipality in Section 9.01 of its Adoption Agreement.

If the Member fails to satisfy the death benefit eligibility criteria prior to his death, the designated Beneficiary shall receive the value of the Member Contribution Account balance valued as of the Member's date of death in a single lump sum payment.

(a) Optional Forms of Payment

Upon satisfying the death benefit eligibility criteria, a Member shall have the option of filing with the System an application to specify a form of payment for the distribution of the death benefit. The available forms of payment shall be the forms of benefit elected by the Municipality in Section 10.02 of its Adoption Agreement.

If the Member fails to specify a form of payment upon satisfying the death benefit eligibility criteria, it will be deemed that the Member has specified the optional form of benefit identified as the "Single Life Guaranteed Present Value" and shall be paid to the designated Beneficiary in a single lump-sum payment or, in accordance with the limitations found in Section 10.04 of the Plan, an Actuarial Equivalent period certain annuity.

9.02 Deferred Vested Death Benefit

(a) Eligibility and Amount

If a Deferred Vested Member eligible to receive a Deferred Vested Pension dies prior to the Benefit Commencement Date, the Member's designated Beneficiary shall be entitled to a death benefit equal to Actuarial Equivalent of his Vested Accrued Benefit, provided the Member, prior to his death, satisfied the death benefit eligibility criteria elected by the Municipality in Section 9.01 of its Adoption Agreement.

If the Member fails to satisfy the death benefit eligibility criteria prior to his death, the designated Beneficiary shall receive the value of the Member Contribution Account balance valued as of the Member's date of death less any benefit payment paid to or on behalf of the Member. Such amount shall be paid in a single lump sum payment.

(b) Optional Forms of Payment

Upon satisfying the death benefit eligibility criteria, a Member shall have the option of filing with the System an application to specify a form of payment for the distribution of the death benefit. The available forms of payment shall be the forms of benefit elected by the Municipality in Section 10.02 of its Adoption Agreement.

If the Member fails to specify a form of payment upon satisfying the death benefit eligibility criteria, it will be deemed that the Member has specified the optional form of benefit identified as the "Single Life Guaranteed Present Value" and shall be paid to the designated Beneficiary in a single lump-sum payment or, in accordance with the limitations found in Section 10.04 of the Plan, an Actuarial Equivalent period certain annuity.

9.03 Post Retirement Death Benefit

If a Member's death occurs after the Benefit Commencement Date and there remains no further benefit payment obligations based on the Member's elected optional form of benefit, the designated Beneficiary shall be entitled to an amount equal to the Member's Contribution Account as of the Benefit Commencement Date less the total accumulated benefit payment amounts made to the Member or to the applicable recipients designated by the Member; otherwise no death benefit is payable.

9.04 Minimum Death Benefit

The minimum death benefit shall be a refund of the Member's Contribution Account valued at the time of the Member's death less any benefit payments paid to or on behalf of the Member.

9.05 Limitation on Death Benefit

Notwithstanding anything in this Article to the contrary, death benefits shall not be paid in excess of the amount that would be considered an incidental death benefit as defined under Treasury Regulation § 1.401-1(b)(1)(i).

ARTICLE X: PAYMENT OF ACCRUED BENEFIT - OPTIONAL FORMS OF PAYMENT

10.01 Normal Form of Benefit

The Municipality shall elect in its Adoption Agreement to provide one of the following the normal form of benefits that shall be used for the computation and payment of pension benefits.

(a) Single Life

An immediate monthly benefit payment payable for the life of the Member.

(b) Life and 50% Spouse Benefit

An immediate monthly benefit payment payable for the life of the Member and the life of the Spouse. Upon the Member's death, the Spouse at the time of the Member's death shall receive a survivor's annuity equal to fifty percent (50%) of the monthly benefit amount being received by the Member immediately preceding his death and such survivor annuity shall be paid for the remainder of the Spouse's life. If the Member has no Spouse at the time of death, and the Survivor Annuitant is one or more of Member's children under the age of 18, (or, if in college, under the age of 23), the survivor's annuity shall be divided and paid equally to each child until such child attains age 18 (or, if in college, age 23).

(c) Life and 100% Spouse Benefit

An immediate monthly benefit payment payable for the life of the Member and the life of the Spouse. Upon the Member's death, the spouse at the time of the Member's death shall receive a survivor's annuity equal to one hundred percent (100%) of the monthly benefit amount being received by the Member immediately preceding his death and it shall be paid for the remainder of the Spouse's life. If the Member has no Spouse at the time of death, and the Survivor Annuitant is one or more of Member's children under the age of 18, (or, if in college, under the age of 23), the survivor's annuity shall be divided and paid equally to each child until such child attains age 18 (or, if in college, age 23).

10.02 Optional Forms of Benefit

Subject to the limitations of Section 12.08 of the Plan, if the Member selects an optional form of benefit, the Member shall receive the Actuarial Equivalent of the Vested Accrued Benefit payable at Early Retirement or Superannuation Retirement Date.

(a) Required Optional Forms of Benefit

The Municipality shall provide the following optional forms of benefit for the computation and payment of monthly benefits:

(i) Single Life with Minimum Net Present Value

A monthly benefit payable for the life of the Member; provided however, that the total benefit payments shall not be less than the present value of the Member's Vested Accrued Benefit ("NPV") as of the Benefit Commencement Date. Should the Member die prior to receiving benefit payments at least equal to the NPV, the designated beneficiary shall receive the remaining amount.

(ii) Life and 50% Survivor Annuitant Benefit

A monthly benefit payable for the life of the Member. Upon the Member's death, the Survivor Annuitant shall receive fifty percent (50%) of the monthly benefit amount being received by the Member immediately preceding his death for the remainder of the Survivor Annuitant's life.

(iii) Life and 100% Survivor Annuitant Benefit

A monthly benefit payable for the life of the Member. Upon the Member's death, the Survivor Annuitant shall receive one hundred percent (100%) of the monthly benefit amount being received by the Member immediately preceding his death for the remainder of the Survivor Annuitant's life.

(b) Employer Elective Optional Forms of Benefit

The Municipality may elect in its Adoption Agreement to provide the following additional optional forms of benefit for the computation and payment of monthly benefits:

(i) Single Life with 10 Years Certain

A monthly benefit payable for the life of the Member; provided however; that the total number of monthly benefit payments made shall not be less than 120. Should the Member die prior to receiving 120 monthly benefit payments, the designated Beneficiary shall receive the remaining monthly benefit payments.

(ii) Single Life with 20 Years Certain

A monthly benefit payable for the life of the Member; provided however; that the total number of monthly benefit payments made shall not be less than 240. Should the Member die prior to receiving 240 monthly benefit payments, the designated Beneficiary shall receive the remaining monthly benefit payments.

(iii) Lump Sum Payment with Reduced Monthly Benefit

A lump sum payment of the Member's Contribution Account at his Benefit Commencement Date combined with a reduced monthly benefit based on the Member's election of one of remaining available optional forms of benefit. The Member may elect to withdraw less than the full amount of the Member Contribution Account. The reduced monthly benefit shall be the Actuarial Equivalent of the Member's Vested Accrued Benefit less the lump sum payment of the Member's Contribution Account.

The Member may select in writing one of the permitted optional forms of benefit prior to his Benefit Commencement Date. This optional form selection shall become irrevocable upon deposit of the Member's first benefit payment, including lump sum payments. If a Member fails to elect one of the optional forms of benefit as of his Benefit Commencement Date, the System shall deem the Member as having elected the Normal Form of Benefit specified in Section 10.01 of the Municipality's Adoption Agreement.

10.03 Cost of Living Adjustment

If elected by the Municipality in its Adoption Agreement, eligible Plan Members shall receive a cost of living adjustment applied to eligible benefit payments in an amount provided in the Municipality's Adoption Agreement as follows:

(a) Municipality Discretionary Percentage Rate

The Municipality may provide from time to time a specified cost of living adjustment to be applied to eligible benefit payments. Any such cost of living adjustment does not obligate the Municipality to provide future cost of living adjustments. Each such adjustment shall be specified as a fixed percentage rate to be applied equitably to all eligible benefit payments and shall be adopted by the Municipality as an amendment to the Plan in accordance with the provisions of Article XVI.

Any Municipality discretionary adjustment authorized and adopted shall not exceed the percentage change calculated in accordance with Subsection (c) below. If the discretionary adjustment percentage rate exceeds the percentage change calculated in accordance with Subsection (c) below, the cost of living adjustment shall be adjusted to the to the rate calculated in Subsection (c) below.

(b) Fixed Percentage Rate

If a fixed percentage cost of living adjustment has been elected by the Municipality in the Adoption Agreement, the Municipality will provide for a cost of living adjustment based on a specified fixed percentage rate to be applied equitably to all eligible benefit payments.

Any fixed percentage rate adjustment authorized and adopted shall not exceed the percentage change calculated in accordance with Subsection (c) below. If the fixed percentage rate specified the Adoption Agreement exceeds the percentage change calculated in accordance with Subsection (c) below, the cost of living adjustment shall be adjusted to the rate calculated in Subsection (c) below.

(c) Adjustable Percentage Rate based on the Consumer Price Index

The Municipality may provide for a cost of living adjustment based on the United States Bureau of Labor Statistics' Consumer Price Index. The index series used shall be the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100.

- (i) Such increases shall be a percentage to be applied to the existing benefit payment amount.
- (ii) The specific percentage change shall be calculated by:
 - (A) averaging the monthly index amounts for the final three months of each calendar year immediately preceding the year in which the increase is to be applied (the "Second Year") and averaging the monthly index for the final three months of the calendar year preceding the Second Year (the "First Year"); and
 - (B) Subtracting the First-Year average from the Second-Year average; and
 - (C) Dividing the result of subsection (B) by the First-Year average.
- (iii) If the result in subsection (ii)(C) is less than zero, no adjustment shall be made for the applicable Plan year.
- (iv) If the result in subsection (ii)(C) is greater than zero, the percentage amount, rounded down to one decimal place, shall be applied to all eligible benefit payments.

Cost of living adjustments shall be applied to eligible benefit payments beginning with the payments dated April 1 in the applicable Plan Year.

(d) Maximum Cost of Living Adjustment

Notwithstanding anything in this Section, in no event shall a cost of living adjustment cause annual payment to a Member or Beneficiary to exceed (i) seventy-five percent (75%) of the Member's Final Average Salary; or (ii) one hundred thirty percent (130%) of the Member's or Beneficiary's annual Pension payment; each determined as of the Member's Date of Termination of Service.

For the purposes of this Section 10.03, "eligible benefit payments" shall mean payments to eligible Members that were disbursed or required to be disbursed by December 31 of the Plan Year immediately preceding the Plan Year in which the cost of living adjustment is to be applied. For the purposes of this Section 10.03, "eligible Plan Members" shall mean

Members receiving benefit payments for an Early or Superannuation Retirement Pension and, if elected by the Municipality in its Adoption Agreement, Members receiving a Disability or Deferred Vested Pension or Survivor Annuitants receiving a joint and survivor annuity.

10.04 Commencement of Benefits/Payment Schedules

(a) Entitlement to Payments

The Member is entitled to commence the payment of his Superannuation or Early Retirement on the first day of the first month coincident with or following his Termination of Employment following his Superannuation or Early Retirement Date.

(b) Mandatory Commencement of Benefits – Required Beginning Date

In no event shall the Board commence the payment of a Member's Superannuation Retirement Pension, Early Retirement Pension or Deferred Vested Pension later than the first day of April in the calendar year following the later of:

- (i) the calendar year in which the Member attains age 70-1/2, or
- (ii) the calendar year in which the Member Terminates Employment as required by Code Section 401(a)(9).

(c) Benefit Payments to Beneficiaries After Member's Death

- (i) If Pension benefit payments begin prior to the Member's death, the remaining Vested Accrued Benefit will be distributed to his Beneficiary at least as rapidly as under the method of benefit payments being used as of the date of the Member's death.
- (ii) If the Member dies after application to the Board for the commencement of benefits but prior to the Benefit Commencement Date, the Member's Beneficiary, based on the Actuarial Equivalence of a single, lump sum payment calculated as of the Member's date of death, shall receive the greater of:
 - (A) the remaining vested Accrued Benefit, or
 - (B) the total of any Death Benefits described in Article IX as elected by the Municipality in its Adoption Agreement.
- (iii) If the Member dies before his Benefit Commencement Date the following rules apply:
 - (A) If the Member's Spouse is the sole Beneficiary, distribution must begin by December 31 of the calendar year immediately following the calendar year in which the Member dies or by December 31 of the calendar year in which the Member would have attained age 70½, if later.
 - (B) If the Member's Spouse is not the sole Beneficiary, then distribution must begin by December 31 of the calendar year immediately following the calendar year in which the Member dies.
 - (C) If there is no designated Beneficiary as of September 30 of the year following the year of the Member's death, the Member's entire benefit must be distributed by December 31 of the calendar year containing the fifth anniversary of the Member's death.
 - (D) If the Member's Spouse is the sole Beneficiary and the Spouse dies after the Member but before distributions to the Spouse begin, this Section 10.04(c)(iii) (other than Section 10.04(c)(iii)(A)) will apply as if the Spouse were the Member.

(d) Conformance to Code Section 401(a)(9)

- (i) All distributions will be made in accordance with Code Section 401(a)(9), the regulations promulgated under Code Section 401(a)(9) and any other provisions reflecting the requirements of Code Section 401(a)(9) and prescribed by the Internal Revenue Service; and the terms of the Plan reflecting the requirements of Code Section 401(a)(9) override the distribution options (if any) in the Plan which are inconsistent with those requirements.
- (ii) Effective January 1, 2006, unless the Member's benefit is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first distribution calendar year distributions will be made in accordance with sections (e), (f) and (g) of this Section 10.04. If the Member's benefit is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code Section 401(a)(9) and the Treasury regulations.
- (iii) Notwithstanding any other provision in the Plan to the contrary, distributions from the Plan will be made in accordance with a good faith interpretation of Code Section 401(a)(9) and the regulations thereunder as applicable to governmental plans with the meaning of Code Section 414(d) and shall be implemented in accordance with the grandfathering provisions of such regulations applicable to annuity option distributions in effect on April 17, 2001.

(e) Determination of Amount to be Distributed Each Year

(i) Annuity Distributions

If the Member's benefit is paid in the form of annuity distributions under the Plan, payments under the annuity will satisfy the following requirements:

- (A) the annuity distributions will be paid in periodic payments made at intervals not longer than one year;
- (B) the distribution period will be over a life (or lives) or over a period certain not longer than the period described in Section 10.04 (f) or 10.04 (g);
- (C) Once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted; and
- (D) Payments will either be non-increasing or increase only as follows:
 - 1. by an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the Bureau of Labor Statistics;
 - 2. to the extent of the reduction in the amount of the Member's payments to provide for a survivor benefit upon death, but only if the Beneficiary whose life was being used to determine the distribution period described in Section 10.04(f) dies;
 - 3. to provide cash refunds of employee contributions upon the Member's death;
 - 4. to pay increased benefits that result from the allocation of Excess Interest pursuant to Section 15.10; or
 - 5. to pay increased benefits that result from a Plan amendment.

(ii) Amount Required to be Distributed by Required Beginning Date

The amount that must be distributed on or before the Member's Required Beginning Date (or, if the Member dies before distributions begin, the date distributions are required to begin under section (c)(iii)(A) or (B)) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the Member's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the Member's Required Beginning Date.

(iii) Additional Accruals After First Distribution Calendar Year

Any additional benefits accruing to the Member in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

(f) Requirements For Annuity Distributions That Commence During Member's Lifetime

(i) Joint Life Annuities Where the Beneficiary Is Not the Member's Spouse

If the Member's benefit is being distributed in the form of a joint and survivor annuity for the joint lives of the Member and a non-spouse Beneficiary, annuity payments to be made on or after the Member's Required Beginning Date to the Beneficiary after the Member's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the Member using the table set forth in Q&A-2 of section 1.401(a)(9)-6 of the Treasury regulations. If the form of distribution combines a joint and survivor annuity for the joint lives of the Member and a non-spouse Beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the Beneficiary after the expiration of the period certain.

(ii) Period Certain Annuities

Unless the Member's Spouse is the sole designated Beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the Member's lifetime may not exceed the applicable distribution period for the Member under the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of the Treasury regulations for the calendar year that contains the Benefit Commencement Date. If the Benefit Commencement Date precedes the year in which the Member reaches age 70, the applicable distribution period for the Member is the distribution period for age 70 under the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of the Treasury regulations plus the excess of 70 over the age of the Member as of the Member's birthday in the year that contains the Benefit Commencement Date. If the Member's Spouse is the Member's sole Beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the Member's applicable distribution period, as determined under this section (f)(ii), or the joint life and last survivor expectancy of the Member and the Member's Spouse as determined under the Joint and Last Survivor Table set forth in section 1.401(a)(9)-9 of the Treasury regulations, using the Member's and Spouse's attained ages as of the Member's and Spouse's birthdays in the calendar year that contains the Benefit Commencement Date.

(g) Requirements For Minimum Distributions Where Member Dies Before Date Distributions Begin

(i) Member Survived by Designated Beneficiary

If the Member dies before the date distribution of his or her benefit begins and there is a Beneficiary, the Member's entire benefit will be distributed, beginning no later than the time described in section (c)(iii)(A) or (B), over the life of the designated Beneficiary or over a period certain not exceeding:

(A) unless the Benefit Commencement Date is before the first distribution calendar year, the life expectancy of the Beneficiary determined using the Beneficiary's age as of the Beneficiary's birthday in the calendar year immediately following the calendar year of the Member's death; or

(B) if the Benefit Commencement Date is before the first distribution calendar year, the life expectancy of the Beneficiary determined using the Beneficiary's age as of the Beneficiary's birthday in the calendar year that contains the Benefit Commencement Date.

(ii) No Beneficiary

If the Member dies before the date distributions begin and there is no Beneficiary as of September 30 of the year following the year of the Member's death, distribution of the Member's entire benefit will be completed by December 31 of the calendar year containing the fifth anniversary of the Member's death.

(iii) Death of Spouse Before Distributions to Begin

If the Member dies before the date distribution of his or her benefit begins, the Member's Spouse is the Member's sole Beneficiary, and the Spouse dies before distributions to the Spouse begin, this Section 10.04(g) will apply as if the Spouse were the Member, except that the time by which distributions must begin will be determined without regard to section (c)(iii)(A).

(h) Definitions

(i) Designated Beneficiary

The individual who is designated as the Beneficiary under Section 1.09 of the Plan and is the designated Beneficiary under Code Section 401(a)(9) and section 1.401(a)(9)-4 of the Treasury regulations.

(ii) Distribution Calendar Year

A calendar year for which a minimum distribution is required.

For distributions beginning before the Member's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Member's Required Beginning Date. For distributions beginning after the Member's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to section 10.04(c)(iii).

(iii) Life Expectancy

Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury regulations.

(iv) Required Beginning Date

The date specified in section 10.04(b) of the Plan.

10.05 Member Continuing Employment after Normal Retirement Age

The Municipality may elect in its Adoption Agreement to permit In-service Distributions. If permitted and a Member elects to commence In-service Distribution, the Member's Service and Compensation earned after commencement of benefit payments shall not thereafter be counted as Credited Service or otherwise increase the Member's Accrued Benefit.

10.06 Reemployment of Member after Benefit Commencement Date

The Municipality shall elect in its Adoption Agreement to allow a retired Member, upon reemployment to (i) elect to either continue or cease receiving his Early or Superannuation Retirement Pension; or (ii) be required to suspend receipt of his Early or Superannuation Retirement Pension.

- (a) If permitted in the Municipality's Adoption Agreement and if the Member elects to continue receiving his Retirement Benefit, the Member's Service and Compensation earned after the Reemployment Commencement Date shall not thereafter be counted as Credited Service or otherwise increase the Member's Accrued Benefit.
- (b) If the Municipality's Adoption Agreement requires the Reemployed Retired Member suspend receipt of his Retired Benefit; or if the Member elects to suspend receipt of his Retirement Benefit, the Member's Service and Compensation earned after the Reemployment Commencement Date shall thereafter be counted as Credited Service to increase the Member's Accrued Benefit.
- (c) The Municipality is required to notify the Board immediately of the reemployment status of any Retired Member.

10.07 Rollovers

(a) General Rule

Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Member's election under this Section, a Member may elect, at the time and in the manner prescribed by the Board, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Member, in a direct rollover.

(b) Definitions

(i) Eligible Rollover Distribution

An Eligible Rollover Distribution is any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include: (A) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Member or the joint lives (or joint life expectancies) of the Member and the Member's designated Beneficiary, or for a specified period often (10) years or more; (B) any distribution to the extent such distribution is required under Code Section 401(a)(9); and (C) the portion of any distribution that is a hardship distribution under Code Section 401(k). A Distributee may not elect a direct rollover with respect to an Eligible Rollover Distribution during the Plan Year that is less than \$200. If the Distributee elects to have only a portion of an Eligible Rollover Distribution paid to an Eligible Retirement Plan, that portion must be equal to at least \$500. Notwithstanding anything contained herein to the contrary, the portion of a distribution that is not includible in the gross income because it represents after-tax amounts shall constitute an Eligible Rollover Distribution, but before January 1, 2007, such portion may be transferred only to an individual retirement account or annuity described in Code

Section 408(a) or (b), or to a qualified defined contribution plan described in Code Section 401(a) or 403(a) that agrees to separately account for amounts so transferred, including separately accounting for the portion of the distribution that is includible in gross income and the portion that is not so includible. Effective for distributions on and after January 1, 2007, after-tax amounts also may be rolled over to a defined benefit plan described in Code Section 401(a) or an annuity described in Code Section 403(b), provided in either case that the recipient agrees to separately account for amounts so transferred, including separately accounting for the portion of the distribution that is includible in gross income and the portion that is not so includible.

(ii) Eligible Retirement Plan

An Eligible Retirement Plan is, in the case of an Eligible Rollover Distribution to the Member or Member's Surviving Spouse, an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), a qualified trust described in Code Section 401(a), an annuity contract described in Code Section 403(b) that accepts the Member's Eligible Rollover Distribution and an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision or agency or instrumentality of a state and which agrees to separately account for amounts transferred to such plan from this Plan, provided that such account, annuity, contract, plan or trust accepts the Distributee's Eligible Rollover Distribution. Effective as of January 1, 2008, "eligible retirement plan" shall include a Roth IRA established under Code Section 408A.

Effective as of January 1, 2010, in the case of an Eligible Rollover Distribution to a Beneficiary other than the Member's Surviving Spouse, "eligible retirement plan" shall mean: (i) an individual retirement account described in Code Section 408(a), (ii) an individual retirement annuity described in Code Section 408(b), or (iii) as of January 1, 2008, a Roth IRA established under Code Section 408A which shall be treated as an inherited IRA.

(iii) Distributee

A Distributee includes the Member, former Member, Surviving Spouse or effective January 1, 2010, a nonspouse Beneficiary of the Member.

(iv) Direct Rollover

A Direct Rollover is a payment by the Plan to the Eligible Retirement Plan specified by the Member.

ARTICLE XI: MISCELLANEOUS PROVISIONS AFFECTING THE CREDITING OF SERVICE

11.01 Service Upon Reemployment

The Municipality, in its Adoption Agreement, shall specify the maximum number of consecutive one-year Breaks in Service a reemployed Employee may incur in order for the Employee to have his Eligibility Service, Vesting Service and Credited Service restored from his prior employment with the Municipality. An Employee who is reemployed by the Municipality after incurring the number of consecutive one year Breaks in Service equal to or greater than that elected by the Municipality in its Adoption Agreement, shall not have restored any prior Credited Service, Eligibility Service and Vesting Service.

All restored Credited Service, Eligibility Service and Vesting Service shall apply to the Plan provisions in effect under the Plan at the time the Member is reemployed and again participates in the Plan.

(a) Reemployment Having an Existing Vested Accrued Benefit

- (i) If, at an Employee's Reemployment Commencement Date, the Employee has a Vested Accrued Benefit under the Plan and prior Service is restored, his benefit at Benefit Commencement Date shall be the greater of his Vested Accrued Benefit at his Reemployment Commencement Date or his Vested Accrued Benefit as of his Benefit Commencement Date.
- (ii) If, at the Date of Reemployment, the Employee has a vested Accrued Benefit under the Plan and prior Service is not restored, his benefit at Benefit Commencement Date shall be the sum of his vested Accrued Benefit at his Reemployment Commencement Date and his vested Accrued Benefit for subsequent periods of Plan membership as of his Benefit Commencement Date.

11.02 Service Prior to Original Plan

The Municipality may elect in its Adoption Agreement to grant some or all of an Employee's Service with the Municipality prior to the Original Plan Effective Date as Credited Service.

- (a) The Municipality may require the Member to purchase such Service in amounts necessary to reimburse the Plan for up to the total cost of such Service to the Plan; provided, however, any such purchase cost shall not exceed an amount equal to the Actuarial Equivalent present value of the additional Accrued Benefit attributable to such purchased Service as of the date of purchase. The Plan may accept payment directly from the Member or through a plan-to-plan transfer from any other qualified retirement plan, Section 401(k) plan, Section 457(b) deferred compensation plan or a Section 403(b) tax sheltered annuity.
- (b) If Members are required to purchase prior Credited Service, the Member shall have the option to decline any such Service (rather than received such Credited Service as an automatic grant).

11.03 Qualified Military Service

(a) Definitions.

For purposes of this Section, the following definitions shall apply:

- (i) **Differential Wage Payments** means, effective January 1, 2009, any payments that are made by the Municipality to a Member for any period during which the Member is performing Military Service for more than 30 days and represents all or part of the

Compensation that the Member would have received from the Municipality if he were performing services for the Municipality.

- (ii) **Military Service** means the period of a Member's active duty for training and service in the Army, Navy, Air Force, Coast Guard or Marines of the United States of America, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or national emergency.
 - (iii) **Qualified Military Service** means Military Service during which the Member is entitled to reemployment rights under Chapter 43 Title 38 of the United State Code.
 - (iv) **USERRA** means the Uniformed Services Employment and Reemployment Rights Act of 1994.
- (b) **USERRA**. Notwithstanding any provision of the Plan to the contrary, contributions, benefits and service credit with respect to Qualified Military Service will be provided in accordance with Code Section 414(u). Plan Members who are reemployed in accordance with the requirements of USERRA shall be treated as not having a Break in Service during such Qualified Military Service and such periods of Qualified Military Service shall be counted for Vesting Service and Credited Service except as provided below.
- (c) **Reemployment**. The Municipality shall elect in its Adoption Agreement whether a Plan Member must make-up any required Member Contributions in order to receive Credited Service under the Plan for the period of Qualified Military Service.
- (d) **Make-up Member Contributions**. Except as provided in subsection (i) below, a Member who is required to make-up Member Contributions in accordance with this Section must do so within the time period the begins on the Employee's Reemployment Commencement Date and ends on the date that is earliest of (i) three (3) times the period of Qualified Military Service; (ii) five (5) Years; or (iii) Termination of Employment. The Member may make-up all or a portion of any required Member Contributions and shall receive the amount of Credited Service that is directly proportionate to the percentage of Member Contributions that are made-up. The Member shall designate the Plan Year to which such Employee Contributions relate. The Municipality shall grant Credited Service based on the made-up Member Contributions in the time and manner as such Credited Service is accrued by active Members. Such make-up Member Contributions can be paid to the Plan in a lump sum, in installments or by payroll deduction.
- (e) **Death During Military Service**
- (i) **Deemed Return to Employment**. If a Member dies during a period of Qualified Military Service, the Member shall be treated as having returned to employment with the Municipality on the day before his death and died the next day for purposes of any survivor benefits including pre-retirement survivor benefits and any accelerated vesting. Such Member shall receive Vesting Service for the period of Qualified Military Service.
 - (ii) **Credited Service**. The Municipality shall elect in its Adoption Agreement whether to grant Credited Service to any Member who dies during a period of Qualified Military Service. If the Municipality elects to grant such Credited Service and the Plan requires Member Contributions in order for a Member to receive Credited Service, the Member shall be deemed to have made the maximum amount of required Member Contributions during the period of Qualified Military Service.

(f) Disability during Qualified Military Service.

The Municipality shall elect in its Adoption Agreement whether to grant Credited Service and Vesting Service if a Member becomes Disabled during a period of Qualified Military Service. If the Municipality elects to grant Credited Service to such Members, the Municipality shall also credit Vesting Service to the Member for such period. The Municipality may elect to credit Vesting Service without crediting Credited Service. However, if the Municipality elects to grant such Credited Service and the Plan requires Member Contributions in order for a Member to receive Credited Service, the Member shall be deemed to have made the maximum amount of required Member Contributions during the period of Qualified Military Service.

(g) Compensation.

For purposes of this Section, a Member's Compensation during the period of Qualified Military Service shall be treated as equivalent to the Compensation he or she would have received during such period but for the period of Qualified Military Service. Such determination shall be based on the rate of pay the Employee would have received during that time; provided however if the Compensation the Employee would have received is not reasonably certain, Compensation for this purpose shall equal the Employee's average Compensation during the 12 months period immediately preceding the Qualified Military Service (or, if shorter, the period of employment immediately preceding the Qualified Military Service).

(h) Intervening Military Service

- (i) Any Member who enters the uniformed services as defined by USERRA and returns to service as a Member within the authorized time period of the law, shall have the authorized time spent in such service credited to the Member's employment record for pension or retirement benefits if the Member makes the required member contributions.
- (ii) The amount due from the Member shall be certified by the System and shall be paid by the Member in accordance with applicable law.
- (iii) A Member may purchase credit for intervening military service only if discharge or separation from the service was granted under other than dishonorable conditions. A Member may not purchase military credit for any service that is covered by another retirement system administered and wholly or partially paid for by any other government agency or private employer.

(i) Non-Intervening Military Service

An Active Member may purchase credit for other than intervening military service performed for the armed forces of the United as defined by USERRA, for a period not to exceed five (5) years, provided the Member has completed five (5) years of service to the Municipality subsequent to such military service. An Active Member may file an application with the Board for permission to purchase credit for non-intervening military service upon completion of five (5) years of subsequent service to the Municipality. The cost of such purchase shall not exceed an amount equal to the Actuarial Equivalent present value of the additional Accrued Benefit attributable to such purchased service as of the date of such purchase.

- (i) The rate of interest charged a Member on purchase of credit for non-intervening military service shall be the Regular Interest in effect on the date of the Member's application.

- (ii) An Active Member may purchase credit for non-intervening military service only if discharge or separation from the service was granted under other than dishonorable conditions. A Member may not purchase military credit for any service that is covered by another retirement system administered and wholly or partially paid for by any other government agency or private employer.

(j) Differential Wage Payments

If the Municipality pays Differential Wage Payments to the Member while on Qualified Military Leave, such payments shall be treated as Compensation under the Plan. Such Differential Wage Payments shall also be treated as Compensation for purposes of Code Section 415 and Section 12.11 of the Plan.

11.04 Transfer of Service and Assets from Another System Plan

The Municipality may elect in its Adoption Agreement to allow Eligible Employees who have previously been Members of another System Plan to transfer Credited Service and Vesting Service and assets from other System plans to the Municipality's Plan subject to certain terms and conditions.

(a) Limitations

- (i) The Employee shall be an Eligible Employee with the Municipality within one (1) year of Termination of Employment from the municipality for which the service is being transferred.
- (ii) At the time the Employee elects to transfer service, the Employee shall be an Eligible Employee under the Plan but is not required to be a Member of the Plan at the time the Employee elects to transfer service. If not a Plan Member at the time the Employee elects to transfer service, the Employee shall subsequently become a Member after satisfying the Plan's eligibility requirements.
- (iii) The Employee shall affirmatively elect to transfer service no later than the one (1) year period specified in subparagraph (i). If however, the Employee's Employment Commencement Date is within ninety (90) days of the expiration of such one (1) year period, he will have ninety (90) days from his Employment Commencement to provide the affirmative election to transfer service.
- (iv) The affirmative election shall be made in the form and substance approved by the Board which shall (A) identify the Plan from which the Credited Service is to be transferred, and (B) specify the amount of Credited Service to be transferred. Failure to affirmatively elect in such manner within the required time limit shall prohibit the transfer of service under this Section.

(b) Transfer of Applicable Vesting Service and Credited Service

- (i) Vesting Service will be transferred in an amount equal to the Vesting Service earned by the Employee with the previous Municipality as of his Termination of Employment with the previous Municipality.
- (ii) Credited Service will be transferred in an amount equal to the Credited Service earned by the Employee with the previous Municipality as of his Termination of Employment with the previous Municipality. A System Policy Statement that reflects the differences in the Actuarial Equivalent present values of the Accrued Benefit when the Accrued Benefit is calculated will be issued to the Member.

(c) Transfer of Applicable Assets

- (i) Assets in the Member's Member Contribution Account of the previous Municipality shall be transferred to equivalent Member Contribution Accounts in the Municipality Plan in an amount equal to the amounts as of the date of transfer. If an appropriate Member Contribution Account type has not been established within the Municipality Plan, such an account type shall be established if needed for the appropriate accounting of any transferred Member Contributions.
- (ii) Assets in the Municipality Contribution Account from the previous Municipality shall be transferred to equivalent Municipality Contribution Account in an amount equal to the Actuarial Equivalent present value of Member's Accrued Benefit in the previous Municipality plan less the transferred amounts of the Member's Member Contribution Account referenced in paragraph (c)(i) above.
- (iii) Any transfer of service under this Section shall be treated as a purchase of Permissive Service Credit and subject to the provision of Code Section 415(n) as set forth in Section 11.09 below.

(d) Calculation of Benefits from Transferred Service and Assets

After the transfer of service and assets, the calculation of benefits based on the transferred service and assets shall be based on the Plan provisions of the Municipality receiving such transfer. Transferred assets shall be applied to the cost of purchasing Permissive Service Credit (including Non-Qualified Service Credit) pursuant to Section 11.07 and 11.08. If, however, the assets to be transferred exceed the amount necessary for the purchase of Permissive Service Credit, such excess shall be allocated as follows:

- (i) If the Plan is a Cash Balance Plan, any excess shall be allocated to the Member's Hypothetical Account Balance pursuant to Section 5.06.
- (ii) If the Plan is a Defined Benefit Plan, the Municipality shall transfer such excess to a Cash Balance Plan established and maintained by the Municipality. If the Municipality does not maintain a Cash Balance Plan, the excess amounts shall be returned to the Member.

11.05 Purchase of Service Credited Under Prior Plan of the Municipality

(a) Transfer Contributions

If elected by the Municipality in the Adoption Agreement, a Member may elect to utilize Transfer Contribution amounts to purchase and convert Prior Plan Service to Credited Service under this Plan. The cost of such conversion shall not exceed an amount equal to the Actuarial Equivalent present value of the additional Accrued Benefit attributable to such purchased service as of the date of such purchase. The amount of Prior Plan Service to be purchased and converted to Credited Service shall be determined at the discretion of the Member subject to the following limitations:

- (i) Transfer Contribution amounts cannot be used to purchase and convert years of Credited Service in excess of the Member's years of Prior Service;
- (ii) The Member may determine the amount of Prior Service to be purchased and converted to Credited Service provided, however that Prior Service shall be purchased and converted to Credited Service in increments authorized in the election notice;
- (iii) Transfer Contribution amounts cannot be used to purchase Prior Service that results in the Member receiving a duplicate benefit under this Plan and the Prior Plan for the same service;

- (iv) The election to convert Prior Service to Credited Service by purchase shall be made in accordance with the election notice; and
- (v) The election to convert Prior Service to Credited Service by purchase shall be irrevocable.

(b) **Termination Contributions**

If elected by the Municipality in the Adoption Agreement, Termination Contributions amounts shall be used to purchase and convert Prior Plan Service to Credited Service under this Plan. The cost of such conversion shall not exceed an amount equal to the Actuarial Equivalent present value of the additional Accrued Benefit attributable to such purchased Service on the date of purchase. The Prior Plan Service to be purchase and converted to Credited Service shall be determined as follows:

- (i) Termination Contribution amounts cannot be used to purchase and convert years of Credited Service in excess of the Member's years of Prior Service;
 - (ii) Termination Contribution amounts shall be utilized to purchase and convert the maximum increment of Credited Service available for such amounts;
 - (iii) Termination Contribution amounts cannot be used to purchase Prior Service that results in the Member receiving a duplicate benefit under this Plan and the Prior Plan for the same service; and
 - (iv) The purchase and conversion of Prior Service to Credited Service shall be irrevocable.
- (c) Any purchase of service under this Section shall be treated as a purchase of Permissive Service Credit and subject to the provisions of Code Section 415(n) as set forth in Section 11.07 and 11.08 below. If, however, such Termination Contributions or Transfer Contributions exceed the amount necessary for the purchase of Permissive Service Credit, the excess shall be allocated to the Member's Hypothetical Account Balance under the Cash Balance Plan maintained by the Municipality.

11.06 Transfer of Member Loans

Upon joining the System, a Municipality may elect in the Adoption Agreement to have Member loans transferred from the Municipality's Original Plan or Prior Plan to this Plan with other assets transferred from the Original Plan or Prior Plan. Such transfer shall be permitted only upon a determination by the Board that the loans to be transferred satisfy the provisions of Code Section 72(p) and Treas. Reg. 1.72(p)-1. In the event the Member fails to repay the outstanding loan in accordance with the loan agreement, then the outstanding loan amount shall be treated as a taxable distribution.

11.07 Permissive Service Credit

A Municipality may elect in the Adoption Agreement to allow a Member to purchase certain types of Permissive Service Credit pursuant to the requirements of Section 415(n) of the Code as set forth in Section 11.09.

(a) Limitations

- (i) The Municipality shall elect in its Adoption Agreement the maximum amount of Permissive Service Credit a Member may purchase.
- (ii) The Municipality shall elect in its Adoption Agreement the types of Permissive Service Credit the Member may purchase.

- (iii) A Member may not purchase Permissive Service Credit for any service that is covered by another retirement system administered by an employer for which Permissive Service Credit is otherwise allowed to be purchased.

(b) Cost

The cost to purchase Permissive Service Credit shall be an amount equal to the Actuarial Equivalence attributable to such service as of the service purchase date.

Subject to the Code, the Municipality may also limit the type and amount of Permissive Service Credit in the Adoption Agreement.

11.08 Nonqualified Service Credit

A Municipality may elect in the Adoption Agreement to allow a Member to purchase Nonqualified Service Credit pursuant to the requirements of Section 415(n) of the Code as set forth in Section 11.09. The cost to purchase Nonqualified Service Credit shall be an amount equal to the Actuarial Liability attributable to such service as of the service purchase date.

11.09 Service Purchases under Code Section 415(n)

- (a) If a Member makes one or more contributions to purchase Permissive Service Credit or Nonqualified Service Credit under the Plan, then the requirements of Section 415(n) of the Code will be treated as satisfied only if:

- (i) the requirements of Section 415(b) are met, determined by treating the Accrued Benefit derived from all such contributions as an annual benefit for purposes of Section 415(b) of the Code; or
- (ii) the requirements of Section 415(c) of the Code are met, determined by treating all such contributions as annual additions for purposes of Code Section 415(c).

(b) Permissive Service Credit

- (i) For purposes of this Plan, the term “Permissive Service Credit” means service credit:
 - (A) recognized by the Plan for purposes of calculating a Member’s benefit under the Plan;
 - (B) that the Member has not received under the Plan; and
 - (C) that the Member may receive only by making a voluntary additional contribution, in an amount determined under the Plan, that does not exceed the amount necessary to fund the benefit attributable to the service credit.

The term may include service credit for periods for which there is no performance of service and may include service credited in order to provide an increased benefit for service credit a member is receiving under the plan.

- (ii) The Plan will fail to meet the requirements of this Section if:
 - (A) more than five (5) years of “Nonqualified Service Credit” as defined below are taken into account for purposes of this Section; or
 - (B) any Nonqualified Service Credit is taken into account under this Section before the Member has at least five years of Membership under the Plan.
- (iii) The term “Nonqualified Service Credit” means Permissive Service Credit other than that allowed with respect to:

- (A) service (including parental, medical, sabbatical and similar leave) as an employee of the Government of the United States, any state or political subdivision of the United States, or any agency or instrumentality of any of the foregoing (other than military service or service for credit that was obtained as a result of a repayment described in Code Section 415(k)(3));
- (B) service (including parental, medical, sabbatical and similar leave) as an employee (other than as an employee described in subsection (e)(1)) of an education organization described in Code section 170(b)(1)(A)(ii) that is a public, private or sectarian school that provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed;
- (C) service as an employee of an association of employees who are described in subparagraph (A) above; or
- (D) military service (other than qualified military service under IRC section 414(u)) recognized by the Plan.

In the case of service described in subparagraphs (A), (B) and (C) above such service will be nonqualified service if recognition of the service would cause a Member to receive a pension benefit for the same service under more than one plan.

- (iv) In the case of a Transfer Contribution to which Code Section 403(b)(13)(A) or 457(e)(17)(A) applies (without regard to whether the transfer is made between plans maintained by the same Municipality):
 - (A) the limitations of paragraph (i) will not apply in determining whether the transfer is for the purchase of Permissive Service Credit; and
 - (B) the distribution rules of the Plan will apply to the Transfer Contribution and any benefits attributable to those amounts.

**ARTICLE XII: MISCELLANEOUS PROVISIONS
AFFECTING THE PAYMENT OF BENEFITS**

12.01 Non-Duplication of Benefits

If the Board distributes any part or all of a Member's Accrued Benefit to him and the Member is later rehired by the Municipality before or after Retirement, the Board shall compute the Member's Accrued Benefit by taking into account all of the Member's Credited Service. However, the Board shall offset the Member's Accrued Benefit so computed by the Member's Accrued Benefit attributable to any distribution described in Article X of the Plan and by any Accrued Benefit disregarded under Section 8.04 of the Plan.

12.02 Form of Payment of Benefits

Benefit payments, including lump sum payments, will be made by direct deposit to a financial institution specified by the Member. Exceptions may be granted upon request for Members who do not have an account at a financial institution.

12.03 Merger of Plan

Neither the Municipality nor the Board shall consent to, or be a party to, any merger or consolidation of the Plan with another plan, or to a transfer of assets or liabilities to another plan, unless immediately after the merger, consolidation or transfer, the surviving Plan provides each Member a benefit equal to or greater than the benefit each Member would have received had the Plan terminated immediately before the merger or consolidation or transfer. However, the Board possesses the specific authority to enter into a merger agreement or a direct transfer of assets agreements with the trustees of other retirement plans described in Code Section 401(a) and to accept the direct transfer of plan assets, or to transfer plan assets, as a party to any such agreement.

The Board may accept a direct transfer of plan assets on behalf of an Employee prior to the date the Employee satisfies the Plan's eligibility condition(s). If the Board accepts such a direct transfer of plan assets, the Board shall treat the Employee as a Member for all purposes of the Plan except the Employee may not make Member Contributions under Sections 4.01 or 4.02 of the Plan, nor shall the Employee accrue benefits, including any minimum Superannuation Retirement Pension provided for, until he actually becomes a Member in the Plan.

12.04 Payments to Minors or Legally Incompetent Persons

Whenever any benefit is to be paid to or for the benefit of any person who is a minor or determined to be incompetent by qualified medical advice, the Board shall cause the benefit to be paid to the person having custody of the minor or incompetent or to the legal guardian or custodian appointed by the Member or a court of competent jurisdiction.

