

TOWNSHIP OF PITTSTON

ORDINANCE NO. 2-01 of 2022

ORDINANCE ESTABLISHING A REVISED PLAN AND TRUST FOR THE  
NON-UNIFORMED EMPLOYEES OF PITTSTON TOWNSHIP

WHEREAS, Pittston Township, Luzerne County, Pennsylvania did by agreement dated October 5, 1992, adopt a Non-Uniformed Employees Pension Plan for Pittston Township; and Pittston Township amended said Ordinance 702-2007; and

WHEREAS, certain rulings, court decisions and Township ordinances and resolutions have made it desirable to amend and restate the Non-Uniformed Pension Plan for the Pittston Township; and

THEREFORE, BE IT ORDAINED, the Board of Supervisors of Pittston Township hereby restates the Non-Uniformed Employees Pension Plan and Trust for the purpose of providing retirement and other benefits as stated herein.

## ARTICLE I

### DEFINITIONS

- 1.01 "Age" shall mean the age attained by the Employee at his or her last birthday.
- 1.02 "Anniversary Date" shall mean any January 1 after the Effective Date.
- 1.03 "Board" shall mean the Board of Supervisors of Pittston Township, Luzerne County, PA.
- 1.04 "Compensation" shall mean the earnings paid by the Township to the Member during the Plan Year as reported on the Federal government for income tax purposes to include Member pre-tax contributions pursuant to IRC section 457 or 125.
- 1.05 "Early Retirement Date" shall mean the first day of the month on or after the Member has completed twenty (20) Years of Service and the Member attains age 55.
- 1.06 "Effective Date" of this Ordinance shall be January 1, 2007.
- 1.07 "Employee" shall mean any person in the full-time employ of the Township whose customary employment by the Township is for not less than 35 hours per week.
- 1.08 "Forfeiture" shall mean the non-vested portion of a Member's Account.
- 1.09 "Fund" shall mean all assets held by the Trustee under the Trust Agreement and related insurance and investment contracts relation to this Plan.
- 1.10 "Late Retirement Date" shall mean any date later then Normal Retirement at which a Member retires.
- 1.11 "Member" shall mean any employee who has satisfied the eligibility requirements established in Article II hereof.
- 1.12 "Member Account" shall mean each Member's individual account maintained within the Fund to include the prorated share of investment earnings or losses.
- 1.13 "Normal Retirement Date" shall mean the first day of the month coincident with or next following the date on which the Member completes five (5) Years of Service or the date on which the Member attains Age 65, whichever is later to occur.
- 1.14 "Pay Period" shall mean the period of time at which end an Employee is compensated for his services to the Township.
- 1.15 "Plan" shall mean the Pension Plan for the Non-Uniformed Employees of Pittston Township, as herein set forth and as the same may hereafter be amended.
- 1.16 "Plan Year" shall mean a period of twelve (12) consecutive months commencing on any January 1<sup>st</sup> and ending on the following December 31<sup>st</sup>.

- 1.17 "Rollover Account" shall mean the distribution amount transferred to the Plan by a Member from a qualified pension or profit-sharing plan.
- 1.18 "Service" shall mean the aggregate of a Member's total periods of employment as a full-time Employee of the Township. If a Member enters military service, either voluntarily or by conscription, after he has been employed for at least six months, such time spent in the armed forces of the United States during a period of national emergency shall be counted as Service for purposes of this Plan, provided such Member returns to service with the Township within 6 months after his discharge or release from such active duty in the armed forces of the United States. The time spent in military service due to voluntary extension of such military service during a period of peacetime shall not be included as Service for the purpose of this Plan. Time spent on Reserve or National Guard Training shall be included as Service for purposes of this Plan.
- 1.19 "Total Disability" shall mean any condition arising from illness or injury which precludes an Employee from performing the duties associated with the normal occupation requirements of any position with the Township as certified by a Physician designated by the Township.
- 1.20 "Trust Agreement" shall mean the contract between the Township and the Trustee establishing the terms by which and under which the Fund is invested, distributed, accounted for and terminated, as the same now exists and as it may hereafter be amended.
- 1.21 "Trustee" shall mean the Board of Supervisors of Pittston Township or any other agency or person appointed by the Board to serve in that capacity as set forth in the Trust Agreement.
- 1.22 "Vested Interest" shall mean the non-forfeitable right to any immediate or deferred benefit in the amount which is equal to the sum of (a) and (b) below:
- (a) The value on that date of that portion of the Member's Account that is attributable to and derived from a Member's own contribution, if any.
  - (b) The value on that date of that portion of the Member's Account that is attributable to and derived from Employer Contributions multiplied by his Vesting Percentage determined on the date applicable.
- 1.23 "Vesting Percentage" shall mean the Member's nonforfeitable interest to his account plus the earnings thereon computed as of the date determining such percentage because of the occurrence of some event. Members are 100% vested upon entering the Plan.
- 1.24 "Year of Service" shall mean the Plan Year during which an Employee has completed at least 1,000 hours of work for compensation or compensation entitlement.

