

ORDINANCE NO. _____

AN ORDINANCE OF THE BOROUGH OF MEDIA, COUNTY OF DELAWARE, COMMONWEALTH OF PENNSYLVANIA, RELATIVE TO THE ESTABLISHMENT AND MAINTENANCE OF BOROUGH EMPLOYEES PENSION, ANNUITY, INSURANCE AND BENEFIT FUND OR FUNDS, TO AMEND CERTAIN PROVISIONS OF THE PENSION PLAN OR PROGRAM APPLICABLE TO THE EMPLOYEES OF SAID TOWNSHIP AND TO RESTATE IN ITS ENTIRETY SUCH PENSION PLAN OR PROGRAM.

BE IT ORDAINED AND ENACTED by the Borough Council ("Council") of the Borough of Media ("Borough") and it is HEREBY ORDAINED AND ENACTED by authority of the same:

The **Borough of Media Non-Uniformed Employees Pension Plan** ("Plan"), which was established for the benefit of the Borough's full time non-uniform employees, and which has been amended and restated by ordinances and resolutions of the Borough Council thereafter, shall be, and hereby is, amended and supplemented in the following respects.

Any Ordinances or Resolutions or parts of Ordinances or Resolutions conflicting with the provisions of this Ordinance shall be, and hereby are repealed so far as they affect this Ordinance; however, such repeal shall not affect any act done or any right or liability accrued under such Ordinance or Resolution herein repealed or superseded and all such rights or liabilities shall continue and may be enforced in the same manner as if such repeal or supersession had not been made but only to the extent otherwise permitted under the laws of the Commonwealth of Pennsylvania.

Effective January 1, 2025, the Plan shall be amended by entirely deleting the provisions of said Plan and substituting the following in its place:

**BOROUGH OF MEDIA
NON-UNIFORMED EMPLOYEES PENSION PLAN**

Amended and Restated
Effective as of: January 1, 2025

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I DEFINITIONS	3
ARTICLE II PARTICIPATION IN THE PLAN	7
ARTICLE III CONTRIBUTIONS	8
ARTICLE IV RETIREMENT BENEFITS	9
ARTICLE V PAYMENT OF BENEFITS	14
ARTICLE VI DISABILITY BENEFITS	17
ARTICLE VII DEATH BENEFITS	18
ARTICLE VIII TERMINATION OF EMPLOYMENT	19
ARTICLE IX ADMINISTRATION	20
ARTICLE X THE PENSION FUND	24
ARTICLE XI AMENDMENT AND TERMINATION	27
ARTICLE XII FUNDING STANDARD REQUIREMENTS	29
ARTICLE XIII MISCELLANEOUS PROVISIONS	30

PREAMBLE

WHEREAS, Borough of Media, County of Delaware, Commonwealth of Pennsylvania, established a retirement program on April 21, 1966, pursuant to Ordinance No. 504 for the benefit of the Borough's full time non-uniformed employees and their beneficiaries; and

WHEREAS, the Plan has been amended thereafter from time to time pursuant to various Ordinances; and

WHEREAS, the Borough Council of the Borough of Media (the "Council") retained the right to amend the Plan; and

WHEREAS, the Council wants to facilitate the administration of the Plan by completely amending and restating the Plan to set forth the provisions thereof in a single document for purposes of incorporating certain changes and for Ordinance consolidation and clarity; and

WHEREAS, the Council intends the Plan shall continue to meet the requirements for qualification as a governmental plan pursuant to the Internal Revenue Code of 1986, as amended, and the requirements under the applicable laws of the Commonwealth of Pennsylvania governing the implementation and operation of local government retirement plans and under the provisions of the Internal Revenue Code of 1986, as amended, including, but not limited to, the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"), the Pension Protection Act of 2006 ("PPA"), the Heroes Earnings Assistance and Relief Tax Act of 2008 ("HEART" or "Heroes' Act"), applicable portions of the Setting Every Community Up For Retirement Enhancement Act of 2019 ("SECURE Act"), and applicable portions of the SECURE 2.0 Act of 2022 ("SECURE 2.0" or "SECURE 2.0 Act"); and

NOW, THEREFORE, the Plan now known as "Borough of Media Non-Uniformed Employees Pension Plan" is hereby amended and restated in its entirety, effective January 1, 2025, as follows:

ARTICLE I **DEFINITIONS**

The following words and phrases as used in this Plan shall have the meaning set forth in this Article, unless a different meaning is otherwise clearly required by the context:

- 1.01 "Accrued Benefit" shall mean, as of any given date, the benefit determined under section 4.02, calculated on the basis of Average Monthly Compensation and Years of Credited Service determined as of such date of determination. The Accrued Benefit shall not exceed the maximum limitation, determined as of the date of computation, provided under section 4.06. All Accrued Benefits are subject to all applicable limitations, reductions, offsets, and actuarial adjustments provided pursuant to the terms of the Plan prior to the actual payment thereof.
- 1.02 "Accumulated Contributions" shall mean the total amount contributed by any Participant to this Pension Fund or its predecessor by way of payroll deduction or otherwise, plus interest credited at six percent (6%) per annum. Interest shall be credited in the form of a compound interest rate from the midpoint of the Plan Year during which the contributions were paid to the first day of the month preceding the date that a distribution of Accumulated Contributions shall be paid or payment of benefits shall commence.
- 1.03 "Act" shall mean the Municipal Pension Plan Funding Standard and Recovery Act which was enacted as Act 205 of 1984, as amended, 53 P.S. Sec. 895.101 et seq.
- 1.04 "Actuarial Equivalent" shall mean two forms of payment of equal actuarial present value on a specified date. The actuarial present value shall be determined by use of the UP-1984 Mortality Table and six percent (6%) interest unless otherwise specifically provided herein.
- 1.05 "Actuary" shall mean the person, partnership, association or corporation which at any given time is serving as Actuary; provided that such Actuary must be an "Approved Actuary" as defined in the Act.
- 1.06 "Authorized Leave of Absence" shall mean any leave granted in writing by the Employer for reasons including but not limited to accident, sickness, pregnancy or temporary disability, education, training, jury duty or such other reasons as may necessitate authorized leave from active employment.
- 1.07 "Average Monthly Compensation" shall mean the Compensation of the Participant averaged over the final twelve (12) months immediately preceding termination of active Employment. Average Monthly Compensation shall exclude lump-sum payments. Average Monthly Compensation shall be calculated by taking into account only those periods during which an Employee receives Compensation, as that term is defined in section 1.14. Therefore, for example, the Average Monthly Compensation for a Participant who is on an Authorized Leave of Absence during the final twelve months of Employment shall be based on the period during which the Employee last received Compensation from the Employer.
- 1.08 "Beneficiary" shall mean the person or entity designated by the Participant to receive any benefits which may be due hereunder upon the death of the Participant. For the purpose of determining the Beneficiary pursuant to section 5.01 or 7.02, in the event that a Participant does not designate a Beneficiary or the Beneficiary does not survive the Participant, the

Beneficiary shall be the surviving spouse, or if there is no surviving spouse, the issue, per stirpes, or if there is no surviving issue, the estate; but if no personal representative has been appointed, to those persons who would be entitled to the estate under the intestacy laws of the Commonwealth of Pennsylvania if the Participant had died intestate and a resident of Pennsylvania.

