

ORDINANCE 6- 2019

KISKIMINETAS TOWNSHIP, ARMSTRONG COUNTY, PENNSYLVANIA

AN ORDINANCE REGARDING THE PENSION ARRANGEMENT FOR FULL-TIME POLICE OFFICERS

WHEREAS, Kiskiminetas Township, Armstrong County, Pennsylvania, established a retirement program (the "Plan") for the benefit of the Township's police officers and their beneficiaries; and

WHEREAS, the Township wishes to cover its two full-time officers in a defined benefit pension arrangement similar to that under Act 600 (Pub. Law 1804, 53 Pa. Con. Stat. Ann. 767, et seq.); and

WHEREAS, two officers had participated in the Laborers' District Council of Western Pennsylvania Pension Plan and recently quit to pursue other employment and thus this documentation represents a continuation of the police pension coverage for Act 205 purposes.

WHEREAS, the Board of Supervisors want to facilitate the administration of the Plan by completely stating the Plan to set forth the provisions thereof in a single document; and

WHEREAS, the Board of Supervisors intends that the Plan shall meet the requirements for governmental plans pursuant to the Internal Revenue Code of 1986, as amended, and the applicable laws of the Commonwealth of Pennsylvania.

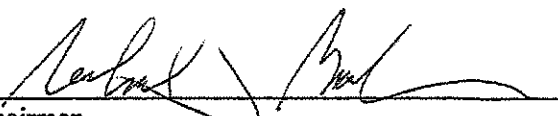
NOW, THEREFORE, the Plan now known as "Kiskiminetas Township Police Pension Plan" is hereby amended and restated in its entirety as set forth on the attached Plan document and, except as otherwise provided, is effective for full-time police employees as of January 1, 2020 and provides benefits for such officers who receive an honorable discharge.

ORDAINED AND ENACTED into law this 19<sup>th</sup> day of DECEMBER 2019 to become effective the first day of January of 2020.

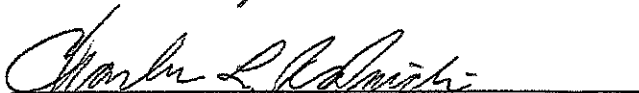
ATTEST:

SUPERVISORS  
KISKIMINETAS TOWNSHIP

  
Secretary

By:   
Chairman





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## PREAMBLE

WHEREAS, Kiskiminetas Township, Armstrong County, Pennsylvania, established a retirement program (the "Plan") for the benefit of the Township's police officers and their beneficiaries; and

WHEREAS, the Township wishes to cover its two full-time officers in a defined benefit pension arrangement similar to that under Act 600 (Pub. Law 1804, 53 Pa. Con. Stat. Ann. 767, et seq.); and

WHEREAS, two officers had participated in the Laborers' District Council of Western Pennsylvania Pension Plan and recently quit to pursue other employment and thus this documentation represents a continuation of the police pension coverage for Act 205 purposes.

WHEREAS, the Board of Supervisors wants to facilitate the administration of the Plan by completely stating the Plan to set forth the provisions thereof in a single document; and

WHEREAS, the Board of Supervisors intends that the Plan shall meet the requirements for governmental plans pursuant to the Internal Revenue Code of 1986, as amended, and the applicable laws of the Commonwealth of Pennsylvania;

NOW, THEREFORE, the Plan now known as "Kiskiminetas Township Police Pension Plan" is hereby amended and restated in its entirety, and, except as otherwise provided, is effective for full-time police employees as of January 1, 2020 and provides benefits for such officers who receive an honorable discharge.

**ARTICLE I**  
**DEFINITIONS**

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

- 1.01 "Accrued Benefit" shall mean, as of any given date, the benefit determined under section 4.02, calculated on the basis of Final Monthly Average Salary as of the date of determination and multiplied by a fraction, not to exceed one (1), the numerator of which shall be the Participant's Aggregate Service determined as of such date and the denominator of which shall be the projected Aggregate Service which would be credited to the Participant if the Participant were to continue in Employment until attainment of Normal Retirement Age. All Accrued Benefits are subject to all applicable limitations, reductions, offsets, and actuarial adjustments provided pursuant to the terms of the Plan prior to the actual payment thereof.
- 1.02 "Accumulated Contributions" shall mean the total amount contributed by any Participant to this Fund or its predecessor by way of payroll deduction or otherwise, plus interest credited at one percent (1%) per annum. Interest shall be credited in the form of a compound interest rate from the midpoint of the calendar year during which contributions were made to the first day of the month preceding or coincident with the date that a distribution of Accumulated Contributions is paid.
- 1.03 "Act" shall mean the Municipal Pension Plan Funding Standard & Recovery Act which was enacted as Act 205 of 1984, as amended, 53 P.S. Sec. 895.101 et seq.
- 1.04 "Actuarial Equivalent" shall mean two forms of payment of equal actuarial present value on a specified date. The actuarial present value shall be determined by use of the 1983 GAM [Male] Table and seven percent (7%) interest unless otherwise specifically provided herein.
- 1.05 "Actuary" shall mean the person, partnership, association or corporation which at any given time is serving as Actuary; provided that such Actuary must be an "Approved Actuary" as defined in the Act.
- 1.06 "Aggregate Service" shall mean the total period or periods of the Participant's Employment with the Employer whether or not interrupted. Notwithstanding the preceding sentence, should any such Participant receive a distribution of Accumulated Contributions with respect to a period of Employment, such period of Employment shall not be included in Aggregate Service thereafter unless, at the commencement of the next period of Employment, the Participant repays to the Fund the amount of such distribution with interest. For purposes of this section, interest shall accrue as of the date the Employee receives a distribution of Accumulated Contributions and shall be computed at the same rate and in the same manner as described in section 1.02.

For any Employee who participated in the Laborers' District Council of Western Pennsylvania Pension Plan ("Multi-Employer Plan") Aggregate Service shall not include a period during which they were a participant in any multi-employer plan.

