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**PART 1**

**BOROUGH COUNCIL AND MAYOR**

**A. Borough Council**

**§1-101. Compensation**

Beginning with the month of January 1975, the compensation for Council members shall be fixed at the rate of \$50 per month for each Council member.

(Ord. 295, 12/19/1966, §1; as amended by Ord. 302, 3/25/1968, §1; and by Ord. 338, 12/30/1974, §1)

**§1-102. Monthly and Special Meetings**

A stated or regular meeting of the Council shall be held on a day and at a time as determined from time to time by resolution of Council. A special meeting of the Council may be called by the President of the Council, on his own initiative, and shall be called by him on the written request of three members of the Council. Notice of special meetings shall be given or sent to each member of the Council by the Borough Secretary, except that where a special meeting shall be announced at a previous meeting of the Council, no individual notice of such meeting need be given to those members of the Council in attendance at such previous meeting at the time when such special meeting was announced.

(Ord. 1, 2/18/1881, Chapter VI; as amended by Ord. 191, 6/29/1953, §3; by Ord. 455, 10/28/1996; and by Ord. 494, 11/27/2000)

**B. Mayor**

**§1-111. Mayor's Compensation**

Beginning with the month of September 2000, the compensation for Mayor shall be fixed at the rate of \$75 per month.

(Ord. 493, 8/28/2000)

**PART 2**

**BOROUGH OFFICERS**

**A. Borough Manager**

**§1-201. Office Created**

The office of Borough Manager is hereby created by the Borough of Ebensburg, Pennsylvania, subject to the right of the Borough, by ordinance, at any time to abolish such office.

(Ord. 352, 1/26/1976, §1)

**§1-202. Appointment and Removal by Borough Council**

As soon as practicable after the enactment of this Part, the Borough Council shall elect, by a majority vote of all its members, one person to fill the office of Borough Manager. In the case of vacancy, the Council shall fill said office by majority vote of all its members. The Borough Manager shall, however, be subject to removal at any time by a majority vote of all members of the Council.

(Ord. 352, 1/26/1976, §2)

**§1-203. Qualifications**

The Borough Manager shall be chosen solely on the basis of his executive and administrative abilities, with special reference to his actual experience in or his knowledge of accepted practices in respect to the duties of the office as herein outlined.

(Ord. 352, 1/26/1976, §3)

**§1-204. Bonding**

Before entering upon his duties, the Borough Manager shall give a bond to the Borough with a bonding company as surety, in the sum to be determined by Borough Council, conditioned upon the faithful performance of his duties, premium for the said bond to be paid for by the Borough of Ebensburg. The bond of the Borough Manager may be included in, and the Manager may be bonded under and covered by the blanket bond now in force and effect for all Borough employees.

(Ord. 352, 1/26/1976, §4; as amended by Ord. 494, 11/27/2000)

**§1-205. Compensation**

The Borough Manager shall receive such compensation as shall be fixed from time to time by resolution.

(Ord. 352, 1/26/1976, §5; as amended by Ord. 494, 11/27/2000)

**§1-206. General Responsibilities**

The Borough Manager shall be the chief administrative officer of the Borough, and he shall be responsible to the Council as a whole for the proper and efficient administration of the affairs of the Borough. His powers and duties shall relate to the general management of all Borough business, not expressly by statute or ordinance imposed or conferred upon other Borough officers. The Mayor is hereby

authorized to delegate to the Borough Manager, subject to recall by written notification at any time, any of his Non-legislative and non-judicial powers and duties.

(Ord. 352, 1/26/1976, §6)

### **§1-207. Powers and Duties**

Subject to recall by ordinance, the powers and duties of the Manager shall include the following:

- A. He shall supervise and be responsible for the activities of all municipal departments, except such departments the supervision of which shall not have been delegated to the Manager by the Mayor or by Council, as the case may be.
- B. He shall hire and, when he shall deem it necessary for the good of the service, shall suspend or discharge all employees under his supervision; provided, that all persons covered by the civil service provisions of the Borough Code shall be hired, suspended or discharged in accordance with such provisions and that he shall not violate the terms of any union agreement.
- C. He shall prepare and submit to Council before the close of the fiscal year, or on such alternate date as Council shall determine, a budget for the next fiscal year and an explanatory budget message. In preparing the budget the Manager, or an officer designated by him, shall obtain from the head of each department, agency, board or officer, estimates of revenue and expenditures and other supporting data, as he requests. The Manager shall review such estimates and may revise them before submitting the budget to the Council.
- D. He shall be responsible for the administration of the budget after its adoption by the Council.
- E. He shall, under the direction of the Mayor, execute and enforce the ordinances, resolutions and bylaws of the Borough.
- F. He shall attend all meetings of the Borough Council and of its committees, with the right to take part in the discussion, and he shall receive notice of all special meetings of Council and of committees.
- G. He shall prepare the agenda for each meeting of Council and supply facts pertinent thereto.
- H. He shall keep the Council informed as to the conduct of Borough affairs; submit monthly reports on the condition of the Borough finances and such other reports as the Council shall request; and shall make such recommendations to the Council as he deems necessary.
- I. He shall submit to Council as soon as possible after the close of the fiscal year, a complete report on the financial and administrative activities of the Borough for the preceding year.
- J. He shall see that the provisions of all franchises, leases, permits and privileges granted by the Borough are observed.
- K. He may employ, by and with the approval of Borough Council, experts and consultants to perform work and to advise in connection with any of the functions of the Borough.
- L. He shall attend to the letting of contracts in due form of law, and he shall supervise the performance and faithful execution of the same except insofar as such duties are expressly imposed upon some other Borough officer by statute.
- M. He shall see that all money owed the Borough is promptly paid and that proper proceedings are taken for the security and collection of all the Borough's claims.
- N. He shall be the purchasing officer of the Borough and he shall purchase, in accordance with the provisions of the Borough Code, all supplies and equipment for the various agencies, boards, departments and other offices of the Borough. He shall keep an account of all purchases and shall, from time to time or when directed by the Council, make a full written report thereof. He shall also issue rules and regulations, subject to the approval of Council, governing the requisition and purchasing of all municipal supplies and equipment. However, in no event shall the Manager make a purchase of an amount exceeding \$10,000 without prior approval of Council.

- O. He shall cooperate with the Borough Council at all times and in all matters so that the best interest of the Borough and of the general public may be maintained.
- P. All complaints regarding services or personnel of the Borough shall be referred to the office of the Manager. He, or an officer designated by him, shall investigate and dispose of such complaints, and the Manager shall report thereon to Council.

(Ord. 352, 1/26/1976, §7; as amended by Ord. 494, 11/27/2000)

#### **§1-208. Illness or Absence of Manager**

In cases of illness or absence of the Manager from the Borough he shall delegate one qualified employee of the Borough who shall perform the duties of the Manager during his absence or disability. The person so designated shall not perform such duties for a period longer than 2 weeks without the approval of the Council.

(Ord. 352, 1/26/1976, §8)

#### **B. Independent Auditor**

##### **§1-211. Appointment of Independent Auditor**

1. From and after the effective date of this Part, all of the accounts of the Borough for the year 1997, and all subsequent years, shall be audited by an independent auditor appointed each year by the Borough Council pursuant to the provisions of the Act of February 1, 1966, P.L. 1656, No. 581, §1005, as amended.
2. Such auditor shall be a certified public accountant or firm of certified public accountants registered in Pennsylvania.
3. Such auditor shall be appointed annually by resolution of Borough Council at least 30 days prior to the close of the fiscal year to make an independent examination of all accounts and accounting records of the Borough for the fiscal year then closing.
4. The compensation to be paid to such auditor shall be fixed by Borough Council.
5. The powers and duties of the independent auditor shall be as set forth in §VIII of the Act of February 1, 1966, P.L. 1956, No. 581, §1005, the text of which section is hereby adopted and incorporated by reference and made a part of this Part to the same extent as though the same were set out verbatim.

(Ord. 465, 11/24/1997, §§1-5)

#### **C. Secretary/Treasurer**

##### **§1-221. Secretary and Treasurer May be Same Person**

1. The office of Borough Secretary and Borough Treasurer may be held by the same person.
2. This Part is adopted in accordance with the provisions of the Borough Code, Act 2, February 1, 1966, No. 581, §1104.

(Ord. 346, 9/22/1975)

**D. Tax Collector**

**§1-231. Tax Collector to Provide Real Estate Tax Certifications**

1. The Borough Council of the Borough of Ebensburg appoints the locally elected Tax Collector, his/her predecessor or successor, as the agent authorized to provide and issue real estate tax certification upon request by the real estate property owner or their authorized agent and hereby authorizes said tax collector to assess, collect and retain as compensation for providing said tax certification service a fee of \$10.00 per taxing year certified.
2. Hereafter, the Borough Council may from time to time revise said fees by resolution.

(Ord. 486, 12/20/1999, §§1, 2)



**PART 3**

**PLANNING COMMISSION**

**§1-301. Creation and Composition**

There is hereby created and established a Borough Planning Commission to consist of five members to be appointed by the Borough Council, Cambria County, Pennsylvania.

(Ord. 452, 3/25/1996, §1)

**§1-302. Terms**

The terms of said members of the Commission shall be for terms of 4 years.

(Ord. 452, 3/25/1996, §2)

**§1-303. Powers and Duties**

Said Commission members shall exercise the powers and authorities granted under and by the virtue of the Pennsylvania Municipalities Planning Code (Act of July 31, 1968, P.L. 805), 53 P.S. §10101 et seq.

(Ord. 452, 3/25/1996, §3)

**PART 4**

**AUTHORITIES, BOARDS AND COMMISSIONS**

**A. Municipal Authority of the Borough of Ebensburg**

**§1-401. Intent**

The Borough of Ebensburg hereby signifies its intention and desire to organize an authority under the Municipality Authorities Act, approved May 2, 1945 (P.L. 382) and its amendments.

