

Chapter 35

PENSIONS

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[HISTORY: Adopted by the Borough Council of the Borough of South Greensburg: Part 1, 11-14-1994 as Ord. No. 94-6; Part 2, 1-9-1995 as Ord. No. 94-7. Amendments noted where applicable.]

GENERAL REFERENCES

Officers and employees — See Ch. 33.

Part 1
Non-Uniformed Employees Pension Plan
[Adopted 11-14-1994 as Ord. No. 94-6]

ARTICLE I
Terminology

§ 35-1. Definitions.

As used in this Part, the following terms shall have the meanings indicated:

AGE — The age attained by the employee at his or her last birthday.

ANNIVERSARY DATE— Any January 1 after the effective date.

BOROUGH — The Borough of South Greensburg, Westmoreland County, Pennsylvania.

COMPENSATION— The base salary paid by the borough to the member during a pay period.

COUNCIL — The Borough Council of the Borough of South Greensburg, Westmoreland County, Pennsylvania.

EFFECTIVE DATE — January 1, 1994.

EMPLOYEE — Any nonuniformed person in the fulltime employ of the borough whose customary employment by the borough is for not less than forty (40) hours per week.

FUND — All assets held by the trustee and related insurance and investment contracts relating to this plan.

LATE RETIREMENT DATE— The first day of any calendar month following normal retirement date at which a member retires.

MEMBER — Any employee who has satisfied the eligibility requirements established in Article II hereof.

MEMBER ACCOUNT— Each member's individual account maintained within the fund to include the prorated share of investment earnings or losses.

NORMAL RETIREMENT DATE — The first day of the month coincident with or next following the date on which the member attains age fifty-five (55).

PAY PERIOD — The period of time at which end an employee is compensated for his services to the borough.

PLAN — The Borough of South Greensburg Nonuniformed Employees' Pension Plan, as herein set forth and as the same may hereafter be amended.

PLAN YEAR— A period of twelve (12) consecutive months commencing on any January 1 and ending on the following December 31.

ROLLOVER ACCOUNT— The distribution amount transferred to the plan by a member from a qualified pension or profit-sharing plan.

SERVICE — The aggregate of a member's total periods of employment as a full-time employee of the borough. If a member enters military service, either voluntarily or by conscription, after he has been employed for at least six (6) 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 that such member returns to service with the borough within six (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.

TOTAL DISABILITY — 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 borough as certified by a physician designated by the borough.

TRUSTEE— The Council of the Borough of South Greensburg or any other agency or person appointed by the borough to serve in that capacity.

VESTED INTEREST — The nonforfeitable right to any immediate or deferred benefit in the amount which is equal to the sum of Subsection A and B below:

- A. The value on that date of that portion of the participant's account that is attributable to and derived from a participant's own contributions, if any.
- B. The value on that date of that portion of the participant's account that is attributable to and derived from employer contributions multiplied by his vesting percentage determined on the date applicable.

VESTING PERCENTAGE The member's nonforfeitable interest to his account plus earnings. An employee will immediately become one-hundred-percent vested upon becoming a member of the plan.

ARTICLE II

Eligibility

§ 35-2. Plan eligibility.

- A. All persons who are employees (as defined in this plan) as of the effective date hereof shall be members as of the effective date.
- B. Any person who becomes an employee (as defined in this plan) after the effective date hereof shall become a member on the first day of service as an employee.
- C. A former member shall become a member immediately upon returning to the employ of the borough if such member has a nonforfeitable right to all or a portion of the member account derived from the borough 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 Subsection B hereof.

ARTICLE III

Contributions

§ 35-3. Member contributions:

No member contributions are required.

§ 35-4. Borough contributions.

For the plan year commencing January 1, 1994, and ending December 31, 1994, the borough shall contribute one thousand five hundred dollars (\$1,500.) per member. For the plan year commencing January 1, 1995, and ending December 31, 1995, the borough shall contribute two thousand dollars (\$2,000.) per member. For all subsequent plan years beginning January 1, 1996, the employer contributions will be equal to the borough's share of the two-percent foreign casualty premium tax allocated each year by the commonwealth. Employer contributions shall be divided among the participants. If the State Aid allocations do not commence until after the 1996 plan year, the borough will contribute two thousand dollars (\$2,000.) per member per year until the plan year in which the State Aid allocation commences.

§ 35-5. 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 theretofore received by such member from a pension or profit sharing plan meeting the requirements of Internal Revenue Code Section 401(a).

