



City of Bethlehem Memorandum

TO: J. William Reynolds, City Council President
FROM: Mark W. Sivak, Director of Budget & Finance *mws*
DATE: January 22, 2014
SUBJECT: PMRS Ordinance

Attached is an ordinance that PMRS has asked the City to pass. They would need it back by February 27, 2014 so we would need first reading on February 4th with second reading on February 18th to meet this deadline.

The ordinance is needed to authorize a new contract with PMRS. The main reason for needing a new contract is to reflect the benefit changes the City made for new hires hired on or after October 4, 2013.

I am including a copy of the new contract for City Council's reference.

If you have any questions or need further information please let me know.

cc: Mayor Donchez
Members of Council
D. Brong
B. Leeson
C. Spadoni

ORDINANCE NO. _____

AN ORDINANCE OF BETHLEHEM CITY, NORTHAMPTON COUNTY, COMMONWEALTH OF PENNSYLVANIA, ELECTING TO AMEND ITS MUNICIPAL PENSION PLAN ADMINISTERED BY THE PENNSYLVANIA MUNICIPAL RETIREMENT SYSTEM PURSUANT TO ARTICLE IV OF THE PENNSYLVANIA MUNICIPAL RETIREMENT LAW; AGREEING TO BE BOUND BY ALL PROVISIONS OF THE PENNSYLVANIA MUNICIPAL RETIREMENT LAW AS AMENDED AND AS APPLICABLE TO MEMBER MUNICIPALITIES. IT IS HEREBY ORDAINED BY BETHLEHEM CITY, NORTHAMPTON COUNTY, AS FOLLOWS:

SECTION I. Bethlehem City (the City), being a member municipality of the Pennsylvania Municipal Retirement System (the System), hereby elects to amend its Municipal Pension Plan administered by the System in accordance with Article IV of the Pennsylvania Municipal Retirement Law, 53 P.S. §881.101 et seq. (Retirement Law), and does hereby agree to be bound by all the requirements and provisions of the Retirement Law and the Municipal Pension Plan Funding Standard and Recovery Act, 53 P.S. §895.101 et seq., and to assume all obligations, financial and otherwise, placed upon member municipalities.

SECTION II. As part of this Ordinance, the City agrees that the System shall administer and provide the benefits set forth in the amended Municipal Pension Plan Contract entered into between the Pennsylvania Municipal Retirement Board and the City effective October 4, 2013 (the Contract).

SECTION III. The passage and adoption of this Ordinance by the City is an official acceptance of the Contract and the financial obligations resulting from the administration of the Contract.

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

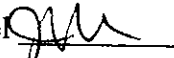
SECTION V. The City intends this Ordinance to be the complete authorization of the Contract and it shall become effective and specifically repeal Ordinance Number 2011-1 (Bill No. 1-2011) either immediately or on October 4, 2013, which is the effective date of the Contract, whichever is later.

SECTION VI. A duly certified copy of this Ordinance and an executed Contract shall be filed with the System.

ORDAINED this _____ day of _____, 2014.

TALLY OF VOTES - YEAS _____ NAYS _____

ATTEST:

Reviewed by PMRS Legal Counsel 

PENNSYLVANIA MUNICIPAL RETIREMENT SYSTEM

MUNICIPAL PENSION PLAN

OF

BETHLEHEM CITY,

NORTHAMPTON COUNTY

TABLE OF CONTENTS

ARTICLE I – PURPOSE	4
SECTION 1.1 THE RETIREMENT SYSTEM.....	4
SECTION 1.2 THE CONTRACT	4
SECTION 1.3 FEDERAL TAX QUALIFICATION.....	4
ARTICLE II – DEFINITIONS	5
SECTION 2.1 DEFINITIONS	5
SECTION 2.2 STATUTORY AUTHORITY	10
ARTICLE III – MEMBERSHIP	11
SECTION 3.1 MANDATORY MEMBERSHIP	11
SECTION 3.2 OPTIONAL MEMBERSHIP	11
SECTION 3.3 PROHIBITED MEMBERSHIP	11
ARTICLE IV – SERVICE	12
SECTION 4.1 CREDITED SERVICE.....	12
SECTION 4.2 PRIOR SERVICE	12
SECTION 4.3 PURCHASE OF SERVICE	12
SECTION 4.4 INTERVENING MILITARY SERVICE	12
SECTION 4.5 NON-INTERVENING MILITARY SERVICE	13
SECTION 4.6 USERRA SERVICE / HEART ACT.....	13
SECTION 4.7 PORTABILITY	14
ARTICLE V – ELIGIBILITY FOR BENEFITS	15
SECTION 5.1 ELIGIBILITY FOR SUPERANNUATION RETIREMENT.....	15
SECTION 5.2 ELIGIBILITY FOR EARLY RETIREMENT BENEFIT.....	15
SECTION 5.3 ELIGIBILITY FOR A VESTED BENEFIT	15
ARTICLE VI – BENEFITS	17
SECTION 6.1 BASIC BENEFIT	17
SECTION 6.2 EXCESS INTEREST BENEFIT.....	17
SECTION 6.3 SERVICE INCREMENT	17
SECTION 6.4 COST OF LIVING ADJUSTMENT	17
SECTION 6.5 MAXIMUM BENEFIT LIMITATIONS	17
SECTION 6.6 SOCIAL SECURITY OFFSET.....	18
ARTICLE VII – OPTIONS UPON TERMINATION OF SERVICE	19
SECTION 7.1 REFUND	19
SECTION 7.2 OPTIONAL FORM OF PAYMENT	19
SECTION 7.3 REQUIRED MINIMUM DISTRIBUTION.....	20
SECTION 7.4 DIRECT ROLLOVER.....	20
SECTION 7.5 DISABILITY RETIREMENT.....	22
ARTICLE VIII – DEATH BENEFITS PRIOR TO RETIREMENT	24
SECTION 8.1 ELIGIBILITY	24
SECTION 8.2 ELECTIONS.....	24
SECTION 8.3 DEATH BENEFIT.....	24

ARTICLE IX – CONTRIBUTIONS	25
SECTION 9.1 MUNICIPALITY CONTRIBUTIONS.....	25
SECTION 9.2 MEMBER CONTRIBUTIONS.....	25
ARTICLE X—RETURN TO SERVICE	26
SECTION 10.1 ANNUITANT.....	26
SECTION 10.2 FORMER MEMBERS OTHER THAN ANNUITANTS.....	26
ARTICLE XI – EXEMPTION OF BENEFITS	27
SECTION 11.1 GENERAL.....	27
SECTION 11.2 DOMESTIC RELATION ORDERS.....	27
SECTION 11.3 FORFEITURE.....	27
ARTICLE XII – PENNSYLVANIA MUNICIPAL RETIREMENT FUND	28
SECTION 12.1 GENERAL.....	28
SECTION 12.2 SEPARATE ACCOUNTS.....	28
SECTION 12.3 DISABILITY.....	28
SECTION 12.4 BASIC BENEFIT.....	28
SECTION 12.5 MUNICIPAL LIABILITY.....	28
SECTION 12.6 EXCLUSIVE BENEFIT.....	28
SECTION 12.7 CUSTODY OF THE FUND.....	29
SECTION 12.8 MANAGEMENT AND INVESTMENT OF THE FUND.....	29
SECTION 12.9 ALLOCATION OF REGULAR INTEREST.....	29
SECTION 12.10 ALLOCATION OF EXCESS INTEREST.....	29
ARTICLE XIII – ADMINISTRATION	31
SECTION 13.1 GENERAL POWERS OF THE BOARD.....	31
SECTION 13.2 LIMITS ON BENEFIT STRUCTURE.....	31
SECTION 13.3 POLICY STATEMENTS.....	31
SECTION 13.4 AMENDMENT OF CONTRACT.....	32
SECTION 13.5 BENEFITS CLAIMS PROCEDURES.....	32
SECTION 13.6 PLAN WITHDRAWAL.....	33
SECTION 13.7 NOTICE.....	34
SECTION 13.8 FILINGS WITH THE BOARD.....	34
SECTION 13.9 EFFECTIVE DATE.....	35
SECTION 13.10 ENTIRE AGREEMENT.....	35
SECTION 13.11 APPLICABLE LAW.....	35
SECTION 13.12 MISTAKE IN THE RECORD.....	36
SECTION 13.13 BINDING EFFECT.....	36
SECTION 13.14 COUNTERPARTS.....	36
SECTION 13.15 SEVERABILITY.....	36
SECTION 13.16 NO PRESUMPTION BASED UPON DRAFTSMANSHIP.....	36
SECTION 13.17 HEADINGS.....	36