(Ord. 230, 12/17/1956, §1)

**§1-402. Articles of Incorporation**

The President and the Secretary of the Borough Council are hereby authorized and directed to execute on behalf of the Borough of Ebensburg Articles of Incorporation for said Authority in substantially the following form:

**ARTICLES OF INCORPORATION**

To the Secretary of the Commonwealth of Pennsylvania, Commonwealth of Pennsylvania:

In compliance with the requirements of the Act of May 2, 1945, P.L. 382, as amended, the Council of the Borough of Ebensburg, a municipal corporation of the County of Cambria and Commonwealth of Pennsylvania, desiring to organize an Authority thereunder, does hereby certify:

1. The name of the authority is the "Municipal Authority of the Borough of Ebensburg."
2. Said Authority is formed under the act of May 2, 1945, P.L. 382, as amended and supplemented.
3. No other authority organized under the said Act of May 2, 1945, as amended and supplemented, or by any previous Act of Assembly authorizing and regulating municipal authorities, is in existence in or for the incorporating municipality, the said Borough of Ebensburg, County of Cambria and Commonwealth of Pennsylvania.
4. The name of the incorporating municipality is the Borough of Ebensburg and the names and addresses of its municipal authorities are as follows: [Here followed the names and addresses of the municipal authorities of the Borough.]
5. The names, addresses and terms of office of the first members of the Board of said Authority are as follows: [Here followed the names, addresses and terms of office of the members of the first Board of Authority.]
6. The project or projects to be undertaken by said Authority shall be projects permitted and authorized by the laws of the Commonwealth of Pennsylvania as the Borough of Ebensburg may from time to time by resolution or ordinance specify.

(Ord. 230, 12/17/1956, §2)

**B. Ebensburg Area Business Commission**

**§1-411. Intent**

The Borough of Ebensburg hereby signifies its intention to establish and organize the "Ebensburg Area Business Commission."

(Res. 01-18, 11/26/2001, §1)

**§1-412. Purpose**

The Ebensburg Area Business Commission is established under 53 P.S. 46202(75); Borough Code, §1202(75). The purpose of the Commission is to apply for, acquire and expend grants, loans and other State and Federal subsidies; engage in blight prevention and elimination programs; and encourage commercial and other related activity within the Borough. The Commission shall promote and engage in activities which promote and enhance commercial enterprises within the Borough.

(Res. 01-18, 11/26/2001, §2)

**§1-413. Powers**

The powers of the Commission shall be exercised by a governing body consisting of 11 members. Council shall appoint members of the Commission whose terms of office shall commence on the date of appointment. Whenever a vacancy has occurred by reason of the expiration of the term of any member, Borough Council shall appoint a member of the Commission for a term of 5 years from the date of expiration of the prior term to succeed the members whose term has expired.

(Res. 01-18, 11/26/2001, §3)

**§1-414. Members**

The names and addresses and terms of office of the first members of the said Commission shall be: [Here followed the names, address and terms of office of the first members.]

(Res. 01-18, 11/26/2001, §4)

**§1-415. Approval**

The Borough Council retains the right to approve any Commission plan for providing improvements or services to any Borough-owned facilities.

(Res. 01-18, 11/26/2001, §5)

**C. Ebensburg Recreation Board**

**§1-421. Intent**

The Borough of Ebensburg hereby signifies its intention to establish and organize the "Ebensburg Recreation Board."

(Res. 01-17, 11/26/2001, §1)

**§1-422. Purpose**

The Ebensburg Recreation Board is established under 53 P.S. 47708, Borough Code §2708. The purpose of the Board is to oversee capital improvement projects of Borough-owned recreational facilities, to manage and operate Borough-owned recreational facilities except those for which Borough Council has or may reserve unto itself, and to obtain financing for capital improvement projects and other operational

costs. The Board shall also promote and engage in activities which enhance the use and enjoyment of Borough-owned recreational facilities.

(Res. 01-17, 11/26/2001, §2)

**§1-423. Powers**

The powers of the Board shall be exercised by a governing body consist of nine members. Council shall appoint members of the Board whose terms of office shall commence on the date of appointment. Whenever a vacancy has occurred by reason of the expiration of the term of any member, Borough Council shall appoint a member of the Board for a term of 5 years from the date of expiration of the prior term to succeed the member whose term has expired.

**§1-424. Members**

The names and addresses and terms of office of the first members of the said Board shall be: [Here followed the names, address and terms of office of the first members.]

(Res. 01-17, 11/26/2001, §4)

**§1-425. Approval**

The Borough Council retains the right to approve any Board plan for providing improvements or services to any Borough-owned facilities.

(Res. 01-17, 11/26/2001, §5)

**PART 5**

**POLICE PENSION**

**§1-501. Definitions**

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

**ACRUED BENEFIT** - As of any given date, the benefit determined under section 1-504.B, calculated on the basis of Final Monthly Average Salary as of the date of determination and multiplied by a fraction, the numerator of which shall be the Participant's Aggregate Service determined as of such date and the denominator of which shall be the projected Aggregate Service of the Participant as if the Participant continues in Employment until attainment of Normal Retirement Age. Notwithstanding anything contained herein to the contrary, in no event shall the fraction exceed one (1.0).

The Accrued Benefit shall include any Service Increment determined pursuant to Service Increment definition below attributable to the Participant's Aggregate Service as of the determination date. The Accrued Benefit shall not exceed the maximum limitation, determined as of the date of computation, provided under section 1-504.G. 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.

**ACCUMULATED CONTRIBUTIONS** - The total amount contributed by any Participant to this Fund or its predecessor by way of payroll deduction or otherwise, plus interest credited at five percent (5%) per annum. Interest shall be credited in the form of a compound interest rate from 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 under sections 1-506.E or 1-507.B shall be paid or payment of benefits shall commence.

**ACT** - 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.

**ACTUARIAL EQUIVALENT** - 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 seven percent (7%) interest unless otherwise specifically provided herein.

**ACTUARY** - 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.

**AGGREGATE SERVICE** - 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 Aggregate Service thereafter unless, at the commencement of the next period of Employment, the Participant repays to the 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 above under Accumulated Contributions. Aggregate Service shall be calculated in completed years and months and shall not include any period of a voluntary leave of absence without pay.

**BENEFICIARY** - The person or entity designated by the Participant to receive a distribution of the Participant's Accumulated Contributions should the Participant die prior to becoming entitled to a retirement benefit. 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.

**BOARD** - The Council of the Borough of Ebensburg.

**CHIEF ADMINISTRATIVE OFFICER** - The person designated by the Borough who has the primary responsibility for the execution of the administrative affairs for the Plan.

**CODE** - The Internal Revenue Code of 1986, as amended.

**COMMITTEE** - The Police Pension Committee as determined pursuant to section 1-508.B.

**COMMONWEALTH** - The Commonwealth of Pennsylvania.

**COMPENSATION** - The base wage, longevity any bonus and overtime for all hours worked on behalf of the Ebensburg Borough and/or routine mutual aid. Compensation shall not include outside work such as task force activities. Compensation shall include any lump sum settlement for vacation and/or sick days earned within the thirty-six (36) month pension calculation period, but shall exclude any payment for same having been earned prior to the calculations period. 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).

(Ord. 599, 03/26/2012)

**DISABILITY DATE** - 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.

**EMPLOYEE** - Any individual employed by the Employer on a regular, full-time basis as a police officer of the Employer's police force.

**EMPLOYER** - Borough of Ebensburg, Cambria County, Pennsylvania.

EMPLOYMENT - For the purpose of determining Aggregate Service:

1. The period of time for which an Employee is directly or indirectly compensated or entitled to compensation by the Employer for the performance of duties as a police officer;
2. 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);
3. Any period during which an Employee is entitled to disability benefits under this Plan, provided that the Employee returns to Employment within three (3) months of the date on which it is determined that the Employee is no longer Totally and Permanently Disabled if such determination occurs prior to the date a Participant attains Normal Retirement Age; and
4. Any period of voluntary or involuntary military service with the armed forces of the United States of America, provided that the Participant has been employed as a regular full-time member of the Employer's police force for a period of at least six (6) months immediately prior to the period of military service; and the Participant returns to Employment within six (6) months following discharge from military service or within such longer period during which employment rights are guaranteed by applicable law or under the terms of a collective bargaining agreement with the Employer; and
5. 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 calculated must be paid into the Plan before the end of the period that begins on the date of reemployment 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 reemployment.

FINAL MONTHLY AVERAGE SALARY - The Compensation earned by the Participant and paid by the Employer averaged over the final thirty-six (36) months immediately preceding termination of active Employment.

Final Monthly Average Salary shall be calculated by taking into account only those periods during which an Employee receives salary, as that term is defined in this section. Therefore, for example, the Final Monthly Average Salary for a Participant who receives disability benefits from this Plan or who is voluntarily or involuntarily serving in the United States armed forces during the final thirty-six (36) months of Aggregate Service shall be based on the period during which the Employee last received salary (as defined in the preceding paragraph) from the Employer.

Salary used to determine Final Monthly Average Salary shall be limited on an annual basis to the amount specified for government plans in accordance with Code section 401(a)(17), as adjusted under Code section 415(d).

INSURER or INSURANCE COMPANY - A legal reserve life insurance company authorized to do business in the Commonwealth of Pennsylvania.

LATE RETIREMENT DATE - The first day of the month coincident with or next following the date on which the Participant retires from Employment subsequent to the Normal Retirement Date and the payment of retirement benefits pursuant to this Plan shall commence.

MINIMUM MUNICIPAL OBLIGATION - The minimum obligation of the municipality as determined by the Actuary pursuant to the provisions of the Act.

NORMAL RETIREMENT AGE - The date on which the Participant has completed twenty-five (25) years of Aggregate Service with the Employer and has attained age fifty-five (55).

NORMAL RETIREMENT DATE - The first day of the month coincident with or next following the date on which the Participant attains Normal Retirement Age.

NOTICE or ELECTION - 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.

PARTICIPANT - An Employee who has met the eligibility requirements to participate in the Plan as provided in section 1-502 and who has not for any reason ceased to be a Participant hereunder.

PENSION FUND - The police Pension Fund administered under the terms of this Plan and which shall include all money, property, investments, Policies and Contracts standing in the name of the Plan.



PLAN - The Plan set forth herein, as amended from time to time and designated as the Borough of Ebensburg Police Pension Plan.

