

ARTICLE 143
Non-Uniformed Employees Pension Plan

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143.01 DEFINITIONS

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

- a.) “Accrued Benefit” shall mean, as of any given date, the Participant’s benefit determined under Subsection 143.04 b.), calculated on the basis of the Participant’s Average Compensation determined as of such date and multiplied by a fraction, the numerator of which shall be the Participant’s completed Years of Credited Service as of such date and the denominator of which shall be the number of Years of Credited Service which are required to be completed by the Participant to attain Normal Retirement Age under the Plan. Notwithstanding anything contained herein to the contrary, in no event shall the fraction exceed one (1.0).

In no event, however, shall the Accrued Benefit exceed the maximum limitation, determined as of the date of computation, provided under Subsection 143.04 b.). All Accrued Benefits are subject to all applicable limitations, reductions, offsets, and actuarial adjustments provided by the Plan prior to the actual payment thereof and no Accrued Benefits shall be paid unless the Participant satisfies all requirements hereunder for entitlement to receive such benefit.

- b.) “Accumulated Contributions” shall mean the total amount contributed by any Participant to this Plan or its predecessor by way of payroll deduction or otherwise. There shall be no interest credited to this amount.
- c.) “Act” shall mean the Municipal Pension Plan Funding Standard and Recovery Act (enacted as Act 205 of 1984), as amended, 53 P.S. §895.101 et. seq.

- d.) "Actuarial Equivalent" shall mean two forms of payment of equal actuarial present value on a specified date. The factors to be used in determining Actuarial Equivalents shall be seven percent (7%) interest, and UP-1984 Mortality Table rates.
- e.) "Actuary" shall mean the person, partnership, association, or corporation which at any given time is serving as Actuary; provided that such Actuary must be an "Approved Actuary" as defined in the Act.
- f.) "Authorized Leave of Absence" shall mean any leave of absence granted in writing by the Employer for reasons including, but not limited to, accident, sickness, pregnancy or temporary disability, education, training, jury duty, or such other reasons as may necessitate authorized leave from active employment.
- g.) "Average Compensation" shall mean the average of the monthly Compensation of the Participant during the last or any five (5) Years of Credited Service prior to termination of Employment which provides the highest average.
- h.) "Beneficiary" shall mean the person or legal entity designated by the Participant to receive any applicable benefits under the Plan payable upon the occurrence of the death of the Participant. 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.
- i.) "Break in Service" shall mean any period of time after Employment has commenced during which an Employee fails to maintain a continuous period of Employment.
- j.) "Chief Administrative Officer" shall mean the person designated by the Employer who has primary responsibility for the execution of the administrative affairs of the Plan.
- k.) "Code" shall mean the Internal Revenue Code of 1986, as amended.
- l.) "Commonwealth" shall mean the Commonwealth of Pennsylvania.
- m.) "Compensation" shall mean the base remuneration plus longevity payments whether salary or hourly wages paid to an Employee by the Employer with respect to personal services rendered as an Employee.

Compensation shall exclude extra or additional forms of remuneration such as overtime, amounts paid as allowance or reimbursement for expenses, payments made by the Employer to this or any other employee welfare or benefit plans on behalf of its employees (other than deductions from the Employee's remuneration which is reclassified as an Employer payment), and amounts paid as lump sums for sick pay, back-pay damage awards or settlements or the like.

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

- n.) "Contract" or "Policy" shall mean any insurance or annuity contract issued by an insurance company in accordance with the requirements of the Plan.
- o.) "Council" shall mean the City Council of the City of Franklin, Pennsylvania.
- p.) "Disability Retirement Date" shall mean the first day of the month coincident with or next following the date when a Participant who has completed at least ten (10) years of Credited Service terminates Employment due to a Total and Permanent Disability.
- q.) "Employee" shall mean any person who is employed as an employee by the Employer, and who is not otherwise participating in a pension plan or retirement program sponsored by the Employer which recognizes credit for the same period of service to the Employer. Employee shall include any elected or appointed official compensated at a stated salary for services rendered.
- r.) "Employer" shall mean the City of Franklin, Pennsylvania, a political subdivision of the Commonwealth.
- s.) "Employment" shall mean 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. Employment may include, for the purpose of determining Years of Credited Service, an Authorized Leave of Absence to the extent it is specifically granted in writing by the Council and permitted pursuant to applicable law.
- t.) "Insurer" or "Insurance Company" shall mean any legal reserve life insurance company licensed to do business in one or more states of the United States.