## **ARTICLE II**

### **ELIGIBILITY**

- 2.01 All persons who are Employees (as defined in this Plan) as of the Effective Date hereof and who have attained age 20.5 and completed ½ year of service shall be a Member as of the Effective Date.
- 2.02 Any person who becomes an Employee after the Effective Date hereof shall become a Member on the earlier of the first day of the seventh month or the first day of the Plan year coincident with or next following completion of six months of full-time employment.
- 2.03 A former Member shall become a Member immediately upon returning to the employ of the Township if such Member has a non-forfeitable right to all or a portion of the Member Account derived from Township contributions at any time of termination of Service. If not, he will be considered a new Employee for Plan eligibility purposes and must meet the requirements of Section 2/02 hereof.

## **ARTICLE III**

### **CONTRIBUTIONS**

- 3.01 Township Contributions: The Township shall contribute on behalf of each Member who was a Member on the last day of the Pay Period an amount equal to the fixed percentage of his Compensation for such Pay Period as has been established by the Board and which may from time to time be changed by the Board. The current level as of the Effective Date of this Ordinance is five percent (5%).

The Township shall remit the contributions to the Trustee not less than monthly.

- 3.02 Rollovers and Transfers: The Trustee may receive on behalf of a Member all or part of the entire amount of any distribution from a terminated pension or profit-sharing plan or any lump sum distribution there to for received by such Member from a pension or profit-sharing plan meeting the requirements of Internal Revenue Code section 401(a).
- 3.03 State Aid: The portion of the payments made by the State Treasurer to the Township and designated by the Board to be allocated to the Non-Uniformed Employee's Pension Fund from money received from taxes paid upon premiums by foreign casualty insurance companies shall be used to reduce or eliminate the Township's Contributions pursuant to Section 3.01 hereof.
- 3.04 Other Contributions: The Fund shall be authorized to receive by gift, grant, devise or bequest, any money or property, real, personal or mixed, in trust for the benefit of the Fund. The Trustee shall be subject to such directions not inconsistent with the Plan as the donors of such funds and property may prescribe.
- 3.05 Forfeitures: Forfeitures shall be allocated to all Participants eligible to share in the allocations in the same proportion that each Participant's Compensation for the year bears to the Compensation of all Participants for such year.
- 3.06 Member Contributions: Members may make voluntary contributions in an amount not greater than 25 % of Compensation and will make mandatory, after-tax contributions equal to 5% of Compensation.

## **ARTICLE IV**

### **RETIREMENT BENEFITS**

- 4.01 Normal Retirement: A Member who attains his Normal Retirement Age shall be considered fully vested. If a Member retires on his Normal Retirement Date he shall receive a distribution of the vested value of his Member Account valued as of his Normal Retirement Date.
- 4.02 Early Retirement: A Member who retires on his Early Retirement Date shall have a Vesting Percentage as determined by Section 1.24 hereof and shall receive a distribution of the vested value of his Member Account valued as of his Early Retirement Date.
- 4.03 Late Retirement: A Member may continue in the Service of the Township after his Normal Retirement Age, and in such event shall retire on his Late Retirement Date. Such Member shall continue as a Member under this Plan until such Late Retirement Date. The Member shall have a Vesting Percentage as determined by Section 1.24 hereof and shall receive a distribution of the vested value of his Member Account valued as of his Late Retirement.
- 4.04 Disability Retirement: A Member who retires from the service of the Township due to a Total Disability shall be deemed to be fully vested and shall receive a distribution of the vested value of his Member Account valued as of his Disability Retirement Date.

## **ARTICLE V**

### **DEATH BENEFITS**

- 5.01 Death Prior to Retirement: If a Member dies prior to the commencement of pension benefits, he shall be deemed to be fully vested and, his designated beneficiary shall be entitled to the Vested Interest of the Member's Account valued as of the end of the month during which death occurred. If no such beneficiary survives, the amount will be paid to the Member's estate.
- 5.02 Death After Retirement: If a Member dies after distribution has commenced, the remaining portion of such interest will continue to be distributed in accordance with the method of distribution elected pursuant to Article VI hereof.