- 1.09 "Break in Service" shall mean the period beginning on the earlier of:
- (a) the date on which an Employee ceases to be employed by the Employer for any reason, including but not limited to resignation, discharge, retirement or death; or
 - (b) the date on which an Employee ceases making contributions required as a condition of participation hereunder.
- No Break in Service shall be deemed to occur in the case of an Authorized Leave of Absence provided the employee returns to active employment at the expiration of such leave.
- 1.10 "Chief Administrative Officer" shall mean the person designated by the Council who has the primary responsibility for the execution of the administrative affairs for the Plan.
- 1.11 "Code" shall mean the Internal Revenue Code of 1986, as amended.
- 1.12 "Committee" shall mean the Pension Plan Committee as more fully described under section 9.02 hereof if one shall be appointed.
- 1.13 "Commonwealth" shall mean the Commonwealth of Pennsylvania.
- 1.14 "Compensation" shall mean the total wages paid to the Employee by the Employer for services rendered.
- Compensation shall be limited on an annual basis to the amount specified for government plans pursuant to Code section 401(a)(17), as adjusted under Code section 415(d).
- 1.15 "Council" shall mean the Borough Council of the Borough of Media.
- 1.16 "Disability Date" shall mean the date when a Participant is determined by the Plan Administrator to be incapacitated due to Total and Permanent Disability, or the date when the Participant's Employment terminates due to such Total and Permanent Disability, if later.
- 1.17 "Employee" shall mean an individual whose employment terms and conditions are governed by the Public Works Contract ("Union Employee") who was hired by the Employer on a full-time basis before January 1, 2014 or an individual whose employment terms and conditions are NOT governed by the Public Works Contract ("Non-Union Employee") who was hired on a full-time basis before July 1, 2013, excluding uniformed employees and those covered under another retirement plan or program sponsored by the Employer.
- 1.18 "Employer" shall mean Borough of Media, Delaware County, Pennsylvania.
- 1.19 "Employment" shall mean, for the purpose of determining Years of Credited Service:
- (a) The period of time during which an Employee renders services for the Employer for which the Employee is directly or indirectly compensated or entitled to receive compensation;

- (b) Any period of time for which an Employee is paid, either directly by the Employer or through a program to which the Employer has made contributions on behalf of the Employee, a fixed, periodic amount in the nature of salary continuation payments for reasons other than the performance of duties such as vacation, holidays, sickness, entitlement to benefits under workers' compensation or similar laws; and
- (c) Any Authorized Leave of Absence expressly granted by the Employer provided the Employee returns to active employment at the end of such leave.
- (d) Any period of qualified military service as determined under the requirements of Chapter 43 of Title 38, United States Code, provided that the Participant returns to Employment following such period of qualified military service, and the Participant makes payment to the Plan in an amount equal to the Participant Contributions that would otherwise have been paid to the Plan during such period of qualified military service. The amount of Participant Contributions shall be based upon an estimate of the Compensation that would have been paid to the Participant during such period of qualified military service as determined by the average Compensation paid to the Participant during the twelve (12) months immediately preceding the period of qualified military service. The amount of Participant Contributions so calculated must be paid into the Plan before the end of the period that begins on the date of re-employment and ends on the earlier of the date that ends the period that has a duration of three (3) times the period of qualified military service, or the date that is five (5) years after the date of re-employment.
- 1.20 "Insurer" or "Insurance Company" shall mean a legal reserve life insurance company authorized to do business in the Commonwealth of Pennsylvania.
- 1.21 "Minimum Municipal Obligation" shall mean the minimum obligation of the municipality as determined pursuant to the provisions of the Act.
- 1.22 "Normal Retirement Age" shall mean the date on which the Participant has attained age sixty-two (62). For Union employees, the earlier of the date on which the Participant has attained age sixty-two (62) or the date on which the Participant has attained age sixty (60) and completed thirty-five (35) Years of Credited Service.
- 1.23 "Normal Retirement Date" shall mean the first day of the month coincident with or next following the date on which the Participant attains Normal Retirement Age.
- 1.24 "Notice" or "Election" shall mean a written document prepared in the form specified by the Plan Administrator. If such notice or election is to be provided by the Employer or the Plan Administrator, it shall be mailed in a properly addressed envelope, postage prepaid, to the last known address of the person entitled thereto, on or before the last day of the specified notice or election period. If such notice or election is to be provided to the Employer or the Plan Administrator, it must be received by the intended recipient on or before the last day of the specified notice or election period.
- 1.25 "Participant" shall mean an Employee who has met the eligibility requirements to participate in the Plan as provided in section 2.01 and who has not for any reason ceased to be a Participant hereunder.
- 1.26 "Pension Fund" shall mean the assets of the Plan, which shall include all money, property, investments, Policies and Contracts standing in the name of the Plan, and which shall be

administered under the supervision of the Employer in accordance with the terms of the Plan and applicable law.

- 1.27 "Plan" shall mean the terms set forth herein, as amended from time to time and designated as the Borough of Media Non-Uniformed Employees Pension Plan.
- 1.28 "Plan Administrator" shall mean the Committee or the individual appointed by the Employer for the purpose of supervising and administering the provisions of the Plan. In the event that no such appointment is made, the Plan Administrator shall be the Council.
- 1.29 "Plan Year" shall mean the 12-month period beginning on January 1 and ending on December 31 of each year.
- 1.30 "Policy" or "Contract" shall mean a retirement annuity or retirement income endowment policy (or a combination of both) or any other form of insurance contract or policy which shall be deemed appropriate in accordance with the provisions of applicable law.
- 1.31 "Restatement Date" shall mean January 1, 2025, the date upon which this amendment and restatement of the Plan becomes effective.
- 1.32 "Total and Permanent Disability" shall mean a condition of physical or mental impairment due to which a Participant is unable to perform any and every duty of gainful occupation for which the Participant is reasonably fitted through training, education and experience, which has continued for a period of at least six (6) months and will be permanent and continuous for the remainder of the Participant's lifetime and due to which a Participant is certified by the Social Security Administration as being eligible for Social Security disability benefits. Excluded conditions include incapacity resulting from (a) chronic alcoholism or addiction to narcotics, (b) engagement in a felonious criminal enterprise, or an intentionally self-inflicted injury, or (c) incapacity that was incurred while in the armed services of any country. The Plan Administrator shall determine whether a Participant shall have incurred a Total and Permanent Disability. The Plan Administrator shall rely on the report of a physician acceptable and approved by the Employer.
- 1.33 "Years of Credited Service" shall mean the total period or periods of the Participant's Employment with the Employer whether or not interrupted. Notwithstanding the preceding sentence, should any such Participant receive a distribution of Accumulated Contributions with respect to a period of Employment for which Employee Contributions are required, such period of Employment shall not be included in Years of Credited Service thereafter unless, at the commencement of the next period of Employment, the Participant repays to the Pension Fund the amount of such distribution with interest. For purposes of this section, interest shall accrue as of the date the Employee receives a distribution of Accumulated Contributions and shall be computed at the same rate and in the same manner as described in section 1.02. Years of Credited Service shall be calculated in completed years and months.

ARTICLE II PARTICIPATION IN THE PLAN

- 2.01 Eligibility Requirements - Each Employee who was a Participant in the Plan on the day prior to the Restatement Date shall continue to be a Participant on and after the Restatement Date subject to the terms and conditions of the Plan as set forth herein. As of July 1, 2013 the Plan is closed to newly hired Non-Union Employees. As of January 1, 2014 the Plan is closed to newly hired Union Employees.
- Notwithstanding the preceding, any Non-Union Employee as of January 1, 2025 who was hired between July 1, 2013 and April 20, 2014 may make a one-time irrevocable Election to participate in the Plan between January 1, 2025 and January 31, 2025. An Employee who makes such an Election and completes the purchase of service credit as required by the Employer on or before January 31, 2025 shall be considered to have been an Employee participating in the Plan since their original full-time hire date.
- 2.02 Designation of Beneficiary - Any Participant shall provide a written notice in the manner prescribed by the Plan Administrator which designates a Beneficiary at the time participation commences. The Participant's Election of any such Beneficiary may be rescinded or changed, subject to the terms of the Plan, without the consent of the Beneficiary, at any time provided the Participant provides the written notice of the changed designation to the Plan Administrator in the manner prescribed by the Plan Administrator. Any designation of a Beneficiary made in any manner other than one acceptable to the Plan Administrator shall be null and void and have no effect under the terms of this Plan.
- 2.03 Re-employment - Each person who shall have previously been an Employee in Employment and who has not received a distribution from the Plan with regard to that period of Employment, shall be eligible to participate hereunder as of the date of reemployment and shall commence the accrual of additional benefits under the Plan. Any person who shall have previously been an Employee in Employment and who has received a distribution from the Plan with regard to that period of Employment may elect to be eligible to participate hereunder as of the date of reemployment and commence the accrual of additional benefits under the Plan by repaying to the Fund the amount of the distribution(s) previously received, along with interest calculated at the same rate and in the same manner as described in section 1.02.
- 2.04 Change in Status - A Participant who remains in the service of the Employer but ceases to be an Employee eligible for participation hereunder shall have no further benefit accruals occur until the individual again qualifies as a Participant hereunder eligible to resume such accrual of benefits and returns the distribution of Accumulated Contributions previously received (if applicable) by the Participant, with interest calculated at the same rate and manner as described in section 1.02 from the date of distribution to date of repayment.
- 2.05 Recordkeeping - The Employer shall furnish the Plan Administrator with such information as will aid the Plan Administrator in the administration of the Plan. Such information shall include all pertinent data on Employees for purposes of determining their eligibility to participate in this Plan.