§ 35-6. 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 this plan as the donors of such funds and property may prescribe.

§ 35-7. Accounting and allocations.

- A. The administrator shall establish and maintain an account in the name of each member to which the administrator shall credit as of each anniversary date all amounts allocated to each such member as hereafter set forth.
- B. The borough shall provide the administrator with all information required by the administrator to make a proper allocation of the borough's contribution for each plan year. Within forty-five (45) days after the date of receipt by the administrator of such information, the administrator shall allocate such contribution to each ~~members~~ member's account in accordance with § 35-4.
- C. As of each anniversary date or other valuation date, before allocation of borough contributions, any earnings or losses (net appreciation or net depreciation) of the trust fund shall be allocated in the same proportion that each member's and former member's nonsegregated account bear to the total of all member's and former ~~members~~ members nonsegregated account as of such date.
- D. Members' accounts shall be debited for any insurance or annuity premiums paid, if any, and credited with any dividends received on insurance contracts.

ARTICLE IV Retirement Benefits

§ 35-8. 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 the valuation date immediately preceding his normal retirement date.

§ 35-9. Late retirement.

A member may continue in the service of the borough 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 the definition of "vesting percentage" in § 35-1 hereof and shall receive a distribution of the vested value of his member account valued as of the valuation date immediately preceding his late retirement date.

§ 35-10. Disability retirement.

A member who retires from the service of the borough due to a total disability shall have a vesting percentage of one hundred percent (100%) and shall receive a distribution of the entire value of his member account valued as of the valuation date immediately preceding his disability retirement date.

**ARTICLE V
Death Benefits**

§ 35-11. Death prior to retirement.

If a member dies prior to the commencement of pension benefits, his designated beneficiary shall be entitled to the vested interest of the member's account determined pursuant to the definition of "vesting percentage" in § 35-1 hereof and valued as of the valuation date immediately prior to when death occurred. If no such beneficiary survives, the amount will be paid to the member's estate.

§ 35-12. Death after retirement.

If a member dies after distribution of benefits 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**

§ 35-13. Settlement options.

Distributions may be made in a lump sum, however, if not made in a lump sum, may be made over one (1) of the following periods (or a combination thereof):

- A. The life of the member.
- B. The life of the member and a designated beneficiary.
- C. A period certain not extending beyond the life expectancy of the member.
- D. A period certain not extending beyond the joint and last survivor expectancy of the member and a designated beneficiary.

§ 35-14. Joint and survivor annuity.

Unless an optional form of benefit is selected by a member and agreed to by the member's spouse, the member's vested member account balance will be paid in the form of a fifty percent (50%) joint and survivor annuity.

§ 35-15. Normal form of annuity.

The normal form of annuity shall be a monthly pension benefit payable for the lifetime of the member.

ARTICLE VIII
Termination of Employment

§ 35-16. Distribution.

As of a member's termination of employment, he shall receive a distribution of his entire vested interest valued as of the valuation date immediately prior to when termination occurred.

§ 35-17. Reemployment rights.

- A. If the terminated member is rehired by the borough and re-enrolls in the plan within twelve (12) months of termination, he shall continue to participate in the plan as if such termination had not occurred.
- B. If a terminated member is rehired by the borough and re-enrolls in the plan after a one-year break in service has occurred, years of service prior to the one-year break in service will be credited towards his vesting percentage calculation as per the definition of "vesting percentage" in § 3-1 hereof, provided that the terminated member who under the plan did not have a nonforfeitable right to any interest in the plan resulting from employer contributions and his consecutive one-year breaks in service did not equal or exceed the greater of five (5) or the aggregate number of his pre-break years of service.
- C. 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 one-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 borough or the close of the first period of five (5) consecutive one-year breaks in service commencing after distribution.
- D. If a nonvested member terminates, he will be deemed to have repaid the deemed distribution as of the date of reemployment.

ARTICLE VIII
Management of Fund

§ 35-18. Fund management.

- A. 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 council; provided, however, that the duty of the trustee to make such payments is wholly contingent upon the sufficiency of the fund for such purpose.
- B. The borough may employ an actuary, investment advisors, counsel or other professional consultants from time to time in connection with the operation of the fund or of this plan. Such persons or entities shall be compensated by the borough at such rates as may be agreed upon by the Council. Such compensation may be paid from the fund.
- C. 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 Council may direct. The fair-market value of the fund shall be reported to the members at least every two (2) years.

ARTICLE IX
The Council

§ 35-19. Powers and duties of Council.