- u.) “Late Retirement Date” shall mean the first day of the month coincident with or next following the date when a Participant retires which is subsequent to the Participant’s Normal Retirement Date.
- v.) “Minimum Municipal Obligation” shall mean the minimum annual obligation of the municipality as determined pursuant to the reports and calculations of the Actuary and certified by the Chief Administrative Officer pursuant to the provisions of the Act.
- w.) “Normal Retirement Age” shall mean the later of attainment of age sixty (60) or completion of twenty (20) Years of Credited Service.
- x.) “Normal Retirement Date” shall mean the first day of the month coincident with or next following the date when an Employee attains Normal Retirement Age.
- y.) “Notice” or “Election” shall mean a written document prepared in the form specified by the Plan Administrator and delivered as follows: if such Notice or Election is to be provided by the Employer or 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; or, if such notice or election is to be provided by the Employer or the Plan Administrator, it must be received by the recipient on or before the last day of the specified Notice or Election period.
- z.) “Participant” shall mean an Employee who has commenced participation in this Plan in accordance with Section 143.02 and has not for any reason ceased to participate hereunder.
- aa.) “Pension Fund” shall mean the assets of the Plan, which shall be accounted for separately from the assets of any other plans maintained by the Employer and which shall be administered under the supervision of the Employer in accordance with the terms of the Plan.
- bb.) “Pension Plan Board” shall mean the board appointed pursuant to the provisions of applicable law to administer the Plan as more fully described herein under Section 143.09.
- cc.) “Plan” shall mean the City of Franklin Non-Uniformed Employees Pension Plan.
- dd.) “Plan Administrator” or “Administrator” shall mean the Pension Plan Board. In the event no such Board is appointed, the Plan Administrator shall be the Council.

- ee.) "Plan Year" shall mean the 12-month period beginning on January 1 and ending on December 31.
- ff.) "Restatement Date" shall mean January 1, 2008, the effective date of this amended and restated Plan.
- gg.) "Total and Permanent Disability" shall mean a condition of physical or mental impairment due to which a Participant is unable to perform any customary duties of Employment with the Employer. The Plan Administrator shall determine whether a Participant has incurred a total and permanent disability based upon the results of an examination by three (3) physicians designated by the Plan Administrator.
- hh.) "Year of Credited Service" shall refer to any consecutive twelve (12) month period during which a Participant is continuously employed in Employment. Each Year of Credited Service shall be determined from the date on which participation in the Plan shall commence and annual anniversaries thereof and/or the date that reemployment of a Participant shall commence and anniversaries thereof, provided that the Employee has authorized the payment of Employee contributions to the Plan.

143.02 PARTICIPATION IN THE PLAN

- a.) Eligibility for Participation. Each Employee who first became an Employee after the adoption of this amended and restated Plan shall be eligible to participate in the Plan as of the first day of Employment provided that all administrative prerequisites such as authorizing the payment of Employee contributions via payroll deduction have been fulfilled. 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 Employee who first became an Employee prior to the adoption of this amended and restated Plan but who was not a Participant in the Plan shall be a Participant subject to the terms and conditions of the Plan as set forth herein as of the adoption of this amended and restated Plan. Each such Employee shall only accrue benefits hereunder from the date of participation in the Plan.
- b.) Participation Requirements. Each Participant hereunder shall be required to make contributions to the Plan, as provided in Section 143.03 a.) hereof, and shall execute and complete any enrollment or application forms as required by the Plan Administrator.
- c.) Reemployment. Each Employee who had previously been employed by the Employer and incurred a Break in Service shall, upon reemployment, have prior Years of Credited Service recredited for all purposes under the

plan upon repayment to the Plan of any amount of Accumulated Contributions which had been distributed pursuant to Section 143.08 b.).