ARTICLE I - PURPOSE

Section 1.1 The Retirement System

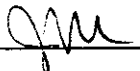
Pursuant to Article IV of the PMRL, the System shall provide for the administration of this Contract for Members of the Municipality.

Section 1.2 The Contract

Pursuant to PMRL Section 104 and Section 401, the Board has adopted standard template language which shall be utilized in the drafting of this Contract. A duly executed Contract shall be the plan document which shall be interpreted consistent with the requirements of the PMRL, the Board adopted regulations, and the Board adopted Policy Statements. In no event shall this Contract extend to a Member any rights beyond those specifically set forth in the PMRL.

Section 1.3 Federal Tax Qualification

The System is a tax-qualified multiple employer retirement system in which the PMRL permits each municipality to establish and maintain a tax-qualified retirement plan pursuant to IRC Section 401(a). This plan is established by the Municipality pursuant to the PMRL and is intended to provide benefits to employees of the Municipality and operate as a governmental plan pursuant to IRC Section 414(d).



ARTICLE II – DEFINITIONS

Section 2.1 Definitions

The following terms shall be defined as set forth below, provided, that each term defined in the PMRL shall have the meaning set forth therein and shall be interpreted consistent with its definition under the PMRL.

“Accumulated Deductions” means the total amount deducted from the Compensation of the Member as set forth in this Contract and paid over by the Municipality or paid by the Member or from any existing pension or retirement System directly into the Fund and credited to the Member’s Account, together with Regular Interest thereon, unless interest is specifically excluded in this Contract.

“Active Member” means a Member who is earning Credited Service under this Contract as a result of employment with a Municipality.

“Actuarially Equivalent” means annuities or lump sum amounts of equal present value determined by appropriate actuarial factors based on mortality tables and interest rates currently adopted and used by the Board. Such mortality tables and interest rates shall comply with IRC Section 415(b)(2), as applicable.

“Actuary” means: (1) a member of the American Academy of Actuaries, or (2) an individual who has demonstrated to the satisfaction of the Insurance Commissioner of Pennsylvania that he or she has the educational background necessary for the practice of actuarial science and has had at least seven years of actuarial experience, or (3) a firm, partnership or corporation of which one or more members meets the requirements of subclauses (1) or (2) above.

“Alternate Payee” means any spouse, former spouse, child or dependent of a Member who is recognized by an Approved Domestic Relations Order as having a right to receive all or a portion of the monies payable to that Member.

“Annuitant” means any Member on or after the Effective Date of Retirement until the Member’s annuity is terminated.

“Approved Domestic Relations Order” means any Domestic Relations Order which has been approved by the System in accordance with the PMRL.

“Basic Benefit” means the Member’s accrued retirement benefit as calculated pursuant to Article VI Section 6.1.

“Beneficiary” means the person or persons last designated in writing to the Board by a Member or an Annuitant, or if one is not so designated, the estate or next of kin under 20 Pa.C.S. § 3101 (relating to payments to family and funeral directors), to the extent applicable, to receive any death benefit after the death of such Member or Annuitant.

"Board" means the Pennsylvania Municipal Retirement Board.

"Commonwealth" means the Commonwealth of Pennsylvania.

"Compensation" means remuneration actually received for services rendered as a Member including salary, overtime, longevity, meal allowances, incentive payments, and educational incentive payments, but excluding reimbursement for expenses incidental to employment. Payments received under the Act of June 2, 1915 (P.L. 736, No. 338), known as "The Pennsylvania Workmen's Compensation Act" shall be included in Compensation. Compensation shall be adjusted as appropriate to comply with the terms of the PMRL and this Contract. For Members who are enrolled in a Plan that has adopted the provisions of IRC § 414(h), Compensation shall also include any such pickup contributions so designated.

Notwithstanding any provision to the contrary, a Member's Compensation shall not exceed the limitations under the IRC §401(a)(17) as adjusted in accordance with IRC §401(a)(17)(B). The adjustment in effect for a calendar year applies to any period, not exceeding twelve months, over which Compensation is determined (the "determination period") beginning in such calendar year. If a determination period consists of fewer than twelve months, the Compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is twelve. The OBRA '93 annual Compensation limit is \$150,000, as adjusted by the Commissioner of Internal Revenue for increases in the cost of living in accordance with IRC Section 401(a)(17)(B). Effective for calendar years beginning on and after January 1, 2002, the Compensation limit shall be \$170,000 as adjusted. Effective for calendar years beginning on and after January 1, 2003, Compensation limit shall be \$200,000. The cost-of-living adjustment in effect for a calendar year applied to any period, not exceeding 12 months, over which compensation is determined (the "determination period") beginning in such calendar year. If a determination period consists of fewer than 12 months, the Compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

For purposes of applying the limitations of IRC Section 415(c), Compensation shall be calculated as provided above and shall also include any elective deferral (as defined in IRC Section 402(g)(3)), severance payments and any amount which is contributed or deferred by the Municipality at the election of the Member and which is not includible in the gross income of the Member by reason of IRC Section 125, IRC Section 132(f) or IRC Section 457. Compensation shall exclude: (A) any distributions from a plan of deferred compensation; and (B) other amounts which received special tax benefits, or contributions made by the Municipality (whether or not under a salary reduction agreement) towards the purchase of an annuity described in IRC Section 403(b) (whether or not the amounts are actually excludible from the gross income of the Municipality).

"Contract" or "Plan" means the agreement between the Board and the Municipality providing for retirement benefits to the Members employed by the Municipality.

"Credited Service" means an increment of service by a Member to a Municipality as determined under the terms of Article IV, Section 4.1.

"Date of Termination of Service" means for an Active Member, the last day of employment in a status covered by the eligibility requirements of the Contract. For an Inactive Member, the date on which formal action is taken by the Municipality to separate the Member from employment.

"Disability Annuitant" means a Member on or after the Effective Date of Disability Retirement until the disability annuity is terminated.

"Domestic Relations Order" means any judgment, decree or order, including approval of a property settlement agreement, by a court of competent jurisdiction pursuant to a domestic relations law which relates to the marital property rights of the spouse or former spouse of a Member, including the right to receive all or a portion of the monies payable to that Member under the System in furtherance of the equitable distribution of marital assets. The term includes orders of support as that term is defined by 23 Pa. C.S. 4302 (relating to definitions) and orders for the enforcement of arrearages as provided by 23 Pa. C.S. § 3703 (relating to enforcement of arrearages).