12.05 Unclaimed Payments

The Board shall take reasonable steps, as appropriate, to locate a Member entitled to Plan benefits. Such steps shall include: (i) use of certified mail; (ii) verification through related Plan records and, as appropriate, Municipality records (such as group health plans); (iii) contact of Member's designated Beneficiaries; and (iv) use of free electronic search tools including internet search engines, public record databases (such as those for licenses, mortgages and real estate taxes), obituaries and social media.

If the above attempts to locate a Member have failed, the Board may direct that the payment and all remaining payments otherwise due to the Member allocated to an appropriate Reserve Account at the discretion of the Board. If the Member later notifies the Board of his whereabouts and

requests the payments due to him, an amount equal to the undistributed amount to be paid to him as soon as administratively feasible.

12.06 Assignment or Alienation

A Member, Survivor Annuitant or Beneficiary shall not anticipate, assign or alienate (either at law or in equity) any benefit provided under the Plan, and the Board shall not recognize any such anticipation, assignment or alienation, subject to the following exceptions (a) federal tax liens or other applicable garnishment under federal law, (b) an assignment of Plan benefits for the provision of health care premiums, or (c) an Approved Domestic Relations Order, or (d) a trustee-to-trustee transfer of a Member's accrued benefit in accordance with Section 12.02 of the Plan. Furthermore, a benefit under the Plan is not subject to attachment, garnishment, levy, execution or other legal or equitable process.

12.07 No Decrease in Benefits by Change in Social Security

In the case of a Member or Beneficiary who is receiving benefits under this Plan or a Member who has Terminated Employment with the Municipality and has a vested Accrued Benefit under this Plan, any increase in the taxable wage base or the benefit level payable under Title II of the Social Security Act shall not affect the way benefits are payable under this Plan to such Member or Beneficiary. The Plan does not permit the recalculation of any benefits accrued before the Termination of Employment of a Member on the basis of changes in Social Security benefit levels or the taxable wage base in effect after reemployment with the Municipality.

12.08 Limitation on Benefits

(a) General Rule

The annual benefit under this Plan payable to a Member at any time shall not exceed the maximum permissible amount. "Maximum permissible amount" shall mean \$160,000, such limitation to be adjusted automatically as determined by the Internal Revenue Service for each calendar year, with the new limitation to apply to limitation years ending within the calendar year of the date of the adjustment.

(a) Annual Benefit

(i) In General

For purposes of subsection (a), the term "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) under a plan to which employees do not contribute and under which no rollover contributions (as defined in Code sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16)) are made.

(ii) Adjustment for Certain Other Forms of Benefit

If the benefit under the Plan is payable in any form other than the form described in paragraph (i), or if the Member contributes to the plan or make rollover contributions (as defined in sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16)), the determinations as to whether the limitation described in subsection (a) has been satisfied shall be made, in accordance with regulations by adjusting such benefit so that it is equivalent to the benefit described in subparagraph (i). For purposes of this subparagraph, any ancillary benefit which is not directly related to retirement income benefits shall not be taken into account; and that portion of any joint and survivor annuity which constitutes a qualified joint and survivor annuity (as defined in section 417) shall not be taken into account.

(iii) Adjustment to \$160,000 Limit Where Benefit Begins Before Age 62

If the retirement income benefit under the plan begins before age 62, the determination as to whether the \$160,000 limitation set forth above has been satisfied shall be made, in accordance with regulations prescribed by the Internal Revenue Service, by reducing the limitation so that such limitation (as so reduced) equals an annual benefit (beginning when such retirement income benefit begins) which is equivalent to a \$160,000 annual benefit beginning at age 62.

(iv) Adjustment to \$160,000 Limit Where Benefit Begins After Age 65

If the annual benefit under the Plan begins after age 65, the determination as to whether the \$160,000 limitation set forth above has been satisfied shall be made, in accordance with regulations, by increasing the limitation so that such limitation (as so increased) equals an annual benefit (beginning when such retirement income benefit begins) which is equivalent to a \$160,000 annual benefit beginning at age 65.

(v) Limitation on Certain Assumptions

- (A) For purposes of adjusting any limitation under paragraph (iii) and, for purposes of adjusting any benefit under subparagraph (ii), the interest rate assumption shall not be less than the greater of 5 percent or the rate specified in the Plan.
- (B) For purposes of adjusting any limitation under paragraph (iv), the interest rate assumption shall not be greater than the lesser of 5 percent or the rate specified in the Plan.
- (C) For purposes of this Section, no cost of living adjustment under Code Section 415(d)(1) shall be taken into account before the year for which such adjustment first takes effect.
- (D) For purposes of adjusting any benefit or limitation under paragraph (ii), (iii) or (iv), the mortality table used shall be the applicable mortality table (within the meaning of Code Section 417(e)(3)(B)).

(vi) Special Limitation for Qualified Police or Firefighters

In the case of a qualified participant, paragraph (iii) of this subsection shall not apply.

(vii) Qualified Participant Defined

For purposes of paragraph (vi), the term “qualified participant” means a participant with respect to whom the period of service taken into account in determining the amount of the benefit under such defined benefit plan includes at least 15 years of service of the participant:

- (A) as a full-time employee of any police department or fire department which is organized and operated by the State, Indian tribal government (as so defined), or any political subdivision maintaining such defined benefit plan to provide police protection, firefighting services, or emergency medical services for any area within the jurisdiction of such State, Indian tribal government (as so defined), or any political subdivision, or
- (B) as a member of the Armed Forces of the United States.

(viii) Exemption for Survivor and Disability Benefits.

Paragraph (iii) of this subsection and subsection (v) shall not apply to:

- (A) income received from a governmental plan (as defined in section 414(d)) as a pension, annuity, or similar allowance as the result of the recipient becoming disabled by reason of personal injuries or sickness, or
- (B) amounts received from a governmental plan by the beneficiaries, survivors, or the estate of an employee as the result of the death of the employee.

(b) Total Annual Benefits Not in Excess of \$10,000

Notwithstanding the preceding provisions of this Section 12.09, the benefits payable with respect to a Member under the Plan shall be deemed not to exceed the limitation of this Section if:

- (i) the retirement benefits payable with respect to such Member under such plan and under all other defined benefit plans of the Municipality do not exceed \$10,000 for the Plan Year, or for any prior Plan Year, and
- (ii) the Municipality has not at any time maintained a defined contribution plan in which the Member participated.

(c) Reduction for Membership of less than 10 years

(i) Dollar Limitation

In the case of a Member who has less than 10 years of Membership in the Plan, the limitation referred to in subsection (a)(i) shall be the limitation determined under such subsection (without regard to this subsection) multiplied by a fraction:

- (A) the numerator of which is the number of years (or part thereof) of participation in the defined benefit plan of the employer, and
- (B) the denominator of which is 10.

(ii) Limitation on Reduction

In no event shall paragraph (i) reduce the limitations referred to in subsection (a) to an amount less than 1/10 of such limitation (determined without regard to this paragraph).

(d) Plan Aggregation

If the Municipality maintains both a Defined Benefit Plan and Cash Balance Plan, the limits set forth in this Section shall apply to the aggregate Accrued Benefit of such plans.

ARTICLE XIII: ADMINISTRATIVE PROVISIONS

13.01 General Powers of the Board

In the administration of the System, the Board has all power granted to it under Section 104 of the PMRL, as set forth in Addendum A, including but not limited to:

- (a) Entering into agreements for professional services, including but not limited to actuarial, investment and medical as it deems advisable;
- (b) Keep in convenient form such data as shall be deemed necessary for actuarial valuation purposes;
- (c) From time to time, through its Actuary, make an actuarial investigation into the mortality and service experience of the Members and Annuitants and of the various accounts created by 16 Pa. Code §81.7 (see Addendum A);
- (d) Adopt for the Base Plan one or more mortality tables and such other tables as shall be deemed necessary;
- (e) Amend the Base Plan Document as necessary and appropriate to comply with the Code or adopt administrative changes;
- (f) Adopt Policy Statements as necessary to administer the System and establish rules regarding the operation of the System. Policy Statements shall remain in full force and effect until superseded or otherwise revoked by the Board;
- (g) Certify annually the amount of appropriation which the Municipality shall pay into the Fund, which amounts shall be based on estimates furnished by the Actuary;
- (h) Prepare and distribute annual statements of accounts to each of the Active Members and annuitants showing the contributions made during the year, the interest earned and the total balance standing in the Member's Contribution Account at the end of the year; and
- (i) Perform such other functions as are required for the execution of any other Federal and State law and to administer and interpret this Plan to ensure that the System is maintained as tax qualified under the IRC.

The Board shall discharge its duties and obligations above solely in the interest of the participants and beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims.

13.02 Policy Statements

- (a) All Policy Statement set forth in Addendum B, shall be deemed incorporated herein by reference regardless of its adoption date and shall be binding on the Municipality to the extent applicable.
- (b) All Policy Statement may be retitled, amended, or supplemented from time to time by written notice to the Municipality.
- (c) The Board shall provide written notice, which may be email, to the Municipality within ninety (90) days of enactment of any new Policy Statement.
- (d) The above notwithstanding, a Policy Statement shall not be applicable to the extent inconsistent with the Base Plan Document.

13.03 Plan Withdrawal

- (a) The Municipality may, for good cause, file an application with the Board for permission to withdraw from the system if it meets all of the following requirements:
 - (i) The Municipality has been enrolled in the System for a period of at least five years.
 - (ii) The Municipality has met all of its financial obligations to the System.
 - (iii) The Municipality has passed an ordinance or resolution signifying its intention to withdraw from the System.
 - (iv) The Municipality has certified to the Board that an affirmative vote approving withdrawal from the System had been obtained from at least seventy-five percent (75%) of all Active Members, Inactive Members, vested Members, Annuitants, and Survivor Annuitants after providing such Members with the information specified in Section 13.03(e) of the Base Plan Document.
 - (v) The Municipality has acknowledged its responsibility to assume and provide for all future benefit payments to the existing Active Members, Inactive Members, vested Members, Annuitants, Survivor Annuitants, and their Beneficiaries effective upon the withdrawal.
 - (vi) The application has specified a date for the withdrawal to become effective, provided if there are Annuitants and/or Survivor Annuitants in active pay status the effective date is the first day of a month no earlier than the month after which the Board is scheduled to take action on the withdrawal application.
- (b) In the event that the Municipality elects to withdraw from the System, a Member's basic benefit under this Plan shall be immediately vested to the extent funded as of the effective date of the withdrawal.
- (c) In the event the Municipality withdraws from the System, the Municipality shall only be entitled to the assets credited to the Municipal Account and the Members' Accounts in accordance with the provisions of the PMRL and Policy Statements. Assets that are actuarially determined by the Board's Actuary to be matched to the Municipality's Annuitants and Survivor Annuitants will also be returned to the Municipality in accordance with the PMRL and Policy Statements.
- (d) If the Municipality intends to continue the Plan in substantially the same form with a successor to the System, the Board shall determine the amount of Plan assets attributable to the Municipality in accordance with policies and procedures established by the Board and provided in the Trust Agreement or a separate written instrument. After the determination of the assets attributable to the Municipality, the Board, with consent of the Municipality, may apply the assets of the portion of the Trust attributable to the Municipality to either:
 - (i) Purchase deferred paid-up annuities for all vested accrued benefits of all Plan Members;
 - (ii) Purchase deferred paid-up annuities for all vested accrued benefits of Plan Members who are former Employees of the Municipality;
 - (iii) Purchase deferred paid-up annuities for all accrued benefits of retired Employees of the Municipality; or
 - (iv) Not purchase any deferred paid-up annuities.

Any remaining assets of the Trust attributable to the Municipality, shall, after satisfaction of the requirements of this Section, be transferred to the successor trustee designated by the Municipality, as soon as practical after the later of the December 31st or ninety (90) days following the date of determination of any such remaining assets.

- (e) Prior to the Board transferring any assets to a successor to the System, the Municipality shall warrant and certify to the Board, in a manner satisfactory to the Board, the following:
 - (i) The successor trustee has been duly appointed by the Municipality;
 - (ii) The plan document pursuant to which the Plan will continue to be maintained, is qualified under Code Section 401(a);
 - (iii) The assets of the Plan will continue to be held by the successor trustee for the exclusive benefit of Plan Members and their Beneficiaries;
 - (iv) The successor plan document does not reduce the Accrued Benefit, vested percentage or existing benefit payment options of any Plan Member;
 - (v) The Municipality has met all minimum funding requirements applicable to the Plan in accordance with the Board's funding policy; and
 - (vi) To the extent permitted by federal, state or local law, the Municipality agrees to indemnify the Board from and against any loss, liability or claim arising out of the Municipality's maintenance of the Plan from and after the date of withdrawal from the Trust.

13.04 Notice

Any notice, demand, direction, instruction, or other communication required or permitted ("Notice") to the Board hereunder shall be confirmed in writing and shall be sufficiently given for all purposes when sent by:

- (a) registered U.S. Postal Service delivery, postage prepaid, or
- (b) facsimile, with a copy sent by 1st Class U.S. Postal Service delivery (provided that if the date of dispatch is not a working day, the facsimile shall be deemed to have been received at the opening of business of the addressee on the next working day),
- (c) email to any party at the email address below, or
- (d) delivering the same in person to any party at the applicable address, or
- (e) any other method or other address as may be designated in writing from time to time by the parties:

PENNSYLVANIA MUNICIPAL RETIREMENT BOARD

Attn: Secretary

For Registered U.S. Postal Service delivery; for overnight/courier service delivery; and for in-person delivery:

1721 N. Front Street, 3rd Floor

Harrisburg, PA 17102-2315

For 1st Class U.S. Postal Service delivery:

P.O. Box 1165

Harrisburg, PA 17108-1165

Fax: (717) 783-8363

Email: RA-Staff@state.pa.us

Any Notice to the Municipality shall be as provided in the Adoption Agreement.

13.05 Information to Board

The Municipality shall supply current information to the Board as to the name, date of birth, Employment Commencement Date, annual Compensation, Leaves of Absences, Vesting, Eligibility, and Credited Service and date of Termination of Employment of each Employee who is, or who will be eligible to become, a Member under the Plan, together with any other information which the Board considers necessary. The Municipality's records as to the current information the Municipality furnishes to the Board shall be conclusive as to all persons.

The following documents will be accepted as documentation of proof of an individual's date of birth in the following order of preference: birth certificate, baptismal certificate showing the date of birth, selective service record, armed forces discharge papers, passport, Pennsylvania Department of Transportation-issued photo ID (need not be current), military ID (DD Form 2) or its equivalent, school records, naturalization record, alien registration records, other records as may be submitted by the Member which are acceptable to the Board.

13.06 Liability

The Municipality shall hold and save harmless the Commonwealth, the Board, its officers, agents and employees and the System from any and all claims, demands, actions or liability of any nature based upon or arising out of any services performed by its employees, servants and agents under this Plan in a manner which is clearly contrary to the written direction of the System or the Board and shall defend any and all actions brought against the System or the Board based upon such claims or demands.

13.07 Amendment to Vesting Schedule

Although the Municipality reserves the right to amend the vesting schedule in the Adoption Agreement at any time, the Municipality shall not apply the amended vesting schedule to reduce the Vested percentage of any Member's Accrued Benefit derived from Municipality contributions (determined as of the later of the date the Municipality adopts the amendment, or the date the amendment becomes effective) to a percentage less than the Vested percentage computed under the Plan without regard to the amendment.

13.08 Information to Municipalities

The Board shall, with the aid of the Actuary, prepare a circular of information relative to the system, showing estimates of the costs thereof to municipalities and Members, including costs of administration, the benefits to be derived therefrom, the methods of administration by the Board and the municipality, and such other information as may be deemed appropriate. Such circular of information shall be furnished to municipalities upon request.

ARTICLE XIV: MEMBER ADMINISTRATIVE PROVISIONS

14.01 Beneficiary Designation

Any Member may from time to time designate, in writing or via secure electronic communication, any person or persons, contingently or successively, to whom the Board shall pay various death benefits provided under the Plan on event of his death. The Board shall prescribe the form or forms, for the designation of Beneficiaries and, upon the Member's filing the form with the Municipality or Board, it effectively shall revoke all designations filed prior to that date by the same Member. Beneficiary designations may be made and/or maintained electronically, if the Municipality or the Board has established a method that is reasonably calculated to provide accurate results.

14.02 No Beneficiary Designation

If a Member fails to name a Beneficiary in accordance with Section 14.01 of the Plan, or if the Beneficiary named by a Member predeceases him or dies before complete distribution of all benefits payable under the Plan, then the Board shall pay such benefits to the Member's estate or next of kin under 20 Pa.C.S. § 3101 (relating to payments to family and funeral directors (see Addendum A) to the extent applicable.

If payment cannot be made as specified above, the Member's benefits shall remain a part of the Municipality's pension assets until his payment can be processed pursuant to this Section 14.02.

14.03 Personal Data to Board

Each Member and each Beneficiary of a deceased Member must furnish to the Board such evidence, data or information as the Board considers necessary or desirable for the purpose of administering the Plan. The provisions of this Plan are effective for the benefit of each Member upon the condition precedent that each Member will furnish promptly full, true and complete evidence, data and information when requested by the Board, provided the Board shall advise each Member of the effect of his failure to comply with its request.

14.04 Information Available

Any Member in the Plan or any Beneficiary may examine copies of the Plan, latest annual report, any bargaining agreement, Adoption Agreement, or any other instrument under which the Plan was established or is operated. The Board will maintain all of the items listed in this Section 14.04 in its offices, or in such other place or places as it may designate from time to time in order to comply with all applicable regulations, for examination during reasonable business hours. Upon the written request of a Member or Beneficiary the Board shall furnish him with a copy of any item listed in this Section 14.04. The Board may make a reasonable charge to the requesting person for the copy so furnished. The Board may provide Members with any information required under any applicable federal or state law via electronic communication, provided the electronic communication is not prohibited under such laws and the method of electronic communication is reasonably calculated to provide accurate results. A Beneficiary's right to (and the Board's duty to provide to the Beneficiary) information or data concerning the Plan, shall not arise until the Beneficiary first becomes entitled to receive a benefit under the Plan.

14.05 Benefits Claims Procedures

- (a) The Board is statutorily vested with the exclusive jurisdiction to administer and interpret this Plan. The parties hereby waive any claim or defense that forum before the Board is not convenient or proper.

- (b) If a Member and/or Municipality believe that a right or benefit under this Plan has been improperly denied, a written request for a final determination must be filed with the Board.
- (c) If the Member and/or Municipality disagrees with the final determination reached by the Board. The Member and/or the Municipality has the right to file an appeal and request an administrative hearing before the Board. See 1 Pa. Code §§ 31.11, 31.15, 33.31, 33.34, and 35.20. See Addendum A. The appeal and request for an administrative hearing must include a statement of the facts that forms the basis of the requested relief and all points of law that support the claim.
- (d) An administrative hearing is a process in which evidence is presented before an independent hearing examiner who makes a recommendation to the Board, following which the Board renders a final adjudication. All administrative hearings are conducted at the Board's headquarters in Harrisburg, Pennsylvania. The Board's final adjudication is subject to an appeal before the Commonwealth Court of Pennsylvania.
- (e) All appeals and requests for administrative hearings must be made in writing within 30 days of the date of the final determination and sent to:

**Appeal Docket Administrator
 Pennsylvania Municipal Retirement Board
 5 North Fifth Street
 Harrisburg, PA 17110**

- (f) If the appeal and request for an administrative hearing is not received by the Board within the thirty (30) day period, the Member and/or Municipality will no longer have the right to administratively appeal the denial of its request to the Board.

14.06 Filings with the Board

(a) Receipt

Any filing, election or notice required to be made under this Plan by a Member must be made by written statement, duly attested, and filed in the office of the Board or deposited in the United States mail, addressed to the Board.

(b) Timeliness

The timeliness of any filing, election or notice required to be made under this Plan to the Board by a Member shall be governed by the actual receipt of the filing, election or notice rather than the date of mailing.

(c) Municipal Certifications

- (i) In the event the Board receives an application for a benefit from a Member in which certification by the Municipality with regard to the data used to calculate such benefit is needed but such certification has not been made by the Municipality, the Board shall issue a formal demand to the Municipality for such certification of the necessary data.
- (ii) Any certification required to be made by the Municipality with regard to any application for benefits by a Member under this Plan shall be made by the Municipality within forty-five (45) days following the date of the Board's formal demand.
- (iii) Failure of the Municipality to provide such requested certification within the forty-five (45) day period shall result in the Board utilizing the most current reliable data maintained by the Board for the Member.

ARTICLE XV: PENNSYLVANIA MUNICIPAL RETIREMENT FUND

15.01 General

The Pennsylvania Municipal Retirement Fund shall consist of (i) contributions by the Municipalities; (ii) contributions by Members through the employing Municipality; (iii) transfers made from municipal retirement plans or pension systems that are tax qualified under Section 401(a) of the Code; and (iv) investment earnings.

15.02 Separate Accounts

The Board shall keep separate accounts for each Municipality, except the Disability Reserve Account and the Retired Member's Reserve Account which shall be maintained as pooled accounts, as described in 16 Pa. Code §81.7 (attached in Addendum A). The Municipality and the Members shall be liable to the Board for the amount of contributions required to cover the cost of the Vested Accrued Benefit and other benefits payable to such Members.

15.03 Disability Pension

Upon the granting of a Disability Retirement Pension, there shall be transferred to Retired Member's Reserve Account the amount of the Disabled Annuitant's Member's Contribution Account, together with an amount from the Municipal Contribution Account, equal to the amount of the Actuarial Equivalent of the Member's Vested Accrued Benefit as of the Benefit Commencement Date of the Disability Retirement Pension. If the total amount transferred from the applicable Member Contribution Account and Municipal Account is less than the Actuarial Equivalent of the Disability Retirement Pension, the difference in amount shall be transferred from the Disability Reserve Account to the Retired Member's Reserve Account.

15.04 Superannuation, Early and Deferred Vested Pension

Upon the granting of a Superannuation, Early or Deferred Vested Pension, there shall be transferred to the Retired Member's Reserve Account the amount of the Member's Account, plus an amount from the Municipal Account such that the sum will equal the Actuarial Equivalent of the Superannuation, Early or Deferred Vested Pension.

15.05 Municipal Liability

The Regular Interest charges payable and the creation and maintenance of the necessary reserves for the payment of the benefits, as to the Municipality and its Members are hereby made the obligation of the Municipality in accordance with PMRL Section 111 and shall not otherwise attach to those assets of the Fund attributable to any other municipality and its members. See Addendum A.

15.06 Exclusive Benefit

The Fund is a trust, and the assets of the Plan are held in trust. No part of the assets of the Plan shall be used for or diverted to purposes other than for the exclusive benefit of the Members, their Survivor Annuitant or Beneficiaries prior to the satisfaction of all liabilities of the Plan with respect to them. The assets of the Fund shall be used only to pay:

- (a) Benefits to Members in accordance with the Plan; and
- (b) Necessary and appropriate expenses of the Plan.

15.07 Custody of the Fund

All moneys and securities in the Fund shall be placed in the custody of the State Treasurer as is required by PMRL Section 109. See Addendum A.

15.08 Management and Investment of the Fund

The members of the Board shall be trustees of the Fund, and shall have the exclusive management of said Fund, with full power to invest the moneys therein, subject to the terms, conditions, limitations and restrictions imposed by law upon fiduciaries. The Board shall have power to hold, purchase, sell, assign, transfer and dispose of any securities and investments in said Fund, as well as the proceeds of such investments, and of the money belonging to such Fund.

The members of the Board shall discharge its duties and obligations solely in the interest of the participants and beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims. For the avoidance of doubt, nothing in this Section 15.08 shall prevent the Board from contractually requiring plan fiduciaries to perform services in accordance with a heightened fiduciary standard.

15.09 Allocation of Regular Interest

The Board shall annually allocate Regular Interest to the credit of each Member's Contribution Account, Municipal Account, and the Retired Member's Reserve Account.

15.10 Allocation of Excess Interest

- (a) The Board may, after deducting money to pay for Regular Interest and any appropriate expenses of each Plan, award Excess Interest to the Municipality in accordance with the terms of this Plan.
- (b) In the event that the Municipality's funding status in relation to the benefit structure set forth under this Plan is less than 95% funded as of the most recent actuarial report filed pursuant to the Municipal Pension Plan Funding Standard and Recovery Act, 53 P.S. § 895.101 et seq., (See Addendum A) all Excess Interest awarded by the Board shall be allocated to the Municipal Account.
- (c) In the event that the Municipality's funding status in relation to the benefit structure set forth under this Plan is 95% funded or more as of the most recent actuarial report filed pursuant to the Municipal Pension Plan Funding Standard and Recovery Act, 53 P.S. § 895.101 et seq., (See Addendum A) Excess Interest awarded to the Municipality shall be allocated as elected by the Municipality in its Adoption Agreement.

ARTICLE XVI: AMENDMENT

16.01 Amendment by Board

The Base Plan Document may be amended at any time and from time to time, in the sole discretion of the Board as sponsor of the Base Plan, by a written instrument. Each amendment shall state the date to which it is either retroactively or prospectively effective. Any amendment which is required by the Internal Revenue Service in order for the Plan or Trust to qualify or continue to be qualified under the applicable provisions of the Code, or which in the judgment of the Board is necessary or appropriate to such qualification or continued qualification, may be made effective retroactively. Each Municipality, by executing an Adoption Agreement, shall thereby delegate to the Board the power to amend its Plan and shall thereby be deemed to have assented to any such amendment. Municipalities will be notified in writing of any Plan amendments made by the Board.

16.02 Amendment by Municipality

The Municipality may amend its Plan from time to time under the circumstances provided below. Each Amendment shall specify its effective date and unless otherwise specified, Amendments are assumed to be applied prospectively from its effective date. The above notwithstanding, no Amendment shall be effective until approved as to form and content by the Board. A resolution, in absence of a completed and approved Adoption Agreement amendment, shall not constitute an amendment of the Plan.

(a) Adoption Agreement Amendment

The Municipality may amend its Plan by changing its election of options in the Adoption Agreement, in the manner it deems necessary or advisable. The Municipality shall identify to the Board any information related to the changes the Board may require.

(b) Application of Amendments

An Amendment shall be considered to be of “General Application” or “Limited Application” as described below:

(i) General Application

Amendments of General Application, as of the Effective Date of the Amendment shall apply to:

- (A) all current and future Eligible Employees; and
- (B) all past and future Eligibility Service, Vesting Service and Credited Service.

(ii) Limited Application

Amendments of Limited Application shall be all other Amendments not of General Application. Amendments of Limited Application shall, at a minimum, include:

- (A) the specific subset of Employees, as identified in the Adoption Agreement, if applicable, which will be affected; and
- (B) the specific Service, if applicable, which will be affected.

(c) Impact on Tax-Qualified Status

For purposes of reliance on the advisory letter issued pursuant to Rev. Proc. 2015- 36, the Board will no longer have the authority to amend the Plan on behalf of a Municipality (i) as of the date of the adoption of a Municipality amendment to the Plan to incorporate a feature described in Section 16.03 of Rev. Proc. 2015-36: or (ii) as of the date the IRS notifies the

Board that the Plan is being treated as an individually designed plan pursuant to Section 24.03 of Rev. Proc. 2015-36.

16.03 Limitations on Amendments

No amendment shall be made that would jeopardize the qualified status of the Plan.

No amendment shall authorize or permit any portion of the Trust Fund (other than the part which is required to pay investment or administration expenses) to be used for or diverted to purposes other than for the exclusive benefit of the Members or their Beneficiaries.

No amendment shall have the effect of decreasing a Member's Accrued Benefit, including a change in the actuarial assumptions or in the Compensation levels used to determine a Member's Superannuation Retirement Pension.

No amendment shall affect the rights, duties, or responsibilities of the Board without the written consent of the Board. Additionally, no such amendment shall be enacted or approved that impairs or is otherwise violative of a Member's rights and protections under the Pennsylvania Constitution.

No amendment shall take effect without the consent and approval of the Board.

16.04 Termination or Freeze by Municipality

By adopting the Plan, the Municipality represents that the Plan is intended to be a permanent and continuing program for providing benefits to the Members therein. The Municipality shall have the right to terminate its Plan upon not less than ninety (90) days advance written notice to the Board. A termination of the Municipality's Plan shall be effective as of the last day of the Plan Year, which follows receipt of the notice of termination (unless the Municipality and Board agree upon a different date).

(a) Complete Plan Termination

If Municipality intends to completely terminate the Plan, the Board shall determine the amount of Plan assets attributable to the Municipality in accordance with the terms of the Plan and Trust. The Board may use the Trust assets attributable to the Municipality to purchase deferred paid-up annuities for the benefits described in (b)(i) through (iii) below.

(b) Annuities Purchased

If any annuities are purchased by the Board in accordance with subsections (a) or (b) hereof, at the option of the Board, such annuities shall be either (i) held by the Board, (ii) transferred to a successor trustee, or (iii) transferred to the applicable Employee or Beneficiary.

16.05 Distribution Upon Termination of Trust

If the Municipality terminates the Plan, the Board shall determine the amount of Plan assets attributable to the Municipality in accordance with the terms of this Plan and Trust. The Board shall allocate assets of the Plan among the Members and Beneficiaries according to the following priorities:

- (a) Benefits payable as an annuity, in the case of the benefit of a Member or Beneficiary which was in pay status as of the termination date of the Plan, each such benefit, based on the provisions of the Plan under which such benefit would be the least;
- (b) All other Vested benefits under the Plan; and

(c) Any other benefits under the Plan.

If assets are insufficient to provide all benefits under the Plan, the Board shall allocate such assets to satisfy obligations within each category by order of priority. If assets are insufficient to provide all benefits under a priority category, the Board shall allocate assets to Members within that category in the ratio which each Member's total benefit bears to the total benefits of all Members within that category.

16.06 Full Vesting on Termination

Notwithstanding any other provision of this Plan to the contrary, upon either full or partial termination of the Plan or the discontinuance of contributions or benefit accruals under the Plan (i.e. a freeze), under Sections 16.04 or 16.05 of the Plan, the Accrued Benefit of those Members, Beneficiaries, Inactive Members and joint annuitants affected shall become one hundred percent (100%) vested and Vested to the extent funded.

ARTICLE XVII: MISCELLANEOUS PROVISIONS

17.01 Use of Trust Fund

The terms of the Plan shall govern the establishment of the Trust Fund from which the benefits provided by the Plan shall be paid. All contributions paid over to the Board shall be invested in accordance with the terms of the Plan and Trust.

17.02 Amount of Municipality Contributions

Each Municipality shall contribute to the Trust Fund such amounts as are necessary to fund its respective benefits under the Plan, and shall contribute such additional amounts as the Board (based on the recommendation of the Actuary and Board) deem necessary or desirable to maintain the actuarial soundness of the Plan. The Board may establish a formal funding policy for this purpose.

17.03 Use of Forfeitures

Forfeitures and investment income attributable to contributions shall be used to reduce Municipality contributions and shall not be used hereunder to increase the benefit of any person.

17.04 Payment of Contributions

Contributions shall be paid by the Municipality to the Board or the Trust Fund manager. The Board or Trust Fund Manager shall provide each Municipality instructions regarding the payment of contributions, including: the schedule for paying contributions; the deadline for paying contributions; the amount of contributions due; and to whom contributions shall be sent.

17.05 Contingent Nature of Municipality Contributions

Contributions made by each Municipality are hereby made expressly contingent on the maintenance of a qualified status by the Plan for the year with respect to which such contribution is made.

17.06 Form of Municipality Contribution

Municipalities may pay their contributions to the Board or Trust Fund manager in cash.

17.07 Exclusive Benefit

Except as otherwise provided herein, the Municipality shall have no beneficial interest in any asset of the Trust or Trust Fund and no part of any asset in the Trust or Trust Fund shall ever revert to or be repaid to a Municipality, either directly or indirectly; prior to the satisfaction of all liabilities with respect to the Members and their Beneficiaries under the Plan. At no time shall any part of the corpus or income of the Trust Fund, or any asset of the Trust, be (at any time) used for or diverted to purposes other than the exclusive benefit of the Members or their Beneficiaries or to pay necessary and appropriate expenses of the System.

17.08 Evidence

Anyone required to give evidence under the terms of the Plan may do so by certificate, affidavit, document or other information which the person to act in reliance may consider pertinent, reliable and genuine, and to have been signed, made or presented by the proper party or parties. The Board shall be fully protected in acting and relying upon any evidence described under the immediately preceding sentence.

17.09 Waiver of Notice

Any person entitled to notice under the Plan may waive the notice.

17.10 Successors

The Plan shall be binding upon all persons entitled to benefits under the Plan, their respective heirs and legal representatives, upon the Municipality, its successors and assigns, and upon the Board and its successors.

17.11 Word Usage

Words used in the masculine shall apply to the feminine where applicable, and wherever the context of the Municipality's Plan dictates, the plural shall be read as the singular and the singular as the plural.

17.12 Intent of Tax Qualification

In an intent to maintain tax qualification, the applicable tax-qualification provisions of the Code shall control over any conflicting provision of state law.

17.13 Employment Not Guaranteed

Nothing contained in this Plan, or any modification or amendment to the Plan, or in the creation of any account, or the payment of any benefit, shall give any Employee, Member, or Beneficiary any right to continue employment, any legal or equitable right against the Municipality, or an Employee of the Municipality, or against the Board, or its agents or employees or against the Board, except as expressly provided by the Plan or by a separate agreement.

17.14 Entire Agreement

Except as expressly provided herein, this Plan supersedes all prior contracts and undertakings, written or oral, between the same parties concerning the same subject matter. The above notwithstanding, in no event shall any provision of this Plan reduce, diminish or otherwise impair any right of a Member Beneficiary or Survivor Annuity under any plan or contract for such benefits accrued as of the date of execution of this Plan.

17.15 Mistake in the Record

Should any change or mistake in records result in any Member, Beneficiary or Survivor Annuitant receiving from the System more or less than the individual would have been entitled to receive had the records been correct, then regardless of the intentional or unintentional nature of the error and upon the discovery of such error, the Board shall correct the error and so far as practicable adjust the payments which may be made for and to such person in such a manner that the actuarial equivalent of the benefit to which he was correctly entitled shall be paid.

17.16 Counterparts

This Plan may be executed in any number of separate counterparts, each of which shall be deemed an original, but the several counterparts shall together constitute but one and the same instrument.

17.17 Severability

If any one or more of the covenants, agreements, provisions, or terms of this Plan shall be held contrary to any express provision of applicable law then such covenants, agreements, provisions, or terms shall be deemed severable from the remaining covenants, agreements, provisions, or terms

of this Plan and shall in no way affect the validity or enforceability of the remainder of this Plan or the rights of the parties hereto.

17.18 No Presumption Based upon Draftsmanship

For purposes of the interpretation and construction of this Plan and for the purpose of resolving any ambiguity herein, no inference or presumption shall be accorded to any party hereto based upon draftsmanship.

17.19 Headings

The headings and captions in this Plan are for convenience and reference purposes only and shall not be construed or deemed to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions hereof.

ADDENDUM A – APPLICABLE STATE LAWS

Sections 101, 103, 104, 107, 109, 111, 401 and 402 of the Pennsylvania Municipal Retirement Law 53 P.S. § 881.101 et. seq., (“PMRL”)

Enforcement Officers Disability Benefits Law, 53 P.S. § 637

16 Pa. Code § 81.7

Public Employee Pension Forfeiture Act (P.L. 752, No. 140)

20 Pa.C.S. § 3101

1 Pa. Code §§ 31.11, 31.15, 33.31, 33.34, and 35.20

ADDENDUM B – PMRS POLICY STATEMENTS

Subject

Actuary Tables

Allocation of Excess Interest

Disability Reserve

Excess Interest Award Process

Overpayment

Permanent Employment

Plan Withdrawal Procedure

Portability-Individual Member

Portability-Plan Spin-offs

Refund- Plan Withdrawal

Treatment of Member Contributions

ADDENDUM A

1 of 8 DOCUMENTS

Pennsylvania Statutes, Annotated by LexisNexis(R)
Copyright © 2016
All rights reserved.

** Pa.C.S. documents are current through 2016 Regular Session Acts 1-101 **
** P.S. documents are current through 2016 Regular Session Acts 1-81 **

Pennsylvania Statutes
Title 53. Municipal and Quasi-Municipal Corporations
Part I. General Municipal Law
Chapter 8A. Pennsylvania Municipal Retirement Law
Article I. General Provisions

Go to the Pennsylvania Code Archive Directory

53 P.S. § 881.101 (2016)

NOTICE: As to repeal of this section where it relates to townships of the first class, see § 3501 of act 1931, June 24, P.L. 1206, art. XXXV. As to repeal of this section where it relates to townships of the second class, see § 2101 of act 1933, May 1, P.L. 103, art. XXI (renumbered § 2201, art. XXII) and § 49 of act 1947, July 10, P.L. 1481. As to repeal of this section where it relates to boroughs, see § 1 of act 1915, May 14, P.L. 312, ch. XIII, art. 1. As to repeal of this section where it relates to third class cities, see § 4701 of act 1931, June 23, P.L. 932, art. XLVII.

§ 881.101. Short title

This act shall be known and may be cited as the "Pennsylvania Municipal Retirement Law."

2 of 8 DOCUMENTS

Pennsylvania Statutes, Annotated by LexisNexis(R)
Copyright © 2016
All rights reserved.

** Pa.C.S. documents are current through 2016 Regular Session Acts 1-101 **
** P.S. documents are current through 2016 Regular Session Acts 1-81 **

Pennsylvania Statutes
Title 53. Municipal and Quasi-Municipal Corporations
Part I. General Municipal Law
Chapter 8A. Pennsylvania Municipal Retirement Law
Article I. General Provisions

Go to the Pennsylvania Code Archive Directory

53 P.S. § 881.103 (2016)

NOTICE: As to repeal of this section where it relates to the conferrance of powers or the imposition of any duties on

townships, see § 1500 of act 1917, July 14, P.L. 840. As to repeal of this section where it relates to the conferrance of powers or the imposition of any duties on boroughs, see § 1 of act 1915, May 14, P.L. 312, ch. XIII, art. I. As to repeal of this section as it relates to third class cities, see § 4701 of act 1931, June 23, P.L. 932, art. XLVII.

§ 881.103. Pennsylvania Municipal Retirement Board

% A Pennsylvania Municipal Retirement Board is hereby created, which shall consist of the State Treasurer, Secretary of the Commonwealth, six municipal elected officials or employes of different classes of municipalities which have joined the system, one retired member of the system who is receiving a retirement allowance, one municipal fireman employed by a municipality which has joined the system and one municipal policeman employed by a municipality which has joined the system. The nine latter members shall be appointed by the Governor from among nominations made by the County Commissioners Association, the Pennsylvania League of Cities, the Pennsylvania Association of Township Commissioners, the Pennsylvania State Association of Township Supervisors, the Pennsylvania State Association of Boroughs and the Pennsylvania Municipal Authorities Association, and associations representing municipal firemen and municipal police, to serve for a term of four years each and until their successors are appointed and qualified. Appointments of members made by the Governor shall not require the advice and consent of the Senate. The two municipal employe members of the Municipal Employees' Retirement Board, appointed by the Governor from among nominations made by various associations of county and municipal officers, who are serving on the effective date of this act, shall continue to serve as members of the Pennsylvania Municipal Retirement Board until the expiration of their respective terms.

A chairman and vice chairman of the board shall be elected by the board every year at the January meeting of the board and the chairman and vice-chairman may succeed themselves for the appointed term of four years.

Vacancies happening from among members appointed from among the nominations made by the associations shall be filled by the appointment of a successor for a full term of four years.

No appointed member shall serve more than two consecutive full terms.

Each member of the board shall take an oath of office that he will diligently and honestly administer the affairs of the board, and that he will not knowingly violate or wilfully permit to be violated any of the provisions of this act.

A quorum of the board shall consist of six members.

3 of 8 DOCUMENTS

Pennsylvania Statutes, Annotated by LexisNexis(R)
Copyright © 2016
All rights reserved.

** Pa.C.S. documents are current through 2016 Regular Session Acts 1-101 **

** P.S. documents are current through 2016 Regular Session Acts 1-81 **

Pennsylvania Statutes
Title 53. Municipal and Quasi-Municipal Corporations
Part I. General Municipal Law
Chapter 8A. Pennsylvania Municipal Retirement Law
Article I. General Provisions

Go to the Pennsylvania Code Archive Directory

53 P.S. § 881.104 (2016)

NOTICE: As to repeal of this section where it relates to the conferrance of powers or the imposition of any duties on

townships, see § 1500 of act 1917, July 14, P.L. 840. As to repeal of this section where it relates to the conferrance of powers or the imposition of any duties on boroughs, see § 1 of act 1915, May 14, P.L. 312, ch. XIII, art. I. As to repeal of this section as it relates to third class cities, see § 4701 of act 1931, June 23, P.L. 932, art. XLVII.

§ 881.104. General powers of the Board

The board shall:

(1) Appoint a secretary and an assistant secretary. The secretary, with the prior approval of the board, shall appoint the clerical and other employes of the board, whose positions, excluding the secretary's and assistant secretary's, shall be under the classified service provisions of the act of August 5, 1941 (P.L. 752, No. 286), as amended and the secretary shall fill future vacancies in accordance with such provisions. The compensation of all persons so appointed shall be fixed by the board and shall be consistent with the standards established by the Executive Board of this Commonwealth;

(2) Contract for professional services, including but not limited to actuarial, investment and medical as it deems advisable;

(3) Keep in convenient form such data as shall be deemed necessary for actuarial valuation purposes;

(4) From time to time, through its actuary, make an actuarial investigation into the mortality and service experience of the contributors and annuitants and of the various accounts created by this act;

(5) Adopt for the system one or more mortality tables and such other tables as shall be deemed necessary;

(6) Deleted by 1980, May 17, P.L. 135, No. 50, § 3, eff. in 60 days.

(7) Certify annually the amount of appropriation which each municipality shall pay into the retirement fund, which amounts shall be based on estimates furnished by the actuary, and shall be credited to the municipal account of the fund;

(8) Prepare and publish annually a financial statement showing the condition of the fund and the various accounts thereof, and setting forth such other facts, recommendations and data as may be of use in the advancement of knowledge concerning the Pennsylvania Municipal Retirement System, and furnish a copy thereof to each municipality which has joined the system, and to such persons as may request copies thereof;

(9) Keep a record of all its proceedings, which will be open to inspection by the public;

(10) From time to time, with the advice of the Attorney General and the actuary, to adopt and promulgate such rules and regulations as may be required for the proper administration of the fund created by this act and the several accounts thereof; to establish procedures which would permit an eligible retired public safety officer to pay qualified accident, health or long-term care insurance premiums as permitted under *section 402(l) of the Internal Revenue Code*; and to provide for the transaction of the business of the board;

(11) Be authorized to approve any optional retirement plan for municipal employes, municipal firemen or municipal police, with any municipality as long as it is actuarially sound and benefits under the plan are not in excess of or member's minimum contribution rates are not less than those provided in other existing retirement laws pertaining to that class of municipality; except to the extent that excess investment earnings are allocated to provide for additional pension benefits or member accruals as otherwise provided in this law;

(12) Prepare and distribute annual statements of accounts to each of the active members of the system, showing the contributions made during the year, the interest earned and the total balance standing in the member's account at the

end of the year;

(12.1) In accordance with the plan contract, provide cost-of-living increases from a plan's share of excess investment earnings to those members of such municipalities who have already retired. Such allocations shall be made, with the advice of the actuary, on a fully funded basis employing actuarial assumptions which reflect the nature of the liability. An award of excess interest shall not be made under this paragraph if the plan is less than 95% funded as of the plan's most recent filing of the actuarial report required under the Municipal Pension Funding Standard and Recovery Act.

