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# Chapter 18 — Nonuniformed Employees Pension Plan

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## **Article I — Title & General Definitions**

### **§ 18-101 Short Title.**

This Chapter shall be known, and may be cited, as the “Borough of Alburdis Nonuniformed Pension Plan Ordinance.”

[Ord. 415 10-29-2003]

### **§ 18-102 Definitions: In General.**

When used in this Chapter with initial capital letters, the words and phrases defined in the following sections of this Article shall have the following meaning, unless the context in which they are used clearly indicates a different meaning.

[Ord. 415 10-29-2003]

### **§ 18-103 Accounting Date.**

The term “Accounting Date” shall mean the last day of each Plan Year.

[Ord. 415 10-29-2003]

### **§ 18-104 Administrator.**

The term “Administrator” shall mean the Plan Administrator described in Article XVII.

[Ord. 415 10-29-2003]

### § 18-105 Alternate Payee.

The term “Alternate Payee” shall mean a person entitled to receive, by virtue of a Qualified Domestic Relations Order (*see* § 18-1405), some of the benefits under this Plan of a Participant .

[Ord. 415 10-29-2003]

### § 18-106 Authorized Leave of Absence.

The term “Authorized Leave of Absence” shall mean any absence authorized by the Employer (or any Related Employer) under the Employer’s (or Related Employer’s) standard personnel practices, *provided that* all persons under similar circumstances must be treated alike in the granting of such leaves, and *provided further* that the employee returns or retires within the period of authorized absence. An absence due to service in the uniformed services of the United States shall be considered an Authorized Leave of Absence if the employee complies with all of the requirements of federal law in order to be entitled to reemployment and in fact does return to employment with the Employer (or a Related Employer) within the period provided by law.

[Ord. 415 10-29-2003]

### § 18-107 Beneficiary.

The term “Beneficiary” shall mean a person who has the right to receive benefits under this Plan as a result of the death of a Participant or Alternate Payee. (*See* Article XI for the method by which Participants may designate their beneficiaries).

[Ord. 415 10-29-2003]

### § 18-108 Code.

The term “Code” shall mean the Internal Revenue Code of 1986, as amended (Title 26, U.S. Code). Reference to a section of the Code shall mean that section as it may be amended or renumbered from time to time, or any corresponding provision of any future legislation that amends, supplements or supersedes that section.

[Ord. 415 10-29-2003]

### § 18-109 Compensation.

(a) **In General.** Except as provided in subsections (b) through (e), the “Compensation” of a Qualified Employee for a given year (or other period for which a determination is being made) shall mean the Qualified Employee’s total Wages from the Employer actually paid, made available, or includible in gross income for the year (or other determination period).

**(b) Elective Deferrals.**

(1) “Compensation” shall also include amounts not currently includible in the Qualified Employee’s gross income by reason of the application of Code § 457 (relating to compensation deferred under an eligible deferred compensation plan for state and local governments and tax exempt organizations), Code § 414(h)(2) (relating to employee contributions to governmental plans that are picked up by the employing unit and thus are treated as employer contributions), Code § 402(a)(8) (relating to 401(k) contributions made by an employer at the election of the employee), Code § 402(h)(1)(B) (relating to salary reduction contributions under a simplified employee pension plan), or Code § 403(b) (relating to certain annuities purchased by charitable organizations or public schools), but only with respect to contributions made to plans maintained by the Employer.

(2) “Compensation” shall also include employee contributions towards medical coverage under § 12-403(b.1) (relating to Personnel Policies—Benefits—Health & Hospitalization—Employee Contributions to Premiums), and Participant compensation reductions for coverage under the Medical Expense Reimbursement Plan under § 14-303(b) (relating to Cafeteria Plan—Election of Optional Benefits—Election of Optional Benefits or Cash Bonuses in Lieu of Coverage—Medical Expense Reimbursement Plan), even though not includible in the Qualified Employee’s gross income by reason of the application of Code § 125 (relating to cafeteria plans) or other provisions of the Code.

(3) “Compensation” shall *not* include cash payments made under § 12-403(c)(1) (relating to Personnel Policies—Benefits—Health & Hospitalization—Waiver of Coverage—In General) due to the waiver of medical coverage, even though includible in the Qualified Employee’s gross income.

