

SUMMARY PLAN DESCRIPTION

CITY OF ERIE

OFFICERS' AND EMPLOYEES' RETIREMENT PLAN

AS AMENDED AND RESTATED

EFFECTIVE AS OF JANUARY 1, 2010

I. INTRODUCTION

- A. Background: The City of Erie Retirement System (the "Plan") has been established under Article 145 of City Ordinances, in accordance with applicable state and federal laws, to help supplement your income during your retirement years. The following is a Summary of the important provisions of the Pension Plan, as amended and restated effective January 1, 2010.
- B. Plan Overview: (Note: For a quick understanding of the Plan read this Plan Overview and the 11 examples set out in the Summary Plan Description below. Then read the rest of this SPD for a more complete understanding.) All capitalized terms in this Overview are defined in Article III below. The Plan is intended to provide full-time non-uniformed employees and elected officers of the City with an annual Retirement Benefit equal to one-half of their Final Pay at the time of their retirement from the employment of the City, payable monthly for life, and with one-half of such benefit payable for the life of their surviving spouse. A Participant is eligible for a Normal Retirement Benefit after reaching age 55 and completing 20 years of Service ("Normal Retirement Date"). Each additional year of Service with the City over 20 years entitles the Participant to a Service Increment of 1/40 (2.5%) of the Normal Retirement Benefit which s/he accrued at his/her earliest Normal Retirement Date. This is added to his/her monthly pension. Thus, a Participant who retires after 30 years of Service will receive a pension of 25% more than his/her earliest Normal Retirement Benefit, based on his/her Final Pay at actual Retirement Date. See Example 1 under Section IX.A below.

A Participant is vested in a proportionally Reduced Retirement Benefit after completing 12 years of Service. This Vested Reduced Benefit is calculated as follows: Final Pay at Termination of Service multiplied by the Number of Full Years of Service divided by 20. This Vested Reduced Retirement Benefit is payable monthly to the Participant commencing at age 60 for life, with one-half of such benefit payable for the life of any surviving spouse. See Section VIII.B and Example 5 under Section IX.B below.

Participants may purchase up to 5 years of their Prior Military Service on active duty for credit as Service under the Plan within a limited period following completion of such Service and commencement of or return to

employment by the City. See Example 2 under Section IX.B below.

Purchase of prior active duty military service does not count toward a Vested Benefit, a Vested Reduced Benefit or a full Normal Retirement Benefit until the Participant has completed at least 12 years of non-military Service.

The Plan is financed by contributions from the Commonwealth of Pennsylvania, by the City and by the Employee. Employee Contributions are made by payroll deductions of 6-1/2% of Compensation. If you contribute to the Fund for less than 20 years of active employment 3% of your monthly pension will be deducted and contributed to the Fund after your retirement until the total period of your Employee Contributions while active and retired equals 20 years.

All Employee Contributions have been "picked-up" by the City since 1994. Employee Contributions that are "picked-up" by the City are not subject to federal income taxes when contributed to the Plan, but are subject to Pennsylvania and local income taxes. Retirement Benefits are subject to federal (but not Pennsylvania or local) income taxes when distributed to retirees.

Employees who terminate their Service or die before completing 12 years of Service are entitled to a refund of their Employee Contributions, without interest, but are not entitled to any Retirement Benefit. Refund or distribution of Employee Contributions made after January 1, 1994, when they began to be picked-up by the City, are subject to federal, but not Pennsylvania or local, income taxes.

The Plan provides for Disability Benefits payable for life in the event of Total and Permanent Disability (not caused by a pre-employment conditions), after fifteen (15) years of Service. The amount of the Disability Benefit is 100% of the Retirement Benefit accrued to the date of Total and Permanent Disability, equal to 50% of Final Pay at that time, commencing immediately.

The Survivor of a Participant who is killed in the line of duty while employed by the City is entitled to a death benefit of 25% of the Participant's Final Pay at time of death, payable monthly, regardless of the Participant's age or years of Service at death.

Further details about the Plan are set forth below in this Summary Plan Description. While this Summary describes most of the principal

provisions of the Plan, it does not include every term, limitation or condition contained in Article 145 of City Ordinances and in applicable state and federal legislation which is referred to in this Summary. If you desire a copy of Article 145 please request it from the Plan Administrator. This Summary is intended to provide concise and accurate information. However, if there is an unintended or inadvertent discrepancy between this booklet and the City Ordinances or federal or state statutes governing the Plan, the Ordinances and applicable legislation shall control.

II. PLAN DATA

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| A. Agent for Service of Legal Process: | The City of Erie Officers' and Employees' Retirement Board
626 State Street, Room 302
Erie, PA 16501-1128 |
| B. Effective Date | July 1, 1946 |
| C. Legislative Authority | As set forth in Article 145 of the Codified Ordinances of the City of Erie, PA, pursuant to the Third Class City Code §35101-39701 and the Optional Third Class City Charter Law (Mayor-Council Plan A) (53 P.S. §§41101-41421). |
| D. Employer: | The City of Erie
626 State Street
Erie, PA 16501-1128 |
| E. Plan Administrator: | The Retirement Board of Officers' and Employees' Retirement System |
| F. Plan Year | The 12-month period beginning on January 1 |
| G. Trustee: | The City of Erie Aggregate Pension Board
626 State Street, Room 302
Erie, PA 16501-1128 |
| H. Type of Administration: | Trust Fund |
| I. Type of Plan: | Defined Benefit Pension Plan |
| J. Employer Identification No.: | 25-6000857 |

K. Plan Identification No.: 100

III. DEFINITIONS

- A. Act 205 of 1984: The Municipal Pension Plan Funding Standard and Recovery Act, 53 P.S. §895.101 eq. seq. as amended from time to time.
- B. Board or Retirement Board: The Retirement Board of the City of Erie Officers's and Employees' Retirement System which is in charge of the administration of the Plan. Its membership and duties are described in Article IV below.
- C. City Council or Council: The governing body of the Employer.
- D. Code: The Internal Revenue Code of 1986, as amended from time to time.
- E. Compensation: A Participant's wages or compensation as reported on IRS Form W-2 each year, including regular pay, overtime, shift differential, longevity increments, holiday pay, and contributions to the Plan which are picked up by the City under Code Section 414(h)(2), but excluding sell back of unused vacation time or unused sick leave pay, clothing allowance and cleaning allowance even, though included in W-2 income. Effective January 1, 1998 Compensation also includes elective amounts not included in W-2 income by reason of Code Sections 125, 132(f)(4), 401(k), 402(g)(3), 403(b) or 457(a).
- F. Employee: Any non-uniformed officer or employee of the City who is hired, appointed or elected to a permanent position, other than uniformed firemen and policemen. Members of Council and other part-time employees who were first hired, elected or appointed to the service of the City for the first time after June 9, 1992 are not covered
- G. Employer: The City of Erie, Pennsylvania.
- H. Final Pay: The greater of: (1) the Participant's annual rate of Compensation at the date when the Participant terminates employment with the City or retires from the Plan, or (2) the highest average annual Compensation which the Participant received during any of the five Plan Years preceding the date on which the Participant terminated employment or retired from the City.