ARTICLE III CONTRIBUTIONS

- 3.01 Participant Contributions - Participants are required to contribute to the Plan an amount equal to six and one-half percent (6.5%) of Compensation. Contributions by Non-Union Employees will cease after completion of thirty-five (35) Years of Credited Service. Effective January 1, 1993, mandatory Participant Contributions are "picked up" by the Employer and shall be treated as Employer contributions pursuant to Code Section 414(h)(2).
- 3.02 Employer Contribution - The Actuary, in accordance with the Act, shall determine the Minimum Municipal Obligation of the Employer. The Employer shall pay into the Pension Fund, by annual appropriations or otherwise, the contributions necessary to satisfy the Minimum Municipal Obligation. Notwithstanding the foregoing, nothing contained herein shall preclude the Employer from contributing an amount in excess of the Minimum Municipal Obligation.
- 3.03 State Aid - General Municipal Pension System State Aid, or any other amount of State Aid received by the Employer in accordance with the Act from the Commonwealth may be deposited into the Pension Fund governed by this Plan in amounts determined by the Council and shall be used to reduce the amount of the Minimum Municipal Obligation of the Employer.
- 3.04 Gifts - The Council is authorized to take by gift, grant, devise or otherwise any money or property, real or personal, for the benefit of the Plan and cause the same to be held as a part of the Pension Fund. The care, management, investment and disposal of such amounts shall be vested in the Council or its delegate, the Plan Administrator, subject to the direction of the donor and not inconsistent with applicable laws and the terms of the Plan.
- 3.05 Employer Reversion - At no time shall it be possible for the Plan assets to be used for, or diverted to, any purpose other than for the exclusive benefit of the Participants and their Beneficiaries, including payment of any reasonable Plan expenses. Notwithstanding the foregoing, any contributions made by the Employer may be returned to the Employer if the contribution was made due to a mistake and the contribution is returned within one (1) year of the date on which the discovery of the mistaken payment of the contribution was made or reasonably should have been made or if the Plan is terminated, as provided in Article XI.

ARTICLE IV RETIREMENT BENEFITS

- 4.01 Normal Retirement - Each Participant shall be entitled to a Normal Retirement Benefit upon retirement on or after the Participant has attained Normal Retirement Age.
- 4.02 Normal Retirement Benefit - Each Participant who shall become entitled to a benefit pursuant to section 4.01 shall receive a benefit paid monthly in an amount equal to two percent (2.0%) of the Participant's Average Monthly Compensation multiplied by Years of Credited Service not in excess of thirty-five (35) years, payable in the Normal Form pursuant to section 5.01, commencing the first day of the month coincident with or next following retirement.
- 4.03 Late Retirement - A Participant may continue in Employment beyond the attainment of Normal Retirement Age subject to the Employer's rules and regulations regarding retirement age. If a Participant who has met the requirements of section 4.01 continues in Employment beyond Normal Retirement Age, there shall be no retirement benefits paid until Employment ceases and the Participant's retirement actually begins. The retirement benefit of a Participant who retires after attainment of Normal Retirement Age shall be calculated in accordance with section 4.02 on the basis of the Participant's Average Monthly Compensation and Years of Credited Service, not to exceed thirty-five (35) years, at the Participant's actual retirement date.
- 4.04 Application for Benefit – A Participant must complete an application for benefit in the manner prescribed by the Plan Administrator and deliver such application to the Plan Administrator at least thirty (30) days prior to the date on which benefit payments shall commence. Notwithstanding anything contained herein to the contrary, no retirement benefit payments nor any other payments shall be due or payable on or before the date that is thirty (30) days after the date the Plan Administrator receives the application for benefits.
- 4.05 Assignment - The pension benefit payments prescribed herein shall not be subject to attachment, execution, levy, garnishment or other legal process and shall be payable only to the Participant or designated Beneficiary and shall not be subject to assignment or transfer unless the subject of a domestic relations order, mandated by a court of competent jurisdiction that clearly provides for proper distribution of a portion of the pension benefit payments to an alternate payee (former spouse of the Participant) and does not require any benefit to be paid in excess of the available earned and accrued under the Plan.
- 4.06 Maximum Benefit Limitations - Notwithstanding any provision of this Plan to the contrary, no benefit provided under this Plan attributable to contributions of the Employer shall exceed, as an annual amount, the amount specified in Code section 415(b)(1)(A) as adjusted pursuant to Code section 415(d), assuming the form of benefit shall be a straight life annuity (with no ancillary benefits). The limitations described in this section shall be governed by the following conditions and definitions:
- (a) benefits paid or payable in a form other than a straight life annuity (with no ancillary benefits) or where the Employee contributes to the Plan or makes rollover contributions shall be adjusted on an actuarially equivalent basis in accordance with applicable regulations to determine the limitation contained herein;
 - (b) in the case of a benefit which commences prior to the attainment of age sixty-two (62) by the Participant, the limitation herein shall be adjusted on an actuarially equivalent

- basis in accordance with applicable regulations to the amount determined pursuant to this section commencing at age sixty-two (62); however, in the case of a qualified Participant (a Participant with respect to whom a period of at least fifteen (15) Years of Credited Service, including applicable military service, as a full-time employee of a police or fire department is taken into account in determining the amount of benefit), the limitation contained herein shall not apply;
- (c) in the case of a benefit which commences after attainment of age sixty-five (65) by the Participant, the limitation herein shall be adjusted on an actuarially equivalent basis in accordance with applicable regulations to the amount determined commencing at age sixty-five (65);
 - (d) benefits paid to a Participant which total less than ten thousand dollars (\$10,000.00) from all defined benefit plans maintained by the Employer expressed as an annual benefit shall be deemed not to exceed the limitation of this section provided that the Employer has not at any time maintained a defined contribution plan in which the Participant has participated; however, in the case of a Participant who is not receiving a Disability Retirement Benefit under Article VI or a Survivor Benefit under Article VII (if applicable), with fewer than ten (10) years of participation, the limitation expressed in this section shall be reduced by one-tenth (1/10) for each year of participation less than ten (10) but in no event shall this limitation be less than one thousand dollars (\$1,000.00);
 - (e) the limitations expressed herein shall be based upon Plan Years for calculation purposes, shall be applied to all defined benefit plans maintained by the Employer as one (1) defined benefit plan and to all defined contribution plans maintained by the Employer as one (1) defined contribution plan, and shall be applied and interpreted consistent with Code section 415 and regulations thereunder as applicable to government plans in general and this Plan in particular;
 - (f) in the case of a Survivor Benefit under Article VII or a Disability Retirement Benefit under Article VI hereunder (if applicable), the adjustment under subsections (b) and (d) hereof shall not apply and the applicable limitation shall be the limitation contained herein without regard to the age or years of service or participation of the benefit recipient.
 - (g) for mandatory employee contributions, the rules set forth in Treasury Regulation 1.415(b)-1(b)(2)(iii) shall apply;
 - (h) to the extent applicable, the Plan will comply with the provisions of Code Section 415(n) regarding the purchase of permissive service credits; and
 - (i) Annual Additions - Except as otherwise provided, annual additions (which include Participant Contributions) under this Plan shall at all times comply with the provisions of Code Section 415(c) and the regulations there under, the terms of which are specifically incorporated herein by reference. If an annual addition would otherwise exceed the limit under Code Section 415(c), the excess annual addition will be corrected in accordance with the IRS Employee Plans Compliance Resolution System;
 - (j) Multiple Plans - If a Participant also participates in one or more other plans that are required to be aggregated with this Plan for purposes of determining the limits under Code Section 415(c), and if the annual additions would otherwise exceed the limit

under Code Section 415(c), annual additions will first be reduced under the other plan. If there is more than one other plan, annual additions will first be reduced under the plan with the greatest amount of annual additions; and

- (k) notwithstanding any other Plan provisions to the contrary, the applicable mortality table used solely for purposes of adjusting any benefit or limitation under 415(b)(2)(B), (C), (D) of the Internal Revenue Code as set forth in the applicable Maximum Benefit Limitations section of the Plan is the applicable mortality table under Code Section 417(e)(3)(B); and effective as of January 1, 2008, for purpose of Code section 415(b)(1)(A), the “applicable mortality table” and “applicable interest rate” are found in Rev. Rul. 2007-67.