PLAN ADMINISTRATOR - The committee or the individual appointed 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 Board.

PLAN YEAR - The 12-month period beginning on January 1 and ending on December 31 of each year.

POLICY or CONTRACT - 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.

RESTATEMENT DATE - January 1, 2001, the date upon which this amendment and restatement of the Plan becomes effective.

SERVICE INCREMENT - The amount calculated pursuant to section 1-504.D on behalf of a Participant for each completed year of service in excess of twenty-five (25) years, not to exceed one hundred dollars (\$100).

TOTAL AND PERMANENT DISABILITY - A condition of physical or mental impairment due to which a Participant is unable to perform the usual and customary duties of Employment and which is reasonably expected to continue to be permanent for the remainder of the Participant's lifetime. For purposes of this section and section 1-505, a condition shall not be treated as a Total and Permanent Disability unless such condition is a direct result of and occurs in the line of duty of Employment. Therefore, an Employee whose physical or mental impairment does not occur in the line of duty or which is the result of alcoholism, addiction to narcotics, perpetration of a felonious criminal activity or is willfully self-inflicted, is not entitled to receive disability benefits under the Plan.

## **§1-502. Participation in the Plan**

### **A. Eligibility Requirements**

Each Employee who is employed as a regular, full-time permanent member of the police department of the Employer shall participate herein as of the date on which such Employee's Employment first commences or recommences provided all prerequisites to participation under this Plan shall have been fulfilled, including but not limited to, completion of all forms required by the Plan Administrator. 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.

### **B. Participation Requirements**

The Board shall furnish the Plan Administrator with written notification of the appointment of any new full-time permanent Employee who is eligible for participation hereunder. Each Participant hereunder shall be required to make contributions to the Plan, as provided in section 1-503.A hereof, and shall execute and complete any enrollment or application forms as required by the Plan Administrator.

C. Designation of Beneficiary

Any new, full-time Employee who becomes a Participant hereunder 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, 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.

D. Change in Status

A Participant who remains in the service of the Employer but ceases to be an Employee eligible for participation hereunder, or ceases or fails to make any contributions which are required as a condition of 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.

E. 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.

**§1-503. Contributions**

A. Participant Contributions

Each Participant shall as a requirement of participation pay regular contributions to the Pension Fund in an amount equal to five percent (5%) of the Participant's Compensation. Each Participant shall complete the necessary forms to authorize the payment of Participant contributions by way of payroll deduction.

B. Reduction of Participant Contributions

Notwithstanding the preceding section 1-503.A, if an actuarial study performed by the Actuary shows that the condition of the Pension Fund is such that payments into the Pension Fund by Participants may be reduced below the minimum percentages prescribed in section 1-503.A, or may be eliminated, and that if such payments are reduced or

eliminated, contributions by the Employer will not be required to keep the Pension Fund actuarially sound, the Employer may, by Ordinance or Resolution, reduce or eliminate payments into the Pension Fund by Participants.

C. Employer Contributions

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.

D. 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 Board, and shall be used to reduce the amount of the Minimum Municipal Obligation of the Employer.

E. Gifts

The Board 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 Board 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.

F. 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 the Plan is terminated, as provided in section 1-510.

**§1-504. Retirement Benefits**

A. Normal Retirement

Each Participant shall be entitled to a Normal Retirement Benefit after retirement on or after the Participant has attained Normal Retirement Age.

B. Normal Retirement Benefit

Each Participant who shall become entitled to a benefit pursuant to section 1-504.A shall receive a benefit paid monthly in an amount equal to fifty percent (50%) of the Participant's Final Monthly Average Salary as determined herein, plus Service Increment benefit, if any.

C. 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 1-504.A 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 continues Employment after attainment of Normal Retirement Age shall be calculated in accordance with section 1-504.B on the basis of the Final Monthly Average Salary and years of service as of such Participant's actual retirement and shall commence on the Participant's Late Retirement Date.

D. Service Increment

Notwithstanding anything contained herein to the contrary, each Participant who shall retire after completion of twenty-six years or more of Aggregate Service may be entitled to receive a monthly service increment benefit. Such Service Increment benefit shall only be available to a Participant who shall retire on a retirement date after attainment of Normal Retirement Age and whose Aggregate Service for purposes of this section 1-504.D shall only include periods of time when the Participant actively renders service in Employment and shall not include any period of time during which the Participant received a Disability Benefit under the terms of this Plan or was not otherwise in active Employment. Such Service Increment benefit shall be a monthly amount equal to twenty dollars (\$20.00) for each year of service exceeding twenty-five (25) years of service, up to a maximum of one hundred dollars (\$100.00), and shall be paid monthly in addition to the amount of Normal Retirement Benefit calculated pursuant to section 1-504.B.

E. Payment of Benefits

Retirement benefit payments shall be payable as of the Participant's retirement date and the first day of each month thereafter during the Participant's lifetime. 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. Payment of benefits hereunder shall cease as of the date of death of the Participant.

F. Cost-of-Living Adjustments

Each Participant, hired before January 1, 2012, who shall retire and receive a retirement benefit determined pursuant to section 1-504.B hereunder shall be entitled to receive each January 1<sup>st</sup> a cost-of-living increase to the amount of benefit payable to such Participant under section 1-504.B. Such cost-of-living increases shall not exceed the following limits: (1) the percentage increase in the Consumer Price Index from the last year if it is at least one percent (1%), not to exceed three percent (3%) in any Plan Year; (2) the total retirement benefits payable under this Plan shall not exceed seventy-five percent (75%) of the Participant's Final Monthly Average Salary; (3) the total cost-of-living increase shall not exceed thirty percent (30%) of the Participant's retirement benefit under this Plan; and (4) the cost-of-living increases shall not impair the actuarial soundness of the Pension Fund. Participants hired after January 1, 2012 shall not be entitled to any cost-of-living adjustments.

(Ord. 599, 03/26/2012)

G. 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 1-504.G shall be governed by the following conditions and definitions:

1. 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 to determine the limitation contained herein;
2. 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 to the amount determined pursuant to this section commencing at age sixty-two (62); however, the reduction shall not reduce the limitation below seventy-five thousand dollars (\$75,000.00) for a benefit commencing at or after age fifty-five (55), or if the benefit commences prior to attainment of age fifty-five (55) the amount which is actuarially equivalent to a benefit of seventy-five thousand dollars (\$75,000.00) commencing at age fifty-five (55); however, in the case of a qualified Participant (a Participant with respect to whom a period of at least fifteen (15) years of 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 reduce the limitation to an amount less than the amount specified pursuant to Code section 415(b)(2)(G) and such amount shall be adjusted pursuant to Code section 415(d);

3. 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 to the amount determined herein commencing at age sixty-five (65);
4. 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 pursuant to section 1-505.B, with fewer than ten (10) years of participation, the limitation expressed in this subsection (4) 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);
5. 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; and
6. in the case of a Survivor Benefit under section 1-506.B or a Disability Retirement Benefit under section 1-505.B, the adjustment under subsection (2) hereof shall not apply and the applicable limitation shall be the limitation contained herein without regard to the age of the benefit recipient.

#### H. Required Distributions

1. 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:
  - a. not later than the Required Beginning Date, or
  - b. 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 entire interest has been distributed after distribution of the 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 death.

2. If a Participant who is entitled to benefits under this Plan dies before distribution of the benefit has begun, the entire interest of such Employee shall be distributed within five (5) years of the death of such Employee, unless the following sentence is applicable. If any portion of the Employee'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 not later than one (1) year after the date of the Employee'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 distributions are required to begin shall not be earlier than the date upon which the Employee would have attained age seventy and one-half (70½) 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 Employee.
3. For purposes of this section, the following definitions and procedures shall apply:
  - a. "Required Beginning Date" shall mean April 1 of the calendar year following the later of the calendar year in which the Employee attains age seventy and one-half (70½), or the calendar year in which the Employee retires.
  - b. The phrase "designated Beneficiary" shall mean any individual designated by the Employee under this Plan according to its rules.
  - c. 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's reaching majority (or other designated event permitted under regulations issued by the Secretary of the Treasury).
  - d. For purposes of this section, the life expectancy of an Employee and/or the Employee's spouse (other than in the case of a life annuity) may be redetermined but not more frequently than annually.

I. 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.

J. 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, except

where 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 under section 1-507.C 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.

K. 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 Board 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.

L. 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.

M. Non-duplication 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 resumption of benefit payments, such Participant shall receive the greater of the amount of the suspended benefit or the amount of benefit based upon Final Monthly Average Salary and Aggregate Service as of the date that such period of resumed Employment shall cease.

**§1-505. Disability Retirement**

A. 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 as of the Disability Date.



B. Disability Retirement Benefit

A Participant who shall be entitled to a Disability Retirement Benefit under section 1-505.A shall receive a monthly benefit in an amount equal to fifty percent (50%) of the Participant's wages/salary at the time of disablement, provided that any Participant who receives benefits for the same injuries under the Social Security Act shall have his disability pension payments offset or reduced by the amount of such benefits. Wages/salary at the time of disablement shall refer to the base rate of pay at that time.

(Ord. 506. 12/17/2001; as amended by Ord. 537. 7/24/2006)

C. Payment of Disability Benefits

Disability payments shall be made monthly as of the first day of each month, commencing as of the first day of the month immediately following the Participant's Disability Date and continuing until the earliest of the death of the Participant, cessation of Total and Permanent Disability, or attainment of Normal Retirement Age (such a Participant who attains Normal Retirement Age shall thereafter receive a Normal Retirement Benefit pursuant to section 1-504.B).

A Participant who shall fail to return within three (3) months to Employment as an Employee of the Employer upon cessation of Total and Permanent Disability prior to attainment of Normal Retirement Age shall be deemed to have terminated Employment as of the Disability Date, shall not be entitled to any distribution of Accumulated Contributions pursuant to section 1-507.B to the extent that the total amount of disability payments exceeds the value of the Participant's Accumulated Contributions as of the Disability Date, and shall not be entitled to any other benefits under the Plan on account of any Aggregate Service as of the Disability Date.