- I. Normal Retirement Benefit: The Retirement Benefit payable to a Participant after reaching age 55 and completing 20 years of Service ("Normal Retirement Date"), calculated in accordance with Section IX.A below.
- J. Participant: An Employee who is contributing to the Fund out of his/her Compensation the amounts required by the Plan.
- K. Pension Fund: The assets of the Plan held, invested and administered in trust by the City under the terms of the Plan, Pennsylvania Act 205 of 1984 and the Internal Revenue Code. Contributions to the Plan are held in the Pension Fund. Retirement Benefits under the Plan are paid from the Pension Fund.
- L. Pick-Up Contributions: Employee Contributions otherwise due from Participants in the Plan that are made by the City on a pre-federal (but not pre-Pennsylvania) income tax basis pursuant to Subsection 414(h)(2) of the Code commencing January 1, 1994.
- M. Plan: The defined benefit plan known as the City of Erie Officers' and Employees' Retirement Plan which is set forth in Article 145 of City Ordinances.
- N. Plan Administrator: The Retirement Board.
- O. Plan Year: The calendar year.
- P. Preparation Time: The reasonable period that the Employee may need after leaving his/her position with the Employer to put his/her affairs in order or to prepare or travel for duty in one of the Uniformed Services as allowed under USERRA. See subparagraph Z below.
- Q. Prior Military Service: Service on active duty in the U.S. Armed Forces completed prior to the Participant's initial employment by the Employer, as evidenced by a Department of Defense Form 214 issued to the Participant.
- R. Repayment Period: The period following the re-employment of a Participant after a period of intervening Uniformed Service within which the Participant must repay to the Plan (1) any Employee Contributions which the Participant withdrew from the Plan in connection with such intervening Uniformed Service, with interest, and (2) the amount of any Employee Contributions otherwise due to the Plan during the Participant's

intervening Uniformed Service and related Report-Back Period, without interest. The Repayment Period is three times the duration of the Participant's intervening Uniformed Service, but not more than five (5) years following the Participant's re-employment by the Employer, provided that the Participant remains employed with the Employer throughout such Repayment Period.

- S. Report-Back Period: The period allowed under USERRA for a Participant to report back to work or apply for re-employment with the Employer after completion of intervening Uniformed Service. Depending on the length of the Participant's intervening Uniformed Service, s/he is allowed up to ninety days following completion of intervening Uniformed Service to apply for re-employment or report back to work at the Employer. This Report-Back Period is extended for the period that is necessary (up to two years) for a Participant to recover from an illness or injury incurred in or aggravated during Uniformed Service.
- T. Retirement Benefit: The total monthly retirement benefit payable to a Participant commencing at or after age 55 under Article below.
- U. Retirement Date: The first day coincident with or following a Participant's 55th birthday and termination of employment with a Vested Retirement Benefit or the first day coincident with or following a Participant's 60th birthday and termination of employment with a Vested Reduced Retirement Benefit.
- V. Service: The total number of full years during which a Participant was an Employee of the Employer and made the required contributions to the Plan from Compensation paid by the City. Service does not include any period for which the Participant's contributions were refunded and not timely repaid to the Fund. Periods of layoff, suspension or leave of absence do not interrupt Service, but are not credited to the accrual of Retirement Benefits payable under the Plan, except as provided in the case of purchase of Prior Military Service under Section VI.H or credit for Intervening Uniformed Service under Section VI. I below.

A Participant shall not receive duplicate credit for Service under the Plan for any period during which a Participant is both an Employee and a member of the Uniformed Services or Armed Forces of the U.S. A Participant shall not receive credit for Service under the Plan with respect to Prior Military Service or Intervening Uniformed Service for which the Participant receives service credit under any other retirement plan sponsored by the Commonwealth of Pennsylvania or any of its agencies,

authorities or political subdivisions.

- W. Service Increment: The component of monthly Retirement Benefit attributable to full years of Service above twenty (20), pursuant to Section IX.A below.
- X. Survivor: The Participant's surviving spouse as long as s/he does not remarry. Following the death of both the Participant and his/her spouse, or the remarriage of the Participant's surviving spouse, "Survivor" shall mean the surviving children of the deceased Participant in equal shares for so long as they are under age 18.
- Y. Total and Permanent Disability, Totally and Permanently Disabled: A condition as determined by sworn statements of three practicing physicians designated by the Retirement Board that, in their opinion, to a reasonable degree of medical certainty, a Participant is totally and permanently disabled from performing the duties of his/her position or office, provided that such permanent disability was not caused by a pre-employment condition. Any Participant found to have such condition shall be subject to periodic physical examination and review by three practicing physicians at any reasonable time designated by the Board for determination whether his/her Total and Permanent Disability continues. If the three practicing physicians do not confirm by their sworn statements that the Participant continues to be Totally and Permanently Disabled from performing the duties of his/her position or office, or if the Participant refuses to submit to such examination, s/he shall cease to be Totally and Permanently Disabled or to have the condition of Total and Permanent Disability.
- Z. Uniformed Service and Uniformed Services: Active duty in the Armed Forces of the United States (which include the Army, Navy, Marine Corps, Air Force, Coast Guard, and National Guard and their Reserve components), the Army National Guard and the Air National Guard when engaged in active duty training, inactive duty training or full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or national emergency, or specified in regulations promulgated under USERRA, together with any period for which an Employee is absent from the employ of the Employer for a determination of the Employee's fitness to perform any such duty or for the purpose of performing funeral honors duty as authorized by 10 USCS §12503 or 32 USCS §115. Uniformed Service shall also include any reasonable period that the Employee may need after leaving his/her position with the Employer to put his/her personal affairs in order or to prepare or travel for duty in one of the

Uniformed Services ("Preparation Time"). If an Employee is dismissed or separated from Uniformed Service under other than honorable conditions that related period of Uniformed Service shall not be credited as Service under the Plan.

AA. USERRA: The Uniform Services and Reemployment Rights Act of 1994, 38 USC §§4301 et seq., as amended from time to time.

BB. Vested Benefit and Vested Reduced Benefit: Participants shall be vested in the Retirement Benefit that they have accrued in the Plan after at least twelve (12) years of Service. Being "vested" means that the accrued Retirement Benefit to which the Participant is credited as of any date cannot be forfeited unless the Participant dies without a Survivor. In that event any undistributed Employee Contributions shall be refunded to the Participant's designated beneficiary or Estate, without interest. Periods of layoff, suspension or leave of absence do not interrupt Service, but are not credited to the accrual of Retirement Benefits payable under the Plan, except as required by USERRA.

