

ORDINANCE No. 1183

AN ORDINANCE OF THE BOROUGH OF WAYNESBORO, FRANKLIN COUNTY, PENNSYLVANIA AMENDING THE EXISTING BOROUGH OF WAYNESBORO MUNICIPAL EMPLOYEES PENSION PLAN AS ORIGINALLY EFFECTIVE JANUARY 2, 1964 TO PROVIDE DEFINED CONTRIBUTION PROVISIONS AS WELL AS APPOINTING CBIZ InR AS THE INVESTMENT FIRM RELATED TO THE FUNDS

WHEREAS, the Borough of Waynesboro previously adopted the "Borough of Waynesboro Municipal Employees Pension Plan" (the "Plan"), which Plan is established and continued in accordance with Chapter 45 of the Code of the Borough of Waynesboro ("Code"); and

WHEREAS, the Borough of Waynesboro desires to modify the Plan to provide for defined contribution provisions; and

WHEREAS, the Borough of Waynesboro desires that its defined contribution accounts be administered by CBIZ InR.

WHEREAS, The 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 the Borough of Waynesboro, Franklin 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 Borough of Waynesboro ("Employer") hired on or after November 1, 2019 pursuant to the provisions of Exhibit A which is hereby adopted by and incorporated in this Ordinance.

SECTION TWO: EXCLUSIVE BENEFIT

The provisions of the Plan shall be maintained for the exclusive benefit of eligible employees and their beneficiaries. No employee hired by the Borough on or after November 1, 2019 will participate in the defined benefit features of the Borough of Waynesboro Municipal Employees Pension Plan.

SECTION THREE: ADMINISTRATION

CBIZ InR is hereby appointed to perform all nondiscretionary functions necessary for the

administration of the defined contribution accounts.

SECTION FOUR: TRUSTEE

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

SECTION FIVE: PLAN ADMINISTRATOR

Unless otherwise changed by the Council, the Borough Manager shall be the Plan Administrator, shall receive reports, notices, etc. on behalf of the Employer, cast any required votes under the Trust and may delegate any administrative duties relating to the Plan Administration to appropriate individuals.

SECTION SIX: AUTHORITY

The Employer hereby authorizes the Borough Manager to execute all necessary agreements incidental to the administration of the Plan.

SECTION SEVEN: REPEALER

All provisions of previous Ordinances of the Borough of Waynesboro which are contrary to this Ordinance are expressly repealed.

SECTION EIGHT: SEVERABILITY

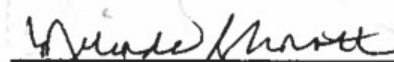
The provisions of this Ordinance are declared to be severable, and if any section, subsection, sentence, clause or part thereof is, for any reason, held to be invalid, unlawful, or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of any remaining sections, subsections, sentences, clauses or part of this Ordinance.

SECTION NINE: EFFECTIVE DATE

This Ordinance shall take effect immediately.

ENACTED AND ORDAINED this 20th day of January, 2021.

ATTEST:


Borough Secretary

BOROUGH OF WAYNESBORO


President of Council

WITNESS:


Borough Manager

BOROUGH OF WAYNESBORO


Mayor

Exhibit A

ARTICLE XV

MONEY PURCHASE PROVISIONS FOR FULL-TIME NON-UNIFORMED EMPLOYEES HIRED ON OR AFTER NOVEMBER 1, 2019

Section 1501 Eligibility for Participation in Money Purchase Defined Contribution (DC) features

Eligibility for Participation in this Article XV is limited to Defined Contribution Employees who complete any forms required by the Plan Administrator. The benefits in this Article XV shall be the exclusive retirement benefits provided to Defined Contribution Employees. Notwithstanding anything to the contrary in this Plan, no Defined Contribution Employee hired on or after November 1, 2019 shall be eligible to participate in the Defined Benefit Features or any other pension funded by the Borough ("Employer"). The provisions of this Article XV found below apply only to Defined Contribution Employees.