D. Verification of Disability

The Plan Administrator shall in its sole discretion determine whether a Participant shall have incurred a Total and Permanent Disability. The Plan Administrator shall rely on the report of a physician acceptable to the Plan Administrator. If the Plan Administrator shall determine that a Participant who is Totally and Permanently Disabled has recovered sufficiently to resume active Employment as a police officer or if a Participant refuses to undergo a medical examination as directed by the Plan Administrator (such a medical examination may not be required more frequently than once in any given twelve (12) month period), the payment of Disability Retirement Benefits shall cease.

E. 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.

**§1-506. Death Benefits**

A. 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 section 1-506.

B. Survivor Benefit

If a Participant shall die after commencement of retirement benefit payments under section 1-504 hereunder or after the Participant is eligible to retire under section 1-504.A and before retirement benefit payments commence, a Survivor Benefit shall be paid to the surviving spouse or children under the age of eighteen (18) pursuant to section 1-506.D in an amount equal to fifty percent (50%) of the Participant's Accrued Benefit to which the Participant was entitled or fifty percent (50%) of the amount the Participant was actually receiving.

C. Killed in Service Survivor Benefit

Section repealed (by Ord. 572. 6/28/2010)

D. Payment of Survivor Benefits

The Survivor Benefit commences as of the first day of the month immediately following the date of death of the Participant. The Survivor Benefit shall be paid monthly to the surviving spouse of the Participant, if any, until the date of death of the surviving spouse. Upon the death of the surviving spouse or if there is no surviving spouse, the Survivor Benefit shall be paid monthly in equal shares to the surviving dependent children of the deceased Participant who have not attained eighteen (18) years of age, or, if attending college (being enrolled in an institution of higher learning and carrying a minimum course load of seven credits per semester), until the age of 23. The shares payable to the surviving dependent children shall be adjusted as each child ceases to be eligible to receive a share of the benefit hereunder.

(Ord. 506. 12/17/2001; as amended by Ord. 537. 7/24/2006)

E. Death of Participant Prior to Retirement

If a Participant shall die before payment of a benefit has commenced and without eligibility for payment of a Survivor Benefit under section 1-506.B or 1-506.C, the Beneficiary shall be eligible to receive a distribution in an amount equal to the

Accumulated Contributions of the Participant as of the date of death of the Participant. If the Participant has received Disability Retirement Benefits hereunder, the amount of distribution of Accumulated Contributions shall be reduced by the amount of Disability Retirement Benefits, which have been paid hereunder.

F. Killed in Service Life Insurance

Section repealed (by Ord. 572. 6/28/2010)

**§1-507. Termination of Employment**

A. 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 subsections of this section.

B. Distribution of Accumulated Contributions

A Participant whose Employment with the Employer shall terminate for any reason other than death or Total and Permanent Disability prior to attainment of Normal Retirement Age shall be entitled to receive a distribution of Accumulated Contributions. Upon receipt of such Accumulated Contributions, said Participant and Beneficiary shall not be entitled to any further payments from the Plan.

C. Deferred Retirement Benefit

A Participant who shall have completed at least twelve (12) years of Aggregate Service and whose Employment shall terminate for any reason other than due to death or Total and Permanent Disability prior to attainment of Normal Retirement Age shall be entitled to elect by filing a written notice of the intention to vest with the Plan Administrator within ninety (90) days of the date Employment ceases to receive a deferred retirement benefit in lieu of a distribution of Accumulated Contributions under section 1-507.B. Such a deferred retirement benefit shall be equal to the Participant's Accrued Benefit as of the date Employment terminates and shall commence after application pursuant to section 4.05 and not earlier than the date which would be the Participant's Normal Retirement Date under the Plan if the Participant remained in Employment until such date.

**§1-508. Administration**

A. Plan Administrator

The Plan Administrator shall be the Committee or the individual appointed by the Board 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. The Plan Administrator may delegate authority to act on its behalf to any persons it

deems appropriate. If a Plan Administrator is not appointed, the Board shall be the Plan Administrator.

B. Police Pension Committee

The Board may appoint a Police Pension Committee to administer the affairs of the Plan. The Board 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, one of which, shall be a representative of the Ebensburg Police Association. 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 the Board and other members of the Committee. Vacancies on the Committee shall be filled in the same manner as the position was originally filled by the Board; provided, however, that the remaining members of the Committee shall have full power to act pending the filling of such vacancies.

C. 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 the Board'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:

1. to construe this Plan;
2. to determine all questions affecting the eligibility of any Employee to participate herein;
3. to compute the amount and source of any benefit payable hereunder to any Participant or Beneficiary;
4. to authorize any and all disbursements;
5. to prescribe any procedure to be followed by any Participant or other person in filing any application or Election;
6. prepare and distribute, in such manner as may be required by law or as the Plan Administrator deems appropriate, information explaining the Plan;
7. to require from the Employer or any Participant such information as shall be necessary for the proper administration of the Plan; and

8. 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.

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 the Board.

#### D. Police 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 the Board, 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.

#### E. Plan Administrator Costs

The Plan Administrator shall serve without compensation for services unless otherwise agreed by the Board 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 the Board to the extent permitted under applicable law and not otherwise paid by the Employer.

#### F. Hold Harmless

No member of the Board, the Plan Administrator, the Enrolled Actuary, 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.

#### G. 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.

#### H. 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.

1. 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.
2. 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.

3. Upon receipt of Notice denying the claim, the Claimant shall have the right to request a full and fair review by the Board of the initial determination. Such request for review must be made by Notice to the Board 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. The Board shall, within sixty (60) days after receipt of the Notice requesting such review, (or in special circumstances, such as where the Board 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.
4. 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.
5. 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.
6. 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 1-508.H of the Plan has been exhausted.

#### **§1-509. The Pension Fund**

##### **A. Operation of the Pension Fund**

The Board 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.

B. 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.

1. 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.
2. 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.
3. 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.
4. 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.
5. To exercise all conversion and subscription rights pertaining to property held in the fund.
6. To exercise all voting rights with respect to property held in the fund and in connection therewith to grant proxies, discretionary or otherwise.
7. 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.
8. 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.

9. 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.
10. 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.
11. 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.
12. To compromise, contest, arbitrate, enforce or abandon claims and demands with respect to the Plan.
13. 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.
14. 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 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.
15. 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 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.

16. 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 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 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.

C. 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.

D. 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.

E. 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 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 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.

F. 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.

#### **§1-510. Amendment and Termination**

##### **A. 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 the Board provided, however:

1. 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;
2. 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 1-510.E, ever revert to or be used or enjoyed by the Employer; and
3. that no amendment to the Plan which provides for a benefit modification shall be made unless the cost estimate described in section 1-511.C has been prepared and presented to the Board in accordance with the Act.

##### **B. 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.

##### **C. 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.

##### **D. Distribution Upon Termination**

In the event of the termination of the Plan, all amounts of vested 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 to the date.

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 effects such termination.

E. 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.

F. 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.

**§1-511. Funding Standard Requirements**

A. Actuarial Valuations

The Plan's Actuary shall perform an actuarial valuation at least biennially unless the Employer is applying or has applied for supplemental state assistance pursuant to section 603 of the Act, whereupon actuarial valuation reports shall be made annually.

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.

Such actuarial valuation 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:

1. investment costs associated with obtaining authorized investments and investment management fees;
2. accounting expenses;
3. premiums for insurance coverage on Fund assets;
4. reasonable and necessary counsel fees incurred for advice or to defend the Fund; and
5. 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.

**B. Duties of Chief Administrative Officer**

Such actuarial reports 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 the Board annually and shall certify the accuracy of such calculations and their conformance with the Act.

**C. 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 the Board a cost estimate of the proposed benefit plan modification. Such estimate shall be prepared by an approved Actuary, which estimate shall disclose to the Board 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.

**§1-501. Miscellaneous Provisions**

A. 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.

B. 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 sections and subsections are inserted only for convenience of reference and are not to be considered in the construction of the Plan.

C. 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.

D. 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 parts of this Plan, and the Plan shall be construed and enforced as if said illegal and invalid provisions had never been inserted herein.

E. 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.

F. 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.

G. 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.

H. 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.

I. 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.

J. 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.

**PART 6**

**NON-UNIFORM PENSION**

**§1-601. 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:

**ACCRUED BENEFIT** - As of any given computation date, a Participant's monthly benefit determined in accordance with section 4.02, which amount shall be based upon the Participant's years of Credited Service and Average Monthly Compensation determined as of such computation date and which shall represent the monthly benefit which would be payable in the Normal Form as of the Participant's attainment of Normal Retirement Age, provided that the Participant shall satisfy all requirements pursuant to the terms of the Plan for entitlement to receive such benefit.

In no event, however, shall the Accrued Benefit exceed the maximum limitation, determined as of the date of computation, provided under section 4.11. All Accrued Benefits are subject to all applicable limitations, reductions, offsets and actuarial adjustments provided by the Plan prior to the actual payment thereof.

**ACCUMULATED CONTRIBUTIONS** - The total amount contributed by any Participant to this Fund or its predecessor by way of payroll deduction or otherwise, plus interest credited at three percent (3%) per annum. Interest shall be credited in the form of a compound interest rate from the midpoint of the Plan Year for which the contributions were paid to the first day of the month preceding the date that a distribution of Accumulated Contributions under sections 7.04 and 8.04 shall be paid or payment of benefits shall commence.

**ACT** - 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.

**ACTUARIAL EQUIVALENT** - Two forms of payment of equal actuarial present value on a specified date. The actuarial present value shall be determined by use of the "Applicable Mortality Table" prescribed in I.R.S. Revenue Ruling 2001-62 for purposes of compliance with Code §417(a) and seven percent (7%) interest unless otherwise specifically provided herein.

**ACTUARY** - 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.

**AUTHORIZED LEAVE OF ABSENCE** - A leave of absence granted in writing by the Employer for reasons including, but not limited to, accident, sickness, pregnancy, temporary disability, education, training, jury duty, or such other reasons as may necessitate authorized leave from active Employment. Authorized Leave of Absence shall include a period of time for active service with the armed forces of the United States of America provided that the



Participant shall return to Employment within the time prescribed by law following separation from such military service during which the Participant's reemployment rights are protected.