## **ARTICLE VI**

### **METHOD OF DISTRIBUTION OF BENEFITS**

6.01 Settlement Options: Distribution will be made in a lump sum at the time of:

- A. Retirement
- B. Termination
- C. Death
- D. Disability



## **ARTICLE VII**

### **TERMINATION OF EMPLOYMENT**

7.01 **Distribution:** As of a Member's termination of employment, he shall receive a distribution of his entire Vested Interest valued at the date his distribution forms are processed.

7.02 **Reemployment Rights:** If the terminated Member is rehired by the Township and re-enrolls in the Plan within 12 consecutive months of termination he shall continue to participate in the Plan as if such termination had not occurred.

If a terminated Member is rehired by the Township and re-enrolls in the Plan after a 1 year break-in-service has occurred, Years of Service prior to the 1-year break-in-service will be credited towards Vesting Percentage calculation as per Section 1.24 hereof provided that the terminated Member who under the Plan did not have a non-forfeitable right to any interest in the Plan resulting from Employer contribution and his consecutive 1-year break-in-service did not equal or exceed the greater of (a) five (5) or (b) the aggregate number of his pre-break Years of Service.

If a terminated Member receives a distribution pursuant to this section and is subsequently rehired and resumes employment covered under this Plan, prior to five (5) consecutive 1-Year breaks-in-service, his employer-derived forfeited account balance will be restored only if he repays the full amount distributed to him before the earlier of five (5) years after the first date on which the Member is reemployed by the Township or the close of the first period of five (5) consecutive 1-Year breaks-in-service commencing after distribution.

If a non-vested Member terminates he will be deemed to have repaid the deemed distribution as of the date of reemployment.

7.03 **Forfeiture:** Any Forfeiture shall be used in accordance with Section 3.05 hereof.

## **ARTICLE VII**

### **MANAGEMENT OF FUND**

- 8.01 It is the duty of the Trustee to pay the benefits to Members and their beneficiaries, as provided in Articles IV, V, VI and VII, in accordance with the instructions received from the Board, provided, however, that the duty of the Trustee to make such payments is wholly contingent upon the sufficiency of the Fund for such purpose.
- 8.02 The Township may employ an actuary, investment advisors, counsel or other professional consultants from time to time in connection with the operation of the Fund of this Plan. Such persons or entities shall be compensated by the Township at such rates as may be agreed upon by the Board. Such compensation may be paid from the Fund.
- 8.03 The Trustee shall make an annual determination of the fair market value of the Fund as of the Anniversary Date and as of such additional dates as the Board may direct. The fair market value of the Fund shall be reported to the Members at least annually.

## **ARTICLE IX**

### **BOARD OF SUPERVISORS**

- 9.01 The Plan shall be administered by the Board. The Board shall make and adopt rules and regulations for the efficient administration of the Plan.
- 9.02 The Board shall keep all data, records and documents pertaining to the administration of the Plan and shall execute all documents necessary to carry out the provisions of the Plan, and shall provide all such data, records and documents to the Trustees, and any other professional whose services are employed pursuant to Section 8.02 of this Plan.
- 9.03 The Board shall construe the Plan, shall determine any questions of fact arising under the Plan and shall make all decisions required of it under the plan and its construction thereof, and decisions and actions taken thereon in good faith shall be final and conclusive. It may correct any defect or supply any omission or reconcile any inconsistency in such manner to such extent as it shall deem expedient to carry the Plan into effect, and it shall be the sole judge of such expediency. The Board shall act uniformly with respect to matters coming before it concerning Employees in similar circumstances.
- 9.04 The Board shall serve without bond except as may be otherwise required by law and without compensation for its services as such.
- 9.05 The members of the Board, and each of them, shall be free of all liability for any act or omission except by willful misconduct or gross negligence, and each of them shall be fully indemnified by the Township against all judgments not involving findings of their respective personal or collective willful misconduct or gross negligence and against all costs, including counsel fees, incurred in defense of actions brought against them.
- 9.06 The Board shall make available to Members, retired Members and terminated Members sand to their beneficiaries, for examination during business hours, such records as pertain to the person examining.
- 9.07 To enable the Board to perform its functions, the Township shall supply full timely information to it on all matters relating to the pay of all Members, their retirement, death, termination of employment and such other pertinent facts as the Board may require.
- 9.08 The Board shall enact such rules and regulations for the conduct of its business and for the administration of the Plan as it may consider desirable, provided the same shall not be in conflict with any of the provisions of the Plan. All actions of the Board shall be taken at meetings at which at least four members shall be present, or by written resolution and any resolutions concurred in by not less than four of its members shall be the action of the entire Board. Written minutes shall be kept of the meetings and actions of the Board.
- 9.09 The President and Secretary, acting on behalf of the Board, shall have the power to execute all documents necessary to carry out the actions of the Board, and any person, partnership, corporation or government agency shall accept such documents over such signatures as if executed by the Board.