Incorporation of Code Section 415 by Reference - Notwithstanding anything contained in this section to the contrary, the limitations, adjustments, and other requirements prescribed in this section shall at all times comply with the provisions of Code Section 415 and the Regulations thereunder (as such apply to governmental plans), the terms of which are specifically incorporated herein by reference.

4.07 Required Distributions

- (a) Notwithstanding any other provision of this Plan, the entire benefit of any Participant who becomes entitled to benefits prior to death shall be distributed either:
- (1) not later than the Required Beginning Date, or
 - (2) over a period beginning not later than the Required Beginning Date and extending over the life of such Participant or over the lives of such Participant and a designated Beneficiary (or over a period not extending beyond the life expectancy of such Participant, or the joint life expectancies of such Participant and a designated Beneficiary).

If a Participant who is entitled to benefits under this Plan dies prior to the date when the Participant's entire interest has been distributed after distribution of the Participant's benefits has begun in accordance with paragraph (2) above, the remaining portion of such benefit shall be distributed at least as rapidly as under the method of distribution being used under paragraph (2) as of the date of the Participant's death.

- (b) If a Participant who is entitled to benefits under this Plan dies before distribution of the benefit has begun, the entire interest of such Participant shall be distributed within five (5) years of the death of such Participant, unless the following sentence is applicable. If any portion of the Participant's interest is payable to (or for the benefit of) a designated Beneficiary, such portion shall be distributed over the life of such designated Beneficiary (or over a period not extending beyond the life expectancy of such Beneficiary), and such distributions begin no later than one (1) year after the date of the Participant's death or such later date as provided by regulations issued by the Secretary of the Treasury, then for purposes of the five-year rule set forth in the preceding sentence, the benefit payable to the Beneficiary shall be treated as distributed on the date on which such distributions begin. Provided, however, that notwithstanding the preceding sentence, if the designated Beneficiary is the surviving spouse of the Participant, then the date on which the Participant would have attained Required Mandatory Distribution Age, and further provided if the surviving spouse

dies before the distributions to such spouse begin, this subparagraph shall be applied as if the surviving spouse were the Participant.

(c) For purposes of this section, the following definitions and procedures shall apply:

- (1) “Required Mandatory Distribution Age” shall mean:
 - a. age seventy-two (72) for individuals who attain age 72 after April 1, 2020 but prior to January 1, 2023, or
 - b. age seventy-three (73) for individuals who attain age 72 after December 31, 2022 and age 73 before January 1, 2033, or
 - c. age seventy-five (75) for individuals who attain age 73 after December 31, 2032.
- (2) “Required Beginning Date” shall mean April 1 of the calendar year following the later of the calendar year in which the Participant retires or the calendar year in which the Participant attains Required Mandatory Distribution Age.
- (3) The phrase “designated Beneficiary” shall mean any individual designated by the Participant under this Plan according to its rules.
- (4) Any amount paid to a child shall be treated as if it had been paid to the surviving spouse if such amount will become payable to the surviving spouse upon such child reaching majority (or other designated event permitted under regulations issued by the Secretary of the Treasury).
- (5) For purposes of this section, the life expectancy of a Participant and/or the Participant's spouse (other than in the case of a life annuity) may be redetermined but not more frequently than annually.

- (d) A surviving spouse who is named as the sole Beneficiary may elect to be treated as the Participant for purposes of determining Required Distributions.
- (e) General Rules. The requirements of this section will take precedence over any inconsistent provisions of the Plan. All distributions required under this section will be determined and made in accordance with Section 401(a)(9) of the Internal Revenue Code and the Treasury regulations thereunder, and the Employer's good faith interpretation of such Code and Regulations.

4.08 Retired Participants - Any Participant who shall have retired prior to the Restatement Date shall not have the benefit altered in any way by the provisions of this amended and restated Plan, unless otherwise expressly provided herein. Such retired Participants shall continue to have their benefits governed by the terms of the Plan in effect on the day preceding the Restatement Date. Any Participant who shall have terminated Employment and elected to receive a deferred retirement benefit shall have such benefit determined based upon the provisions of the Plan in effect as of the date of such termination of Employment and shall not have the benefit altered by the provisions of this amended and restated Plan.

4.09 Cessation of Benefit Payments - Any pension benefit payable hereunder shall be payable through and including the later of the month in which such Participant's death occurs or

the month in which any period certain payments due on or after the Participant's death have been paid. Any survivor annuity payable on or after the Participant's death in accordance with the form of pension benefit elected shall be paid through the month in which such contingent annuitant's death occurs.

- 4.10 Limitation of Liability - Nothing contained herein shall obligate the Employer, the Plan Administrator, any fiduciary or any agent or representative of any of the foregoing, to provide any retirement or other benefit to any Participant or Beneficiary which cannot be provided from the assets available in the Pension Fund, whether such benefits are in pay status or otherwise payable under the terms of the Plan. The Council retains the right to amend or terminate this Plan consistent with applicable law at any time, with or without cause and whether or not such action directly or indirectly results in the suspension, reduction or termination of any benefit payable under the Plan or in pay status, and without liability to any person for any such action.
- 4.11 Personal Right of Participant - The right to receive any benefits under this Plan is a personal right of the Participant and shall expire upon the death of the Participant. No heir, legatee, devisee, Beneficiary, assignee or other person claiming by or through a Participant shall have any interest in any benefits hereunder unless clearly and expressly so provided by the terms of this Plan or the provisions of applicable law. A Participant's Election, failure to make an Election or revocation of an Election hereunder shall be final and binding on all persons.

ARTICLE V PAYMENT OF BENEFITS

5.01 Normal Form of Benefit Payment - The Normal Form for payment of retirement benefits shall be a single life annuity with one hundred twenty (120) months certain. If the death of the retired Participant occurs after the payments commence but before receiving one hundred twenty (120) monthly payments, the remainder of such payments shall be paid to the Beneficiary designated by the Participant until the total number of monthly payments made to the Participant and Beneficiary equal one hundred twenty (120).

5.02 Optional Forms of Benefit Payment - The automatic form of payment of retirement benefits shall be the Normal Form specified in section 5.01 unless a Participant elects to receive benefits in some other form as provided herein. A participant who retires under section 4.01 or 4.03 may elect, by giving written Notice to the Employer to receive payment in one of the optional forms of payment, which shall be the Actuarial Equivalent of the Normal Form of Benefit Payment. The available optional forms of benefit payment shall be as follows:

- (a) Single Life Annuity - In lieu of receiving a retirement benefit under the Normal Form, a Participant may elect to convert the benefit to this option which provides for a monthly benefit payable to the Participant until the death of the Participant. All benefit payments cease upon the death of the Participant.
- (b) Contingent Annuitant Option - In lieu of receiving a retirement benefit paid in the Normal Form of Benefit Payment, a Participant may elect to convert the benefit to this option which provides for a retirement benefit payable to the retired Participant until death and for the continuation of benefit payments thereafter in an amount equal to fifty percent (50%) of the benefit the Participant was receiving to the designated Beneficiary for the rest of the Beneficiary's life.

If the Beneficiary is the spouse of the retired Participant, the benefit payable under this option is payable without restriction. If, however, the Beneficiary is any person other than the spouse of the retired Participant, the benefit payable under this option shall be limited such that the present value of the payments to be made to the Participant during the Participant's lifetime shall be at least equal to fifty percent (50%) of the present value of the total payments to be made to the Participant and the Beneficiary.