**AVERAGE MONTHLY COMPENSATION** - On any given date, an Employee's Compensation averaged over the five (5) consecutive calendar year period out of the last ten (10) calendar years of Employment which provides the highest average, or all calendar years and calendar months of Employment if employed less than five (5) years.

Notwithstanding the preceding, Average Monthly Compensation for a Participant who is employed by the Employer as the Borough Manager shall mean, on any given date, the Compensation averaged over the three (3) consecutive calendar year period out of the last ten (10) calendar years of Employment which provides the highest average, or all calendar years and calendar months of Employment if employed less than three (3) years.

Average Monthly Compensation for all employees shall exclude any payments made in a lump-sum at termination or retirement for unused vacation, sick or personal days.

Compensation used to determine Average Monthly Compensation shall be limited on an annual basis to the amount specified for government plans in accordance with Code Section 401(a)(17), as adjusted under Code Section 415(d).

**BENEFICIARY** - The person or persons validly designated in writing by a Participant to receive such benefits as may be due hereunder upon the death of the Participant. A designation shall become effective only upon the Participant's death and shall be valid only if delivered prior to such Participant's death to the Plan Administrator in such form as the Plan Administrator shall specify. In the event that there is no validly designated Beneficiary that survives the Participant or that is legally able to take the benefits provided as Beneficiary then 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 of the Participant; 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.

**CHIEF ADMINISTRATIVE OFFICER** - The person designated by the Council, who has the primary responsibility for the execution of the administrative affairs for the Plan. Council has designated the Borough Manager as Chief Administrative Officer.

**CODE** - The Internal Revenue Code of 1986, as amended.

**COMMITTEE** - The Pension Plan Committee as more fully described under section 1-609.B hereof if one shall be appointed.

**COMMONWEALTH** - The Commonwealth of Pennsylvania.

**COMPENSATION** - The total compensation paid to the Participant for active services rendered as an Employee of the Employer, including overtime pay.

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).

COUNCIL - The Borough Council of the Borough of Ebensburg.

CREDITED SERVICE - "Credited Service" shall mean the total period of an Employee's Employment. Notwithstanding the preceding sentence, should any such Participant receive a distribution of Accumulated Contributions with respect to a period of Employment, such period of Employment shall not be included in Credited Service thereafter unless, at the commencement of the next period of Employment, the Participant repays to the 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 above under "Accumulated Contributions". Credited Service shall be expressed in whole years and fractional parts of a year where each completed month equals one-twelfth (1/12) of one (1) year.

DISABILITY DATE - 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.

EARLY RETIREMENT AGE - The date on which a Participant has attained age fifty-five (55) and completed at least ten (10) years of Credited Service with the Employer.

EARLY RETIREMENT DATE - The first day of the month coincident with or next following the date on which a Participant who has attained Early Retirement Age ceases Employment and elects to commence receipt of retirement benefits prior to the date the Participant would attain Normal Retirement Age.

EMPLOYEE - Any individual employed by the Employer on a permanent, full-time basis, working a minimum of forty (40) hours per week, excluding any uniformed employee.

EMPLOYER - The Borough of Ebensburg, Cambria County, Pennsylvania.

EMPLOYMENT - For the purpose of determining years of Credited Service:

1. The period of time for which an Employee is directly or indirectly compensated or entitled to compensation by the Employer for the performance of duties as an Employee;
2. Any period of time for which an Employee is paid a fixed, periodic amount in the nature of salary continuation payments for reasons other than the performance of duties (such as vacation, holidays, sickness, disability, entitlement to benefits under workers' compensation or similar laws), either directly by the Employer or through a program to which the Employer has made contributions on behalf of the Employee;

3. 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 reemployment 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 reemployment.

**INSURER** - A legal reserve life insurance company authorized to do business in the Commonwealth of Pennsylvania.

**LATE RETIREMENT DATE** - The first day of the month coincident with or next following the date on which a Participant shall retire from Employment, which occurs after the Participant's Normal Retirement Date.

**MINIMUM MUNICIPAL OBLIGATION** - The minimum obligation of the municipality as determined by the Actuary pursuant to the provisions of the Act.

**NORMAL FORM** - A straight life annuity as further described in section 1-605.A hereof.

**NORMAL RETIREMENT AGE** - The date a Participant attains sixty-five (65) years of age.

**NORMAL RETIREMENT DATE** - The first day of the month coincident with or next following the attainment of Normal Retirement Age.

**NOTICE or ELECTION** - 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.

**PARTICIPANT** - Any Employee who has commenced participation in this Plan in accordance with section 1-602, and has not for any reason ceased to participate hereunder.

**PENSION FUND or FUND** - 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

accounted for separately from the assets of any other plans maintained by the Employer, whether actually held separately or commingled with the assets of another plan, and which shall be administered under the supervision of the Employer in accordance with the terms of the Plan and applicable law.

PLAN - The Borough of Ebensburg Non-Uniformed Employees Pension Plan as herein set forth and as it may be amended from time to time hereafter.

PLAN ADMINISTRATOR or ADMINISTRATOR - The Pension Plan Committee appointed by the Council for the purpose of supervising and administering the Plan. In the event no person is so appointed, the Plan Administrator shall be the Council.

PLAN YEAR - The twelve (12) month period beginning on January 1 and ending on December 31 of each year.

POLICY or CONTRACT - 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 Plan investments in accordance with the provisions of applicable law.

RESTATEMENT DATE - January 1, 2013, the effective date of this Plan as hereby amended and restated.

TOTAL AND PERMANENT DISABILITY - That a Participant is disabled, as a result of sickness or injury, to the extent that the Participant is prevented from engaging in any substantially gainful activity and is eligible for and receives a disability benefit under Title II of the Federal Social Security Act.

## **§1-602. Eligibility**

### **A. Eligibility for Participation**

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. Each other person who is employed as a regular, full-time Employee of the Employer shall become a Participant in the Plan as of the first day on which such Employee's Employment first commences or recommences, provided all prerequisites to participation in this Plan have been fulfilled, including but not limited to, completion of all necessary forms required by the Plan Administrator.

### **B. Participation Requirements**

The Council shall furnish the Plan Administrator with written notification of the appointment of any new full-time permanent Employee who is eligible for participation hereunder, and shall execute and complete any enrollment or application forms as required by the Plan Administrator.

### **C. Designation of Beneficiary**

Each Employee who becomes a Participant hereunder shall provide a written Notice which designates the Beneficiary or Beneficiaries to the Plan Administrator at the time participation commences. The Participant's Election of any such Beneficiary or Beneficiaries may be rescinded or changed, without the consent of the Beneficiary or Beneficiaries, at any time provided the Participant provides the Plan Administrator with written Notice of the changed designation in the manner prescribed by the Plan Administrator and such election is not contrary to applicable law. 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.

D. Change in Status

In the event a Participant who remains in the service of the Employer ceases to be an Employee eligible for participation hereunder no further benefit accruals shall occur until the Participant again qualifies under such participation requirements. Such a re-qualified Participant shall immediately commence the accrual of additional benefits hereunder upon becoming eligible to participate.

E. Leave of Absence

During any leave of absence that is not an Authorized Leave of Absence, a Participant shall be deemed an inactive Participant, and shall not be given credit for years of Credited Service and shall not continue to accrue any benefits hereunder. If the Employee is not re-employed by the expiration of such leave of absence, participation in the Plan shall cease on the date on which such leave of absence commenced. During any Authorized Leave of Absence, a Participant shall continue to receive credit for years of Credited Service to the extent such credit is specifically granted in writing by Council and is permitted pursuant to applicable law provided that any required contributions are paid to the Plan.

F. Reemployment

Each person who shall have previously been an Employee in Employment and had completed a minimum of five (5) years of Credited Service during such period of 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 provided that there shall be no duplication of benefits as provided under section 1-604.G. In the case of a reemployed Employee, the benefit entitlement at final termination or retirement shall be calculated by taking into account each period of Employment in which at least five (5) years of Credited Service was completed, provided no distribution of benefits attributable to such period was made. Except as provided for in sections 1-602.D and 1-602.E, any period of Employment during which the Participant did not complete five (5) years of Credited Service shall be ignored, and the Participant shall be

deemed to have been finally terminated at the end of the last period of Employment in which the Participant completed five (5) years of Credited Service.

G. 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 initially and subsequently.

**§1-603. Contributions**

A. Employee Contributions

As of the Restatement Date, Participants are required to contribute to the Plan in an amount to be determined from time to time by Resolution of Council, depending on the financial status of the Plan.

B. Employer Contributions

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 which are 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.

C. State Aid

General Municipal Pension System State Aid, or any other amount of State Aid received by the Employer from the Commonwealth in accordance with the Act, 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.

D. 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.

E. No Reversion to the Employer

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 of fact and the contribution is returned within one (1) year of the discovery of the mistaken payment of the contribution, or the Plan is terminated, as provided in section 1-611.

**§1-604. Retirement Benefits**

A. Normal Retirement

Each Participant shall be entitled to a Normal Retirement Benefit upon retirement on or after attainment of Normal Retirement Age.

B. Normal Retirement Benefit

Each Participant who shall become entitled to a benefit pursuant to section 1-604.A shall receive a monthly Normal Retirement Benefit in an amount equal to one and two-tenths percent (1.2%) of the Participant's Average Monthly Compensation multiplied by the Participant's years of Credited Service completed prior to January 1, 2007, plus one and five-tenths percent (1.5%) of the Participant's Average Monthly Compensation multiplied by the Participant's years of Credited Service completed after January 1, 2007.

Notwithstanding the preceding, a Participant who is employed by the Employer as the Borough Manager and shall become entitled to a benefit pursuant to section 1-604.A shall receive a monthly Normal Retirement Benefit in an amount equal to three and five-tenths percent (3.5%) of the Borough Manager's Average Monthly Compensation multiplied by all years of Credited Service.

The Normal Retirement Benefit for all Participants shall be payable in the Normal Form pursuant to section 1-605.A, commencing on the Participant's Normal Retirement Date.

C. Early Retirement

Each Participant shall be entitled to an Early Retirement Benefit after retirement which occurs on or after attainment of Early Retirement Age.