- 1.07 "Beneficiary" shall mean the person or entity designated by the Participant to receive a distribution of the Participant's Accumulated Contributions should the Participant die prior to becoming entitled to a retirement benefit. Effective as of April 17, 2002, if 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 child or children under the age of 18 years, or if attending college, under or attaining the age of 23 years, unless the Participant has designated another Beneficiary or if there is no surviving issue, the estate; but if no personal representative has been appointed, to those persons who would be entitled to the estate under the intestacy laws of the Commonwealth of Pennsylvania if the Participant had died intestate and a resident of Pennsylvania.
- 1.08 "Board" shall mean the Board of Supervisors of Kiskiminetas Township.
- 1.09 "Chief Administrative Officer" shall mean the person designated by the Township who has the primary responsibility for the execution of the administrative affairs for the Plan. If the Township fails to designate a person, the Township Manager shall be the Chief Administrative Officer.
- 1.10 "Code" shall mean the Internal Revenue Code of 1986, as amended.
- 1.11 "Committee" shall mean the Police Pension Committee as determined pursuant to section 8.02.
- 1.12 "Commonwealth" shall mean the Commonwealth of Pennsylvania.
- 1.13 "Disability Date" shall mean the date when a Participant is determined by the Plan Administrator to be incapacitated due to Total and Permanent Disability, or the date when the Participant's Employment terminates due to such Total and Permanent Disability, if later.
- 1.14 "Early Retirement Age" shall mean the date on which the Participant has completed twelve (12) years of Aggregate Service with the Employer and attained age sixty-two. "Early Retirement Date" is the first day of the month coincident with or next following the date a Participant attains Early Retirement Age.
- 1.15 "Employee" shall mean any individual employed by the Employer on a regular full-time basis as a police officer of the Employer's police force.
- 1.16 "Employer" or "Township" shall mean Kiskiminetas Township, Armstrong County, Pennsylvania.

1.17 "Employment" shall mean for the purpose of determining Aggregate Service and shall start accruing January 1, 2014 as follows:

- (a) The period of time for which an Employee is directly or indirectly compensated or entitled to compensation by the Employer for the performance of duties as a police officer;
- (b) Any period of time for which an Employee is paid, either directly by the Employer or through a program to which the Employer has made contributions on behalf of the Employee, a fixed, periodic amount in the nature of salary continuation payments for reasons other than the performance of duties (such as vacation, holidays, sickness, entitlement to benefits under workers' compensation or similar laws);
- (c) Any period during which an Employee is entitled to disability benefits under this Plan, provided that the Employee returns to Employment within three (3) months of the date on which it is determined that the Employee is no longer Totally and Permanently Disabled if such determination occurs prior to the date a Participant attains Normal Retirement Age; and
- (d) Any period of voluntary or involuntary military service with the armed forces of the United States of America, provided that the Participant has been employed as a regular, full-time member of the Employer's police force for a period of at least six (6) months immediately prior to the period of military service; and the Participant returns to Employment within six (6) months following discharge from military service or within such longer period during which employment rights are guaranteed by applicable law or under the terms of a collective bargaining agreement with the Employer.
- (e) Shall exclude any period of time an officer was participating in another pension arrangement funded by the Township such as the Laborers' Multi-Employer pension plan.

1.18 "Final Monthly Average Salary" shall mean the average monthly base salary earned by the Participant and paid by the Employer during the final sixty (60) months immediately preceding termination of active employment. Final Monthly Average Salary shall include no compensation except base salary.

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

- 1.19 "Insurer" or "Insurance Company" shall mean a legal reserve life insurance company authorized to do business in the Commonwealth of Pennsylvania.
- 1.20 "Minimum Municipal Obligation" shall mean the minimum obligation of the municipality as determined by the Actuary pursuant to the provisions of the Act.
- 1.21 "Normal Retirement Age" shall mean the date on which the Participant has completed twenty-five (25) years of Aggregate Service with the Employer and has attained age fifty-five (55). "Normal Retirement Date" is the first day of the month coincident with or next following the date a Participant attains Normal Retirement Age.
- 1.22 "Notice" or "Election" shall mean a written document prepared in the form specified by the Plan Administrator. If such notice or election is to be provided by the Employer or the Plan Administrator, it shall be mailed in a properly addressed envelope, postage prepaid, to the last known address of the person entitled thereto, on or before the last day of the specified notice or election period. If such notice or election is to be provided to the Employer or the Plan Administrator, it must be received by the recipient on or before the last day of the specified notice or election period.
- 1.23 "Participant" shall mean an Employee who has met the eligibility requirements to participant in the Plan as provided in section 2.01 and who has not for any reason ceased to be a Participant hereunder.
- 1.24 "Pension Fund" or "Fund" shall mean the police Pension Fund administered under the terms of this Plan and which shall include all money, property, investments, Policies and Contracts standing in the name of the Plan.
- 1.25 "Plan" shall mean the Plan set forth herein, as amended from time to time and designated as the Kiskiminetas Township Police Pension Plan.
- 1.26 "Plan Administrator" shall mean the individual appointed for the purpose of supervising and administering the provisions of the Plan. In the event that no such appointment is made, the Plan Administrator shall be the Township Manager.
- 1.27 "Plan Year" shall mean the 12-month period beginning on January 1 and ending on December 31 of each year.
- 1.28 "Policy" or "Contract" shall mean a retirement annuity or retirement income endowment Policy (or a combination of both) or any other form of insurance Contract or Policy which shall be deemed appropriate in accordance with the provisions of applicable law.

- 1.29 "Restatement Date" shall mean January 1, 2020, the date upon which the Township hired three officers and this Plan became effective.
- 1.30 "Retirement Date" shall mean the first day of the month coincident with or next following the date on which the Participant retires from Employment or the first day of any month thereafter on which the payment of retirement benefits pursuant to this Plan shall commence.
- 1.31 "Salary" shall mean the base salary of the Employee and shall exclude all other types or forms of compensation. Salary includes only amounts paid to an Employee while he is an active police officer of the Township and does not include short-term disability payments, workmen's compensation, or similar payments. In addition, Salary does not include any lump-sum cash-out of unused leave.
- 1.32 "Service Increment" shall mean the amount (if any) calculated pursuant to section 4.04 on behalf of a Participant for each completed year of Aggregate Service in excess of twenty-five (25) years.
- 1.33 "Total and Permanent Disability" shall mean a condition of physical or mental impairment due to which a Participant is unable to perform the usual and customary duties of Employment and which is reasonably expected to be permanent for the lifetime of the Participant. For purposes of this section and Article V, a condition shall not be treated as Total and Permanent Disability unless such condition is a direct result of and occurs in the line of duty of Employment. Therefore, an Employee whose physical or mental impairment does not occur in the line of duty or which is the result of alcoholism, addiction to narcotics, perpetration of a felonious criminal activity or is willfully self inflicted, is not entitled to receive disability benefits under the Plan.