Monthly benefits payable to the Beneficiary shall commence on the first day of the month following the death of the retired Participant and continue with the last monthly payment payable on the first of the month preceding the death of the Beneficiary.

If the Beneficiary dies before the Participant begins receiving a retirement benefit, any Election of this option shall be deemed null and void and the retirement benefit shall be payable in the Normal Form of Benefit Payment, the same as if the Contingent Annuitant Option had not been elected.

If the Beneficiary shall die before the Participant but after retirement benefit payments have commenced hereunder, there shall be no additional payments made after the death of the Participant.

No change to the designated Beneficiary may be made under this option for any

reason after benefit payments have commenced.

5.03 **Nonduplication of Benefit** - To avoid any duplication of benefits, a Participant who is receiving a retirement benefit under the Plan and who shall resume Employment shall have benefit payments suspended until the first day of the month coincident with or next following the date such Employment shall cease. Upon final termination of Employment, such Participant's benefit shall be recalculated based on the Participant's Years of Credited Service (not to exceed thirty-five (35) years) and Average Monthly Compensation, as well as the terms of the Plan in effect at that time; provided, however, that such recalculation shall not result in a decrease in such Participant's retirement benefit.

5.04 **Direct Rollovers**

- (a) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this section, a Distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an Eligible Rollover Distribution that is equal to at least five hundred dollars (\$500) paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.
- (b) Notwithstanding any provisions of the Plan to the contrary that would otherwise limit a Distributee's election under this section, if a distribution in excess of one-thousand dollars (\$1,000.00) is made and the Distributee does not make an election under section (a) and does not elect to receive the distribution directly, the Plan Administrator shall make such transfer to an individual retirement plan of a designated trustee or issuer pursuant to Authority and Duties of the Plan Administrator section of the Plan. The Plan Administrator shall notify the Distributee in writing, within a reasonable period of time and as otherwise prescribed by law, that the distribution may be transferred to another individual retirement plan.
- (c) For purposes of this section, the following definitions shall apply:
 - (1) "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: 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; any distribution to the extent such distribution is required under Code Section 401(a)(9); and the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).

For purposes of the direct rollover provisions in this section of the Plan, a portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax employee contributions that are not includable in gross income. However, such portion may be paid only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Code or any qualified trust or Code section 403(b) plan that agrees to separately account for amounts so transferred, including separately accounting for the portion of such

- distribution which is includable in gross income and the portion of such distribution which is not so includable.
- (2) “Eligible Retirement Plan” is a qualified trust described in Code Section 401(a), an individual retirement account (IRA) 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), an annuity contract described in Code Section 403(b), an eligible deferred compensation plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan, and a Roth IRA described in Section 408A of the Internal Revenue Code to the extent that the applicable requirements of Code Section 408A are satisfied with respect to any Direct Rollovers to such Roth IRA.
- (3) “Distributee” includes a Participant or former Participant. In addition, the Participant's or former Participant's surviving spouse and the Participant's or former Participant's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p), are Distributees with regard to the interest of the spouse or former spouse.
- (4) “Direct Rollover” is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee, or by the Plan Administrator if the Distributee does not make an election.
- (d) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Non-Spouse Beneficiary's election under this section, a Non-Spouse Beneficiary may elect to have any portion of a Plan distribution (that is payable to such Non-Spouse Beneficiary due to a Participant's death) paid in a direct trustee-to-trustee transfer to an individual retirement account described in Code Section 408(a) or to an individual retirement annuity described in Section 408(b) (other than an endowment contract) that has been established for the purposes of receiving the distribution on behalf of such Non-Spouse Beneficiary. For these purposes, a “Non-Spouse Beneficiary” is an individual who is a designated beneficiary (as defined by Section 401(a)(9)(E) of the Internal Revenue Code) of a Participant and who is not the surviving spouse of such Participant.

ARTICLE VI DISABILITY BENEFITS

- 6.01 Disability Retirement - A Participant who shall incur a Total and Permanent Disability before attaining Normal Retirement Age shall be entitled to a Disability Retirement Benefit.
- 6.02 Disability Retirement Benefit - A Participant who retires pursuant to Section 6.01 shall receive a monthly benefit equal to the Participant's Accrued Benefit, determined as of the Disability Date.
- 6.03 Payment of Disability Benefits - Disability Retirement Benefit payments shall be paid monthly commencing as of the first day of the month coincident with or immediately following the Participant's Disability Date and continuing the first day of every month until the earlier of cessation of Total and Permanent Disability or the death of the Participant.
- 6.04 Verification of Disability Benefits - The Employer may require proof of continued disability but not more frequently than once in any six-month period. If a Participant refuses to submit to a medical examination or furnish proof of the Participant's continued disability upon the request of the Employer, the Participant's disability payments shall cease.
- 6.05 Cessation of Disability - A Participant who is receiving payment of Disability Retirement Benefits under this Plan must notify the Plan Administrator of any change which may cause a cessation of entitlement to receipt of such benefits hereunder. If a Participant fails to provide immediate Notice to the Plan Administrator of any such change in status and continues to receive payment of benefits hereunder to which the Participant is not entitled, then the Plan may take whatever action is necessary to recover any amount of improperly paid amounts, including legal action or offsetting such amounts against any future payments of retirement or other benefits under the Plan, including the costs of such actions.

ARTICLE VII

DEATH BENEFITS

- 7.01 Death of Participant - Upon the occurrence of the death of a Participant, there shall be benefits payable in accord with the following sections of this Article VII.
- 7.02 Death Prior to Retirement - If a Participant shall die prior to eligibility for and Election to commence retirement benefits pursuant to section 4.01 or 4.03, the Beneficiary shall be eligible to receive a single distribution in an amount equal to the Accumulated Contributions of the Participant as of the date of death of the Participant.
- 7.03 Death After Retirement - A benefit shall be payable to the Beneficiary of a Participant who shall die after the payment of monthly retirement benefits has commenced only to the extent and in the manner consistent with the provisions of the form of payment of benefits selected by the Participant pursuant to the provisions of Article V.
- 7.04 Veterans' Survivor Benefits - Notwithstanding any other provision of the Plan to the contrary, in the case of the death of a Participant who dies while performing qualified military service (as defined in Code Section 414(u)), the survivors of the Participant are entitled to any additional benefits under the Plan (if any) had the Participant resumed and then terminated Employment on account of death.

ARTICLE VIII

TERMINATION OF EMPLOYMENT

- 8.01 Rights of Terminated Employees - A Participant who shall cease to be an Employee except as otherwise hereinbefore provided shall have all interest and rights under this Plan limited to those contained in the following sections of this Article.
- 8.02 Distribution of Accumulated Contributions - A Participant whose Employment with the Employer shall terminate for any reason other than retirement, Total and Permanent Disability, or death and who paid any Participant Contributions shall be entitled to receive a distribution of Accumulated Contributions. Upon receipt of such Accumulated Contributions, the Participant shall not be entitled to any further payments from the Plan.
- 8.03 Deferred Retirement Benefit - A Participant whose Employment shall terminate for any reason other than retirement or death shall be entitled to elect to receive a deferred vested retirement benefit in lieu of a distribution of Accumulated Contributions under section 8.02 by filing a written Notice of the intention to vest with the Plan Administrator. Such a deferred vested retirement benefit shall be equal to the Participant's Accrued Benefit as of the date Employment terminates and shall commence after application has been made to the Plan Administrator, on what would have been the Participant's Normal Retirement Date.
- 8.04 Forfeiture – To the extent permissible under the Code, rights under this Plan shall be subject to forfeiture pursuant to the act of July 8, 1978 (P.L. 752, No. 140), known as the Public Employee Pension Forfeiture Act.