- 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.) Leave of Absence. During any leave of absence that is not an Authorized Leave of Absence, a Participant shall be deemed an active Participant and shall not be given credit for Years of Credited Service nor continue to accrue any benefits hereunder. If the Employee is not reemployed 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 the Participant shall make Participant contributions to the Plan during the Authorized Leave of Absence based upon the Participant's Compensation immediately prior to leave.
- f.) Record Keeping. The Employer shall furnish the Administrator with such information as will aid the 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.

143.03 CONTRIBUTIONS

- a.) Employee Contributions. As a condition of participation hereunder, each Participant shall be required to have contributions deducted from the Participant's Compensation and contributed to the Plan at a rate of five percent (5%) of the Participant's annual Compensation.
- b.) Employer Contributions. The Chief Administrative Officer, in accordance with the Act, shall annually determine the Minimum Municipal Obligation of the Employer based upon the reports and calculations of the Actuary. 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.
- c.) 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 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, except that 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 year of the mistaken payment of the contribution or the Plan is terminated, as provided in Section 143.11.

143.04 RETIREMENT BENEFITS

- a.) Normal Retirement. Each Participant shall be entitled to a Normal Retirement Benefit after retirement on or after attainment of Normal Retirement Age.
- b.) Normal Retirement Benefit. Each participant who shall become entitled to a benefit pursuant to Subsection 143.04 a.) hereof shall receive a benefit commencing on the Participant's Normal Retirement Date and paid in the Normal Form as provided in Subsection 143.07 a.). The monthly amount of the Normal Retirement Benefit shall be equal to fifty percent (50%) of the Participant's Average Compensation.
- 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 Subsection 143.02 a.) continues in Employment beyond the Participant's Normal Retirement Date, there shall be no retirement benefits paid until Employment has ceased and the Participant's retirement actually commences. The retirement benefit of a Participant described in this Subsection 143.04 c.) shall be calculated in accordance with Subsection 143.04 b.) on the basis of Average Compensation as of the Participant's actual retirement and shall commence on the Participant's Late Retirement Date.

- d.) 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.
- e.) 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 is in excess of the Third Class City Code or 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.
- f.) Special Provision for Restated Plans. The benefit amount of any Participant who retired prior to the Restatement Date shall not be in any way altered by the provisions of this Plan, except where otherwise expressly indicated herein, and shall continue to be determined on the basis of the terms of the Plan in effect on the day preceding the Restatement Date.

143.05 DISABILITY RETIREMENT

- a.) Disability Retirement. A Participant who has completed at least ten (10) Years of Credited Service and who incurs a Total and Permanent Disability before attaining Normal Retirement Age shall be entitled to a Disability Retirement Benefit as of the Disability Retirement Date.
- b.) Disability Retirement Benefit. A Participant who shall be entitled to a Disability Retirement Benefit under Subsection 143.05 a.) shall receive a benefit commencing on the Participant's Disability Retirement Date and paid monthly. The amount of the Disability Retirement Benefit shall be equal to fifty percent (50%) of the Participant's Average Compensation.
- c.) Payment of Disability Benefit. Payment of a Disability Retirement Benefit shall be made monthly commencing on the Participant's Disability Retirement Date and ending on the earlier of the date of death of the

Participant, the date that the Participant's Total and Permanent Disability shall cease, or the date that the Participant would attain Normal Retirement Age if the Participant had continued to accrue Years of Credited Service to such date (such a Participant shall thereafter receive a retirement benefit equal to the amount of the Disability Retirement Benefit which will be deemed to be the Normal Retirement Benefit). If the Participant's Total and Permanent Disability shall cease prior to the attainment of the Participant's Normal Retirement Age, the Participant shall be deemed to have terminated Employment as of the Disability Retirement Date for purposes of this Plan unless the Participant shall resume active Employment within three (3) months following the date on which such Total and Permanent Disability ceased. A Participant who fails to resume active Employment after Total and Permanent Disability ceases shall not be entitled to a distribution of Accumulated Contributions pursuant to Subsection 143.08 b.) to the extent that the total amount of Disability Retirement Benefits paid exceeds the value of the Participant's Accumulated Contributions as of the Disability Retirement Date, and shall not be entitled to any other benefits under the Plan as a result of the accumulation of any Years of Credited Service as of the Disability Retirement Date.