Purchase of Prior Military Service is not credited to vesting Service. Intervening active duty in the Uniformed Services of up to five (5) years following initial participation in the Plan is credited to vesting Service to the extent that the requirements of Section XI.F. are satisfied

The Vested Reduced Benefit to which a Participant who has completed the minimum number of years of Service required for vesting (12) is calculated by multiplying the Normal Retirement Benefit to which the Participant would be entitled at age 60 if s/he had completed 20 years of Service (but using the actual Final Pay which the Participant had received to the date his/her employment by the City was terminated) by the fraction determined by dividing the Participant's actual years of Service by 20, but the amount of such monthly Retirement Benefit is reduced by 3% for the remainder of the twenty (20) year period of Service which would have been required for the Participant to receive an unreduced Normal Retirement Benefit. In the event that the City terminates the Plan or discontinues making contributions to it, the accrued Retirement Benefit of all Participants shall become fully vested, to the extent funded, regardless of the Participant's years of Service.

IV. ESTABLISHMENT OF RETIREMENT BOARD, MEMBERSHIP, DUTIES, TERM.

- A. The Officers' and Employees' Retirement Board which administers the Plan is comprised of the Mayor, the City Controller, the Director of Finance, a member of Council chosen by Council, three employees chosen by the collective bargaining units representing the Participants contributing to the Pension Fund (subject to reduction to two employees elected by the collective bargaining units if no fire non-suppression civilian employees participate in the Plan); and a retired City employee receiving a Pension under the Plan who is recommended by the Erie City Retirees' Association for appointment by the Mayor. A majority of the members of the Board shall constitute a quorum.
- B. The three employees chosen by the collective bargaining units representing the Participants contributing to the Pension Fund shall serve a term of four (4) years. In the event that an employee so elected is unable to complete his/her term and a vacancy exists, then an employee shall be elected by the Participants contributing to the Pension Fund to fill such unexpired term.
1. The first regular election shall take place in September of 1989, and in September of every fourth year thereafter.
 2. Each of the bargaining units representing the blue collar, white collar and fire non-suppression civilian employees shall make their respective nominations for members to be elected to the Board from the floor at their respective meetings, with acceptance of such nomination in person or by the nominee's formal written notice given at the time of nomination. Each of such bargaining units shall submit their nominations to the Board prior to September 1 of the year of the election.
 3. The Board shall give proper notice of the individuals nominated for election to the Board to all eligible voting Participants at least fifteen days prior to each election.
 4. Elections shall be by secret ballot or by voting machine, with provisions affording all eligible voting participants the opportunity to vote.
 5. Eligible voting Participants shall have the opportunity to vote for three individuals, with the individual receiving the highest number of votes cast for the nominee of the blue collar bargaining unit

employees to be declared elected, the individual receiving the highest number of votes cast for the nominee of the white bargaining unit employees to be declared elected, and the individual receiving the highest number of votes cast for the nominee of the fire nonsuppression civilian employees under the Firefighters' union collective bargaining agreement to be declared elected. In the event that no fire nonsuppression civilian employees under the Firefighters' union collective bargaining unit participate in the Plan the number of representatives elected by Participant's contributing to the Plan shall be reduced to two individuals, one a member of the white collar bargaining unit and the other a member of the blue collar bargaining unit.

6. Those individuals so elected shall take office at the first meeting of the Officers' and Employees' Retirement Board held in January of the year following such election.

C. It shall be the duty of The Board to register all persons employed by the City on a permanent, full-time basis, as provided for by ordinance, other than firemen and policemen, and to administer the collections, investments and distributions of the Fund herein provided for, and make such reasonable rules as the Board may deem necessary to carry into effect the provisions of this Article IV and of Article XII below.

V. EMPLOYER CONTRIBUTIONS

The Employer shall contribute to the Pension Fund the minimum amounts each year that are necessary to satisfy the minimum funding standards of Act 205 of 1984 and of the Code. These contributions are determined by the Plan's enrolled actuary, who must certify the Plan's financial status and funding obligation each year.

VI. EMPLOYEE CONTRIBUTIONS

A. Payroll Deductions: Each Participant is required to contribute by payroll deduction to the Pension Fund an amount equal to 6.5% of his/her monthly Compensation, exclusive of sell back of unused vacation time and sick leave pay, clothing and cleaning allowances, for so long as the Participant is an Employee. All such Employee Contributions to the Pension Fund shall be separately accounted for each Participant.

- B. Required Contributions After 20 Years of Service Prior to Age 55: A Participant who completes 20 years of Service and terminates his/her Service prior to age 55 must continue contributing to the Pension Fund until reaching age 55 at the same rate s/he was contributing prior to Termination of Service, namely 6.5% of Compensation.
- C. Deductions for Remainder of 20-Year Required Contribution Period: The monthly Retirement Benefit of a Participant who did not contribute to the Pension Fund for the full twenty (20) years is reduced by three percent (3%), which is contributed to the Pension Fund as Employee Contributions for the remainder of such twenty (20) year period.
- D. Pick-Up Contributions: Effective January 1, 1994 Employee Contributions to the Pension Fund are picked-up by the City under Section 414(h)(2) of the Code, with the effect that such Employee Contributions are made to the Pension Fund on a pre-federal income tax basis (but not pre-Pennsylvania or pre-local income taxes). These are referred to as Pick-Up Contributions. Prior to January 1, 1994, Employee Contributions were made on a post-tax basis.
- E. Refund of Undistributed Employee Contributions to Non-Vested Terminees: If a Participant terminates Service prior to accruing a Vested Benefit in the Plan or prior to receiving Retirement Benefits equal to his/her Employee Contributions s/he shall be entitled to the return of his/her undistributed Employee Contributions, including Pick-Up Contributions, without interest.
- F. Right of Re-employed Participant to Return Contributions Withdrawn In Connection with Termination of Service or USERRA: In the event that the City re-employs a Participant who received a refund of his/her Employee Contributions in connection with his/her previous termination of Service, or as permitted by USERRA, the Participant has the option to repay to the Plan within 24 months of re-employment all amounts previously paid to or withdrawn by the Participant, with interest at the annual rate of return on Plan assets (which rate is assumed by the Plan actuary) from the date of withdrawal to the date of repayment. Upon repayment to the Plan of all amounts withdrawn with interest the Participant shall be credited with the Service related to such withdrawn and repaid Employee Contributions.
- G. Refund of Participant's Undistributed Contributions Upon Death: Any excess of the total amount of the Participant's contributions to the Plan, including Pick-Up Contributions, without interest, over the total of all

benefits distributed from the Plan to the Participant, to his/her surviving spouse and to his/her surviving children under age 18 up to the death of the last survivor, shall be paid to the Participant's designated beneficiary, or in the absence of a designated beneficiary, to the Participant's estate. However, if payment of the deceased Participant's Retirement Benefit is subject to a domestic relations order in favor of a former spouse, the amount of refund owing from the Plan to the Participant's designated beneficiary or estate for undistributed benefits shall be calculated after deducting all payments made from the Plan to the Participant's former spouse under the domestic relations order, as well as the payments made from the Plan to the Participant and his Survivor.