## ARTICLE II

### PARTICIPATION IN THE PLAN

- 2.01 Eligibility Requirements – Each Employee who is employed as regular, full-time permanent member of the police department of the Employer shall participate herein as of the date on which such Employee's Employment first commences or recommences provided all prerequisites to participation under this Plan shall have been fulfilled, including but not limited to, completion of all forms required by the Plan Administrator.
- 2.02 Notification of Plan Administrator – The Board shall furnish the Plan Administrator with written notification of the appointment of any new full-time permanent Employee who is eligible for participation hereunder.
- 2.03 Designation of Beneficiary – Any new, full-time Employee who becomes a Participant hereunder shall provide a written notice in the manner prescribed by the Plan Administrator which designates a Beneficiary at the time participation commences. The Participant's election of any such Beneficiary may be rescinded or changed, without the consent of the Beneficiary, at any time provided the Participant provides the written notice of the changed designation to the Plan Administrator in the manner prescribed by the Plan Administrator. Any designation of a Beneficiary made in any manner other than one acceptable to the Plan Administrator shall be null and void and have no effect under the terms of this Plan.

## ARTICLE III

### CONTRIBUTIONS

- 3.01 Participant Contribution – Each Participant shall as a requirement of participation pay regular contributions to the Pension Fund in an amount equal to two and three quarters percent (2.75%) of the Participant's annual Salary not in excess of the Social Security Wage Base and five percent (5%) of Salary in excess of the Social Security Wage Base. Each Participant shall complete the necessary forms to authorize the payment of Participant contributions by way of payroll deduction.
- 3.02 Reduction of Participant Contributions – The Employer may, in its sole discretion, reduce or eliminate on an annual basis, by ordinance or resolution, the Participant Contributions required by Section 3.01.
- 3.03 Employer Contributions – The Actuary, in accordance with the Act, shall determine the Minimum Municipal Obligation of the Employer. The Employer shall pay into the Pension Fund, by annual appropriations or otherwise, the contributions necessary to satisfy the Minimum Municipal Obligation.
- 3.04 State Aid – General municipal pension system State Aid, or any other amount of State Aid received by the Employer in accordance with the Act from the Commonwealth may be deposited into the Pension Fund governed by this Plan in amounts determined by the Board and shall be used to reduce the amount of the Minimum Municipal Obligation of the Employer.
- 3.05 Gifts – The Board is authorized to take by gift, grant, devise or otherwise any money or property, real or personal, for the benefit of the Plan and cause the same to be held as a part of the Pension Fund. The care, management, investment and disposal of such amounts shall be vested in the Board or its delegate, the Plan Administrator, subject to the direction of the donor and not inconsistent with applicable laws and the terms of the Plan.

## ARTICLE IV

### RETIREMENT BENEFITS

- 4.01 Normal Retirement – Each Participant shall be entitled to normal retirement benefits after retirement on or after the Participant has attained Normal Retirement Age.
- 4.02 Normal Retirement Benefit – Each Participant who shall become entitled to a benefit pursuant to section 4.01 shall receive a benefit paid monthly in an amount equal to fifty percent (50%) of the Participant's Final Monthly Average Salary as determined herein reduced by the sum of: (a) 75% of the primary benefit under the Social Security laws for which the Participant may be eligible because of age.
- 4.03 Late Retirement – A Participant may continue to work beyond the attainment of Normal Retirement Age subject to the Employer's rules and regulations regarding retirement age. If a Participant who has met the requirements of section 4.01 continues to work beyond Normal Retirement Age, there shall be no retirement benefits paid until Employment ceases and retirement begins. The retirement benefit of a Participant who retires after attainment of Normal Retirement Age shall be calculated in accordance with section 4.02 on the basis of the Final Monthly Average Salary as of such Participant's actual Retirement Date.
- 4.04 Early Retirement – Each Participant shall be entitled to early retirement benefits after retirement on or after the Participant has attained Early Retirement Age.
- 4.05 Early Retirement Benefit – Each Participant who shall become entitled to a benefit pursuant to Section 4.04 shall receive a benefit paid monthly in an amount equal to the Accrued Benefit as of Employment termination.
- 4.06 Payment of Benefits - Retirement benefit payments shall be payable as of the first day of the month coincident with or next following the Participant's Retirement Date and the first day of each month thereafter during the Participant's lifetime. A Participant must complete an application for benefit in the manner prescribed by the Plan Administrator and deliver such application to the Plan Administrator at least thirty (30) days prior to the date on which benefit payments shall commence. Notwithstanding anything contained herein to the contrary, no retirement benefit payments nor any other payments shall be due or payable on or before the 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 benefits. Payment of benefits hereunder shall cease as of the date of death of the Participant.
- 4.07 Assignment – Except as provided in Section 9.09, the pension benefit payments prescribed herein shall not be subject to attachment, execution, levy, garnishment

or other legal process and shall be payable only to the Participant or designated Beneficiary and shall not be subject to assignment or transfer.

- 4.08 Retired Participants – Any Participant who shall have retired prior to January 1, 2020 shall not have the benefit altered in any way by the provisions of this amended and restated Plan, except where otherwise expressly provided herein. Such retired Participants shall continue to have their benefits governed by the terms of the Plan in effect at the time of their termination from employment.

## ARTICLE V

### DISABILITY BENEFITS

5.01 Disability – A Participant who shall incur a Total and Permanent Disability shall be entitled to a disability benefit as of the Disability Date.

5.02 Disability Benefit –

- (a) The disability benefit payable for a disability on or after August 1, 2016 to a Participant who meets the requirements of Section 5.01 shall be a monthly benefit from the Plan of 50% of the Participant's salary at the time the disability was incurred provided that any Participant who receives benefits for the same injuries under the Social Security Act (42 U.S.C. §§3.01 et. seq.) shall have his disability benefit offset or reduced by the amount of such benefits.

Notwithstanding anything to the contrary in this Plan, anyone receiving benefits under this subsection shall receive no other disability or retirement benefits under this Plan, and no one shall be entitled to any benefits under this provision greater than those required under Act 30 of 2002.

5.03 Payment of Disability Benefits – Disability payments shall be made monthly as of the first day of each month, commencing as of the first day of the month coincident with or immediately following the Participant's Disability Date and continuing until the earlier of the death of the Participant or cessation of Total and Permanent Disability.

A Participant who shall fail to return within three (3) months to Employment as an Employee of the Employer upon cessation of Total and Permanent Disability prior to attainment of Normal Retirement Age shall be deemed to have terminated Employment as of the Disability Date, shall not be entitled to any distribution of Accumulated Contributions pursuant to section 7.02 to the extent that the total amount of disability payments exceeds the value of the Participant's Accumulated Contributions as of the Disability Date, and shall not be entitled to any other benefits under the Plan on account of any Aggregate Service as of the Disability Date.

5.04 Verification of Disability – The Plan Administrator shall in its sole discretion determine whether a Participant shall have incurred a Total and Permanent Disability. The Plan Administrator shall rely on the report of a physician acceptable to the Plan Administrator. If the Plan Administrator shall determine that a Participant who is Totally and Permanently Disabled has recovered sufficiently to resume active Employment as a police officer or if a Participant refused 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 benefits shall cease.