- A. The plan shall be administered by the Council of the Borough of South Greensburg. The Council shall make and adopt rules and regulations for the efficient administration of the plan.
- B. The Council 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 trustee, and any other professional whose services are employed pursuant to § 35-18B of this plan.
- C. The Council 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 Council shall act uniformly with respect to matters coming before it concerning employees in similar circumstances.
- D. The Council shall serve without bond except as may be otherwise required by law and without compensation for its services as such.
- E. The members of the Council 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 borough 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.
- F. The Council shall make available to members, retired members and terminated members and to their beneficiaries, for examination during business hours, such records as pertain to the person examining.
- G. To enable the Council to perform its functions, the borough shall supply full and 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 Council may require.

- H. The Council 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 that the same shall not be in conflict with any of the provisions of the plan. All actions of the Council shall be taken at meetings at which at least a quorum of members shall be present or by written resolution, and any resolutions concurred in by not less than a quorum of its members shall be the action of the entire Council. Written minutes shall be kept of the meetings and actions of the Council.
- I. The Secretary, acting on behalf of the Council, shall have the power to execute all documents necessary to carry out the actions of the Council, and any person, partnership, corporation or government agency shall accept such documents over such signature or signatures as if executed by the Council.

ARTICLE X

The Pension Committee

§ 35-20. Appointment.

The Council may appoint a committee which shall administer the plan established by its ordinance according to the regulations established pursuant to this Article.

§ 35-21. Composition.

The committee shall consist of the President of the Council, Borough Secretary and a member appointed by the President of the Council.

§ 35-22. Term; resignation; vacancies.

Members of the committee so designated shall serve until death, resignation, removal or disqualification. Any committee member may resign upon written notice to the Council and the committee. Any vacancies in the committee arising from resignation, death or removal shall be filled by Council (by the procedure set out herein for the committee member whose resignation, death or removal has created the vacancy).

§ 35-23. Actions and decisions; adoption of regulations.

The committee shall act by such procedure as the committee shall establish. All decisions of the committee shall be by majority vote. The committee may authorize one (1) of its members to execute any document or documents on behalf of the committee. The committee may adopt such bylaws and regulations as it deems necessary for the conduct of its affairs and may appoint such accountants, counsel, actuaries, specialists or such other person as it may deem advisable for the proper administration of the plan. No such regulation, by law or appointment shall be effective until such is approved by the Council and the expenses incurred by the retention of such professionals shall be subject to the prior approval of the Council.

§ 35-24. Keeping of records; monthly reports.

The Committee shall keep a record of all proceedings and acts and shall keep all such books of accounts, records and other data as shall be necessary for the proper administration of the plan. All actions of the committee shall be communicated to the Council monthly.

§ 35-25. Custody of records.

All books, records, accounts, ledgers, transcripts, bank records, assets and tangible property of value shall be kept and in the custody of the borough or any person designated by the President of Borough Council.

§ 35-26. Salary and expenses.

The members of the committee shall serve without salary for their services but shall be reimbursed for all reasonable expenses incurred in the administration of the plan. Such expenses shall be subject to the prior approval of the Council.

§ 35-27. Liability of members; indemnification.

No committee member shall incur any liability for any action or failure to act, accepting only liability for his/her own gross negligence or willful misconduct. The borough shall indemnify each committee member against any and all claims, loss, damages, expense and liability arising from any action or failure to act, except for such that is the result of gross negligence or willful misconduct of such committee member.

§ ~~S~~ 35-28. Financial transactions.

All checks, drafts, orders to pay money, deposits of money and all transactions concerning the receipt or disbursement of any money shall be prepared by the borough or any person designated by the President of the Borough Council.

ARTICLE XI

Provisions Relating to the Borough

§ 35-29. Continuation of plan.

It is the expectation of the borough 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 borough and the right is reserved by the borough at any time to reduce, suspend or discontinue its contributions hereunder.

§ 35-30. Operation and administration of fund.

The borough 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 borough 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 borough or under its control, save the Non-Uniformed Employees Pension Fund herein provided for.

§ 35-31. Guaranty of employment.

Nothing contained in the plan shall be held or construed as a contract or guaranty of employment nor to create any liability upon the borough to retain any person in its service. The borough reserves the full right to discontinue the service of any person without any 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 XII

Termination or Amendment of Plan

§ 35-32. Plan termination or amendment.