(12.2) In accordance with the plan contract, the board shall allocate excess investment earnings for active members of such municipalities by applying such allocation to member contributions. To the extent that additional liabilities may accrue as a result of such allocation, the actuary shall employ actuarial assumptions, on a fully funded basis, to accurately reflect the nature of the liability generated therefrom. An award of excess interest shall not be made under this paragraph if the plan is less than 95% funded as of the plan's most recent filing of the actuarial report required under the Municipal Pension Funding Standard and Recovery Act.

(12.3) Promulgate regulations required for the proper administration of the DROP.

(12.4) Establish a subsidiary DROP participant account for each DROP participant, provide for the separate investment and funding of each account and establish a monthly rate of interest to credit the money deposited in each account.

(13) Perform such other functions as are required for the execution of the provisions of this act and of other Federal and State law and administer and interpret this act to ensure that the system is maintained as tax qualified under the Internal Revenue Code.

4 of 8 DOCUMENTS

Pennsylvania Statutes, Annotated by LexisNexis(R)
Copyright © 2016
All rights reserved.

** Pa.C.S. documents are current through 2016 Regular Session Acts 1-101 **

** P.S. documents are current through 2016 Regular Session Acts 1-81 **

Pennsylvania Statutes
Title 53. Municipal and Quasi-Municipal Corporations
Part I. General Municipal Law
Chapter 8A. Pennsylvania Municipal Retirement Law
Article I. General Provisions

Go to the Pennsylvania Code Archive Directory

53 P.S. § 881.107 (2016)

NOTICE: As to repeal of this section where it relates to boroughs, see § 3301 of act 1927, May 4, P.L. 519, art. XXXIII. As to repeal of this section where it relates to third class cities, see § 4701 of act 1931, June 23, P.L. 932, art. XLVII.

§ 881.107. Election by municipalities to join retirement system

53 P.S. § 881.107

% Any municipality may elect, by ordinance or resolution adopted by the tax levying body, or in the case of municipal authorities by the board of such municipal authority to join the system: Provided, however, That any municipality electing coverage under the provisions of Article II of this act must have first placed its municipal employees in so far as they are eligible under the Federal Social Security Act.

Any municipality, by action of its tax levying body, may and upon petition of electors equal to at least five per cent of the registered electors of the municipality, shall, submit the question of joining such system to the voters of the municipality at any municipal or general election, in the same manner as other questions are submitted to the electors under the election code of the Commonwealth. If the majority of the electors voting on the question vote in favor thereof, the tax levying body shall adopt an ordinance or resolution electing to join such system. If the electors vote against joining the system, then no further action shall be taken in the municipality for a period of two years.

A duly certified copy of any such ordinance or resolution electing to join the system shall be filed with the board.

5 of 8 DOCUMENTS

Pennsylvania Statutes, Annotated by LexisNexis(R)

Copyright © 2016

All rights reserved.

** Pa.C.S. documents are current through 2016 Regular Session Acts 1-101 **

** P.S. documents are current through 2016 Regular Session Acts 1-81 **

Pennsylvania Statutes

Title 53. Municipal and Quasi-Municipal Corporations

Part I. General Municipal Law

Chapter 8A. Pennsylvania Municipal Retirement Law

Article I. General Provisions

Go to the Pennsylvania Code Archive Directory

53 P.S. § 881.109 (2016)

NOTICE: As to repeal of this section where it relates to boroughs, see § 3301 of act 1927, May 4, P.L. 519, art. XXXIII. As to repeal of this section where it relates to third class cities, see § 4701 of act 1931, June 23, P.L. 932, art. XLVII.

§ 881.109. Custody of and payments from fund

All moneys and securities in the fund shall be placed in the custody of the State Treasurer for safekeeping, and all payments on account of retirement allowances shall be made on requisition signed by the chairman and secretary of the board.

6 of 8 DOCUMENTS

Pennsylvania Statutes, Annotated by LexisNexis(R)

Copyright © 2016

All rights reserved.

** Pa.C.S. documents are current through 2016 Regular Session Acts 1-101 **

53 P.S. § 881.111

**** P.S. documents are current through 2016 Regular Session Acts 1-81 ****

Pennsylvania Statutes
Title 53. Municipal and Quasi-Municipal Corporations
Part I. General Municipal Law
Chapter 8A. Pennsylvania Municipal Retirement Law
Article I. General Provisions

Go to the Pennsylvania Code Archive Directory

53 P.S. § 881.111 (2016)

NOTICE: As to repeal of this section where it relates to third class cities, see § 4701 of act 1931, June 23, P.L. 932, art. XLVII.

§ 881.111. Municipal guarantee

% The regular interest charges payable, the DROP interest charges payable and the creation and maintenance of the necessary reserves for the payment of the municipal and member's annuities, as to any municipality in accordance with this act, are hereby made the obligation of that municipality.

In the case of the failure of a municipality to make payments as required by this act, the Commonwealth shall withhold payment to the municipality of any funds to which the municipality may be entitled for pension purposes. The board may recover any sums due to the fund by suit at law, or other appropriate remedy.

7 of 8 DOCUMENTS

Pennsylvania Statutes, Annotated by LexisNexis(R)
Copyright © 2016
All rights reserved.

**** Pa.C.S. documents are current through 2016 Regular Session Acts 1-101 ****

**** P.S. documents are current through 2016 Regular Session Acts 1-81 ****

Pennsylvania Statutes
Title 53. Municipal and Quasi-Municipal Corporations
Part I. General Municipal Law
Chapter 8A. Pennsylvania Municipal Retirement Law
Article IV. Optional Retirement Plans

Go to the Pennsylvania Code Archive Directory

53 P.S. § 881.401 (2016)

NOTICE: As to repeal of this section where it relates to boroughs, see § 1 of act 1915, May 14, P.L. 312, ch. XIII, art. I. As to repeal of this section where it relates to third class cities, see § 4701 of act 1931, June 23, P.L. 932, art. XLVII. See also act 1899, April 28, P.L. 74 and § 42 of act 1901, June 4, P.L. 364.

§ 881.401. Purpose

This article shall provide for the enrollment of those municipalities in the Pennsylvania Municipal Retirement System which want to offer retirement benefits to their employes different from those available under Article II and Article III of this act. It shall also provide for increasing member benefits for municipalities formerly enrolled under the provisions of Article II and Article III of this act.

8 of 8 DOCUMENTS

Pennsylvania Statutes, Annotated by LexisNexis(R)
Copyright © 2016
All rights reserved.

** Pa.C.S. documents are current through 2016 Regular Session Acts 1-101 **

** P.S. documents are current through 2016 Regular Session Acts 1-81 **

Pennsylvania Statutes
Title 53. Municipal and Quasi-Municipal Corporations
Part I. General Municipal Law
Chapter 8A. Pennsylvania Municipal Retirement Law
Article IV. Optional Retirement Plans

Go to the Pennsylvania Code Archive Directory

53 P.S. § 881.402 (2016)

NOTICE: As to repeal of this section where it relates to boroughs, see § 1 of act 1915, May 14, P.L. 312, ch. XIII, art. I. As to repeal of this section where it relates to third class cities, see § 4701 of act 1931, June 23, P.L. 932, art. XLVII. See also act 1899, April 28, P.L. 74 and § 42 of act 1901, June 4, P.L. 364.

§ 881.402. Existing local retirement systems and compulsory and optional membership

% Where a municipality elects to join the system established by this act, and is then maintaining a retirement or pension system or systems covering its employes in whole or in part, those employes so covered, and employes thereafter eligible to join such pension system, shall not become members of the retirement system established by this act, unless at the time the municipality elects to join the system, the members of each such existing retirement or pension system shall, by the affirmative vote of seventy-five per cent of all the members of each pension system, elect to be covered by the retirement system established by this act. At any time thereafter, within a period of three years after the municipality has elected to join the system, but not thereafter, the members of an existing retirement or pension system may, in like manner, elect to join the system established by this act. In any such case, provisions may be made for the transfer of moneys and securities in its retirement or pension fund or funds, in whole or in part, to the fund established by this act. Securities so transferred shall be only those acceptable to the board. Securities not so acceptable shall be converted into cash, and said cash transferred to the fund created by this act. In any such transfer, provision shall be made to credit the accumulated deductions of each member, at least the amount he has paid into the retirement or pension system of the municipality, which moneys shall be credited against the prior service contributions of such member, or a municipality may turn over to the retirement system created by this act any existing local pension system on a completely funded basis, as to pensioners and pension credits of members related to prior service to the date of transfer, or on a partially funded basis if the municipality pays annually into the retirement system amounts sufficient to completely liquidate the municipality's liability for prior service within a period not to exceed thirty years.

No liability, on account of retirement allowances or pensions being paid from any retirement or pension fund of the municipality, shall attach against the fund, except as provided in the agreement, making a transfer of an existing system

in accordance with this section. The liability to continue payment of pensions not so transferred shall attach against the municipality, which shall annually make appropriations from its tax revenues sufficient to pay the same. In cases where workers covered by an existing retirement or pension system elect to join the system created by this act, the election to join shall be deemed to have been made at the time the municipality elected to join the system, and the liabilities of the municipality shall be fixed accordingly.

If a municipality elects to join the system under the provisions of this Article IV, it shall first negotiate a contract with the board, acceptable to both the municipality and the board, which shall set forth all the specific details of municipal and member contribution rates and benefits. The municipality shall then pass an ordinance or resolution electing to join the system, and confirming the terms of the contract by reference thereto. Separate contracts and separate resolutions shall be executed for each class of employees, namely municipal employees, municipal firemen and municipal police in those cases where the municipality elects to bring more than one class of its employees into the system.

When a municipality elects to enroll its municipal employees into the system, then each officer other than elected officers, and each municipal employe thereof, employed on a full-time basis, shall be required to become a member of the system. Each municipality shall determine whether membership in said system for elected officials and employes hired on a temporary, seasonal or part-time basis shall be compulsory, optional or prohibited. Where membership may be optional with an elected officer or an employe hired on a temporary, seasonal or part-time basis, an election to join the system must be made within one year after the municipality elected to join the system or within one year after the officer or temporary, seasonal or part-time employe first entered the service of the municipality. Officers and employes paid only on a fee basis shall not be eligible to join the system.

When a municipality elects to enroll its municipal firemen or its municipal police into the system, then each municipal fireman or each municipal policeman, as defined in section 102 of this act, shall be required to become a member of the system.

When a municipality has established a policy of placing new employees on a probationary status it may elect to refrain from enrolling such employees into the system for a period of up to one year from the date the probationary employe first entered the service of the municipality. In such cases service credits shall not be earned by the employe for probationary time served prior to enrollment. Notwithstanding any other provision herein, the board may, in its discretion, entertain a request from a municipality to join the system established by this act for those employees who are excluded from local pension plan coverage by virtue of the collective bargaining process or otherwise. The request to join the system must be accompanied by an affirmative vote of no less than three-fourths of those employees not covered by the local pension plan. The benefits to be established may be in accordance with the provisions of this article or any other relevant pension law covering that class of municipality. The other requirements of this section for joining this system shall be observed.



PENNSYLVANIA ADMINISTRATIVE CODE
Commonwealth of Pennsylvania
Pennsylvania Codes
Copyright (c) 2016 Pennsylvania Legislative Reference Bureau.
All rights reserved.

*** This document is current through the December 2016 supplement ***
*** Changes effective through 46 Pa.B. 6280 (October 1, 2016) ***

TITLE 16. COMMUNITY AFFAIRS
PART III. MUNICIPAL RETIREMENT BOARD
CHAPTER 81. GENERAL PROVISIONS

Go to the Pennsylvania Administrative Code Archive Directory

16 Pa. Code § 81.7 (2016)

§ 81.7. Retirement funds and accounts

(a) The Board will consolidate for investment purposes the assets of the various plans. The Board will account separately for each plan's assets in a municipal account and each individual active member, inactive member and vested member's assets in a member's account. The Board maintains pooled accounts for retired members (the Retired Members' Reserve Account) and for the funding of disability benefits (the disability reserve).

(b) When a municipality withdraws the administration of its plan from the System, the municipality shall only be entitled to the assets credited to the plan's municipal account and the plan's members' accounts in accordance with the provisions of the law. Assets that are actuarially determined by the Board's actuary to be matched to a withdrawing plan's retired members as of the effective date of withdrawal will also be returned to the plan in accordance with the law provided there are sufficient funds in the retired member's reserve account to meet the actuarially determined liability of all retired members of the System, as of the date of withdrawal; otherwise payment shall be on a prorated basis.

SOURCE:

The provisions of this § 81.7 amended June 23, 2000, effective June 24, 2000, *30 Pa.B. 3168*. Immediately preceding text appears at serial page (260163).

HIERARCHY NOTES:

Part Note

1 of 1 DOCUMENT

Pennsylvania Statutes, Annotated by LexisNexis(R)
Copyright © 2016
All rights reserved.

** Pa.C.S. documents are current through 2016 Regular Session Acts 1-101 **

** P.S. documents are current through 2016 Regular Session Acts 1-81 **

Pennsylvania Statutes
Title 53. Municipal and Quasi-Municipal Corporations
Part I. General Municipal Law
Chapter 8. Public Officers and Employees
Article IV. Compensation

Go to the Pennsylvania Code Archive Directory

53 P.S. § 637 (2016)

§ 637. Enforcement officer disability benefits

(a) Any member of the State Police Force, any enforcement officer or investigator employed by the Pennsylvania Liquor Control Board, and the parole agents, enforcement officers and investigators of the Pennsylvania Board of Probation and Parole, Capitol Police officers, correction employes employed by the Department of Corrections, whose principal duty is the care, custody and control of inmates, psychiatric security aides employed by the Department of Public Welfare and the Department of Corrections, whose principal duty is the care, custody, and control of the criminally insane, drug enforcement agents of the Office of Attorney General whose principal duty is the enforcement of the drug laws of the Commonwealth, special agents of the Office of Attorney General whose principal duty is the enforcement of the criminal laws of the Commonwealth, any member of the Delaware River Port Authority Police, any policeman, fireman or park guard of any county, city, borough, town or township, or any sheriff or deputy sheriff who is injured in the performance of his duties including, in the case of firemen, duty as special fire police, and by reason thereof is temporarily incapacitated from performing his duties, shall be paid by the Commonwealth of Pennsylvania if a member of the State Police Force or an enforcement officer or investigator employed by the Pennsylvania Liquor Control Board or the parole agents, enforcement officers and investigators of the Pennsylvania Board of Probation and Parole, Capitol Police officers, correction employes employed by the Department of Corrections, whose principal duty is the care, custody and control of inmates, psychiatric security aides employed by the Department of Public Welfare and the Department of Corrections, whose principal duty is the care, custody, and control of the criminally insane, drug enforcement agents of the Office of Attorney General whose principal duty is the enforcement of the drug laws of the Commonwealth, special agents of the Office of Attorney General whose principal duty is the enforcement of the criminal laws of the Commonwealth, or by the Delaware River Port Authority if a member of the Delaware River Port Authority Police or by the county, township or municipality, by which he is employed, his full rate of salary, as fixed by ordinance or resolution, until the disability arising therefrom has ceased. All medical and hospital bills, incurred in connection with any such injury, shall be paid by the Commonwealth of Pennsylvania or by the Delaware River Port Authority or by such county, township or municipality. During the time salary for temporary incapacity shall be paid by the Commonwealth of Pennsylvania or by the Delaware River Port Authority or by the county, city, borough, town or township, any workmen's compensation, received or collected by any such employe for such period, shall be turned over to the Commonwealth of Pennsylvania or to the Delaware River Port Authority or to such county, city, borough, town or township, and paid into the treasury thereof, and if such payment shall not be so made by the employe the amount so due the Commonwealth of Pennsylvania, the Delaware River Port Authority or the county, city, borough,

town or township shall be deducted from any salary then or thereafter becoming due and owing.

(b) In the case of the State Police Force, enforcement officers and investigators employed by the Pennsylvania Liquor Control Board and the parole agents, enforcement officers and investigators of the Pennsylvania Board of Probation and Parole, Capitol Police officers, correction employes employed by the Department of Corrections, whose principal duty is the care, custody and control of inmates, psychiatric security aides employed by the Department of Public Welfare and the Department of Corrections whose principal duty is the care, custody, and control of the criminally insane, drug enforcement agents of the Office of Attorney General whose principal duty is the enforcement of the drug laws of the Commonwealth, special agents of the Office of Attorney General whose principal duty is the enforcement of the criminal laws of the Commonwealth, members of the Delaware River Port Authority Police, salaried policemen and firemen, and sheriffs and deputy sheriffs who have served for four consecutive years or longer, diseases of the heart and tuberculosis of the respiratory system, contracted or incurred by any of them after four years of continuous service as such, and caused by extreme overexertion in times of stress or danger or by exposure to heat, smoke, fumes or gases, arising directly out of the employment of any such member of the State Police Force, enforcement officer, investigator employed by the Pennsylvania Liquor Control Board, guard or enforcement officer employed by the Department of Corrections or parole agent, enforcement officer or investigator of the Pennsylvania Board of Probation and Parole, Capitol Police officers, correction employes employed by the Department of Corrections whose principal duty is the care, custody and control of inmates, psychiatric security aides employed by the Department of Public Welfare and the Department of Corrections whose principal duty is the care, custody, and control of the criminally insane, drug enforcement agents of the Office of Attorney General whose principal duty is the enforcement of the drug laws of the Commonwealth, special agents of the Office of Attorney General whose principal duty is the enforcement of the criminal laws of the Commonwealth, member of the Delaware River Port Authority Police, policeman or fireman, or sheriff or deputy sheriff shall be compensable in accordance with the terms hereof; and unless any such disability shall be compensable under the compensation laws as having been caused by accidental injury, such disability shall be compensable as occupational disease disabilities are presently compensable under the compensation laws of this Commonwealth. It shall be presumed that tuberculosis of the respiratory system contracted or incurred after four consecutive years of service was contracted or incurred as a direct result of employment.

(c) In the case of any person receiving benefits pursuant to this act, the statutes of limitations set forth in sections 306.1, 315, 413, and 434 of the act of June 2, 1915 (P.L. 736, No. 338), known as the "Workers' Compensation Act," shall not begin to run until the expiration of the receipt of benefits pursuant to this act.

(d) All payments herein required to be made by the Commonwealth of Pennsylvania on account of any member of the State Police Force shall be made from moneys appropriated to the Pennsylvania State Police, and any payments required to be made on account of any enforcement officer or investigator employed by the Pennsylvania Liquor Control Board shall be from appropriations out of the State Stores Fund, any payments required to be made on account of any parole agent, enforcement officer or investigator employed by the Pennsylvania Board of Probation and Parole shall be from moneys appropriated to the Pennsylvania Board of Probation and Parole, any payments required to be made on account of Capitol Police officers shall be made from moneys appropriated to the Department of General Services, any payments required to be made on account of any correction employe shall be made from moneys appropriated to the Department of Corrections, any payments required to be made on account of any psychiatric security aides shall be made from moneys appropriated to the Department of Public Welfare or the Department of Corrections where appropriate, and any payments required to be made on account of any drug enforcement agent or special agents shall be made from moneys appropriated to the Office of Attorney General.

1 of 5 DOCUMENTS

Pennsylvania Statutes, Annotated by LexisNexis(R)
Copyright © 2016
All rights reserved.

** Pa.C.S. documents are current through 2016 Regular Session Acts 1-101 **
** P.S. documents are current through 2016 Regular Session Acts 1-81 **

Pennsylvania Statutes
Title 43. Labor
Chapter 22. Public Employee Pension Forfeiture Act

Go to the Pennsylvania Code Archive Directory

43 P.S. § 1311 (2016)

§ 1311. Short title

This act shall be known and may be cited as the "Public Employee Pension Forfeiture Act."

2 of 5 DOCUMENTS

Pennsylvania Statutes, Annotated by LexisNexis(R)
Copyright © 2016
All rights reserved.

** Pa.C.S. documents are current through 2016 Regular Session Acts 1-101 **
** P.S. documents are current through 2016 Regular Session Acts 1-81 **

Pennsylvania Statutes
Title 43. Labor
Chapter 22. Public Employee Pension Forfeiture Act

Go to the Pennsylvania Code Archive Directory

43 P.S. § 1312 (2016)

NOTICE: As to suspension of this section for the purpose of considering Act 1984, Dec. 19, P.L. 1191, No. 226, and all amendments to it, see § 8 of said act.

§ 1312. Definitions

% The following words and phrases when used in this act shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"CRIMES RELATED TO PUBLIC OFFICE OR PUBLIC EMPLOYMENT." Any of the criminal offenses as set forth in the following provisions of Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes or other enumerated statute when committed by a public official or public employee through his public office or position or when his public employment places him in a position to commit the crime:

Any of the criminal offenses set forth in Subchapter B of Chapter 31 (relating to definition of offenses) when the criminal offense is committed by a school employee as defined in 24 Pa. C.S. § 8102 (relating to definitions) against a student.

Section 3922 (relating to theft by deception) when the criminal culpability reaches the level of a misdemeanor of the first degree or higher.

Section 3923 (relating to theft by extortion) when the criminal culpability reaches the level of a misdemeanor of the first degree or higher.

Section 3926 (relating to theft of services) when the criminal culpability reaches the level of a misdemeanor of the first degree or higher.

Section 3927 (relating to theft by failure to make required disposition of funds received) when the criminal culpability reaches the level of a misdemeanor of the first degree or higher.

Section 4101 (relating to forgery).

Section 4104 (relating to tampering with records or identification).

Section 4113 (relating to misapplication of entrusted property and property of government or financial institutions) when the criminal culpability reaches the level of misdemeanor of the second degree.

Section 4701 (relating to bribery in official and political matters).

Section 4702 (relating to threats and other improper influence in official and political matters).

Section 4902 (relating to perjury).

Section 4903(a) (relating to false swearing).

Section 4904 (relating to unsworn falsification to authorities).

Section 4906 (relating to false reports to law enforcement authorities).

Section 4909 (relating to witness or informant taking bribe).

Section 4910 (relating to tampering with or fabricating physical evidence).

Section 4911 (relating to tampering with public records or information).

Section 4952 (relating to intimidation of witnesses or victims).

Section 4953 (relating to retaliation against witness, victim or party).

Section 5101 (relating to obstructing administration of law or other governmental function).

Section 5301 (relating to official oppression).

Section 5302 (relating to speculating or wagering on official action or information).

Article III of the act of March 4, 1971 (P.L. 6, No. 2), known as the "Tax Reform Code of 1971."

In addition to the foregoing specific crimes, the term also includes all criminal offenses as set forth in Federal law substantially the same as the crimes enumerated herein.

"POLITICAL SUBDIVISION." Any county, city, borough, incorporated town, township, school district, vocational school district, intermediate unit, municipal authority, home rule, optional plan or optional charter municipality, and any agencies, boards, commissions, committees, departments, instrumentalities, or entities thereof designated to act in behalf of a political subdivision either by statute or appropriation.

"PUBLIC OFFICIAL" or "PUBLIC EMPLOYEE." Any person who is elected or appointed to any public office or employment including justices, judges and justices of the peace and members of the General Assembly or who is acting or who has acted in behalf of the Commonwealth or a political subdivision or any agency thereof including but not limited to any person who has so acted and is otherwise entitled to or is receiving retirement benefits whether that person is acting on a permanent or temporary basis and whether or not compensated on a full or part-time basis. This term shall not include independent contractors nor their employees or agents under contract to the Commonwealth or political subdivision nor shall it apply to any person performing tasks over which the Commonwealth or political subdivision has no legal right of control. However, this term shall include all persons who are members of any retirement system funded in whole or in part by the Commonwealth or any political subdivision. For the purposes of this act such persons are deemed to be engaged in public employment.

43 P.S. § 1313

Pennsylvania Statutes, Annotated by LexisNexis(R)
Copyright © 2016
All rights reserved.

** Pa.C.S. documents are current through 2016 Regular Session Acts 1-101 **
** P.S. documents are current through 2016 Regular Session Acts 1-81 **

Pennsylvania Statutes
Title 43. Labor
Chapter 22. Public Employee Pension Forfeiture Act

Go to the Pennsylvania Code Archive Directory

43 P.S. § 1313 (2016)

NOTICE: As to termination of this commission on December 31, 2001, in the manner provided for by the act of December 22, 1981 (P.L. 508, No. 142), known as the Sunset Act, see § 2 of Act 1991, Dec. 20, P.L. 393, No. 42.

§ 1313. Disqualification and forfeiture of benefits

(a) Notwithstanding any other provision of law, no public official or public employee nor any beneficiary designated by such public official or public employee shall be entitled to receive any retirement or other benefit or payment of any kind except a return of the contribution paid into any pension fund without interest, if such public official or public employee is convicted or pleads guilty or no defense to any crime related to public office or public employment.

(b) The benefits shall be forfeited upon entry of a plea of guilty or no defense or upon initial conviction and no payment or partial payment shall be made during the pendency of an appeal. If a verdict of not guilty is rendered or the indictment or criminal information finally dismissed, then the public official or public employee shall be reinstated as a member of the pension fund or system and shall be entitled to all benefits including those accruing during the period of forfeiture if any. Such conviction or plea shall be deemed to be a breach of a public officer's or public employee's contract with his employer.

(c) Each time a public officer or public employee is elected, appointed, promoted, or otherwise changes a job classification, there is a termination and renewal of the contract for purposes of this act.

(d) The appropriate retirement board may retain a member's contributions and interest thereon for the purpose of paying any fine imposed upon the member of the fund, or for the repayment of any funds misappropriated by such member from the Commonwealth or any political subdivision.

(e) Notwithstanding any other provision of this act, the State Employees' Retirement Board shall not disburse any funds to any person who has forfeited their right to benefits until the Auditor General and the Attorney General have determined and certified that there has been no loss to the Commonwealth as a result of the conduct that resulted in forfeiture of benefits. If there is a loss to the Commonwealth, the board shall pay the amount of the loss to the State Treasurer from the member's contributions and the interest thereon.

4 of 5 DOCUMENTS

Pennsylvania Statutes, Annotated by LexisNexis(R)
Copyright © 2016
All rights reserved.

43 P.S. § 1314

** Pa.C.S. documents are current through 2016 Regular Session Acts 1-101 **

** P.S. documents are current through 2016 Regular Session Acts 1-81 **

Pennsylvania Statutes
Title 43. Labor
Chapter 22. Public Employee Pension Forfeiture Act

Go to the Pennsylvania Code Archive Directory

43 P.S. § 1314 (2016)

§ 1314. Restitution for monetary loss

(a) Whenever any public official or employee who is a member of any pension system funded by public moneys is convicted or pleads guilty or pleads no defense in any court of record to any crime related to a public office or public employment, the court shall order the defendant to make complete and full restitution to the Commonwealth or political subdivision of any monetary loss incurred as a result of the criminal offense.

(b) If the court fails to order such restitution the Commonwealth, through the Attorney General, or a political subdivision shall petition the court pronouncing sentence for an order establishing the amount of restitution due it. If the court does not have authority to order restitution, the Commonwealth or the political subdivision shall bring an original action for restitution.

(c) Notwithstanding any law or provision of law exempting the pension account or benefits of any public official or public employee from garnishment or attachment, whenever the court shall order restitution or establish the amount of restitution due after petition, all sums then credited to the defendant's account or payable to the defendant including the contributions shall be available to satisfy such restitution order.

(d) The retirement board, administrator of the pension fund or employer of the defendant, upon being served with a copy of the court's order, shall pay over all such pension benefits, contributions or other benefits to the extent necessary to satisfy the order of restitution.

5 of 5 DOCUMENTS

Pennsylvania Statutes, Annotated by LexisNexis(R)
Copyright © 2016
All rights reserved.

** Pa.C.S. documents are current through 2016 Regular Session Acts 1-101 **

** P.S. documents are current through 2016 Regular Session Acts 1-81 **

Pennsylvania Statutes
Title 43. Labor
Chapter 22. Public Employee Pension Forfeiture Act

Go to the Pennsylvania Code Archive Directory

43 P.S. § 1315 (2016)

§ 1315. Repealer

All other acts or parts of acts inconsistent with the provisions of this act are repealed to the extent of their inconsistency.

Pennsylvania Statutes, Annotated by LexisNexis(R)
Copyright © 2016
All rights reserved.

* Pa.C.S. documents are current through 2016 Regular Session Acts 1-174 with the exception of Act 170 *

* P.S. documents are current through 2016 Regular Session Acts 1-81 *

Pennsylvania Consolidated Statutes
Title 20. Decedents, Estates and Fiduciaries
Chapter 31. Dispositions Independent of Letters; Family Exemption; Probate of Wills and Grant of Letters
Subchapter A. Dispositions Independent of Letters

Go to the [Pennsylvania Code Archive Directory](#)

20 Pa.C.S. § 3101 (2016)

§ 3101. Payments to family and funeral directors.

(a) *Wages, salary or employee benefits.* --

Any employer of a person dying domiciled in this Commonwealth at any time after the death of the employee, whether or not a personal representative has been appointed, may pay wages, salary or any employee benefits due the deceased in an amount not exceeding \$ 5,000 to the spouse, any child, the father or mother, or any sister or brother (preference being given in the order named) of the deceased employee. Any employer making such a payment shall be released to the same extent as if payment had been made to a duly appointed personal representative of the decedent and he shall not be required to see to the application thereof. Any person to whom payment is made shall be answerable therefor to anyone prejudiced by an improper distribution.

(b) *Deposit account.* --

Any bank, savings association, savings and loan association, building and loan association, credit union or other savings organization, at any time after the death of a depositor, member or certificate holder, shall pay the amount on deposit or represented by the certificate, when the total standing to the credit of the decedent in that institution does not exceed \$ 10,000, to the spouse, any child, the father or mother or any sister or brother (preference being given in the order named) of the deceased depositor, member or certificate holder, provided that a receipted funeral bill or an affidavit, executed by a licensed funeral director which sets forth that satisfactory arrangements for payment of funeral services have been made, is presented. Any bank, association, union or other savings organization making such a payment shall be released to the same extent as if payment had been made to a duly appointed personal representative of the decedent and it shall not be required to see to the application thereof. Any person to whom payment is made shall be answerable therefor to anyone prejudiced by an improper distribution.

(c) *Patient's care account.* --

When the decedent was a qualified recipient of medical assistance from the Department of Public Welfare, the facility in which he was a patient may make payment of funds, if any, remaining in the patient's care account, for the decedent's burial expenses to a licensed funeral director in an amount not exceeding \$ 10,000 whether or not a personal representative has been appointed. After the payment of decedent's burial expenses, the facility may pay the balance of decedent's patient's care account, as long as the payments including the payment for burial expenses does not exceed \$ 10,000, to the spouse, any child, the father or mother or any sister or brother (preference being given in the order

named) of the deceased patient. Any facility making such a payment shall be released to the same extent as if payment had been made to a duly appointed personal representative of the decedent and it shall not be required to see to the application thereof. Any licensed funeral director or other person to whom payment is made shall be answerable therefor to anyone prejudiced by an improper distribution.

(d) *Life insurance payable to estate.* --

Any insurance company which upon the death of an individual residing in this Commonwealth owes his estate a total amount of \$ 11,000 or less under any policy of life, endowment, accident or health insurance, or under any annuity or pure endowment contract, may at any time after 60 days following his death pay all or any part of that amount to the spouse, any child, the father or mother or any sister or brother of the decedent (preference being given in the order named) provided that at the time of the payment no written claim for that money has been received at the office of the company specified in the policy or contract for the receipt of claims from any duly appointed personal representative of the decedent. Any insurance company making any payment in accordance with this section to an adult may rely on the affidavit of any of the persons named in this subsection concerning the existence and relationship of these persons and shall be released to the same extent as if payment had been made to a duly appointed personal representative of the decedent and the insurance company shall not be required to see to the application thereof. Any person to whom payment is made shall be answerable therefor to anyone prejudiced by an improper distribution.

(e) *Unclaimed property.*

(1) In any case where property or funds owned by an individual who has died a resident of this Commonwealth have been reported to the Commonwealth and are in the custody of the State Treasurer as unclaimed or abandoned property, the State Treasurer, at any time after the death of the individual, shall be authorized under this section to distribute the property or to pay the amount being held in custody where all of the following conditions are present:

(i) The amount of the funds or the value of the property is \$ 11,000 or less.

(ii) The person claiming the property or the funds is the surviving spouse, child, mother or father, or sister or brother of the decedent, with preference given in that order.

(iii) A personal representative of the decedent has not been appointed or five years have lapsed since the appointment of a personal representative of the decedent.

(2) Upon being presented with a claim for property owned by a decedent, the State Treasurer shall require the person claiming the property to provide all of the following prior to distributing the property or paying the amount held in custody:

(i) A certified death certificate of the owner.

(ii) A sworn affidavit under the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities) setting forth the relationship of the claimant to the decedent, the existence or nonexistence of a duly appointed personal representative of the decedent and any other persons that may be entitled under this section to make a claim to the decedent's property.

(iii) Other information determined by the State Treasurer to be necessary in order to distribute property or pay funds under this section to the proper person.

(3) If the State Treasurer determines the claimant to be a person entitled to claim property of a decedent owner, the State Treasurer shall pay or distribute such property to the claimant and shall thereby be released to the same extent as if payment or distribution had been made to a duly appointed personal representative of the decedent and shall not be required to oversee the application of the payments made. Any claimant to whom payment is made shall be answerable

therefore to anyone prejudiced by an improper distribution or payment.

1 of 5 DOCUMENTS

PENNSYLVANIA ADMINISTRATIVE CODE
Commonwealth of Pennsylvania
Pennsylvania Codes
Copyright (c) 2016 Pennsylvania Legislative Reference Bureau.
All rights reserved.

*** This document is current through the December 2016 supplement ***
*** Changes effective through 46 Pa.B. 6280 (October 1, 2016) ***

TITLE I. GENERAL PROVISIONS
PART II. GENERAL RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE

CHAPTER 31. PRELIMINARY PROVISIONS
SUBCHAPTER B. TIME

Go to the Pennsylvania Administrative Code Archive Directory

1 Pa. Code § 31.11 (2016)

§ 31.11. Timely filing required

Pleadings, submittals or other documents required or permitted to be filed under this part, the regulations of the agency or any other provision of law shall be received for filing at the office of the agency within the time limits, if any, for the filing. The date of receipt at the office of the agency and not the date of deposit in the mails is determinative.

2 of 5 DOCUMENTS

PENNSYLVANIA ADMINISTRATIVE CODE
Commonwealth of Pennsylvania
Pennsylvania Codes
Copyright (c) 2016 Pennsylvania Legislative Reference Bureau.
All rights reserved.

*** This document is current through the December 2016 supplement ***
*** Changes effective through 46 Pa.B. 6280 (October 1, 2016) ***

TITLE I. GENERAL PROVISIONS
PART II. GENERAL RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE

CHAPTER 31. PRELIMINARY PROVISIONS
SUBCHAPTER B. TIME

Go to the Pennsylvania Administrative Code Archive Directory

1 Pa. Code § 31.15 (2016)

1 Pa. Code § 31.15

§ 31.15. Extensions of time

(a) Extensions of time shall be governed by the following:

(1) Except as otherwise provided by law, whenever by these rules or by a regulation or order of an agency, or a notice given thereunder, an act is required or allowed to be done at or within a specified time, the time fixed or the period of time prescribed may, by the agency head or the presiding officer, for good cause be extended upon motion made before expiration of the period originally prescribed or as previously extended; and upon motion made after the expiration of the specified period, the act may be permitted to be done where reasonable grounds are shown for the failure to act.

(2) Requests for the extension of time in which to file briefs shall be filed at least 5 days before the time fixed for filing such briefs.

(b) Except as otherwise provided by law, requests for continuance of hearings or for extension of time in which to perform an act required or allowed to be done at or within a specified time by these rules or a regulation or order of an agency, shall be by motion in writing, timely filed with the agency, stating the facts on which the application rests, except that during the course of a hearing in a pro-ceeding, the requests may be made by oral motion in the hearing before the agency head or the presiding officer.

3 of 5 DOCUMENTS

PENNSYLVANIA ADMINISTRATIVE CODE
Commonwealth of Pennsylvania
Pennsylvania Codes
Copyright (c) 2016 Pennsylvania Legislative Reference Bureau.
All rights reserved.

*** This document is current through the December 2016 supplement ***
*** Changes effective through 46 Pa.B. 6280 (October 1, 2016) ***

TITLE 1. GENERAL PROVISIONS
PART II. GENERAL RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE

CHAPTER 33. DOCUMENTARY FILINGS
SUBCHAPTER B. SERVICE OF DOCUMENTS

Go to the Pennsylvania Administrative Code Archive Directory

1 Pa. Code § 33.31 (2016)

§ 33.31. Service by the agency

Orders, notices and other documents originating with an agency, including forms of agency action, complaints and similar process and other documents designated by the agency for this purpose, shall be served by the office of the agency by mail, except when service by another method shall be specifically required by the agency, by mailing a copy thereof to the person to be served, addressed to the person designated in the initial pleading or submittal at his principal office or place of business. If service is not accomplished by mail, it may be effected by anyone authorized by the agency in the manner provided in 231 Pa. Code Rules 400 -- 441 (relating to service of original process).

1 Pa. Code § 33.34

4 of 5 DOCUMENTS

PENNSYLVANIA ADMINISTRATIVE CODE
Commonwealth of Pennsylvania
Pennsylvania Codes
Copyright (c) 2016 Pennsylvania Legislative Reference Bureau.
All rights reserved.

*** This document is current through the December 2016 supplement ***
*** Changes effective through 46 Pa.B. 6280 (October 1, 2016) ***

TITLE 1. GENERAL PROVISIONS
PART II. GENERAL RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE

CHAPTER 33. DOCUMENTARY FILINGS
SUBCHAPTER B. SERVICE OF DOCUMENTS

Go to the Pennsylvania Administrative Code Archive Directory

1 Pa. Code § 33.34 (2016)

§ 33.34. Date of service

The date of service shall be the day when the document served is deposited in the United States mail, or is delivered in person, as the case may be.

5 of 5 DOCUMENTS

PENNSYLVANIA ADMINISTRATIVE CODE
Commonwealth of Pennsylvania
Pennsylvania Codes
Copyright (c) 2016 Pennsylvania Legislative Reference Bureau.
All rights reserved.

*** This document is current through the December 2016 supplement ***
*** Changes effective through 46 Pa.B. 6280 (October 1, 2016) ***

TITLE 1. GENERAL PROVISIONS
PART II. GENERAL RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE

CHAPTER 35. FORMAL PROCEEDINGS
SUBCHAPTER A. PLEADINGS AND OTHER PRELIMINARY MATTERS
PETITIONS

Go to the Pennsylvania Administrative Code Archive Directory

1 Pa. Code § 35.20 (2016)

§ 35.20. Appeals from actions of the staff

I Pa. Code § 35.20

Actions taken by a subordinate officer under authority delegated by the agency head may be appealed to the agency head by filing a petition within 10 days after service of notice of the action.

ADDENDUM B

PENNSYLVANIA MUNICIPAL RETIREMENT SYSTEM
BASE PLAN DOCUMENT
ADDENDUM B – PMRS POLICY STATEMENTS

Pennsylvania Municipal Retirement Board Policy Statement 14 – 3 Adopted June 11, 2014	Utilization of Actuarial Tables
---	------------------------------------

Purpose: The Pennsylvania Municipal Retirement Board is required to adopt all necessary actuarial assumptions essential for the calculation of retirement benefits. This policy sets forth the adopted tables and assumptions the System uses to determine actuarial equivalence for optional benefit forms of retirement and the early retirement actuarial equivalence.

Authority: Pennsylvania Municipal Retirement Law, Act of February 1, 1947, P.L. 34, No. 15, § 104(5), 53 P.S. § 881.104(5).

Policy: The Pennsylvania Municipal Retirement Board adopts the following actuarial assumptions to be used for optional benefit forms of retirement and early retirement actuarial equivalence being made effective on or after January 1, 2011:

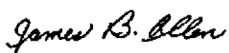
1. Mortality Assumption: The Society of Actuaries RP 2000 table. Rates will be blended 70% male and 30% female to provide unisex factors for calculating actuarial equivalent benefits.
2. Interest assumption: 6.0% compounded annually for calculations effective on or after January 1, 2011 through December 31, 2012; 5.5% compounded annually for calculations effective on or after January 1, 2013.

The following actuarial assumption shall be used for optional benefit form of retirement and early retirement actuarial equivalence being made on or after December 31, 2002 through December 31, 2010:

1. Mortality Assumption: The 1994 Group Annuity Mortality Table without adjustment or projection will be used. Rates will be blended 70% male and 30% female to provide unisex factors for calculating actuarial equivalent benefits.
2. Interest assumption: 6.0% compounded annually.

Effective Date: This policy is effective immediately and shall be applied retroactively to distributions with annuity starting dates on or after December 31, 2002. It replaces Policy Statement 10-7 adopted at the November 18, 2010 meeting of the Pennsylvania Municipal Retirement Board.

Adoption Date: Adopted at the June 11, 2014 meeting of the Pennsylvania Municipal Retirement Board.


James B. Allen, Secretary

JBA:jba
06/11/2014

Pennsylvania Municipal Retirement Board Policy Statement Rule Number 97-1	Allocation of Excess Interest to Municipal Account, Members' Accounts, and Retired Members' Reserve Account
---	---

- Purpose: To formalize the procedure used by the Pennsylvania Municipal Retirement System (the System) to allocate excess interest “. . . as each municipality deems appropriate to the credit of the Municipal accounts, member’s accounts, the member’s excess investment accounts, retired members reserve accounts and total disability reserve accounts.” (“Pennsylvania Municipal Retirement Law”: Section 110)
- Authority: Act 15 of 1974, “Pennsylvania Municipal Retirement Law”: Section 110. Management and Investment of Fund; Interest Credits.
- Specific Cites: Act 15 of 1974, “Pennsylvania Municipal Retirement Law”: Section 104. General Powers of the Board. (12.1) and (12.2); Section 110. Management and Investment of Fund; Interest Credits.
- Policy: The Board has been directed to credit any excess investment monies, hereafter referred to as excess interest, earned by the System to the Municipal Account, Members’ Accounts, and Retired Members’ Reserve Account as directed by each member municipality. It is noted that the law speaks also to the crediting of excess interest to the member’s excess investment account and to the total disability reserve.

Whereas the member’s excess investment account is a sub-account of each member’s account maintained as part of the Members’ Reserve Account, the Board has determined that it does fulfill the obligation of allocating monies to the member’s excess investment account when a municipality directs that excess interest is to be allocated to the members’ accounts. The Board satisfies the obligation by crediting the directed excess interest to each member’s excess interest account maintained as a part of the Members’ Reserve Account.

The Board further declares that the total Disability Reserve Account is a pooled account of the System. This reserve account is used to fund a portion of a disability pension when a disability benefit is not fully funded by a member’s accrued benefit as of the date of disability. This account does not benefit a plan unless that plan has a member who seeks a disability pension in a given year. The Board declares that allocating excess interest to the Disability Reserve Account would not directly benefit a municipality in a subsequent year, nor would it benefit a municipality’s members (active or retired) in a subsequent year. Given these facts, the Board deems it illogical to have a municipality allocate excess interest to this account and therefore directs that the municipalities

Pennsylvania Municipal Retirement Board Policy Statement Rule Number 97-1 (Continued)	Allocation of Excess Interest to Municipal Account, Members' Accounts, and Retired Members' Reserve Account
---	---

Policy: not be given the option of allocating excess interest to the total Disability Reserve Account.
(Cont'd.)