- d.) Verification of Disability. The Plan Administrator shall determine whether a Participant shall have incurred a Total and Permanent Disability. Proof of Total and Permanent Disability shall consist of the sworn statement of three (3) practicing physicians, designated by the Plan Administrator, that the Participant has incurred a Total and Permanent Disability. 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 in condition which may cause the Participant's entitlement to receipt of such benefits to cease. If a Participant fails to provide immediate Notice to the Plan Administrator of any such change in status and thereby continues to receive payment of benefits hereunder to which the Participant is not entitled, the Plan Administrator may take whatever action is necessary and permitted under applicable law to recover any amount of improper payments, including offsetting such amounts against any future payment of retirement or other benefits under the Plan or legal action. The Plan Administrator may also recover the costs of any such action.

143.06 DEATH BENEFITS

- a.) Death of Participant. Upon the occurrence of the death of a Participant, there shall be payable benefits in accord with the following sections of this Section 143.06.
- b.) Death Prior to Retirement. If a Participant shall die prior to the commencement of the payment of any retirement benefits under this Plan, the Beneficiary shall be entitled to receive a distribution of the Participant's Accumulated Contributions determined as of the date of death of the Participant.
- c.) Death After Retirement. If a Participant shall die after the payment of the pension has commenced or where a Participant shall be killed in the service, the surviving spouse of the Participant shall receive for his or her lifetime, as long as he or she does not remarry, one-half of the pension the Participant was receiving or would have been entitled to had she or he been retired at the time of her or his death.

143.07 PAYMENT OF BENEFITS

- a.) Normal Form. The Normal Form for payment of retirement benefits shall be an annuity for the life of the Participant with one-half of such annuity continuing to the surviving spouse of the Participant for her or his lifetime so long as she or he does not remarry, paid in equal semi-monthly installments.
- b.) Commencement of Benefits. A Participant may make an Election to commence receiving distribution of retirement benefits as of the Participant's Normal Retirement Date or Late Retirement Date, whichever is applicable, or may defer such payments to a date not later than the required date for commencement of benefits determined under Subsection 143.13 g.).
- c.) Nonduplication of Benefit. To avoid any duplication of benefits, a Participant who is receiving a retirement benefit under this 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 Average Compensation and Years of Credited Service as of the date that such period of resumed Employment shall cease.
- d.) 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. A Participant's Election, failure to make an Election or revocation of an Election hereunder shall be final and binding on all persons.

143.08 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 twenty (20) Years of Credited Service and who shall be dismissed, voluntarily retired, or otherwise deprived of active Employment other than due to death or Total and Permanent Disability prior to attainment of Normal Retirement Age shall be entitled to elect to receive a deferred retirement benefit in lieu of a distribution of Accumulated Contributions under Subsection 143.08 b.) and in lieu of a Deferred Vested Benefit under Subsection 143.08 d.). If such election is made, the Participant must continue to pay contributions into the Pension Fund on a monthly basis equal to the monthly amount due and paid under Subsection 143.03 a.) during the last full month of Employment with such contributions to continue until the Participant attains sixty (60) years of age. Such deferred retirement benefit shall be equal to the benefit determined pursuant to Subsection 143.04 b.) hereof and shall commence after application under Subsection 143.04 d.) not earlier than the date which is the Participant's Normal Retirement Date under the Plan.
- d.) Deferred Vested Benefit. Should a Participant terminate employment before reaching the date which would have been the Participant's earliest retirement date had the Participant continued employment by meeting the minimum age and minimum period of continuous service requirements but after having completed twelve (12) years of full-time service, the Participant shall be entitled to vest his or her retirement benefits subject to the following conditions:

- (1) the Participant must file with the Pension Plan Board of the pension fund a written notice of his or her intention to vest;
- (2) the Participant must include in the notice the date the member intends to terminate his or her service as an employee;
- (3) the termination date shall be at least thirty (30) days later than the date of notice to vest;
- (4) the Participant must be in good standing with the Employer on the date of notice to vest; and
- (5) the Pension Plan Board shall indicate on the notice to vest the rate of monthly pay of the Participant as of the date of said notice to vest or the highest average annual salary which the Participant received during any five (5) years of service preceding said date, whichever is the higher.

Upon reaching the date which would have been the Participant's earliest retirement date had the Participant continued his or her employment with the Employer, the Participant shall notify the Pension Plan Board, in writing, that the Participant desires to collect his or her pension. The amount of retirement benefits the Participant is entitled to receive under this section shall be computed as follows and shall be in lieu of any other benefit under the Plan:

- (1) the initial determination of the Participant's base retirement benefits shall be computed on the salary indicated on the notice to vest; and
- (2) the portion of the base retirement benefits due the Participant shall be determined by applying to the base amount the percentage that his or her years of service actually rendered bears to the years of service which would have been rendered had the Participant continued to be employed by the Employer until his or her earliest retirement date.

143.09 ADMINISTRATION

- a.) Plan Administrator. The Pension Plan Board shall be the Plan Administrator and 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 Council shall be the Plan Administrator.

- b.) Pension Plan Board. The Pension Plan Board shall consist of the Mayor, City Manager, Finance Director, and two (2) Participants who shall serve alternating four (4) year terms to be chosen by the Participants who are contributing to the Pension Fund.

Each member of the Pension Plan Board shall serve in that capacity until the earliest of death, resignation, removal or expiration of term above. Each member, but not including the members whose term runs coincidentally with their particular term of elected or appointed office for the City of Franklin, of the Pension Plan Board may resign by giving written notice to the Council and other members of the Pension Plan Board thirty (30) days prior to the date of resignation. Any vacancy on the Pension Plan Board shall be filled in accordance with the provisions governing initial appointment as a member of the Pension Plan Board.

The Pension Plan Board may organize itself in any manner deemed appropriate to effectuate its purposes hereunder provided that:

- (1) it shall act by a majority of its members at the time in office either by vote at a meeting or in writing without a meeting.
 - (2) it shall appoint a Chairman, a Secretary who may, but need not be a Pension Plan Board member and such other agents as it may deem advisable.
 - (3) it 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 Council, in writing, of each such member so authorized, however, if no member is so authorized, the Chairman shall be deemed to be so authorized.
 - (4) it shall meet at least one time in each Plan Year, and
 - (5) it shall maintain and keep such records as are necessary for the efficient operation of the Plan and preservation of the Pension Fund 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 and/or other persons entitled to benefits under the Plan.
- 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 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;

to prescribe any procedure to be followed by any Participant and/or other person in filing any application or election;
- (6) to prepare and distribute, in such manner as may be required by law and 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, actuarial, and investment services as may be required by any applicable law or laws.

The Plan Administrator in its capacity as 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, or to determine or require any contributions to the Plan, said powers being exclusively reserved to the Council in its capacity as the governing body of the Employer.

- d.) Plan Administration Expense. 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.

- e.) Hold Harmless. No member of the Council nor the Plan Administrator nor any other City of Franklin employee 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 Plan Administrator's 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 the Plan Administrator or a 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.
- f.) 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.
- g.) 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 (within ninety (90) days of the event causing 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 Council of the initial determination. Such request for review must be made by Notice to the Council within sixty (60) days of receipt of such Notice of denial. During such review, the Claimant or a fully authorized representative shall have the right to review any pertinent documents and to submit any issues or comments in writing. The Council shall, within sixty (60) days after receipt of the Notice requesting such review, (or in special circumstances, such as where the 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.