- A. The borough may amend, curtail or terminate this plan at any time; provided, however, that no amendment affecting the trustee shall be made without its consent (other than an amendment having the effect of termination of 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 of 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.
- B. In the event of termination of this plan, the Council 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 balances reduced in the cases of retired members by any prior distributions made to them.
- C. After allocation of the funds, the Council shall determine whether to operate the fund as the source of whatever payments the money so allocated will provide.

ARTICLE XIII

Miscellaneous Provisions

§ 35-33. Miscellaneous provisions.

- A. 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 member or any 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 Council under the provisions of the Retirement Equity Act of 1984. The Council 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.
- B. 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.
- C. Anything heretofore contained in this plan to the contrary notwithstanding, it is the intention of the borough that any action herein provided to be taken by the trustee shall be taken only in accordance with written instructions of the Council given in such detail as to preclude the exercise by the trustee of discretion in the performance thereof.
- D. Under no circumstances, 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 of the actuarial obligations to such members or members' beneficiaries have been met.

- E. If the Council deems any person incapable of receiving benefits to which he is entitled by reasons of minority, illness, infirmity or other incapacity, it may direct the trustee to make payment directly for the benefit of such person, to the guardian or trustee of such person whose receipt shall be a complete acquittance therefore. Such payment shall, to the extent therefore, discharge all liability of the borough, the trustee and the fund.
- F. 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.
- G. Headings and captions provided herein are for convenience only and shall not be deemed part of the plan.
- H. 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.
- I. All ordinances or ordinances or portions thereof inconsistent herewith are hereby repealed.

Part 2
Uniformed Employees Pension Plan
[Adopted 1-9-1995 as Ord. No. 94-7]

§ 35-34. Establishment of plan.

The Council of the Borough of South Greensburg hereby retroactively establishes the Police Pension Plan and Trust for the purpose of providing retirement and other benefits as of January 1, 1953.

§ 35-35. Definitions.

As used here, the words and phrases shown below shall have the meanings shown:

COMPENSATION — The gross monthly compensation paid to an employee averaged over his actual service before his actual retirement date but not over any period of such service in excess of the last sixty (60) calendar months.

EMPLOYEE — A person actively engaged by the contract holder on a regular, full-time permanent basis.

MEMBER — An employee eligible to participate in the benefits provided hereunder whose pension has not yet commenced.

PENSIONER — A former member (as defined) who has retired under the provisions of this contract and whose pension has commenced.

PENSION — The annuity purchased hereunder for a member.

RETIREMENT DATE — The date on which a member's pension commences or is due to commence under the terms of this contract.

CONTRACT YEAR — Any twelve-month period commencing with the effective date.

§ 35-36. Eligibility.

- A. Each person who is an employee, as defined herein, on the effective date shall become a member hereunder on that date.
- B. Each person who becomes employed or who is reemployed as an employee, as defined, subsequent to the effective date shall become a member immediately. [Amended 5-9-1983 by Amdt. No. 2]

§ 35-37. Retirement date.

- A. Normal retirement date. The normal retirement date of a member shall be the first day of the calendar month coincident with or next following attainment of age fifty-five (55). [Amended 5-9-1983 by Amdt. No. 2]
- B. Late retirement date. A member may elect, in writing, to defer his retirement date, provided that the contract holder's consent to make such election is first obtained. His late retirement date shall be the first day of any calendar month following his normal retirement date on which he actually retires from active service. To be effective, such election together with the written consent of the contract holder thereto must be filed with the company at its home office before the member's normal retirement date.

§ 35-38. Member contributions.

- A. No member contributions are required.
- B. Employer contributions will be equal to the municipality's share of the two-percent foreign casualty premium tax allocated each year by the commonwealth. Employer contributions shall be divided among the participants.

§ 35-39. Types of pension.

- A. The normal form of pension benefit shall be a monthly annuity payable for the lifetime of the pensioner.
- B. [Amended 3-17-1984 by Amdt. No. 3, effective 1-1-1984] In lieu of the normal form of pension payments provided for in Subsection A, a member may elect in writing at least sixty (60) days prior to his actual retirement date to receive benefits as follows:
 - (1) An actuarially reduced monthly benefit equivalent to the life annuity under one (1) of the following optional forms of payment:
 - (a) A monthly annuity payable for the lifetime of the pensioner or for one hundred twenty (120) months certain, whichever is longer.
 - (b) A monthly annuity payable for the lifetime of the pensioner or for sixty (60) months certain whichever period is longer; or
 - (2) Equal monthly payments for a period certain of five (5) years at a rate of eighteen dollars and twelve cents (\$18.12) per month for each one thousand dollars (\$1,000.) of equivalent present value of the normal form of pension payment provided for in Subsection A.