ARTICLE IX ADMINISTRATION

- 9.01 Plan Administrator - The Plan Administrator shall be the Committee or the individual appointed by Council who shall have the power and authority to do all acts and to execute, acknowledge and deliver all instruments necessary to implement and effectuate the purpose of this Plan provided that Council chooses to delegate said power and authority. The Plan Administrator may delegate authority to act on its behalf to any persons it deems appropriate. If a Plan Administrator is not appointed, Council shall be the Plan Administrator.
- 9.02 Pension Committee - Council may appoint a Pension Committee to administer the affairs of the Plan. Council shall delegate such authority as it shall deem appropriate to the Committee. The Committee, if one is appointed, shall consist of not more than five (5) members. Each member of the Committee shall serve in that capacity until death, resignation, removal or otherwise. Each member may resign by delivering written notice to Council and other members of the Committee. Vacancies on the Committee shall be filled in the same manner as the position was originally filled by Council; provided, however, that the remaining members of the Committee shall have full power to act pending the filling of such vacancies.
- 9.03 Authority and Duties of the Plan Administrator - The Plan Administrator shall have full power and authority to do whatever shall, in its judgment, be reasonably necessary for the proper administration and operation of the Plan. The interpretation or construction placed upon any term or provision of the Plan by the Plan Administrator or any action of the Plan Administrator taken in good faith shall, upon Council's review and approval thereof, be final and conclusive upon all parties hereto, whether Employees, Participants or other persons concerned. By way of specification and not limitation and except as specifically limited hereafter, the Plan Administrator is authorized:
- (a) to construe this Plan;
 - (b) to determine all questions affecting the eligibility of any Employee to participate herein;
 - (c) to compute the amount and source of any benefit payable hereunder to any Participant or Beneficiary;
 - (d) to authorize any and all disbursements;
 - (e) to prescribe any procedure to be followed by any Participant or other person in filing any application or Election;
 - (f) to prepare and distribute, in such manner as may be required by law or as the Plan Administrator deems appropriate, information explaining the Plan;
 - (g) to require from the Employer or any Participant such information as shall be necessary for the proper administration of the Plan; and
 - (h) to appoint and retain any individual to assist in the administration of the Plan, including such legal, clerical, accounting and actuarial services as may be required by any applicable law or laws.

- (i) to select an individual retirement plan provider (either the state or federally regulated financial institution) and invest funds in connection with the rollover of mandatory distributions as described in section 5.04(b).

The Plan Administrator shall have no power to add to, subtract from or modify the terms of the Plan or change or add to any benefits provided by the Plan, or to waive or fail to apply any requirements of eligibility for benefits under the Plan. Further, the Plan Administrator shall have no power to adopt, amend, or terminate the Plan, to select or appoint any Trustee or to determine or require any contributions to the Plan, said powers being exclusively reserved to Council.

- 9.04 **Pension Committee Organization** - The Committee may organize itself in any manner deemed appropriate to effectuate its purposes hereunder provided that it shall operate and act by a majority of its members at the time in office either by vote at a meeting or in writing without a meeting. The Committee shall appoint a Chairman, a Secretary who may, but need not be a Committee member, and such other agents as it may deem advisable. The Committee may authorize any one or more of its members to execute any document or documents including any application, request, certificate, notice, consent, waiver or direction and shall notify Council, in writing, of each such member so authorized; however, if no such member is so authorized, the Chairman shall be deemed to be so authorized. Any Trustee or other fiduciary appointed hereunder shall accept and be fully protected in relying upon any document executed by the designated members (or the Chairman in the absence of a designation) as representing a valid action by the Committee until the Committee shall file with such fiduciary a written revocation of such designation. The Committee shall meet at least one time in each Plan Year, and it shall maintain and keep such records as are necessary for the efficient operation of the Plan or as may be required by any applicable law, regulation or ruling, and shall provide for the preparation and filing of such forms, reports or documents as may be required to be filed with any governmental agency or department and with the Participants or other persons entitled to benefits under the Plan.
- 9.05 **Plan Administrator Costs** - The Plan Administrator shall serve without compensation for services unless otherwise agreed by Council in writing. All reasonable expenses incident to the functioning of the Plan Administrator, including, but not limited to, fees of accountants, counsel, actuaries and other specialists, and other costs of administering the Plan, may be paid from the Pension Fund upon approval by Council to the extent permitted under applicable law and not otherwise paid by the Employer.
- 9.06 **Hold Harmless** - No member of Council, the Committee, the Plan Administrator, nor any other person involved in the administration of the Plan shall be liable to any person on account of any act or failure to act which is taken or omitted to be taken in good faith in performing their respective duties under the terms of this Plan. To the extent permitted by law, the Employer shall, and hereby does agree to, indemnify and hold harmless the Plan Administrator and each successor and each of any such individual's heirs, executors and administrators, and the delegates and appointees (other than any person, bank, firm or corporation which is independent of the Employer and which renders services to the Plan for a fee) from any and all liability and expenses, including counsel fees, reasonably incurred in any action, suit or proceeding to which he is or may be made a party by reason of being or having been a member, delegate or appointee of the Plan Administrator, except in matters involving criminal liability, intentional or willful misconduct. If the Employer

purchases insurance to cover claims of a nature described above, then there shall be no right of indemnification except to the extent of any deductible amount under the insurance coverage or to the extent of the amount the claims exceed the insured amount.

- 9.07 Approval of Benefits - The Plan Administrator shall review and approve or deny any application for retirement benefits within thirty (30) days following receipt thereof or within such longer time as may be necessary under the circumstances. Any denial of an application for retirement benefits shall be in writing and shall specify the reason for such denial.
- 9.08 Appeal Procedure - Any person whose application for retirement benefits is denied, who questions the amount of benefit paid, who believes a benefit should have commenced which did not so commence or who has some other claim arising under the Plan ("Claimant"), shall first seek a resolution of such claim under the procedure hereinafter set forth.
- (a) Any Claimant shall file a Notice of the claim with the Plan Administrator which shall fully describe the nature of the claim. The Plan Administrator shall review the claim and make an initial determination approving or denying the claim.
 - (b) If the claim is denied in whole or in part, the Plan Administrator shall, within ninety (90) days (or such other period as may be established by applicable law) from the time the application is received, mail Notice of such denial to the Claimant. Such ninety (90) day period may be extended by the Plan Administrator if special circumstances so require for up to ninety (90) additional days by the Plan Administrator's delivering Notice of such extension to the Claimant within the first ninety (90) day period. Any Notice hereunder shall be written in a manner calculated to be understood by the Claimant and, if a Notice of denial, shall set forth (i) the specific Plan provisions on which the denial is based, (ii) an explanation of additional material or information, if any necessary to perfect such claim and a statement of why such material or information is necessary, and (iii) an explanation of the review procedure.
 - (c) Upon receipt of Notice denying the claim, the Claimant shall have the right to request a full and fair review by Council of the initial determination. Such request for review must be made by Notice to Council within sixty (60) days of receipt of such Notice of denial. During such review, the Claimant or a duly authorized representative shall have the right to review any pertinent documents and to submit any issues or comments in writing. Council shall, within sixty (60) days after receipt of the Notice requesting such review, (or in special circumstances, such as where Council in its sole discretion holds a hearing, within one hundred and twenty (120) days of receipt of such Notice), submit its decision in writing to the person or persons whose claim has been denied. The decision shall be final, conclusive and binding on all parties, shall be written in a manner calculated to be understood by the Claimant and shall contain specific references to the pertinent Plan provisions on which the decision is based.
 - (d) Any Notice of a claim questioning the amount of a benefit in pay status shall be filed within ninety (90) days following the date of the first payment which would be adjusted if the claim is granted unless the Plan Administrator allows a later filing for good cause shown.

- (e) A Claimant who does not submit a Notice of a claim or a Notice requesting a review of a denial of a claim within the time limitations specified above shall be deemed to have waived such claim or right to review.
- (f) Nothing contained herein is intended to abridge any right of a Claimant to appeal any final decision hereunder to a court of competent jurisdiction under 2 Pa. C.S.A. section 752. No decision hereunder is a final decision from which such an appeal may be taken until the entire appeal procedure of this section 9.08 of the Plan has been exhausted.

ARTICLE X THE PENSION FUND

10.01 Operation of the Pension Fund - Council is hereby authorized to hold and supervise the investment of the assets of the Pension Fund, subject to the provisions of the laws of the Commonwealth and of this Plan and any amendment thereto.

The Pension Fund shall be used to pay benefits as provided in the Plan and, to the extent not paid directly by the Employer, to pay the expenses of administering the Plan pursuant to authorization by the Employer.