- H. Purchase of Prior Military Service: A Participant who was a member of the U.S. Armed Forces prior to initial participation in the Plan may purchase up to five (5) years of such Prior Military Service (as evidenced by a Department of Defense Form 214 issued to the Participant) for credit as Service under the Plan by paying into the Pension Fund within the time period specified below the amount which he or she would have contributed to the Fund during the period of such Prior Military Service, based on the Participant's monthly Compensation at the time of his/her initial employment by the City, and an additional amount equal to the amount the City would have contributed on behalf of such Participant during the period of such Prior Military Service. A Participant who desires to purchase any period of Prior Military Service for credited Service under the Plan must deliver his/her election in writing to the Board within six (6) months of commencing participation in the Plan and must pay in full within twenty-four (24) months of the date of the election all contributions due to the Pension Fund for the Prior Military Service credit purchased. However, for any Participant hired on or after December 1, 2006, any Prior Military Service purchased in accordance with this procedure shall not be credited towards the accrual of a Vested Benefit, a Vested Reduced Benefit or a full Retirement Benefit under the Plan until the Participant has completed at least twelve (12) years of non-military Service. Amounts which Participants pay to purchase their Prior Military Service shall be treated as Employee Contributions under the Plan.
- I. Credit for Intervening Service in the Uniformed Services: See Section XI.F and Example 10 for the terms and conditions under which Participants receive credited Service under the Plan for their intervening honorable Uniformed Service following initial participation in the Plan.

VII. STATE CONTRIBUTIONS

The Commonwealth of Pennsylvania will provide annual funding to the City under the rules of Act 205 of 1984, provided the City remains in compliance with all State legal requirements governing the Plan, including the requirements of Act 205 of 1984. This funding is derived from the taxes which the Commonwealth imposes on out of state casualty insurers.

VIII. RETIREMENT ELIGIBILITY

- A. Normal Retirement Benefit: A Participant is entitled to retire from the employment of the City and to receive a Normal Retirement Benefit commencing on the first day which coincides with or follows both his/her completion of 20 years of Service with the Employer and his/her 55th birthday, provided the Participant has made all of the Employee Contributions required by Sections VI. A and B.
- B. Vested Reduced Retirement Benefit: A Participant who terminates his/her employment with the Employer following completion of at least 12 years of Service (not counting Prior Military Service purchased in accordance with Section VI.H.), but prior to completion of twenty (20) years of Service, shall be entitled to the Vested Reduced Retirement Benefit determined by the proportion which his/her completed years of Service bears to the full 20-year period of Service required for a Normal Retirement Benefit, subject to the 3% deduction required by Section VI.C. for the remainder of such 20 year period. Such Vested Reduced Retirement Benefit is payable commencing on the first day of the month coincident with or following the Participant's 60th birthday.

IX. RETIREMENT BENEFITS AND SURVIVOR BENEFITS

- A. Normal Retirement Benefit: The Normal Retirement Benefit payable beginning at the Retirement Date of a retired Participant is 50% of the Participant's Annual Compensation, including Pick-Up Contributions, at the greater of (1) the annual rate of Compensation in effect at the Participant's termination of Service or (2) the highest average annual Compensation which the Participant received during any of the five (5) Plan Years preceding the Participant's termination of Service ("Final Pay"), 1/12 of which is payable as a monthly benefit for life; plus a Service Increment equal to 1/40 of the Normal Retirement Benefit determined above, multiplied by each full year of Service completed after 20 years of Service, also payable on a monthly basis for life.

Example 1: Retirement After 20 Years of Service and Age 55

Mary was employed by the City from January 1, 1975 until January 1, 2005 when she elected to apply for retirement at age 62. Her annual salary at the date she applied for retirement was \$30,000 per year which equals \$2,500 per month. Mary had completed 30 years of Service at the time she elected to retire from the City.

1/12 of Final Pay:	\$2,500.00
Pension Formula Percent:	<u>x 50%</u>
Full Formula Benefit:	\$1,250.00
Service Increment for 10 years in excess of 20:	<u>x 125%*</u>
Monthly Pension at Age 62	\$1,562.50

*100% of this figure is for the first 20 year period of service; 25% is for the 10 years in excess of 20 years.

Note: Mary's benefit will be paid each month she is alive. If Mary is married when she dies, her spouse (or surviving children under age 18) will receive 50% (\$781.25) of the pension Mary was receiving for the balance of his life or until he remarries. If both Mary and her spouse die before the monthly benefit payments equal or exceed Mary's cumulative employee contributions to the Plan, the balance, without interest, will be paid to Mary's beneficiary or estate.

Example 2: Termination of Employment After 20 Years of Service But Under Age 55

Tom was employed by the City from April 1, 1985 until April 1, 2007 when he voluntarily quit at age 53 to take another job. His annual salary was \$36,000.00 when he quit. He had completed 22 years of service when he terminated. He continued to contribute \$195.00 per month (\$3,000.00 x .065) to the Fund for each of the next 24 months until age 55. Upon attaining age 55 he will begin receiving his retirement income under the Plan. The amount of his monthly pension benefit is determined as follows:

1/12th of Final Pay:	\$3,000.00
Pension Formula Percent:	<u>x 50%</u>
Full Formula Benefit	<u>\$1,500.00</u>
Service Increment for 2 years	

in excess of 20:	<u>x 105%</u>
Monthly Pension at Age 55:	\$1,575.00

Note: Since Tom completed more than 20 years of Service at the time he terminated he was entitled to a Service Increment pension increase of 2.5% for each of his 2 full years of Service over 20.

- B. Normal Survivor Benefit: Fifty percent (50%) of the Normal Retirement Benefit otherwise payable to a Participant who dies shall be payable to his/her surviving spouse for his/her life, so long as s/he does not remarry, and if there is no surviving spouse, or if s/he remarries, then in equal shares to the surviving children of the deceased Participant for so long as they are under age 18. The Survivor of a Participant who dies after 20 years of Service but prior to age 55 is not required to contribute 6.5% of the deceased Participant's Final Pay until s/he would have reached age 55.

Example 3: Death After 20 Years of Service But Prior to Age 55

Joe was employed by the City for 20 years when he died of causes not related to his job at age 50. His Average Monthly Pay was \$3,000.00 at his death. If Joe had terminated his Service at age 50 and had not died, he would not have been eligible for an immediate pension but would have qualified for a full deferred pension of \$1,500 per month commencing at his age 55, provided he continued contributing 6.5% of his last annual pay to the Retirement Fund until his 55th birthday. However, Joe's widow is entitled to immediate commencement of 50% of the full pension which Joe had earned to his death at age 50, or \$750.00 per month, commencing in the month following his death, without any obligation to contribute 6.5% of Joe's last annual rate of pay to the Retirement Fund until the date which would have been his 55th birthday.