D. Early Retirement Benefit

Each Participant who shall become entitled to a benefit pursuant to section 1-604.C shall receive, upon making an Election hereunder, an Early Retirement Benefit commencing on the Early Retirement Date equal to the Participant's Accrued Benefit on the Early Retirement Date, multiplied by the factor shown below corresponding to the number of years the Early Retirement Date precedes the Participant's Normal Retirement Date:

Number of Years Early Retirement Date

<u>Precedes Normal Retirement Date</u>	<u>Factor</u>
1	.9333
2	.8667
3	.8000
4	.7333
5	.6667
6	.6333
7	.6000
8	.5667
9	.5333
10	.5000

The above factors shall be prorated for a partial year.

#### E. Late Retirement

A Participant who remains in the employ of the Employer subsequent to their Normal Retirement Date, shall continue to be eligible to participate hereunder, subject to the Employer's rules and regulations regarding retirement age. If a Participant who has met the requirements of section 1-604.A continues in employment beyond Normal Retirement Age, there shall be no retirement benefits paid until employment ceases and the Participant's retirement actually begins. A Participant who retires on a Late Retirement Date shall be entitled to receive a monthly pension benefit equal to the greater of: 1) the amount determined in accordance with section 1-604.B as of the Participant's actual retirement date or 2) the amount determined under section 1-604.B as of the Participant's Normal Retirement Date (based on Average Monthly Compensation and years of Credited Service at Normal Retirement Date), multiplied by the factor shown below corresponding to the number of years the Participant's Late Retirement Date follows their Normal Retirement Date:

<u>Number of Years Late Retirement Date Follows Normal Retirement Date</u>	<u>Factor</u>
1	1.06
2	1.12
3	1.19
4	1.26
5	1.34
6	1.42
7	1.50
8	1.58
9	1.67
10	1.76



The above factors shall be prorated for a partial year. Factors for numbers of years beyond ten (10) shall be determined using a consistently applied reasonable actuarial equivalent method.

F. Application for Benefit

A Participant must complete and execute an application for benefit on a form and in the manner prescribed by the Plan Administrator and deliver the said application to the Plan Administrator at least thirty (30) days prior to the date on which benefit payments are to commence. Notwithstanding anything contained herein to the contrary, no retirement benefit payments or any other benefit payments shall be due or payable on or before the first day of the month coincident with or next following the date that is thirty (30) days after the date the Plan Administrator receives the application for benefit.

G. Non-duplication of Benefit

A Participant who shall receive a monthly retirement benefit under this Plan and who shall resume Employment as an Employee, shall have benefit payments suspended until the first day of the month coincident with or next following the date such Employment shall cease. Such benefit payments shall, upon resumption, be adjusted to reflect any change in years of Credited Service caused by such additional period of Employment; provided, however, that such adjustment shall not result in a decrease in such Participant's retirement benefit.

H. Small Amounts

If the Plan Administrator determines that the value of a Participant's Accrued Benefit is so small as to make monthly pension payments administratively impractical, the Plan Administrator may cause such payments to be made at such other periodic intervals as are administratively practical, but no less frequently than annually. If the Participant's Vested Benefit is five thousand dollars (\$5,000.00) or less, the Plan Administrator may, at its discretion, make a single lump sum payment equal to the Actuarial Equivalent value of such Vested Benefit to the extent permitted under applicable law in fulfillment of all benefit payment obligations under the Plan.

I. 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 surviving annuitant's death occurs.

J. 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, except where 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 under section 1-608.B 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.

#### K. Defined Benefit Dollar Limitations

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. Effective for limitation years beginning on and after July 1, 2007, the Plan shall comply with the final regulations issued under Code Section 415.

##### 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 1-604.K shall be governed by the following conditions and definitions:

1. 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;
2. 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 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 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;
3. 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);
4. 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 pursuant to section 1-606 or a Survivor Benefit pursuant to section 1-607, with fewer than ten (10) years of participation the limitation expressed in this subsection (4) 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);
  5. 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; and
  6. in the case of a Survivor Benefit or a Disability Retirement Benefit, the adjustment under subsection (K.2) hereof shall not apply and the applicable limitation shall be the limitation contained herein without regard to the age of the benefit recipient;
  7. for mandatory employee contributions, the rules set forth in Treasury Regulation 1.415(b)-1(b)(2)(iii) shall apply; and
  8. effective for distributions with annuity starting dates beginning on or after December 31, 2008, 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), or (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).ö

#### L. 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.

**§1-605. Payment of Benefits**

A. Normal Form of Benefit Payment

The Normal Form for payment of retirement benefits shall be a monthly annuity payable for the life of the Participant.

B. Optional Forms of Benefit Payment

The automatic form of payment of retirement benefits shall be the Normal Form specified in section 1-604.A unless a Participant elects to receive benefits in some other form as provided herein. A Participant who retires under sections 1-604.A, 1-604.C, or 1-604.C or who has attained Normal Retirement Age, but is still an active Employee, may elect, by giving written Notice to the Employer prior to the date retirement benefit payments shall commence, to receive payment in one of the optional forms of payment, which shall be the Actuarial Equivalent of the Normal Form. Any election of an optional form of payment may be rescinded or changed by the Participant prior to commencement of payments. The available optional forms of benefit payment shall be as follows:

1. Life Annuity with Period Certain Option

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 retirement benefit payable monthly to the Participant until the death of the Participant occurs or for a period certain whichever is longer. If the Participant shall die before receiving payment of benefits at least equal to the period certain then the remainder of the period certain payments shall be paid as they become due to a designated Beneficiary, such that the total number of payments made to the Participant and Beneficiary shall equal to the number of period certain payments selected. If the Participant shall die after receiving payment of benefits equal to or greater than the period certain there shall be no additional payments due hereunder after the Participant's death. The periods certain which may be elected, shall be sixty (60) months, one hundred twenty (120) months or one hundred eighty (180) months.

2. Contingent Annuitant Option

In lieu of receiving the retirement benefit under the Normal Form, a Participant may elect the Contingent Annuitant Option which provides for a reduced retirement benefit payable to the retired Participant until death and for the continuation of benefit payments in an amount equal to fifty percent (50%), sixty-six and two-thirds percent (66-2/3%) or one hundred percent (100%) of the benefit the Participant was receiving, whichever the Participant shall have elected, to a designated Beneficiary until the death of the contingent annuitant shall occur.

If the designated Beneficiary is the spouse of the retired Participant, the benefit payable under this option shall be payable without other 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.

If the death of the Beneficiary occurs before the Participant's actual retirement date, any election of this option shall be deemed null and void and the retirement benefit shall be payable in the Normal Form, 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 retirement benefit payments have commenced.

#### C. Commencement of Benefits

A Participant may elect to commence receiving distribution of retirement benefits as of the Early, Normal or Late Retirement Date or may defer such payments to a date no later than the required date for commencement of benefits determined under section 1-605.D.

#### D. Required Distributions

1. 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:
  - a. not later than the Required Beginning Date, or
  - b. 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 entire interest has been distributed after distribution of benefits has begun in accordance with paragraph (b) above, the remaining portion of such benefit shall be distributed at least as rapidly as under the method of distribution being used under paragraph (b) as of the date of death.

2. If a Participant who is entitled to benefits under this Plan dies before distribution of the benefit has begun, the entire interest of such Employee shall be distributed within five (5) years of the death of such Employee, unless the following sentence is applicable. If any portion of the Employee'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 not later than one (1) year after the date of the Employee'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 Employee would have attained age seventy and one-half (70½) 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 Employee.
3. For purposes of this section, the following definitions and procedures shall apply:
    - a. "Required Beginning Date" shall mean April 1 of the calendar year following the later of the calendar year in which the Employee attains age seventy and one-half (70½), or the calendar year in which the Employee retires.
    - b. The phrase "designated Beneficiary" shall mean any individual designated by the Employee under this Plan according to its rules.
    - c. 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's reaching majority (or other designated event permitted under regulations issued by the Secretary of the Treasury).
    - d. For purposes of this section, the life expectancy of an Employee and/or the Employee's spouse (other than in the case of a life annuity) may be redetermined but not more frequently than annually.
  4. General Rules. The requirements of this Section D will take precedence over any inconsistent provisions of the Plan. All distributions required under this Section D 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.

E. Direct Rollovers

1. 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 paid directly to an eligible retirement plan specified by the distributee in a direct rollover.
2. This section (E.2) shall apply to distributions made on or after January 1, 2006. 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 E.1 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. 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.

3. For purposes of this section, the following definitions shall apply:

- a. "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 includible 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 includible 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 (effective for distributions on or after January 1, 2007, 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 includible in gross income and the portion of such distribution which is not so includible.

- b. "Eligible Retirement Plan" is a qualified trust described in Code section 401(a), 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), an annuity contract described in Code section 403(b), an eligible deferred compensation plan described in Code section 457(b), which is maintained by a state, political subdivision of a state, and 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.
- c. "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 section 414(p), are distributees with regard to the interest of the spouse or former spouse.

- d. "Direct Rollover" is a payment by the Plan to the eligible retirement plan specified by the distributee or the Plan Administrator, if the distributee does not make an election.
  - e. Effective January 1, 2008, direct rollovers may be made to 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 rollover to such Roth IRA.
4. This Section applies to distributions made on or after January 1, 2010. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Nonspouse Beneficiary's election under this Section, a Nonspouse Beneficiary may elect to have any portion of a Plan distribution (that is payable to such Nonspouse 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 Nonspouse Beneficiary. For these purposes, a "Nonspouse 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.

#### F. 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.

#### G. 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.

### §1-606. Disability Retirement



A. Disability Retirement

A Participant who shall incur a Total and Permanent Disability prior to attaining Normal Retirement Age shall be entitled to a Disability Retirement Benefit as of the Disability Date.

B. Disability Retirement Benefit

A Participant who retires due to a Total and Permanent Disability, pursuant to section 1-606.A shall be eligible for a Disability Retirement Benefit in an amount equal to the Participant's Accrued Benefit as of the Disability Date.