- 5.05 Cessation of Disability – A Participant who is receiving payment of disability benefits under this Plan must notify the Plan Administrator of any change which may cause a cessation of entitlement to receipt of such benefits hereunder. If a Participant fails to provide immediate notice to the Plan Administrator of any such change in status and continues to receive payment of benefits hereunder to which the Participant is not entitled, then the Plan may take whatever action is necessary to recover any amount of improperly paid amounts, including legal action or offsetting such amounts against any further payments of retirement or other benefits under the Plan, including the costs of such actions.

## ARTICLE VI

### DEATH BENEFITS

- 6.01 Death of Participant – Upon the occurrence of the death of a Participant, there shall be benefits payable in accord with the following sections of this Article VI.
- 6.02 Survivor Benefit – In the event a Participant “retires on pension” (within the meaning of Act 30 of 2002) on or after April 17, 2002 and dies, a benefit shall be paid to the surviving spouse or if no spouse survives, or if he or she survives and subsequently dies, then the child or children under the age of 18 years or if attending college, under or attaining the age of 23 years in the case of a child or children, in the amount of 50% of the pension the Participant was receiving or would have been receiving had he been retired at the time of his death. For purposes of this section, a Participant who has attained Normal Retirement Age and dies prior to retiring shall be treated as if he had retired on the day before his death. Notwithstanding anything to the contrary in this Plan, if anyone receives benefits under this section, no one shall receive any other benefits under this Plan on account of the death or retirement of the Participant.

The phrase “attending college” shall mean the eligible children are registered at an accredited institution of higher learning and are carrying a minimum course load of seven credit hours per semester.

To the extent required by Act 30 of 2002 for an Act 600 plan, this section applies to the surviving spouse of a Participant who died on or before April 17, 2003 and who was not remarried as of April 17, 2002.

- 6.03 Death of Participant Prior to Retirement – If a Participant shall die before payment of a benefit has commenced and without eligibility for payment of a survivor benefit under section 6.02, the Beneficiary shall be eligible to receive a distribution of the Accumulated Contributions of the Participant as of the date of death of the Participant. If the Participant has received disability benefits hereunder, the amount of distribution of Accumulated Contributions shall be reduced by the amount of disability benefits which have been paid hereunder.

The surviving spouse of a Participant who dies on or after April 17, 2002 before his pension has vested, and whose survivors are entitled to no benefits under any other sections of this Plan, or if no spouse survives or if he or she survives and subsequently dies, the child or children under the age of 18 years, or if attending college, under or attaining the age of 23 years, of a Participant shall be entitled to receive repayment of all money which the Participant invested in the pension fund plus interest unless the member has designated another beneficiary.

## ARTICLE VII

### TERMINATION OF EMPLOYMENT

- 7.01 Rights of Terminated Employees – A Participant who shall cease to be an Employee except as otherwise hereinbefore provided shall have all interest and rights under this Plan limited to those contained in the following sections of this Article.
- 7.02 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 shall not be entitled to any further payments from the Plan.
- 7.03 Deferred Vested Benefit – A Participant who has completed at least twelve (12) years of Aggregate Service and whose Employment with the Employer shall terminate for any honorable discharge other than death or Total and Permanent Disability prior to attainment of Normal Retirement Age shall be entitled to elect to receive a deferred vested benefit in lieu of a distribution of Accumulated Contributions under Section 7.02. The Election hereunder shall be made within ninety (90) days of the date on which the Participant's Employment shall cease or shall be forever waived and a distribution pursuant to Section 7.02 shall occur. Such a deferred vested benefit shall be in an amount equal to the Participant's Accrued Benefit as of the date Employment terminates and shall commence as of the first day of the month coincident with or next following the date on which the Participant's Normal Retirement Age would be attained if the Participant continued in Employment until such date.



## ARTICLE VIII

### ADMINISTRATION

- 8.01 Plan Administrator – The Plan Administrator shall be individual appointed by the Board who shall have the power and authority to do all acts and to execute, acknowledge and deliver all instruments necessary to implement and effectuate the purpose of this Plan. The Plan Administrator may delegate authority to act on its behalf to any persons it deems appropriate. If a Plan Administrator is not appointed, the Township Manager shall be the Plan Administrator.
- 8.02 Police Pension Committee – If the Board shall appoint a Police Pension Committee to administer the affairs of the Plan, the Board shall delegate such authority as it shall deem appropriate to the Committee. The Committee shall consist of not more than five (5) members who shall be appointed by the Board. Each member of the Committee shall serve in that capacity until death, resignation, removal or otherwise. Vacancies on the Committee shall be filled in the same manner as the position was originally filled. The Board is not required to appoint a Police Pension Committee.
- 8.03 Authority and Duties of the Plan Administrator – The Plan Administrator shall have full power and authority to do whatever shall, in its judgment, be reasonably necessary for the proper administration and operation of the Plan. The interpretation or construction placed upon any term or provision of the Plan by the Plan Administrator or any action of the Plan Administrator taken in good faith shall, upon the Board's review and approval thereof, be final and conclusive upon all parties hereto, whether Employees, Participants or other persons concerned. By way of specification and not limitation and except as specifically limited hereafter, the Plan Administrator is authorized:
- (a) to construe this Plan;
  - (b) to determine all questions affecting the eligibility of any Employee to participate herein;
  - (c) to compute the amount and source of any benefit payable hereunder to any Participant or Beneficiary;
  - (d) to authorize any and all disbursements;
  - (e) to prescribe any procedure to be followed by any Participant and/or other person in filing any application or Election;

- (f) to prepare and distribute, in such manner as may be required by law or as the Plan Administrator deems appropriate, information explaining the Plan;
- (g) to require from the Employer or any Participant such information as shall be necessary for the proper administration of the Plan; and
- (h) to appoint and retain any individual to assist in the administration of the Plan, including such legal, clerical, accounting and actuarial services as may be required by any applicable law or laws.

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

8.04 Police Pension Committee Organization – If the Board appoints a Committee, it may organize itself in any manner deemed appropriate to effectuate its purposes hereunder, subject to the following:

- (a) The Committee shall act by a majority of its members at the time in office and such action may be taken either by vote at a meeting or in writing without a meeting.
- (b) The Committee shall, from time to time, appoint a Chairman, a Secretary who may, but need not, be a Committee member and such other agents as it may deem advisable.
- (c) The Committee may, from time to time, authorize any one or more of its members to execute any document or documents including any application, request, certificate, notice, consent, waiver or direction and shall notify the Board, in writing, of the name or names of the member or members so authorized. In the absence of a designation, the Chairman shall be deemed to be so authorized. Any Trustee or other fiduciary appointed hereunder shall accept and be fully protected in relying upon any document executed by the designated member or members (or the Chairman in the absence of a designation) as representing a valid action by the Committee until the Committee shall file with such fiduciary a written revocation of such designation.