"DROP" means the Deferred Retirement Option Plan adopted by the Board and set forth in Appendix A to this Contract, if one is so attached.

"DROP participant" means an Annuitant who has elected to participate in the DROP as may be provided under Article VII, Section 7.2 (b).

"Early Retirement Benefit" means the Member's Basic Benefit adjusted for commencement upon early retirement as may be provided under Article V, Section 5.2.

"Effective Date of Disability Retirement" means the date following the last day for which Compensation was paid or the date on which the Member filed an effective application for disability benefits, whichever is later.

"Effective Date of Retirement" means one of the following:

- (a) For a Member who files an application for an annuity within ninety days after the Date of Termination of Service, the later of:
 - (i) the first day following the Date of Termination of Service; or
 - (ii) the date specified on the application.
- (b) For a Member who does not file an application for an annuity within ninety days after the Date of Termination of Service, the later of:
 - (i) the date the application is filed; or
 - (ii) the date specified on the application.
- (c) For a Member who applies for a disability retirement, the date certified by the Board as the Effective Date of Disability Retirement.

- (d) For a DROP participant, the day before the effective date of DROP participation as determined in accordance with Appendix A to this Contract, if one is so attached.

"Eligible Retirement Plan" means any of the following: (a) an individual retirement account described in IRC Section 408(a); (b) an individual retirement annuity described in IRC Section 408(b); (c) an annuity plan described in IRC Section 403(a); (d) a qualified trust described in IRC Section 401(a); (e) an annuity contract described in IRC Section 403(b); and (f) an eligible plan under IRC 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 accepts the Member's Eligible Rollover Distribution. However, in the case of an Eligible Rollover Distribution to the non-spousal Beneficiary of a Member, an Eligible Retirement Plan is an individual retirement account or individual retirement annuity.

"Eligible Rollover Distribution" means any distribution of all or any portion of the balance of a qualified plan described in IRC Section 401(a) or 403(a), an annuity described in IRC Section 403(b), or an eligible deferred Compensation plan described in IRC 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. The above notwithstanding, an Eligible Rollover Distribution does not include: (a) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Member or the joint lives (or joint life expectancies) of the Member and the Member's Beneficiary, or for a specified period of ten years or more; (b) any distribution to the extent such distribution is required under IRC Section 401(a)(9); and (c) the portion of any distribution which consists of after-tax employee contributions.

"Equivalent Actuarial Value" means benefits which have equal present value when computed on the basis of interest and the mortality tables adopted by the Board and in use at the date the benefit becomes effective.

"Excess Interest" means the investment earnings on the Fund in excess of that required for allocation to Regular Interest and expenses.

"Final Salary" means the average annual Compensation earned and paid during the Member's final five (5) years of Credited Service or if not so long employed, then the average annual Compensation earned and paid during the whole period of such employment.

"Fund" means the Pennsylvania Municipal Retirement Fund.

"Inactive Member" means a Member who is enrolled in the System but is no longer earning Credited Service under this Contract as a result of separation from or leave from employment with a Municipality.

"IRC" means the Internal Revenue Code of 1986, as designated and referred to in the Federal Tax Reform Act of 1986 (Public Law 99-514) as amended. A reference to "IRC Section ____" shall be deemed to refer to the identically numbered section and subsection or other subdivision of such section in 26 U.S.C. (relating to Internal Revenue Code), as such identically numbered section may be amended.

"Member" means an elected official or municipal employee who meets the eligibility requirements in Article III, Section 3.1 or 3.2 and is paid on a regular salary or per diem basis. The term shall not include elected officials and employees paid wholly on a fee basis.

"Member's Account" means the account to which shall be credited any Accumulated Deductions, municipal contributions made on behalf of the Member and Excess Interest.

"Member's Annuity" means that portion or component of the Basic Benefit which is of Equivalent Actuarial Value, at date of retirement, to the Accumulated Deductions of the Member.

"Member's Excess Investment Account" means the account maintained for each Member, to which shall be credited such Excess Interest deemed to be earned on Accumulated Deductions.

"Municipal Account" means the Account maintained for the Municipality, to which shall be credited the contributions made by it toward the benefits of the Members under the System.

"Municipality" means Bethlehem City, Northampton County.

"Original Member" means a Member who was employed by the Municipality as of the date the Municipality joined the System.

"Pennsylvania Municipal Retirement Law" means, 53 P. S. §881.101 et seq. A reference to "PMRL Section ____" shall be deemed to refer to the identically numbered subsection of 53 P.S. § 881 as may be amended.

"PMRL" See the Pennsylvania Municipal Retirement Law.

"Policy Statement" means a statement of rule adopted by the Board as provided in Article XIII, Section 13.3 and as authorized by PMRL Section 104(10).

"Prior Service" means all service as an Original Member completed at the time the Municipality elected to join the System.

"Regular Interest" means the rate fixed by the board, from time to time, on the basis of earnings on investments to be applied to the Member's Accounts, Municipal Accounts and the Retired Member's Reserve Account.

"Retired Member's Reserve Account" means the account from which all Basic Benefits shall be paid for Superannuation, Early and disability retirements.

"Service Connected Disability" means total and permanent disability of a Member resulting from a condition arising out of and incurred in the course of employment, and which is compensable under the applicable provisions of the act of June 2, 1915 (P.L. 736, No. 338), known as "The Pennsylvania Workmen's Compensation Act," or the act of June 21, 1939 (P.L. 566, No. 284), known as "The Pennsylvania Occupational Disease Act."

"Superannuation Retirement Age" means the age and credited service, if any, set forth in Article V, Section 5.1.

"Superannuation Retirement Benefit" means the accrued unreduced Basic Benefit payable to a Member upon attainment of Superannuation Retirement Age.

"Survivor Annuitant" means any person who has been named by a Member under a joint and survivor annuity option to receive an annuity upon the death of such Member.

"System" means the Pennsylvania Municipal Retirement System, a multiple employer retirement system created pursuant to the PMRL.

"Total Disability Reserve Account" means the account to which shall be credited the contributions made by the Municipality toward the disability retirement of Members.

"USERRA" means the federal Uniformed Services Employment and Reemployment Rights Act of 1994 (Pub. L. 101-353, 38 U.S.C. §§ 4303 et seq.).

"Vested Member" means a Member after a stipulated age or with sufficient years of service, or both, as set forth in Article V, Section 5.3 who has terminated service with the Municipality and has elected to leave total Accumulated Deductions in the Fund and to defer receipt of a Basic Benefit, provided the election is made within 90 days after the Date of Termination of Service.

Section 2.2 Statutory Authority

The aforementioned definitions shall be interpreted consistent with the PMRL, Board adopted regulations, and Board adopted Policy Statements.

ARTICLE III – MEMBERSHIP

Section 3.1 Mandatory Membership

Membership for full-time officers and employees of the Municipality is mandatory.

Section 3.2 Optional Membership

- (a) Eligibility.-- Membership for elected officials is optional.
- (b) Election.-- To become a Member, an employee eligible under Section 3.2(a) must file an election with the System within one year after the employee first enters the service of the Municipality regardless of the employee's probationary status.
- (c) Declination of Optional Membership.-- If the employee eligible under Section 3.2(a) elects not to join, the declination of membership under this Contract shall be irrevocable and shall apply for the period of time the employee serves continuously in that optional category. If there is a break in service and the employee returns to service in any employment capacity, the employee shall not be eligible to purchase the optional membership time previously declined.