C. Payment of Disability Benefits

Disability payments shall be made monthly as of the first day of each month, commencing as of the first day of the month coincident with or immediately following the Participant's Disability Date and continuing until the earliest of the death of the Participant, cessation of Total and Permanent Disability, or attainment of Normal Retirement Age (such a Participant who attains Normal Retirement Age shall thereafter receive a Normal Retirement Benefit pursuant to section 1-604.B in the same amount as the amount of the Disability Retirement Benefit).

A Participant who shall fail to return within three (3) months to Employment as an Employee of the Employer upon cessation of Total and Permanent Disability prior to attainment of Normal Retirement Age shall be deemed to have terminated Employment as of the Disability Date. Such a Participant may elect to receive vested benefits pursuant to section 1-608.B, which shall be reduced by any payments made under this section 1-606.

D. Verification of Disability

The Plan Administrator shall in its sole discretion determine whether a Participant shall have incurred a Total and Permanent Disability. The Plan Administrator shall rely on the report of a physician acceptable to the Plan Administrator. If the Plan Administrator shall determine that a Participant who is Totally and Permanently Disabled has recovered sufficiently to resume active Employment or if a Participant refuses to undergo a medical examination as directed by the Plan Administrator (such a medical examination may not be required more frequently than once in any given twelve (12) month period), the payment of Disability Retirement Benefits shall cease.

E. 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.

#### **§1-607. Death Benefits**

##### **A. Death Benefits**

Upon the occurrence of the death of a Participant, there shall be benefits payable in accord with the following sections of this section 1-607.

##### **B. Pre-Retirement Survivor Annuity Death Benefit**

If a Participant shall die before attaining their Normal Retirement Age but after reaching eligibility for an Early Retirement Benefit, a survivor annuity death benefit shall be payable to the surviving spouse of the Participant if the Participant was continuously married to that spouse throughout the one (1) year period preceding the date of death. The Pre-Retirement Survivor Annuity Death Benefit shall be equal to the survivor's portion of the Actuarially Equivalent fifty percent (50%) Contingent Annuitant Option under section 1-605.B.(2) based on the amount of the Participant's Accrued Benefit determined as of the Participant's date of death and reduced for early retirement pursuant to section 1-604.D, if applicable. Such benefit shall be payable monthly and shall commence on the first day of the month coincident with or next following the date of death of the Participant and will continue for the surviving spouse's life. The Pre-Retirement Survivor Annuity Death Benefit shall be paid in lieu of any other benefit under the Plan.

If a Participant dies on or after his Normal Retirement Date and before retirement, the provisions above shall not apply.

##### **C. Survivor Benefit after Normal Retirement Eligibility**

If a Participant dies on or after their Normal Retirement Date and before retirement benefits commence, the survivor benefit shall be the benefit which would have been payable to the Participant's Beneficiary or Contingent Annuitant as if the Participant had retired on the date of their death. The form of benefit payment elected pursuant to section 1-605.B by the Participant before the Participant's death will be the form of payment in effect for determining the survivor benefit. If the Participant has not made an election pursuant to section 1-605.B, the form of benefit payment in effect will be the Normal Form under section 1-605.A.

##### **D. Death of Participant Prior to Retirement**

If a Participant shall die before payment of a benefit has commenced and without eligibility for payment of a survivor benefit, the Beneficiary shall be eligible to receive a

distribution in an amount equal to the Accumulated Contributions of the Participant as of the date of death of the Participant.

E. Death of Participant After Commencement of Benefits

In the event that a Participant shall die after the receipt of any benefit payments under the Plan, a death benefit shall only be payable 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 this Plan.

F. Veterans' Survivor Benefits

Notwithstanding any other provision of the Plan to the contrary, in the case of the death of a Participant who dies on or after January 1, 2007 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.

**§1-608. Termination of Employment**

A. Rights of Terminated Employees

A Participant who shall cease to be an Employee except as otherwise hereinbefore provided, shall be limited to those rights under this Plan contained in the following subsections of this section.

B. Deferred Retirement Benefit

A Participant who ceases to be an Employee in Employment for any reason other than retirement, Total and Permanent Disability or death and who has completed at least five (5) years of Credited Service may elect to receive a Deferred Retirement Benefit instead of an in lieu of a distribution of Accumulated Contributions under section 1-608D. Such an election must be made in writing in a form acceptable to the Plan Administrator and delivered to and received by the Plan Administrator within ninety (90) days following the date that the Participant's Employment terminates. If no such election is made, there shall be no other eligibility for the said benefit, and the Participant shall receive a distribution of Accumulated Contributions under section 1-608D.

The Deferred Retirement Benefit hereunder shall be equal to the Participant's Accrued Benefit determined as of the date when Employment terminates and multiplied by the applicable Vesting Percentage below based on the Participant's completed years of Credited Service:

<u>years of Credited Service</u>	<u>Vesting Percentage</u>
0-4	0 %
5	25 %
6	30 %
7	35 %
8	40 %
9	45 %
10	50 %
11	60 %
12	70 %
13	80 %
14	90 %
15	100 %

Notwithstanding the preceding, a Participant who is employed by the Employer as the Borough Manager shall be one-hundred percent (100%) vested in their Accrued Benefit after completing ten (10) years of Credited Service.

Payment of the monthly deferred vested retirement benefit shall commence as of the Participant's Normal Retirement Date after application pursuant to section 1-604.F. The Participant may elect to commence payment of their vested benefit as of their Early Retirement Date, in which case the benefit shall be reduced by the applicable early retirement reduction factors as set forth in section 1-604.D herein, or as of their Late Retirement Date, in which case the benefit shall be subject to the applicable late retirement factors as set forth in section 1-604.E.

Payment of the deferred monthly retirement benefit shall be on the form of distribution in effect on a Participant's retirement date as provided under section 1-605. The amount of payment under any form, other than the Normal Form, shall be determined as provided under section 1-605.

C. Forfeiture

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.

D. Distribution of Accumulated Contributions

A Participant whose Employment with the Employer shall terminate for any reason other than death or Total and Permanent Disability prior to attainment of Normal Retirement Age shall be entitled to receive a distribution of Accumulated Contributions. Upon receipt of such Accumulated Contributions, said Participant and Beneficiary shall not be entitled to any further payments from the Plan.

**§1-609. Administration**

A. Plan Administrator

The Plan Administrator shall be the Pension Plan Committee or the individual appointed by the 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 the 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, the Council shall be the Plan Administrator.

B. Pension Plan Committee

The Council may appoint a Pension Plan Committee to act as the Administrator of the affairs of the Plan. The Council shall delegate such authority as it shall deem appropriate to the Pension Plan Committee. The Committee shall consist of not more than five (5) members appointed by the Council. Each member of the Committee shall serve in that capacity until death, resignation, removal or otherwise. Each member may be removed at any time, with or without cause by the Council. Each member may resign by delivering written notice to the 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 the Council; provided, however, that the remaining members of the Committee shall have full power to act pending the filling of such vacancies.

C. 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:

1. to construe this Plan;
2. to determine all questions affecting the eligibility of any Employee to participate herein;
3. to compute the amount and source of any benefit payable hereunder to any Participant or Beneficiary;
4. to authorize any and all disbursements;
5. to prescribe any procedure to be followed by any Participant or other person in filing any application or Election;

6. to prepare and distribute, in such manner as may be required by law or as the Administrator deems appropriate, information explaining the Plan;
7. to require from the Employer or any Participant such information as shall be necessary for the proper administration of the Plan;
8. 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; and

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.

#### D. Pension Plan Committee Organization

The Committee may organize itself in any manner deemed appropriate to effectuate its purposes hereunder, subject to the following:

1. The Committee shall act by a majority of its members at the time in office and such action may be taken either by vote at a meeting or in writing without a meeting.
2. The Committee shall, from time to time, appoint a Chairman, a Secretary who may, but need not, be a Committee member and such other agents as it may deem advisable.
3. The Committee may, from time to time, 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 the name or names of the member or members so authorized. In the absence of a designation, 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 member or 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.
4. The Committee or its delegate, 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 or reports 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.

E. Plan Administrator Costs

The Plan Administrator shall serve without compensation for services unless otherwise agreed by the 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 the Council to the extent permitted under applicable law and not otherwise paid by the Employer.

F. Hold Harmless

No member of the Council, the Plan Administrator, the Committee, 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 they 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.

G. 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.

H. 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.

1. 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.
2. 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.
3. 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.
4. 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.
5. 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.
6. 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 1-609.H of the Plan has been exhausted.

**§1-610. The Pension Fund**



A. Operation of the Pension Fund

The 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 and/or investment manager, at its sole discretion.

B. 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.

1. 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.
2. 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.
3. 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.
4. 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.

5. To exercise all conversion and subscription rights pertaining to property held in the fund.
6. To exercise all voting rights with respect to property held in the fund and in connection therewith to grant proxies, discretionary or otherwise.
7. 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.
8. 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.
9. 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.
10. 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.
11. 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.
12. To compromise, contest, arbitrate, enforce or abandon claims and demands with respect to the Plan.
13. 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.

14. 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 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.
15. 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 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.
16. 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 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 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.

#### C. 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.

#### D. 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.

E. 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 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 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.

F. 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.

**§1-611. Amendment and Termination**

A. 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 the Council provided, however:

1. 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;
2. 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 1-611.E, ever revert to or be used or enjoyed by the Employer; and
3. that no amendment to the Plan which provides for a benefit modification shall be made unless the cost estimate described in section 1-612.C has been prepared and presented to the Council in accordance with the Act.

B. 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 consistent with the provisions of applicable law.

C. 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.

D. Distribution Upon Termination

In the event of the termination of the Plan, all amounts of vested benefits accrued by the affected Participants as of the date of such termination, to the extent funded on such date, shall be non-forfeitable 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 to the date.

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 Participant 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 shall effect such termination.

E. 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.

F. 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.

#### **§1-612. Funding Standard Requirements**

##### **A. 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. Such actuarial valuation 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 experience 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:

1. investment costs associated with obtaining authorized investments and investment management fees;
2. accounting expenses;
3. premiums for insurance coverage on fund assets;
4. reasonable and necessary counsel fees incurred for advice or to defend the fund; and
5. 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.