143.10 THE PENSION FUND

- a.) Operation of the Pension Fund. The Council of the City of Franklin 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 of Pennsylvania 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. If the Employer does not appoint a trustee, Council shall be the trustee.

- 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 again 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 in 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 his 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 trustees shall be entitled to pay the same, or to reimburse themselves 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.

143.11 AMENDMENT AND TERMINATION OF PENSION PLAN OR PENSION FUND

- 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 this municipal seal by officers fully 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 Subsection 143.11 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 Subsection 143.12 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.
- 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 (1) 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 (2) 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 affects 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 the 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.

143.12 PROVISIONS TO COMPLY WITH THE MUNICIPAL PENSION PLAN FUNDING STANDARD AND RECOVERY ACT OF 1984

- 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 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 expense for pension 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 pension 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 the Council a cost estimate of the proposed benefit plan modification. Such estimate shall be prepared by an approved Actuary, which estimate shall disclose to the 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.
- d.) Effective Date. If there is more than one permissible effective date for any required change in the Code Section 415(b) provisions, then the change shall be effective as of the latest permissible effective date; however, any adjustment in the dollar limit under Code Section 415(b)(1)(A), whether required or permissible, shall take effect automatically as of the earliest permissible effective date. The “applicable mortality table” in Rev. Rul.

2001-62 is effective from December 31, 2002, through December 31, 2007. Effective as of January 1, 2008, the "applicable mortality table" and "applicable interest rate" are found in Rev. Rul. 2007-67. (Ord. 5 of 2013, Sect. 1, Passed 9-9-2013)

143.13 APPLICABLE PROVISIONS OF THE INTERNAL REVENUE CODE

a.) Definitions.

(1) The following definitions apply for purposes of this Article only:

- (i) "Leased Employee" shall mean, effective as of January 1, 1997, any person (other than an employee of the recipient) who pursuant to an agreement between the recipient and any other person ("leasing organization") has performed services for the recipient (or for the recipient and related persons determined in accordance with Code Section 414(n)(6)) on a substantially full-time basis for a period of at least one year, and such services are performed under primary direction or control by the recipient.
- (ii) "Limitation Year" shall mean the Plan Year.

b.) Leased Employees and Independent Contractors.

(1) Leased Employees and independent contractors are not eligible to participate in this Plan. Any person whom the Council does not regard as being an Employee shall not be eligible to participate.

c.) Limit on Compensation.

(1) Compensation is subject to the limitation under Code Section 401(a)(17), which is \$230,000 for the Plan Year beginning in 2008. The limit is automatically adjusted periodically, without formal amendment, for changes in the law and cost-of-living adjustments under Code Section 401(a)(17).

d.) Maximum Annual Benefit.

(1) General Rule - Except as otherwise provided, this Plan shall at all times comply with the provisions of Code Section 415 and the regulations thereunder, the terms of which are specifically incorporated herein by reference. If a benefit payable to a Participant under this Plan would otherwise exceed the limit under Code Section 415, the benefit will be reduced to the maximum permissible benefit.

- (2) Effective Date – If there is more than one permissible effective date for any required change in the Code Section 415(b) provisions, then the change shall be effective as of the latest permissible effective date; however, any adjustment in the dollar limit under Code Section 415(b)(1)(A), whether required or permissible, shall take effect automatically as of the earliest permissible effective date. The “applicable mortality table” in Rev. Rul. 2001-62 became effective as of December 31, 2002.
 - (3) No Reduction in Accrued Benefits - Notwithstanding the above, no change in the limits under this Article shall reduce the benefit of any Participant.
 - (4) Multiple Plans – If a Participant also participates in one or more other plans that are required to be aggregated with this Plan for purposes of determining the limits under Code Section 415(b) or (e), and if the aggregated benefits would otherwise exceed the limit under Code Section 415(b) or (e), then benefits shall be reduced first under this Plan. [Historical Note: Code Section 415(e) applied for Limitation Years beginning prior to 2000.]
 - (5) Mandatory Contributions - Participant Contributions are annual additions, and any benefit attributable to Participant Contributions is not included in the benefit subject to the limits of Code Section 415(b) or (e). This subsection does not apply to contributions “picked-up” in accordance with Code Section 414(h).
 - (6) Permissive Service Credit - Effective as of January 1, 1998, if a Participant makes a purchase of permissive service credit (within the meaning of Code Section 415(n)) under the Plan, the benefit derived from the contributions made to purchase the service credit shall be treated as part of the benefit subject to the limitations under this section.
- e.) Limit on Annual Additions.
- (1) Annual Additions - Except as otherwise provided, annual additions (which include Participant Contributions) under this Plan shall at all times comply with the provisions of Code Section 415(c) and the regulations thereunder, the terms of which are specifically incorporated herein by reference. If an annual addition would otherwise exceed the limit under Code Section 415(c), the excess annual addition will be eliminated in accordance with methods permitted under Rev. Proc. 2008-50 (Rev. Proc. 2006-27 prior to 2009) or its successor. (Ord. 5 of 2013, Sect. 2, Passed 9-9-2013)