- (d) The Committee or its delegate, shall maintain and keep such records as are necessary for the efficient operation of the Plan or as may be required by any applicable law, regulation or ruling and shall provide for the preparation and filing of such forms or reports as may be required to be filed with any governmental agency or department and with the Participants and/or other persons entitled to benefits under the Plan.
- 8.05 Plan Administrator Costs – The Plan Administrator shall serve without compensation for services unless otherwise agreed by the Board in writing. All reasonable expenses incident to the functioning of the Plan Administrator, including, but not limited to, fees of accountants, counsel, actuaries and other specialists and other costs of administering the Plan, may be paid from the Pension Fund upon approval by the Board to the extent permitted under applicable law and not otherwise paid by the Employer.
- 8.06 Hold Harmless – No member of the Board, the Plan Administrator, the Enrolled Actuary, nor any other person involved in the administration of the Plan shall be liable to any person on account of any act or failure to act which is taken or omitted to be taken in good faith in performing their respective duties under the terms of this Plan. To the extent permitted by law, the Employer shall, and hereby does agree to, indemnify and hold harmless the Plan Administrator and each successor and each of any such individual's heirs, executors and administrators, and the delegates and appointees (other than any person, bank, firm or corporation which is independent of the Employer and which renders services to the Plan for a fee) from any and all liability and expenses, including counsel fees, reasonably incurred in any action, suit or proceeding to which he is or may be made a party by reason of being or having been a member, delegate or appointee of the Plan Administrator, except in matters involving criminal liability, intentional or willful misconduct. If the Employer purchases insurance to cover claims of a nature described above, then there shall be no right of indemnification except to the extent of any deductible amount under the insurance coverage or to the extent of the amount the claims exceed the insured amount.
- 8.07 Approval of Benefits – The Plan Administrator shall review and approve or deny any application for retirement benefits within thirty (30) days following receipt thereof or within such longer time as may be necessary under the circumstances. Any denial of an application for retirement benefits shall be in writing and shall specify the reason for such denial.
- 8.08 Appeal Procedure – Any person whose application for retirement benefits is denied, who questions the amount of benefit paid, who believes a benefit should have commenced which did not so commence or who has some other claim arising under the Plan ("Claimant"), shall first seek a resolution of such claim under the procedure hereinafter set forth.

- (a) Any Claimant shall file a Notice of the claim with the Plan Administrator which shall fully describe the nature of the claim. The Plan Administrator shall review the claim and make an initial determination approving or denying the claim.
- (b) If the claim is denied in whole or in part, the Plan Administrator shall, within ninety (90) days (or such other period as may be established by applicable law) from the time the application is received, mail Notice of such denial to the Claimant. Such ninety (90) day period may be extended by the Plan Administrator if special circumstances so require for up to ninety (90) additional days by the Plan Administrator's delivering Notice of such extension to the Claimant within the first ninety (90) day period. Any Notice hereunder shall be written in a manner calculated to be understood by the Claimant and, if a Notice of denial, shall set forth (i) the specific Plan provisions on which the denial is based, (ii) an explanation of additional material or information, if any necessary to perfect such claim and a statement of why such material or information is necessary, and (iii) an explanation of the review procedure.
- (c) Upon receipt of Notice denying the claim, the Claimant shall have the right to request a full and fair review by the Board of the initial determination. Such request for review must be made by Notice to the Board within sixty (60) days of receipt of such Notice of denial. During such review, the Claimant or a duly authorized representative shall have the right to review any pertinent documents and to submit any issues or comments in writing. The Board shall, within sixty (60) days after receipt of the Notice requesting such review, (or in special circumstances, such as where the Board in its sole discretion holds a hearing, within one hundred and twenty (120) days of receipt of such Notice), submit its decision in writing to the person or persons whose claim has been denied. The decision shall be final, conclusive and binding on all parties, shall be written in a manner calculated to be understood by the Claimant and shall contain specific references to the pertinent Plan provisions on which the decision is based.
- (d) Any Notice of a claim questioning the amount of a benefit in pay status shall be filed within ninety (90) days following the date of the first payment which would be adjusted if the claim is granted unless the Plan Administrator allows a later filing for good cause shown.
- (e) A Claimant who does not submit a Notice of a claim or a Notice requesting a review of a denial of a claim within the time limitations specified above shall be deemed to have waived such claim or right to review.
- (f) Nothing contained herein is intended to abridge any right of a Claimant to appeal any final decision hereunder to a court of competent jurisdiction under 2 Pa. C.S.A. section 752. No decision hereunder is a final decision from which such an appeal may be taken until the entire appeal procedure of this section 8.08 of the Plan has been exhausted.

## ARTICLE IX

### APPLICABLE PROVISIONS OF THE INTERNAL REVENUE CODE

- 9.01 Intent to Comply with Internal Revenue Code - The Employer intends that this Plan shall meet all the pertinent requirements established for a governmental plan (as defined in Internal Revenue Code §414(d)) under Internal Revenue Code §401(a), as amended, and the Plan shall be interpreted, wherever possible, to comply with the terms of said Code and all formal regulations and rulings pertinent to the Plan and trust agreement.
- 9.02 Definitions - The following definitions apply for purposes of this Article only:
- (a) "Leased Employee" shall mean 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.
  - (b) "Limitation Year" shall mean the Plan Year.
- 9.03 Limitation Compensation - Compensation is subject to the limitation under Code Section 401(a)(17), which is \$275,000 for the Plan Year and Limitation Year beginning in 2018. 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).
- 9.04 Leased Employees and Independent Contractors - Leased Employees and independent contractors are not eligible to participate in this Plan. Any person whom the Employer does not regard as being an Employee shall not be eligible to participate.
- 9.05 Limit on Accrued Benefit -
- (a) 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.
  - (b) Effective Date. If there is more than one permitted effective date for any change, 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. Effective as of January 1, 2008 the "applicable mortality table" and "applicable interest rate" are found in Rev. Rul. 2007-67. The "applicable mortality table" in Rev. Rul. 2001-62 was effective from December 31, 2002 through December 31, 2007. The "applicable mortality table" and "applicable interest rate" shall be automatically adjusted for changes in the law and IRS announcements.

- (c) No Reduction in Accrued Benefits. Notwithstanding the above, no change in the limits under this Article shall reduce the benefit of any Participant.
- (d) 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), and if the aggregated benefits would otherwise exceed the limit under Code Section 415(b), then benefits shall be reduced first under this Plan.
- (e) 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). This subsection does not apply to contributions "picked-up" in accordance with Code Section 414(h).
- (f) 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.
- (g) 415 Extension. To the extent applicable, the above provisions and limitations shall be subject to Code Section 415(b)(2)(g).