The Board directs that the Secretary of the System or the Secretary's designee inform the municipalities of the excess interest award value to the municipalities' plan(s) within two weeks of the Board's adoption of the excess interest award. The written announcement shall be mailed to each plan's designated contact person and shall contain the specific dollar amount awarded as excess interest. This amount shall be calculated by multiplying each plan's assets by the percentage of the adopted excess interest award. Assets refer to monies held in the Members' Reserve, the Municipal Reserve, and the Retired Members' Reserve (the assets held in the name of a retired member – the present value as determined by the System's actuary) as of December 31 of the previous year. The announcement shall show not only the value of the total excess interest awarded to the plan but also the dollar amount of the award generated from the previous year-end balances of the reserve accounts (Municipal, Members, and Retired Members).

The plan's governing body shall notify the System in writing of the manner in which the governing board wants the excess interest allocated among the three reserves. In addition, if any excess interest is allocated to either active or retired members, it must be done in a non-discriminatory, systematic manner, and the process shall be uniformly applied to all members. The Board directs that staff monitor the allocation process and contact the municipality should a questionable or unusual allocation decision be presented to the System.

If the plan's allocation decision is not returned to the System by November 30, the System shall allocate all awarded excess interest to the plan's municipal account. The System will implement the municipalities' allocation decisions effective December 31 of the year the Board declared the excess interest award. Once the allocation has been made (December 31), the decision is irrevocable.

Active members who terminate membership in the System after December 31 of the previous year shall not be entitled to any excess interest award. Any award that would have been allocated to the member's account shall be deposited instead to the municipal account of the plan.

Pennsylvania Municipal Retirement Board Policy Statement Rule Number 97-1 (Continued)	Allocation of Excess Interest to Municipal Account, Members' Accounts, and Retired Members' Reserve Account
---	---

Policy:
(Cont'd) Retired members who terminate membership in the System after December 31 of the previous year shall not be entitled to any excess interest award. Instead, any award that would have been allocated to the retired member's benefit shall be deposited to the municipal account of the plan.

Members who would have been allocated excess interest money as an active member but who retired on or after December 31 of the previous year shall have said allocation annuitized and added to the monthly benefit said member is getting as a retired member of the plan.

Municipalities that withdraw their plan(s) from the System on or after December 31 of the previous year shall be entitled to any excess interest declared by the Board in the current year which is based upon the plan's assets as of December 31 of the previous year. The System shall award said excess interest to the governing board of the withdrawn plan on December 31 of the current year. A plan must be a member of the System on December 31 to participate in any allocation of excess interest in the following year.

Any former member who has lost rights to membership in the System due to termination of employment in a member plan but has not withdrawn the accumulated member deductions by December 31 of the year in which membership rights ended shall not be eligible for allocated excess interest.

Effective Date: This rule is to be implemented effective immediately and applicable only on a prospective basis.

Adoption Date: Adopted at the September 18, 1997, meeting of the Pennsylvania Municipal Retirement Board.

Purpose: The Pennsylvania Municipal Retirement Law establishes a separate reserve fund, Total Disability Reserve Account (Disability Reserve), to assist plans in providing disability benefits through a pooled risk vehicle. This statement sets out the funding and utilization policy of the Disability Reserve.

Background: Municipalities may elect to provide disability retirement benefits. When a municipality has elected to provide disability benefits, a common design is to provide 30% income replacement for non-service or standard disability and 50% income replacement for an in-service disability. The law requires the Pennsylvania Municipal Retirement System (PMRS) to include in the plan's annual obligation a charged term cost for the value of these benefits.

When a participant of a plan with disability benefits applies and is approved by the Pennsylvania Municipal Retirement Board for a disability retirement benefit, all or a portion of the funding of the benefit is transferred from the Disability Reserve to the Retired Member's Reserve Account (Retiree Reserve). When determining the amount of the transfer from the Disability Reserve a value of the disability benefit is determined using the applicable actuarial factors consistent with the member's demographics and the plan's benefit formula.

Once the value of the disability benefit is determined, PMRS determines the accrued value of the member's normal retirement benefit. The value of the member's accrued normal retirement benefit is subtracted from the value of the member's approved disability benefit and the remainder is the amount of money that is transferred from the Disability Reserve to the Retiree Reserve to fully fund the approved disability benefit.

Any monies in the Member's Account (except those monies voluntarily contributed to fund an optional benefit and the regular interest credited to them) and any monies in the Member's Excess Interest Account are subtracted from the value of the accrued normal retirement benefit to determine the amount of monies charged to the member's employer's Municipal Account to fund the benefit not funded by monies from the Disability Reserve.

Authority: Pennsylvania Municipal Retirement Law, Act of February 1, 1974, P.L. 34, No. 15, § 104(5), 53 P.S. § 881.104(5).

Policy: The Pennsylvania Municipal Retirement Board adopts the following funding procedures to ensure adequate financial resources are available to provide for disability retirement liabilities for those participating municipalities that elect to provide disability benefits.

1. Funding – An annual cost, expressed as a percentage of a plan’s covered compensation, shall be determined by the system’s actuary and included in the Minimum Municipal Obligation of each plan that provides disability benefits. This cost is to be used for the funding of the Disability Reserve. The annual cost shall be equal to the projected disability cost in excess of the projected accrued benefit cost factoring in the probability of a disability occurrence for the one year term covered by the Minimum Municipal Obligation. Such amounts charged shall be deposited to the Disability Reserve.
2. Distributions – On approval of a disability retirement by the Pennsylvania Municipal Retirement Board, the difference in the value of the disability benefit and the funds identified for transfer to the Retiree Reserve based upon the member’s accrued normal retirement benefit as of the date of disability shall be determined and that amount shall be transferred from the Disability Reserve to the Retiree Reserve to fully fund the disabled retiree benefit.
3. Funding Limitation – The assets in the Disability Reserve shall be determined as of December 31 of each year. If the value exceeds 1.5 times the highest total of all required disability transfers to the Retiree Reserve in any one of the last three years, all assets in excess of 1.5 times the highest transfer value shall be transferred from the Disability Reserve and placed in the unallocated assets for distribution in the year of determination.
4. Shortfall Funding – To the extent that transfers from the Disability Reserve to the Retiree Reserve exceed the value of assets in the Disability Reserve and the balance in the Disability Reserve is determined to be a negative value as of December 31, assets from the unallocated earnings of PMRS shall be deposited in the Disability Reserve to bring the Disability Reserve balance to “0” at year end.

Effective This policy is to be effective immediately.

Date:

Adoption Adopted at the September 20, 2007 meeting of the Pennsylvania Municipal

Date: Retirement Board.

James B. Allen, Secretary

JBA:jba
09/07/07

- Purpose: To document how the Pennsylvania Municipal Retirement Board determines whether and the extent to which Excess Interest is available to be distributed to the member plans.
- Authority: The Pennsylvania Municipal Retirement Law, Act 15 of 1974 (referred to as “the Act”), Sections 104 (General Powers of the Board) and 110 (Management and Investment of Fund; Interest Credits).
- Background: The Pennsylvania Municipal Retirement Board is required to determine annually the amount of investment earnings on the System assets in excess of that required for allocation to regular interest and expenses. This “excess” is defined in the law as “Excess Interest.” The Board adopted a procedure to determine the excess interest in 1984. This Policy Statement is intended to memorialize the process and make it available to the public. The Board is adding one new stipulation to the process – the establishment of a minimum award threshold. This additional provision is to limit the administrative burden associated with the allocation process in years when the award would be considered “de minimis.”
- Policy: The Board requires the following calculations to be made as part of the excess interest determination process.
1. At the close of the year, staff with the confirmation of the independent auditing firm under contract to the Board, shall make all required allocations of regular interest to the System’s accounts.
 2. Staff and consulting actuary shall then determine the expected administrative expense for the following year that is not expected to be met from the \$20 per plan member administrative charge.
 3. Staff with the confirmation of the independent auditing firm shall determine the *Market value* of the System’s investment portfolio as of year end along with the audited balances of the *System’s Reserve accounts* (Member, Municipal, Retired, Disability).
 4. These numbers (See Steps 1, 2 & 3) will be provided to the consulting actuary who will be responsible for performing the next set of calculations.
 5. The consulting actuary will add to the *System’s Reserve accounts* the projected expenses from Step 2. This total will become the *Preliminary value*.

Policy:
(Con't.)

6. The consulting actuary will then subtract from the *Market value* of the System's investment portfolio the *Preliminary value*. This result will be the *Available surplus*.
7. The consulting actuary will then determine the *New surplus* by subtracting from the *Available surplus* last year's *Final surplus*. New surplus is limited to be no greater than Available surplus
8. Next the consulting actuary will calculate the ratio "m" of *Available surplus* (See Step 6) to *Market value*.
9. Next the consulting actuary will calculate the ratio "n" of *New surplus* (See Step 7) to *Market value*.
10. The percentage of *New surplus* to be used for the *Excess interest* (e) is derived from the following formula:

$$e = \frac{0.10 + 8m}{1.0 + 8n}$$

11. The consulting actuary then determines the *Trial excess interest allocation* by multiplying (e) (See Step 10) times *New surplus* (See Step 7).
12. The consulting actuary will also determine *Trial surplus* by subtracting *Trial excess interest allocation* (See Step 11) from *Available surplus* (See Step 6).
13. The consulting actuary will determine *Trial margin* by dividing *Trial surplus* (See Step 12) from *Market value* (See Step 3).
14. If *Trial margin* (See Step 13) is less than ten percent (10%), then trial figures become final figures and the *Actuarial value* is set as *Market value* less *Final surplus* (See Step 12).
15. If *Trial margin* (See Step 13) is equal to or greater than ten percent (10%), the *Final excess interest allocation* is *Available surplus* (See Step 6) less ten percent (10%) of *Market value* (See Step 3), *Final surplus* is ten percent (10%) of *Market value*, and *Actuarial value* is ninety percent (90%) of *Market value*.

Once the *Final excess interest allocation* is determined, the *Excess interest percentage* is calculated by the consulting actuary. This is derived by first adding the Member Reserve balance, the Municipal Reserve balance and the actuarially determined Present value of the Retired Reserve balance to determine *eligible reserves*. The Excess interest percentage is the *Final excess interest allocation* divided by the *eligible reserves*.

Pennsylvania Municipal Retirement Board Policy Statement 05-2 (Con't)	Excess Interest Award Process
--	-------------------------------

Policy:
(Con't.)

If the *Excess interest percentage* is less than five tenths of one percent (0.5%), there shall be NO *Excess interest* awarded, the *Actuarial value* shall be set to the *Preliminary value* and the *Final surplus* shall be set to the *Available surplus*. If the *Excess interest percentage* is five tenths of one percent (0.5%) or greater, the resulting *Excess interest percentage* shall be awarded and the plans notified as to their proportion of the total *Final excess interest allocation*.

The actual allocation of the year's *Excess interest* will be posted to the plans' accounts as of December 31 of the following year. To be eligible to receive a portion of the excess interest awarded for any year, a municipality's plan must have been in PMRS on December 31 of the year for which the allocation was made.

Effective
Date:

This policy is to be implemented effective immediately.

Adoption
Date:

Adopted at the July 21, 2005 meeting of the Pennsylvania Municipal Retirement Board.

James B. Allen, Secretary

Purpose: To provide direction to the Pennsylvania Municipal Retirement staff (Staff) on the collection, requests for compromise, and write-off of delinquent debts and accounts due the Pennsylvania Municipal Retirement System (the “System”).

Authority The Pennsylvania Municipal Retirement Law, Act 15 of 1974, Section 104.

Background An overpayment occurs when a former member, annuitant, beneficiary or survivor annuitant (“Debtor”) is paid a benefit exceeding his/her entitlement. The following represent the major causes of overpayments by the System:

1. Delayed notification of the death of a member or annuitant.
2. Inaccurate information reported by the member or municipality.
3. Administrative errors by Staff.
4. Misinterpretation of benefit provisions.

Procedures: A. Debtors who have been overpaid shall be notified in writing of the reason and the amount of the overpayment and offered the following repayment methods:

1. A lump-sum payment within 90 days of the receipt of notification.
2. Monthly installment payments in an amount agreed upon between the former member or beneficiary and the Secretary of the Pennsylvania Municipal Retirement System (Secretary). Installment periods extending beyond sixty months shall require the approval of the Pennsylvania Municipal Retirement Board (Board).
3. If applicable, an actuarial reduction spread over the life of the annuitant, survivor annuitant, or beneficiary may be applied to the monthly check. Reductions of more than 20% of the monthly check shall require the approval of the Board

The debtor shall be given 15 days to respond to the first notice, which shall be sent via certified mail return receipt requested to the last known address on file for the debtor. If there is no response to the first notice, a second and third notice, if necessary, shall be sent by regular first-class mail at 15-day intervals.

If no response is received after the third notice and the amount of the overpayment is \$1,000 or less:

1. In the case of a former member or beneficiary, a write-off request will be completed and submitted to the Office of Attorney General, Financial Enforcement Section. If the write-off request is approved, the outstanding balance shall be written off, collection efforts shall stop, and the account shall be closed, but if the former member returns to service, the debt shall be recovered from future benefits that accrue to the re-enrolled member.

2. In the case of an annuitant, survivor annuitant or beneficiary, an actuarial reduction shall be applied to the ongoing annuity, when available. If a beneficiary is not receiving a monthly annuity from the System or if the annuity is not large enough to accommodate the actuarial reduction and there is still a balance remaining of less than \$1,000; after 2 documented attempts to receive the funds have been made, a write-off request will be completed and submitted to the Office of Attorney General, Financial Enforcement Section. If the write-off request is approved, the outstanding balance shall be written off, collection efforts shall stop, and the account shall be closed.

If no response is received after the third notice and the amount of the overpayment is more than \$1,000, the claim shall be referred to the Office of the Attorney General, Financial Enforcement Section for attempted collection of the debt. The System shall ask the Attorney General to return the claim to the System if the debt is not collectible. If the debt is returned as uncollectible:

1. In the case of a former member, the debt shall be written off to balance the member's account but if the former member returns to service, the debt shall be recovered from future benefits that accrue to the re-enrolled member.
2. In the case of an annuitant, survivor annuitant or beneficiary, the debt shall be permanently written off.

B. If payments are made by the System to a Debtor after the Debtor's date of death resulting in an overpayment, the legal representative for the estate of the Debtor shall be advised in writing of the reason and the amount of the overpayment and the following repayment methods:

1. A lump-sum payment within 90 days of the receipt of notification.
2. Monthly installment payments in an amount agreed upon between the legal representative and the Secretary. Installment periods extending beyond sixty months shall require the approval of the Board.

The legal representative shall be given 15 days to respond to the first notice, which shall be sent via certified mail return receipt requested to the last known address on file. If there is no response to the first notice, a second and third notice, if necessary, shall be sent by regular first-class mail at 15-day intervals.

If no response is received after the third notice and the amount of the overpayment is \$1,000 or less:

1. An actuarial reduction shall be applied to the annuity of the survivor annuitant or beneficiary, if available. Reductions of more than 20% of the monthly check shall require approval by the Board.

2. If a Debtor is not receiving a monthly annuity from the System or if there is no benefit payable or the annuity is not large enough to accommodate the actuarial reduction and there is still a balance remaining of less than \$1,000; a write-off request will be completed and submitted to the Office of Attorney General, Financial Enforcement Section. If the write-off request is approved, the outstanding balance shall be written off, collection efforts shall stop, and the account shall be closed.

If the amount is more than \$1,000, the claim shall be referred to the Office of the Attorney General, Financial Enforcement Section for attempted collection of the debt. The System shall ask the Attorney General to return the claim to the System if the debt is not collectible. It shall be written off on a permanent basis.

If there is no legal representative of the estate of the Debtor and the Secretary has reason to believe that the overpayment was received by a person without due authority (“Unauthorized Person”), then Staff shall make a reasonable effort to obtain the identity of the Unauthorized Person and follow the notice procedures to a legal representative stated above.

If after reasonable investigation, such Unauthorized Person cannot be identified and there is no death benefit payable from which to deduct the overpayment:

1. If the amount is \$1,000 or less, a write-off request will be completed and submitted to the Office of Attorney General, Financial Enforcement Section. If the write-off request is approved, the debt shall be written off, collection efforts shall stop, and the account shall be closed.
 2. If the amount is more than \$1,000, the claim shall be referred to the Office of the Attorney General, Financial Enforcement Section for attempted collection of the debt. The System shall ask the Attorney General to return the claim to the System if the debt is not collectible. It shall be permanently written off.
- C. If a write-off request or settlement is not approved by the Office of the Attorney General, the claim shall be referred to the Office of the Attorney General, Financial Enforcement Section for attempted collection of the debt.
- D. In all cases, the System reserves the right to confer with its Office of Chief Counsel to request delegation from the Office of the Attorney General to pursue collection of the debt in accordance with the Commonwealth Attorneys Act.
71 P.S. § 732-204(c).

Pennsylvania Municipal Retirement Board Policy Statement 08 – 4 (Continued) Adopted November 20, 2008	Overpayment Policy
---	--------------------

Hardship: If the debtor wishes to appeal the collection of the overpayment on the basis of financial hardship, the following procedures shall be followed:

1. The Staff shall notify the debtor in writing that reasonable evidence must be provided within 30 days to support the appeal. Where health is the issue, some form of medical evidence from an informed source shall be required. For financial reasons, details of income and expenditure (bills) shall be required.
2. The Secretary, or his or her designee, shall review the information provided. If the Secretary determines that additional information is needed in order to make a recommendation to the Board, he or she may request a meeting with the Debtor. The Secretary may also request the Debtor to provide a notarized affidavit certifying the information provided.
3. If the Secretary, or his or her designee, feels that a hardship exists, he or she shall recommend to the Board forgiveness or settlement of the debt.
4. If the Board decides to write-off or settle the debt, the System shall complete and submit the appropriate STD forms including supporting documentation to the Office of the Attorney General, Financial Enforcement Section for approval.

Exceptions: Exceptions to this policy shall require Board action and the Board reserves its right to make such exceptions when it deems it appropriate.

Effective Date: This policy is to be effective immediately and apply to all current Debtors, regardless of the date on which the debt was incurred.

Adoption Date: Adopted at the November 20, 2008 meeting of the Pennsylvania Municipal Retirement Board.

James B. Allen, Secretary

JBA:jba
10/29/08

Pennsylvania Municipal Retirement Board Policy Statement Rule 03-1	Permanent Employment
--	----------------------

Purpose: To set forth guidance on the definition of permanent employment as used in Act 15 of 1974, the Pennsylvania Municipal Retirement Law (referred to as “the Act”).

Authority: The Pennsylvania Municipal Retirement Law, Act 15 of 1974, Section 106.

Background: The Pennsylvania Municipal Retirement Board is authorized to prepare information to be distributed to members and municipalities showing “the methods of administration” the Board uses in managing the plans enrolled in the Pennsylvania Municipal Retirement System (PMRS). The Board has found it necessary to share with existing municipal members and potential members guidance on the term “employed on a permanent basis” as used in sections 203 and 402 of the Act. The reference is to those municipal employees who must be enrolled in the PMRS administered pension plan.

Policy: The Board confirms its understanding of the law that any individual hired with the expectation of being in an active, regularly scheduled paid position for more than one year is required to be considered employed on a permanent basis, regardless of whether the employment is part-time or full-time. The actual number of hours worked per week is not a consideration in the determination of permanent employment.

Implementation: The Board directs that all municipalities that have municipal plans in PMRS be provided with information advising of their responsibility to specifically agree to enroll all employees employed on a permanent basis. The municipality’s agreement to do so shall be memorialized in all contracts for benefits entered into from the effective date of this policy forward. The municipality shall also be required to certify that this requirement is met via the certification process used on the System’s Quarterly Report of Contributions (PMRB-21).

When there is a dispute over whether an individual is eligible to be enrolled in a PMRS administered municipal plan, PMRS shall address the question of the individual’s status upon a request to review the matter from the individual or the municipality. The request shall be set forth in writing.

Pennsylvania Municipal Retirement Board Policy Statement Rule 03-1 (Con't)	Permanent Employment
--	----------------------

Implementation: PMRS shall review the request and confirm the particulars of that individual's employment history with the enrolled municipal plan sponsor. Circumstances to be identified include, but are not limited to, the following:

(Con't)

1. The specific offer of employment, such as the letter offering employment, the resolution of the employer formally creating the position, or any public announcement of the position's vacancy.
2. The conditions set forth in the offer of employment including hours worked, obligations to report to work and expected term of employment.
3. The funding of the position, and whether the individual is being paid under the same federal Employer Identification Number as other individuals enrolled in the pension plan.
4. Any written personnel policy adopted by the municipality.
5. Actual employment and payment records for the individual in question.

During the review, PMRS' Secretary shall be empowered to issue an "Order to Show Cause" if deemed necessary to the determination of the status of the individual with the PMRS administered pension plan.

The Secretary shall notify the individual and the municipality in writing of the administrative decision of PMRS. The parties to the administrative decision shall have all rights of appeal granted to parties to PMRS administrative decisions, including a formal appeal to the Board.

If PMRS determines that an individual should have been enrolled in the plan, enrollment will be effective as of the date the individual became eligible for enrollment, absent extenuating circumstances. PMRS shall calculate the required member contributions that should have been made during the time period in question, if any are required by the plan.

If member contributions should have been made, the individual shall be required to pay into the System the required contributions and the regular interest that would have been credited had the individual been enrolled in the System. The individual may pay the obligation in a lump sum or over a period of up to five years through payroll deductions, so long as the individual remains an active member of the plan. If not paid in a lump sum, the amount due shall be assessed interest at the regular interest rate. The municipality's liability will also be determined and reflected as an obligation of the municipality.

Pennsylvania Municipal Retirement Board Policy Statement Rule 03-1 (Con't)	Permanent Employment
--	----------------------

Effective

Date: This policy is to be implemented effective immediately.

Adoption

Date: Adopted at the July 17, 2003 meeting of the Pennsylvania Municipal Retirement Board.

James B. Allen, Secretary

Purpose: To document how the Pennsylvania Municipal Retirement Board (Board) processes a plan's request to withdraw from the Pennsylvania Municipal Retirement System (System).

Authority: The Pennsylvania Municipal Retirement Law, Act 15 of 1974 (referred to as "the Act"), contains three articles (Articles II, III, and IV) that allow for municipalities to enroll their pension plan in the System. Each article contains a section that also allows a municipality to withdraw from the System. (See Sections 214, 316, and 412). Each of the previously cited sections also cites Section 104 (General Powers of the Board) which authorizes the Board to adopt rules and regulations for the proper administration of the System. The Board has adopted regulations to this end. (See 16 Pa. Code, 81.10 -Withdrawal Provisions.)

Background: The Pennsylvania Municipal Retirement Board is required to take action on the application of a plan that seeks permission to withdraw from the System. While the Act and the adopted regulations set forth the specific requirements that must be met, the Board wishes to specify how the application will be processed and the steps that will be followed once a plan's application to withdraw has been approved.

Policy: Requirements for Withdrawal - A municipality that files an application with the Board for permission to withdraw from the System must meet all of the following requirements:

1. the plan has been enrolled in the System for a period of at least five years;
2. the municipality has met all of the plan's financial obligations to the System;
3. the legislative body of the municipality has passed an ordinance or, if the legislative body does not possess the authority to adopt ordinances, a resolution, signifying its intention to withdraw from the System;
4. the municipality has certified to the Board that an affirmative vote approving withdrawal from the System had been obtained from at least seventy-five per cent of all of the municipal employees (the term "municipal employee" for the purpose of considering a plan's withdrawal has been defined by regulation to include a plan's active members, inactive members, vested members and retired members);
5. the municipality has acknowledged its responsibility to assume and provide for all future benefit payments to the existing active, inactive, vested and retired members and their beneficiaries effective upon the withdrawal; and,

6. the application has specified a date for the plan withdrawal to become effective, provided if there are retired members in active pay status the effective date must be the first day of a month no earlier than the month after which the Board is scheduled to take action on the withdrawal application.

Board Consideration of Application - The Board shall take action within ninety (90) days of receipt of an application for permission to withdraw from the System. Should no regular Board meeting be scheduled to occur within ninety (90) days of receipt of an application, the Secretary shall arrange with the Board Chair to schedule a special meeting to take action on the application.

Concurrently with the scheduling of the application for action by the Board, the Secretary shall provide the Office of Chief Counsel with a copy of the application and any associated documents. The Office of Chief Counsel shall advise the Board as to whether or not the application meets the requirements of the law and Board adopted regulations. The Secretary shall also cause a review of the plan's accounts to be undertaken and a determination to be made as to whether the plan's financial obligations to the System have been met. The Secretary shall report the results of this review to the Board.

If the Board approves the municipality's application to withdraw its plan, the municipality shall be entitled to receive a refund of the assets of the plan calculated in accordance with the procedure set forth below. The Board may require the withdrawing municipality to enter into a written agreement with the Board terminating its contractual relationship with the Board and fixing the respective rights of the parties. Additionally, the withdrawing municipality may be required to obtain individual waivers or releases from affected members. If the board disapproves the application of the municipality to withdraw, the Secretary shall notify the municipality of the Board's decision and advise the municipality of the Board's reason or reasons for disapproval.

Calculation of Plan Assets to be Refunded – When the Board approves a municipality's application to withdraw a plan from the System, the Secretary shall cause to be determined as of the effective date of withdrawal, the total of all amounts then standing to the credit of the plan in the members' accounts, the members' excess investment accounts, the municipal account and the retired members' reserve accounts. When determining the amount then standing to the credit of the plan in the retired members' accounts, the Secretary shall utilize Policy Statement 10-3. This total shall be considered the plan's credited assets.

The Secretary shall also determine whether or not the actuarial value of the System's assets exceed the System's market value of its investments in the most current actuarial valuation accepted by the Board. If the actuarial value of assets exceeded the market value of investments, the ratio of market value to actuarial value shall be multiplied times the plan's credited assets. The resulting product shall be considered the plan's net refund. If the actuarial value of assets is less than the market value of investments, the plan's credited assets shall be the plan's net refund.

In the event that the withdrawal of the plan is due to the dissolution of the employing municipal entity and all of the assets and liabilities of the withdrawing plan are to be transferred and distributed to a PMRS member plan or plans; then, regardless of the ratio of the System's market value to actuarial value, the withdrawing plan's credited assets shall be the plan's net refund.

Specifics of the Plan's Net Refund – Once the determination of a withdrawing plan's net refund is made, the Secretary shall cause said amount to be made payable to the plan's withdrawing municipality. The net refund may be made in a single payment or in multiple payments depending on the municipality's certification of all plan payments into the System. If the withdrawing plan has retirees in an active payment status, the Secretary shall make every attempt to refund, at a minimum, that portion of the plan's net refund attributable to the retired members' accounts prior to the date the municipality must begin to make monthly benefit payments.

All payouts are to be considered a trustee-to-trustee payment. A complete accounting of the plan's net refund, as well as the System's financial statements for the plan for the year in which the plan withdraws shall be provided to the withdrawing municipality.

Effective Date: This policy is to be implemented effective immediately.

Adoption Date: Adopted at the March 17, 2010 meeting of the Pennsylvania Municipal Retirement Board.

James B. Allen, Secretary

Pennsylvania Municipal Retirement Board Policy Statement Rule Number 97-2	Portability: Individual Member
---	-----------------------------------

Purpose: The law provides that the Board transfers service credits when an employee leaves one Pennsylvania Municipal Retirement System (PMRS) member municipality and joins another. This benefit is called portability. The Board, in order to give policy guidance to staff, adopts the following statements on portability.

Authority: Act 15 of 1974, "Pennsylvania Municipal Retirement Law": Section 405.

Policy: **STATEMENT 1:** Portability is optional.

An employee who leaves the employ of one PMRS member municipality (Municipality A) and joins the employ of another PMRS member municipality (Municipality B) shall have one year from the date of separation from Municipality A's plan to exercise the portability benefit authorized in the law. Employment (but not necessarily enrollment in Municipality B's plan) must occur within one year of separation from eligibility in Municipality A's plan. Municipality B's plan enrollment effective date as a member municipality in PMRS must be on or before the date the employee is hired. An employee shall have the rights to exercise his rights to portability but said rights have to be affirmatively selected by the eligible employee by completing the appropriate PMRS form relating to the instituting of portability within one year of separation from Municipality A.

STATEMENT 2: The member's benefit will be determined under the contract provisions in effect in Municipality B.

In determining the benefit to be received by the employee who exercises portability, the contract and plan benefit structure of Municipality B shall be the controlling document in determining the benefit under which the member will be allowed to retire or receive a benefit. However, in no event will the member receive an accrued benefit from Municipality B which has a present value less than that earned in Municipality A as of the time of separation from Municipality A.

STATEMENT 3: Service credits re combined.

For an employee electing to institute portability, the years of credited service shall be based on all years of credited service earned by the employee (credited service in both Municipality A and Municipality B).

Pennsylvania Municipal Retirement Board Policy Statement Rule Number 97-2 (Continued)	Portability: Individual Member
---	-----------------------------------

STATEMENT 4: The transfer amount is the present value of the accrued benefit in Municipality A's plan as of date of separation from Municipality A.

When an individual elects to implement the portability benefit, his accumulated contributions (member contributions and regular interest thereon) and any credited excess interest shall be transferred and credited to his new account in Municipality B. The difference between the accumulated contributions and the present value of the accrued benefit of the member at the time of separation from Municipality A shall be determined (or if the plan is a defined contribution plan – the employer contributions made to the member's account and credited interest thereon). This determined amount shall be transferred from Municipality A's municipal account (or if Municipality A's plan is a defined contribution plan – from the member's account) to Municipality B's municipal account (or if Municipality B's plan is a defined contribution plan – to the member's account).

It is recognized that the potential exists for the transfer to either overfund the accrued benefit under Municipality B's plan (if the member is leaving from a higher benefit plan to go to a lower benefit plan) or, conversely, the transfer may be insufficient to meet the accrued liability of the member under Municipality B's plan (if Plan B's benefit structure is better than Plan A's benefit structure). The actual consequences will depend upon the benefit structures in effect in the two municipalities. At time of benefit receipt, the employee shall have a present value of benefits at least equal to the amount that has been transferred from Municipality A's plan to Municipality B's plan.

Effective

Date:

This rule is to be implemented effective immediately and is intended as a continuation and restatement of the Board's policy adopted on November 20, 1986.

Adoption

Date:

Adopted at the November 20, 1997 meeting of the Pennsylvania Municipal Retirement Board.

Pennsylvania Municipal Retirement Board Policy Statement Rule Number 98-1	Portability: Plan Spin-offs
---	--------------------------------

Purpose: The law provides that the Board transfers service credits when an employee leaves one Pennsylvania Municipal Retirement System (PMRS) member municipality and joins another. This benefit is called portability. The Board, in rule Number 97-2, set policy to guide staff when an individual utilizes the portability benefit. The Board finds, however, that when a member municipality elects to spin off an employee or group of employees into a new, separate plan to be governed by a new municipality, there is a need to adopt additional guidelines. Rule Number 98-1 is intended to address the portability of individuals involved in a plan spin-off.

Authority: Act 15 of 1974, "Pennsylvania Municipal Retirement Law": Section 405.

Policy: When the employer (Employer A) of a PMRS administered plan seeks to spin off one or more employee members and transfer the employee(s) to an employer (Employer B) created by Employer A and Employer B seeks to have the Pennsylvania Municipal Retirement System administer a newly created pension plan, the System shall provide portability for the affected, transferred employee members. This situation is typically found in the creation of an authority by a municipality or in the creation of a regional government (Council of Government – COG).

The calculation of the asset value associated with an employee's portability benefit in a spin-off situation shall be determined based upon the relationship between the member's existing pension plan and the newly created plan.

STATEMENT 1: When Employer B establishes a plan that is identical or better in benefit design than the plan that existed for the employee(s) under Employer A, the assets equal to the actuarial accrued liability under Employer A's plan for the effected employees will be transferred from Employer A's plan to Employer B's plan. The employee(s) shall be entitled to the benefits in effect in the plan from which they finally separate from employment.

This calculation method shall be used so that the newly established pension plan is not created with an immediate unfunded liability. It is assumed that the spin-off in this circumstance is intended to start the new employer's pension plan with no unfunded liability for service credits earned with the previous employer.

Pennsylvania Municipal Retirement Board Policy Statement Rule Number 98-1 (Continued)	Portability: Plan Spin-offs
---	--------------------------------

Because the effect of the transfer of service credits for the affected employee(s) is such that no lesser benefit will be earned in the new plan, there is no need to guarantee that the employee will be unharmed in such a transfer.

STATEMENT 2: When Employer B establishes a plan with benefits less than those that existed for the employee(s) prior to the spin-off, the calculation of the assets and liabilities associated with the portability benefit shall be done in accordance with the Board's Rule Number 97-2 policy statement.

The Board believes that Employer A should not be forced to fund the new plan at a level higher than Employer B's actual obligation to the employee(s). Because the effect of the transfer of service credits for the affected employee(s) is such that a lesser benefit could be earned in the new plan, there is a need to guarantee that the employee will not receive a reduction in benefits as a result of such a transfer. That guarantee is provided in the Board's policy statement Rule Number 97-2.

Effective

Date: This rule is to be implemented effective immediately.

Adoption

Date: Adopted at the January 22, 1998 meeting of the Pennsylvania Municipal Retirement Board.

Pennsylvania Municipal Retirement Board Policy Statement 10 – 3 Adopted March 17, 2010	Calculation of Withdrawing Plan’s Portion of Retired Member’s Reserve
--	---

Purpose: To adopt a procedure to calculate the amount of money “. . . standing to the credit of the municipality . . . in the retired member’s reserve accounts of the system (.)” when a municipality is withdrawing a plan from the System’s administration.

Authority: Act 15 of 1974, “The Pennsylvania Municipal Retirement Law” Section 104 General Powers of the Board, Paragraph (10).

Specific Cites: Act 15 of 1974, “The Pennsylvania Municipal Retirement Law”; Section 214 Withdrawal Provisions and Section 412 Withdrawal Provisions.

Policy: The calculation of the amount remaining to the credit of a withdrawing plan in the retired member’s reserve account shall be made as of the effective date of the withdrawal utilizing the actuarial assumptions and tables in use by the System on the effective date of withdrawal.

The withdrawal payout shall be the “reverse” transfer value (actuarial present value) of each plan member in payment status as of the effective date of withdrawal provided the System’s retired member’s reserve account has as of the System’s most recently completed actuarial valuation, assets in excess of the actuarial present value of future expected payments to retired pensioners and beneficiaries of all the plans of the System (Retiree Actuarial Value). This provision shall apply only to those benefits which had been fully funded through transfers from the members, municipal, and/or disability reserves as well as any allocation of excess interest. (The reverse transfer values for pay-as-you-go ad-hoc COLA benefits are not to be calculated.)

If the assets in the System’s retired member’s reserve are less than the System’s Retiree Actuarial Value as of the most recently completed actuarial valuation, then the ratio of the assets to the Retiree Actuarial Value shall be applied to the calculated reverse transfer value and the product shall be deemed the amount then standing to the credit of the withdrawing municipality in the retired member’s reserve account, and it will be the amount paid out to the withdrawing municipality.

In the event that the withdrawal of the plan is due to the dissolution of the employing municipal entity and all of the assets and liabilities of the withdrawing plan are to be transferred to a PMRS member plan or plans; then, regardless of the ratio of the assets in the System's retiree reserve to the System's Retiree Actuarial Value, the amount credited to the withdrawing plan in the retired members' reserve account shall be equal to the actuarial present value of each plan member in payment status as of the effective date of withdrawal.

The actuarial experience of the retired members and their beneficiaries that has developed prior to the effective date of the plan's withdrawal shall not be considered in the calculation of the Retired Member's Reserve Account payout. Only those retired members or their beneficiaries who have a benefit in pay status on the effective date of withdrawal shall be considered as a part of the municipal plan's retired member's reserve account balance.

Effective
Date:

This rule is to be implemented effective immediately and applicable only on a prospective basis.

Adoption
Date:

Adopted at the March 17, 2010 meeting of the Pennsylvania Municipal Retirement Board.

James B. Allen, Secretary

EXHIBIT 2



PENNSYLVANIA MUNICIPAL RETIREMENT SYSTEM
DEFINED BENEFIT PLAN
Adoption Agreement 001

The undersigned, _____, Pennsylvania ("Municipality"), by executing this Adoption Agreement 001, elects to establish its own single employer plan within the meaning of Code Section 401(a) in the Pennsylvania Municipal Retirement System (the "System") and hereby adopts the accompanying Base Plan Document and Trust documents in full as if the Municipality were a signatory to those agreements. The Municipality makes the following elections granted under the provisions of the Base Plan Document..

TYPE OF PLAN ADOPTION

- New Plan Effective Date: _____ (Effective date of newly-adopted Plan. Date cannot be earlier than the first day of the initial Plan Year)
Restatement Effective Date: _____ (Effective date of this Plan document which restates and supersedes previous PMRS Plan document or Original Plan document. Date cannot be earlier than (1) the first day of the 2008 Plan Year; or (2) the first day of the first Plan Year of the PMRS Plan or Original Plan as applicable.)
PMRS Plan Effective Date: _____ (Effective date of Plan initially administered by PMRS and restated under this document.)
Original Plan Effective Date: _____ (Effective date of Plan initially administered by Municipality or third party administrator or PMRS and restated under this document.)

ARTICLE I: DEFINITIONS

Any capitalized terms used in this Adoption Agreement but not defined herein shall be given the meaning set forth in the Base Plan Document and Trust.

1.23 COMPENSATION.

The total amount of all payments, direct or indirect, made by the Municipality to an Member for services rendered to the Municipality, for a calendar year which ends within a Plan Year, as defined in Code Section 3401(a) for purposes of tax withholding at the source (as reported to the Employee on Form W-2 for such year). Compensation shall include before-tax or salary deferral contributions made to this Plan or any other plan of the Municipality, under a Code Section 132(f)(4) qualified transportation plan or under Code Sections 125, 402(g)(3), 457 or 414(h), on behalf of a Member for such Plan Year. The term Compensation shall exclude the following (select all exclusions):

- Overtime (as defined under the Fair Labor Standards Act)
Bonus Payments (Regular)
Bonus Payments (Special)
Unused Accrued Leave Payments
(if unused accrued leave is included for purposes of Compensation, it should be excluded for purposes of calculation of Credited Service under Section 1.24)
Unused Sick Leave Payments
(if unused sick leave is included for purposes of Compensation, it should be excluded for purposes of calculation of Credited Service under Section 1.24)
Payments under the "The Pennsylvania Workmen's Compensation Act"

Incentive Payments
 Education Incentive Payments
 Longevity Payments
 Payments in Lieu of Offered Benefits
 Allowance for Meals
 Allowance for Clothing and/or Equipment
 All other Compensation except regular salary not otherwise enumerated in the Base Plan Document or in this Adoption Agreement
 Other (Specify Short Name) : _____
 Definition: _____

1.24 CREDITED SERVICE.

Method of Measurement (Select One)

Hours of Service Method

Elapsed Time Method

Adjustments to Credited Service

Include Exclude

Maximum years of Credited Service

Maximum Years: _____

Unused sick leave

(converted to Credited Service under the following formula:
 _____)

(if included for purposes of Credited Service, should be excluded for purposes of Compensation under Section 1.23)

Unused annual leave

(converted to Credited Service under the following formula:
 _____)

(if included for purposes of Credited Service, should be excluded for purposes of Compensation under Section 1.23)

Worker's Compensation Leave

Service as Employee before the Municipality's PMRS Plan Enrollment Date

Service as Employee before the Original Plan Effective Date

Service as Employee under the non-PMRS Original Plan

Service as Employee before the terminated Prior Plan of Municipality

Service as Employee under the terminated Prior Plan of Municipality

Service as Employee after the terminated Prior Plan of Municipality

Name of terminated Prior Plan: _____

Service as Employee before the merged Prior Plan of Municipality

Service as Employee under the merged Prior Plan of Municipality

Service as Employee after the merged Prior Plan of Municipality

Name of merged Prior Plan: _____

1.34 ELIGIBILITY SERVICE.

Method of Measurement (Select One)

Hours of Service Method

Elapsed Time Method

1.35 EMPLOYEE.

Plan Type (Select one)

Municipal Police Officers

Municipal Firefighters

Non-Uniform Municipal Employees (Select all that apply)

Eligible Employees for Mandatory Membership (Select all that apply)

Full-time Employees not subject to a collective bargaining agreement with a bargaining unit authorized with the Municipality

Defined as regularly scheduled to perform at least _____ (____) Hours of Service per week

Full-time Employees subject to a collective bargaining agreement with one of the specified bargaining units below authorized with the Municipality:

Defined as regularly scheduled to perform at least _____ (____) Hours of Service per week

Elected Officials (Employee employed exclusively by virtue of election and employed concurrent with a term of office)

Temporary Employees (Employee expressly hired for a definite period less than _____ (____) months (must be less than twelve (12))

Seasonal Employees (Employee expressly hired for a specific task for a duration of less than twelve (12) months)

Part-time Employees regularly scheduled for _____ (____) or more hours per week

Eligible Employees for Optional Membership/Employee Election (Select all that apply)

No Eligible Employees

Elected Officials (Employees employed exclusively by virtue of election and employed concurrent with a term of office)

Temporary Employees (Employee expressly hired for a definite period less than _____ (____) months (must be less than twelve (12))

Seasonal Employees (Employee expressly hired for a specific task for a duration of less than twelve (12) months)

Part-time Employees regularly scheduled for _____ (____) or more hours per week

Ineligible Employees

All individuals not otherwise identified as Eligible Employees in this Section
Individuals specified as follows:

(Category cannot be age or service-based and cannot name specific individuals or a finite group)
The average annual annualized Compensation earned and paid during the:

1.38 FINAL AVERAGE SALARY. (Select One)

The average annual annualized Compensation earned and paid during the:

Average Monthly Compensation

_____ (____) consecutive calendar months of the most recent _____ (____)
consecutive calendar months of Credited Service which produces the highest Final Average Salary

Average Annual Compensation

_____ (____) consecutive calendar years of the most recent _____ (____)
consecutive calendar years of Credited Service which produces the highest Final Average Salary

Final Monthly Compensation

_____ (____) most recent consecutive calendar months of Credited Service
which determines the Final Average Salary

1.41 HOURS OF SERVICE.

An Employee shall be awarded a Year of Service upon completion of _____ (____) Hours
of Service.

(The number of Hours of Service cannot exceed 2,000.) .

1.61 NORMAL RETIREMENT AGE (Applicable to In-Service Distributions)

In-Service Distributions Not Allowed

In-Service Distributions Allowed in Accordance with Section 10.05
(Continuing Employment after Normal Retirement Age)

In-Service Distributions Allowed in Accordance with Section 10.06
(Re-employment after Benefit Commencement Date)

Normal Retirement Age for Allowable In-Service Distributions

Eligible Employees (Select all that apply below)

Date the Member attains age sixty-five (65)

Date the Member attains age sixty-two (62)

The later of the date:

Member attains age sixty (60) and

Member completes five (5) Years of Vesting Service

The later of the date:

Member attains age fifty-five (55) and

Member completes ten (10) Years of Vesting Service

Date the Member's age plus completed Years of Vesting Service equals or exceeds eighty (80)

Date the Member's age plus completed Years of Vesting Service equals or exceeds _____ (____) (The numerical value shall not be less than eighty (80))

Date the Member completes twenty-five (25) Years of Vesting Service
(Must be combined with one of the other options)

To use the three options below, the date the Member meets the specified conditions cannot be greater than the date the member attains age 65 nor less than the date the member attains age 55 and, in any event, may not be less than the representative typical retirement date for such Member's occupation.