Example 4: Death After Retirement or Eligibility for Retirement

Bob had been employed by the City for 17 years, 3 months when he died at age 61 for non-occupational reasons. His Average Monthly Pay was \$3,000 at his death. Bob had not retired at his death but was eligible for the following pro rata reduced benefit based on his years of Service less than 20 at his death:

1/12 of Final Pay:	\$3,000.00
Pension Formula Percent:	<u>x 50%</u>
Full Formula Benefit:	\$1,500.00
Multiplied by Completed Service:	x 17.25

Divided by Projected Service:	$\div 20.00$
Immediate Monthly Pension:	\$1,293.75

Bob's surviving spouse (or children under age 18) is entitled to commence receiving half of said \$1,293.75 per month, or \$646.87 per month, immediately following Bob's death. However, 3% of this monthly benefit, or \$19.41, will be deducted and deposited into the Retirement Fund for 2 years and 9 months until the total period of contributions by Bob and his survivors equals 20 years.

- C. Vested Reduced Benefit: A former Participant who has completed less than 20 but at least 12 full years of Service is entitled to a Vested Reduced Benefit determined by the proportion which his/her completed years of Service bears to the full 20-year period of Service required for a Normal Retirement Benefit, less the 3% contribution required by Section V.C., 1/12th of which is payable as a monthly benefit for life, commencing on the first day of the month coinciding with or following the Participant's 60th birthday.

Example 5: Termination of Employment Between 12 and 20 Years of Service But Under Age 60

Ted was employed by the City from April 1, 1985 until June 30, 2002 when he voluntarily quit at age 50 to take another job. His Final Pay was \$36,000 when he quit. He had completed 17 years and three months of Service (17.25 years). Ted will have the option to receive the return of his cumulative contributions (without interest) to the Plan (with his spouse's consent if married) or a monthly benefit from the Plan immediately following his 60th birthday. If Ted and his spouse elect the monthly benefit option the amount of monthly pension benefit is determined as follows:

1/12 of Final Pay:	\$3,000.00
Pension Formula Percent:	$\times 50\%$
Full Formula Benefit:	\$1,500.00
Multiplied by Completed Service:	$\times 17.25$
Divided by Projected Service:	$\div 20.00$
Monthly Pension at Age 60:	\$1,293.75

Note: 3% of the pension benefit, or \$38.81 will be deducted from Joe's Monthly Pension and deposited into the Retirement Fund for two years and nine months after Joe retires to make up the fact that Joe did not contribute to the Retirement Fund for the full 20 year period.

- D. Vested Reduced Survivor Benefit: Fifty percent (50%) of the Vested Reduced Benefit accrued by a former Participant who dies is payable on a monthly basis commencing with his/her death, to his/her surviving spouse for life, so long as s/he does not remarry, and if there is no surviving spouse, or s/he remarries, then in equal shares to the surviving children of the deceased former Participant for so long as they are under age 18. The benefit payable to the Survivor is reduced by 3% for the remainder of the twenty (20) year period required for a full Normal Retirement Benefit.

Example 6: Retirement Between 12 and 20 Years of Service But After Age 60

John was employed by the city from January 1, 1990 until January 1, 2005 when he elected to retire at age 60. His Final Pay at the date he applied for retirement was \$27,000 per year which equals \$2,250 per month. John had completed 15 years of Service at the time he elected to retire from the City.

1/12 of Final Pay:	\$2,250.00
Pension Formula Percent:	<u>x 50%</u>
Full Formula Benefit:	\$1,125.00
Multiplied by Completed Service:	x 15.00
Divided by Projected Service:	<u>÷ 20.00</u>
Monthly Pension at Age 60:	\$843.75

Note: John's benefit will be paid each month starting at age 60 for as long as he lives. If John is married when he dies, his spouse will receive 50% (\$421.88) of the pension John was receiving for the balance of her life, provided she doesn't remarry. If both John and his spouse die before the monthly benefit payments equal or exceed John's cumulative employee contributions to the Plan, the balance, without interest, will be paid to John's surviving children under age 18 or to his beneficiary. John's pension benefit will be reduced by 3% (\$25.31) per month for the first five years of his retirement until his total pension contribution equals twenty (20) years.

Example 7: Death After 12 But Less Than 20 Years of Service

Ray had been employed by the City for 17 years, 3 months when he died from non-occupational reasons at age 50, when he was earning \$3,000 per month. The pension which Ray had earned to his death must be proportionately reduced from the normal 50% amount of \$1,500 per

month by the number of years less than 20 that Joe contributed to the Retirement Fund, as follows:

1/12 of Final Pay:	\$3,000.00
Pension Formula Percent:	<u>x 50%</u>
Full Formula Benefit:	\$1,500.00
Multiplied by Completed Service:	x 17.25
Divided by Projected Service:	<u>÷ 20.00</u>
Monthly Pension at Age 55:	\$1,294.00

If Ray had terminated his employment (instead of dying) at age 50 with 17.25 years of Service he would have been entitled to said pro rata reduced monthly benefit of \$1,294 per month starting at age 60 provided he continued paying 6.5% of his last Compensation to the Plan from age 50 to age 55. Whenever Ray had commenced receiving his pension, if he had lived, 3% or \$38.81 per month would have been deducted for 2 years and 9 months, until the total period of his contributions to the Fund equaled 20 years. Ray's surviving spouse (or children under age 18) is entitled to commence receiving half of said \$1,294 per month, or \$647 per month immediately following Ray's death. However, the monthly benefit of \$647 payable to Ray's survivors will be subject to a deduction of 3% or \$19.41 for a similar period of 2 years and 9 months to make up for Ray's failure to contribute to the Fund for a full 20 years.

- E. Survivor Benefit for Participant Killed In Line of Duty: The surviving spouse of a City employee killed in the line of duty during the course of his or her employment with the City of Erie shall receive a Pension Benefit payable commencing upon the Participant's death equal to twenty-five percent (25%) of the annual Compensation such employee was receiving at the time of his or her death, regardless of the deceased Participant's age or years of Service. Should the surviving spouse remarry, his/her right to a Pension Benefit under this section shall cease. If a deceased Participant is not survived by a spouse or is survived by a spouse who subsequently becomes deceased or remarries, and the deceased participant is survived by children under the age of eighteen (18) years, a Pension Benefit calculated at twenty-five percent (25%) of the annual Compensation the Participant was receiving at the time of his/her death, shall be payable as a monthly benefit to and divided equally among his/her surviving children under the age of eighteen (18) years.

Example 8: Death In Line of Duty Prior to Retirement Eligibility

Dick had been employed by the City for 10 years, when he died in the line of duty at age 50. His Average Monthly Pay was \$3,000 at his death. His surviving spouse (or surviving children under age 18) would be entitled to an immediate monthly benefit of 25% of Dick's Average Monthly Pay at his death, or \$750 per month, without any reduction for the fact that Dick had not contributed to the Retirement Fund for a full 20 years or was under age 55 when he died.