##### **B. Duties of Chief Administrative Officer**

Such actuarial reports 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 the Council annually and shall certify the accuracy of such calculations and their conformance with the Act.

C. Benefit 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.

**§1-613. Miscellaneous Provisions**

A. 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 to them hereunder. Participation in this Plan shall not give any right to any Employee to be retained in the employ of the Employer, nor shall it interfere with the right of the Employer to discharge any Employee and to deal with such Employee without regard to the effect that such treatment might have upon participation in this Plan.

B. Meaning of Certain Words

For purposes of this Plan, the masculine gender shall include the feminine and the singular shall include the plural, and vice versa, in all cases wherever the person or context shall plainly so require. Headings of sections and subsections are inserted only for convenience of reference and are not to be considered in the construction of the Plan.

C. Construction of Document

This Plan may be executed 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 of Pennsylvania, excepting such Commonwealth's choice of law rules.

D. 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.

E. 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 parts of this Plan, and the Plan shall be

construed and enforced as if said illegal and invalid provisions had never been inserted therein.

F. 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.

G. 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 shall be personally liable to any Participant, Beneficiary or other person under any provision of the Plan.

H. 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.

I. 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.

J. 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 be no such 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.



(Ord. 545, 3/26/2007; as amended by Ord. 606, 05/20/2013)

**PART 7**

**OPEN RECORDS POLICY**

**§1-701. Purpose**

The purpose of this policy is to assure compliance with Act 3 of 2008, The Pennsylvania Right-to-Know Law, as amended; to provide access to public records of Ebensburg Borough; to preserve the integrity of Ebensburg Borough's records; and to minimize the financial impact to the residents of the Borough regarding the resources utilized in the receipt and processing of public record requests and the retrieval and copying of public records.

(Ord. 555, 5/26/2008)

**§1-702. Designated Open Records Officer**

It is the policy of the Borough to require the presence of a designated employee when public records are examined and inspected and to charge reasonable fees for duplication of public records of the Borough. Ebensburg Borough designates the Borough Manager as the Open Records Officer, responsible for assuring compliance with the Pennsylvania Right-to-Know Law, in accordance with the following guidelines:

- A. The Borough Manager may designate certain employee(s) to process public record requests.
- B. The Borough Manager is responsible for minimizing, where possible, the financial impact to the Borough regarding the resources utilized in the receipt and processing of public record requests and the retrieval and copying of public records.
- C. All requests for public records of the Borough under this policy shall be specific in identifying and describing each public record requested. In no case shall the Borough be required to create a public record which does not exist or to compile, maintain, format or organize a public record in a manner in which the Borough does not currently compile, maintain, format or organize the public record. All requests for public records shall be submitted in writing and include the date of the request; the requestor's name, address, and telephone number; certification of United States residency; the signature of the requestor; and, if duplication is requested, appropriate payment.
- D. The designated employee shall make a good-faith effort to determine whether each record requested is a public record.
- E. The Borough shall facilitate a reasonable response to a request for Ebensburg Borough's public records. In no case is the Borough expected to provide extraordinary staff to respond to the request, but it will respond in a manner consistent with the Borough's administrative responsibilities and consistent with the requirements of the Pennsylvania Right-to-Know Law.
- F. The designated employee shall respond to the requester within five business days from the date of receipt of the written request. If the Borough does not respond within five business days of receipt thereof, the request is deemed denied.
- G. The response provided by the Borough shall consist of:
  - (1) Approval for access to the public record;
  - (2) Review of the request by the designated employee; or
  - (3) Denial of access to the record requested.
- H. If access to the public record requested is approved, the public record shall be available for access during the regular business hours of the Borough. The designated employee shall cooperate fully with the requester, while also taking reasonable measures to protect Borough public records from the possibility of theft and/or modification. The presence of a designated employee is required when public records are examined and inspected.

- I. Fees for duplication of public records shall be as established by the Commonwealth's Office of Open Records. The Borough may, at its discretion, waive fees.
- J. In the event that the estimated cost of fulfilling a request submitted under this policy is expected to exceed \$100, the designated employee(s) shall obtain the expected cost in advance of fulfilling the request to avoid unwarranted expense of Borough resources.
- K. If the request is being reviewed, the notice provided by the Borough shall be in writing and shall include the reason for the review and the expected response date, which shall be within 30 days of the notice of review. If the Borough does not respond within 30 days thereof, the request is deemed denied.
  - (1) Review of the request is limited to situations where:
    - (a) The record requested contains information which is subject to access, as well as information which is not subject to access that must be redacted prior to a grant of access. The redacted information is considered a denial as to that information.
    - (b) The record requires retrieval from a remote location.
    - (c) A timely response cannot be accomplished due to staffing limitations.
    - (d) A legal review is necessary to determine whether the record requested is a public record.
    - (e) The requester has failed to comply with the Borough's policy and procedure requirements.
    - (f) The requester refuses to pay the applicable fees.
    - (g) The extent or nature of the request precludes a response within the required time period.
  - (2) Upon a determination that one of the factors listed above applies, the Borough shall send written notice to the requester within five business days of receipt of the request for access. The notice shall include a statement notifying the requester that the request for access is being reviewed, the reason for the review, a reasonable date that a response is expected to be provided, and an estimate of applicable fees owed when the record becomes available. If the date that a response is expected to be provided is in excess of 30 days, following the five business days allowed for, the request for access shall be deemed denied unless the requester has agreed, in writing, to an extension to the date specified in the notice. If the requester agrees to the extension, the request shall be deemed denied on the day following the date specified in the notice if the agency has not provided a response by that date.
- L. If access to the record requested is denied, the notice provided by the Borough shall be in writing, as indicated on the form attached hereto entitled "Denial of Request to Review and/or Duplicate Ebensburg Borough Records."
- M. If the request is denied or deemed denied, the requester may file an appeal with the Commonwealth's Office of Open Records within 15 business days of the mailing date of the Borough's notice of denial or within 15 days of a deemed denial. The appeal shall state the grounds upon which the requester asserts that the record is a public record and shall address any grounds stated by the agency for delaying or denying the request.
- N. Within 30 days of the mailing date of the final determination of the appeals officer, the requester or Borough may file a petition for review or other document as required by rule of court with the Court of Common Pleas for Cambria County. The decision of the court shall contain findings of fact and conclusions of law based upon the evidence as a whole. The decision shall clearly and concisely explain the rationale for the decision. A petition for review under this section shall stay the release of documents until a decision is issued.
- O. This policy shall be available for review at the Borough office.

**PART 8**

**COLLECTION OF DELINQUENT ACCOUNTS**

**§1-801. Definitions**

Unless otherwise stated, the following words shall, for the purpose of this Part, have the meanings herein indicated:

**BOROUGH** - The Borough of Ebensburg, Cambria County, Pennsylvania.

**BOROUGH SOLICITOR** - The persons or law firm appointed by the Borough Council to serve as legal counsel to the Borough.

**DELINQUENT ACCOUNT** - Any sums due and owing to the Borough which have not been paid within the time required by the Borough's ordinances, resolutions, rules, regulations or policies, including, but not limited to, charges for trash collection, sewer service, water service, electric service, removal or abatement of nuisances, taxes, municipal improvements, or any other charge which may lawfully be imposed by the Borough and for which a municipal claim may be filed.

**HOURLY RATE** - The hourly fee charged by the Borough Solicitor to the Borough consistent with the ordinary and customary charges by the Borough Solicitor for similar services in the community, but in no event shall the hourly rate exceed the rate charged by the Borough Solicitor to the Borough when fees are not reimbursed by or otherwise imposed upon delinquent customers of the Borough.

**§1-802. Imposition of Attorney Fees for Collection**

The Borough Council specifically authorizes the recovery of attorney fees incurred by the Borough in the collection of delinquent accounts from the person or persons who are responsible for the payment of such delinquent accounts. The Borough Council authorizes the Borough Manager to take all actions required by applicable law to enable the Borough to recover attorney fees incurred from the persons responsible for this cost and to include such attorney fees in municipal claims. This authorization includes, but is not limited to, sending notification to such persons of the intention of the Borough to impose attorney fees incurred in collection efforts upon such persons.

**§1-803. Schedule of Attorney Fees**

The Borough shall impose attorney fees upon persons who have delinquent accounts in accordance with the following schedule:

Service	Minimum Time (hours)
Obtain and review tax account information for property	0.4
Obtain and review deed for property	0.2
Prepare municipal lien	0.5
Prepare civil action cover sheet	0.1
File municipal lien	0.4
Forward copy of municipal lien to Borough	0.2
Prepare civil action complaint before Magisterial District Judge for collection of account	0.7
Prepare for and attend hearing before Magisterial District Judge concerning civil action to collect delinquent account	2.5
Prepare and file satisfaction of municipal lien	0.2

#### **§1-804. Recovery of Additional Attorney Fees**

The services and minimum times expended by the Borough Solicitor for the services set forth in Section 1-803 of this chapter are based upon the experiences of the Borough Solicitor and upon standard collection practices. Should the person or persons responsible for payment of a delinquent account take action or should other circumstances occur which will require the Borough Solicitor to perform additional or more time-consuming services than contemplated by Section 1-803 it is the intention of the Borough to recover all of its attorney fees so incurred. Such actions include, but are not limited to, filing of counterclaims, challenging the legal power of the Borough to impose and collect the fee, rate, charge or other cost, or similar actions.

#### **§1-805. Recovery of Costs**

Filing fees, postage charges and other direct expenditures incurred in the collection of delinquent accounts shall be chargeable to the account.

#### **§1-806. Interest on Filed Liens**

Liens filed with the Court of Common Pleas shall bear interest at a rate of ten (10%) percent per annum from the date of filing (53 P.S. §7143).

#### **§1-807. Penalty on Unpaid Claims**

A penalty of five (5%) percent of the total amount of the claim shall be imposed on all amounts unpaid for more than 90 days after the amount is first assessed (53 P.S. §7203).

**§1-808. Applicability**

The provisions of this Ordinance shall apply to all collection efforts following adoption of this Ordinance. The provisions shall apply to all previously filed liens which have not been fully settled or discharged within 90 days of the adoption of this Resolution.

(Ord. 563; March 23, 2009)