Date the Member attains age _____ (____):

The later of the date:

Member attains age _____ (____)

Member completes _____ (____) Years of Vesting Service

Other: _____

Police Officers, Firefighters and other qualified public safety employees as defined under Code Section 72(t)(10) have the following additional options (Select all that apply below)

Date the Member attains age fifty (50)

Date the Member completes twenty (20) Years of Vesting Service

Date the Member's age plus completed Years of Vesting Service equals or exceeds seventy (70)

Date the Member's age plus completed Years of Vesting Service equals or exceeds _____ (____) (The numerical value shall not be less than seventy (70))

To use the three options below, the date the Member meets the specified conditions cannot be greater than the date the member attains age 65 nor less than the date the member attains age 50 and, in any event, may not be less than the representative typical retirement date for such Member's occupation.

Date the Member attains age _____ (____):

The later of the date:

Member attains age _____ (____)

Member completes _____ (____) Years of Vesting Service

Other: _____

(Normal Retirement Age designation cannot be earlier than Superannuation Retirement Pension eligibility under Section 5.01.)

1.69 PLAN.

Plan name as adopted by the Municipality:

Defined Benefit Plan

1.70 PLAN ENTRY DATE.

Employee's Employment Commencement Date
After Completion of Eligibility Criteria under Section 2.01

- First day
- First day of the following month
- First day of the following calendar year quarter
- First day of following calendar year
- Other:

(Option must be completed in a manner that results in Member entering Plan on the earlier of: (i) the first day of the plan year beginning after the date on which the employee has met the minimum age and service requirements; or (ii) six month after the date the requirements are met.)

1.71 PLAN YEAR

The Plan Year shall be the:

- Calendar Year
- Twelve month period beginning _____ and ending _____

1.97 VESTING SERVICE.

Method of Measurement (Select One)

- Hours of Service Method
- Elapsed Time Method

Adjustments to Vesting Service

Include Exclude

- Service as Employee before the Municipality's PMRS Plan Enrollment Date
- Service as Employee before the Original Plan Effective Date
- Service as Employee under the non-PMRS Original Plan
- Service as Employee before the terminated Prior Plan
- Service as Employee under the terminated Prior Plan
- Service as Employee after the terminated Prior Plan
- Name of terminated Prior Plan: _____
- Service as Employee before the merged Prior Plan
- Service as Employee under the merged Prior Plan
- Service as Employee after the merged Prior Plan
- Name of merged Prior Plan: _____

ARTICLE II: MEMBERSHIP

2.01 MEMBERSHIP ELIGIBILITY.

Eligibility Date (Select One)

Employee’s Employment Commencement Date

Date on which the Employee completes _____ (____) months of Eligibility Service

Date on which the Employee completes _____ (____) days of Eligibility Service

Other date (specify): _____

(Service requirements cannot exceed twelve (12) months.)

ARTICLE III: MUNICIPALITY CONTRIBUTIONS

3.03 TIME OF PAYMENT OF CONTRIBUTION.

Contribution Remittance (Select One)

On an annual basis (not later than December 31)

At the same time and frequency of Member’s contributions as specified in Section 4.01 or Section 4.02

ARTICLE IV: MEMBER CONTRIBUTIONS

4.01 MEMBER PRE-TAX PICK-UP CONTRIBUTIONS.

Contribution Requirement (Select One)

Not Required

Required in an amount equal to _____ percent (____%) of Compensation

Contribution Remittance (Select One)

On a payroll basis

Per Weekly Period

Per Bi-Weekly Period

Per Semi-Monthly Period

Per Monthly Period

Per Other Period: _____

On a monthly basis

On a quarterly basis

4.02 MEMBER AFTER-TAX CONTRIBUTIONS.

Contribution Requirement (Select all that apply)

Not Permitted

Required in an amount equal to _____ percent (____) of Compensation (Section 4.02(a))

Contribution Remittance (Select One)

On a payroll basis

Per Weekly Period

Per Bi-Weekly Period

Per Semi-Monthly Period

Per Monthly Period

Per Other Period: _____

On a monthly basis

On a quarterly basis

4.03 OTHER MEMBER CONTRIBUTIONS.

Service Purchase Contributions (Select one)

Not Permitted

Permitted

Prior Plan Transfer Contributions (Select one)

Not Permitted

Permitted

Prior Plan Termination Contributions (Select one)

Not Permitted

Permitted

(Such contributions shall be subject to the limits on the purchased Permissive Service Credit (including Non-Qualified Service Credit) set forth in Article XI of the Base Plan Document.)

4.08 REPAYMENT OF MEMBER ACCOUNT.

Minimum Repayment Amount (Select one)

An amount not less than _____ percent (____%) of the previously refunded amount including interest

An amount equal to the lesser of (a): the repayment for one (1) year of Credited Service or (b): 100% of the previously refunded amount including interest

Repayment Time Period (Select one)

At any time between the Member's Reemployment Commencement Date and the Member's subsequent Termination of Employment

Repayment (not to exceed five (5) years) must be made within (complete only one) :

_____ (____) days of the Member's Reemployment Commencement Date

_____ (____) months of the Member's Reemployment Commencement Date

_____ (____) years of the Member's Reemployment Commencement Date

ARTICLE V: SUPERANNUATION RETIREMENT PENSION

5.01 OFFERING OF SUPERANNUATION RETIREMENT PENSION.

Eligible Employees (Select all that apply below)

Date the Member attains age sixty-five (65)

Date the Member attains age sixty-two (62)

The later of the date:

Member attains age sixty (60) and

Member completes five (5) Years of Vesting Service

The later of the date:

Member attains age fifty-five (55) and

Member completes ten (10) Years of Vesting Service

Date the Member's age plus completed Years of Vesting Service equals or exceeds eighty (80)

Date the Member's age plus completed Years of Vesting Service equals or exceeds _____ (____) (The numerical value shall not be less than eighty (80))

Date the Member completes twenty-five (25) Years of Vesting Service
(Must be combined with one of the other options)

To use the three options below, the date the Member meets the specified conditions cannot be greater than the date the member attains age 65 nor less than the date the member attains age 55 and, in any event, may not be less than the representative typical retirement date for such Member's occupation.

Date the Member attains age _____ (____):

The later of the date:

Member attains age _____ (____)

Member completes _____ (____) Years of Vesting Service

Other: _____

Police Officers, Firefighters and other qualified public safety employees as defined under Code Section 72(t)(10) shall have the following additional options (Select all that apply below)

Date the Member attains age fifty (50)

Date the Member completes twenty (20) Years of Vesting Service

Date the Member's age plus completed Years of Vesting Service equals or exceeds seventy (70)

Date the Member's age plus completed Years of Vesting Service equals or exceeds _____ (____) (The numerical value shall not be less than seventy (70))

To use the three options below, the date the Member meets the specified conditions cannot be greater than the date the member attains age 65 nor less than the date the member attains age 50 and, in any event, may not be less than the representative typical retirement date for such Member's occupation.

Date the Member attains age _____ (____):

The later of the date:

Member attains age _____ (____)

Member completes _____ (____) Years of Vesting Service

Other: _____

5.02 AMOUNT OF SUPERANNUATION RETIREMENT PENSION.

Shall be calculated using the following Pension Benefit Formula(s):

For Basic Benefit (Select all that apply)

Maximum Annual Benefit Amount

_____ percent (____%) of Member Final Average Salary

Single Tiered Formula (Unit Credit Plan)

Member Final Average Salary multiplied by _____ percent (____%) multiplied by the Member Years of Credited Service

Fixed amount of _____ dollars (\$_____) multiplied by the Member Years of Credited Service

Multi-Tiered Formula (Unit Credit Plan)

Member Final Average Salary multiplied by _____ percent (____%) multiplied by the Member Years of Credited Service during the period _____ to _____

Member Final Average Salary multiplied by _____ percent (____%) multiplied by the Member Years of Credited Service during the period _____ to _____

Member Final Average Salary multiplied by _____ percent (____%) multiplied by the Member Years of Credited Service during the period _____ to _____

For Service Increment Benefit (Select one)

Not Permitted

Two and one half percent (2.5%) of the Basic Benefit multiplied by completed Years of Credited Service in excess of twenty-five (25) subject to a maximum Service Increment Benefit of one-thousand two hundred dollars (\$1,200) annually

Two and one half percent (2.5%) of the Basic Benefit multiplied by completed Years of Credited Service in excess of twenty-five (25) subject to a maximum Service Increment Benefit of one-thousand two hundred dollars (\$1,200) annually for each year of applicable Credited Service up to a maximum five (5) additional years of such Credited Service

Fixed dollar amount of one-thousand two hundred dollars (\$1,200) annually after completion of one (1) Year of Credited Service in excess of twenty-five (25)

(Benefit accrual rate must be no less than 0.5% of Final Average Salary per year of Credited Service inclusive of Service Increment Benefit, if any)

5.04 INVOLUNTARY/VOLUNTARY LUMP SUM PAYMENT OF SUPERANNUATION RETIREMENT PENSION.

Involuntary Lump Sum Payment (Amounts less than \$5,000)

Required

Not Required

Voluntary Lump Sum Payment (Amounts less than \$5,000)

Permitted

Not Permitted

ARTICLE VI: EARLY RETIREMENT PENSION

6.01 OFFERING OF EARLY RETIREMENT PENSIONS.

The Plan offers: (Select all that apply)

No Early Retirement Pension

An Unreduced Early Retirement Pension

A Reduced Early Retirement Pension

6.02 ELIGIBILITY FOR EARLY RETIREMENT PENSION.

For Unreduced Early Retirement Pension (Select all that apply)

Date the Member attains _____ (____) years of age

Date the Member completes _____ (____) years of Vesting Service

Date the Member age plus the Member Years of Vesting Service equals or exceeds _____ (____)

The later of the date:

Member attains _____ (____) years of age

Member completes _____ (____) years of Vesting Service

Date the Member is involuntarily terminated
(provided that the Member has at least eight (8) years of Vesting Service)

For Reduced Early Retirement Pension (Select all that apply)

Date the Member attains _____ (____) years of age

Date the Member completes _____ (____) years of Vesting Service

Date the Member age plus the Member Years of Vesting Service equals or exceeds _____ (____)

The later of the date:

Member attains _____ (____) years of age

Member completes _____ (____) years of Vesting Service

Date the Member is involuntarily terminated
(provided that the Member has at least eight (8) years of Vesting Service)

(Eligibility criteria selected must be earlier than eligibility criteria for Superannuation Retirement Pension under Section 5.01.)

6.03 AMOUNT OF EARLY RETIREMENT PENSION.

For Reduced Early Retirement Pension/Pension Benefit Reduction Factors (Select one)

Pension benefit reduction for each month between the Benefit Commencement Date and the Member Superannuation Retirement Date

Actuarial Reduction using Actuarial Equivalence as defined in Section 1.04 of the Base Plan Document

Annual rate of _____ percent (_____%)

Other reductive factor or schedule (must be uniform to all Members) (specify):

ARTICLE VII: DISABILITY PENSION

7.01 OFFERING OF DISABILITY PENSION.

The Plan offers: (Select all that apply)

No Disability Pension

Disability Pension

Service-Connected Disability Pension

7.02 ELIGIBILITY FOR DISABILITY PENSION.

For Disability Pension: (Select all that apply)

Member's Plan Entry Date

Date the Member attains _____ (____) years of age Date the

Member completes _____ (____) years of Vesting Service

The later of the date:

Member attains _____ (____) years of age

Member completes _____ (____) years of Vesting Service

For Service Connected Disability Pension: (Select all that apply)

Member's Plan Entry Date

Date the Member attains _____ (____) years of age

Date the Member completes _____ (____) years of Vesting Service

The later of the date:

Member attains _____ (____) years of age

Member completes _____ (____) years of Vesting Service

7.03 AMOUNT OF DISABILITY PENSION.

For Disability Pension (Select all that apply)

Benefit Formula:

_____ percent (____%) of Final Average Salary

_____ percent (____%) of Superannuation Retirement Pension calculated to reflect the Member's Final Average Salary and Credited Service as of the date of Disability.

Adjustments/Reductions to the Benefit Payments:

No adjustments or reductions

Payments under the "The Pennsylvania Workmen's Compensation Act"

Payments under the "The Pennsylvania Occupational Disease Act"

Payments under the Social Security Disability Insurance (SSDI) Program

For Service Connected Disability Pension (Select all that apply)

Benefit Formula:

_____ percent (____%) of Final Average Salary

_____ percent (____%) of Superannuation Retirement Pension calculated to reflect the Member's Final Average Salary and Credited Service as of the date of Disability.

Adjustments/Reductions to the Benefit Payments:

No adjustments or reductions

Payments under the "The Pennsylvania Workmen's Compensation Act"

Payments under the "The Pennsylvania Occupational Disease Act"

Payments under the Social Security Disability Insurance (SSDI) Program

ARTICLE VIII: DEFERRED VESTED PENSION

8.04 COMPUTATION AND PAYMENT OF DEFERRED VESTED PENSION.

Involuntary Lump Sum Payment (Amounts less than \$5,000)

Permitted

Not Permitted

Voluntary Lump Sum Payment (Amounts less than \$5,000)

Permitted

Not Permitted

8.05 VESTING SCHEDULE.

100% Vested upon Plan Entry Date	
100% Vested upon Specified Years of Vesting Service	% Vested
Less than _____ (____) years of Vesting Service	0%
Equal to or greater than _____ (____) years of Vesting Service	100%
(Not to exceed fifteen (15) years of Vesting Service)	
Percent Vested upon Completed Years of Vesting Service	% Vested
_____ (_____) years	_____ %
_____ (_____) years	_____ %
_____ (_____) years	_____ %
_____ (_____) years	_____ %
_____ (_____) years	_____ %
_____ (_____) years	_____ %
(Not to exceed twenty (20) years of Vesting Service)	

ARTICLE IX: DEATH BENEFITS

9.01 PRE-RETIREMENT DEATH BENEFIT.

Offering of Pre-Retirement Death Benefit

Not Offered (Distribution of Minimum Death Benefit only)

Offered to a Member who has met the requirements: (Select all that apply)

 To receive a Superannuation Retirement Pension under Section 5.01

 To receive an Early Retirement Pension under Section 6.02

 Of minimum Vesting Service under Section 8.05

 Completion of _____ (_____) Years of Vesting Service under Section 8.05

ARTICLE X: PAYMENT OF RETIREMENT BENEFIT – NORMAL & OPTIONAL FORMS OF DISTRIBUTION

10.01 NORMAL FORM OF BENEFIT.

Single Life Annuity for the life of the Member

Single Life Annuity with 50% Spouse/Minor Children Survivor

 Payable for the life of the Member, and one-half the monthly amount payable for the life of the Spouse or Minor Children as applicable following the death of the Member.

Single Life Annuity with 100% Spouse/Minor Children Survivor

 Payable for the life of the Member, and the same monthly amount payable for the life of the Spouse or Minor Children as applicable following the death of the Member.

(All Normal Form payments shall be adjusted as appropriate to comply with Code Section 415(b))

10.02 OPTIONAL FORMS OF BENEFIT.

The optional forms of benefit offered to the Member.

Single Life Annuity with Minimum Net Present Value.

Single life annuity with guaranteed total payment equal to the Actuarial Equivalence of straight life annuity determining as Benefit Commencement Date

Single Life Annuity with Ten (10) Years of Certain Payments

Payable for the life of the Member, with a minimum 120 monthly payments if the Member death occurs prior to 120 monthly payments being paid to the Member

Single Life Annuity with Twenty (20) Years of Certain Payments

Payable for the life of the Member, with a minimum 240 monthly payments if the Member death occurs prior to 240 monthly payments being paid to the Member

Joint Life Annuity with 50% Survivor Annuitant Benefit

Payable for both the life of the Member and the Survivor Annuitant, with the Survivor Annuitant receiving 50% of the monthly benefit that had been received by the Member

Joint Life Annuity with 100% Survivor Annuitant Benefit

Payable for both the life of the Member and the Survivor Annuitant, with the Survivor Annuitant receiving 100% of the monthly benefit that had been received by the Member

Lump Sum Payment of Employee Contributions and Excess Interest Investment Account with a Normal or Optional Form of Annuity Benefit

The Normal or Optional Form of Benefit will be actuarially reduced in an amount equal to the lump sum payment.

10.03 COST OF LIVING ADJUSTMENT.

Offering of Cost of Living Adjustment (“COLA”)

Not Offered

Offered at the Discretion of the Municipality

An ad hoc, one-time adjustment elected by the Municipality and implemented with a Plan amendment or addendum specifying the COLA amount, the eligible payees and the beginning adjustment date.

Offered upon allocation of Excess Interest under Section 15.10

Proportionately by Monthly Retirement Benefit (equal percentage)

In Equal Dollar Amounts per Eligible Payee

Offered on a Continuing Basis and Applied Every _____ (____) Year(s)

Fixed applied rate in the amount of _____ percent (____%)

Adjustable rate in an amount equal to the most recent calendar year annual change in the Consumer Price Index (“CPI COLA”)

Maximum and Minimum Limits on CPI COLA

No Maximum and Minimum Limits

Maximum and Minimum Annual Limits Follows: (Select all that apply)

Maximum limit of _____ percent (____%)

Minimum limit of _____ percent (____%)

Maximum Cumulative Limits Based on: (Select all that apply)

_____ percent (____%) of Final Average Salary

_____ percent (____%) of Initial Monthly Retirement Benefit

_____ percent (____%) of Simple Addition of COLA Percentage Rates

Payees Eligible for COLA (Select all that apply)

All Retired Members

Retired Members having Retired on or before: _____ (insert date)

Retired Members having Retired on or after: _____ (insert date)

Other Eligibility for Retired Members: **Having a balance in an Excess Interest Account in accordance with Section 15.10**

10.05 CONTINUATION OF EMPLOYMENT AFTER NORMAL RETIREMENT AGE.

A Member continuing as an Employee (as defined in Section 1.34 of this Adoption Agreement) after Normal Retirement Age:

May elect to Retire and commence payment of Superannuation Retirement Benefit without a Severance from Credited Service or a Termination of Employment

Shall not be able to commence Superannuation Retirement Benefit without a Termination of Employment or Retirement

10.06 REEMPLOYMENT OF RETIRED MEMBER.

After Reemployment Commencement Date as an Employee (as defined in Section 1.34), the Retired Member:

Shall elect to continue or cease receiving his Accrued Benefit

Shall cease receiving his Accrued Benefit

ARTICLE XI: MISCELLANEOUS PROVISIONS AFFECTING THE CREDITING OF SERVICE

11.01 SERVICE UPON REEMPLOYMENT. (Select one)

Not Applicable; Plan has Member Contributions

Credited Service shall be restored regardless of Breaks in Service

Credited Service shall be restored if the Member has incurred less than _____ (____) consecutive Breaks in Service (must be equal to or greater than five (5))

11.02 SERVICE PRIOR TO ORIGINAL PLAN EFFECTIVE DATE.

Inclusion of Credited Service Prior to the Original Plan

Not Included

Included subject to the following limits: (Select all that apply)

No limit on Credited Service Prior to Original Plan

A maximum _____ percent (____%) of such Credited Service A

maximum _____ (____) years of such Credited Service

Excluding such Prior Credited Service as follows:

Member Purchase of Credited Service Prior to Original Plan

Not permitted to purchase such Credited Service

Member is permitted to purchase such Credited Service as follows: (Select one)

_____ percent (____%) of the Actuarial Equivalence of the Service to be purchased.

Other method or formula as follows:

Member Payment Time Period for Purchase of Credited Service Prior to Original Plan
(Select all that apply)

Member payment must be made in whole within _____ (____) days of payment notification amount by the Municipality

Member may elect to make the required payment by payroll deduction for a period not to exceed _____ (____) years (maximum five (5) years).

The payment will be adjusted to include interest at the rate established by the Board compounded annually. Interest shall begin on the first day of the month following the month of notification of the payment amount by the Municipality shall end on the last day of the month preceding the final payment

Other time period as follows:

Payments over multiple periods will be adjusted to include interest at the rate established by the Board compounded annually. Interest shall begin on the first day of the month following the month of notification of the payment amount by the Municipality shall end on the last day of the month preceding the final payment

11.03 QUALIFIED MILITARY SERVICE.

Intervening Military Service

Return to Employment

Yes

No

Repayment of Mandatory Employee Contributions required to receive Credited Service

Death During Military Service

Credited Service granted to Members who die during Qualified Credited Military Service

Disability During Military Service

Credited Service granted to Members who become Disabled during Qualified Credited Military Service

Vesting Service granted to Members who become Disabled during Qualified Credited Military Service

11.04 TRANSFER OF SERVICE AND ASSETS FROM ANOTHER SYSTEM PLAN.

Plan will allow the transfer of Member Credited Service, Vesting Service and Contribution Account assets from or to other System Plans

Plan will not allow the transfer of Member Credited Service, Vesting Service and Contribution Account assets from or to other System Plans

11.05 PRIOR PLAN SERVICE CREDIT.

Transfer Contributions

Credited Service Purchase allowed (Subject to the limits of Section 11.02)

Credited Service Purchase not allowed

Termination Contributions

Credited Service Conversion allowed (Subject to the limits of Section 11.02)

Credited Service Conversion not allowed

Inclusion of Prior Plan Credited Service

Not Included

Included subject to the following limits: (Select all that apply)

Limited to Credited Service Before the Prior Plan

Limited to Credited Service During the Prior Plan

Limited to Credited Service After the Prior Plan

A maximum _____ percent (____%) of such Limited Credited Service

A maximum _____ (____) years of such Limited Credited Service

Excluding such Limited Credited Service as follows:

Member Purchase of such Prior Plan Credited Service

Not permitted to purchase such Credited Service

Member is permitted to purchase such Credited Service as follows: (Select one)

_____ percent (____%) of the Actuarial Equivalence of the Service to be purchased.

Other method or formula as follows:

Member Payment Time Period for Purchase of Prior Plan Credited Service

(Select all that apply)

Member payment must be made in whole within _____ (____) days of payment notification amount by the Municipality

Member may elect to make the required payment by payroll deduction for a period not to exceed _____ (____) years (maximum five (5) years).

Payments over multiple periods will be adjusted to include interest at the rate established by the Board compounded annually. Interest shall begin on the first day of the month following the month of notification of the payment amount by the Municipality shall end on the last day of the month preceding the final payment.

Other time period as follows:

Payments over multiple periods will be adjusted to include interest at the rate established by the Board compounded annually. Interest shall begin on the first day of the month following the month of notification of the payment amount by the Municipality shall end on the last day of the month preceding the final payment

11.06 TRANSFER OF LOANS.

Transferred from Prior Plan

Shall be permitted

Shall not be permitted

11.07 PERMISSIVE SERVICE CREDIT.

The Plan will not allow the purchase of Permissive Service Credit

The Plan will allow the purchase of Permissive Service Credit

Maximum Amount of Allowable Permissive Service Credit

No limit on allowable years of service

Years of service allowed to be purchased shall not exceed _____ (____) years

Applicable Service Types (Select all that apply)

Federal government service

Commonwealth of Pennsylvania government service (including school district service)

Government service with Municipalities located within the Commonwealth of Pennsylvania

Government service with states other than the Commonwealth of Pennsylvania:

Government service with other municipalities located outside the Commonwealth of Pennsylvania:

11.08 NON-QUALIFYING SERVICE CREDIT.

The Plan will not allow the purchase of Nonqualified Service Credit

The Plan will allow the purchase of Nonqualified Service Credit

Maximum Amount of Allowable Nonqualified Service Credit

Years of Nonqualified Service Credit allowed to be purchased shall not exceed _____ (____) years (maximum of five (5))

ARTICLE XIII: ADMINISTRATION

13.04 NOTICE TO MUNICIPALITY.

Municipality: _____, Pennsylvania

Employer Identification Number: _____

Address 1: _____

Address 2: _____

City, ST Zip: _____, PA _____

Contact Name: _____

Contact Position: _____

Phone Number: (____) ____-____ Fax Number: (____) ____-____

Email Address _____

ARTICLE XV: PENNSYLVANIA MUNICIPAL RETIREMENT FUND

15.10 ALLOCATION OF EXCESS INTEREST.

Municipality Allocation

Between three account types: Municipal Account, Active and Deferred Vested Member Accounts and Payee Accounts (Select one)

Proportionately by Aggregate Account Balances (equal percentage)

Proportionately between Active and Deferred Vested Member Accounts and Payee Accounts only

In Equal Dollar Amounts per Account Type

Specified Percentage by Account Type

_____ percent (____%) to the Municipal Account

_____ percent (____%) to the Active and Deferred Vested Member Accounts

_____ percent (____%) to the Payee Accounts (See Section 10.03 for Payee Allocation)

Active and Deferred Vested Member Allocation

If allocated an amount of Excess Interest (Select one)

Proportionately by Account Balance (equal percentage)

In Equal Dollar Amounts per Member

Proportionately by Credited Service

[Signatures on the following page]

The Municipality hereby agrees to the provisions of this Adoption Agreement, Base Plan Document and Trust, and in witness of its agreement, the Municipality by its duly authorized officers has executed this Adoption Agreement, on the date specified below.

IN WITNESS WHEREOF, we have hereunto set our hands and seal the day, month and year above written.

ATTEST:

BY: _____

BY: _____
Head of Governing Authority

DATE: _____

ATTEST

**PENNSYLVANIA MUNICIPAL
RETIREMENT BOARD**

BY: _____
PMRS Secretary

BY: _____
PMRS Board Chair

DATE: _____

Approved as to form and legality:

BY: _____
Chief Counsel, PMRS

BY: _____
Office of General Counsel

BY: _____
Office of Attorney General

This Plan is an important legal document. Failure to properly fill out this Adoption Agreement may result in disqualification of this Plan. PMRS will inform you of any amendments made to the Base Plan Document. The PMRS mailing address for U.S. Postal Service delivery is P.O. Box 1165, Harrisburg, PA 17108-1165. The PMRS street address for overnight/courier service delivery is 1721 N. Front Street, 3rd Floor, Harrisburg, PA 17102-2315.

You may rely on an opinion letter issued by the Internal Revenue Service as evidence that this Plan is qualified under Code Section 401 only to the extent provided in Revenue Procedure 2015-36.

You may not rely on the opinion letter in certain other circumstances or with respect to certain qualification requirements, which are specified in the opinion letter issued with respect to the Plan and in Revenue Procedure 2015-36. In order to have reliance in such cases, an individual application for a determination letter must be made to Employee Plans Determinations of the Internal Revenue Service.

EXHIBIT 3



PENNSYLVANIA MUNICIPAL RETIREMENT SYSTEM
DEFINED BENEFIT PLAN
Adoption Agreement Amendment

The undersigned, Salisbury Township, Pennsylvania ("Municipality"), pursuant to Article XVI of the Base Plan Document, is amending its Adoption Agreement having the effective date and the expiration date as shown below. The Municipality makes the following elections granted under the provisions of the Base Plan Document:

PLAN AMENDMENT

Amendment Effective Date: January 1, 2019
Adoption Agreement Effective Date: January 1, 2019
Application: General
Amendment Expiration Date: December 31, 2019
General Description: Establishes the Required Member Contribution amount for all Active Members for Calendar year 2019 only.
Affected Members: All Active Members.

AMENDED ADOPTION AGREEMENT SECTIONS

The Sections of the Adoption Agreement below are applicable to this Amendment and will be effective for the Affected Members between Amendment Effective Date and the Amendment Expiration Date. All other sections of the applicable Defined Benefit Plan Adoption Agreement 001 remain the same during the period between the Amendment Effective Date and the Amendment Expiration Date.

4.01 MEMBER PRE-TAX PICK-UP CONTRIBUTIONS.

Contribution Requirement (Select One)

- [--] Not Required
[X] Required in an amount equal to one percent (1.00%) of Compensation

Contribution Remittance (Select One)

- [X] On a payroll basis
[--] Per Weekly Period
[X] Per Bi-Weekly Period
[--] Per Semi-Monthly Period
[--] Per Monthly Period
[--] Per Other Period:
[--] On a monthly basis
[--] On a quarterly basis



The Municipality hereby agrees to the provisions of this Adoption Agreement Amendment, and in witness of its agreement, the Municipality by its duly authorized officers has executed this Adoption Agreement Amendment, on the date specified below.

IN WITNESS WHEREOF, we have hereunto set our hands and seal the day, month and year above written.

ATTEST: SALISBURY TOWNSHIP

BY _____ BY _____
Head of Governing Authority

DATE: _____

ATTEST PENNSYLVANIA MUNICIPAL RETIREMENT BOARD

BY: _____ BY _____
Secretary Board Chair

DATE: _____

Approved as to form and legality:

BY: _____ BY _____
Chief Counsel, PMRS Office of General Counsel

BY: _____
Office of Attorney General

This Plan is an important legal document. Failure to properly fill out this Adoption Agreement Amendment may result in disqualification of this Plan. PMRS will inform you of any amendments made to the Base Plan Document. The address of PMRS is 1721 North Front Street, Harrisburg, PA 17102.

You may rely on an opinion letter issued by the Internal Revenue Service as evidence that this Plan is qualified under Code Section 401 only to the extent provided in Revenue Procedure 2015-36.

You may not rely on the opinion letter in certain other circumstances or with respect to certain qualification requirements, which are specified in the opinion letter issued with respect to the Plan and in Revenue Procedure 2015-36. In order to have reliance in such cases, an individual application for a determination letter must be made to Employee Plans Determinations of the Internal Revenue Service.

EXHIBIT 4

Salisbury Township Nonuniformed Employees Defined Contribution Pension Plan

Article I – General Definitions

§ 101	In General.....	9
§ 102	Accounting Date.....	9
§ 103	Administrator.....	9
§ 104	Alternate Payee.....	9
§ 105	Authorized Leave of Absence.....	10
§ 106	Beneficiary.....	10
§ 107	Code.....	10
§ 108	Compensation.....	10
	(a) In General.....	10
	(b) Adjustments.....	10
	(1) Certain Non-Taxable Compensation.....	10
	(2) Cash Payments for Waiver of Benefits.....	10
	(c) Compensation During Periods of Uniformed Service.....	11
	(d) Maximum Amount Which May Be Treated As Compensation.....	11
	(1) General Rule.....	11
	(2) Short Years.....	11
	(e) Modified Definition of Compensation for Purposes of Certain Provisions.....	11
§ 109	Effective Date.....	11
§ 110	Eligible Spouse.....	11
§ 111	Employer.....	11
§ 112	ERISA.....	12
§ 113	Fiduciary.....	12
§ 114	Investment Manager.....	12
§ 115	Normal Retirement Age.....	12
§ 116	Participant.....	12
	(a) Active Participant.....	12
	(b) Inactive Participant.....	12
§ 117	Plan or Plan and Trust.....	12
§ 118	Plan Year.....	13
§ 119	Qualified Employee.....	13
§ 120	Related Employer.....	13
§ 121	Separation from Service.....	14
	(a) In General.....	14
	(b) Temporary Lay-Offs.....	14
	(c) Transfers Among Related Employers.....	14
	(d) Transfer of Business.....	14
	(e) Uniformed Service.....	14
§ 122	Sponsor.....	15
§ 123	Trust.....	15

§ 124	Trust Fund.....	15
§ 125	Trustees.....	15
§ 126	Wages.....	15

Article II – Participation & Service

§ 201	In General.....	16
§ 202	Entry Date.....	16
	(a) In General.....	16
	(b) Rehired Employees.....	16
	(c) Uniformed Service.....	16
§ 203	Required Information.....	16
§ 204	Year of Service.....	16
	(a) In General.....	16
	(b) Workers' Compensation.....	17
	(c) Unpaid Leave.....	17
	(d) Service Before Age 18.....	17

Article III – Accounting

§ 301	Accounts.....	17
	(a) Paper Accounts of Participants.....	17
	(b) Paper Accounts of the Plan.....	17
	(c) Alternate Payee Accounts.....	17
	(d) Segregation of Assets.....	17
	(1) Paper Accounts.....	17
	(2) Segregated Accounts.....	17
	(3) Record Keeping.....	18
§ 302	Income of the Trust Fund.....	18
	(a) Definition.....	18
	(b) Annual Determination.....	18
	(c) Special Determination.....	18
	(d) Termination of Trust.....	18
	(e) Valuation of Assets upon Segregation.....	18
	(f) Return of Segregated Assets to General Pool of Investments.....	18
	(g) Distribution from Segregated Group of Assets.....	18
	(h) Other Determination.....	18
§ 303	Allocation of Income.....	18
	(a) In General.....	18
	(b) Early Employer Contributions Account.....	19
§ 304	Valuation of Assets.....	19
§ 305	Beneficiaries.....	19

Article IV – Additions to Employer Contribution Accounts

§ 401	Annual Allocation.....	19
	(a) In General.....	19
	(b) Increase.....	20
§ 402	Qualified Recipients.....	20
§ 403	Funding of Credits; Employer Contributions.....	20
§ 404	Payment of Employer Contributions.....	20
	(a) In General.....	20
	(b) Uniformed Service.....	21
	(c) Additional Contributions for Interest on Late Contributions.....	21
	(d) Mistake of Fact.....	21

§ 405	Multiple Employers	22
	(a) Employer Contributions	22
	(b) Forfeitures	22

Article V – Employee Contributions

§ 501	No Contributions.....	22
-------	-----------------------	----

Article VI – Maximum Additions

§ 601	General Definitions	23
	(a) Compensation	23
	(1) In General	23
	(2) Payment During the Limitation Year	23
	(3) Payment Prior to Severance from Employment	23
	(4) Regular Pay After Severance from Employment.....	23
	(5) Leave Cashouts.....	23
	(6) Qualified Military Service.....	24
	(7) Back Pay	24
	(8) Maximum Amount Which May Be Treated As Compensation ..	24
	(A) General Rule	24
	(B) Short Years	24
	(b) Employer.....	24
	(c) Limitation Year	24
§ 602	Definitions Relating to Defined Contribution Limitations.....	24
	(a) Annual Additions	24
	(b) Defined Contribution Plan	25
	(c) Maximum Permissible Amount	25
	(1) In General	25
	(2) Short Year	25
§ 603	General Rule	25
§ 604	Procedure for Reducing Contributions.....	25
	(a) Timing of Reductions	25
	(b) Priority vs. Medical Plans.....	25
	(c) Priority vs. Earlier Defined Contribution Plan Allocations	26
	(d) Priority vs. Contemporaneous Allocations Under All Defined Contribution Plans	26
	(1) Nondeductible Employee Contributions.....	26
	(2) Elective Deferrals.....	26
	(3) Profit Sharing Employer Contributions.....	26
	(4) Money Purchase Employer Contributions	26
	(5) Other Allocations	26
	(6) Forfeitures	26
	(e) Matching Contributions	26
§ 605	Conformance to Code Section 415.....	27

Article VII – Rollovers & Transfers to the Plan

§ 701	Rollovers.....	27
§ 702	Plan-to-Plan Transfers.....	27

Article VIII – Vesting & Forfeitures

§ 801	Vesting.....	27
	(a) Employer Contribution Accounts	27
	(b) Normal Retirement Age.....	28
	(c) Death or Disability	28
	(d) Plan Termination	28

§ 802	Forfeiture of Nonvested Employer Contributions	28
§ 803	Application of Forfeitures.	28
§ 804	Restoration in the Case of Reemployment Following a Forfeiture..	28
	(a) Return of Formerly Non-Vested Participant.	28
	(b) No Limitations.....	29

Article IX – Loans & Withdrawals

§ 901	Loans.....	29
§ 902	Withdrawals.	29

Article X – Beneficiaries

§ 1001	Designation of Beneficiaries.....	29
§ 1002	Procedure.	29
§ 1003	Revocation.....	30
§ 1004	Default Beneficiaries.....	30

Article XI – Commencement of Benefits

§ 1101	In General.	30
§ 1102	Commencement Date.....	30
	(a) Immediate Payment.	30
	(b) Amounts Allocated After Commencement of Benefits.....	30
§ 1103	Reemployment of Participant.....	31
§ 1104	Production of Information.....	31

Article XII – Form of Benefits

§ 1201	Form of Distribution.	31
	(a) Living Participant.	31
	(b) Deceased Participant.	31
§ 1202	Direct Rollovers of Distributions.	31
	(a) In General.	31
	(b) Definitions.....	31
	(1) Direct Rollover.	31
	(2) Distributee.....	31
	(3) Eligible Rollover Distribution.	32
	(4) Eligible Retirement Plan.....	32
	(A) In General.....	32
	(B) After-Tax Employee Contributions.....	32
	(c) Automatic Rollovers.....	32
§ 1203	Compliance with Code § 401(a)(9).	33

Article XIII – Benefits: Miscellaneous Provisions

§ 1301	Provision of Benefits.....	33
§ 1302	Notice Requirements.....	33
§ 1303	Spendthrift Provisions.....	33
	(a) General Rule.	33
	(b) Qualified Domestic Relations Orders.....	34

§ 1304	Qualified Domestic Relations Orders.....	34
	(a) Definition.....	34
	(1) Rights Recognized.....	34
	(2) Required Provisions.....	34
	(3) Prohibited Provisions.....	34
	(4) Permitted Provision.....	34
	(b) Procedure.....	35
	(1) Notification.....	35
	(2) Establishment of Procedure.....	35
	(c) Alternate Payee Accounts.....	35
	(1) Creation.....	35
	(2) Disposition.....	35
	(A) To Alternate Payee.....	35
	(B) Return to Participant's Accounts.....	35
	(d) Compliance with Qualified Domestic Relations Order.....	36
§ 1305	Facility of Payment.....	36
§ 1306	Unclaimed Distribution.....	36
	(a) Segregation.....	36
	(b) Payment.....	36
	(c) Escheat.....	36
§ 1307	Survivors of Participant Who Dies While Performing Qualified Military Service.....	36

Article XIV – Claims Procedure

§ 1401	Filing a Claim.....	37
§ 1402	Notice of Denial.....	37
§ 1403	Review of Denial.....	37
	(a) Petition.....	37
	(b) Rights.....	37
	(c) Decision.....	37
	(d) Compliance with Local Agency Law.....	37

Article XV – Trust & Investments

§ 1501	Establishment & Acceptance of Trust.....	38
§ 1502	Trustees.....	38
	(a) Qualification.....	38
	(b) Initial Trustees.....	38
	(c) Joint Trustees.....	38
	(d) Resignation.....	38
	(e) Removal.....	38
	(f) Successor & Additional Trustees.....	39
	(g) Transfer of Assets to New Trustees.....	39
§ 1503	Investment of the Trust Fund.....	39
	(a) In General.....	39
	(b) Location.....	39
	(c) Employer Securities.....	39
§ 1504	Life Insurance Policies and Annuity Contracts.....	39
	(a) Restrictions on Purchase.....	39
	(b) Requirements for Permitted Contracts.....	39
§ 1505	Participant-Directed Investments.....	40
§ 1506	Investment by Investment Managers.....	40
	(a) In General.....	40
	(b) Qualification.....	40
	(c) Acceptance & Communication.....	40

	(d) Security Transactions.....	40
	(e) Release and Indemnification of Trustee.....	41
§ 1507	Other Powers of the Trustees.....	41
	(a) Purchase of Property.....	41
	(b) Disposition of Property.....	41
	(c) Exercise of Ownership Rights.....	41
	(d) Registration of & Title to Investments.....	41
	(e) Borrowing.....	42
	(f) Collection.....	42
	(g) Retention of Cash.....	42
	(h) Retention of Property Acquired.....	42
	(i) Execution of Instruments.....	42
	(j) Settlement of Claims & Debts.....	42
	(k) Employment of Agents & Counsel.....	42
	(l) Incorporation.....	42
	(m) Pooling of Assets.....	42
	(n) Legal Actions.....	43
	(o) Necessary Acts.....	43
§ 1508	Limiting Directions from the Administrator.....	43
§ 1509	Distributions from the Trust Fund.....	43
§ 1510	Administrative Payments.....	43
	(a) Compensation of Trustees and Investment Managers.....	43
	(b) Expenses.....	43
	(c) Taxes.....	44
§ 1511	Accounting.....	44
	(a) Record Keeping.....	44
	(b) Reports to Administrator.....	44
	(c) Discharge from Liability.....	44
§ 1512	Immunity.....	44
	(a) Persons to whom Responsible.....	44
	(b) Ordinary Negligence.....	44
	(c) Permitted Reliance.....	44
	(1) Action by the Administrator.....	44
	(2) Other Writings.....	44
§ 1513	Purpose: Exclusive Benefit Rule.....	45
§ 1514	Standard of Care.....	45

Article XVI — Participant-Directed Investments

§ 1601	Program Authorized.....	45
§ 1602	Definitions.....	45
	(a) Affiliate.....	45
	(b) Average Annual Total Return.....	46
	(1) In General.....	46
	(2) Transitional Rule.....	46
	(c) Designated Investment Alternative.....	46
	(d) Total Annual Operating Expenses.....	46
§ 1603	Investment Instructions.....	47
	(a) In General.....	47
	(b) Restrictions and Procedures.....	47
	(1) In General.....	47
	(2) Range of Risk and Return Characteristics.....	47
	(3) General Frequency Standard.....	47
	(4) Core Investment Funds.....	47
	(5) Investment Alternative Available to Receive Transfers.....	47
	(6) Employer Securities.....	48
	(7) Annuity Contracts.....	48

	(c) Compliance With Instructions.....	48
	(d) Unavailable Investments.....	48
§ 1604	Core Investment Funds.....	48
§ 1605	Notice of Limited Liability.....	49
§ 1606	Disclosure of Plan-Related Information.....	49
	(a) General Information.....	49
	(b) Administrative Expenses.....	50
	(1) Initial and Annual Disclosure.....	50
	(2) Quarterly Disclosure.....	50
	(c) Individual Expenses.....	50
	(1) Initial and Annual Disclosure.....	50
	(2) Quarterly Disclosure.....	50
	(d) Changes to Disclosed Information.....	51
§ 1607	Automatic and Periodic Disclosure of Investment-Related Information.....	51
	(a) Identifying Information.....	51
	(b) Performance Data.....	51
	(1) Return Not Fixed.....	51
	(2) Fixed Return.....	51
	(c) Benchmarks.....	51
	(d) Fee & Expense Information.....	51
	(1) Return Not Fixed.....	51
	(2) Fixed Return.....	52
	(e) Internet Web Site Address.....	52
	(f) Glossary.....	52
	(g) Annuity Options.....	52
§ 1608	Special Rules Relating to Automatic Disclosure of Investment-Related Information.....	53
	(a) Annuity Options.....	53
	(b) Fixed Return Investments.....	53
§ 1609	Comparative Format For Furnishing Investment-Related Information.....	54
	(a) In General.....	54
	(b) Additional Information.....	54
	(c) Use of Model Comparative Chart.....	54
§ 1610	Investment-Related Information to be Provided Subsequent to Investment.....	54
§ 1611	Investment-Related Information to be Provided Upon Request.....	55
§ 1612	Miscellaneous Rules Relating to Disclosures.....	55
	(a) Fees & Expenses.....	55
	(b) Understandable Disclosures.....	55
§ 1613	Independent Control by Participants.....	55
	(a) In General.....	55
	(b) Improper Influence.....	55
	(c) Concealment of Material Non-Public Facts.....	55
	(d) Incompetent Participant.....	56
	(e) Transactions Involving a Fiduciary.....	56
	(f) Investment Advice.....	56
§ 1614	Incidents of Ownership Appurtenant to Participant Investments.....	56
§ 1615	Segregation; Expenses.....	56
§ 1616	ERISA § 404(c) Requirements.....	56

Article XVII — Administration

§ 1701	In General.....	57
	(a) In General.....	57
	(b) Members of the Committee.....	57
	(c) Conduct of the Committee.....	57

§ 1702	Powers & Duties.....	57
	(a) In General.....	57
	(b) Delegation.....	58
	(c) Designation of Chief Administrative Officer.....	58
	(d) Employment of Professionals & Others.....	58
	(e) Records.....	58
	(f) Notifications.....	58
	(g) Reports, Documents, and Communications.....	58
§ 1703	Direction of the Trustees.....	58
	(a) Direction to Request Approval.....	58
	(b) Funding Policy and Method.....	58
	(c) Duty to Question Direction by Administrator.....	58
§ 1704	Compensation & Expenses.....	59
§ 1705	Standard of Care.....	59

Article XVIII – Fiduciaries

§ 1801	Prohibition Against Certain Persons Holding Positions under this Plan.....	59
§ 1802	Bonding.....	59
§ 1803	Duty of Care.....	59
§ 1804	Duty of Loyalty.....	60
	(a) Self-Dealing.....	60
	(b) Adverse Interests.....	60
§ 1805	Prohibited Transactions.....	60
	(a) General Rule.....	60
	(b) Prohibited Transactions.....	60
	(c) Disqualified Persons.....	60
	(d) Definitions.....	61
§ 1806	Indemnification.....	61

Article XIX – Amendment, Termination & Merger

§ 1901	Amendment.....	61
	(a) In General.....	61
	(b) Prohibited Amendments.....	61
	(1) Exclusive Benefit.....	61
	(2) Accrued Rights.....	61
	(3) Trustees.....	61
§ 1902	Termination.....	62
	(a) Right to Terminate Plan.....	62
	(b) Plan Accounts.....	62
	(c) Termination & Liquidation of the Trust.....	62
	(d) Termination of Trust Without Termination of Plan.....	62
	(e) Termination or Spin-Off by Related Employer.....	62
§ 1903	Merger of Plans; Transfer of Assets.....	62
	(a) Definition.....	62
	(b) Accrued Rights.....	62

Article XX – Miscellaneous

§ 2001	Acquittance.....	63
§ 2002	Limitation of Liability.....	63

§ 2003	Legal Actions.....	63
	(a) Necessary Parties	63
	(b) Notice.....	63
	(c) Final Judgment.....	63
§ 2004	Delegation of Authority by Employer.....	63
§ 2005	Clerical Errors.	63
§ 2006	Construction.....	64
§ 2007	Gender & Number.	64
§ 2008	Headings.....	64
§ 2009	Severability.	64
§ 2010	Employment Rights.	64
§ 2011	Communications.....	65
	(a) To the Administrator or Trustees.	65
	(b) By the Administrator, Trustees, or Employer.	65
§ 2012	Public Employee Pension Forfeiture Act.....	65
§ 2013	Type of Plan.....	65

Article I – General Definitions

§ 101 In General.