(4) The purpose of paragraphs (2) and (3) is to insure that a Participant shall receive the same pension benefits under this Plan regardless of whether the Participant elects to receive medical coverage or waives the receipt of medical coverage, and regardless of the medical coverage option he/she elects. “Compensation” is the same as it would be if the Employer had maintained a medical coverage plan which covered all Qualified Employees, required no employee contributions, and provided no incentives to Qualified Employees to select any particular coverage option.

**(c) Compensation During Periods of Uniformed Service.** In the case of a period during which a Qualified Employee is serving in the uniformed services of the United States, the employee’s “Compensation” shall be computed—

(1) at the rate the Qualified Employee would have received but for the uniformed service; or

(2) in the case that the determination of such rate is not reasonably certain, on the basis of the Qualified Employee’s average rate of Compensation during the 12-month period immediately preceding the period of uniformed service (or, if shorter, the period of employment immediately preceding such period).

**(d) Maximum Amount Which May Be Treated As Compensation.**

(1) **General Rule.** The “Compensation” of a Qualified Employee for any given year shall not exceed the amount in effect for such year under Code § 401(a)(17), as adjusted for changes in the cost of living. (For any year beginning in 1996, the amount is \$150,000.00.)

(2) [RESERVED]

(3) **Short Years.** If Compensation is ever required to be determined for a period of time which contains fewer than 12 months, the amount of effect for such period under Code § 401(a)(17) shall be equal to the amount in effect under Code § 401(a)(17) for the calendar year in which the period begins, multiplied by a fraction whose numerator is equal to the number of months in the period, and whose denominator is equal to 12.

(e) **Modified Definition of Compensation for Purposes of Certain Provisions.** For purposes of Article VII (relating to Maximum Additions), the term “Compensation” shall be modified as described in § 18-701(a).

[Ords. 415 10-29-2003, 501 12-28-2011, 561 01-29-2020]

### § 18-110 Conversion Date.

The “Conversion Date” shall be **January 1, 1996**, the date as of which this Plan is converted from a defined benefit plan to a defined contribution plan.

[Ord. 415 10-29-2003]

### § 18-111 Disabled.

A person shall be considered “Disabled” if he/she has Separated from Service as a result of a physical or mental condition which (i) can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months, and (ii) renders him/her unable to perform all of the essential functions of his/her employment with or without reasonable accommodation; *provided that* such condition was not caused by—

- (a) chronic or excessive use of intoxicants, drugs, or narcotics;
- (b) intentionally self-inflicted injury or intentionally self-induced sickness; or
- (c) an unlawful act or enterprise on the part of the individual.

[Ords. 415 10-29-2003, 561 01-29-2020]

### § 18-112 Effective Date.

The “Effective Date” shall mean **January 1, 1996**, the date on which this Amended and Restated Plan becomes effective.

[Ord. 415 10-29-2003]

### § 18-113 Eligible Spouse.

The term “Eligible Spouse” shall mean, with respect to any amount of benefit payments, the spouse to whom a Participant was married on the **earlier** of the date such benefit payments commenced under this Plan, **or** the date of his death (*except* to the extent a former spouse is to be treated as an Eligible Spouse under a Qualified Domestic Relations Order).

[Ord. 415 10-29-2003]

### § 18-114 Employer.

The term “Employer” shall mean the Sponsor and all Related Employers which have adopted this Plan and executed a copy of this Plan and Trust Agreement, and their successors.

[Ord. 415 10-29-2003]

### § 18-115 ERISA.

The term “ERISA” shall mean the Employee Retirement Income Security Act of 1974 (P.L. 93-406), as amended (29 U.S. Code § 1001 *et seq.*). Reference to a section of ERISA shall mean that section as it may be amended or renumbered from time to time, or any corresponding provision of any future legislation that amends, supplements, or supersedes that section.

[Ord. 415 10-29-2003]

### § 18-116 Fiduciary.

The term “Fiduciary” shall mean the Trustees, the Administrator, any Investment Manager, and any other person who exercises any discretionary authority or discretionary control respecting the management of the Plan; or who exercises any authority or control respecting the management or disposition of Plan assets; or who renders investment advice for a fee or other direct or indirect compensation with respect to any monies or property of the Plan or has any authority or responsibility to do so; or has any discretionary authority or discretionary responsibility in the administration of the Plan.

[Ord. 415 10-29-2003]

### § 18-117 [RESERVED]

[Ord. 561 01-29-2020]

### § 18-118 [RESERVED]

[Ord. 561 01-29-2020]

**§ 18-119** [RESERVED]

[Ord. 561 01-29-2020]

**§ 18-120 Investment Manager.**

The term “Investment Manager” shall mean an investment manager appointed under § 18-1606.