#### 9.06 Limit on Annual Additions -

- (a) 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.
- (b) 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.

- (c) **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.
- (d) **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 for the purposes of applying the limits on annual additions under IRC Section 415(c). This provision shall be applied to all similarly situated individuals in a reasonable equivalent manner.

#### 9.07 Direct Rollovers -

- (a) 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.
- (b) For purposes of this section, the following definitions shall apply:
  - (1) 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: (i) 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; (ii) any distribution to the extent such distribution is required under Code Section 401(a)(9); (iii) 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 (iv) 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 as of January 1, 2007, any 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.

- (2) 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 as of January 1, 2008 a Roth IRA is an "eligible retirement plan".
- (3) 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.
- (4) 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.

9.08 Minimum Required Distributions - Notwithstanding any provision in this Plan to the contrary, the distribution of a Participant's benefits shall be made in



accordance with the requirements of Code Section 401(a)(9). For purposes of complying with Code Section 401(a)(9), life expectancies were 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.

(a) Distribution of a Participant's benefits shall begin not later than April 1<sup>st</sup> of the calendar year following the later of:

- (1) the calendar year in which the Participant attains age seventy and one-half (70½), or
- (2) 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.

(b) 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. If a Participant receives a joint and survivor annuity and the beneficiary is not the Participant's spouse, life expectancy shall be determined using the Uniform Lifetime Table of Treasury regulation §1.401(a)(9)-9.

(c) This section does not authorize the payment of any benefit in any form not permitted under another provision of the Plan.

9.09 Approved Domestic Relations Orders - 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 or as a "approved domestic relations order."

9.10 Credit for Qualified Military Service - 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 Sections 401(a)(37) and 414(u).

9.11 Vesting Upon Plan Termination - 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 (who is not already 100% vested) as of the date of such termination or discontinuance shall become vested to the extent that the Plan is funded.

9.12 Mandatory Lump Sum Distributions - Effective as of January 1, 2006, unless the Participant consents to the distribution, any lump-sum distribution in excess of \$1000 made to a Participant prior to the Participant's attainment of Normal

Retirement Age shall be rolled over by the Plan Administrator into an Individual Retirement Account established by the Plan Administrator for that purpose.

- 9.13 Non-Spousal Rollover - Effective 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:
- (a) the transfer is made not later than the end of the fourth year after the year of the Participant's death; and
  - (b) 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).
- 9.14 Full Vesting at Normal Retirement Age - A Participant's Normal Retirement Benefit shall be 100% vested upon attainment of his Normal Retirement Age.
- 9.15 Forfeitures - Forfeitures shall not be used to increase the benefits of any Participant in this Plan but may be used to reduce Employer contributions to the Plan.
- 9.16 Exclusive Benefit: - The Plan is maintained for the exclusive benefit of its Participants and Beneficiaries.
- 9.17 No Reversion to 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:
- (a) 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
  - (b) The Plan is terminated.
- 9.18 Windsor Case -Effective June 23, 2013, the terms spouse, husband, wife, widow and widower shall include individuals married to persons of the same sex if the individuals are legally married under state law. Also, where the term widow appears, it shall be read to include widower.

**ARTICLE X**  
**THE TRUST FUND**

10.01 Establishment and Acceptance of Trust.

The Trust will consist of all funds held by the Trustee under the Plan, including contributions made pursuant to the provisions hereof and the investments, reinvestment and proceeds thereof. The Trust shall be held, managed, and administered pursuant to the terms of the Plan. The Trustee hereby accepts the Trust created hereunder and agrees to perform the duties under the Plan on its part to be performed. Except as otherwise expressly provided for in the Plan, the Trustee has exclusive authority and discretion to manage and control the Trust assets. The duties, powers and responsibilities reserved to the trustee may be allocated among the Trustees (if there be more than one) so long as such allocation is pursuant to action taken by the Employer, or by written agreement executed by the Trustee and approved by the Employer, in which case no Trustee shall have any liability, with respect to any duties, powers or responsibilities not allocated to him, for the acts or omissions of any other Trustee.

If all Plan assets are held in one or more custodial accounts or contracts issued by an insurance company licensed to do business in Pennsylvania, then the Township does not need to appoint a Trustee, and Plan assets shall be administered in accordance with the other provisions of this Plan and the terms of the agreement with the insurance company. If there is a separate trust document, then the terms of that document shall supersede the provisions of this Article. If the Township fails to name a Trustee, the Township shall be the Trustee.

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

- (a) To retain in cash so much of the Trust 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 a Trustee hereunder), and shall include the right to hold funds on a temporary basis in accounts or investments that do not bear interest.
- (b) To invest and reinvest the principal and income of the fund and keep said fund invested, without distinction between principal and income, in securities which are at the time legal investments for fiduciaries under the Pennsylvania Fiduciaries Investment Act, or as the same may be subsequently modified or amended.

- (c) To sell property held in the fund at either public or private sale for cash or on credit at such times as it may deem appropriate; to exchange such property; to grant options for the purchase or exchange thereof.
- (d) To consent to and participate in any plan of reorganization, consolidation, merger, extension or other similar plan affecting property held in the fund; to consent to any contract, lease, mortgage, purchase, sale or other action by any corporation pursuant to any such plan.
- (e) To exercise all conversion and subscription rights pertaining to property held in the fund.
- (f) To exercise all voting rights with respect to property held in the fund and in connection therewith to grant proxies, discretionary or otherwise.
- (g) To cause any securities or other property held as part of the Trust to be registered in its own name or in the name of one or more of its nominees, without designating the same as Trust property, and to hold any investments in bearer form, but the books and records of the Trustee shall at all times show that all such investments are part of the Trust.
- (h) Generally, to do all such acts, execute all such instruments, take all such proceedings and exercise all such rights and privileges with relation to property constituting the Trust as if the Trustee were the absolute owner thereof.
- (i) If bonds, preferred stocks or other securities shall be purchased at a premium, it shall not be necessary for the Trustee to set aside a sinking fund from the earnings to retire or absorb the premium.
- (j) To place money at any time in a deposit bank deemed by the Trustee 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.
- (k) In addition to the foregoing powers, the Trustee shall also have all of the powers, rights, and privileges conferred upon Trustees by the Pennsylvania Fiduciaries Act of 1949, 20 P.S. §320, 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 Trustee may deem necessary to administer the Trust and to carry out the purposes of this trust.