Section 3.3 Prohibited Membership

Membership for part-time employees, seasonal employees, and temporary employees is prohibited, as is membership for individuals paid only on a fee basis.

ARTICLE IV - SERVICE

Section 4.1 Credited Service

- (a) Credited Service shall begin to accrue as of the Member's date of enrollment in the System.
- (b) The Member's date of enrollment in the System shall be the date the Municipality entered into the System or the Member's date of hire, whichever is more recent.

Section 4.2 Prior Service

An Original Member shall be granted Credited Service for Prior Service from the date of hire.

Section 4.3 Purchase of Service

If a former Member of the Municipality returns to service with the Municipality and becomes a Member, the Member may restore to the Fund the amounts refunded under Article VII, Section 7.1. The Member's annuity rights shall be restored as they existed at the time of separation from service provided the Member pays the amount due plus Regular Interest up to the date of purchase in a lump sum within 30 days after billing, or through salary deductions amortized with Regular Interest through a repayment period of not more than 5 years.

Section 4.4 Intervening Military Service

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

Section 4.5 Non-Intervening Military Service

- (a) An Active Member may purchase credit for other than intervening military service performed for the United States in times of war, armed conflict or national emergency, so proclaimed by the President of the United States, for a period not to exceed five (5) years, provided the Member has completed five (5) years of service to the Municipality subsequent to such military service. An Active Member may file an application with the Board for permission to purchase credit for nonintervening military service upon completion of five (5) years of subsequent service to the Municipality.
- (b) The rate of interest charged a Member on purchase of credit for nonintervening military service shall be the Regular Interest in effect on the date of the Member's application.
- (c) An Active Member may purchase credit for nonintervening military service only if discharge or separation from the service was granted under other than dishonorable conditions. A Member may not purchase military credit for any service that is covered by another retirement system administered and wholly or partially paid for by any other government agency or private employer.

Section 4.6 USERRA Service / HEART Act

- (a) **Qualified Military Service.--** Notwithstanding any provisions herein to the contrary, contributions, benefits and service credit with respect to "qualified military service" within the meaning of IRC Section 414(u)(5) will be provided in accordance with IRC Section 414(u).
- (b) **HEART Act Provisions.--**
 - (i) **Death benefits.** In the case of a death or disability occurring on or after January 1, 2007, if a Member dies while performing qualified military service (as defined in IRC Section 414(u)), the survivors of the Member are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the System as if the Member had resumed and then terminated employment on account of death.
 - (ii) **Benefit accrual.** For benefit accrual purposes, the System will treat an individual who dies or becomes disabled (as determined by the System) while performing qualified military service with respect to the Member as if the Member had resumed employment in accordance with the Member's reemployment rights under USERRA, on the day preceding death or disability (as the case may be) and terminated employment on the actual date of death or disability.

(iii) Determination of benefits. The System will determine the amount of member contributions of an individual treated as reemployed under this Section 4.6 for purposes of applying IRC Section 414(u)(8)(C) on the basis of the Member's average actual employee contributions for the lesser of: (i) the 12-month period of service with the Municipality immediately prior to qualified military service; or (ii) if service with the Municipality is less than such 12-month period, the actual length of continuous service with the Municipality.

(iv) Differential wage payments. For years beginning after December 31, 2008:

- (a) a Member receiving a differential wage payment, as defined by IRC Section 3401(h)(2), shall be treated as an employee of the employer making the payment;
- (b) the differential wage payment shall be treated as Compensation; and,
- (c) the System shall not be treated as failing to meet the requirements of any provision described in IRC Section 414(u)(1)(C) by reason of any contribution or benefit which is based on the differential wage payment.

Section 4.7 Portability

When a Member leaves the employ of the Municipality and enters within one year of separation into the employ of another municipality that has joined the System, the Member's service credits shall remain unimpaired. Should a Member from the employ of another municipality that has joined the System separate from service and within one year of separation be employed by the Municipality and qualify for membership under this Contract, the Member's service credits will remain unimpaired. In such cases, the municipal liability for past service shall be prorated by the System between the municipalities on an equitable basis.

ARTICLE V – ELIGIBILITY FOR BENEFITS

Section 5.1 Eligibility for Superannuation Retirement Benefit

- (a) For Members hired prior to October 4, 2013, a Member shall be eligible for a Superannuation Retirement Benefit upon attainment of Superannuation Retirement Age, which shall be fifty-five (55) years of age.
- (b) For Members hired on or after October 4, 2013, a Member shall be eligible for a Superannuation Retirement Benefit upon attainment of Superannuation Retirement Age, which shall be sixty-two (62) years of age.

Section 5.2 Eligibility for Early Retirement Benefit

- (a) A Member who voluntarily terminates service after twenty (20) years of Credited Service may apply for an Early Retirement Benefit.
- (b) A Member whose service is involuntarily terminated after eight (8) years of Credited Service may apply for an Early Retirement Benefit.
- (c) A Member hired on or after October 4, 2013 who voluntarily terminates service after attaining fifty-five (55) years of age may apply for an Early Retirement Benefit.
- (d) For Members hired prior to October 4, 2013, the Early Retirement Benefit will be actuarially reduced for each year or partial year thereof prior to fifty-five (55) years of age that early retirement takes place. For Members hired on or after October 4, 2013, the Early Retirement Benefit will be actuarially reduced for each year or partial year thereof prior to sixty-two (62) years of age that early retirement takes place.

Section 5.3 Eligibility for a Vested Benefit

- (a) A Member shall vest upon the completion of twelve (12) years of Credited Service provided the Member files an application to vest with the Board within ninety (90) days of the Member's Date of Termination of Service.
- (b) A Vested Member shall be entitled to a Superannuation Retirement Benefit upon attainment of fifty-five (55) years of age for Members hired prior to October 4, 2013 and sixty-two (62) years of age for Members hired on or after October 4, 2013.

- (c) In the event that a Member fails to file within ninety days of the Member's Date of Termination of Service, the Member shall be deemed ineligible for a vested benefit. The amount payable to the Member shall be determined in accordance with Article VII, Section 7.1.
- (d) The above notwithstanding, a Member who has not terminated service shall vest upon attainment of Superannuation Retirement Age as set forth in Section 5.1(a) and (b), as applicable, regardless of the years of Credited Service set forth in subsection (a).

ARTICLE VI – BENEFITS

Section 6.1 Basic Benefit

The annual Basic Benefit shall be calculated by multiplying the Member's Final Salary by all years of Credited Service and multiplied by the benefit accrual rate of two percent (2%). Provided however, in no event shall the annual Basic Benefit exceed eighty percent (80%) of the Member's Final Salary for Members hired prior to October 4, 2013 and sixty-five percent (65%) of the Member's Final Salary for Members hired on or after October 4, 2013.

Section 6.2 Excess Interest Benefit

An annual Excess Interest benefit shall be equal to a single life annuity starting on the Effective Date of Retirement with a present value equal to the Member's Excess Investment Account.

Section 6.3 Service Increment

Not available.

Section 6.4 Cost of Living Adjustment

Not available.