- (2) Multiple Plans - If a Participant also participates in one or more other plans that are required to be aggregated with this Plan for purposes of determining the limits under Code Section 415(c), and if the annual additions would otherwise exceed the limit under Code Section 415(c), annual additions will first be reduced under the other plan. If there is more than one other plan, annual additions will first be reduced under the plan with the greatest amount of annual additions.
- (3) Effective Date – The limits under which Code Section 415(c) are adjusted periodically in accordance with changes in the law or cost of living adjustments without the need for a plan amendment. If there is more than one permissible effective date for any required change relating to Code Section 415(c), then the change shall be effective as of the earliest permissible effective date.
- (4) 415(c) Compensation – For the purposes of this Section “compensation” includes only those items specified in Treas. Reg. §1.415(c)-2(b)(1) or (2) and excludes all items listed in Treas. Reg. §1.415(c)-2(c), the terms of which are specifically incorporated herein by reference. Effective as of January 1, 2009, to the extent required by the Heroes Earnings Assistance Tax Relief Tax Act of 2008 (HEART Act), differential wage payments shall be included in Compensation. (Ord. 5 of 2013, Sect. 3, Passed 9-9-2013)

f.) Direct Rollovers.

- (1) Effective as of January 1, 1993, if a Participant, a spousal beneficiary, or an alternate payee (who is a spouse or former spouse of a Participant) is entitled (under other provisions of this Plan) to receive an “eligible rollover distribution” of at least two hundred (\$200) dollars, the distributee may elect that the Plan Administrator transfer all or part (provided that the part is at least five hundred (\$500) dollars) to any “eligible retirement plan” capable of accepting such a transfer.
- (2) For purposes of this section, the following definitions shall apply:
 - (i) An “eligible rollover distribution” is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:
 - (a) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and

the distributee's designated beneficiary, or for a specified period of ten years or more; (b) any distribution to the extent such distribution is required under Code Section 401(a)(9); (c) 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), and (d) effective as of January 1, 2002, any hardship distribution. Effective as of January 1, 2002 clause (iii) does not apply to any after-tax Participant contributions that are paid to an individual retirement account or annuity described in Code Section 408(a) or (b), or to a qualified defined contribution plan described in Code Section 401(a) or 403(a) or effective January 1, 2007, a 403(b) annuity contract 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.

- (ii) An "eligible retirement plan" is 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), or a qualified trust described in Code Section 401(a), that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to a surviving spouse, prior to January 1, 2002, an eligible retirement plan was an individual retirement account or individual retirement annuity. Effective as of January 1, 2002, an "eligible retirement plan" includes an annuity contract described in Code Section 403(b) and an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan. Effective January 1, 2008 an eligible retirement plan shall include a Roth IRA as that term is defined in Code Section 408A(b) that agrees to separately account for amounts transferred from this Plan.
- (iii) A distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p)(11), are distributees with regard to the interest of the spouse or former spouse.