[Ord. 415 10-29-2003]

**§ 18-121** [RESERVED]

[Ord. 561 01-29-2020]

**§ 18-122 Normal Retirement Age.**

The “Normal Retirement Age” under this Plan shall mean age 65.

[Ord. 415 10-29-2003]

**§ 18-123 Participant.**

The term “Participant” shall mean an “Active Participant” or an “Inactive Participant”:

(a) **Active Participant.** An “Active Participant” shall mean a Qualified Employee who is currently an Active Participant in this Plan (*see* Article III).

(b) **Inactive Participant.** An “Inactive Participant” shall mean any person, other than an Active Participant, who had previously been an Active Participant, and still has accounts with positive balances in the Plan (regardless of whether they are vested).

[Ord. 415 10-29-2003]

**§ 18-124 Plan or Plan and Trust.**

The terms “Plan” or “Plan and Trust” shall mean the **Borough of Albury Nonuniformed Pension Plan and Trust**, as set forth in this Chapter and as it may be amended from time to time. For periods prior to the Conversion Date, the term “Plan” shall mean the Sponsor’s pension plan for nonuniformed employees under the Provisions of the Defined Benefit Plan.

[Ord. 415 10-29-2003]

### § 18-125 Plan Year.

The term “Plan Year” shall mean any 12 consecutive month period beginning on January 1 and ending on the following December 31.

[Ord. 415 10-29-2003]

### § 18-126 Provisions of the Defined Benefit Plan.

The term “Provisions of the Defined Benefit Plan” shall mean the terms and provisions of the Sponsor’s pension plan for nonuniformed employees as in effect from time to time prior to the Conversion Date.

[Ord. 415 10-29-2003]

### § 18-127 Qualified Employee.

(a) **In General.** The term “Qualified Employee” shall mean, as of any given date, **either**—

(1) any person originally hired before January 30, 2020 who is receiving remuneration for personal services rendered to the Employer (other than as an independent contractor) or who would be receiving such remuneration except for an Authorized Leave of Absence or for a temporary lay-off which has not yet become a Separation from Service; *provided* such person is not an Excluded Person; **or**

(2) any person originally hired on or after January 30, 2020 who is employed by the Employer for a stated salary or compensation in a position for which work is regularly scheduled for thirty-five (35) or more hours per week throughout the calendar year (or would be so scheduled except for authorized sick time, holidays, vacation time, leave, and similar paid or unpaid time off); *provided* such person is not an Excluded Person.

(b) **Excluded Persons.** For purposes of this Section, the term “Excluded Person” shall mean any of the following—

(1) a nonresident alien who receives no remuneration from the Employer which constitutes income from sources within the United States (within the meaning of the Code);

(2) a person who is included in a unit of employees covered by a negotiated collective bargaining agreement which does not provide for his inclusion as a Qualified Employee eligible for participation in this Plan, *provided that* retirement benefits were the subject of good faith bargaining and less than two percent of the employees of the Employer who are covered pursuant to that agreement are “professionals” as defined in Treas. Regs. § 1.410(b)-9(g);

(3) an employee of a police department or fire department organized and operated by the Employer, if the employee provides police protection, firefighting services, or emergency medical services for ny area within the jurisdiction of the Employer;

(4) a self-employed individual or leased employee who is not a common law employee of the Employer;

- (5) a person who has not yet attained eighteen (18) years of age.

[Ords. 415 10-29-2003, 561 01-29-2020]

### § 18-128 Related Employer.

The term “Related Employer” shall mean any—

(a) corporation which is a member of a controlled group of corporations (as defined in Code § 414(b)) which includes the Sponsor;

(b) trade or business (whether or not incorporated) which is under common control (as defined in Code § 414(c)) with the Sponsor;

(c) member of an affiliated service group (as defined in Code § 414(m)) which includes the Sponsor; **and**

(d) other entity required to be aggregated with the Sponsor pursuant to Code § 414(o) and the regulations thereunder;

*provided that* for purposes of Article VII (relating to Maximum Additions), the definitions of Code §§ 414(b) and (c) shall be read as modified by Code § 415(h).