- F. Disability Retirement Benefit: If a Participant becomes Totally and Permanently Disabled after fifteen (15) years of Service, s/he shall be entitled to full retirement benefit (50% of Final Pay plus Service Increment for years of Service over 20) during such permanent disability, regardless of age, provided that such permanent disability was not caused by a pre-employment condition. Such person shall thereafter be subject to physical examination at any reasonable time upon order of the Board. Upon his/her refusal to submit to any such examination, his/her Disability Retirement Benefit shall cease.

New employees hired by the City on or after October 22, 1975, shall not be entitled to include credit for Prior Military Service purchased under Section VI.H toward the Service required for a Disability Retirement Benefit.

Example 9: Retirement for Disability After 15 Years of Service

Sue became disabled at age 52 with 15 years of Service when she was earning \$36,000 per year or \$3,000 per month. Sue applied to the Retirement Board for disability benefits from the Plan. The Board received three physician certifications that Sue was permanently unable to perform her job. She is entitled to a Disability Benefit of \$1,500 per month commencing immediately and as long as she remains unable to perform her job.

- G. Retirement Benefit for Disabled Participant's Survivor: Following the death of the Disabled Participant, the pension payment s/he was receiving shall continue to be paid to his/her surviving spouse for life, so long as s/he does not remarry, and if there is no surviving spouse, or s/he remarries, then divided equally among his/her surviving children who are under age 18. When a deceased Disabled Participant has no surviving spouse who has not remarried, and no surviving children under age 18 no further benefits are payable from the Plan, except for refund of any undistributed Employee Contributions, without interest, to the estate of the deceased Disabled Participant.

H. Increase of Benefits After Retirement:

1. Effective January 1, 2005, the monthly Retirement Benefit payable to retired Participants and the spouses of deceased Participants who were receiving Retirement Benefits as of January 1, 2004, shall be increased by \$3.00 per month for each full year that elapsed from the date on which the retired Participant and/or the spouse of a deceased Participant commenced receiving Retirement Benefits under the Plan to January 1, 2004; provided, however, that no person shall be entitled to an increase in the Retirement Benefit payable hereunder which exceeds the increase in the Consumer Price Index between the year in which such person commenced receiving Retirement Benefits hereunder and the Consumer Price Index as of January, 2004, and provided further that the increase in the monthly Retirement Benefit provided by this subsection shall not be paid to any retired Participant or spouse of a deceased retired Participant who retired as an employee of the City of Erie Water Authority until and unless the City of Erie Water authority contributes to the Fund the monies required to pay the cost of this increase for such Participant (and his/her spouse in the case of deceased Participants) who retired as employees of said Authority.
2. The Board may, subject to the approval required under subparagraph 3 hereof , increase the retirement benefit of any member of the Fund by reason of and after the termination of the services of such member of the Fund. Such increases shall be in conformity with a uniform scale, which shall be based on the Consumer Price Index for all urban consumers calculated by the Bureau of Labor Statistics of the United States Department of Labor, but the total of any such allowance shall not at any time exceed one-half of the current salary being paid to non-Uniformed employees of the highest pay grade.
3. The Board may recommend the increase described in subparagraph 2 hereof to Council at any time. Provided that the provisions of Act 205 of 1984 have been satisfied, Council, by ordinance, may approve this increase subject, however, to the approval of the Mayor.

XI. **REFUNDS OF CONTRIBUTIONS**

- A. Participants Terminating Employment With Less Than 12 Years of Service: Any Participant who shall cease to be employed by the City after completing less than twelve (12) years of Service shall, upon application

to the Board and submission of the required executed termination forms, be entitled to receive a refund of the total amount of his/her contributions to the Fund, including Pick-up contributions, but without interest.

Example 10: Termination of Employment Under 12 Years of Service

Stan had been employed by the City for 9 years when he quit. He had contributed \$8,775 out of his pay to the Retirement Fund throughout his total period of Service. Stan will receive a distribution from the Retirement Fund in the amount of \$8,775 following his termination.

- B. Participants Terminating Employment Under Age 55 With At Least 12 But Less Than 20 Years of Service: Any Participant who has not reached the age of fifty-five (55) who shall cease to be employed by the City after completing at least twelve (12), but less than twenty (20) years of Service, shall be entitled to receive a refund of the total amount of his/her contributions to the Fund, without interest, upon application to the Board and submission of the required executed termination forms. If the Participant is married the Participant and the Participant's spouse must execute a release of all rights to Pension Benefits.
- C. Restoration of Employee Contributions Upon Re-Entry Into City Service: Any Participant who has ceased to be employed by the City and who has applied for and received a refund of his/her contributions to the Fund pursuant to paragraph A or B hereof who shall afterward re-enter the Service of the City, shall not be entitled to the retirement benefit designated unless s/he shall return to the Fund the amount withdrawn within two years from the date of re-entry into the Service of the City, in which event the required period of Service for a Retirement Benefit shall be computed from the time s/he first entered the Service of the City, but excluding his/her period of absence from the Service of the City; otherwise the date of his/her period of Service shall commence upon re-entry.
- D. Refund of Participant's Undistributed Contributions on Death: In the event of the death of a Participant, and in the case of a married Participant, the death of his/her Survivor, any excess of the total amount of the Participant's contributions to the Plan, including Pick-up Contributions, without interest, over the total of all benefits distributed from the Plan to the Participant, to his/her surviving spouse and to his/her/their surviving children prior to the death of the last survivor, shall be paid to the Participant's designated beneficiary, and if no beneficiary has been designated, to his/her estate, provided, that in case payment of the deceased Participant's retirement benefits is subject to a domestic relations order in favor of a former spouse, no refund of the benefit undistributed from the Plan shall be made to the Participant's designated beneficiary or

estate until all obligations of the Plan to the Participant's former spouse under the domestic relations order are satisfied, and the amount of refund owing from the Plan to the Participant's designated beneficiary or estate for undistributed benefits under this paragraph shall be calculated after deducting all payments made from the Plan to the Participant's former spouse under the domestic relations order, as well as the payments made from the Plan to the Participant, his/her surviving spouse and his/her/their surviving children prior to the death of the last survivor.

- E. Refund of Participant's Contributions Forfeits Right to Retirement Benefits: Any Participant who applies for and receives a refund of his/her contributions to the Fund thereby gives up and forfeits all rights to receive any further Retirement Benefits under the Plan unless s/he restores such withdrawn contributions to the Fund in accordance with paragraph C. above.
- F. Re-employment of Terminated Vested Participant: Upon re-employment by the City in a permanent, full-time position of any Participant who has terminated his/her Service with a vested right to receive or who is receiving a Retirement Benefit under this Plan, such Participant must suspend the right to receive Retirement Benefits hereunder while again participating in and contributing to this Plan as an Employee of the City until his/her ultimate termination of Service. At that time his/her Retirement Benefit shall be calculated and paid on the basis of his/her age and total years of Service accrued to the date of his/her ultimate termination of Service.