When used in this Plan with initial capital letters, the words and phrases defined in the following sections of this Article shall have the following meaning, unless the context in which they are used clearly indicates a different meaning.

§ 102 Accounting Date.

The term “Accounting Date” shall mean the last day of each Plan Year.

§ 103 Administrator.

The term “Administrator” shall mean the Plan Administrator described in Article XVII.

§ 104 Alternate Payee.

The term “Alternate Payee” shall mean a person entitled to receive, by virtue of a Qualified Domestic Relations Order (*see* § 1304), some of the benefits under this Plan of a Participant.

§ 105 Authorized Leave of Absence.

The term “Authorized Leave of Absence” shall mean any absence authorized by the Employer under the Employer’s standard personnel practices, *provided that* all persons under similar circumstances must be treated alike in the granting of such leaves. An absence due to service in the uniformed services of the United States shall be considered an Authorized Leave of Absence if the employee complies with all of the requirements of federal law in order to be entitled to reemployment and in fact does return to employment with the Employer within the period provided by law.

§ 106 Beneficiary.

The term “Beneficiary” shall mean a person who has the right to receive benefits under this Plan as a result of the death of a Participant or Alternate Payee. (*See Article X for the method by which Participants may designate their beneficiaries.*)

§ 107 Code.

The term “Code” shall mean the Internal Revenue Code of 1986, as amended (Title 26, U.S. Code). Reference to a section of the Code shall mean that section as it may be amended or renumbered from time to time, or any corresponding provision of any future legislation that amends, supplements or supersedes that section.

§ 108 Compensation.

(a) In General. Except as provided in subsections (b) through (e), the “Compensation” of a Qualified Employee for a given year (or other period for which a determination is being made) shall mean the Qualified Employee’s total Wages from the Employer actually paid, made available, or includible in gross income for the year (or other determination period).

(b) Adjustments.

(1) Certain Non-Taxable Compensation. Except as provided in paragraph (2), “Compensation” for a given year (or other determination period) shall also include amounts that would otherwise be includible in the Qualified Employee’s gross income for the given year (or other determination period) but for the application of Code § 125 (relating to cafeteria plans), Code § 457 (relating to compensation deferred under an eligible deferred compensation plan for state and local governments and tax exempt organizations), Code § 414(h)(2) (relating to employee contributions to governmental plans that are picked up by the employing unit and thus are treated as employer contributions), or Code § 132(f)(4) (relating to qualified transportation fringes), or any elective deferrals (within the meaning of Code § 402(g)(3)) for the given year (or other determination period), but only with respect to contributions made to plans maintained by the Employer.

(2) Cash Payments for Waiver of Benefits. “Compensation” shall *not* include cash payments made through a cafeteria plan due to the full or partial waiver of health or other coverage, even though such payments are includible in the Qualified Employee’s Wages or gross income. The purpose of this subsection (b) is to insure that a Participant shall receive the same pension benefits under this Plan regardless of whether the Participant elects through a cafeteria plan to receive health or other coverage or waive the receipt of such coverage, and regardless of the health or other coverage options he/she elects through a cafeteria plan. “Compensation” is

the same as it would be if the Employer had maintained coverages which covered all Qualified Employees, required no employee contributions, and provided no incentives to Qualified Employees to select any particular coverage option.

(c) Compensation During Periods of Uniformed Service. In the case of a period during which a Qualified Employee is serving in the uniformed services of the United States, the employee's "Compensation" shall be computed—

(1) at the rate the Qualified Employee would have received but for the uniformed service; or

(2) in the case that the determination of such rate is not reasonably certain, on the basis of the Qualified Employee's average rate of Compensation during the 12-month period immediately preceding the period of uniformed service (or, if shorter, the period of employment immediately preceding such period).

(d) Maximum Amount Which May Be Treated As Compensation.

(1) **General Rule.** The "Compensation" of a Qualified Employee for any given Plan Year shall not exceed the amount in effect for such year under Code § 401(a)(17), as adjusted for changes in the cost of living. (For any year beginning in 2019, the amount is \$280,000.00.)

(2) **Short Years.** If Compensation is ever required to be determined for a period of time which contains fewer than 12 months, the amount in effect for such period under Code § 401(a)(17) shall be equal to the amount in effect under Code § 401(a)(17) for the calendar year in which the period begins, multiplied by a fraction whose numerator is equal to the number of months in the period, and whose denominator is equal to 12.

(e) Modified Definition of Compensation for Purposes of Certain Provisions. For purposes of Article VI (relating to Maximum Additions), the term "Compensation" shall be modified as described in § 601(a).

§ 109 Effective Date.

The "Effective Date" shall mean **June 1, 2019**, the date on which this Plan becomes effective.

§ 110 Eligible Spouse.

The term "Eligible Spouse" shall mean, with respect to any amount of benefit payments, the spouse to whom a Participant was married on the **earlier of** the date such benefit payments commenced under this Plan, **or** the date of his/her death (*except* to the extent a former spouse is to be treated as an Eligible Spouse under a Qualified Domestic Relations Order).

§ 111 Employer.

The term "Employer" shall mean the Sponsor and all Related Employers which have adopted this Plan, and their successors.

§ 112 ERISA.

The term “ERISA” shall mean the Employee Retirement Income Security Act of 1974 (P.L. 93-406), as amended (29 U.S. Code § 1001 *et seq.*). Reference to a section of ERISA shall mean that section as it may be amended or renumbered from time to time, or any corresponding provision of any future legislation that amends, supplements, or supersedes that section.

§ 113 Fiduciary.

The term “Fiduciary” shall mean the Trustees, the Administrator, any Investment Manager, and any other person who exercises any discretionary authority or discretionary control respecting the management of the Plan; or who exercises any authority or control respecting the management or disposition of Plan assets; or who renders investment advice for a fee or other direct or indirect compensation with respect to any monies or property of the Plan or has any authority or responsibility to do so; or has any discretionary authority or discretionary responsibility in the administration of the Plan.

§ 114 Investment Manager.

The term “Investment Manager” shall mean an investment manager appointed under § 1506.

§ 115 Normal Retirement Age.

The “Normal Retirement Age” under this Plan shall mean age 60.

§ 116 Participant.

The term “Participant” shall mean an “Active Participant” or an “Inactive Participant”:

(a) Active Participant. An “Active Participant” shall mean a Qualified Employee who is currently an Active Participant in this Plan (*see* Article II).

(b) Inactive Participant. An “Inactive Participant” shall mean any person, other than an Active Participant, who had previously been an Active Participant, and still has accounts with positive balances in the Plan.

§ 117 Plan or Plan and Trust.

The terms “Plan” or “Plan and Trust” shall mean the **Salisbury Township Nonuniformed Employees Defined Contribution Pension Plan and Trust**, as set forth in this Plan document, as it may be amended from time to time.

§ 118 Plan Year.

The term “Plan Year” shall mean any 12 consecutive month period beginning on January 1 and ending on the following December 31. However, the first Plan Year under this Plan shall be a short Plan Year beginning on June 1, 2019 and ending on December 31, 2019.

§ 119 Qualified Employee.

The term “Qualified Employee” shall mean, as of any given date, any person employed by the Employer for a stated salary or compensation in a position for which work is regularly scheduled for thirty-five (35) or more hours per week (or would be so scheduled except for authorized sick time, holidays, vacation time, leave, and similar paid or unpaid time off); *provided* such person is neither—

(a) a person who was employed by the Employer at any time before June 1, 2019 in a position which qualified the person to participate in the Employer’s defined benefit plan for nonuniformed employees maintained through the Pennsylvania Municipal Retirement System;

(b) a nonresident alien who receives no remuneration from the Employer which constitutes income from sources within the United States (within the meaning of the Code);

(c) a person who is included in a unit of employees covered by a negotiated collective bargaining agreement which does not provide for his/her inclusion as a Qualified Employee eligible for participation in this Plan, *provided that* retirement benefits were the subject of good faith bargaining and less than two percent of the employees of the Employer who are covered pursuant to that agreement are “professionals” as defined in Treas. Regs. § 1.410(b)-9(g);

(d) an employee of a police department or fire department organized and operated by the Employer, if the employee provides police protection, firefighting services, or emergency medical services for any area within the jurisdiction of the Employer; **nor**

(e) the Township Treasurer, the Township Tax Collector, a *per diem* employee or an elected official, other than those who are employed by the Employer in an independent employee status. In the later event, the person shall only be considered a Qualified Employee with respect to the independent employee status.

No self-employed individual or leased employee who is not a common-law employee of the Employer may be a Qualified Employee or a Participant in this Plan.

§ 120 Related Employer.

The term “Related Employer” shall mean any—

(a) corporation which is a member of a controlled group of corporations (as defined in Code § 414(b)) which includes the Sponsor;

(b) trade or business (whether or not incorporated) which is under common control (as defined in Code § 414(c)) with the Sponsor;

(c) member of an affiliated service group (as defined in Code § 414(m)) which includes the Sponsor; **and**

(d) other entity required to be aggregated with the Sponsor pursuant to Code § 414(o) and the regulations thereunder;

provided that for purposes of Article VI (relating to Maximum Additions), the definitions of Code §§ 414(b) and (c) shall be read as modified by Code § 415(h).

§ 121 Separation from Service.

(a) **In General.** The term “Separation from Service” shall mean the end of a continuous period of employment of a given person by the Employer (or any Related Employer) and may result from retirement, death, resignation, involuntary termination, unauthorized absence, or by failure to return to active employment with the Employer (or any Related Employer) or to retire by the date on which an Authorized Leave of Absence expires. For purposes of the preceding sentence only, periods of Authorized Leaves of Absence and temporary lay-offs are considered to be periods of employment by the Employer. A person “Separates from Service” if he incurs a Separation from Service.

(b) **Temporary Lay-Offs.** If the Employer (or any Related Employer) shall terminate a person’s employment due to insufficient work for such person and shall indicate that the termination is temporary and that the Employer (or Related Employer) anticipates being able to re-employ the person within six (6) months, the termination shall be considered a “temporary lay-off” and not a “Separation from Service.” In that case, if the person does not return to active employment with the Employer (or any Related Employer) immediately upon recall and within six (6) months, he shall incur a “Separation from Service” as of the **earlier** of:

- (1) the date specified in any recall notice as the date to return to work, **or**
- (2) the date six (6) months after the temporary lay-off began.

(c) **Transfers Among Related Employers.** The term “Separation from Service” shall not include transfers between employers all of whom are included within the definition of “Employer” or “Related Employer,” or the mere cessation of a person’s status as a “Qualified Employee” if he remains in the employment of the Employer (or any Related Employer).

(d) **Transfer of Business.**

(1) A person shall not incur a “Separation from Service” if the Employer or any Related Employer transfers the trade or business for which the person performs services to an unrelated transferee, but the person continues to work for the trade or business. Thereafter, the person shall incur a “Separation from Service” if he does so under the provisions of this § 121 as modified by substituting the transferee of the trade or business (and his related employers) for the Employer (and Related Employers).

(2) A person shall not incur a “Separation from Service” if the corporation for which he works shall cease to be included within the definition of Employer or Related Employer (*e.g.*, through the sale of its stock), but the person continues to work for the corporation. Thereafter, the person shall incur a “Separation from Service” if he does so under the provisions of this § 121 as modified by substituting the corporation for which he works (and its related employers) for the Employer (and Related Employers).

(e) **Uniformed Service.** In the case of a person who is absent to perform service in the uniformed services of the United States and who could be entitled to reemployment with the Employer under the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301 *et seq.*, following the completion of such service, the person shall incur a Separation from Service (and be entitled to commence the receipt of Plan benefits) as of the **earliest** of the following dates—

(1) the date elected by the person (which may not be earlier than the date the person files the election with the Administrator);

(2) the date of the person's death; **or**

(3) the date the Administrator determines that the person no longer is legally entitled to reemployment with the Employer,

provided that if the person complies with all of the requirements of federal law in order to be entitled to reemployment and, does in fact return to employment with the Employer within the period provided by law, the person shall thereafter be treated as not having incurred a Separation from Service with respect to the period of uniformed service. The person shall not be required or permitted to return any benefits received from the Plan prior to his/her return to employment with the Employer.

§ 122 Sponsor.

The term "Sponsor" shall mean **Salisbury Township**, Lehigh County, Pennsylvania, a Pennsylvania first class township and municipal corporation, and its successors.

§ 123 Trust.

The term "Trust" shall mean the trust established for this Plan in § 1501.

§ 124 Trust Fund.

The term "Trust Fund" shall mean any and all assets held under the Plan or the Trust by the Trustees.

§ 125 Trustees.

The term "Trustees" shall mean those individuals or corporations who, at any given time are the trustees of the Trust (*see* § 1502).

§ 126 Wages.

The term "Wages" shall mean wages as defined in Code § 3401(a) and all other payments of compensation to an employee by the Employer (in the course of such employers' trade or business) for which the Employer is required to furnish the employee a written statement under Code §§ 6401(d), 6051(a)(3), and 6052. *See* Treas. Regs. §§ 1.6041-1(a), 1.6041-2(a)(1), 1.6052-1, 1.6052-2, 31.6051-1(a)(1)(i)(C). Compensation shall be determined without regard to any rules under Code § 3401(a) that limit covered employment based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code § 3401(a)(2)). (This amount is the amount shown on the "Wages, Tips, and Other Compensation" box on Form W-2 for federal income tax purposes.)

Article II – Participation & Service

§ 201 In General.

In order to be eligible to become an Active Participant in this Plan, a person must be a Qualified Employee. The eligible person shall become an Active Participant at the time provided in § 202, and shall remain an Active Participant only so long as he/she remains a Qualified Employee. After the person ceases to be a Qualified Employee, he/she shall become an Inactive Participant until all of his/her Plan accounts are distributed, or until he/she becomes an Active Participant again.

§ 202 Entry Date.

(a) **In General.** A person shall become an Active Participant as of the first day the person satisfies the eligibility requirements of § 201.

(b) **Rehired Employees.** Subject to subsection (c), a person who Separates from Service and who later returns to employment with the Employer as a Qualified Employee shall become an Active Participant again upon his/her return to employment with the Employer as a Qualified Employee. A person who ceases to be a Qualified Employee but does not Separate from Service, and who becomes a Qualified Employee again shall become an Active Participant again on the date he becomes a Qualified Employee again.

(c) **Uniformed Service.** A Qualified Employee who Separates from Service as a result of service in the uniformed services of the United States and who returns to employment with the Employer at a time when the Employer is legally obligated to reemploy the person under the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301 *et seq.*, shall be treated as not having incurred that Separation from Service, shall be treated as having been a Qualified Employee during the period of such uniformed service, and shall be treated as having remained an Active Participant during the period of such uniformed service.

§ 203 Required Information.

The Administrator may require a Qualified Employee to submit relevant information to the Plan in connection with his/her entry into participation in this Plan. The Administrator shall be fully protected from any loss which may result from the Qualified Employee's failure to submit such information or from the Plan's reliance on incorrect information.

§ 204 Year of Service.

(a) **In General.** To determine the number of Years of Service credited to an individual, one divides the total number of days the person was employed by the Township as a Qualified Employee by three hundred sixty-five and one-quarter (365.25). For this purpose, time is generally measured for any continuous period of employment as a Qualified Employee from the first day the person performs an hour of service as a Qualified Employee to the last day the person performs an hour of service as a Qualified Employee, and time in non-continuous separate periods of employment as a Qualified Employee are aggregated.

(b) Workers' Compensation. Notwithstanding subsection (a), days within a period for which payment is received under the Pennsylvania Workmen's Compensation Act shall not be counted.

(c) Unpaid Leave. Notwithstanding subsection (a), any days while on an unpaid Leave of Absence shall not be counted, except for periods of uniformed service described in § 202(c) for which the person is considered to have remained a Qualified Employee or any other period required by law to be counted for retirement plan vesting purposes.

(d) Service Before Age 18. Notwithstanding subsection (a), no days shall be counted which occur before the person's eighteenth (18th) birthday.

Article III – Accounting

§ 301 Accounts.

(a) Paper Accounts of Participants. The Administrator shall create and maintain adequate records to disclose the interest in the Trust Fund of each Participant who was a Qualified Employee at any time on or after the Effective Date and for each Beneficiary of such a Participant. Such records shall be in the form of individual accounts, created and closed as appropriate. Credits and charges shall be made to such accounts in the manner described in this Plan. Each such Participant and Beneficiary shall have an Employer Contribution Account to hold employer contributions to the Plan for the Participant, and the earnings thereon.

(b) Paper Accounts of the Plan. The Administrator shall create and maintain adequate records to disclose the portions of the Trust Fund which represent amounts not currently allocated to the accounts of persons with an interest in the Plan. There shall be two such accounts created with respect to each particular Employer which maintains this Plan (unless there would be zero balances in any such account):

(1) Forfeiture Account (to hold amounts forfeited from the accounts of Inactive Participants plus any earnings).

(2) Early Employer Contributions Account (to hold amounts contributed to the Plan for a Plan Year before the end of that Plan Year; *see* § 404(a)).

(c) Alternate Payee Accounts. Alternate Payee Accounts under this Plan and Trust shall be created at such times as provided in § 1304(c) (relating to Alternate Payee Accounts under Qualified Domestic Relations Orders).

(d) Segregation of Assets.

(1) Paper Accounts. The accounts described in subsections (a) through (c) together account for all of the assets of the Trust Fund. The maintenance of these individual accounts is for accounting purposes only. A segregation of the assets of the Trust Fund to each account shall not be required.

(2) Segregated Accounts. The Trustees may segregate the assets of the Trust Fund if they so desire. If the Trustees earmark any assets to the accounts of specific Participants, they shall first obtain the consent of the Participant or shall earmark such assets ratably among the accounts of all Participants.

(3) Record Keeping. Whenever assets are segregated, the Trustees shall maintain adequate records to disclose which of the accounts described in subsections (a) through (c) or portions of such accounts) are identified with which segregated group of assets.

§ 302 Income of the Trust Fund.

(a) Definition. For the purposes of this Section, the “Income” of the Trust Fund or any group of assets shall mean the net gain or loss of the Trust Fund or group of assets from investments, as reflected by interest payments, dividends, realized and unrealized gains and losses on securities and other property, and administrative and other expenses paid from the Trust Fund or the group of assets. All administrative and other expenses which are fairly chargeable to one or more segregated groups of assets shall be charged to those assets alone, regardless of the fund from which those expenses were initially paid. All administrative and other expenses which are fairly chargeable to all of the assets of the Trust Fund shall be charged *pro rata* against all of the segregated groups of assets, regardless of the fund from which those expenses were initially paid.

(b) Annual Determination. The Trustees shall determine the Income of the Trust Fund since the most recent determination as of each Accounting Date.

(c) Special Determination. If a distribution of benefits is to begin from the general Trust Fund during a given month, the Trustees shall determine the Income of the Trust Fund since the most recent determination as of the end of the month immediately preceding the calendar month of the distribution.

(d) Termination of Trust. The Trustees shall determine the Income of the Trust Fund since the most recent determination upon the Termination of the Trust and liquidation of its assets.

(e) Valuation of Assets upon Segregation. The Trustees shall determine the Income of a group of assets at any time they choose to segregate certain assets from the larger group.

(f) Return of Segregated Assets to General Pool of Investments. Whenever any segregated group of assets are to be merged with another group of assets, the Trustees shall determine the Income of the two groups of assets in the Trust Fund since their most recent valuation.

(g) Distribution from Segregated Group of Assets. The Trustees shall determine the Income of a segregated group of assets whenever they are to make a distribution from such segregated group of assets.

(h) Other Determination. The Trustees **may** determine the Income of the Trust Fund or any segregated portion of it since its most recent valuation at any time they think it prudent to do so (*e.g.*, the Trustees may decide to determine the Income for certain segregated bank accounts, mutual funds, or other assets quarterly, monthly, or even daily); *provided* that elections to make such determinations are not made in a fashion likely to discriminate among persons with an interest in the Plan.

§ 303 Allocation of Income.

(a) In General. Except as provided in subsection (b), the Income of each segregated portion of the Trust Fund shall be allocated to the accounts described in § 301(a) through (c) as of the day such Income is determined, **but only** to those accounts which have a positive balance

on such day and which have been assigned to that segregated portion of the Trust Fund. If more than one of those accounts have been assigned to that segregated portion of the Trust Fund, the Income will be allocated among the accounts according to each account's portion of the following total:

(1) the balances in the accounts as of the last asset valuation date (to the extent the accounts are assigned to that segregated portion of the Trust Fund);

less (2) the amount of any distributions or transfers from the accounts during the period concerned (to the extent the segregated portion of the Trust Fund is used to make such distributions or transfers) **multiplied by** a fraction whose numerator is the number of days in the period after the date of distribution or transfer and whose denominator is the total number of days in the period;

plus (3) the amount of any contributions or transfers to the accounts during the period concerned (to the extent the contributions or transfers are assigned to the segregated portion of the Trust Fund) **multiplied by** a fraction whose numerator is the number of days in the period after the date as of which the contributions or transfers were credited to the accounts and whose denominator is the total number of days in the period.

(b) **Early Employer Contributions Account.** Any positive net Income which is allocated under subsection (a) to the Early Employer Contributions Account during a Plan Year shall be allocated as of the last day of the Plan Year among the Employer Contribution Accounts of the Qualified Recipients for that Plan Year by increasing the percentage in effect under § 401 (relating to Additions to Employer Contribution Accounts—Annual Allocation) as described in that section. All of such Income must be used to provide additional credits for Qualified Recipients beyond those which would have been received in the absence of such Income.

§ 304 Valuation of Assets.

In determining the value of Trust Fund assets for any purpose under this Plan, assets shall be valued on the basis of their fair market value as of the valuation date.

§ 305 Beneficiaries.

Accounts originally maintained on behalf of a deceased Participant shall be maintained on behalf of his current Beneficiaries (*see* Article X).

Article IV — Additions to Employer Contribution Accounts

§ 401 Annual Allocation.

(a) **In General.** Subject to the provisions of Article VI (relating to Maximum Additions), § 404(b) (relating to Uniformed Service), and subject to modification under subsection (b), as of the last day of each Plan Year, the Employer Contribution Account of each Qualified

Recipient (*see* § 402) shall be credited with an amount equal to **eight percent (8.00%)** of the Qualified Recipient's Compensation *attributable to* service as a Qualified Employee (or service in the uniformed services of the United States recognized under this Plan due to service as a Qualified Employee) *for the portion* of the Plan Year during which he/she was an Active Participant.

(b) Increase. The percentage under subsection (a) shall be increased for any given Plan Year if and to the extent necessary so that the total amount of credits provided for that Plan Year under this Section and § 404(b) (relating to Payment of Employer Contributions—Uniformed Service), as modified by Article VI (relating to Maximum Additions) is not less than the sum of:

(1) the *greater* of—

(A) the total amount which would be credited for all Qualified Recipients for that Plan Year under subsection (a) prior to the application of this subsection (b), plus the amount of credits during that Plan Year under § 404(b) (relating to Uniformed Service); **or**

(B) the maximum amount of withdrawals able to be made for that Plan Year from the Forfeiture Account under § 403 (relating to Funding of Credits); **plus**

(2) any Income to be allocated to the Employer Contribution Accounts of Qualified Recipients for the Plan Year under § 303(b) (relating to Early Employer Contributions Account); **and**

(3) any amount to be allocated to the Employer Contribution Accounts of Qualified Recipients for the Plan Year under § 404(d)(2)(A) (relating to contributions of state aid in excess of the amount required).

§ 402 Qualified Recipients.

For purposes of this Article IV, a “Qualified Recipient” for any Plan Year shall mean a person who was an Active Participant on any day during the Plan Year.

§ 403 Funding of Credits; Employer Contributions.

The credits described in § 401 and § 404(b) shall be funded—

(a) First, by withdrawals from the Forfeiture Account (including amounts forfeited on the last day of the Plan Year); **and**

(b) Then, if necessary, by contributions to the Plan and Trust Fund from the Employer, *which the Employer hereby covenants and agrees to make*, which may be from funds of the Employer and/or grants from the Commonwealth of Pennsylvania and/or others.

§ 404 Payment of Employer Contributions.

(a) In General. Employer contributions under this Article for a given Plan Year are due to be paid to the Trustees not later than December 31 of the Plan Year. All amounts contributed before the end of the Plan Year shall be held unallocated in a separate Early Employer Contributions Account until the end of the Plan Year, when they shall be withdrawn and allocated as if they were contributed on the last day of the Plan Year.

(b) Uniformed Service. Employer contributions under this Article IV for a Participant with respect to any period of service in the uniformed services of the United States shall be made at the *later* of—

(1) the time set forth in subsection (a); **or**

(2) within a reasonable period of time after the Participant returns to employment with the Employer or any Related Employer,

provided that the Participant returns to employment at a time when the Employer or any Related Employer is legally obligated to reemploy the person under the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301 *et seq.*, and any amendments, supplements, or successor legislation.

The amount of such contributions shall *not* be adjusted for any earnings or forfeitures which may otherwise have accrued to the benefit of the Participant during the period between the time when the contributions would have been made had the Participant not provided service in the uniformed services of the United States, and the time when the contributions were actually made.

(c) Additional Contributions for Interest on Late Contributions. If any amount of Employer contributions for a Plan Year remains unpaid as of December 31 of that Plan Year, the amount of Employer contributions for that Plan Year shall be increased by interest on the unpaid amount as of December 31, from January 1 of the Plan Year until the date of payment at a rate equal to the interest assumption used for the required actuarial valuation report under the Municipal Pension Plan Funding Standard and Recovery Act, 53 PA. STAT. ANN. § 891.101 *et seq.*, or the discount rate applicable to treasury bills issued by the Treasury Department of the United States with a six-month maturity as of the last business day in December of the Plan Year, whichever is greater, expressed as a monthly rate and compounded monthly. Such “interest” contributions shall be treated as Income of the Plan for the period after the end of the Plan Year.

(d) Mistake of Fact. The actual required Employer contributions for a given Plan Year cannot be known until the end of the Plan Year, since an employee’s qualification for a contribution and the amount of his/her Compensation for the Plan Year cannot be determined until that time. Consequently, the estimates made by the Employer in determining the minimum municipal obligation for the Plan Year and in making contributions to the Plan during the Plan Year most likely will be either higher or lower than the actual required contributions. Therefore:

(1) If the amount in the Early Employer Contributions Account as of the last day of the Plan Year is insufficient to cover the required allocations to Participants under § 401 (subject to modifications under Article VI, relating to Maximum Additions), the Employer must contribute the amount of the shortfall to the Plan as soon as possible, together with interest as described in subsection (c).

(2) If there otherwise would remain a positive balance in the Early Employer Contributions Account as of the last day of the Plan Year after making the required allocations to Participants under § 401 (subject to modifications under Article VI, relating to Maximum Additions, and after any Income earned by the Early Employer Contributions Account for the Plan Year is allocated to other accounts as described in § 303(b) and § 401(b)(2)), then:

(A) That portion of the Early Employer Contributions Account as of the last day of the Plan Year which otherwise would remain and which is attributable to grants by the Commonwealth under the General Municipal Pension System State Aid Program shall be transferred to the Employer’s defined benefit plan for nonuniformed employees through the Pennsylvania Municipal Retirement System, together with the Income earned on that amount from the last day of the Plan Year until the date of the transfer, *except* that if such portion does not exceed Two

Hundred Dollars (\$200.00), then such portion shall instead be allocated as of the last day of the Plan Year among the Employer Contribution Accounts of the Qualified Recipients for that Plan Year by increasing the percentage in effect under § 401 (relating to Additions to Employer Contribution Accounts—Annual Allocation) as described in that section.

(B) That portion of the Early Employer Contributions Account which is *not* attributable to grants by the Commonwealth under the General Municipal Pension System State Aid Program shall either be:

(I) returned to the Employer (if so directed by the Administrator within one year after the date the contributions were made to the Plan); **or**

(II) treated as a new Employer contribution for the following Plan Year, and retained in the Early Employer Contributions Account.

(3) For purposes of this Plan, Employer contributions to the Early Employer Contributions Account shall be deemed to be attributable to grants under the General Municipal Pension System State Aid Program to the extent the governing body of the Employer allocates the grants to this Plan, and all amounts allocated to Participant accounts under § 401 and § 404(b) from the Early Employer Contributions Account shall be deemed to be attributable to grants under the General Municipal Pension System State Aid Program until the amount of such grants allocated to this Plan has been exhausted.

§ 405 Multiple Employers.

For any Plan Year in which more than one employer is included within the definition of “Employer,” the following rules shall apply:

(a) **Employer Contributions.** Employer contributions to be allocated to the account of a given Participant shall be made by his particular employer.

(b) **Forfeitures.** For the purpose of allocating forfeitures, amounts derived from the contributions of a particular employer shall be allocated only to employees of that particular employer. Separate subaccounts shall be maintained in the Forfeiture Account for this purpose.

Article V — Employee Contributions

§ 501 No Contributions.

No employee contributions shall be required or permitted under this Plan.

Article VI – Maximum Additions

§ 601 General Definitions.

When used in this Article, the words and phrases defined in this Section shall have the following meaning, unless the context in which they are used clearly indicates a different meaning:

(a) Compensation. The term “Compensation” for a Participant for a Limitation Year shall mean:

(1) In General. All wages within the meaning of Code § 3401(a) (for purposes of income tax withholding at the source), and all other payments of compensation to an employee by the Employer (in the course of such employers’ trade or business) for which the Employer is required to furnish the employee a written statement under Code §§ 6401(d), 6051(a)(3), and 6052, plus amounts that would be included in wages but for an election under Code §§ 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b). Compensation shall be determined without regard to any rules under Code § 3401(a) that limit covered employment based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code § 3401(a)(2)).

(2) Payment During the Limitation Year. Except as otherwise provided in this subsection (a), in order to be taken into account for a Limitation Year, amounts under paragraph (1) must be actually paid or made available to the Participant (or, if earlier, includible in the gross income of the Participant) within the Limitation Year. For this purpose, an amount is treated as paid on a date if it is actually paid on that date or it would have been paid on that date but for an election under Code §§ 125, 132(f)(4), 401(k), 403(b), 408(k), 408(p)(2)(A)(i), or 457(b).

(3) Payment Prior to Severance from Employment. Except as otherwise provided in paragraphs (4) and (5), in order to be taken into account for a Limitation Year, amounts under paragraph (1) must be paid or treated as paid to the Participant (in accordance with the rules of paragraph (2)) prior to the Participant’s severance from employment (within the meaning of Treas. Regs. § 1.415(a)-1(f)(5)) with the Employer. Thus, for example, “Compensation” generally does not include severance pay or parachute payments.

(4) Regular Pay After Severance from Employment. Notwithstanding paragraph (3), a payment of an amount described in paragraph (1) after severance from employment will be considered “Compensation” for the Limitation Year which includes the date of severance from employment if it—

(A) is regular compensation for services during the Participant’s regular working hours, or compensation for services outside the employee’s regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments;

(B) would have been paid to the Participant prior to a severance from employment if the Participant had continued in employment with the Employer; and

(C) is paid by the *later* of 2.5 months after severance from employment with the Employer maintaining the plan or the end of the Limitation Year which includes the date of severance from employment.

(5) Leave Cashouts. Notwithstanding paragraph (3), a payment of an amount described in paragraph (1) after severance from employment will be considered “Compensation” for the Limitation Year which includes the date of severance from employment if it—

(A) is 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; and

(B) is paid by the later of 2.5 months after severance from employment with the Employer maintaining the plan or the end of the Limitation Year which includes the date of severance from employment.

(6) Qualified Military Service. For purposes of this subsection (a), a Participant who is in qualified military service (within the meaning of Code § 414(u)(5)) shall be treated as receiving Compensation from the Employer during such period of qualified military service equal to—

(A) the Compensation the Participant would have received during such period if the Participant were not in qualified military service, determined based on the rate of pay the Participant would have received from the Employer but for absence during the period of qualified military service; or

(B) if the compensation the Participant would have received during such period was not reasonably certain, the Participant's average Compensation from the Employer during the 12-month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

(7) Back Pay. Payments awarded by an administrative agency or court or pursuant to a bona fide agreement by an employer to compensate an employee for lost wages are Compensation within the meaning of this subsection (a) for the Limitation Year to which the back pay relates, but only to the extent such payments represent wages and compensation that would otherwise be included in compensation under this subsection (a.)

(8) Maximum Amount Which May Be Treated As Compensation.

(A) **General Rule.** Notwithstanding anything to the contrary in this subsection (a), the "Compensation" of a Participant for any Limitation Year shall not exceed the amount in effect for such year under Code § 401(a)(17), as adjusted for changes in the cost of living. (For any Limitation Year beginning in 2019, the amount is \$280,000.00.)

(B) **Short Years.** If Compensation is ever required to be determined for a short Limitation Year which contains fewer than 12 months, the amount of effect for such Limitation Year under Code § 401(a)(17) shall be equal to the amount in effect under Code § 401(a)(17) for the calendar year in which the Limitation Year begins, multiplied by a fraction whose numerator is equal to the number of months in the period, and whose denominator is equal to 12.

(b) **Employer.** The term "Employer" shall mean the Sponsor and all Related Employers, and, to the extent required under Treas. Regs. § 1.415(f)-1, a predecessor employer within the meaning of that regulation.

(c) **Limitation Year.** The term "Limitation Year" shall mean, for this Plan, those periods which are coextensive with the Plan Year after the Effective Date of this Plan. Limitation Years for other plans shall be as elected for those plans.

§ 602 Definitions Relating to Defined Contribution Limitations.

When used in this Article, the words and phrases defined in this Section shall have the following meaning, unless the context in which they are used clearly indicates a different meaning:

(a) **Annual Additions.** The term "Annual Additions", for a Participant in any given Limitation Year with respect to the Defined Contribution Plans maintained by the Employer, shall have the meaning given to the term under Treas. Regs. § 1.415(c)-1(b) (which generally

includes all employer contributions, employee contributions, and forfeitures credited to the Participant's accounts for the Limitation Year).

(b) Defined Contribution Plan. The term "Defined Contribution Plan" shall have the meaning provided in Treas. Regs. § 1.415(c)-1(a)(2) (including mandatory employee contributions to a defined benefit plan maintained by the Employer which are not treated as employer pick-up contributions under Code § 414(h)(2), and employee contributions to a separate account in a defined benefit plan maintained by the Employer to the extent that benefits are based on the separate account).

(c) Maximum Permissible Amount.

(1) In General. Subject to the special rules relating to certain medical benefits and employee stock ownership plans under Treas. Regs. § 1.415(c)-1(e) and (f), the term "Maximum Permissible Amount", for any Limitation Year, shall mean the **lesser** of—

(A) The defined contribution dollar limitation in effect for the Limitation Year under Code § 415(c)(1)(A) as adjusted under Code § 415(d) for changes in the cost of living (\$56,000 for 2019); **or**

(B) 100% of the Participant's Compensation for the Limitation Year.

(2) Short Year. If a short Limitation Year is created because of an amendment changing the Limitation Year to a different 12 consecutive month period, for purposes of the short Limitation Year, the number in paragraph (1)(A) shall be multiplied by the following fraction:

$$\frac{\text{number of months in the short Limitation Year (including fractional parts of a month)}}{12}$$

If the Plan is terminated as of a date other than the last day of the Limitation Year, the Plan is deemed to have been amended to change its Limitation Year and the Maximum Permissible Amount shall be determined by prorating for the resulting short Limitation Year.

§ 603 General Rule.

The amount of Annual Additions which would otherwise be allocated under this Plan on behalf of any Participant during any Limitation Year (whether of this Plan or any other plan of the Employer) shall be reduced (under the procedures of § 604) to the extent necessary and possible so that the total amount of Annual Additions which may be allocated on behalf of any Participant during that Limitation Year (whether of this Plan or any other plan of the Employer) under all of the Defined Contributions Plans maintained by the Employer shall not exceed the Maximum Permissible Amount.

§ 604 Procedure for Reducing Contributions.

(a) Timing of Reductions. Reductions pursuant to this Article in the amount of contributions and allocations made on behalf of a Participant shall be made as soon as is administratively feasible, preferably before contributions and allocations are made.

(b) Priority vs. Medical Plans. Annual Additions under this Plan shall be reduced in full before Annual Additions are reduced under any individual medical accounts (as defined in

Code § 415(l)(2)) or post-retirement medical accounts for key employees (as described in Code § 419A(d)) maintained by the Employer.

(c) **Priority vs. Earlier Defined Contribution Plan Allocations.** Annual Additions under this Plan which are allocated as of later dates shall be reduced in full before any earlier allocations under this or any other defined contribution plan of the Employer are reduced.

(d) **Priority vs. Contemporaneous Allocations Under All Defined Contribution Plans.** Annual Additions under this Plan which are allocated on the same day as other Annual Additions under this Plan or under other Defined Contribution Plans, shall be reduced according to the order of priority which follows (to the extent necessary). Where a full reduction is not necessary under any given category, the amount of Annual Additions to be reduced under this Plan shall be determined by the following product:

$$\begin{array}{r} \text{The total amount of} \\ \text{Annual Additions to be} \\ \text{reduced in that category.} \end{array} \quad \times \quad \begin{array}{r} \text{The amount of Annual} \\ \text{Additions allocated under} \\ \text{this Plan in that category.} \\ \text{The total amount of Annual} \\ \text{Additions allocated under all} \\ \text{defined contribution plans} \\ \text{in that category.} \end{array}$$

(1) **Nondeductible Employee Contributions.** First, nondeductible employee contributions under this Plan and other Defined Contribution Plans of the Employer shall be reduced.

(2) **Elective Deferrals.** Second, elective deferrals under any other plans of the Employer shall be reduced.

(3) **Profit Sharing Employer Contributions.** Third, allocations which would be attributable to nonelective employer contributions under profit sharing plans of the Employer shall be reduced. These reductions shall be used to increase the amount of additions to be allocated to Participants who have not reached their Code § 415 limit (as provided in this Article VI). After each such allocation, the provisions of this Article VI and similar Code § 415 provisions in other plans executed to that point shall be re-executed in accordance with the new allocations. Successive reductions and reallocations under this paragraph shall continue until all employer contributions are allocated to Participants consistent with the Code § 415 limitations or all eligible Participants have received the maximum amount permitted under this Article VI and similar Code § 415 provisions in other plans. Thereafter, the contributions from the Employer shall be reduced.

(4) **Money Purchase Employer Contributions.** Fourth, allocations which would be attributable to nonelective employer contributions under this and other money purchase pension plans of the Employer shall be reduced.

(5) **Other Allocations.** Fifth, any allocations not described in paragraphs (1) through (4) or (6) of this subsection (d), or in subsection (e), shall be reduced.

(6) **Forfeitures.** Finally, allocations which would be attributable to withdrawals from forfeiture accounts of all Defined Contribution Plans of the Employer shall be reduced.

(e) **Matching Contributions.** Allocations which would be attributable to employer matching contributions made with respect to employee contributions or elective deferrals under Defined Contribution Plans of the Employer that are reduced by virtue of this Article VI, shall not be made and the Employer shall not be required to make such contributions (since there are no underlying contributions to match).

§ 605 Conformance to Code Section 415.

The limitations provided by this Article are intended to comply with Code § 415 and the regulations promulgated thereunder. To the extent there is any discrepancy between this Article and Code § 415 and related regulations, or any ambiguity in the terms of this Article, the discrepancy or ambiguity (whether this Article is more or less stringent than Code § 415 and related regulations) shall be resolved in such a way as to give full effect to the provisions of Code § 415 and regulations promulgated thereunder.

Article VII – Rollovers & Transfers to the Plan

§ 701 Rollovers.

No person may roll over any money or property to the Plan and Trust Fund which was received from other qualified plans, individual retirement accounts/annuities, Code § 403(a) or § 403(b) annuities, Code § 457 eligible deferred compensation plans, or any other plan, account, annuity, or arrangement (whether received directly or indirectly through an Individual Retirement Account or Annuity, and whether as a “Direct Rollover” under Code § 401(a)(31) or a rollover via the Participant).

§ 702 Plan-to-Plan Transfers.

The Trustees may not accept transfers of cash or assets to the Plan and Trust Fund from other qualified plans, individual retirement accounts/annuities, Code § 403(a) or § 403(b) annuities, Code § 457 eligible deferred compensation plans, or any other plan, account, annuity, or arrangement.

Article VIII – Vesting & Forfeitures

§ 801 Vesting.

(a) **Employer Contribution Accounts.** Except as provided in subsections (b) through (d), the vested portion of the Employer Contribution Account of any Participant or Beneficiary shall be a percentage of the account balance determined in accordance with the following schedule (*see* § 204):

<u>Years of Service</u>	<u>Vested Portion</u>
less than 5	0%
5 or more	100%

(b) Normal Retirement Age. The balance in all the Plan accounts created for any Participant who has attained the Normal Retirement Age (age 60) at a time when he is a Qualified Employee (or become a Qualified Employee after attaining the Normal Retirement Age) shall be 100% vested.