The Employer intends the Plan to be permanent and for the exclusive benefit of its Employees. It expects to make the contributions to the Pension Fund required under the Plan.

The Employer shall not be liable in any manner for any insufficiency in the Pension Fund; benefits are payable only from the Pension Fund, and only to the extent that there are monies available therein.

The Pension Fund will consist of all funds held by the Employer under the Plan, including contributions made pursuant to the provisions hereof and the investments, reinvestments and proceeds thereof. The Pension Fund shall be held, managed, and administered pursuant to the terms of the Plan. Except as otherwise expressly provided in the Plan, the Employer has exclusive authority and discretion to manage and control the Pension Fund assets. The Employer may, however, appoint a trustee, custodian or investment manager at its sole discretion.

10.02 Powers and Duties of Employer - With respect to the Pension Fund, the Employer shall have the following powers, rights and duties, in addition to those vested in it elsewhere in the Plan or by law, unless such duties are delegated.

- (a) To retain in cash so much of the Pension Fund as it deems advisable and to deposit any cash so retained in any bank or similar financial institution (including any such institution which may be appointed to serve as trustee hereunder), without liability for interest thereon.
- (b) To invest and reinvest the principal and income of the fund and keep said fund invested, without distinction between principal and income, in securities which are at the time legal investments for fiduciaries under the Pennsylvania Fiduciaries Investment Act or as the same may be subsequently modified or amended.
- (c) To sell property held in the fund at either public or private sale for cash or on credit at such times as it may deem appropriate; to exchange such property; to grant options for the purchase or exchange thereof.
- (d) To consent to and participate in any plan of reorganization, consolidation, merger extension or other similar plan affecting property held in the fund; to consent to any contract, lease, mortgage, purchase, sale or other action by any corporation pursuant to any such plan.
- (e) To exercise all conversion and subscription rights pertaining to property held in the fund.
- (f) To exercise all voting rights with respect to property held in the fund and in connection therewith to grant proxies, discretionary or otherwise.

- (g) To place money at any time in a deposit bank deemed to be appropriate for the purposes of this Plan no matter where situated, including in those cases where a bank has been appointed to serve as trustee hereunder, the savings department of its own commercial bank.
- (h) In addition to the foregoing powers, the Employer shall also have all of the powers, rights, and privileges conferred upon trustees by the Pennsylvania Fiduciaries Investment Act, or as the same may be subsequently modified or amended, and the power to do all acts, take all proceedings and execute all rights and privileges, although not specifically mentioned herein, as the Employer may deem necessary to administer the Pension Fund.
- (i) To maintain and invest the assets of this Plan on a collective and commingled basis with the assets of other pension plans maintained by the Employer, provided that the assets of each respective plan shall be accounted for and administered separately.
- (j) To invest the assets of the Pension Fund in any collective commingled trust fund maintained by a bank or trust company, including any bank or trust company which may act as a trustee hereunder. In this connection, the commingling of the assets of this Plan with assets of other eligible, participating plans through such a medium is hereby specifically authorized. Any assets of the Plan which may be so added to such collective trusts shall be subject to all of the provisions of the applicable declaration of trust, as amended from time to time, which declaration, if required by its terms or by applicable law, is hereby adopted as part of the Plan, to the extent of the participation in such collective or commingled trust fund by the Plan.
- (k) To make any payment or distribution required or advisable to carry out the provisions of the Plan, provided that if a trustee is appointed by the Employer, such trustee shall make such distribution only at the direction of the Employer.
- (l) To compromise, contest, arbitrate, enforce or abandon claims and demands with respect to the Plan.
- (m) To retain any funds or property subject to any dispute without liability for the payment of interest thereon, and to decline to make payment or delivery thereof until final adjudication is made by a court of competent jurisdiction.
- (n) To pay, and to deduct from and charge against the Pension Fund, any taxes which may be imposed thereon, whether with respect to the income, property or transfer thereof, or upon or with respect to the interest of any person therein, which the Pension Fund is required to pay; to contest, in its discretion, the validity or amount of any tax, assessment, claim or demand which may be levied or made against or in respect of the Pension Fund, the income, property or transfer thereof, or in any matter or thing connected therewith.
- (o) To appoint any persons or firms (including but not limited to, accountants, investment advisors, counsel, actuaries, physicians, appraisers, consultants, professional plan administrators and other specialists), or otherwise act to secure specialized advice or assistance, as it deems necessary or desirable in connection with the management of the Pension Fund; to the extent not prohibited by applicable law, the Employer shall be entitled to rely conclusively upon and shall be fully protected in any action or omission taken by it in good faith reliance upon, the advice or opinion of such persons

or firms, provided such persons or firms were prudently chosen by the Employer, taking into account the interests of the Participants and Beneficiaries and with due regard to the ability of the persons or firms to perform their assigned functions.

- (p) To retain the services of one or more persons or firms for the management of (including the power to acquire and dispose of) all or any part of the Pension Fund assets, provided that each of such persons or firms is registered as an investment advisor under the Investment Advisors Act of 1940, is a bank (as defined in that act), or is an insurance company qualified to manage, acquire or dispose of pension trust assets under the laws of more than one state; in such event, the Employer shall follow the directions of such investment manager or managers with respect to the acquisition and disposition of fund assets, but shall not be liable for the acts or omissions of such investment manager or managers, nor shall it be under any obligation to review or otherwise manage any Pension Fund assets which are subject to the management of such investment manager or managers. If the Employer appoints a trustee, the trustee shall not be permitted to retain such an investment manager except with the express written consent of the Employer.
- 10.03 Common Investments - The Employer shall not be required to make separate investments for individual Participants or to maintain separate investments for each Participant's account but may invest contributions and any profits or gains therefrom in common investments.
- 10.04 Compensation and Expenses of Appointed Trustee - If a trustee is appointed, the trustee shall be entitled to such reasonable compensation as shall from time to time be agreed upon by the Employer and the trustee, unless such compensation is prohibited by law. Such compensation, and all expenses reasonably incurred by the trustee in carrying out its functions, shall constitute a charge upon the Employer or the Pension Fund, which may be executed at any time after thirty (30) days written notice to the Employer. The Employer shall be under no obligation to pay such costs and expenses, and, in the event of its failure to do so, the trustee shall be entitled to pay the same, or to be reimbursed for the payment thereof, from the Pension Fund.
- 10.05 Periodic Accounting - If a trustee is appointed, the Pension Fund shall be evaluated annually, or at more frequent intervals, by the trustee and a written accounting rendered as of each fiscal year end of the Pension Fund, and as of the effective date of any removal or resignation of the trustee, and such additional dates as requested by the Employer, showing the condition of the Pension Fund and all receipts, disbursements and other transactions effected by the trustee during the period covered by the accounting, based on fair market values prevailing as of such date.
- 10.06 Value of the Pension Fund - All determinations as to the value of the assets of the Pension Fund, and as to the amount of the liabilities thereof, shall be made by the Employer or its appointed trustee, whose decisions shall be final and conclusive and binding on all parties hereto, the Participants and Beneficiaries and their estates. In making any such determination, the Employer or trustee shall be entitled to seek and rely upon the opinion of or any information furnished by brokers, appraisers and other experts, and shall also be entitled to rely upon reports as to sales and quotations, both on security exchanges and otherwise as contained in newspapers and in financial publications.