§ 35-40. Amount of pension.

The monthly amount of pension payable hereunder to a pensioner on his actual retirement date shall be equal to the amount which can be purchased for the member based on funds accumulated in his behalf, actual age at retirement and the type of pension payment elected as provided in § 35-39.

§ 35-41. Termination of employment, [Amended 5-9-1983 by Amdt. No. 1]

- A. If a member's employment is terminated or if he ceases to be an employee, as herein defined, before his normal retirement date, he shall immediately cease to be a member and shall not be entitled to any benefit under this contract other than a deferred vested benefit commencing at normal retirement for such an amount as his vested interest in the fund will provide.
- B. Vesting. If a member's employment is terminated or if he ceases to be an employee, as herein defined, for any reason other than death, total and permanent disability or retirement, and he has completed at least six (6) months of service, he shall be vested in the full value of funds deposited in his behalf, and such vested interest will be retained in the fund and will be credited with the interest earnings until the employee's retirement date as herein set forth, at which time an annuity will be purchased in his behalf. In the event of a member's death or a member becoming totally or permanently disabled as the result of a service-connected injury, said member shall be vested in the full value of funds deposited in his behalf. Further, in the event of death of a member prior to his actual retirement date, his beneficiary will receive his vested interest in the fund as of the date of death. In the event of total and permanent disability of a member as stated herein, then said member shall have a right to have purchased on his behalf an annuity, payments of which shall commence at the time of said total and permanent disability.
- C. In the event that a third employee is added to this plan, the contract will be amended in order to comply with the provisions of Act 600. At that time money already allocated to participants will be fully vested.

§ 35-42. Death benefit.

- A. Upon death of a member prior to his actual retirement date, his beneficiary will receive his vested interests in the fund as of date of death. A death benefit of twenty thousand dollars (\$20,000.) will be provided under a separate contract. [Amended 5-9-1983 by Amdt. No. 2]
- B. The provisions of the type of pension purchased for a pensioner shall determine the death benefit, if any, payable with respect to the death of the pensioner.

§ 35-43. Deposit fund.

- A. The company will maintain a deposit fund under this contract which will be credited with deposits as they are paid to the company. The liability of the company to provide benefits or other payments hereunder is limited to the amount available in the deposit fund. Funds held under this contract shall be allocated to the individual members.
- B. The deposit fund shall be debited with the annuity considerations necessary to purchase pensions or make payments hereunder prior to partial termination of this contract.
- C. Administration charge. The amount of administration charge shall be a maximum of five percent (5%) of the normal cash flow in the fund, with a minimum charge of three hundred dollars (\$300.) per year. The charge will be deducted proportionately from the deposits made in behalf of the individual members.
- D. Interest. The deposit fund shall be credited at the end of each of the first five (5) contract years with interest at a rate of not less than four and one-half percent (4½%) per annum. The decision of the company as to the method to be used in determining the interest credited shall be final and binding on all parties. Additional interest earnings as declared by the company Board of Directors may be added.

§ 35-44. Pension purchases.

- A. On a member's actual retirement date or on the normal date of retirement for a former member who is eligible for a deferred vested benefit, the total value of funds allocated to such member or former member shall be withdrawn from the deposit fund. Deposits and interest thereon shall be so withdrawn in the order in which they have been credited to the deposit fund (i.e., first-in-first-out method). [Amended 5-9-1983 by Amdt. No. 2]
- B. The amount of monthly normal pension purchased hereunder during the first five (5) contract years will be determined in accordance with Table I or IA attached hereto based on the pensioner's age and sex on the date as of which such pension is purchased. For pensions purchased after the first five (5) years but purchased entirely with monies deposited in the first five (5) years, the purchase rates will be determined in accordance with Table II or IIA attached hereto.