(c) Death or Disability. The balance in all the Plan accounts of any Participant or Beneficiary shall be 100% vested at all times after the Separation from Service of the Participant for whom the account was created if the Separation from Service occurred due to the death of the Participant or as a result of a condition which rendered him/her unable to perform all of the essential functions of his/her employment with or without reasonable accommodation, *provided that* such condition was not caused by—

- (1) chronic or excessive use of intoxicants, drugs, or narcotics;
- (2) intentionally self-inflicted injury or intentionally self-induced sickness; or
- (4) an unlawful act or enterprise on the part of the individual.

(d) Plan Termination. The balance in all the Plan accounts of any Participant or Beneficiary shall become 100% vested upon the termination or complete discontinuance of Employer contributions under this Plan and Trust. In the event of a partial termination of the Plan, the accounts of those Participants (and Beneficiaries) included in that part of the Plan which has terminated shall become 100% vested.

§ 802 Forfeiture of Nonvested Employer Contributions.

In the case of any Participant who is not 100% vested in all of his Plan accounts (*see* § 801), the nonvested portion of the Participant’s Plan accounts *shall be forfeited* —

- (a) on the date the Participant Separates from Service, if he/she has no vested balance in any account under the Plan; **and**
- (b) on any date, after the Participant Separates from Service, that additional amounts are credited to his/her account under the Plan and he/she has no vested balance in any account under the Plan.

§ 803 Application of Forfeitures.

All funds forfeited under § 802 shall be allocated to the Forfeiture Account. Amounts in the Forfeiture Account under this Plan shall be applied on the last day of each Plan Year under the provisions of Article IV to provide allocations to the accounts of other Participants and reduce Employer contributions to the Plan for the given Plan Year.

§ 804 Restoration in the Case of Reemployment Following a Forfeiture.

(a) Return of Formerly Non-Vested Participant. If a Participant who suffered a forfeiture under § 802 becomes a Qualified Employee again, **then** the Employer shall contribute to the account(s) from which the forfeiture was made an amount equal to the amount which was

forfeited from such account (without any adjustment for imputed interest or imputed Plan Income or loss). The contributions specified in this subsection (a) shall take place as of the date the person becomes a Qualified Employee again.

(b) No Limitations. The Employer contributions under this § 804 shall not be subject to any limitations provided in Article IV (relating to Employer contributions) or Article VI (relating to Maximum Additions), and shall not be treated as Employer contributions for those purposes.

Article IX – Loans & Withdrawals

§ 901 Loans.

The Trustees shall not make any loans to Participants, Alternate Payee, or Beneficiaries from the Trust Fund.

§ 902 Withdrawals.

A Participant or Alternate Payee may not elect to withdraw any funds from any of his accounts under this Plan, including his Employee Contribution Account, prior to the time for distribution under Article XI.

Article X – Beneficiaries

§ 1001 Designation of Beneficiaries.

Each Participant and Alternate Payee (if permitted by the Qualified Domestic Relations Order) may designate any person or persons (natural or legal) as his/her Beneficiary or Beneficiaries to whom his/her Plan benefits are to be paid if he/she dies before receipt of all such benefits. Beneficiaries may be designated primarily, contingently, jointly, or successively.

§ 1002 Procedure.

Beneficiary designations shall be made on a form prescribed by the Administrator and will only be effective if filed with the Administrator during the Participant's or Alternate Payee's lifetime.

§ 1003 Revocation.

Each effective beneficiary designation filed with the Administrator by a Participant or Alternate Payee will revoke all previously filed designations by such person. The revocation of a beneficiary designation shall not require the consent of any designated beneficiary or the Participant's spouse.

§ 1004 Default Beneficiaries.

If a Participant (or Alternate Payee whose Beneficiary is entitled to receive Plan benefits) fails to designate a Beneficiary in the manner provided in § 1001 and § 1002, **or** if all the Beneficiaries designated by a deceased Participant or Alternate Payee die before him/her or before a complete distribution of his/her benefits, the benefits with respect to the Participant or Alternate Payee shall be paid to those of his/her survivor(s) who are highest in the following list:

- (a) his/her Eligible Spouse;
- (b) his/her surviving spouse;
- (c) his/her children, in equal parts;
- (d) his/her parents, in equal parts;
- (e) his/her estate.

Article XI – Commencement of Benefits

§ 1101 In General.

The Plan benefits of a Participant (or his/her Beneficiary) shall commence after the Participant has Separated from Service. The Separation from Service may be for any reason, including normal retirement (age 60), death, disability, voluntary quit, or involuntary termination.

§ 1102 Commencement Date.

Except as otherwise provided in this Article XI—

(a) **Immediate Payment.** Benefits derived from the Participant's Plan accounts (as of the date of distribution) shall commence within ninety (90) days after the Participant Separates from Service.

(b) **Amounts Allocated After Commencement of Benefits.** All benefits derived from amounts credited to a Participant's Plan accounts after his benefits commence under subsection (a), shall commence within ninety (90) days after they were contributed to the Plan and so credited.

§ 1103 Reemployment of Participant.

Notwithstanding anything to the contrary contained in this Article XI, no benefits shall commence to any Participant under § 1102 if the Participant is re-employed by the Employer or any Related Employer by the time the benefits would otherwise commence. In that case, such benefits shall only commence after the next event under this Article XI which permits or requires a distribution of benefits.

§ 1104 Production of Information.

Notwithstanding anything to the contrary contained in this Article XI, no benefits shall be paid under this Plan to any recipient until an administratively reasonable period of time after the recipient shall file with or make available to the Plan Administrator such information as the Plan Administrator may require to determine that the recipient is entitled to receive such benefits under this Plan at that time, or to administer the payment of such benefits.

Article XII — Form of Benefits

§ 1201 Form of Distribution.

(a) Living Participant. Except as provided in § 1202 (relating to Direct Rollovers of Distributions) or § 1304 (relating to Qualified Domestic Relations Orders), **if** the Participant is living at the time benefits commence with respect to his Plan accounts, **then** the benefits which commence shall be distributed to the Participant in a lump sum cash distribution.

(b) Deceased Participant. Except as provided in § 1202 (relating to Direct Rollovers of Distributions) or § 1304 (relating to Qualified Domestic Relations Orders), **if** the Participant is not living at the time benefits commence with respect to his Plan accounts, **then** the benefits which commence shall be distributed to the Participant's Beneficiary in a lump sum cash distribution.

§ 1202 Direct Rollovers of Distributions.

(a) In General. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Article, a Distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

(b) Definitions. When used in this Section, the words and phrases defined in this subsection shall have the following meaning:

(1) Direct Rollover. A "Direct Rollover" is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

(2) Distributee. A "Distributee" includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former

employee's spouse or former spouse who is the Alternate Payee under a Qualified Domestic Relations Order, as defined in Code § 414(q), are "Distributee's" with regard to the interest of the spouse or former spouse. A "Distributee" also includes the employee's or former employee's nonspouse designated beneficiary, in which case the distribution can only be transferred to a traditional IRA (under Code § 408(a) or (b)) or Roth IRA (under Code § 408A) established on behalf of the nonspouse designated beneficiary for the purpose of receiving the distribution.

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

(A) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary, or for a specified period of ten (10) years or more;

(B) any distribution to the extent such distribution is required under Code § 401(a)(9); and

(C) any hardship distribution.

(4) Eligible Retirement Plan.

(A) **In General.** Except as provided in subparagraph (B), an "Eligible Retirement Plan" is—

(I) an individual retirement account or annuity described in Code § 408(a) or (b);

(II) a Roth individual retirement account or annuity described in Code § 408A;

(III) a qualified trust described in Code § 401(a), including both defined benefit and defined contribution plans;

(IV) an annuity plan described in Code § 403(a);

(V) an annuity contract described in Code § 403(b); or

(VI) an eligible deferred compensation plan described in Code § 457(b) which is maintained by an eligible governmental employer described in Code § 457(e)(1)(A), and which agrees to separately account for the amounts transferred into such plan from this Plan, that accepts the Distributee's Eligible Rollover Distribution.

(B) **After-Tax Employee Contributions.** In the case of any portion of a distribution that consists of after-tax employee contributions which are not includible in gross income, an "Eligible Retirement Plan" is—

(I) an individual retirement account or annuity described in Code § 408(a) or (b) or a Roth individual retirement account or annuity described in Code § 408A; or

(II) a qualified plan under Code § 401(a), or an annuity contract described in Code § 403(b), that agrees to separate accounting for amounts so transferred (and earnings thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible,

that accepts the Distributee's Eligible Rollover Distribution.

(c) **Automatic Rollovers.** In the event of a mandatory distribution made from the Plan to a Participant in an amount greater than One Thousand Dollars (\$1,000.00), which is made before the Participant attains age 62 and without the Participant's consent, if the Participant does not elect to have such distribution paid directly to an Eligible Retirement Plan specified by the Participant in a Direct Rollover in accordance with this Section, and does not affirmatively elect to receive the distribution directly from the Plan at the time and in the manner prescribed by the

Administrator, then the Administrator will pay the distribution in a Direct Rollover to an individual retirement account or annuity described in Code § 408(a) or (b) designated by the Administrator. The Administrator shall notify the Participant of this possibility as required by law, and shall notify the Participant that the distribution may be transferred to another individual retirement plan. *See* IRS Notice 2005-5; 29 CFR 2550.404a-2.

§ 1203 Compliance with Code § 401(a)(9).

The provisions of this Plan are designed to satisfy the latest commencement of benefit and minimum distribution requirements of Code § 401(a)(9) and the regulations promulgated thereunder in that all benefits are to commence no later than ninety (90) days after the Participant's Separation from Service (which is earlier than the date benefits must commence from a governmental plan under Code § 401(a)(9)), and are paid in full in a lump sum as a cash distribution or a direct rollover. To the extent any provision of this Plan does not provide for the payment of the minimum distribution required through any given date under Code § 401(a)(9) and the regulations promulgated thereunder, this Plan shall be deemed amended in such a way as to comply with the minimum requirements of Code § 401(a)(9) and the regulations promulgated thereunder.

Article XIII – Benefits: Miscellaneous Provisions

§ 1301 Provision of Benefits.

The Administrator shall direct the Trustees to provide benefit payments to the appropriate recipients from time to time in accordance with the provisions of this Plan. The **entire** vested portion of all accounts created with respect to a Participant shall be used to provide benefits for the Participant or his Beneficiaries or Alternate Payees under this Plan.

§ 1302 Notice Requirements.

The Administrator shall provide each person receiving benefits under this Plan with the notice required under Section 402(f) of the Code (regarding federal income tax treatment of Plan benefits and rollover rights) within 180 days prior to the date of distribution. To the extent possible, the notice shall be based on statements supplied by the U.S. Secretary of the Treasury.

§ 1303 Spendthrift Provisions.

(a) **General Rule.** Except as provided in subsection (b), benefits payable under this Plan shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, change, garnishment, execution, or levy of any kind, either voluntary or involuntary, including any such liability which is for alimony or other payments for support of a spouse, former spouse, or any other relative or dependent of the Participant before actually being received by the Participant, Former Participant, Beneficiary, or Alternate Payee under the terms of the Plan, **except** with respect to federal income tax withholding. Any attempt to anticipate,

alienate, transfer, assign, pledge, encumber, change, or otherwise dispose of any right to benefits payable under this Plan shall be void. The Trustees and the Employer shall not be liable for or subject to, in any manner, the debts, contracts, liabilities, engagements or torts of any person entitled to benefits under this Plan.

(b) Qualified Domestic Relations Orders. Notwithstanding the provisions of subsection (a), the Administrator may direct the Trustees to comply with a Qualified Domestic Relations Order (as described in § 1304).

§ 1304 Qualified Domestic Relations Orders.

(a) Definition. A Qualified Domestic Relations Order is a judgment, decree, or order (including approval of a property settlement agreement) made pursuant to a state domestic relations law (including community property law) that relates to the provision of child support, alimony payments or marital property rights to a spouse, former spouse, child, or other dependent of a Participant (hereinafter referred to as an “Alternate Payee”), **which** was entered before January 1, 1985, **or** which—

(1) Rights Recognized. Creates or recognizes a right on the part of the Alternate Payee to receive all or a portion of the benefits payable on behalf of a Participant under this Plan;

(2) Required Provisions. Specifies—

(A) the name and last known mailing address (if any) of the Participant and each Alternate Payee covered by the order;

(B) the amount or percentage of the Participant's Plan benefits to be paid to any Alternate Payee, or the manner in which such amount or percentage is to be determined; **and**

(C) the number of payments or the period to which the order applies and each Plan to which the order relates;

(3) Prohibited Provisions. Does not require the Plan to do any of the following:

(A) provide any type or form of benefit or any option not otherwise provided under the Plan;

(B) pay any benefit in the form of a Joint and Survivor Annuity with respect to the Alternate Payee and his or her subsequent spouse;

(C) pay any benefits to an Alternate Payee before the **earlier** of—

(I) the date on which the Participant is entitled to a distribution under the Plan, **or**

(II) the **later** of—

(i) the date the Participant attains age 50, **or**

(ii) the earliest date on which the Participant could begin receiving benefits under the Plan if the Participant incurred a Separation of Service with the Employer;

(D) provide increased benefits; **or**

(E) pay benefits to an Alternate Payee that are required to be paid to another Alternate Payee under a prior Qualified Domestic Relations Order; **and**

(4) Permitted Provision. May or may not provide that an Alternate Payee who had been married to the Participant for at least one year will be treated as an Eligible Spouse with respect to the portion of the Participant's benefit in which such Alternate Payee has an interest.

(b) Procedure.

(1) Notification. Upon receipt of any judgment, decree, or order (including approval of a property settlement agreement) relating to the provision of payment by the Plan to an Alternate Payee pursuant to a state domestic relations law, the Administrator shall promptly notify the affected Participant and any Alternate Payee of:

(A) the receipt of such judgment, decree, or order; **and**

(B) the Administrator's procedure for determining whether or not the judgment, decree, or order is a Qualified Domestic Relations Order.

(2) Establishment of Procedure. The Administrator shall establish a procedure to determine the status of a judgment, decree, or order as a Qualified Domestic Relations Order and to administer Plan distributions in accordance with them. Such procedure shall—

(A) be in writing;

(B) permit an Alternate Payee to designate a representative for receipt of communications from the Administrator;

(C) include a provision specifying the notification requirements set forth in paragraph (1);

(D) include a provision describing the Alternate Payee Accounts provided in subsection (c); **and**

(E) include such other provisions as may be required by regulations promulgated by the Secretary of the Treasury.

(c) Alternate Payee Accounts.

(1) Creation. During any period in which the Administrator or a court (or other tribunal) of competent jurisdiction is determining whether a judgment, decree, or order is a Qualified Domestic Relations Order, the Administrator shall create separate accounts under this Plan ("**Alternate Payee accounts**") and shall credit such accounts with the amounts, if any, which would have been payable to each Alternate Payee during such period (as they would have become due) if the judgment, decree, or order had already been determined to be a Qualified Domestic Relations Order. The amounts credited to the Alternate Payee accounts shall be debited from the accounts of the Participant potentially subject to the putative Qualified Domestic Relations Order. The Alternate Payee accounts need not be segregated from the general assets of the Trust Fund; they only must be accounted for separately.

(2) Disposition.

(A) To Alternate Payee. If a judgment, decree, or order is determined to be a Qualified Domestic Relations Order within 18 months after the date on which the first payment would be required to be made under the judgment, decree, or order, the Administrator shall direct the Trustees to pay the amounts in Alternate Payee accounts created with respect to such judgment, decree, or order to the Alternate Payees.

(B) Return to Participant's Accounts. All amounts in Alternate Payee accounts created with respect to such judgment, decree, or order shall be returned to the accounts with respect to the Participant from which they were derived upon the **earliest** of the following events:

(I) the date 18 months after the date on which the first payment would be required to be made under the judgment, decree, or order;

(II) the conclusive determination that such judgment, decree, or order is **not** a Qualified Domestic Relations Order; **or**

(III) the termination, partial termination, or complete discontinuance of Employer contributions to the Plan and Trust.

Such returned amounts shall be paid at such time and in such manner as is otherwise provided in this Plan (*except* that any amounts already due for distribution shall be paid to the proper recipient immediately).

(d) Compliance with Qualified Domestic Relations Order. If a judgment, decree, or order is conclusively determined to be to be a Qualified Domestic Relations Order, the Administrator shall direct the Trustees to provide benefits under the Plan in accordance with such Qualified Domestic Relations Order.

§ 1305 Facility of Payment.

Whenever the Administrator determines that a person entitled to receive any payment of a benefit or installment is under a legal disability or is incapacitated in any way so as to be unable to manage his financial affairs, the Administrator may direct the Trustees to make payments to such person, to his legal representative, to a relative, or to a friend of such person for his benefit. Any payment of a benefit or installment in accordance with the provisions of this Section shall be a complete discharge from any liability for the making of such payment under the provisions of the Plan.

§ 1306 Unclaimed Distribution.

(a) Segregation. If, after diligent inquiry, the Administrator is unable to locate a person for the purpose of distribution of benefits under this Plan by the end of the Plan Year following the Plan Year in which the distribution was to have been made, the Administrator shall direct the Trustees to segregate the person's unclaimed Plan benefits in a separate interest bearing account under the Plan. Such separate account shall be entitled to all income it earns and shall bear all expenses it incurs.

(b) Payment. If a person entitled to benefits segregated in an account under subsection (a) files a claim for benefits under this Plan and the Administrator approves such claim, the Administrator shall direct the Trustees to pay the segregated amounts over to the claimant.

(c) Escheat. Amounts which remain unclaimed in an account under subsection (a) upon the termination and liquidation of this Plan and Trust or, if earlier, at the time when such property shall escheat under applicable state law (or be delivered to the state under applicable abandoned and unclaimed property law), shall be distributed to the state with jurisdiction over the amounts. In the event of a distribution under this subsection, the Plan and Trust shall have no further responsibility for such amounts.

§ 1307 Survivors of Participant Who Dies While Performing Qualified Military Service.

Notwithstanding any provision of this Plan to the contrary, the survivors of any Participant who dies while performing qualified military service are entitled to any additional benefits (*other than* contributions relating to the period of qualified military service, but including vesting service credit for such period and any ancillary life insurance or other survivor benefits) that would have been provided under the Plan had the Participant resumed employment on the day preceding the Participant's death and then terminated employment on account of death.

Article XIV – Claims Procedure

§ 1401 Filing a Claim.

A Participant, Beneficiary, or Alternate Payee shall make a claim for benefits under this Plan by filing a written request with the Administrator on a form supplied by the Administrator.

§ 1402 Notice of Denial.

If the Administrator denies a request for benefits under § 1401 in whole or in part, it shall notify the claimant of the same in writing within 60 days of the date the request was filed with the Administrator. Any notice of denial shall contain—

- (a) the reason for the denial;
- (b) specific references to the Plan provisions on which the denial is based;
- (c) a description of any additional information needed to perfect the claim and an explanation of why such information is necessary; **and**
- (d) an explanation of the Plan’s claim procedure, including the opportunity for review under § 1403.

§ 1403 Review of Denial.

(a) **Petition.** Within 60 days of the receipt of a notice of denial under § 1402, a claimant may petition the Administrator in writing for a review of the denial.

(b) **Rights.** With respect to any review under this Section, the claimant shall have the right—

- (1) to a hearing within 60 days of the receipt of the notice of denial under § 1402;
- (2) to representation;
- (3) to review pertinent documents;
- (4) to submit comments in writing within 60 days of the receipt of the notice of denial under § 1402; and
- (5) to all rights afforded under subsection (d).

(c) **Decision.** The Administrator shall issue a written decision at the conclusion of a review under this Section within 60 days following the hearing, or, if the claimant waives a hearing, within 120 days following the Administrator’s receipt of a petition for such review under subsection (a). Such decision shall give specific reasons for the decision and provide specific references to the plan provisions on which it is based.

(d) **Compliance with Local Agency Law.** All reviews under this § 1403 shall comply with the provisions of the Local Agency Law, 2 PA. CONS. STAT. § 551 *et seq.*

Article XV – Trust & Investments

§ 1501 Establishment & Acceptance of Trust.

The Trustees shall receive all contributions paid to them under this Plan in cash or other property approved by the Administrator for acceptance by the Trustees. All property so received, together with income on such property, shall be held, managed, and administered in trust pursuant to the terms of this Plan agreement, and shall constitute the Trust Fund under this Plan. The Trustees shall be responsible only for such sums as shall actually be received by them as Trustees. They shall have no duty to collect any sums from the Employer or the Participants, and shall have no duties and responsibilities other than those set forth in this Plan and Trust or as imposed by applicable law. The Trustees may segregate invested assets. However, notwithstanding any other provision of this Plan, the Trustees may only earmark specific investments to the accounts of specific persons if the persons consent or if the investments are purchased ratably.

§ 1502 Trustees.

(a) **Qualification.** A Trustee under this Plan may be any individual or corporation not prohibited from serving as a Trustee under § 1801.

(b) **Initial Trustees.** The initial Trustees shall be the members of the Committee described in § 1701(b), *provided* that no person shall be a Trustee unless and until he/she signs a document accepting the Trust and agreeing to perform the duties of a Trustee under this Plan and Trust.

(c) **Joint Trustees.** If at any time there is more than one (1) Trustee, the decision of the majority of the Trustees shall determine the actions of the Trustees. Notwithstanding the foregoing, the Administrator may allocate responsibilities among the Trustees from time to time by written notice to the Trustees. In such case, a Trustee (the “**first Trustee**”) shall not be liable, either individually or as a Trustee, for any breaches of duty or losses to the Plan and Trust arising out of the acts or omissions of a co-Trustee in connection with areas of responsibility allocated to the co-Trustee to the exclusion of the first Trustee **unless**—

(1) the first Trustee participates knowingly in, or knowingly undertakes to conceal, an act or omission of the co-Trustee, including knowing such act or omission is a breach of duty;

(2) by the first Trustee’s failure to comply with the standards set forth in § 1803 with respect to his own areas of responsibility, the first Trustee enables the co-Trustee to commit a breach of duty; **or**

(3) the first Trustee has knowledge of a breach of duty by the co-Trustee and fails to make reasonable efforts under the circumstances to remedy the breach.

(d) **Resignation.** Any Trustee may resign at any time upon 15 days notice in writing to the Board of Commissioners of the Sponsor and the Administrator.

(e) **Removal.** The Board of Commissioners of the Sponsor may remove one or more of the Trustees at any time upon 15 days notice in writing to the Trustees and the Administrator. In addition, unless otherwise provided by Ordinance or Resolution of the Board of Commissioners, a Trustee who is a members of the Committee described in § 1701(b) shall automatically be removed from office upon his resignation or removal from the Committee under § 1701(b) or upon the expiration of his term of office on that Committee and the appointment of a successor.

(f) Successor & Additional Trustees. Upon the removal, resignation, or death of a Trustee, the Board of Commissioners of the Sponsor may appoint a successor Trustee *provided* that the Board must act to insure that there will be at least one Trustee. In addition, at any time the Board of Commissioners of the Sponsor may appoint one or more additional Trustees. All Trustees appointed under this subsection shall have the same powers and duties as those conferred upon the initial Trustees under this Plan and Trust. Unless otherwise provided by Ordinance or Resolution of the Board of Commissioners and unless the Board of Commissioners has appointed a corporate Trustee, all persons appointed to the Committee under § 1701(b) shall automatically be appointed as Trustees of this Trust as well, *provided* that no person shall be a Trustee unless and until he/she signs a document accepting the Trust and agreeing to perform the duties of a Trustee under this Plan and Trust.

(g) Transfer of Assets to New Trustees. Upon the appointment of a successor or additional Trustee under subsection (f), the former body of Trustees (or their personal representatives) shall assign, transfer, and pay over to the new or reconstituted body of Trustees the funds and properties then constituting the Trust Fund. However, the former body of Trustees are authorized to reserve such sum of money as may seem to them advisable for payment of their fees and expenses in connection with the settlement of their accounts; any balance of such reserve remaining after the payment of such fees and expenses shall be paid over to the new or reconstituted body of Trustees as soon as possible.

§ 1503 Investment of the Trust Fund.

(a) In General. Except as provided in this Section and §§ 1505 (relating to Participant-directed investments), 1506 (relating to Investment Managers), and 1508 (relating to limiting directions from the Administrator), the Trustees shall have the power to invest and re-invest at any time all money or other property of any description held by them and constituting part of the Trust Fund. They may make such investments in any manner they deem advisable (subject to the duty of care required under § 1803 and the other fiduciary requirements of Article XVIII) which are permitted by law, and will not be limited to investments which are lawful for trustees. However, in making investments, the Trustees shall keep in mind the need for a certain degree of liquidity in order to provide benefits under this Plan.

(b) Location. The Trustees may not maintain the indicia of ownership of any assets of the Plan and Trust outside the jurisdiction of the United States District Courts.

(c) Employer Securities. The Trustees shall not invest in any securities of the Employer or any Related Employer.

§ 1504 Life Insurance Policies and Annuity Contracts.

(a) Restrictions on Purchase. The Trustees may not invest in insurance policies on the lives of Participants, and may only invest in annuity contracts on the lives of Participants which are retirement annuity polices, retirement income endowment policies, disability income policies, a combination of such policies, or other annuity contracts permitted under Pennsylvania law and approved by the Department of the Auditor General for inclusion in municipal pension plans eligible for general municipal pension system state aid.

(b) Requirements for Permitted Contracts. The Trustee may apply for permitted annuity contracts on any day of any month, and may continue to hold contracts on the lives of Inactive Participants which were purchased earlier. Each contract shall provide that the Trustees shall be the owner of such contract while it is held under this Trust, and that it may be cash

surrendered or exchanged for another policy before the annuitant attains the Normal Retirement Age (at least). All rights, options, and privileges which are available by the terms of such contracts shall be vested *exclusively* in or exercised *solely* by the Trustees. In the event of any conflict between the terms of this Plan and the terms of any insurance contract purchased hereunder, the Plan provisions shall control.

§ 1505 Participant-Directed Investments.

Participants, Beneficiaries, and/or Alternate Payees may direct the Trustees to invest all or a portion of the amounts allocated to their Plan accounts in particular investments in accordance with the provisions of Article XVI.

§ 1506 Investment by Investment Managers.

(a) **In General.** The Administrator may appoint one or more persons qualified under subsection (b) to be Investment Managers under this Plan, with powers to manage, acquire, and/or dispose of specified assets in the Trust. Each such appointment shall specify the powers granted to the Investment Manager, the assets involved, and the duties and responsibilities, if any, of the Trustees with respect to the assets subject to investment by the Investment Manager. The Administrator shall have the authority and responsibility for establishing operational and administrative procedures to coordinate the activities of the Trustees and any Investment Manager. The Trustees shall have no obligation to take any action with respect to those assets of the Trust subject to the direction of an Investment Manager without receipt of written directions acceptable to the Trustees from the Investment Manager, and the Trustees shall be under no duty to review such directions. The Administrator may revoke an appointment under this Section or change its terms at any time. Upon receipt of a written notice from the Administrator of the resignation or removal of an Investment Manager, the Trustees shall assume management responsibility for the assets previously appointed to the direction of the Investment Manager. The Investment Manager may not invest in any assets in which the Trustees are precluded from investing under §§ 1503 (relating to Investment of the Trust Fund) or 1504 (relating to Life Insurance Policies and Annuity Contracts).

(b) **Qualification.** An Investment Manager must be **either** —

- (1) registered as an investment adviser under the Investment Advisers Act of 1940;
- (2) a bank (as defined in the Investment Advisers Act of 1940); **or**
- (3) an insurance company qualified to perform the duties of an Investment Manager under the laws of more than one State.

(c) **Acceptance & Communication.** A person appointed under subsection (a) shall not exercise the powers of an Investment Manager until he has acknowledged in writing that he is a Fiduciary under this Plan and until the appointment and acknowledgment have been transmitted to the Administrator and the Trustees.

(d) **Security Transactions.** If an Investment Manager appointed pursuant to this Section elects to place security transactions directly with a broker or dealer, the Trustees shall not recognize such transactions unless and until the Trustees have received instructions or confirmations from the Investment Manager in such manner of communication customary to the Trustees. Should the Investment Manager direct the Trustees to utilize the services of any person with regard to the assets under its management or control, such instructions shall specifically set forth the actions to be taken by the Trustees as to such services. In the event that an Investment

Manager places security transactions directly or directs the utilization of services, the Investment Manager shall be solely responsible for the acts of the persons utilized. The sole duty of the Trustees as to such transactions shall be incident to the Trustees' practices as a custodian.

(e) Release and Indemnification of Trustee. To the extent that the Trust is subject to the direction of an Investment Manager—

(1) the Trustees shall not be responsible nor have any liability for acting pursuant to any direction of the Investment Manager or failing to act in the absence of any direction from the Investment Manager (except as may otherwise be imposed by applicable law), and shall not be required to consult with or advise the Administrator or the Employer regarding the investment quality of any investments; **and**

(2) the Employer shall indemnify and hold the Trustees harmless from any and all losses or claims which arise with respect to the Trust,

unless the Trustees—

(A) knowingly participate in or knowingly conceals an act or omission of the Investment Manager, knowing such act to be a breach of fiduciary duty;

(B) have enabled the Investment Manager to commit a breach by failing to discharge the Trustees' duties in accordance with the fiduciary requirements of Article XVIII and applicable law; **or**

(C) has knowledge of a breach of fiduciary responsibility by the Investment Manager and fails to make reasonable efforts under the circumstances to remedy the breach.

§ 1507 Other Powers of the Trustees.

Subject to the other provisions of this Article and the provisions of Article XVIII (relating to Fiduciaries), the Trustees shall be entitled to exercise, in their own discretion, the following powers regarding the administration of the Trust Fund:

(a) Purchase of Property. To purchase, or subscribe for, any securities or other property and to retain the same in trust, regardless of whether such property is specifically authorized as a legal investment for trust funds under applicable law;

(b) Disposition of Property. To sell, exchange, convey, transfer, mortgage, pledge, lease, grant options with respect to, or otherwise dispose of any securities or other property held by the Trustees, by private contract or at public auction. No person dealing with the Trustees shall be bound to see to the application of the purchase money or to inquire into the validity, expediency, or propriety or any such sale or other disposition;

(c) Exercise of Ownership Rights. To vote any stock, bonds, or other securities; to give general or special proxies or powers of attorney, with or without powers of substitution; to exercise any conversion privileges, subscriptions rights, or other options, and to make any payment incidental thereto; to oppose, or to consent to, or otherwise participate in, corporate reorganizations or other changes affecting corporate securities, and to delegate discretionary powers, and to pay any assessments or charges in connection therewith; to manage, operate, improve, develop, repair, and preserve any real property or any oil, gas, or mineral properties, royalties, or interests; and generally to exercise any of the powers of an owner with respect to stock, bonds, securities, or other property held as part of the Trust Fund;

(d) Registration of & Title to Investments. To cause any securities or other property held as part of the Trust Fund to be registered in the name(s) of the Trustees or in the name(s) of

one or more nominees of the Trustees, or to hold any investments in bearer form, *so long as* the books and records of the Trustees shall at all times show that all such investments are part of the Trust Fund;

(e) Borrowing. To borrow or raise money for the purposes of the Trust in such amount and upon such terms and conditions as the Trustees shall deem advisable. For any sum so borrowed, the Trustees may issue a promissory note as Trustees and secure repayment by pledging all, or any part, of the Trust Fund. No person lending money to the Trustees shall be bound to see to the application of the money lent or to inquire into the validity, expediency, or propriety of any such borrowing;

(f) Collection. To collect and receive any and all money and other property of whatsoever kind or nature due or owing or belonging to the Trust Fund and to give full discharge and acquittance therefor; and to extend the time of payment of any obligation at any time owing to the Trust Fund, as long as such extension is for a reasonable period, and continues reasonable interest;

(g) Retention of Cash. To keep such portion of the Trust Fund in cash or cash balance as the Trustees may from time to time deem to be in the best interests of the Trust, without liability for interest thereon;

(h) Retention of Property Acquired. To accept and retain for such time as the Trustees may deem advisable any securities or other property received or acquired as Trustees under this Plan, whether or not such securities or other property would normally be purchased as investments under this Plan;

(i) Execution of Instruments. To make, execute, acknowledge, and deliver any and all documents or transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers granted under this Plan;

(j) Settlement of Claims & Debts. To settle, compromise, or submit to arbitration any claims, debts, or damages due or owing to or from the Trust Fund; to commence or defend suits or legal or administrative proceedings; and to represent the Trust Fund in all suits and legal and administrative proceedings;

(k) Employment of Agents & Counsel. Subject to the prohibitions of § 1801, to employ suitable agents, counsel, consultants, specialists, and accountants, any one of whom may also be so engaged by the Employer; to pay their reasonable expenses and compensation in the event the Employer has not so paid them; and to rely exclusively upon, and be fully protected in any action taken in good faith in relying upon, any opinions or reports which shall be furnished by any such accountant, counsel, specialist, or other consultant.

(l) Incorporation. To organize and incorporate under the laws of any state (or participate in the organization or incorporation of) a corporation for the purpose of acquiring and holding title to any property which the Trustees are authorized to acquire for the Trust Fund and to exercise with respect thereto any of the powers, rights, and duties they have with respect to other assets of the Trust Fund;

(m) Pooling of Assets. To transfer any of the assets of this Trust to any pooled investment fund or group trust (including those which have one or more trustees who are Trustees under this Trust) which has been ruled by the Internal Revenue Service to be, and which is, a qualified trust exempt from tax under the Code and which has been established for the purpose of permitting separate qualified pension and profit sharing trusts to pool some or all of their funds for investment purposes and as to which it has been ruled by the Internal Revenue Service that the pooling of funds by the separate trusts will not adversely affect the qualified status of the separate trusts. Any such common trust fund shall constitute an integral part of this

Plan and Trust. The commingling of assets of this Trust with assets of other qualified participating trusts in such pooled funds is specifically authorized;

(n) Legal Actions. To prosecute, defend against, or participate in any legal actions involving the Trust or any Trustee in the manner and to the extent the Trustees deem advisable. The Trustees need not participate in any litigation concerning the Trust or the Trustees' management of the Trust unless first indemnified against expense by the Employer in a form satisfactory to the Trustee, unless the litigation is occasioned by the negligence or fault of the Trustee and the Trustee is found to be negligent or at fault pursuant to such litigation; and

(o) Necessary Acts. To do all such acts, take all such proceedings, and exercise all such rights and privileges as the Trustees may deem necessary to administer the Trust Fund and carry out the purposes of this Plan and Trust, even though not specifically mentioned in this document.

§ 1508 Limiting Directions from the Administrator.

The Trustees shall comply with any directions given by the Administrator under § 1703 (relating to limiting directions from the Administrator) as promptly as possible. The Trustees shall not be responsible for any loss which may result from compliance with the directions of the Administrator or the failure or refusal of the Administrator to approve any actions which require the Administrator's approval, and the Employer shall indemnify and hold the Trustees harmless for any such loss.

§ 1509 Distributions from the Trust Fund.

From time to time, the Trustees shall make payments out of the Trust Fund to such persons, in such manner, for such purposes, and in such amounts as may be specified in written directions by the Administrator. Such directions must be accompanied by a certificate executed by the Administrator or its designate that the payment is in accordance with this Plan. Once made, the amount of any such payment shall no longer constitute a part of the Trust Fund. The Trustees shall not be responsible in any way for the application of such payments or for the adequacy of the Trust Fund to meet and discharge any and all liabilities under the Plan.

§ 1510 Administrative Payments.

(a) Compensation of Trustees and Investment Managers. Trustees who are also officers or employees of the Employer shall receive no compensation for their services as Trustees under this Plan. All other Trustees may be paid such reasonable compensation as shall from time to time be agreed upon in writing by the Board of Commissioners of the Sponsor and the Trustees. Investment Managers shall be paid such fees as shall from time to time be agreed upon in writing by the Investment Manager and the Administrator. Trustee and Investment Manager fees may be paid by the Employer, but unless or until so paid they shall constitute a charge upon the Trust Fund.

(b) Expenses. The Trustees shall be reimbursed for any reasonable expenses, including reasonable counsel fees, incurred by them in the administration of the Trust. Such reimbursement may be made by the Employer, but unless or until so paid it shall constitute a charge upon the Trust Fund.

(c) **Taxes.** All taxes of any and all kinds whatsoever that may be levied or assessed (under existing or future laws) upon or with respect to the Trust Fund or the income of the Trust Fund shall be paid from the Trust Fund.

§ 1511 Accounting.

(a) **Record Keeping.** The Trustees shall keep accurate and detailed accounts of all investments, receipts, disbursements, and other transactions under this Trust. All accounts, books, and records relating to such transactions shall be open to inspection and audit at all reasonable times by any person designated by the Administrator.

(b) **Reports to Administrator.** Within 60 days following the close of each fiscal year of the Trust, within 60 days following the effective date of the termination of the Plan or Trust, and within 60 days after the removal or resignation of a Trustee, the Trustees shall file with the Administrator a written account of all investments, receipts, disbursements, and other transactions affected by them during such fiscal year (or during the period from the close of the last fiscal year to the date on which the Trustee resigned or was removed, or the effective date of the termination of the Plan or Trust). Such account shall also set forth the current value of the Trust Fund and its assets. Neither the Administrator nor any other person shall be entitled to any further accounting by the Trustees, except as provided by law.

(c) **Discharge from Liability.** Thirty-one (31) days after an accounting has been filed under subsection (b), the Trustees shall be forever released and discharged from all liability and accountability to anyone with respect to the propriety of their actions and transactions shown in the accounting, *except* with respect to any actions or transactions as to which the Administrator has objected in a writing filed with the Trustees before such time. If such an objection is filed, the Trustees shall, unless the matter is compromised with the Administrator, file its account in any court of competent jurisdiction for audit and adjudication.

§ 1512 Immunity.

(a) **Persons to whom Responsible.** No person other than the Employer or the Administrator may require an accounting or bring an action against the Trustees with respect to the Trust created under this Plan or their actions as Trustees.

(b) **Ordinary Negligence.** The Trustees shall not be liable for the making, retention, or sale of any investment or reinvestment made by them as provided under this Plan, nor for any loss to, or diminution of, the Trust Fund unless caused by their own gross negligence, willful misconduct, or lack of good faith.

(c) **Permitted Reliance.** The Trustees shall be fully protected in relying upon—

(1) **Action by the Administrator.** A certification by the Administrator or by any person designated by the Administrator (under § 1702(b)) with respect to any instruction or direction of the Administrator. The Trustees may rely upon any such designation until they have received a revocation of same;

(2) **Other Writings.** Any instrument, certificate, or paper believed by them to be genuine and be signed or presented by the proper person or persons; the Trustees shall be under no duty to make any investigation or inquiry as to any statement contained in any such writing, but may accept the writing as conclusive evidence of the truth and accuracy of such statements.

§ 1513 Purpose: Exclusive Benefit Rule.

Except as provided in § 404(d) (relating to disposition of contributions made on the basis of a mistake of fact), all assets of the Trust Fund, including investment income, shall be retained for the exclusive benefit of Participants, Alternate Payees, and Beneficiaries, and shall be used to pay benefits to such persons or to pay administrative expenses of the Plan and Trust Fund to the extent not paid by the Employer; they shall not revert to or inure to the benefit of the Employer. The Trustees shall exercise all powers and discharge all duties under this Plan and Trust solely in the general interest of Participants, Alternate Payees, and Beneficiaries.

§ 1514 Standard of Care.

The Trustees, all agents, counsel, consultants, specialists, and accountants retained by them under § 1507(k), and all Investment Managers under § 1506 shall be subject to the fiduciary requirements detailed in Article XVIII.

Article XVI — Participant-Directed Investments

§ 1601 Program Authorized.

Participants may direct the Trustees to invest all or a portion of the amounts allocated to their Plan accounts in particular investments in accordance with the provisions of this Article. A Participant may also direct the Trustees to resume responsibility for any portion of such investments. Participant directions shall expire to the extent that amounts which have been so directed are forfeited or distributed, or are invested in investments which are no longer permitted under the participant-directed investment program. Investment directions by a Participant under this Article shall relieve the Administrator and the Trustees of all fiduciary responsibilities in the management of such funds. Beneficiaries and Alternate Payees have the same rights under this Article as Participants.

§ 1602 Definitions.

For purposes of this Article—

(a) **Affiliate.** The term “Affiliate” shall include:

(1) any person directly or indirectly controlling, controlled by, or under common control with the person. For purposes of this paragraph (1), the term “control” means, with respect to a person other than an individual, the power to exercise a controlling influence over the management or policies of such person;

(2) any officer, director, partner, employee, an employee of an affiliated employer, relative (as defined in ERISA § 3(15)), brother, sister, or spouse of a brother or sister, of the person; **and**

(3) any corporation or partnership of which the person is an officer, director, or partner.

(b) Average Annual Total Return.

(1) In General. The term “Average Annual Total Return” shall mean the average annual compounded rate of return that would equate an initial investment in a designated investment alternative to the ending redeemable value of that investment calculated with the before tax methods of computation prescribed in Securities and Exchange Commission Form N-1A, N-3, or N-4, as appropriate, except that such method of computation may exclude any front-end, deferred, or other sales loads that are waived for the Participants of the covered individual account plan. Nothing in this Article requires disclosure of returns for periods before the inception of a Designated Investment Alternative.

(2) Transitional Rule. For Plan Years beginning before October 1, 2021, if the Administrator reasonably and in good faith determines that it does not have the information on expenses attributable to the Plan that is necessary to calculate, in accordance with paragraph (1), the 5-year and 10-year Average Annual Total Returns for a Designated Investment Alternative that is not registered under the Investment Company Act of 1940, the Administrator may use a reasonable estimate of such expenses **or** the most recently reported Total Annual Operating Expenses of the Designated Investment Alternative as a substitute for such expenses, and shall inform Participants of the basis on which the returns were determined.

(c) Designated Investment Alternative. The term “Designated Investment Alternative” shall mean a *specific* investment identified by a Plan Fiduciary as an available investment alternative under the participant-directed investment program. An investment alternative permitted under the participant-directed investment program which is *not* specifically identified by a Plan Fiduciary, such as an investment alternative covered by a general rule that allows Participants to invest in any asset administratively feasible for the Plan to hold and not otherwise prohibited under the program, is *not* a “Designated Investment Alternative”, and the information production and other requirements applicable to Designated Investment Alternatives shall not apply to such a non-specified investment alternative.

(d) Total Annual Operating Expenses. The term “Total Annual Operating Expenses” shall mean:

(1) In the case of a Designated Investment Alternative that is registered under the Investment Company Act of 1940, the annual operating expenses and other asset-based charges before waivers and reimbursements (*e.g.*, investment management fees, distribution fees, service fees, administrative expenses, separate account expenses, mortality and expense risk fees) that reduce the Designated Investment Alternative’s rate of return, expressed as a percentage, calculated in accordance with the required Securities and Exchange Commission form, *e.g.*, Form N-1A (open-end management investment companies) or Form N-3 or N-4 (separate accounts offering variable annuity contracts); **or**

(2) In the case of a Designated Investment Alternative that is not registered under the Investment Company Act of 1940, the sum of the fees and expenses described in the following subparagraphs before waivers and reimbursements, for the Designated Investment Alternative’s most recently completed fiscal year, expressed as a percentage of the Designated Investment Alternative’s average net asset value for that year:

(A) Management fees as described in the Securities and Exchange Commission Form N-1A that reduce the Designated Investment Alternative’s rate of return;

(B) Distribution and/or servicing fees as described in the Securities and Exchange Commission Form N-1A that reduce the Designated Investment Alternative’s rate of return; **and**

(C) Any other fees or expenses not included in subparagraphs (A) or (B) that reduce the Designated Investment Alternative’s rate of return (*e.g.*, externally negotiated fees, custodial expenses, legal expenses, accounting expenses, transfer agent expenses, recordkeeping

fees, administrative fees, separate account expenses, mortality and expense risk fees), excluding brokerage costs described in Item 21 of Securities and Exchange Commission Form N-1A.