[Ords. 415 10-29-2003, 561 01-29-2020]

### § 18-129 Separation from Service.

(a) **In General.** The term “Separation from Service” shall mean the end of a continuous period of employment of a given person by the Employer (or any Related Employer) and may result from retirement, death, resignation, involuntary termination, unauthorized absence, or by failure to return to active employment with the Employer (or any Related Employer) or to retire by the date on which an Authorized Leave of Absence expires. For purposes of the preceding sentence, periods of Authorized Leaves of Absence and temporary lay-offs are considered to be periods of employment by the Employer. A person “Separates from Service” if he incurs a Separation from Service.

(b) **Temporary Lay-Offs.** If the Employer (or any Related Employer) shall terminate a person’s employment due to insufficient work for such person and shall indicate that the termination is temporary and that the Employer (or Related Employer) anticipates being able to re-employ the person within six (6) months, the termination shall be considered a “temporary lay-off” and not a “Separation from Service.” In that case, if the person does not return to active employment with the Employer (or any Related Employer) immediately upon recall and within six (6) months, he shall incur a “Separation from Service” as of the earlier of:

- (1) the date specified in any recall as the date to return to work, **or**
- (2) the date six (6) months after the temporary lay-off began.

(c) **Transfers Among Related Employers.** The term “Separation from Service” shall not include transfers between employers all of whom are included within the definition of “Employ-

er” or “Related Employer,” or the mere cessation of a person’s status as a “Qualified Employee” if he remains in the employment of the Employer (or any Related Employer).

**(d) Sale of Business.**

(1) A person shall not incur a “Separation from Service” if the Employer or any Related Employer sells the trade or business for which the person performs services to an unrelated purchaser, but the person continues to work for the trade or business. Thereafter, the person shall incur a “Separation from Service” if he does so under the provisions of this § 18-129 as modified by substituting the purchaser of the trade or business (and his related employers) for the Employer (and Related Employers).

(2) A person shall not incur a “Separation from Service” if the corporation for which he works shall cease to be included within the definition of Employer or Related Employer (*e.g.*, through the sale of its stock), but the person continues to work for the corporation. Thereafter, the person shall incur a “Separation from Service” if he does so under the provisions of this § 18-129 as modified by substituting the corporation for which he works (and its related employers) for the Employer (and Related Employers).

**(e) Uniformed Service.** In the case of a person who is absent to perform service in the uniformed services of the United States and who could be entitled to reemployment with the Employer under the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301 *et seq.*, following the completion of such service, the person shall incur a Separation from Service (and be entitled to commence the receipt of Plan benefits) as of the earliest of the following dates —

(1) the date elected by the person (which may not be earlier than the date the person files the election with the Administrator;

(2) the date of the person’s death; **or**

(3) the date the Administrator determines that the person no longer is legally entitled to reemployment with the Employer,

*provided* that if the person complies with all of the requirements of federal law in order to be entitled to reemployment and, does in fact return to employment with the Employer within the period provided by law, the person shall thereafter be treated as not having incurred a Separation from Service with respect to the period of uniformed service. The person shall not be required or permitted to return any benefits received from the Plan prior to his/her return to employment with the Employer.

[Ord. 415 10-29-2003]

## § 18-130 Sponsor.

The term “Sponsor” shall mean the **Borough of Alburtis**, Lehigh County, Pennsylvania, a Pennsylvania borough and municipal corporation, and its successors.

[Ord. 415 10-29-2003]

**§ 18-131 Trust.**

The term “Trust” shall mean the trust established for this Plan in § 18-1601.

[Ord. 415 10-29-2003]

**§ 18-132 Trust Fund.**

The term “Trust Fund” shall mean any and all assets held under the Plan or the Trust by the Trustees.

[Ord. 415 10-29-2003]

**§ 18-133 Trustees.**

The term “Trustees” shall mean those individuals or corporations who, at any given time are the trustees of the Trust (*see* § 18-1602).

[Ord. 415 10-29-2003]

**§ 18-134 Wages.**

The term “Wages” shall mean wages as defined in Code § 3401(a) and all other payments of compensation to an employee by the Employer or any Related Employer (in the course of such employers’ trade or business) for which the Employer and any Related Employer is required to furnish the employee a written statement under Code §§ 6401(d), 6051(a)(3), and 6052. *See* Treas. Regs. §§ 1.6041-1(a), 1.6041-2(a)(1), 1.6052-1, 1.6052-2, 31.6051-1(a)(1)(i)(C). Compensation must be determined without regard to any rules under Code § 3401(a) that limit covered employment based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code § 3401(a)(2)). (This amount is the amount shown on the “Wages, Tips, and Other Compensation” box on Form W-2.)

[Ord. 415 10-29-2003]