Section 1502 Definitions for Article XV

- (a) **Account Balance** means the balance of a Participant's Account held under this Article XV. A Participant's Account Balance shall be composed of all amounts allocated under this Article XV hereof (including the Employer Contribution Participant Account and the Employee Contribution Participant Account) (if any) and all related earnings thereon net of expenses thereon.
- (b) **Administrator or Plan Administrator** means the individual or Committee appointed by the Employer to administer the Plan. If no Administrator is appointed, the Administrator shall be the Borough Manager.
- (c) **Defined Benefit Features** means the defined benefit provisions of the Borough of Waynesboro Municipal Employees Pension Plan including those set forth in Article III and Article V of the Plan.
- (d) **Defined Contribution Employee** shall mean any individual who is a non-uniformed employee hired by Employer on or after November 1, 2019 on a regular full-time basis, who is not a police officer. For the purpose of this Article XV, "full-time basis" shall mean a person who is regularly employed for at least thirty-five (35) hours per week for at least forty (40) weeks a year. For the purposes of this Article XV, part time employees and elected officials shall not be considered Defined Contribution Employees.
- (e) **Normal Retirement** means age 65 and 10 years of service.
- (f) **Plan** means the Borough of Waynesboro Municipal Employees Pension Plan.

- (g) **Plan Year** means the calendar year.
- (h) **Salary** means the Defined Contribution Employee's base wages earned during the Plan Year.
- (i) **Total and Permanent Disability** means that a Participant because of sickness or injury can no longer work on behalf of the Employer which is verified by a physician chosen by the Plan Administrator.
- (j) **Trustee** means the individual or entity selected by the Employer to hold the assets of this Article XV in trust for the Participants. Unless and until another appointment is made, the Employer shall be Trustee of the assets of the Plan.
- (k) **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 self-directed, the Valuation Date shall be determined daily.

Section 15.03 Contributions

- (a) **Employer** - Beginning as soon as practical after adoption of this Ordinance (for 2019) and each calendar year thereafter, the Employer shall make a contribution to the Plan that will be sufficient to satisfy the requirements of Section 15.04.
- (b) **Employee** - There are no required employee contributions to the Defined Contribution features of the Plan. An employee may make voluntary employee contributions up to 20% of Salary as defined in Section 15.02(h) or other such limits as may be imposed by applicable law.

Section 15.04 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 15.03(b) (if any) and employer contributions under 15.04(b) hereof.
- (b) **Employer Contributions** (made under 15.03(a), above) shall be allocated as of each allocation date among the Employer Contribution Participant Accounts of eligible Participants in the amount of five thousand dollars (\$5,000) each calendar year. 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. A pro rata allocation of the Employer Contribution shall be made in the year a Participant begins or terminates employment based upon the number of whole months of employment served with the

Employer divided by twelve (12). The amount of the Employer contribution may be amended or stopped all together.

Any forfeitures at the end of the Plan year are applied as an offset to employer costs.

Section 15.05 Vesting

A Participant shall be 100% vested in Employer contributions at all times:

A Participant shall be 100% vested in his Employee Contribution Account, if any.

Section 15.06 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.
- (4) **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.

Section 15.07 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 15.06 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 15.06 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.

Section 1508 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.
- (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.

Section 1509 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 and to amend or stop Employer contributions;
- (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 Plan;
 - (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 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.
- (h) **Appeal:** 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 to this section 15.09 of the Plan has been exhausted.

Section 1510 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 person, 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 of the Plan's requirements 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 Internal Revenue Code ("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.

Section 15.11 Trust

A Trust is hereby created to hold all the assets under this Article XV 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 and impacts Participant Accounts as provided in Sections 15.06 and 15.07 hereof.

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.

Section 15.12 Amendment

The Employer may amend the provisions of this Article XV 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.

Section 15.13 Document Coordination

The Defined Contribution provisions of this Article V shall be construed in conformance with the Definitions provisions of Plan document except where Definitions conflict with the Defined Contributions provisions hereof of Article XV.