§ 35-45. Deposits. [Amended 5-9-1983 by Amdt. No. 1]

- A. The contract holder will make deposits to the deposit fund at such times and in such amounts as the company determines are necessary to fund the benefits provided under the terms of this contract, subject to the minimum and maximum limits stated in the following subsections. All deposits are payable at the home office of the company in Norristown, Pennsylvania, or to an authorized agent of the company.
- B. Minimum deposit. The total deposit in a contract year shall not be less than the amount necessary to prevent the unfavorable application of Ruling No. 57 (PS57) of the Pension Trust Division of the Internal Revenue Service or any extension of, modification of or substitutions of such ruling.
- C. Maximum deposit. The total deposits in a contract year shall not exceed the amount which is allowable under the Internal Revenue Code, as amended from time to time, and any applicable regulations and rulings thereunder, as a deductible contribution to a qualified pension plan, unless the company, in writing, otherwise agrees.
- D. Supplementary deposit. If at any time an amount to be withdrawn from the deposit fund as provided hereunder exceeds the amount then in such fund, there will be immediately due the company from the contract holder, to be credited to such fund, a supplementary deposit in an amount to be determined by the company.
- E. Grace period. A grace period of thirty-one (31) days will be allowed for the payment of any minimum deposit or supplementary deposit after the date of notification by the company that such deposit is due.
- F. Suspension of payment. Subject to the provision of Subsection B, the contract holder may, upon filing written notice with the company, suspend the payment of a deposit for a period not in excess of one (1) year. The company may agree in writing to extend any such suspension for further periods of not more than one (1) year.

§ 35-46. Partial termination.

- A. Partial termination of this contract shall occur when:
 - (1) The contract holder gives written notice of partial termination. In such event such partial termination shall be effective on the date stipulated by the contract holder, or on the date the notice is received by the company, if later.
 - (2) The company gives written notice to the contract holder of partial termination as a result of the contract holder having failed to pay a deposit on its due date or within the grace period allowed therefor; in which event, such partial termination shall be effective as of the date of such written notice.

- (3) The contract holder notifies the company, or the company becomes aware, that there are only pensioners remaining under the plan, in which event such partial termination shall be effective on a date determined by the company.
 - (4) The contract holder does not assent to a modification of this contract initiated by the company as hereinafter provided, in which event such partial termination shall be effective on the date the company intended such modification to be applicable.
- B. Effect of partial termination. On and after partial termination, no deposits will be payable to or accepted by the company. The amount then in the deposit fund shall be accounted for under either the purchase option or the liquidation option, as the contract holder may elect. If the contract holder fails to elect either option within one (1) month after termination, the purchase option shall be deemed to have been elected by the contract holder.
- C. Purchase option.
- (1) If the purchase option becomes effective, there shall first be withdrawn from the deposit fund any administration charge not yet debited as hereinbefore provided.
 - (2) The balance of the deposit fund will then be applied to purchase pensions for members in accordance with the individual allocations of the fund made pursuant to § 35-43A. The type of pensions purchased for members will be determined by the contract holder in a nondiscriminatory manner. Immediately commencing pensions will be purchased for Class I, and deferred pensions with payments thereunder commencing at normal retirement date will be purchased for Class II.
 - (3) The classes are as follows:
 - (a) Class I: members eligible to retire who have not yet done so.
 - (b) Class III: all other members.
 - (4) The member with respect to whom a pension is purchased under the purchase option shall have vesting in such pension whether the pension is immediate or deferred.
 - (5) The annuity considerations for purchase under the purchase option shall be computed on the same actuarial basis as used to compute pensions purchased immediately prior to partial termination, save that the annual interest rate used in such computations shall be reduced by one percent (1%).
- D. Liquidation option.
- (1) If the liquidation option is elected by the contract holder, there shall be first withdrawn from the deposit fund any administration charge not yet debited as hereinbefore provided. Within six (6) months after the date of partial termination, the company will pay not less than ninety percent (90%) [if such date of partial termination occurs during the first five (5) contract years] and ninety-five percent (95%) thereafter of any remaining balance in the fund to such insurance carrier or fiduciary designated by the contract holder as the new agency through which the benefits of the plan are to be disbursed.
 - (2) However, the company, in lieu of making payment in a lump sum, may elect to liquidate such amount by making annual payments of at least fifty thousand dollars (\$50,000.) over a period of not more than five (5) years in which event interest at the rate or three percent (3%) per annum, compounded annually, will be credited on the unpaid balance. Such payment or payments shall be in lieu of all rights and benefits under this contract.

§ 35-47. Data to be furnished to the company.

- A. The contract holder, members and pensioners shall furnish the company all information reasonably necessary for the company to administer this contract, including, without limiting the generality of the foregoing, proof of age and proof of death of any member, pensioner or payee and proof that a payee is living when payment is contingent upon survival of such payee.
- B. The contract holder shall make available for inspection by the company any records maintained by the contract holder which may pertain to the coverage of a member or pensioner hereunder.
- C. The contract holder's determination of facts regarding the status of any member with respect to employment shall be conclusive for the purpose of this contract.

