

AMBRIDGE BOROUGH

ORDINANCE NUMBER 1317

AN ORDINANCE AMENDING THE EXISTING BOROUGH OF AMBRIDGE FIREMEN'S PENSION PLAN ("PLAN"), BEAVER COUNTY, PENNSYLVANIA, IN ORDER TO AMEND THE PLAN TO ADD DEFINED CONTRIBUTION FEATURES AND TO COMPLY WITH THE FEDERAL AND COMMONWEALTH OF PENNSYLVANIA LAWS AND REGULATIONS IN EFFECT.

WHEREAS, Borough intends for this Plan to comply with the tax-exempt retirement plan requirement of the Internal Revenue Code of 1986 (as amended) Section 401(a) and, as a result, the Borough adopts the attached Plan amendments.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED, by Ambridge Borough, Beaver County, Pennsylvania and it is hereby ordained and enacted by the authority of the same as follows:

SECTION ONE: ESTABLISHMENT:

This Ordinance sets forth the details of the defined contribution retirement plan provisions for full time non-uniformed employees of Ambridge Borough ("Employer") administrative employees hired after January 1, 2016 pursuant to the provisions of Exhibit A and updates the Internal Revenue Code provisions as set forth in Exhibit A.

SECTION TWO: EXCLUSIVE BENEFIT

The provisions of the Plan shall be maintained for the exclusive benefit of eligible employees and their beneficiaries.

SECTION THREE: DECLARATION OF TRUST

The Employer hereby executes any Declaration of Trust, intending this execution to be operative with respect to the provisions of attached Plan established by the Employer associated with the assets of the Plan that are to be invested.

SECTION FOUR: TRUSTEE

The Employer hereby agrees to serve as trustee under the provisions of the Plan and to invest funds held thereunder.

SECTION FIVE: PLAN ADMINISTRATOR

The Borough Manager shall be the coordinator for the Plan Administration; shall receive reports, notices, etc. regarding this retirement arrangement, shall cast, on behalf of the Employer, any required votes under the retirement arrangement, and may delegate any administrative duties relating to the Plan Administration to appropriate departments.

SECTION SIX: AUTHORITY

The Employer hereby authorizes the Borough Manager to execute all necessary agreements associated with the retirement arrangement incidental to the administration of the Plan. References to any entity hereunder shall include successors of such entity.

SECTION SEVEN: SAVINGS PROVISION:

In the event that any provisions, section, sentence, clause or part of this Plan shall be held to be invalid, such invalidity shall not affect or impair any remaining provision, section, sentence, clause, or part of the Plan, it being the intent of Ambridge Borough that such remainder shall remain in full force and effect.

SECTION EIGHT: AUTHORIZED SIGNATURE:

The President or Vice President of the Ambridge Borough Council are hereby authorized and directed to execute this amendment to the Plan Document.


ENACTED this 14 day of May 2020.

ATTEST:

AMBRIDGE BOROUGH



Joseph Kauer
Borough Manager




Michael A. Mikulich
President of Council

(SEAL)

EXAMINED AND APPROVED this 14 day of MAY 2020, by the Mayor of the Borough of Ambridge.

BOROUGH OF AMBRIDGE:



David Drewnowski
Mayor

EXHIBIT A

1. **Sections 4.06 and 4.07** - Maximum Benefit Limitations and Annual Additions and Incorporation of Section 415 by Reference are deleted in their entirety and replaced by Article XV.
2. **Sections 5.02** – Required Distributions is deleted in its entirety and replaced by Article XV.
3. **Section 5.03** – The second sentence, “In evaluating any such domestic relations order, the Plan may use as a guide Code Section 414(p)” is hereby deleted.
4. **Section 5.04** – Direct Rollovers is deleted in its entirety and replaced by Article XV.
5. Any references to the above sections in Articles I through X shall be changed to references to Article XV.
6. **Articles XIV and XV**– Defined Contribution provisions for Full-Time Service Employees hired after January 1, 2016 and Internal Revenue Code provisions are added to the Plan which will provide as follows in the attached:

Exhibit A (Continued)

ARTICLE XIV

**DEFINED CONTRIBUTION PROVISIONS FOR FIRE EMPLOYEES
HIRED ON OR AFTER JANUARY 1, 2016**

Section 14.1 - Eligibility for Participation in Defined Contribution (DC) Features

Eligibility for Participation in this Article XIV is limited to Defined Contribution Employees who complete any forms required by the Plan Administrator. The benefits in this Article XIV shall be the exclusive benefits provided to Defined Contribution Employees. Notwithstanding anything to the contrary in this Plan, no Firefighter (including any Participant eligible for participation in this Article XIV) hired after January 1, 2016 shall be eligible to participate in the Defined Benefit Features, Articles II through VI of this Plan for any period of service after January 1, 2016. The provisions of this Article XIV found below apply only to Defined Contribution Employees.

Section 14.2 - Definitions

- (a) **Account Balance** means the balance of a Participant's Account held under this Article XIV. A Participant's Account Balance shall be composed of all amounts allocated under this Article XIV hereof (including the Employer Contribution Participant Account, the Employee Pre-Tax and Post-Tax Contribution Participant Account) (if any) and all related earnings thereon net of expenses thereon.
- (b) **Administrator or Plan Administrator** means the individual or firm appointed by the Employer to administer defined contribution features of the Plan. If no Administrator is appointed, the Administrator shall be the Ambridge Borough ("Employer") Manager.
- (c) **Compensation** means the amount reported on a Participant's W-2 that the Participant earned by working normal 40-hour weeks, being paid longevity, vacation, sick pay, and overtime, but shall not include any amounts paid for workers' compensation or any other salary continuation payments, bonuses, back pay awards, lump-sum payments for accumulated vacation or sick pay, and any other extraordinary payments or fringe benefits.
- (d) **Defined Contribution Employee** shall mean any individual who is a firefighter hired by Ambridge Borough after January 1, 2016 on a regular full-time basis and who is not eligible to participate under the provisions of any other IRC 401 pension plan employed by the Employer. For the purpose of this Article XIV, "full-time basis" shall mean a person who is regularly employed for at least thirty-

five (35) hours per week. For the purposes of this Article XIV part time employees and elected officials shall not be considered Defined Contribution Employees.

- (e) **Normal Retirement** means age 55 and 25 Years of Service or age 60 with 20 Years of Service.
- (f) **Plan Year** means the calendar year.
- (g) **Trustee** means the individual or entity selected by the Employer to hold the assets of this Article XIV in trust for the Participants. Unless and until another appointment is made, the Employer shall be Trustee of the assets of the Plan.
- (h) **Valuation Date** means the last day of the calendar year and any other date selected by the Employer. However, to the extent any assets are invested with an insurance or other investment company, Valuation Dates shall be determined in accordance with the investment contract or arrangement. If the assets are selfdirected, the Valuation Date shall be determined daily.

Section 14.3 - Contributions

- (a) **Employer** - As soon as administratively feasible after adoption of this Plan amendment, and each calendar year thereafter, the Employer shall make a contribution to the Plan that will be sufficient to satisfy the requirements of Section 14.4.
- (b) **Employee** – As soon as administratively feasible after adoption of this Plan amendment, participants shall make a mandatory contribution of one (1%) percent of Compensation into the Employee Pre-Tax Contribution Participant Account. Participants may also make voluntary contributions into Employee Post-Tax Contribution Participant Account up to 15% of Compensation or such lesser amount as may be permitted under the Internal Revenue Code (“Code”). All mandatory employee contributions designated as such made on or after the first payroll after this Plan is adopted shall be paid or “picked up” by the Employer in lieu of contributions by the employees and thereafter treated as employer contributions for federal income taxation purposes within the meaning of Section 414(h)(2) of the Code. The mandatory contributions may be paid or picked up by a reduction in the cash salary, by an offset against future salary increases or a combination of both. Affected employees shall not have the option of choosing to receive the pickup up contributions directly in lieu of having them paid by the Employer to the Plans. Notwithstanding the foregoing, contributions so picked up shall continue to be treated as employee contributions for all purposes of state and local law in the same manner and to the same extent as employee contributions made prior to the date of the pickup, including, by way of illustration and not limitation, being treated as part of the affected employee’s compensation for both

Pennsylvania and local income tax laws and for purposes of computing any benefits under the affected employee's pension plan.