§ 1603 Investment Instructions.

(a) **In General.** The Trustees shall identify a specific fiduciary or agent to receive investment instructions, and all investment instructions must be made through such fiduciary or agent. All Participant investment instructions shall be made on such written forms (or in accordance with such online procedures) as may be prescribed by the Trustees or the identified fiduciary or agent. Instructions may relate to amounts allocated to the Participant's accounts to date and/or to amounts as they are so allocated in the future. Each Participant who is qualified to participate in the participant-directed investment program shall have an opportunity to obtain written confirmation of such instructions.

(b) Restrictions and Procedures.

(1) **In General.** The Trustees may promulgate nondiscriminatory rules restricting Participant directions to such times, investments, amounts, and features as may be necessary or desirable to avoid undue administrative expenses or complexity in the overall operation of the Participant-directed investment program, *provided* that such rules comply with requirements of this subsection (b) and of § 1604. For example, without limiting the foregoing, the Trustees may restrict investment to identified specific investment alternatives.

(2) **Range of Risk and Return Characteristics.** The Trustees shall permit a sufficient number and variety of investment alternatives to provide Participants with a reasonable opportunity to materially affect the potential return on amounts in their accounts and the degree of risk to which such amounts are subject.

(3) **General Frequency Standard.** The rules applicable to any given investment alternative made available under the participant-directed investment program must permit Participants to give investment instructions with a frequency which is appropriate in light of the market volatility to which the investment alternative may reasonably be expected to be subject.

(4) **Core Investment Funds.** The rules applicable to each of the investment alternatives included in the group of "core funds" described in § 1604 must permit a Participant to give instructions no less frequently than once within any three month period.

(5) **Investment Alternative Available to Receive Transfers.** Under the rules established by the Trustees, **either**—

(A) at least *one* of the "core funds" described in § 1604 must permit a Participant to transfer *into* that fund as frequently as Participants are permitted to give investment instructions with respect to any investment alternative included in the participant-directed investment program which permits Participants to give investment instructions more frequently than once within any three month period; **or**

(B) with respect to each investment alternative which permits Participants to give investment instructions more frequently than once within any three month period, Participants are permitted to direct their investments *from* such investment alternative *to* a Liquid Investment as frequently as they are permitted to give investment instructions with respect to such investment alternative, **and**, with respect to the Liquid Investment, Participants are permitted to direct investments *from* the Liquid Investment *to* at least *one* of the "core funds" described in § 1504 as frequently as they are permitted to give investment instructions with respect to that core fund. For purposes of this subparagraph (B), a "Liquid Investment" is an income producing, low risk, liquid fund, subfund, or account.

(6) Employer Securities. The participant-directed investment program shall not permit Participant to directly or indirectly acquire any securities of the Employer or any Related Employer or Affiliate.

(7) Annuity Contracts. If the Trustees permit investment in annuity contracts under the participant-directed investment program, an Active Participant may only direct investment in annuity contracts which are on his/her own life.

(c) Compliance With Instructions. The fiduciary or agent receiving the instructions shall be obligated to comply with such instructions, unless an instruction, if implemented—

(1) would not be permitted under this Article or would otherwise not be in accordance with the provisions of this Plan;

(2) would not comply with the procedures, limitations, or restrictions established by the Trustees for the participant-directed investment program;

(3) would cause a Fiduciary to maintain the indicia of ownership of any assets of the Plan outside the jurisdiction of the district courts of the United States other than as permitted under the standards of ERISA § 404(b) and 29 C.F.R. § 2550.404b-1;

(4) would jeopardize the Plan's tax qualified status under the Code;

(5) could result in a loss in excess of a Participant's account balance;

(6) would result in a prohibited transaction described in Plan § 1805;

(7) would result in the acquisition of a "collectible", as that term is defined in Code § 408(m) and the regulations thereunder;

(8) would generate income that would be taxable to the Plan;

(9) would result in a direct or indirect—

(A) sale, exchange, or lease of property between the Employer or any Affiliate of the Employer and the Plan except for the acquisition or disposition of any interest in a fund, subfund, or portfolio managed by the Employer or any Affiliate of the Employer;

(B) loan to the Employer or any Affiliate of the Employer;

(C) acquisition or sale of any employer real property (as defined in ERISA § 407(d)(2)); **or**

(D) acquisition or sale of any employer security; **or**

(10) would violate any applicable law, statute, regulation, rule, order, or decree.

(d) Unavailable Investments. In the event the Trustees find that an investment meeting the requirements of this Trust cannot be procured for a Participant under this Article, **or** a given investment is or becomes unavailable, the Trustees shall report the same to the Participant as soon as practicable and request further instructions.

§ 1604 Core Investment Funds.

Throughout the time that a Participant-directed investment program is in effect under this Section, the permitted investment alternatives under the program shall include a group of at least three (3) investment funds—

(1) each of whose underlying assets are diversified so as to minimize the risk of large losses;

- (2) each of which has materially different risk and return characteristics;
- (3) which in the aggregate enable the Participant by choosing among them to achieve a portfolio with aggregate risk and return characteristics at any point within the range normally appropriate for the Participant;
- (4) each of which, when combined with investments in the other funds in the group, tends to minimize through diversification the overall risk of a Participant's portfolio; **and**
- (5) each of which is either—
 - (A) An investment company described in § 3(a) of the Investment Company Act of 1940, or a series investment company described in § 18(f) of the Investment Company Act of 1940, or any of the segregated portfolios of such company;
 - (B) A common or collective trust fund or a pooled investment fund maintained by a bank or similar institution, a deposit in a bank or similar institution, or a fixed rate investment contract of a bank or similar institution;
 - (C) A pooled separate account or a fixed rate investment contract of an insurance company qualified to do business in a state; **or**
 - (D) Any entity whose assets include plan assets by reason of a plan's investment in the entity (such as a "group trust" as defined in Rev. Rul. 81-100).

These investment funds may be Designated Investment Alternatives, or they may merely be permitted without specific identification under a general rule allowing investment in broad categories of assets or in all assets which are administratively feasible for the Plan to hold.

§ 1605 Notice of Limited Liability.

The Administrator (or person designated by the Administrator to act on its behalf) shall provide each Participant who is qualified to participate in the participant-directed investment program with an explanation that the Plan is intended to constitute the kind of plan described in ERISA § 404(c) and 29 C.F.R. § 2550.404c-1, and that the Fiduciaries of the Plan may be relieved of liability for any losses which are the direct and necessary result of investment instructions given by such Participant.

§ 1606 Disclosure of Plan-Related Information.

The Administrator (or person designated by the Administrator to act on its behalf) shall provide to each Participant the following Plan-related information, based on the latest information available to the Plan:

(a) **General Information.** On or before the date on which a Participant can first direct his investments, and at least annually thereafter:

- (1) an explanation of the circumstances under which Participants may give investment instructions (including the persons to whom instructions may be given, the times when instructions may be given, and the manner in which instructions may be given);
- (2) an explanation of any specified limitations on such instructions under the terms of the Plan, including any restrictions on transfers to or from a Designated Investment Alternative (such as absolute restrictions, minimum investment periods, penalties, or valuation adjustments);

(3) a description of or reference to plan provisions or provisions of the participant-directed investment program relating to the exercise of voting, tender, and similar rights appurtenant to a Participant's investment in an investment alternative, as well as any restrictions on such rights;

(4) an identification of any Designated Investment Alternatives offered under the Plan;

(5) an identification of any designated Investment Managers; **and**

(6) a description of any "brokerage windows," "self-directed brokerage accounts," or similar Plan arrangements that enable Participants to select investments beyond those designated by the Plan. If the participant-directed investment program does not limit the investment alternatives to Designated Investment Alternatives, a general statement of the types of non-identified investments that are permitted and the types which are prohibited, as provided under the rules established for the participant-directed investment program, shall be a sufficient description of such investments, *provided that* Participants are encouraged to obtain and review materials relating to any such non-identified investments prior to actually making an investment.

(b) Administrative Expenses.

(1) **Initial and Annual Disclosure.** On or before the date on which a Participant can first direct his investments, and at least annually thereafter, an explanation of any fees and expenses for general plan administrative services (*e.g.*, legal, accounting, recordkeeping), which may be charged against the individual accounts of Participants and are not reflected in the Total Annual Operating Expenses of any Designated Investment Alternative, as well as the basis on which such charges will be allocated (*e.g.*, pro rata, per capita) to, or affect the balance of, each individual account.

(2) **Quarterly Disclosure.** At least quarterly, a statement that includes—

(A) the dollar amount of the fees and expenses described in paragraph (1) that are actually charged (whether by liquidating shares or deducting dollars) during the preceding quarter to the Participant's account for individual services;

(B) a description of the services to which the charges relate (*e.g.*, plan administration, including recordkeeping, legal, accounting services) ; **and**

(C) if applicable, an explanation that, in addition to the fees and expenses disclosed pursuant this paragraph (2), some of the Plan's administrative expenses for the preceding quarter were paid from the Total Annual Operating Expenses of one or more of the Plan's Designated Investment Alternatives (*e.g.*, through revenue sharing arrangements, Rule 12b-1 fees, sub-transfer agent fees).

(c) Individual Expenses.

(1) **Initial and Annual Disclosure.** On or before the date on which a Participant can first direct his investments, and at least annually thereafter, an explanation of any fees and expenses that may be charged against the individual account of a Participant on an individual, rather than on a plan-wide, basis (*e.g.*, fees attendant to processing Plan loans or Qualified Domestic Relations Orders, fees for investment advice, fees for brokerage windows, commissions, front- or back-end loads or sales charges, redemption fees, transfer fees, and similar expenses, and optional rider charges in annuity contracts) and which are not reflected in the Total Annual Operating Expenses of any Designated Investment Alternative.

(2) **Quarterly Disclosure.** At least quarterly, a statement that includes—

(A) the dollar amount of the fees and expenses described in paragraph (1) that are actually charged (whether by liquidating shares or deducting dollars) during the preceding quarter to the Participant's account for individual services; **and**

(B) a description of the services to which the charges relate (*e.g.*, loan processing fee).

(d) **Changes to Disclosed Information.** If there is a change to the information described in subsections (a), (b)(1), or (c)(1), each Participant must be furnished a description of such change at least thirty (30) days, but not more than ninety (90) days, in advance of the effective date of such change, unless the inability to provide such advance notice is due to events that were unforeseeable or circumstances beyond the control of the Administrator, in which case notice of such change must be furnished as soon as reasonably practicable.

§ 1607 Automatic and Periodic Disclosure of Investment-Related Information.

Except as provided in § 1608, the Administrator (or person designated by the Administrator to act on its behalf) shall provide to each Participant the following investment-related information on or before the date on which a Participant can first direct his investments, and at least annually thereafter, based on the latest information available to the Plan and in the format described in § 1609:

(a) **Identifying Information.** Such information shall include:

- (1) The name of each Designated Investment Alternative; **and**
- (2) The type or category of the investment (*e.g.*, money market fund, balanced fund (stocks and bonds), large-cap stock fund, employer stock fund, employer securities).

(b) **Performance Data.**

(1) **Return Not Fixed.** For Designated Investment Alternatives with respect to which the return is not fixed, the Average Annual Total Return of the investment for 1-, 5-, and 10-calendar year periods (or for the life of the alternative, if shorter) ending on the date of the most recently completed calendar year; as well as a statement indicating that an investment's past performance is not necessarily an indication of how the investment will perform in the future.

(2) **Fixed Return.** For Designated Investment Alternatives with respect to which the return is fixed or stated for the term of the investment, both the fixed or stated annual rate of return and the term of the investment. If, with respect to such a Designated Investment Alternative, the issuer reserves the right to adjust the fixed or stated rate of return prospectively during the term of the contract or agreement, the current rate of return, the minimum rate guaranteed under the contract, if any, and a statement advising Participants that the issuer may adjust the rate of return prospectively and how to obtain (*e.g.*, telephone or Web site) the most recent rate of return required under this Section.

(c) **Benchmarks.** For Designated Investment Alternatives with respect to which the return is not fixed, the name and returns of an appropriate broad-based securities market index over the 1-, 5-, and 10-calendar year periods (or for the life of the alternative, if shorter) comparable to the performance data periods provided under subsection (b)(1), and which is not administered by an Affiliate of the investment issuer, its investment adviser, or a principal underwriter, unless the index is widely recognized and used.

(d) **Fee & Expense Information.**

(1) **Return Not Fixed.** For Designated Investment Alternatives with respect to which the return is not fixed:

(A) The amount and a description of each shareholder-type fee (fees charged directly against a Participant's investment, such as commissions, sales loads, sales charges, deferred sales charges, redemption fees, surrender charges, exchange fees, account fees, and purchase fees, which are not included in the Total Annual Operating Expenses of any Designated Investment Alternative) and a description of any restriction or limitation that may be applicable to a purchase, transfer, or withdrawal of the investment in whole or in part (such as round trip, equity wash, or other restrictions);

(B) the Total Annual Operating Expenses of the investment expressed as a percentage (*i.e.*, expense ratio), calculated in accordance with § 1602(d);

(C) the Total Annual Operating Expenses of the investment for a one-year period expressed as a dollar amount for a \$1,000 investment (assuming no returns and based on the percentage described in subparagraph (B));

(D) a statement indicating that fees and expenses are only one of several factors that Participants should consider when making investment decisions; **and**

(E) a statement that the cumulative effect of fees and expenses can substantially reduce the growth of a Participant's retirement account and that Participants can visit the Employee Benefit Security Administration's Web site for an example demonstrating the long-term effect of fees and expenses.

(2) **Fixed Return.** For Designated Investment Alternatives with respect to which the return is fixed for the term of the investment, the amount and a description of any shareholder-type fees and a description of any restriction or limitation that may be applicable to a purchase, transfer, or withdrawal of the investment in whole or in part.

(e) **Internet Web Site Address.** An Internet Web site address that is sufficiently specific to provide Participants access to the following information regarding the Designated Investment Alternative:

(1) The name of the Designated Investment Alternative's issuer;

(2) The Designated Investment Alternative's objectives or goals in a manner consistent with Securities and Exchange Commission Form N-1A or N-3, as appropriate;

(3) The Designated Investment Alternative's principal strategies (including a general description of the types of assets held by the investment) and principal risks in a manner consistent with Securities and Exchange Commission Form N-1A or N-3, as appropriate;

(4) The Designated Investment Alternative's portfolio turnover rate in a manner consistent with Securities and Exchange Commission Form N-1A or N-3, as appropriate;

(5) The Designated Investment Alternative's performance data described in subsection (b), updated on at least a quarterly basis, or more frequently if required by other applicable law; **and**

(6) The Designated Investment Alternative's fee and expense information described in subsection (d).

(f) **Glossary.** A general glossary of terms to assist Participants in understanding the Designated Investment Alternatives, or an Internet Web site address that is sufficiently specific to provide access to such a glossary along with a general explanation of the purpose of the address.

(g) **Annuity Options.** If a Designated Investment Alternative is *part of* a contract, fund, or product that permits Participants to allocate contributions towards the *future* purchase of a stream of retirement income payments guaranteed by an insurance company, the information set forth in § 1608(a)(1) through (7) with respect to the annuity option, to the extent such informa-

tion is not otherwise included in investment-related fees and expenses described in subsection (d).

§ 1608 Special Rules Relating to Automatic Disclosure of Investment-Related Information.

(a) Annuity Options. In the case of a Designated Investment Alternative that is a contract, fund, or product that permits Participants to allocate contributions towards the current purchase of a stream of retirement income payments guaranteed by an insurance company, the Administrator (or person designated by the Administrator to act on its behalf) shall provide the following information with respect to each such option *in lieu of* the information required by § 1607(a) through (e):

- (1) The name of the contract, fund, or product;
- (2) The option's objectives or goals (*e.g.*, to provide a stream of fixed retirement income payments for life);
- (3) The benefits and factors that determine the price (*e.g.*, age, interest rates, form of distribution) of the guaranteed income payments;
- (4) Any limitations on the ability of a Participant to withdraw or transfer amounts allocated to the option (*e.g.*, lock-ups) and any fees or charges applicable to such withdrawals or transfers;
- (5) Any fees that will reduce the value of amounts allocated by Participants to the option, such as surrender charges, market value adjustments, and administrative fees;
- (6) A statement that guarantees of an insurance company are subject to its long-term financial strength and claims-paying ability; **and**
- (7) An Internet Web site address that is sufficiently specific to provide Participants access to the following information:
 - (A) The name of the option's issuer and of the contract, fund, or product;
 - (B) Description of the option's objectives or goals;
 - (C) Description of the option's distribution alternatives/guaranteed income payments (*e.g.*, payments for life, payments for a specified term, joint and survivor payments, optional rider payments), including any limitations on the right of a Participant to receive such payments;
 - (D) Description of costs and/or factors taken into account in determining the price of benefits under an option's distribution alternatives/guaranteed income payments (*e.g.*, age, interest rates, other annuitization assumptions);
 - (E) Description of any limitations on the right of a Participant to withdraw or transfer amounts allocated to the option and any fees or charges applicable to a withdrawal or transfer; **and**
 - (F) Description of any fees that will reduce the value of amounts allocated by Participants to the option (*e.g.*, surrender charges, market value adjustments, and administrative fees).

(b) Fixed Return Investments. In the case of a Designated Investment Alternative with respect to which the return is fixed for the term of the investment, the Administrator (or person designated by the Administrator to act on its behalf) shall, *in lieu of* complying with the requirement of § 1607(e), provide an Internet Web site address that is sufficiently specific to provide

Participants access to the following information regarding the Designated Investment Alternative:

- (1) The name of the Designated Investment Alternative's issuer;
- (2) The Designated Investment Alternative's objectives or goals (*e.g.*, to provide stability of principal and guarantee a minimum rate of return);
- (3) The Designated Investment Alternative's performance data described in § 1607(b)(2), updated on at least a quarterly basis, or more frequently if required by other applicable law; **and**
- (4) The Designated Investment Alternative's fee and expense information described in § 1607(d)(2).

§ 1609 Comparative Format For Furnishing Investment-Related Information.

(a) **In General.** The Administrator (or person designated by the Administrator to act on its behalf) shall provide the information required under § 1607 or § 1608 in a chart or similar format that is designed to facilitate a comparison of such information for each Designated Investment Alternative available under the Plan, that prominently displays the date, and that includes:

- (1) A statement indicating the name, address, and telephone number of the Administrator (or person(s) designed by the Administrator to act on its behalf) to contact for the provision of the information required by § 1611 (relating to Investment-Related Information to be Provided Upon Request);
- (2) A statement that additional investment-related information (including more current performance information) is available at the listed Internet Web site addresses (*see* § 1607(e), § 1608(a)(7), and § 1608(b)); **and**
- (3) A statement explaining how to request and obtain, free of charge, paper copies of the information required to be made available on a Web site pursuant to § 1607(e), § 1608(a)(7), and § 1608(b).

(b) **Additional Information.** Nothing in this Article shall preclude the Administrator (or person designated by the Administrator) from including additional information that the Administrator (or designee) determines appropriate for such comparisons, provided such information is not inaccurate or misleading.

(c) **Use of Model Comparative Chart.** The Administrator (or person designated by the Administrator) shall be deemed to have satisfied the requirements of this Section if it uses and accurately completes the model comparative chart in the Appendix to 29 C.F.R. § 2550.404a-5.

§ 1610 Investment-Related Information to be Provided Subsequent to Investment.

The Administrator (or person designated by the Administrator to act on its behalf) shall furnish to each investing Participant, subsequent to an investment in a Designated Investment Alternative, any materials provided to the Plan relating to the exercise of voting, tender, and similar rights appurtenant to the investment, to the extent such rights are passed through to such Participant under the terms of the Plan.

§ 1611 Investment-Related Information to be Provided Upon Request.

The Administrator (or person designated by the Administrator to act on its behalf) shall furnish to each investing Participant, either at the times specified in § 1607 or upon request, the following information related to Designated Investment Alternatives—

(a) Copies of prospectuses (or, alternatively, any short-form or summary prospectus, the form of which has been approved by the Securities and Exchange Commission) for the disclosure of information to investors by entities registered under either the Securities Act of 1933 or the Investment Company Act of 1940, or similar documents relating to Designated Investment Alternatives that are provided by entities that are not registered under either of these Acts;

(b) Copies of any financial statements or reports, such as statements of additional information and shareholder reports, and of any other similar materials relating to the Plan's Designated Investment Alternatives, to the extent such information is provided to the Plan;

(c) A statement of the value of a share or unit of each Designated Investment Alternative as well as the date of the valuation; **and**

(d) A list of the assets comprising the portfolio of each Designated Investment Alternative which constitute "plan assets" within the meaning of 29 C.F.R. § 2510.3-101, and the value of each such asset (or the proportion of the investment alternative which it comprises).

§ 1612 Miscellaneous Rules Relating to Disclosures.

(a) **Fees & Expenses.** Except as otherwise explicitly required under this Article, in any disclosure of information by the Administrator to Participants under this Article, fees and expenses may be expressed in terms of a monetary amount, formula, percentage of assets, or per capita charge.

(b) **Understandable Disclosures.** The information required to be prepared by the Administrator for disclosure under this Article shall be written in a manner calculated to be understood by the average Plan Participant.

§ 1613 Independent Control by Participants.

(a) **In General.** The Trustees shall not interfere with the exercise of independent control by Participants regarding transactions related to the participant-directed investment program (including, without limitation, the acquisition or disposition of investments, and the exercise of any voting, tender, and similar rights appurtenant to a Participant's ownership interest in an investment alternative).

(b) **Improper Influence.** No Plan Fiduciary or Plan sponsor shall subject any Participant to improper influence with regard to any transaction related to the participant-directed investment program.

(c) **Concealment of Material Non-Public Facts.** No Plan Fiduciary shall conceal any material non-public facts regarding an investment from a Participant, *unless* the disclosure of such information by the Plan Fiduciary to the Participant would violate any provision of federal law or any provision of state law which is not preempted by ERISA.

(d) Incompetent Participant. No Plan Fiduciary shall accept the instructions of any person whom the Plan Fiduciary knows is legally incompetent.

(e) Transactions Involving a Fiduciary. In the case of any transaction permitted under the participant-directed investment program and this Article which involves the sale, exchange, or leasing of property between the Plan and a Plan Fiduciary or an Affiliate of a Plan Fiduciary, or a loan to a Plan Fiduciary or an Affiliate of a Plan Fiduciary, the Participant shall not be required to pay more than, or shall not receive less than, “adequate consideration” (as defined in ERISA § 3(18) and the regulations thereunder) in connection with the transaction. (In general terms, “adequate consideration” for a security traded on a registered national securities exchange is the prevailing price on such market; for a security not so traded for which there is a generally recognized market, the current offering price for the security; and for an asset other than a security for which there is a generally recognized market, the fair market value of the asset as determined in good faith by the Plan Fiduciary.)

(f) Investment Advice. Neither the Employer nor any Plan Fiduciary should provide any investment advice to a Participant related to the participant-directed investment program.

§ 1614 Incidents of Ownership Appurtenant to Participant Investments.

The Trustees may provide each Participant who has a Plan account invested in whole or in part in any investment directed by the Participant under this Article with a reasonable opportunity to give instruction with respect to voting, tender, or similar rights appurtenant to the Participant’s ownership interest in that investment. To the extent that the Trustees do not pass through such rights to Participants, they shall not be protected from fiduciary liability with respect to the exercise or non-exercise of those rights.

§ 1615 Segregation; Expenses.

The portion of any Participant’s Plan accounts which are invested according to Participant instructions under this Article shall be segregated from the rest of the Trust Fund. Such portion shall not share in any gains or losses of the general Trust Fund, but shall instead reap the benefits and bear the expenses of the segregated investments. Where more than one Participant is investing in the same investment, it is not necessary that the assets allocable to each Participant be physically segregated from those of other Participants, so long as they are segregated from other investments and the Trustees maintain adequate records to disclose the portions of the investment associated with each Participant. The Plan and Trust may charge a Participant’s account for the reasonable expenses of carrying out investment instructions, *provided* that procedures are established to periodically inform the Participant of the actual expenses incurred with respect to his/her individual account.

§ 1616 ERISA § 404(c) Requirements.

Although this Plan is not subject to ERISA Title I, Part 4 fiduciary requirements, the Participant-directed investment program established under this Article is generally intended to satisfy the requirements established by the U.S. Department of Labor for “ERISA § 404(c) plans”, and this Plan shall be deemed to incorporate by reference all requirements for ERISA § 404(c) plans not otherwise stated, except to the extent the Plan’s language clearly evidences an intent not to follow a particular requirement. (*Cf.* 29 C.F.R. § 2550.404c-1 and § 2550.404a-5.) Nonetheless, any failure by a Plan Fiduciary to satisfy any of the provisions of this Article that

are designed to comply with requirements for ERISA § 404(c) plans, shall not subject the Plan, any Fiduciary, or the Employer to any liability to any Participant, Alternate Payee, or Beneficiary *except* to the extent such liability would exist under Pennsylvania law for a municipal government retirement plan even if the ERISA § 404(c) plan requirements had not been included in this Article, and for those purposes it shall be deemed that such provisions are not included in this Plan.

Article XVII — Administration

§ 1701 In General.

(a) **In General.** The Plan Administrator and named fiduciary of this Plan shall be the Committee described in this Section.

(b) **Members of the Committee.** The Committee shall consist of:

(1) the Salisbury Township Manager;

(2) the Chief Administrative Officer of this Plan (*see* § 1702(c));

(3) one member of the Salisbury Township Board of Commissioners, who shall be appointed by resolution of the Board of Commissioners, and shall serve at the pleasure of the Board of Commissioners;

(4) one Qualified Employee who is not included within any collective bargaining unit, who shall be appointed by resolution of the Board of Commissioners, and shall serve at the pleasure of the Board of Commissioners; **and**

(5) one Qualified Employee who is included within the collective bargaining unit covering certain full-time public works employees, who shall be appointed by the collective bargaining representative of that unit, and serve at its pleasure.

Any person described in paragraphs (3) through (5) may resign upon written notice to the Board of Commissioners and the Committee.

(c) **Conduct of the Committee.** The Committee shall meet no less than annually. The Committee may adopt procedures, by-laws, and regulations as it deems necessary for the conduct of its affairs. A majority of the members of the Committee shall constitute a quorum, and any action of the Committee shall require the affirmative vote of a majority of those present at a meeting or, if action without a meeting is permitted by the Committee's procedures, by-laws, and regulations, the affirmative vote in writing of a majority of the members of the Committee.

§ 1702 Powers & Duties.

(a) **In General.** The Administrator shall administer the Plan in accordance with its terms and applicable law, shall direct the Trustees to make payments in accordance with the Plan from the Trust under § 1509, and shall have all powers necessary to carry out the provisions of the Plan. The Administrator shall have absolute and exclusive discretion to decide all issues arising in the administration, interpretation, and application of the Plan, including eligibility for benefits. The Administrator may from time to time set forth rules of interpretation and administration,

subject to modification as appropriate in the light of experience. No such rule will be ineffective by reason of the fact that such rule may amend the purely administrative provisions of the Plan or conform to any changes in the Plan or applicable law relating to qualified retirement plans. Decisions and rules established by the Administrator shall be conclusive and binding on all persons. The Administrator shall act without discrimination among persons similarly situated at any given time, although it may change its policies from time to time.

(b) Delegation. Subject to the prohibitions of § 1801, the Administrator may delegate to any person or group of persons its authority to perform any act under this Plan and Trust, including those matters involving the exercise of discretion, *provided* that such delegation shall be subject to revocation at any time at the Administrator's discretion.

(c) Designation of Chief Administrative Officer. The Township Finance Director shall be the Chief Administrative Officer of the Plan for purposes of the Municipal Pension Plan Funding Standard and Recovery Act, 53 PA. STAT. ANN. § 895.101 *et seq.*, subject to the control of the Administrator.

(d) Employment of Professionals & Others. Subject to the prohibitions of § 1801, the Administrator may appoint such accountants, counsel, specialists, consultants, and other persons as it may deem necessary or desirable in connection with the administration of this Plan, including persons who may also be engaged by the Employer or who may be Trustees. The Administrator shall be entitled to rely exclusively upon, and shall be fully protected in any action taken in good faith by it in relying upon, any opinions or reports which shall be furnished to it by any such accountant, counsel, specialist, or other consultant.

(e) Records. The Administrator shall keep a record of all its proceedings and acts, and shall keep all such books of account, records, and other data as may be necessary for the proper administration of the Plan.

(f) Notifications. The Administrator shall notify the Trustees of all its actions, and, when required by law, it shall also notify any other interested persons of its actions.

(g) Reports, Documents, and Communications. The Administrator (or Chief Administrative Officer, as applicable) shall prepare and file all reports and documents required to be filed with a governmental agency, shall prepare and provide or make available all reports and documents required to be provided or made available to persons with an interest under the Plan, **and** shall communicate with employees and other persons with respect to all matters relating to the Plan and Trust, including rights and benefits under this Plan.

§ 1703 Direction of the Trustees.

(a) Direction to Request Approval. The Administrator may at any time direct the Trustees in writing to obtain the written approval of the Administrator before exercising certain of the powers granted the Trustees under this Plan and Trust. Any such direction may be of a continuing nature or otherwise, and may be revoked in writing by the Administrator at any time.

(b) Funding Policy and Method. The Administrator shall, from time to time, establish a funding policy and investment objectives and guidelines for the Trust consistent with the purposes of the Plan and state and federal law, and shall direct the Trustees to comply with such policy, objectives, and guidelines. The Administrator shall periodically review the operation of the Trust and all financial reports, investment reviews, and other reports prepared for the Plan or Trust.

(c) Duty to Question Direction by Administrator. Neither the Trustees nor any other person shall be under any duty to question a direction by the Administrator under this Section.

§ 1704 Compensation & Expenses.

Members of the Committee shall serve without compensation for their services. All expenses incident to the administration of the Plan by the Administrator, including but not limited to fees of accountants, counsel, consultants, and other specialists, and other costs of administering the Plan, may be paid by the Employer, but until and unless they are paid by the Employer they shall constitute a charge upon the Trust Fund.

§ 1705 Standard of Care.

The Administrator and all accountants, counsel, specialists, consultants, and others retained by it under § 1702(d) shall be subject to the fiduciary requirements detailed in Article XVIII.

Article XVIII — Fiduciaries

§ 1801 Prohibition Against Certain Persons Holding Positions under this Plan.

No person may serve under this Plan and Trust as a Fiduciary **if** he has been convicted of any of the crimes enumerated in ERISA § 411 **until** after the expiration of 13 years from the later of conviction or release from imprisonment (or such earlier period as allowed under ERISA § 411).

§ 1802 Bonding.

Every Fiduciary and every other person who handles funds or other property under this Plan (except properly capitalized corporate fiduciaries organized, doing business, and authorized to exercise trust powers under the laws of the Commonwealth of Pennsylvania or the United States, and their directors, officers, and employees) should be bonded in the same manner as if this Plan and Trust were subject to ERISA § 412 (which generally requires a bond not less than 10% of the amount of funds handled, though not less than \$1000 nor more than \$500,000) and the Plan may pay the costs and expenses of such bonds.

§ 1803 Duty of Care.

To the extent of their powers, the Fiduciaries shall discharge their duties with respect to the Plan and Trust—

(a) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character;

(b) by diversifying the investments of the Plan and Trust so as to minimize the risk of large losses **unless** under the circumstances it is clearly prudent not to do so; **and**

(c) in accordance with the documents and instruments governing the Plan and Trust **to the extent** they are consistent with the applicable provisions of ERISA, the Code, and other laws.

§ 1804 Duty of Loyalty.

(a) **Self-Dealing.** Fiduciaries shall not deal with the income or assets of the Plan in their own interests or for their own accounts, nor shall they receive any consideration for their own personal accounts from any party dealing with the Plan in connection with a transaction involving the income or assets of the Plan.

(b) **Adverse Interests.** A Fiduciary shall not act in any transaction involving the Plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the Plan or the interests of the Participants, Alternate Payees, or Beneficiaries, whether in his individual capacity or any other.

§ 1805 Prohibited Transactions.

(a) **General Rule.** Fiduciaries shall not engage on behalf of the Plan or Trust, either directly or indirectly, in any Prohibited Transaction or in any other transaction which is prohibited under Code § 503.

(b) **Prohibited Transactions.** For purposes of this Section, the term “Prohibited Transaction” means any transaction in which the Plan or Trust:

(1) lends any part of its income or corpus, without receipt of adequate security and a reasonable rate of interest, to a Disqualified Person;

(2) pays any compensation, in excess of a reasonable allowance for salaries or other compensation for personal services actually rendered, to a Disqualified Person;

(3) makes any part of its services available on a preferential basis to a Disqualified Person;

(4) makes any substantial purchase of securities or any other property, for more than adequate consideration in money or money’s worth, from a Disqualified Person;

(5) sells any substantial part of its securities or other property, for less than an adequate consideration in money or money’s worth, to a Disqualified Person; or

(6) engages in any other transaction which results in a substantial diversion of its income or corpus to a Disqualified Person.

(c) **Disqualified Persons.** For purposes of this Section, the term “Disqualified Person” means—

(1) the Employer;

(2) a person who has made a substantial contribution to the Plan or Trust;

(3) a member of the family (as defined in Code § 267(c)(4)) of an individual described in paragraph (2); **and**

(4) a corporation controlled by a person described in paragraphs (1) or (2) through the ownership, directly or indirectly, of 50% or more of the total combined voting power of all classes of stock entitled to vote or 50% or more of the total value of shares of all classes of stock of the corporation.

(d) **Definitions.** The terms used in this Section shall be interpreted in the same manner as corresponding terms utilized in Code § 503.

§ 1806 Indemnification.

The Employer hereby agrees to indemnify any officer, director, elected official, or employee of the Employer for any expenses, penalties, damages, or other pecuniary losses which such person may suffer as a result of his responsibilities, obligations, or duties in connection with the Plan or fiduciary activities actually performed in connection with the Plan, **but only** to the extent that—

- (a) fiduciary liability insurance is not available to cover the payment of such item; **and**
- (b) the person is not being relieved of his fiduciary responsibilities and liabilities to the Plan for breaches of fiduciary obligations.

Article XIX — Amendment, Termination & Merger

§ 1901 Amendment.

(a) **In General.** Subject to the provisions of subsection (b) and applicable collective bargaining obligations, the Board of Commissioners of the Sponsor shall have the right at any time, and from time to time, to amend in whole or in part, any or all of the provisions of this Plan and Trust, by Ordinance.

(b) **Prohibited Amendments.** No amendment under this Section shall be effective to the extent that it shall—

(1) **Exclusive Benefit.** Authorize or permit any part of the Trust Fund to revert to or become the property of the Employer or any Related Employer, or to be used or diverted to purposes other than the exclusive benefit of the Participants, Beneficiaries, and Alternate Payees, except as permitted under ERISA and the Code for qualified retirement plans which are government plans;

(2) **Accrued Rights.** Cause any reduction in the accrued benefit of any Participant, Alternate Payee, or Beneficiary except as permitted under applicable law;

(3) **Trustees.** Affect the rights, duties, or responsibilities of the Trustees without the written consent of the Trustees.

§ 1902 Termination.

(a) **Right to Terminate Plan.** The Sponsor shall have the right to discontinue its contributions to the Plan and Trust and terminate its participation under this Plan at any time by Ordinance, subject to any applicable collective bargaining responsibilities.

(b) **Plan Accounts.** Following a termination of the Plan or complete discontinuance of Employer contributions to the Plan, the amounts in the Forfeiture Account and Early Employer Contributions Account shall be allocated on the day of termination or discontinuance as if they were end-of-Plan-Year Employer contributions under Article IV.

(c) **Termination & Liquidation of the Trust.** Following a termination of the Plan, the Sponsor shall terminate the Trust. In that event, the Trustees shall distribute the accounts of all Plan Participants, Alternate Payees, and Beneficiaries to such persons as quickly as possible under the provisions of Articles XI, XII, and XIII as if the Plan and Trust termination were an event described in § 1101.

(d) **Termination of Trust Without Termination of Plan.** The Sponsor may also elect to terminate the Trust *without* terminating the Plan so long as the Sponsor directs the Trustees to transfer the assets of the Trust Fund to another funding medium for the Plan consistent with applicable law concerning qualified retirement plans and plans of Pennsylvania first class townships, and § 1513 (relating to Exclusive Benefit Rule).

(e) **Termination or Spin-Off by Related Employer.** Any Related Employer (or former Related Employer) which has adopted this Plan and Trust may at any time elect to terminate its participation in this Plan and Trust by written notice to the Administrator and the Trustees, to the extent permitted by state and federal law. In such event, the Trustee shall segregate assets attributable to employer and employee contributions (and liabilities allocable to investments thereof) made by or with respect to employees of the Related Employer from the Trust Fund and distribute such assets in accordance with the written directions of the (former) Related Employer (consistent with applicable law concerning qualified retirement plans and § 18-1613 (relating to Exclusive Benefit Rule)). Any election by a Related Employer under this subsection (d) shall be deemed an amendment and separation of the Related Employer's plan and trust from the provisions of this Plan and Trust Agreement, and not a termination of the Related Employer's plan, unless the Related Employer specifically terminates its plan.

§ 1903 Merger of Plans; Transfer of Assets.

(a) **Definition.** For purposes of this Section, the term "merger" shall mean any merger or consolidation of this Plan and/or the Trust Fund with any other plan, or any transfer of the assets or liabilities of the Plan and/or the Trust Fund to any other plan.

(b) **Accrued Rights.** The terms of any merger must specify that if this Plan or its successor were to terminate immediately after the merger, each Participant shall receive a benefit which is not less than he/she would have received in the event this Plan terminated immediately before such merger.

Article XX – Miscellaneous

§ 2001 Acquittance.

This Plan and Trust is purely voluntary on the part of the Employer. Except as provided in this Plan and Trust document, neither the establishment of the Trust, any modification thereof, the creation of any fund or account, nor the payment of any benefits shall be construed as giving to any Participant or any other person any legal or equitable right against the Employer, any officer or Employee of the Employer, the Trustees, or the Administrator. Neither the Trustees, the Administrator, nor the Employer in any way guarantees the Trust Fund from loss or depreciation, nor do they guarantee any payment to any person. The liability of such persons to make any payments hereunder is limited to the available assets of the Trust Fund.

§ 2002 Limitation of Liability.

Each Employee who becomes a Participant under this Plan expressly agrees and understands that neither the Employer, the members of the Administrator, the Trustees in their individual capacity, nor any of their officers and agents shall be subject in any way to any suit or litigation, or to any personal liability for any reason whatsoever in connection with this Plan and Trust or its operation, *except* for their willful neglect or fraud.

§ 2003 Legal Actions.

In any action or proceeding involving the Trust Fund, its administration, or any of its constituent property—

(a) **Necessary Parties.** The only necessary parties shall be the Employer, the Administrator, and the Trustees;

(b) **Notice.** No Employees or former Employees of the Employer, Alternate Payees, Beneficiaries, or any other person having or claiming to have an interest in the Trust Fund or under the Plan shall be entitled to any notice or process; **and**

(c) **Final Judgment.** Any final judgment which is either not appealed or appealable shall be binding and conclusive on all parties, the Administrator, and all persons having or claiming to have any interest in the Trust Fund or under the Plan.

§ 2004 Delegation of Authority by Employer.

Whenever any Employer is permitted or required to do or perform any act, matter, or thing under this Plan, it shall be done or performed by any officer duly authorized to perform same by the Employer.

§ 2005 Clerical Errors.

If the Administrator discovers that a person who should have received any contribution or allocation under this Plan for any Plan Year did not, or did not receive as large a contribution or

allocation as he should have, the Employer shall make a contribution for such person in the amount erroneously omitted, plus the amount of Income which would have been earned by such contribution had it been timely made.

Conversely, if the Administrator discovers that a person received a contribution or allocation under this Plan for any Plan Year to which he was not entitled, the amount of such erroneous contribution or allocation shall be deducted from the person's account and transferred to the Early Employer Contributions Account (where it shall be treated as being a contribution derived from state aid).

§ 2006 Construction.

This Plan and Trust Agreement shall be construed and administered according to the laws of the United States of America and the Commonwealth of Pennsylvania. Further, this Plan and Trust Agreement shall be construed and administered so as to conform to the applicable requirements for qualification under Code §§ 401(a) and 501(a) and shall be deemed amended automatically to conform to such legal requirements as in effect from time to time to the extent necessary.

§ 2007 Gender & Number.

Whenever any words are used in this Plan and Trust in the masculine gender, they shall be construed as though they were also used in the feminine gender in all appropriate cases. Whenever any words are used in either the singular or plural form, they shall be construed as though they were also used in the other form in all appropriate cases.

§ 2008 Headings.

Article, section, subsection, paragraph, subparagraph, clause, subclause, and other headings are included in this document for convenience only and shall in no manner be construed as a part of this Plan and Trust Agreement.

§ 2009 Severability.

Any provision of this Plan which is prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating or rendering unenforceable the remaining provisions of this Plan. To the extent permitted by applicable law, the Employer and Trustees hereby waive any provision of law which renders any provision of this Plan prohibited or unenforceable in any respect.

§ 2010 Employment Rights.

Nothing contained in this Plan and Trust shall be construed or interpreted as giving any employee of the Employer the right to be retained in the service of any Employer or shall affect or impair any terms of employment with any Employer, the right of any Employer to control its employees, and the right of any Employer to terminate the service of any employee at any time.

§ 2011 Communications.

(a) **To the Administrator or Trustees.** All elections, designations, requests, notices, instructions, or other communications made to the Administrator or the Trustees shall be in such form as may be prescribed by the Administrator or the Trustees and shall be mailed by first-class mail or delivered to such location as shall be specified by the Administrator or the Trustees, or transmitted to them in some other manner approved by the Administrator or Trustee (*e.g.*, fax, e-mail, action on an internet web page, etc.). The communication shall be deemed to have been given and delivered only upon actual receipt thereof at such location.

(b) **By the Administrator, Trustees, or Employer.** All notices, statements, reports, or other communications from the Administrator, the Trustees, or the Employer to any person with an interest under this Plan shall be deemed to have been duly given when delivered to, or when mailed by first-class mail, postage prepaid and addressed to such person at his address last appearing on the records of the Administrator, the Trustees, or the Employer.

§ 2012 Public Employee Pension Forfeiture Act.

Notwithstanding anything to the contrary contained in this Ordinance, all benefits with respect to a Participant under this Plan are subject to partial or complete forfeiture in accordance with the provisions of the Public Employee Pension Forfeiture Act, 43 PA. STAT. ANN. § 1311 *et seq.* Any amounts so forfeited which are subject to restitution to the Employer or another person or entity under the Act shall be so paid in accordance with the restitution order. Any amounts so forfeited which are not subject to restitution to the Employer or other person or entity under that Act shall, at such time as the Administrator reasonably determines that all proceedings related to the forfeiture and/or restitution under the Act have commenced and have concluded, be allocated among the accounts of persons who were Active Participants in this Plan as of the date of the forfeiture in proportion to their Compensation for the last Plan Year which ended before the date of the forfeiture.

§ 2013 Type of Plan.

This Plan is a money purchase, defined contribution pension plan.