§ 35-48. General provisions.

- A. Misstatements and adjustments. If it shall be found that the age, sex or any other relevant fact with respect to a member, pensioner or contingent annuitant has been misstated, the amount of annuity considerations or benefits, or both, payable by or to the company shall be equitably adjusted to what would have been payable on the basis of the correct information.
- B. Entire contract. This contract and the contract holder's application (a copy of which is attached hereto) shall constitute the entire contract between the parties. No amendment shall be valid unless signed by the President, a Vice President or the Secretary of the company, and no agent or other person has the authority to waive or amend any provisions hereof. Any statements in any application hereunder shall be deemed representations and not warranties, and no statement shall be used as a defense to a claim unless contained in a written application.
- C. Modification of contract. This contract may be modified in any respect at any time by written agreement between the contract holder and the company. On the fifth anniversary of the effective date or on any anniversary date thereafter the company, upon forty-five (45) days' advance notice in writing to the contract holder, may change, vary or modify any or all terms of this contract, provided that any such change shall not affect the amount or terms of a pension purchased hereunder before its effective date.
- D. Individual certificates. The company will issue to the contract holder an individual certificate for delivery to each pensioner which will in no way void or alter any of the terms of this contract but will describe the pensioner's pension.
- E. Proof of pensioner's survival. If within five (5) years of a pensioner's retirement date the company does not receive at its home office proof satisfactory to it that the pensioner was living on his retirement date, it shall conclusively be presumed that he died on the day before his retirement date.
- F. Facility of payment. If any payee entitled to benefits thereunder is for any reason incapable of giving a valid release for any benefits due, the company, at its option and until claim is made by the duly appointed committee or guardian of such payee, makes payments to such person or party which appears to the company to have assumed the custody of principal support of such payee. Payment in the above manner shall release the company from all further liability to the extent of all benefits so paid.
- G. Small pensions. If the monthly payments of any pension purchased hereunder are less than ten dollars (\$10.), the company reserves the right to pay the actuarial equivalent of such pension payments in one (1) sum.
- H. Incontestability. The validity of this contract shall not be contested, except for the nonpayment of deposits after it has been in force one (1) year from its date of issue.
- I. Assignability. This contract is not assignable without the consent of the company. Except as provided by law, rights of a payee may not be assigned, altered or transferred or made subject to legal process for payment of the payee's debts.

- J. Sex and number. Unless the context indicates otherwise, the plural shall include the singular and the masculine shall include the feminine, where used in this contract.
- K. Complete termination of contract. This contract shall terminate as of the first day upon which all the obligations of the company hereunder have been fulfilled.

§ 35-49. Contract provisions.

A. Beneficiary.

- (1) The member may designate a beneficiary or change his designation of beneficiary from time to time by written request filed with the contract holder or at the home office of the company. No such designation or change of beneficiary shall take effect unless so filed, but if filed it will be effective as of the date the request was signed, whether or not the member is living at the time of such filing, but any payment made by the company prior to receipt of such request at its home office shall fully discharge the company to the extent of such payment.
 - (2) Except as may be otherwise specifically provided by the member:
 - (a) If any designated beneficiary predeceases the member, the interest of such beneficiary shall terminate and any amount which would have become payable to such beneficiary, if living, shall be payable equally to the remaining designated beneficiary or beneficiaries, if any, who survive the member; and
 - (b) If there is no designated surviving beneficiary or if no beneficiary has been designated at the death of the member, payment shall be made to the member's widow or widower, if surviving the member; if not surviving the member, in equal shares to the ~~members~~ member's children who survive the member; if none survives the member, to the member's parents, equally or to the survivor; if neither survives the member, in equal shares to the member's brothers and sisters who survive the member; or, if none survives the member, to the member's executors or administrators.
 - (3) If any beneficiary is a minor or otherwise incapable of giving a valid release for any payment due, the company may, at its option and until claim has been made by a legally appointed guardian or committee of such beneficiary, make payment of the amount payable to such person or institution as has, in the opinion of the company, assumed the custody and principal support of such beneficiary. The company shall be discharged from all liability to the extent of such payments and shall not be responsible for the application of any amount so paid.
- B. Assignment. No payee hereunder may assign any payment due to him from the company. Any payment due a payee from the Company will be exempt from the claims of creditors of the payee. If the provisions of this Subsection B are contrary to the law governing in a particular circumstance, then, as to that circumstance, the payment will be exempt to the maximum extent permitted by law.