Section 6.5 Maximum Benefit Limitations

- (a) General Limitation.-- The annual retirement benefit payable to any Member shall not exceed the maximum permissible amount for the System year pursuant to IRC Section 415(b) and, to the extent applicable, Section 415(c).
- (b) Adjustment of Limitations.--
 - (i) To the extent the limitations set forth herein may be from time to time adjusted by statutes, regulations or other publications issued by the Internal Revenue Service, such adjusted amounts shall be substituted for the amounts set forth in this section, provided that no such adjustment shall reduce a Member's accrued benefit unless such adjustment is required to preserve the qualified status of the System or the applicable Plan.

- (ii) If a benefit is to be distributed in a form other than a single or straight life annuity or joint and survivor annuity (including any death benefit payable as a survivor's annuity), the actuarial equivalent (as determined pursuant to IRC Section 415(b)(2)(B)) of a single life annuity of such benefit must satisfy the limitations set forth in this section. Further adjustments may be made by the Board, as permitted by IRC Section 415 and the regulations promulgated thereunder, under the appropriate circumstances including, if authorized by the Board, receipt by the System of rollover contributions or assets or liabilities transferred from another qualified plan.
- (iii) In the event that a Member's benefit is to be distributed prior to age 62, the currently effective dollar amount in subsection (a) of this section shall be actuarially reduced to the actuarial equivalent (as determined pursuant to IRC Section 415(b)(2)(C)) of an annual benefit equal to the dollar amount commencing at age 62 in the manner as prescribed by IRC Section 415.
- (iv) In the event that a Member's benefit is to be distributed after age 65, the currently effective dollar amount in subsection (a) of this section shall be actuarially increased to the actuarial equivalent (as determined pursuant to IRC Section 415(b)(2)(D)) of an annual benefit equal to such dollar amount commencing at age 65 in the manner as prescribed by IRC Section 415.
- (v) With regard to any Member identified in IRC Section 415(b)(2)(H), this subsection (b) shall not serve to reduce the limitation set forth in subsection (a).
- (c) This section shall be interpreted consistent with the limitations on annual benefits set forth under IRC Section 415(b) and Treasury Regulations thereunder as applicable to governmental plans under IRC Section 414(d).
- (d) To the extent applicable, in no event shall a Member or a Municipality be permitted to make a contribution in an amount which exceeds the limitations on contributions and other additions as set forth under IRC Section 415(c) and Treasury Regulations thereunder, as applicable January 1, 2012.
- (e) For purposes of this IRC Section 415, the "limitation year," is the calendar year.

Section 6.6 Social Security Offset

There shall be no offset for Social Security retirement benefits received by a Member.

ARTICLE VII – OPTIONS UPON TERMINATION OF SERVICE

Section 7.1 Refund

A Member who terminates service may elect to receive the Accumulated Deductions and the Member's Excess Investment Account standing to the credit of the Member as of the Date of Termination of Service, in lieu of receipt of a benefit provided under Article VI.

Section 7.2 Optional Form of Payment

(a) Single Life Annuity.--

(i) Upon attainment of eligibility to receive a Superannuation Retirement Benefit or eligibility to elect an Early Retirement Benefit, a Member separating from service may elect to receive the benefits provided in Article VI. Such benefits shall be calculated in accordance with Article VI and shall be paid throughout the Member's life.

(ii) In the event of the death of an Annuitant who has elected to receive a single life annuity before the Annuitant has received in total annuity payments an amount equal to the full amount of the Accumulated Deductions plus Excess Interest standing to the Member's credit on the Effective Date of Retirement, the difference between the total payments made to the date of death and the Accumulated Deductions plus Excess Interest shall be paid to the Beneficiary.

(b) Reduced Annuity Options.-- The Member may alternatively elect at the time of retirement to receive the Equivalent Actuarial Value in a lesser allowance, payable throughout life with provisions that:

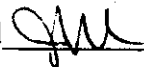
(i) Option 1. A life annuity to the Member with a guaranteed total payment equal to the present value of the single life annuity on the Effective Date of Retirement. If, at death, the Member has received less than such present value as it was as of the Effective Date of Retirement, the unpaid balance shall be payable to the Beneficiary. If the balance is less than five thousand dollars (\$5,000), it shall be paid in a lump sum to the Beneficiary if living, or if the Beneficiary predeceased the Member or if no Beneficiary was named, then to the Member's estate. If the balance is five thousand dollars (\$5,000) or more, the Beneficiary may elect, by application duly acknowledged and filed with the Board to receive payment of such balance according to any one of the following provisions:

- (a) in a lump-sum payment; or,
- (b) in an annuity having a present value equal to the balance payable; or,

- (c) in a lump-sum payment and an annuity. Such annuity shall be of Equivalent Actuarial Value to the balance payable less the amount of the lump-sum payment specified by the Beneficiary.
 - (ii) Option 2. Upon the Annuitant's death, the joint and survivor annuity shall be continued throughout the life of and paid to the Survivor Annuitant, if then living.
 - (iii) Option 3. Upon the Annuitant's death, one-half of the joint and survivor annuity shall be continued throughout the life of and paid to the Survivor Annuitant, if then living.
 - (iv) Option 4. A Member may elect to receive, in one payment at the time of retirement, the full amount of the Accumulated Deductions, excluding Excess Interest, standing to the Member's credit in the Member's account. In so electing this option, the Member forfeits the portion of the annuity paid from the Accumulated Deductions, but shall continue to be entitled to an annuity comprised of the municipal contribution and any Excess Interest credited to the account. Any Member electing this option shall be entitled to receive the remaining annuity calculated in accordance with any of the other options provided for in this section.
 - (v) Option 5. Not Available.
- (c) If a Member has elected a joint and survivor annuity option and the Member and Survivor Annuitant die before receiving in annuity payments the full amount of the total Accumulated Deductions and Excess Interest standing to the credit of the Member on the Effective Date of Retirement, the balance shall be paid to the Beneficiary.

Section 7.3 Required Minimum Distribution

In no event may a Member or Beneficiary be entitled to a form of payment which commences or is payable over a period which fails to satisfy the required distribution provisions of IRC Section 401(a)(9), including the incidental benefit distribution requirements. The Board shall adopt procedures as necessary to comply with IRC Section 401(a)(9) and Treasury Regulations thereunder as applicable to governmental plans.



Section 7.4 Direct Rollover

- (a) **Eligible Rollover Distributions.**-- If a Member is eligible for a distribution that qualifies as an "Eligible Rollover Distribution" as defined herein and under IRC Section 402(f)(2)(A), such amount shall be distributed as follows:
- (i) If the distributable amount is \$1,000 or less, it shall be distributed as a direct payment to such Member as soon as administratively practicable after separation from service.
 - (ii) If the distributable amount is \$5,000 or less, but more than \$1,000, then it shall be distributed as soon as administratively practicable after separation from service, as follows:
 - (a) Upon the written consent of the Member, by rollover to an Eligible Retirement Plan as directed by the Member (as provided in subsection (b) below) or by direct payment to the Member; or
 - (b) In absence of the Member's written consent, by direct transfer to an individual retirement account maintained on behalf of the Member by a trustee designated by the Board.
 - (iii) If the distributable amount exceeds \$5,000, it shall be distributed by direct payment to such Member (or by rollover to an Eligible Retirement Plan, as directed by the Member pursuant to subsection (b) below) as follows:
 - (a) If the Member has attained Superannuation Retirement Age, it shall be distributed as soon as administratively practicable after separation from service.
 - (b) If the Member has not attained Superannuation Retirement Age, it shall be distributed as soon as administratively practicable after the Member attains Superannuation Retirement Age; or, if the Member consents to such distribution in writing, as soon as administratively practicable after receipt of such consent.
- (b) **Direct Rollovers.**-- Except as provided in subsection (a)(1) above, a Member, a Member's surviving spouse, a Member's Beneficiary or a Member's former spouse who is an Alternate Payee under an Approved Domestic Relations Order pursuant to Article XI, Section 11.2, may elect, at the time and in the manner prescribed by the Board, to have any portion of his or her distribution paid directly, as an Eligible Rollover Distribution, to an Eligible Retirement Plan.