Section 14.4 - Allocation of Contributions

- (a) **Separate Accounts:** The Administrator shall maintain a separate Participant Account for each Participant setting forth the Participant's Account Balance. The Administrator shall make the allocations among such Participant Accounts as set forth in this Section which shall include employee contributions under 14.3(b) and employer contributions under 14.4 hereof.
- (b) **Employer Contributions** (made under 14.3(a), above) shall be allocated as of each allocation date among the Employer Contribution Participant Accounts of eligible Participants in the amount as provided below. The last day of the Plan Year and any interim date chosen by the Employer and the Administrator shall be allocation dates. Once an allocation is made, the amount allocated shall become part of the Participant's Account Balance. The amount of the Employer contribution may be amended or stopped all together.
 - (i) Employer Percent of Pay Contributions. The Employer shall contribute an amount equal to one percent (1.0%) of each Participant's Compensation earned effective on a Participant's date of hire of employment with the Employer. For any Defined Contribution Employee hired after January 1, 2016 and prior to the passage of this Ordinance, the one percent (1.0%) Employer contribution will be made retroactively back to his or her employment start date.
 - (j) Employer State Aid Contributions. Effective as soon as legally permitted, a Participant shall be eligible for an Employer State Aid Contribution based on whether the Employer received state aid for such Participant for a given Plan Year (Employee must be certified on Form AG-385 the Employer filed with the Pennsylvania Department of the Auditor General if the Employee worked for a minimum of six (6) consecutive months in the previous calendar year). Furthermore, a Participant must be actively employed as of October 31 of the Plan Year for which the Employer State Aid Contribution is payable. The amount of contribution under this subsection shall be equal to two times the "unit value" reported by the Department of the Auditor General for the applicable Plan Year pursuant to the General Municipal Pension System State Aid Program under Act 205 of 1984.

14.5. Vesting

Each Participant shall be 100% vested immediately in the Employer Contribution.

14.6. Allocation of Gain or Loss

- (a) **General Pooled Assets:** As of each Valuation Date, the Administrator shall determine the fair market value of all assets in the Plan that are not held in suspense accounts, segregated accounts or insurance contracts. Any gain or loss on such assets since the previous Valuation Date shall be allocated among all Participant Accounts (except those Accounts held in segregated accounts) in proportion to Account Balances as of the previous Valuation Date.
- (b) **Segregated Accounts** (including Participant-Directed Investment Accounts): As of each Valuation Date, the Administrator shall determine the market value of all assets held in each segregated account. A separate allocation of gain or loss shall be made for each segregated account. If there is more than one Participant Account within a segregated account, the gain or loss since the previous Valuation Date for that segregated account shall be allocated in proportion to the Account Balances as of the previous Valuation Date.
- (c) **Holding Account:** Contributions made between allocation dates shall be allocated to a holding account which shall also hold any related earnings all of which shall be allocated to Participant Accounts pursuant to the process established by the Administrator and the Employer.
- (d) **Investment Contracts:** Notwithstanding subsections (1), (2), and (3) immediately above, if any Plan assets are invested through any arrangement with an insurance company or other investment organization, Accounts shall be valued, and gains, losses, costs, and expenses shall be allocated (but not less frequently than annually) in accordance with the terms of the applicable investment contract or arrangement.