- (l) To invest the assets of the Trust 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 or to invest in an insurance contract or other funding arrangement. 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.
- (m) To make any payment or distribution required or advisable to carry out the provisions of the Plan, provided that a trustee shall make such distribution only at the direction of the Employer.
- (n) To compromise, contest, arbitrate, enforce or abandon claims and demands with respect to the Plan.
- (o) 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.
- (p) After advance notice to the Employer to pay, and to deduct from and charge against the Trust, 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 Trust is required to pay; to contest, in its discretion, the validity or amount of any tax, assessment, claim or demand which may be levied or made against or in respect of the Trust, the income, property or transfer thereof, or in any matter or thing connected therewith.
- (q) 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 Trust, to the extent not prohibited by applicable law, the Trustee 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 Trustee, 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.

- (r) 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 Plan assets, provided that each of such persons or firms is registered as an investment advisor under the Investment Advisors Act of 1940, is a bank (as defined in that act), or is an insurance company qualified to manage, acquire or dispose of pension trust assets under the laws of more than one state; in such event, the Trustee 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 nor omissions of such Investment Manager or Managers, nor shall it be under any obligation to review or otherwise manage any assets which are subject to the management of such Investment Manager or Managers.

The trustee shall not be permitted to retain such an Investment Manager except with the express written consent of the Employer.

- 10.03 Management Authority. Except as otherwise provided, authority granted to the Trustee shall be exercised in the discretion of the Trustee; however, the Employer may at any time affirmatively direct the Trustee with regard to the investment of the Trust or direct the Trustee to obtain the Employer's approval before exercising any of the powers granted the Trustee. Any such direction may be of a continuing nature or otherwise, may be revoked at any time, and shall be complied with as promptly as possible by the Trustee. The Trustee shall not be liable for any loss or depreciation in value of the Trust, or any adverse effect upon the exempt status of the Trust under the Code, resulting from actions taken in accordance with the Employer's affirmative direction or from the failure or refusal of the Employer to give any required approval, nor shall the Trustee be obliged to review the assets of the trust acquired on the direction of the Employer.
- 10.04 Successor Trustee. Pending the appointment of any successor Trustee and the acceptance of such appointment, the existing Trustee or Trustees shall have full power to take any action hereunder. Each successor or additional Trustee shall have all rights and powers, as well as duties and liabilities, vested in the original Trustee without the signing or filing of any further instrument, but any resigning or removed Trustee shall execute all documents and do all acts necessary to vest title of record to any assets of the Trust in any successor Trustee, or in the remaining Trustee or Trustees. With the approval of the Employer, a successor Trustee may accept the account rendered and the property delivered to it by a predecessor Trustee as a full and complete discharge of the predecessor Trustee, without incurring any liability or responsibility for so doing.
- 10.05 Common Investments. The Employer shall not be required to make separate investments for individual Participants or to maintain separate investments for each Participant's account but may invest contributions and any profits or gains therefrom in common investments.

10.06 Compensation and Expenses of Appointed Trustee. 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 Trust, which may be executed at any time after 30 days written notice to the Employer. The Employer shall be under no obligation to pay such costs and expenses, and, in the event of its failure to do so, the trustee shall be entitled to pay the same, or to reimburse themselves for the payment thereof, from the Trust.

10.07 Immunity and Liability of Trustee.

- (a) The Trustee shall not be liable for the making, retention or sale of any investment or reinvestment made by it, as herein provided, nor for any loss to, or diminution of, the Trust, unless due to its own intentional or willful misconduct, lack of good faith or gross negligence.
- (b) The Trustee shall be fully protected in acting upon any instrument, certificate or paper believed by it to be genuine and to be signed or presented by the proper person or persons, and the Trustee shall be under no duty to make any investigation or any inquiry as to any statement contained in any writing, but may accept the same as conclusive evidence of the truth and accuracy of the statements therein contained.
- (c) The Trustee shall not be liable for the proper application of any part of the Trust if payments are made in accordance with the directions of the Employer as herein provided, and the Trustee shall not be obliged to inquire as to whether any payee is entitled to any payment or distribution, pursuant to such directions, or as to whether any payment or distribution, pursuant to such directions, is proper or within the terms of the Plan. The Trustee shall not be required to make any investigation to determine the identity or mailing address of any person entitled to benefits under the Plan and shall be entitled to withhold making any payments or deliveries upon instructions from the Employer.
- (d) The Trustee shall not be responsible for the adequacy of the Trust to meet and discharge any and all payments and liabilities under the Plan. The Trustee shall be responsible only for such sums as shall actually be received by it as Trustee, hereunder, and it shall not be the duty of the Trustee to collect, or to ascertain the correctness of the amount of, any sum receivable or received from the Employer.
- (e) The Trustee shall discharge its duties with respect to the assets of the Trust solely in the interest of the Participants and Beneficiaries, administering the assets of the Plan with the care and diligence, under the then prevailing

circumstances, that a prudent man acting in like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims.

- 10.08 Financial Records. The Trustee shall maintain records and accounts reflecting all receipts and disbursements made by it under the Plan and showing such other items and information as the Employer from time to time may specify. The Trustee's records and accounts shall be open to the inspection of the Employer at all reasonable times and may be audited from time to time by such person or persons as the Employer may specify.
- 10.09 Periodic Accounting. The Trust 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 Trust, 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. Any such accounting shall be due within 90 days after the date thereof; to the extent permitted by law, upon the expiration of 180 days from the filing of such accounting, the Trustee shall be forever released, remised and discharged from all liability and accountability to anyone with respect to the propriety of its accounts and transactions shown in such accounts except with respect to any such accounts or transactions as to which the Employer shall within such 180 day period file written exceptions. All determinations as to the value of the assets of the Trust, and as to the amount of the liabilities thereof, shall be made by the 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 Trustee shall be entitled to seek and rely upon the opinion of or any information furnished by brokers, appraisers and other experts, and the Trustee 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.
- 10.10 Rights of Trustee. The rights and interest of any Participant on whose life or in whose name an insurance contract is issued shall not be expanded by such an investment and any and all rights provided under the contract or permitted by the insurer shall be reserved to the Trustee. Such rights shall include the right to surrender, reduce or split the contract, the right to name and change the payee to receive thereunder on the happening of any contingency specified in the contract, the right to exercise any loan provisions to pay premiums or for any other reason, and such other rights as may be reserved to the owner of the policy.
- 10.11 Actions of Insurer. No insurer, which may issue a policy for the purpose of this Plan, shall be required to take or permit any action contrary to the provisions of said policy nor shall the Insurer be required to look into the terms of this Plan, or



question any action as authorized by the Trustee in the application for a policy or changes in an existing Policy.