Section 7.5 Disability Retirement

- (a) **General Rule.**--A Member may, upon application or on application of one acting on the Member's behalf, or upon application of a responsible official of the Municipality, be retired by the Board on a disability retirement if the medical examiner designated by the Board following a review of the application and any supporting medical records and other documentation submitted with the application certifies to the Board that the Member is unable to engage in any gainful employment and that said Member ought to be retired.
- (b) Once every year the Board may require a medical review of subsequent medical documentation of the Disability Annuitant, while still under Superannuation Retirement Age, by the medical examiner designated by the Board. Should the medical examiner recommend to the Board that such Disability Annuitant is no longer physically or mentally incapacitated and is able to engage in a gainful occupation, then the portion of the annuity funded from the Total Disability Reserve Account shall be discontinued.
- (c) Should a Disability Annuitant, while under Superannuation Retirement Age, refuse to submit to at least one medical review in any year, the disability retirement shall be discontinued until the withdrawal of such refusal, and should such refusal continue for one year, then all rights in and to any disability retirement or for early involuntary retirement as may be provided under the Contract, shall be forfeited.
- (d) Should a Disability Annuitant die before the amount payable under this section equals the amount of Accumulated Deductions plus the balance in the Member's Excess Investment Account as of the Effective Date of Disability Retirement, the Board shall pay to the Beneficiary (if living, or if the Beneficiary predeceased the Disability Annuitant, or no Beneficiary was named, then to the Disability Annuitant's estate) an amount equal to the difference between such amounts paid under this Section and the Accumulated Deductions and the balance in the Member's Excess Investment Account. If such difference is less than one hundred dollars (\$100) and no letters have been taken out on the estate within six (6) months after the Disability Annuitant's death, such difference may be paid to the undertaker or to any person or Municipality who or which shall have paid the claim of the undertaker.
- (e) **Service Connected Disability.**
 - (i) When the disability of a Member is determined to be a Service Connected Disability, no minimum period of Credited Service shall be required for eligibility to receive a disability retirement.

- (ii) A Service Connected Disability shall equal an annual benefit of fifty percent (50%) of the Disability Annuitant's Final Salary.
- (f) Non-Service Connected Disability.
 - (i) When the disability of a Member is determined to be non-service connected, the Member shall be eligible to apply for a disability retirement if the Member has completed ten (10) years of Credited Service.
 - (ii) A non-service connected disability shall equal an annual benefit of thirty percent (30%) of the Disability Annuitant's Final Salary.
- (g) A Member with eight (8) or more years of Credited Service eligible for a disability retirement, may, in lieu of a disability retirement, elect to retire not voluntarily under the provisions of Article V, Section 5.2(b).
- (h) The portion of the disability annuity funded from the Total Disability Reserve Account shall be reduced by the amount of any payments for which the Disability Annuitant shall be eligible under the Act of June 2, 1915 (P.L. 736, No. 338), known as "The Pennsylvania Workmen's Compensation Act" or the Act of June 21, 1939 (P.L. 566, No. 284), known as "The Pennsylvania Occupational Disease Act."

ARTICLE VIII – DEATH BENEFITS PRIOR TO RETIREMENT

Section 8.1 Eligibility

An Active Member or Vested Member who has:

- (a) met the eligibility requirements for a Superannuation Retirement Benefit found in Article V, Section 5.1 or,
- (b) met the eligibility requirements for a voluntary Early Retirement Benefit found in Article V, Section 5.2(a) and (c)

may file a written application for retirement requesting that such retirement become effective at the time of death.

Section 8.2 Elections

When filing an application under this part, one of the options provided in Article VII, Section 7.2 may be elected. The application shall be held by the Board until (1) a later application for a retirement is filed or (2) the death of the Active Member or Vested Member prior to the Effective Date of Retirement.

Section 8.3 Death Benefit

- (a) If an Active Member or Vested Member dies before becoming eligible for any benefits under this Contract, the balance of the Member's Account shall be paid to the Beneficiary.
- (b) If an Active Member or Vested Member meets the eligibility requirements of Section 8.1 and files an application under this part, benefits shall become effective as if such Active Member or Vested Member had retired on the day immediately preceding death in accordance with the annuity option elected in the application.
- (c) If an option was not filed with the Board under this part, it shall be considered that the Active Member or Vested Member elected Option I as provided in Article VII Section 7.2(b)(i). In such event, payment under Option I shall be made to the Beneficiary.

ARTICLE IX -- CONTRIBUTIONS

Section 9.1 Municipality Contributions

- (a) The Board will actuarially determine the normal cost of the benefits provided in this Contract and any liability associated with the actuarial experience of such benefits which shall be contributed annually by the Municipality. The Board shall determine and the Municipality shall be charged an additional amount to be contributed annually toward a reserve account for any disability benefit which may be payable under this Contract.
- (b) The amounts so determined shall be computed in accordance with the Municipal Pension Plan Funding Standard and Recovery Act, 53 P.S. §895.101 et seq., and the PMRL.

Section 9.2 Member Contributions

- (a) Members shall contribute five-tenths percent (7.5%) of their Compensation.
- (b) If sufficient funds exist, the Municipality may annually elect to lower or waive the required member contribution rate by adopting a resolution and filing it with the Board.
- (c) Contributions shall be deducted from payroll and transmitted to the System by the Municipality in accordance with the Board's policy regarding the treatment of member contributions.
- (d) Member contributions will be treated as taxed at the time they are made to the System, will be tracked separately, and will not be treated as taxable when paid out to the Member.

ARTICLE X—RETURN TO SERVICE

Section 10.1 Annuitant

- (a) If an Annuitant, other than a Disability Annuitant, returns to service with the same Municipality, the annuity shall cease, and in the case of an annuity, other than a disability annuity, the present value of such annuity shall be frozen as of the date such annuity ceases.
- (b) Upon subsequent discontinuance of service, such Annuitant, other than a former Disability Annuitant, shall be entitled to an annuity which is Actuarially Equivalent to the sum of the present value of the annuity previously being paid and the present value of the annuity earned by further service and further deductions added upon reemployment.
- (c) The above notwithstanding, if the Annuitant is otherwise eligible to receive an in-service distribution of the annuity due to (i) attainment of normal retirement age as defined in the IRC, (ii) operation of IRC Section 401(a)(36); or (iii) operation of any other provision as may be adopted by the Board and consistent with the tax-qualification provisions of the IRC, the annuity shall continue to be paid through the period of such reemployment; but the Annuitant shall not be enrolled as a Member or receive credited service during any period of an in-service distribution.
- (d) The Municipality is required to notify the Board immediately of the reemployment status of any Annuitant.