14.7. Participant-Directed Investments

Notwithstanding the provisions or the other sections of this Article, if the Administrator establishes such a policy, any Participant, Beneficiary, or alternate payee with an Account Balance under this Article may direct how to invest all, or a certain portion, of his Participant Account. The Employer or Administrator shall have sole discretion to determine what investment options will be made available to the Participants. All contributions, expenses, income or losses shall be allocated in accordance with the policies established under this section. To the extent that the Participants do not exercise their rights under this section, the allocation of expenses, income or losses may be made pursuant to Section 14.6 above or such other provisions set forth by the Plan Administrator and the Employer and the investment of their Accounts may be made pursuant to Section 14.6 immediately above or such other provisions set forth by the Plan Administrator and the Employer. To the extent permitted by law, the Trustee and Administrator shall be relieved of any fiduciary responsibility for investment decisions made pursuant to this section, provided, however, that the Plan Administrator or Trustee have followed the instructions of the Participant and

that said instructions are in accordance with applicable law. Upon the death or incapacity of the Participant, the powers granted to the Participant under this section shall inure to the benefit of the Participant's Beneficiary, trustee or legal representative.

14.8. Distributions

- (a) **Applicability:** This section governs the distribution of vested Account Balances. Furthermore, distributions are subject to the requirements of the applicable provisions of the Internal Revenue Code as set forth in this Plan document.
- (b) **General Rule:** Distribution of a Participant's vested Account Balance shall be made in a lump sum as soon as it is administratively feasible to make distribution following a Participant's termination of employment with the Employer and subject to such limitations and conditions utilized by the Administrator. A Participant's Account Balance shall be valued as of the Valuation Date coincident with or immediately preceding the date of distribution. In the event that a Participant does not consent to accept a distribution pursuant to this provision, his Account Balance shall be rolled over to an Individual Retirement Account.
- (c) **Annuity Option:** Notwithstanding subsection (b) immediately above, if a Participant has a vested Account Balance in excess of \$5,000 and the Participant desires to convert his lump-sum benefit into an annuity, he may do so under the rules and conditions established by the Employer and the Administrator. This annuity shall be purchased from a third-party insurance firm selected by the Employer or the Administrator.
- (d) **Death Benefit:** Each Participant shall complete a beneficiary designation form designating the person to whom his Account Balance shall be paid upon his death. If no beneficiary designation form has been completed, the Participant's Account Balance shall be paid to his spouse, or if no spouse to his issue to be divided equally and, if no issue, to his Estate. All payments shall be made in a lump sum payment.
- (e) **Loans and Hardship Distributions:** Loans and hardship distributions of Plan assets are not permitted.

14.9 Administration

- (a) **Powers of the Employer.** The Employer shall have the following powers and duties:

- (i) To appoint and remove, with or without cause, the Plan Administrator. If none is so appointed, the Plan Administrator shall be the Borough Manager.
 - (ii) To amend or terminate the Plan;
 - (iii) To appoint a committee to facilitate administration of the Plan and communications to Participants;
 - (iv) To decide all questions or eligibility (1) for Plan participation, and (2) upon appeal by a Participant, Employee or Beneficiary, for the payment of benefits;
 - (v) To engage professionals with regard to Plan matters and Plan's operation;
 - (vi) To take all actions and to communicate to the Plan Administrator in writing all necessary information to carry out the terms of the Plan and Trust; and
 - (vii) To notify the Plan Administrator in writing of the termination of the Plan.
- (b) **Duties of the Plan Administrator** – The Plan Administrator shall have the following powers and duties.
- (i) To construe and interpret the provisions of the Plan;
 - (ii) To maintain and provide such returns, reports, schedules, descriptions, and individual Account statements, as are required by law within the times prescribed by law; and to furnish to the Employer, upon request, copies of any or all such materials, and further, to make copies of such instruments, reports, descriptions, and statements as are required by law available for examination by Participants and such of their Beneficiaries who are or may be entitled to benefits under the Plan in such places and in such manner as required by law;
 - (iii) To obtain from the Employer such information as shall be necessary for the proper administration of the Plan;
 - (iv) To determine the amount, manner, and time of payment of benefits hereunder;
 - (v) To appoint and retain such agents, counsel, and accountants for the purpose of properly administering the Plan;
 - (vi) To distribute assets of the Trust to each Participant and Beneficiary in accordance with the terms of this Section 14.9;