- 10.12 Insurer Not a Party to Plan. The Insurer shall not be deemed to be a party to this Plan for any purpose nor shall it be responsible for the validity of this Plan.
- 10.13 Authorized Investments. The Trustee shall not, in any case, be required to accept as assets hereunder any contracts or policies which are not permissible investments for retirement plans subject to Act 205; moreover, the Trustee shall have no duty or obligation to inquire into the nature of any such contracts or policies, nor to access the appropriations of such contracts or policies as investments of Plan assets under Act 205.

## ARTICLE XI

### AMENDMENT AND TERMINATION OF PENSION PLAN OR PENSION FUND

- 11.01 Amendment of the Plan The Employer may amend this Plan at any time or from time to time by an instrument in writing executed in the name of the Employer under its municipal seal by officers duly authorized to execute such instrument and delivered to the Board provided, however:
- (a) that no amendment shall deprive any Participant or any Beneficiary of a deceased Participant of any of the benefits to which he is entitled under this Plan with respect to contributions previously made;
  - (b) that no amendment shall provide for the use of funds or assets held under this Plan other than for the benefit of Employees and no funds contributed to this Plan or assets of this Plan shall, except as provided in section 11.05, ever revert to or be used or enjoyed by the Employer; and
  - (c) that no amendment to the Plan which provides for a benefit modification shall be made unless the cost estimate described in section 12.03 has been prepared and presented to the Board in accordance with the Act.
- 11.02 Termination of the Plan – The Employer shall have the power to terminate this Plan in its entirety at any time by an instrument in writing executed in the name of the Employer.
- 11.03 Automatic Termination of Contributions – Subject to the provisions of the Act governing financially distressed municipalities, the liability of the Employer to make contributions to the Pension Fund shall automatically terminate upon liquidation or dissolution of the Employer, upon its adjudication as a bankrupt or upon the making of a general assignment for the benefit of its creditors.
- 11.04 Distribution Upon Termination – In the event of the termination of the Plan, all 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, and the Plan Administrator shall immediately distribute to each Participant an amount equal to his vested benefit.

If there are insufficient assets in the Pension Fund to provide for all vested benefits as of the date of Plan termination, priority shall first be given to the distribution of any amounts attributable to mandatory or voluntary Employee contributions before assets are applied to the distribution of any vested benefits attributable to other sources hereunder.

All other assets attributable to the terminated Plan shall be distributed and disposed of in accordance with the provisions of applicable law and the terms of any instrument adopted by the Employer which effects such termination.

- 11.05 Residual Assets – If all liabilities to vested Participants and any others entitled to receive a benefit under the terms of the Plan have been satisfied and there remain any residual assets in the Pension Fund, such residual assets remaining shall be returned to the Employer insofar as such return does not contravene any provision of law, and any remaining balance, in excess of Employer contributions, shall be returned to the Commonwealth.
- 11.06 Exclusive Benefit Rule – In the event of the discontinuance and termination of the Plan as provided herein, the Employer shall dispose of the Pension Fund in accordance with the terms of the Plan and applicable law; at no time prior to the satisfaction of all liabilities under the Plan shall any part of the corpus or income of the Pension Fund, after deducting any administrative or other expenses properly chargeable to the Pension Fund, be used for or diverted to purposes other than for the exclusive benefit of the Participants in the Plan, their Beneficiaries or their estates.

## ARTICLE XII

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

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

Such biennial actuarial valuation report shall be made as of the beginning of each Plan Year occurring in an odd-numbered calendar year, beginning with the year 1985.

Such actuarial valuation shall be prepared and certified by an approved Actuary, as such term is defined in the Act.

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

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

- 12.02 Duties of Chief Administrative Officer – Such actuarial reports shall be prepared and filed under the supervision of the Chief Administrative Officer.

The Chief Administrative Officer of the Plan shall determine the financial requirements of the Plan on the basis of the most recent actuarial report and shall determine the Minimum Municipal Obligation of the Employer with respect to funding the Plan for any given Plan Year. The Chief Administrative Officer shall submit the financial requirements of the Plan and the Minimum Municipal Obligation of the Employer to the Board annually and shall certify the accuracy of such calculations and their conformance with the Act.

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

## ARTICLE XIII

### MISCELLANEOUS PROVISIONS

- 13.01 Plan Not a Contract of Employment – No police officer of the Employer nor anyone else shall have any rights whatsoever against the Employer or the Plan Administrator as a result of this Plan except those expressly granted to them hereunder. Nothing herein shall be construed to give any police officer the right to remain on the police force of the Employer.
- 13.02 Masculine/Feminine: Singular/Plural – For purposes of this Plan, the masculine shall be read for the feminine and the singular shall be read for the plural, wherever the person or context shall plainly so require.
- 13.03 Construction of Document – This Plan may be executed and/or conformed in any number of counterparts, each of which shall be deemed an original and shall be construed and enforced according to the laws of the Commonwealth, excepting such Commonwealth's choice of law rules.
- 13.04 Headings – The headings of articles are included solely for convenience of reference, and if there be any conflict between such headings and the text of the Plan, the text shall control.
- 13.05 Severability of Provisions – In case any provisions of this Plan shall be held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining parts of this Plan, and the Plan shall be construed and enforced as if said illegal and invalid provisions had never been inserted therein.
- 13.06 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 him, may provide for such payment of pension benefits hereunder to such person or institution so maintaining him, and any such payments so made shall be deemed for every purpose to have been made to such Participant.
- 13.07 Liability of Officers of the Plan Administrator and/or Employer – Subject to the provisions of the Act and unless otherwise specifically required by other applicable laws, no past, present or future officer of the Employer shall be personally liable to any Participant, Beneficiary or other person under any provision of the Plan.

13.08 Assets of the Fund – Nothing contained herein shall be deemed to give any Participant or Beneficiary any interest in any specific property of the Pension Fund or any right except to receive such distributions as are expressly provided for under the Plan.

13.09 Pension Fund for Sole Benefit of Participants – The income and principal of the Pension Fund are for the sole use and benefit of the Participants covered hereunder, and to the extent permitted by law, shall be free, clear and discharged from and are not to be in any way liable for debts, contracts or agreements, now contracted or which may hereafter be contracted, and from all claims and liabilities now or hereafter incurred by any Participant or Beneficiary.

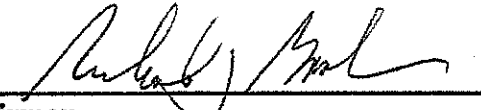
ORDAINED AND ENACTED into law this 19<sup>th</sup> day of December

2019 to become effective the first day of January 2020.

ATTEST:

SUPERVISORS  
KISKIMINETAS TOWNSHIP

  
Secretary

By:   
Chairman