Section 10.2 Former Members other than Annuitants

- (a) If a former Member of the Municipality returns to service with the Municipality and becomes a Member, the Member may restore to the Fund the amounts refunded under Article VII, Section 7.1 that represent that Member's previous service, and continue accruing Credited Service for service rendered subsequent to the return to service.
- (b) The Member's annuity rights shall be restored as they existed at the time of separation from service provided the Member pays the amount due plus Regular Interest up to the date of purchase in a lump sum within 30 days after billing, or through salary deductions amortized with Regular Interest through a repayment period of not more than 5 years.

ARTICLE XI – EXEMPTION OF BENEFITS

Section 11.1 General

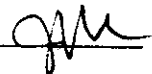
The Basic Benefit, Accumulated Deductions and the moneys in the Fund shall be exempt from any State or municipal tax and shall be unassignable except to a Beneficiary.

Section 11.2 Domestic Relation Orders

Rights under this Contract shall be subject to attachment in favor of an Alternate Payee as set forth in an Approved Domestic Relations Order.

Section 11.3 Forfeiture

- (a) Rights under this Contract shall be subject to forfeiture as required under the act of July 8, 1978 (P.L.752, No.140), known as the "Public Employee Pension Forfeiture Act." Forfeitures under this clause or under any other provision of law may not be applied to increase the benefits that any member would otherwise receive under this act.
- (b) The Public Employee Pension Forfeiture Act states that all benefits payable to a public employee must be forfeited if the employee is convicted of, or pleads guilty or no defense to a crime related to public office or public employment enumerated in the Public Employee Pension Forfeiture Act.
- (c) In the event a Member is convicted of, pleads guilty or no defense to a forfeitable crime, the Member will be entitled to receive the retirement contributions the Member made, without Regular Interest or Excess Interest, unless a court of competent jurisdiction orders the Member's contributions to be paid as restitution to the Municipality.
- (d) All service and benefits forfeited by operation of the Public Employee Pension Forfeiture Act shall be ineligible for retirement coverage should the Member later gain public employment and qualify for membership in the System, regardless of the employing Municipality.



ARTICLE XII -- PENNSYLVANIA MUNICIPAL RETIREMENT FUND

Section 12.1 General

The Pennsylvania Municipal Retirement Fund shall consist of contributions by municipalities from payroll deductions, from other contributions made by members through the employing municipality to the System, transfers made from municipal retirement or pension systems and investment earnings.

Section 12.2 Separate Accounts

The Board shall keep separate accounts for each municipality, except the Total Disability Reserve Account and the Retired Member's Reserve Account which shall be maintained as pooled accounts. The Municipality and the Members shall be liable to the Board for the amount of contributions required to cover the cost of the Basic Benefit and other benefits payable to such Members.

Section 12.3 Disability

Upon the granting of a disability retirement, there shall be transferred to the Retired Member's Reserve Account the amount of the Disability Annuitant's Member's Account, together with an amount from the Municipal Account to equal the amount of the Equivalent Actuarial Value of the Basic Benefit, and such additional amount from the Total Disability Reserve Account as may be needed to provide the actuarial equivalent of the disability retirement to which the Disability Annuitant is entitled.

Section 12.4 Basic Benefit

Upon the granting of a Basic Benefit, there shall be transferred to the Retired Member's Reserve Account the amount of the Member's Account, plus an amount from the Municipal Account such that the sum will equal the Equivalent Actuarial Value to the annuity provided in Article VII, Section 7.2(a).

Section 12.5 Municipal Liability

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

Section 12.6 Exclusive Benefit

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

- (a) Benefits to Members in accordance with the PMRL and this Contract; and,
- (b) Necessary and appropriate expenses of the System.

Section 12.7 Custody of the Fund

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

Section 12.8 Management and Investment of the Fund

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

Section 12.9 Allocation of Regular Interest

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

Section 12.10 Allocation of Excess Interest

- (a) The Board may, after deducting money to pay for Regular Interest and any appropriate expenses of the System, award Excess Interest to the Municipality in accordance with Board adopted policy.
- (b) Notwithstanding any other provision, Excess Interest shall not be allocated to the Member's Accounts and/or Retired Members' Reserve Account if the Municipality's funding status in relation to the benefit structure set forth under this Contract is less than 95% funded as of the most recent actuarial report filed pursuant to the Municipal Pension Plan Funding Standard and Recovery Act, 53 P.S. § 895.101 et seq.
- (c) In the event that the Municipality's funding status in relation to the benefit structure set forth under this Contract is less than 95% funded as of the most recent actuarial report filed pursuant to the Municipal Pension Plan Funding Standard and Recovery Act, 53 P.S. § 895.101 et seq., all Excess Interest awarded by the Board shall be allocated to the Municipal Account.

- (d) In the event that the Municipality's funding status in relation to the benefit structure set forth under this Contract is 95% funded or more as of the most recent actuarial report filed pursuant to the Municipal Pension Plan Funding Standard and Recovery Act, 53 P.S. § 895.101 et seq., Excess Interest awarded to the Municipality shall be allocated as follows:

33.34% to the Municipal Account,

33.33% to the Member's Account,

33.33% to the Retired Member's Reserve Account.

- (e) The amount allocated to the Member's Account shall be credited in accordance with Board adopted policy in an equal percentage to each Member based on the assets in each Member's Account.
- (f) The amount allocated to the Retired Member's Reserve Account shall be credited so as to provide an equal percentage benefit increase to each Annuitant and Survivor Annuitant in accordance with Board adopted policy.

ARTICLE XIII -- ADMINISTRATION

Section 13.1 General Powers of the Board

In the administration of the System the Board has the exclusive authority under the PMRL to:

- (a) Contract for professional services, including but not limited to actuarial, investment and medical as it deems advisable;
- (b) Keep in convenient form such data as shall be deemed necessary for actuarial valuation purposes;
- (c) From time to time, through its Actuary, make an actuarial investigation into the mortality and service experience of the Members and Annuitants and of the various accounts created by the PMRL;
- (d) Adopt for the System one or more mortality tables and such other tables as shall be deemed necessary;
- (e) Certify annually the amount of appropriation which the Municipality shall pay into the Fund, which amounts shall be based on estimates furnished by the Actuary;
- (f) Prepare and distribute annual statements of accounts to each of the Active Members, showing the contributions made during the year, the interest earned and the total balance standing in the Member's Account at the end of the year;
- (g) Perform such other functions as are required for the execution of the PMRL and of any other Federal and State law and to administer and interpret this Contract to ensure that the System is maintained as tax qualified under the IRC.

Section 13.2 Limits on Benefit Structure

This Contract shall not provide benefits in excess of or provide for member contribution rates less than those available to the Municipality's class of employees covered by this Contract under existing law, including laws applicable to the establishment of pension plans.

Section 13.3 Policy Statements

- (a) Pursuant to PMRL Section 104(5), the Board has authority to adopt Policy Statements as necessary to administer the System and establish rules regarding the operation of the System. Policy Statements shall remain in full force and effect until superseded or otherwise revoked by the Board.

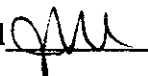
- (b) Any Policy Statement shall be deemed incorporated herein by reference regardless of its adoption date and shall be binding on the Municipality to the extent applicable.
- (c) Any Policy Statement may be retitled, amended, or supplemented from time to time by written notice to the Municipality.
- (d) The Board shall provide written notice to the Municipality within ninety (90) days of enactment of any new Policy Statement.