- (iv) Effective as of January 1, 2002, an Employee may, in accordance with Code Section 457(e)(17), make a trustee-to-trustee transfer from an eligible deferred compensation plan (as defined in Code Section 457(b)) to this Plan for the purpose of purchasing service credit (to the extent that such purchases are permitted under the terms of the Plan) or repaying a cash-out of contributions refunded under the Plan.

g.) Minimum Required Distributions.

- (1) Notwithstanding any provision in this Plan to the contrary, the distribution of a Participant's benefits shall be made in accordance with the requirements and conditions of and shall otherwise comply with Code Section 401(a)(9). For purposes of complying with Code Section 401(a)(9), life expectancies shall be determined in accordance with the 1987 proposed regulations prior to January 1, 2003 and with the final regulations (§1.401(a)(9)-1 through §1.401(a)(9)-9) on or after January 1, 2003.
- (2) Effective as of January 1, 1997 distribution of a Participant's benefits shall begin not later than April 1st of the calendar year following the later of:
 - (i) the calendar year in which the Participant attains age seventy and one-half (70½), or
 - (ii) the calendar year in which the Participant retires.

Distributions must be made over a period not exceeding the life of the Participant or the joint lives a Participant and his Beneficiary.

- (3) Distributions to a Participant and his Beneficiaries shall only be made in accordance with the incidental death benefit requirements of Code Section 401(a)(9)(G) and the regulations thereunder.
- (4) This section does not authorize the payment of any benefit in any form not permitted under another provision of the Plan.

h.) Approved Domestic Relations Orders.

- (1) All rights and benefits, including elections, provided to a Participant in this Plan shall be subject to the rights afforded to any "alternate payee" under what is recognized pursuant to State law support provisions as an "approved domestic relations order."

- i.) Credit for Qualified Military Service.
 - (1) Effective as of December 12, 1994, notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance Code Section 414(u).

- j.) Vesting Upon Plan Termination.
 - (1) Upon the termination of this Plan, or complete discontinuance of contributions (within the meaning of pre-ERISA Code Section 401(a)(7)) to this Plan, each Employee as of the date of such termination or discontinuance shall become vested to the extent that the Plan is funded.

- k.) Consent for Lump-Sum Distributions.
 - (1) Effective January 1, 2006, notwithstanding any other provision of the Plan, any distribution to a Participant made prior to the earlier of age 62 or Normal Retirement Age of an amount in excess of \$1,000 that is an eligible rollover distribution as set forth in the Plan and the Code shall be made only upon consent of the Participant.

- l.) Non-spouse Beneficiaries: Effective as of January 1, 2007, if a Beneficiary who is not a surviving spouse is entitled to receive what would otherwise be an "eligible rollover distribution," the Beneficiary may, in accordance with Code Section 402(c)(11), make a trustee-to-trustee transfer of that amount to an IRA or individual retirement annuity (other than an endowment contract); provided that:
 - (1) the transfer is made not later than the end of the fourth year after the year of the Participant's death, and
 - (2) the account or annuity to which the amount is transferred is treated as an inherited IRA or individual retirement annuity in accordance with Code Section 408(d)(3)(C).

(Ord. 5 of 2013, Sect. 4, Passed 9-9-2013)

- m.) Heros Earnings Assistance Relief Tax Act Of 2008 (HEART Act): Except where otherwise specifically provided to the contrary in this Plan, effective for deaths occurring on or after January 1, 2007, the Plan will provide retirement benefits and service credit to the extent that the Plan is required and mandated by the HEART Act to provide said benefits and/or service credit. (Ord. 5 of 2013, Sect. 5, Passed 9-9-2013)

- n.) Vesting at Normal Retirement Age: Upon attainment of Normal Retirement Age, a Participant shall be 100% vested in his Normal Retirement Benefit. (Ord. 5 of 2013, Sect. 6, Passed 9-9-2013)

143.14 MISCELLANEOUS

- a.) Employment Rights. 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. As used herein, the masculine gender shall include the feminine gender and the singular shall include the plural in all cases where such meaning would be appropriate. 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 the 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 of this Plan, 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 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.
- h.) Assets in Pension 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.