ARTICLE XI

AMENDMENT AND TERMINATION

- 11.01 **Amendment of the Plan** - The Employer may amend this Plan at any time or from time to time by an instrument in writing executed in the name of the Employer under its municipal seal by officers duly authorized to execute such instrument and delivered to Council provided, however:
- (a) that no amendment shall deprive any Participant or any Beneficiary of a deceased Participant of any of the benefits to which each is entitled under this Plan with respect to contributions previously made;
 - (b) that no amendment shall provide for the use of funds or assets held under this Plan other than for the benefit of Employees and no funds contributed to this Plan or assets of this Plan shall, except as provided in section 11.05, ever revert to or be used or enjoyed by the Employer; and
 - (c) that no amendment to the Plan which provides for a benefit modification shall be made unless the cost estimate described in section 12.03 has been prepared and presented to Council in accordance with the Act.
- 11.02 **Termination of the Plan** - The Employer shall have the power to terminate this Plan in its entirety at any time by an instrument in writing executed in the name of the Employer.
- 11.03 **Automatic Termination of Contributions** - Subject to the provisions of the Act governing financially distressed municipalities, the liability of the Employer to make contributions to the Pension Fund shall automatically terminate upon liquidation or dissolution of the Employer, upon its adjudication as a bankrupt or upon the making of a general assignment for the benefit of its creditors.
- 11.04 **Distribution Upon Termination** - In the event of the termination of the Plan all benefits accrued by the affected Participants as of the date of such termination to the extent funded on such date, shall be nonforfeitable hereunder. In the event of termination of the Plan, the Employer shall direct either (a) that the Plan Administrator continue to hold the vested Accrued Benefits of Participants in the Pension Fund in accordance with the provisions of the Plan (other than those provisions related to forfeitures) without regard to such termination until all funds have been distributed in accordance with the provisions; or (b) that the Plan Administrator immediately distribute to each Participant an amount equal to the vested Accrued Benefit.
- If there are insufficient assets in the Pension Fund to provide for all vested Accrued Benefits as of the date of Plan termination, priority shall first be given to the distribution of any amounts attributable to mandatory or voluntary Employee contributions before assets are applied to the distribution of any vested benefits attributable to other sources hereunder.
- All other assets attributable to the terminated Plan shall be distributed and disposed of in accordance with the provisions of applicable law and the terms of any instrument adopted by the Employer which affects such termination.
- 11.05 **Residual Assets** - If all liabilities to vested Participants and any others entitled to receive a benefit under the terms of the Plan have been satisfied and there remain any residual assets in the Pension Fund, such residual assets remaining shall be returned to the Employer

insofar as such return does not contravene any provision of law, and any remaining balance, in excess of Employer contributions, shall be returned to the Commonwealth.

- 11.06 **Exclusive Benefit Rule** - In the event of the discontinuance and termination of the Plan as provided herein, the Employer shall dispose of the Pension Fund in accordance with the terms of the Plan and applicable law; at no time prior to the satisfaction of all liabilities under the Plan shall any part of the corpus or income of the Pension Fund, after deducting any administrative or other expenses properly chargeable to the Pension Fund, be used for or diverted to purposes other than for the exclusive benefit of the Participants in the Plan, their Beneficiaries or their estates.

ARTICLE XII

FUNDING STANDARD REQUIREMENTS

- 12.01 Actuarial Valuations - The Plan's Actuary shall perform an actuarial valuation at least biennially. Such biennial actuarial valuation report shall be made as of the beginning of each Plan Year occurring in an odd-numbered calendar year, beginning with the year 1985 and shall be prepared and certified by an approved Actuary, as such term is defined in the Act.

The expenses attributable to the preparation of any actuarial valuation report or investigation required by the Act or any other expense which is permissible under the terms of the Act and which are directly associated with administering the Plan shall be an allowable administrative expense payable from the assets of the Pension Fund. Such allowable expenses shall include but not be limited to the following:

- (a) investment costs associated with obtaining authorized investments and investment management fees;
- (b) accounting expenses;
- (c) premiums for insurance coverage on Fund assets;
- (d) reasonable and necessary counsel fees incurred for advice or to defend the Pension Fund; and
- (e) legitimate travel and education expenses for Plan officials; provided, however, that the municipal officials of the Employer, in their fiduciary role, shall monitor the services provided to the Plan to ensure that the expenses are necessary, reasonable and benefit the Plan; and further provided, that the Plan Administrator shall document all such expenses item by item, and where necessary, hour by hour.

- 12.02 Duties of Chief Administrative Officer - Such actuarial reports and actuarial cost studies pursuant to section 12.03 shall be prepared and filed under the supervision of the Chief Administrative Officer. The Chief Administrative Officer of the Plan shall determine the financial requirements of the Plan on the basis of the most recent actuarial report and shall determine the Minimum Municipal Obligation of the Employer with respect to funding the Plan for any given Plan Year. The Chief Administrative Officer shall submit the financial requirements of the Plan and the Minimum Municipal Obligation of the Employer to Council annually and shall certify the accuracy of such calculations and their conformance with the Act.

- 12.03 Benefit Plan Modifications - Prior to the adoption of any benefit plan modification by the Employer, the Chief Administrative Officer of the Plan shall provide to Council a cost estimate of the proposed benefit plan modification. Such estimate shall be prepared by an approved Actuary, which estimate shall disclose to Council the impact of the proposed benefit plan modification on the future financial requirements of the Plan and the future Minimum Municipal Obligation of the Employer with respect to the Plan.

ARTICLE XIII MISCELLANEOUS PROVISIONS

- 13.01 Employment Rights - No Employee of the Employer nor anyone else shall have any rights whatsoever against the Employer or the Plan Administrator as a result of this Plan except those expressly granted hereunder. Participation in this Plan shall not give any right to any Employee to be retained in the employ of the Employer, nor shall interfere with the right of the Employer to discharge any Employee and to deal with such Employee without regard to the effect such treatment might have upon participation in this Plan.
- 13.02 Meaning of Certain Words - For purposes of this Plan, the masculine gender shall include the feminine gender, and the singular shall include the plural, and vice versa, in all cases wherever the person or context shall plainly so require. Headings of articles and sections are inserted only for convenience of reference and are not to be considered in the construction of the Plan.
- 13.03 Information to Be Furnished By the Employer - The Employer shall furnish to the Plan Administrator (and where applicable, the trustee) information in the Employer's possession as the Plan Administrator and the trustee shall require from time to time to perform their duties under the Plan.
- 13.04 Severability of Provisions - Should any provisions of this Plan be held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining provisions of this Plan, and the Plan shall be construed and enforced as if said illegal and invalid provisions had never been inserted herein.
- 13.05 Incapacity of Participant - If any Participant shall be physically or mentally incapable of receiving or acknowledging receipt of any payment of pension benefits hereunder, the Plan Administrator, upon the receipt of satisfactory evidence that such Participant is so incapacitated and that another person or institution is maintaining the Participant and that no guardian or committee has been appointed for the Participant, may provide for such payment of pension benefits hereunder to such person or institution so maintaining the Participant, and any such payments so made shall be deemed for every purpose to have been made to such Participant.
- 13.06 Pension Fund for Sole Benefit of Participants - The income and principal of the Pension Fund are for the sole use and benefit of the Participants covered hereunder, and to the extent permitted by law, shall be free, clear and discharged from and are not to be in any way liable for debts, contracts or agreements, now contracted or which may hereafter be contracted, and from all claims and liabilities now or hereafter incurred by any Participant or Beneficiary.
- 13.07 Benefits for a Deceased Participant - If any benefit shall be payable under the Plan to or on behalf of a Participant who has died, if the Plan provides that the payment of such benefits shall be made to the Participant's estate, and if no administration of such Participant's estate is pending in the court of proper jurisdiction, then the Plan Administrator, at its sole option, may pay such benefits to the surviving spouse of such deceased Participant, or, if there is no surviving spouse, to such Participant's then living issue, per stirpes; provided, however, that nothing contained herein shall prevent the Plan Administrator from insisting upon the commencement of estate administration proceedings and the delivery of any such benefits to a duly appointed executor or administrator.

- 13.08 Assets of the Fund - Nothing contained herein shall be deemed to give any Participant or Beneficiary any interest in any specific property of the Pension Fund or any right except to receive such distributions as are expressly provided for under the Plan.
- 13.09 Personal Liability - Subject to the provisions of the Act and unless otherwise specifically required by other applicable laws, no past, present or future officer or agent of the Employer or Plan Administrator shall be personally liable to any Participant, Beneficiary or other person under any provision of the Plan.
- 13.10 Construction of Document - This Plan may be executed and/or conformed in any number of counterparts, each of which shall be deemed an original and shall be construed and enforced according to the laws of the Commonwealth, excepting such Commonwealth's choice of law rules.

ORDAINED AND ENACTED this _____ day of _____, 2025.

BOROUGH OF MEDIA

ATTEST:

President of Council

Secretary

Approved this _____ of _____, 2025.

Mayor