**X. PENSION EXEMPT FROM ATTACHMENT OR EXECUTION;
NONASSIGNABLE.**

The Retirement Benefits herein provided for are not subject to attachment or execution and are payable only to the beneficiary designated in accordance with this Plan. These Retirement Benefits are not subject to assignment or transfer, except for what is recognized under State law for support of dependent children or as a "qualified domestic relations order". However, the Participant's Contributions to the fund are subject to assignment prior to the Participant's completion of the number of years of Service necessary to have a Vested Benefit in the Plan, but any such assignment shall be void and of no effect once the Participant becomes vested in a Retirement Benefit.

XI. CONTROLLING PROVISIONS OF INTERNAL REVENUE CODE, GUST, EGTRRA AND USERRA LEGISLATION

- A. Overview: Pension Plans of state and local governments are exempt from all requirements of the Employee Retirement Income Security Act of 1974 (“ERISA”). Until the GUST legislation which Congress adopted beginning in 1994, the only requirements of the Internal Revenue Code binding on plans of state and local governments were those in effect prior to the enactment on September 2, 1974 of the ERISA-related amendments to the Internal Revenue Code.

As a result, the pension plans of state and local governments are exempt from the requirement to file an annual financial statement on Form 5500 with the IRS and the following post-1974 provisions of the Internal Revenue Code which apply to non-governmental pension plans: top-heavy rules, anti-cutback rules, minimum funding rules, plan termination (PBGC) insurance, and joint and survivor annuity requirements.

The minimum requirements of the Internal Revenue Code made applicable to pension plans of state and local governments by the GUST legislation effective January 1, 1997 are the much less stringent requirements that were in effect prior to the enactment of ERISA in September of 1974. These rules prohibited discrimination in benefits in favor of highly compensated or supervisory employees; established minimum coverage and participation rules for all classes of employees; required vesting and commencement of benefits only at normal retirement age; and prohibited the assignment or alienation of benefits.

GUST is an acronym that refers to the statutory requirements affecting pension plans qualified under the Internal Revenue Code. These statutory requirements first appeared in the Uruguay Round Agreements Act (commonly referred to as “GATT” because it approved the trade agreements negotiated under the General Agreements on Tariffs and Trade), the Uniformed Service Employment and Reemployment Rights Act of 1994 (“USERRA”), the Small Business Job Protection Act of 1996 (“SBJPA”) and the Taxpayer Relief Act (“TRA”) of 1997. Later, GUST also came to include the Internal Revenue Service Restructuring and Reform Act of 1998, and the Community Renewal Tax Relief Act of 2000 (“CRA”).

The GUST legislation imposed standard limitations on pensionable compensation and annual pension benefits on the defined benefit plans of state and local governments and required them to receive a determination from the Internal Revenue Service that their plans met all applicable requirements of the Internal Revenue Code and of GUST. In 2004, the

Plan Administrator submitted an application to the IRS for approval of the Plan's qualification under the Internal Revenue Code and GUST on a retroactive basis. On January 8, 2007, the Plan received a favorable determination letter from the IRS that it was qualified under the Internal Revenue Code as amended through the GUST legislation.

The Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA") established a series of five-year remedial amendment periods for requalification of Plans to meet the requirements of legislation and regulation, and any discretionary amendments, that became effective after the GUST legislation. There are five 12-month cycles (A through E) for submittal to IRS of applications to requalify the plans within each period. These cycles are staggered and run sequentially for five 12-month periods from February 1 through January 31, following which each five-year remedial amendment period and its related 12-month requalification cycle is repeated.

The effect of this system is that plan sponsors must apply to the IRS by January 31 of every fifth year for a new determination that the plan qualifies with all of the new laws and regulations included in the Cumulative List of Changes that the IRS publishes as of October 1 of the preceding year for the remedial amendment period that expires on January 31 of the following year.

The annual Cumulative Lists identify, on a year-by-year basis for each succeeding requalification cycle, all changes required to qualify the plan under the Code which result from new legislation and regulations adopted and issued since the Cumulative List previously issued for that five-year remedial amendment period. All plan amendments that the plan sponsor adopts before the end of the remedial amendment period are given retroactive effect to the beginning of the five-year period.

The letter of determination which the IRS issues in response to the plan sponsor's application for redetermination that the plan is qualified under the Internal Revenue Code is valid only for the changes included in the applicable Cumulative List for that cycle, and only until the end of the next succeeding remedial amendment period.

The remedial amendment period and related requalification cycle in which a Plan falls is determined by the last digit of the Plan sponsor's Employer Identification No., except that all government plans are placed in Cycle C. Cycle C had an original twelve month requalification cycle that ended on January 31, 2009, based on the Cumulative List as of October 1, 2008. However, the IRS extended the initial twelve month requalification cycle for government plans to expire on January 31, 2011 (same as Cycle E), but

still to reflect the amendments required for Cycle C by the Cumulative List of October 1, 2008.

On January 28, 2011, the Plan Administrator applied to the IRS to requalify the Plan as amended and restated to meet the requirements of Cycle C for a governmental plan, and to incorporate certain discretionary amendments which the City of Erie had adopted. The next remedial amendment and requalification period for Cycle C concludes with the five years and twelve month period ending January 31, 2014. Further plan amendments and another application will have to be filed with the IRS by that date to reflect the Cumulative List of Changes that the IRS will issue as of October 1, 2013. Succeeding five year remedial amendment periods and amendment/application deadlines for Cycle C will expire on January 31, 2019, January 31, 2024, etc., and each set of amendments must implement the IRS Cumulative List of Changes for Cycle C as of the previous October 1.

- B. Annual Limits On Pensionable Compensation and Pension Benefits: The Final Pay which is taken into account in determining Retirement Benefit accruals in any Plan Year for each Employee who first became a Participant in the Plan on or after January 1, 1989 is subject to the annual limits of Code Section 401(a)(17), which specifies \$200,000 for Plan Year 1989, and other limits for later years. The \$200,000 limit on Compensation included in Final Pay is adjusted after the 2002 Plan Year for cost-of-living increases in accordance with Code Section 401(a)(17)(B). These limitation amounts are also subject to actuarial adjustment to arrive at an equivalent present value for payment commencing earlier or later than age 62 or for forms other than as a straight life annuity. There is an annual limit of \$160,000.00 on the Retirement Benefit payable to a Participant. This ceiling is subject to periodic adjustment for the cost of living.

None of these Internal Revenue Code limitations have in the past affected the Compensation that is entitled to be considered for purposes of pension credit or the annual Retirement Benefit payable under the Plan and, because they are subject to periodic adjustment for inflation, are not projected to restrict the benefits payable under the Plan's retirement benefit formula in the foreseeable future.

- C. Required Minimum Annual Distributions After Age 70 ½: The Internal Revenue Code requires a qualified pension plan to commence paying out benefits over the life expectancy of the Participant and his/her spouse or other designated beneficiary commencing by the April 1 following the calendar year when the Participant reaches age 70 ½, or his/her

retirement, if later. This requirement is not projected to have a significant impact on the timing of benefits payable from the Plan because most Participants commence receiving Retirement Benefits several years before they reach age 70 ½.