TABLE I
Rates to Purchase Non-Refund Monthly
Retirement Annuities
[For purchase made in first five (5) contract years]

Age Nearest Birthday on Date of Purchase	Single Premium Rate Per \$1 Per Month	
	Male	Female
50	\$202.85	\$224.68
51	198.75	220.86
52	194.62	216.94
53	190.44	212.91
54	186.21	208.78
55	181.95	204.54
56	177.64	200.20
57	173.28	195.76
58	168.87	191.21
59	164.41	186.58
60	159.89	181.86
61	155.31	177.07
62	150.68	172.22
63	146.01	167.31
64	141.29	162.36
65	136.56	157.35
66	131.83	152.30
67	127.13	147.21
68	122.50	142.05
69	117.93	136.84
70	113.39	131.59
71	108.88	126.32
72	\$104.41	\$121.10
73	100.00	115.98
74	95.68	111.00
75	-91.44	106.17

TABLE IA
Rates to Purchase Ten-Year Certain and
Life Thereafter Monthly Retirement Annuities
[For purchase made in first five (5) contract years]

Age Nearest Birthday on Date of Purchase	Single Premium Rate Per \$1 Per Month	
	Male	Female
50	\$206.60	\$226.48
51	202.87	222.76
52	199.12	219.01
53	195.34	215.18
54	191.54	211.28

55	187.73	207.30
56	183.39	203.25
57	180.05	199.15
58	176.20	194.99
59	172.35	190.78
60	168.52	186.54
61	164.70	182.26
62	160.92	177.98
63	157.19	173.69
64	153.51	169.43
65	149.91	165.20
66	146.41	161.02
67	143.01	156.92
68	139.75	152.90
69	136.62	148.99
70	133.63	145.20
71	130.79	141.57
72	\$128.11	\$138.11
73	125.61	134.86
74	123.29	131.82
75	121.16	128.98

Should a member on the retirement date have dependents that would make the contingency for survivor's benefits necessary, this table would be used to determine the purchase price of the annuity. In the event there was no eligible contingent beneficiary at the death of the member, the commuted value of any unpaid installment would be used as a credit for the current deposit to the fund.

TABLE II
Rates to Purchase Non-Refund Monthly
Retirement Annuities
[For purchases made with monies deposited in first
five (5) contract years]

Age Nearest Birthday on Date of Purchase	Rate Per \$1 Per Month		Single Premium
	Male	Female	
50	\$213.09	\$235.94	
51	208.79	231.94	
52	204.45	227.84	
53	200.07	223.65	
54	195.65	219.35	
55	191.19	214.95	
56	186.69	210.45	
57	182.15	205.84	

58	177.57	201.44
59	172.94	196.34
60	168.26	191.45
61	163.53	186.48
62	158.75	181.45
63	153.92	176.36
64	149.05	171.22
65	144.14	166.03
66	139.23	160.80
67	134.32	155.54
68	129.45	150.23
69	124.66	144.88
70	119.94	\$139.47
71	115.26	134.02
72	110.60	128.58
73	106.00	123.19
74	101.47	117.91
75	97.03	112.78

IIA

Rates to Purchase Ten-year Certain and Life Thereafter Monthly Retirement Annuities

[For purchases made with monies deposited in first five (5) contract years]

Single Premium

Age Nearest Birthday on Date of Purchase	Rate Per \$1 Per Month	
	Male	Female
50	\$216.54	\$237.57
51	212.61	233.71
52	208.64	229.77
53	204.65	225.76
54	200.63	221.66
55	196.61	217.49
56	192.56	213.25
57	188.50	208.95
58	184.44	204.59
59	180.38	200.18
60	176.33	195.72
61	172.30	191.24
62	168.29	186.73
63	164.33	182.21
64	160.41	177.70
65	156.56	173.22

66	152.80	168.78
67	149.13	164.40
68	145.59	160.11
69	142.19	155.90
70	138.93	151.82
71	135.82	147.86
72	132.87	144.07

73	\$130.08	\$140.48
74	127.48	137.09
75	125.08	133.93

Should a member on the retirement date have dependents that would make the contingency for survivor's benefits necessary, this table would be used to determine the purchase price of the annuity. In the event there was no eligible contingent beneficiary at the death of the member, the commuted value of any unpaid installment would be used as a credit for the current deposit to the fund.