- (vii) To pay expenses from the Trust; and
 - (viii) To do such other acts reasonably required to administer the Plan in accordance with its provisions or as may be provided for or required by law.
- (c) **Protection of the Employer:** The Employer shall not be liable for the acts or omissions of the Plan Administrator, but only to the extent that such acts or omissions do not result from the Employer's failure to provide accurate or timely information as required or necessary for proper administration of the Plan.
- (d) **Protection of the Plan Administrator:** The Plan Administrator may rely upon any certificate, notice or direction purporting to have been signed on behalf of the Employer which the Plan Administrator believes to have been signed by a duly designated official of the Employer.
- (e) **Resignation or Removal of Plan Administrator:** The Plan Administrator may resign at any time effective upon sixty (60) days prior written notice to the Employer. The Plan Administrator may be removed by the Employer at any time upon sixty (60) days prior written notice to the Plan Administrator. Upon the resignation or removal of the Plan Administrator, the Employer may appoint a successor Plan Administrator; failing such appointment, the Employer shall assume the powers and duties of Plan Administrator. Upon the resignation or removal of the Plan Administrator, any Trust assets invested by or held in the name of the Plan Administrator shall be transferred to the trustee in cash or property, fair market value, except that the return of Trust assets invested in a contract issued by an insurance company shall be governed by the terms of that contract.
- (f) **No Termination Penalty:** The Plan Administrator shall have no authority or discretion to impose any termination penalty upon its removal.
- (g) **Decisions of the Plan Administrator:** All constructions, determinations, and interpretations made by the Plan Administrator pursuant to this Section or by the Employer pursuant to this Section shall be final and binding on all persons participating in the Plan, given deference in all courts of law to the greatest extent allowed by applicable law, and shall not be overturned or set aside by any court of law unless found to be arbitrary or capricious, or made in bad faith.

14.10 Miscellaneous

- (a) **Nonguarantee of Employment:** Nothing contained in this Plan shall be construed as a contract of employment between the Employer and any Employee, or as a right of an Employee to be continued in the employment of the Employer,

as a limitation of the right of the Employer to discharge any of its Employees, with or without cause.

- (b) **Rights to Trust Assets:** No Employee or Beneficiary shall have any right to, or interest in, any assets of the Trust upon termination of his/her employment or otherwise, except as provided from time to time under this Plan, and then only to the extent of the benefits payable under the Plan to such Employee or Beneficiary out of the assets of the Trust. All payments of benefits as provided for in this Plan shall be made solely out of the assets of the Trust and none of the fiduciaries shall be liable therefor in any manner.
- (c) **Nonforfeitability of Benefits:** Subject only to the specific provisions of this Plan, nothing shall be deemed to deprive a Participant of his/her right to the nonforfeitable interest to which he/she becomes entitled in accordance with the provisions of the Plan.
- (d) **Incompetency of Payee:** In the event any benefit is payable to a minor or incompetent, to a person otherwise under legal disability, or to a person who, in the sole judgment of the Employer, is by reason of advanced age, illness, or other physical or mental incapacity incapable of handling the disposition of his/her property, the Employer may apply the whole or any part of such benefit directly to the care, comfort, maintenance, support, education, or use of such person or pay or distribute the whole or any part of such benefit to:
 - (i) The parent of such person;
 - (ii) The guardian, committee, or other legal representative, wherever appointed, of such person;
 - (iii) The person with whom such person resides;
 - (iv) Any person having the care and control of such person; or
 - (v) Such person personally.

The receipt of the person to whom any such payment or distribution is so made shall be full and complete discharge therefor.