## **ARTICLE X**

### **PROVISIONS RELATING TO THE TOWNSHIP**

- 10.01 It is the expectation of the Township that it will continue this Pension Plan indefinitely and will from time to time contribute to the Fund such amounts as may be needed to provide the benefits set forth in the Plan; but continuance of the Plan is not assumed as an obligation of the Township and the right is reserved by the Township at any time to reduce, suspend or discontinue its contributions hereunder.
- 10.02 The Township assumes no obligation or responsibility with respect to the operation of the Plan and does not guarantee the payment of the benefits provided for Members of the Plan. The Township shall have no liability with respect to the administration of the Fund and payments made under the provisions of any Ordinance establishing, amending, or maintaining the Plan shall not be a charge on any other fund in the treasury of the Township or under its control, save the Non-Uniformed Employees' Pension Fund herein provided for.
- 10.03 Nothing contained in the Plan shall be held or construed as a contract or guarantee of employment or to create any liability upon the Township to retain any person in its service. The Township reserves the full right to discontinue the service of any one person without liability except for salary or wages that may be due and unpaid, whenever in its judgment its best interests so require, and such discontinuance shall be without regard to this Plan.

## **ARTICLE XI**

### **TERMINATION OR AMENDMENT OF PLAN**

- 11.01 The Board may amend, curtail or terminate this Plan at any time, provided, however, that no amendment enlarging the responsibilities or the obligations of the Trustee shall be made without the Trustee's consent (other than an amendment having the effect of terminating the Plan); nor shall any amendment be made which will in any manner divert any part of the Fund to any purpose other than the exclusive benefit of Members or their beneficiaries (except upon termination such diversion may be made after all the fixed and contingent liabilities to Members and their beneficiaries have been met); nor shall any amendment be made at any time which will in any manner divest any benefit then vested in a Member.
- 11.02 In the event of termination of this Plan, the Board shall allocate the assets then remaining in the Fund, to the extent that such assets are sufficient, to Members and retired Members in an amount equal to their respective Member Account Balance reduced in the cases of retired Members by any prior distributions made to them.

## **ARTICLE XII**

### **MISCELLANEOUS PROVISIONS**

- 12.01 No benefit under this Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge or encumbrance, nor to seizure, attachment or other legal process for the debts of any Members or Member's beneficiary.

This provision shall not apply to a "qualified domestic relations order" defined in Code Section 414(p), and those other domestic relations orders permitted to be so treated by the Board under the provisions of the Retirement Equity Act of 1984. The Board shall establish a written procedure to determine the qualified status of domestic relations orders and to administer distributions under such qualified orders. Further, to the extent provided under a "qualified domestic relations order", a former spouse of a Participant shall be treated as the spouse or surviving spouse for all purposes under this Plan.

- 12.02 Any person dealing with the Trustee may rely upon a copy of this Plan and any amendments thereto certified to be a true and correct copy by the Trustee.
- 12.03 Anything heretofore contained in this Plan to the contrary notwithstanding, it is the intention of the Township that any action herein provided to be taken by the Trustee shall be taken only in accordance with written instructions of the Board given in such detail as to preclude the exercise by the Trustee of discretion in the performance thereof.
- 12.04 Under no circumstance, whether upon amendment or termination of this Plan or otherwise, shall any part of the Fund be used for or diverted to any purpose other than the exclusive benefit of Members or their beneficiaries until all actuarial obligations to such Member or Member's beneficiaries have been met.
- 12.05 Should any provision of this Plan be determined to be void by any court, the Plan will continue to operate and, to the extent necessary, will be deemed not to include the provision determined to be void.
- 12.06 Headings and captions provided herein are for convenience only and shall not be deemed part of the Plan.
- 12.07 This Plan shall be construed and applied under the laws of the Commonwealth of Pennsylvania where not in conflict with Federal laws, which shall prevail.
- 12.08 All Ordinances or Resolutions, or portions thereof, inconsistent herewith are repealed.

Adopted as on Ordinance of Pittston Township this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

### **PITTSTON TOWNSHIP**

\_\_\_\_\_  
Chairman, Board of Supervisors  
Pittston Township

**ATTEST:**

\_\_\_\_\_  
Secretary