Section 13.4 Amendment of Contract

- (a) The Board and the Municipality shall have authority at any time to amend this Contract. No amendment or modification of this Contract, except as permitted under Section 13.3, shall have any force or effect unless it is in writing and signed by the parties hereto.
- (b) Notwithstanding any other provision, in no event shall an amendment to this Contract:
 - (i) authorize that any part of the Fund be used for or diverted to purposes other than the payments of benefits herein or appropriate administrative expenses; or
 - (ii) have the effect of decreasing a Member's benefit accrued under the System.
- (c) Benefit improvements shall be determined on a total plan basis and not on a benefit-by-benefit comparison nor on an individual-by-individual comparison.

Section 13.5 Benefits Claims Procedures

- (a) The Board is statutorily vested with the exclusive jurisdiction to administer and interpret this Contract in accordance with the PMRL. The parties hereby waive any claim or defense that such forum is not convenient or proper.
- (b) If a Member and/or Municipality believe that a right or benefit under this Contract has been improperly denied, a written request for a final determination must be filed with the System.
- (c) If the Member and/or Municipality disagrees with the final determination reached by the System, the Member and/or the Municipality has the right to file an appeal and request an administrative hearing before the Board. *See* 1 Pa. Code §§ 31.11, 31.15, 33.31, 33.34, and 35.20. The appeal and request for an administrative hearing must include a statement of the facts that forms the basis of the requested relief and all points of law that support the claim.



- (d) An administrative hearing is a process in which evidence is presented before an independent hearing examiner who makes a recommendation to the Board, following which the Board renders a final adjudication. All administrative hearings are conducted at the Board's headquarters in Harrisburg. The Board's final adjudication is subject to an appeal before the Commonwealth Court of Pennsylvania.
- (e) All appeals and requests for administrative hearings must be made in writing within 30 days of the date of the final determination and sent to:

**Appeal Docket Administrator
Pennsylvania Municipal Retirement Board
5 North Fifth Street
Harrisburg, PA 17101-1905**

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

Section 13.6 Plan Withdrawal

- (a) **Withdrawal.--** The Municipality may, for good cause, file an application with the Board for permission to withdraw from the system if it meets all of the following requirements:
 - (i) The Municipality has been enrolled in the System for a period of at least five years.
 - (ii) The Municipality has met all of its financial obligations to the System.
 - (iii) The Municipality has passed an ordinance signifying its intention to withdraw from the System.
 - (iv) The Municipality has certified to the Board that an affirmative vote approving withdrawal from the System had been obtained from at least seventy-five per cent of all Active Members, Inactive Members, Vested Members, Annuitants, and Survivor Annuitants.
 - (v) The Municipality has acknowledged its responsibility to assume and provide for all future benefit payments to the existing Active Members, Inactive Members, Vested Members, Annuitants, Survivor Annuitants, and their Beneficiaries effective upon the withdrawal.

- (vi) The application has specified a date for the withdrawal to become effective, provided if there are Annuitants and/or Survivor Annuitants in active pay status the effective date is the first day of a month no earlier than the month after which the Board is scheduled to take action on the withdrawal application.
- (b) In the event that the Municipality elects to terminate its participation in the System, a Member's Basic Benefit under this Contract shall be immediately vested to the extent funded as of the effective date of the withdrawal.
- (c) In the event the Municipality withdraws from the System, the Municipality shall only be entitled to the assets credited to the Municipal Account and the Members' Accounts in accordance with the provisions of the PMRL and Policy Statements. Assets that are actuarially determined by the Board's Actuary to be matched to the Municipality's Annuitants and Survivor Annuitants will also be returned to the Municipality in accordance with the PMRL and Policy Statements.

Section 13.7 Notice

Any notice, demand, direction, instruction, or other communication required or permitted hereunder shall be confirmed in writing and shall be sufficiently given for all purposes when sent (i) by registered U.S. mail, postage prepaid, (ii) by facsimile, with a copy sent by first-class U.S. mail (provided that if the date of dispatch is not a working day, the facsimile shall be deemed to have been received at the opening of business of the addressee on the next working day), (iii) by email to any party at the following email address or (iv) by delivering the same in person to any party at the following addresses or such other addresses as may be designated in writing from time to time by the parties:

BOARD: PENNSYLVANIA MUNICIPAL
RETIREMENT BOARD
Attn: Secretary
Suite 301 Eastgate Center
1010 North 7th Street
Harrisburg, Pennsylvania 17102
Fax: 717/783-8363
Email: RA-Staff@pa.gov

MUNICIPALITY: BETHLEHEM CITY
Attn: Business Administrator
10 East Church Street
Bethlehem, PA 18018
Fax: 610/865-7019

Section 13.8 Filings with the Board

- (a) Receipt.--Any filing, election or notice required to be made under this Contract or the PMRL by a Member must be made by written statement, duly attested, and filed in the office of the Board or deposited in the United States mail, addressed to the Board.
- (b) Timeliness.-- Subject to any exceptions provided for in the PMRL, the timeliness of any filing, election or notice required to be made under this Contract or the PMRL to the Board by a Member shall be governed by the actual receipt of the filing, election or notice rather than the date of mailing.
- (c) Municipal Certifications. --
 - (i) In the event the System receives an application for a benefit from a Member in which certification by the Municipality with regard to the data used to calculate such benefit is needed but such certification has not been made by the Municipality, the System shall issue a formal demand to the Municipality for such certification of the necessary data.
 - (ii) Any certification required to be made by the Municipality with regard to any application for benefits by a Member under this Contract shall be made by the Municipality within forty-five (45) days following the date of the System's formal demand.
 - (iii) Failure of the Municipality to provide such requested certification within the forty-five (45) day period shall result in the System utilizing the most current reliable data maintained by the System for the Member.

Section 13.9 Effective Date

This Contract shall be effective the fourth day of October, 2013.

Section 13.10 Entire Agreement

Except as hereinabove expressly provided, this Contract supersedes all prior contracts and undertakings, written or oral, between the same parties concerning the same subject matter.

Section 13.11 Applicable Law

This Contract shall be governed by and interpreted and enforced in accordance with the PMRL and, as applicable, Municipal Pension Plan Funding Standard and Recovery Act, 53 P.S. §895.101 et seq., as they shall, from time to time, be amended.

Section 13.12 Mistake in the Record

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

Section 13.13 Binding Effect

This Contract inures to the benefit of and binds all parties hereto and their respective successors and assigns.

Section 13.14 Counterparts

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

Section 13.15 Severability

If any one or more of the covenants, agreements, provisions, or terms of this Contract shall be held contrary to any express provision of applicable law then such covenants, agreements, provisions, or terms shall be deemed severable from the remaining covenants, agreements, provisions, or terms of this Contract and shall in no way affect the validity or enforceability of the remainder of this Contract or the rights of the parties hereto.

Section 13.16 No Presumption Based upon Draftsmanship

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

Section 13.17 Headings

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

IN WITNESS WHEREOF, we have hereunto set our hands and seal the day, month and year as written below.

ATTEST:

BETHLEHEM CITY,
NORTHAMPTON COUNTY

BY: _____
Controller Date

BY: _____
Mayor Date

ATTEST:

PENNSYLVANIA MUNICIPAL
RETIREMENT BOARD

BY: _____
Secretary Date

BY: _____
Chairman Date

Approved as to form and legality:

BY: 49-K-100
Office of Attorney General

BY: 49-K-100
Office of General Counsel

BY: _____
Chief Counsel of the Board