- (e) **Inability to Locate Payee:** Anything to the contrary herein notwithstanding, if the Employer is unable, after reasonable effort, to locate any Participant or Beneficiary to whom an amount is payable hereunder, such amount shall be forfeited and held in the Trust for application against the next succeeding Employer Contribution or contributions required to be made hereunder. Notwithstanding the foregoing, however, such amount shall be reinstated, by means of an additional Employer contribution, if and when a claim for the forfeited amount is subsequently made by the Participant or beneficiary of if the

Employer receives proof of death of such person, satisfactory to the Employer. To the extent not inconsistent with applicable law, any benefits lost by reason of escheat under applicable state law shall be considered forfeited and shall not be reinstated.

- (f) **Mergers, Consolidations, and Transfer of Assets:** The Plan shall not be merged into or consolidated with any other plan, nor shall any of its assets or liabilities be transferred into any such other plan, unless each Participant in the Plan would (if the Plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer that is equal to or greater than the benefit he/she would have been entitled to receive immediately before the merger, consolidation, or transfer (if the Plan had then terminated).
- (g) **Employer Records:** Records of the Employer as to an Employee's or Participant's Period of Service, termination of service and the reason therefor, leaves of absence, reemployment, earnings, and salary will be conclusive on all persons, unless determined to be incorrect.
- (h) **Applicable Law:** The Plan shall be construed under the laws of the Commonwealth of Pennsylvania, except to the extent superseded by federal law. The Plan is established with the intent that it meets the requirements under the Code. The provisions of this Plan shall be interpreted in conformity with these requirements.

In the event of any conflict between the Plan and a policy or contract issued hereunder, the Plan provisions shall control; provided, however, no Plan amendment shall supersede an existing policy or contract unless such amendment is required to maintain qualification under Section 401(a) and 414(d) of the Code.

14.11. Trust

A Trust is hereby created to hold all the assets under this Article XIV for the exclusive benefit of Participants and Beneficiaries, except that expenses and taxes may be paid from the Trust including investment expenses and reasonable compensation of Plan Administrator and reimbursement of reasonable expenses of Plan Administrator.

The Trustee or the Plan Administrator acting as agent for the Trustee shall have all such powers of a Trustee as are permitted under the laws of the Commonwealth of Pennsylvania.

14.12 Amendment

The Employer may amend the provisions of this Article XIV subject to the conditions and limitations of State law. The power to amend specifically

includes the power to increase, decrease or stop Employer or Employee contributions and terminate the Plan.

14.13 Document Coordination

The Defined Contribution provisions of this Article XIV shall be construed in conformance with the following provisions of Plan document: Articles I (Definitions), Article XIII (Miscellaneous Provisions) and Article XV (Applicable Provisions of the Internal Revenue Code) and Sections 9.07 – 9.08 (Articles I, XIII and XV together with Sections 9.07 – 9.08 are the “Coordinated Provisions”), except where Coordinated Provisions conflict with the Defined Contribution provisions hereof of Article XIV.

ARTICLE XV

APPLICABLE PROVISIONS OF THE INTERNAL REVENUE CODE

15.1 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.

15.2 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.

15.3 Limit on Compensation

Compensation is subject to the limitation under Code Section 401(a)(17), which is \$285,000 for the Plan Year and Limitation Year beginning in 2020. 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).

15.4 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.

15.5 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.
- (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.

15.6 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

15.7 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 aftertax 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.

15.8 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 1st of the calendar year following the later of:
 - (1) the calendar year in which the Participant attains age seventy and onehalf (70½) for those who attain such age on or before 1/1/2020 and otherwise the calendar year in which the Participant attains age seventy-two (72), 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.

15.9 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."

15.10 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).

15.11 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.

15.12 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.

15.13 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).

15.14 Full Vesting at Normal Retirement Age

A Participant's Normal Retirement Benefit shall be 100% vested upon attainment of his Normal Retirement Age.

15.15 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.

15.16 Exclusive Benefit

The Plan is maintained for the exclusive benefit of its Participants and Beneficiaries.

15.17 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.

ORDAINED AND ENACTED this 14 day of May, _____ A.D. 2020.

ATTEST:



BOROUGH OF AMBRIDGE



President of Council