- D. Domestic Relations Orders: Benefits payable to a Participant under the Plan are subject to the rights of an “alternate payee” under a “qualified domestic relations order” granted pursuant to applicable state law regulating the rights of a spouse, former spouse or dependent to support and maintenance.
- E. Rollovers: A Participant, former Participant or his/her surviving spouse or former spouse who is an “alternate payee” under a domestic relations order may elect to have an eligible rollover distribution of \$500.00 or more under this Plan paid to another eligible retirement plan, individual retirement account, annuity plan, annuity contract or qualified trust. The definition of “eligible” and “qualified” as applied to such a plan, contract and trust is spelled out in the Plan document. An “eligible rollover distribution” is generally any distribution of all or a part of the balance in the Plan standing to the credit of the distributee, other than: one of a series of substantially equal periodic payments (payable at least once per year) payable over the life or life expectancy of the distributee and that of his/her spouse, or over a specified period of at least 10 years. Any Participant, spouse or “alternate payee” wishing to take advantage of this feature should contact the Plan Administrator for further details, procedures and limitations.

Effective January 1, 2008, the Plan has accepted Participant rollover contributions and direct rollovers from the following types of plans, contracts and accounts for the purpose of purchasing Service credit (including military or Uniformed Service credit under this Plan) or repaying a cash-out of contributions refunded under this Plan, to the extent otherwise permitted under this Plan:

1. A Plan qualified under Code Section 401(a) or 403(a), including employee after-tax contributions.
2. An annuity contract under Code Section 403(b), excluding employee after-tax contributions.
3. An eligible plan under Code Section 457 which is maintained by a state or its political subdivision or agency.
4. An eligible rollover distribution from an individual retirement account or annuity under Code Sections 408(a) or (b).

- F. Credit for Intervening Uniformed Service: The GUST legislation which applied certain requirements of the Internal Revenue Code to the pension plans of state and local governments beginning in 1994 also included the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA") effective December 12, 1994. USERRA generally requires that a defined benefit pension plan such as this one which requires contributions by Participants must provide the following protections for plan participants who voluntarily or involuntarily leave the employment of the plan sponsor to serve on full-time active duty for up to five (5) years in one of the Uniformed Services (which include the U.S. Armed Forces and the commissioned corps of the U.S. Public Health Service), are honorably discharged from such Uniformed Service, and make timely application for re-employment by the Employer.

A former Participant who serves more than five (5) years in Uniformed Service (not counting any related Report-Back Period and necessary Preparation Time included in such Uniformed Service) does not have any right to be re-employed by the Employer or to receive Service credit under the Plan for such Uniformed Service. However, the five (5) year service limit is extended under the Final Regulations issued by the Department of Labor under USERRA for additional periods of active duty in the Uniformed Services required by military necessity, national emergency or in support of a critical mission of the Uniformed Service, and not within the control of the former Participant.

Upon re-employment of a Participant after completing a period of intervening Uniformed Service following application within the Report-Back Period the Participant has the option (1) to repay any amounts previously withdrawn by the Participant from the Plan in connection with such Uniformed Service, with interest at the annual rate of return on Plan assets which is calculated by the Plan actuary from the date of withdrawal to the date of repayment, and (2) to make-up any Employee Contributions that would have been due to the Plan but for such intervening Uniformed Service and related Report Back Period, without interest. The Participant has the Repayment Period (generally, three (3) times the period of intervening Uniformed Service, up to five (5) years following re-employment) within which to repay to the Plan any such Employee withdrawals with interest and such Employee make-up Contributions without interest.

At the time of, and to the extent of, the Participant's repayment to the Plan of any such Employee withdrawals with interest and of such Employee make-up Contributions without interest, the Employer shall pay the Employer Contributions to the Plan that relate to and are contingent upon the Participant's restoration to the Plan of the Employee

Contributions withdrawn in connection with or otherwise due during such periods of intervening Uniformed Service and Report-Back.

To the extent that the preceding conditions are met within the Repayment Period the effect of intervening Uniformed Service and related Report-Back periods upon the Retirement Benefit of a Participant retiring from the Plan shall be the same as though the Participant had remained continuously employed by the Employer during such periods.

The Employee's rate of pay and required contribution rate during said intervening Uniformed Service and Report-Back Periods shall be calculated using the rate of pay that the Employee would have received and the contribution rate that the Employee would have been required to make had s/he not been absent during such intervening Uniformed Service and Report-Back periods, or if not reasonably certain, then it shall be the Employee's average level of Compensation and rate of contribution during the 12-month or shorter period of employment immediately preceding his/her Uniformed Service.

Example 11 - - Credit for Intervening Uniformed Service Following Re-Employment. Jim was born 9/30/78 and was hired by the City on January 1, 2000. Jim had no prior active military service, but was a member of an Army Reserve unit that trained for 2 weeks each summer and on weekends once each month. Jim contributed 6.5% of his Compensation to the Plan until January 1, 2004 when his Army Reserve unit was activated for service in Iraq. Jim's Compensation and Employee Contributions to the Plan from 2000 through 2003 were as follows:

<u>Year</u>	<u>Actual Compensation</u>	<u>Employee Contributions</u>
2000	\$28,000 x 6.5% =	\$1,820.00
2001	\$29,000 x 6.5% =	\$1,885.00
2002	\$30,000 x 6.5% =	\$1,950.00
2003	\$31,000 x 6.5% =	<u>\$2,015.00</u>
Total Employee Contributions		\$7,670.00

Since Jim was not vested in the Plan, on December 31, 2003 he withdrew his Employee Contributions of \$7,670.00 to supplement his family's income while he was on active duty in Iraq.

Effective December 31, 2005 Jim was honorably discharged from active duty. He gave due notice to the City of Erie of his intent to return to his former position. After a Report-Back Period of 60 days, Jim was re-appointed to his previous job effective March 1, 2006. The annual Compensation for Jim's position had increased to \$34,000 for 2006, which was Jim's Compensation upon his return to the City's employ. Jim asked the Plan Administrator what he needed to do to be reinstated in the Plan with respect to the four years of Service prior to his activation for military duty, and with respect to his intervening two years of active Uniformed Service and two months Report-Back Period. The Plan Administrator replied that Jim must repay to the Plan the \$7,670 which he had withdrawn from the Plan just before leaving for active duty with the Army, with 6% interest per annum (the average return on Plan assets as calculated by the Plan actuary while Jim was on active duty from January 1, 2004 to date of repayment within 24 months of re-employment on March 1, 2006, i.e., by February 29, 2008) in order to be restored to his four years of Service in the Plan prior to going on active military duty. The amount of Employee Contributions otherwise due on the Compensation that Joe would have received for his position while on active duty (Imputed Compensation), but without interest, was as follows:

<u>Year</u>	<u>Imputed Compensation</u>	<u>Employee Contribution</u>
2004	\$32,000 x 6.5% =	\$2,080.00
2005	\$33,000 x 6.5% =	\$2,145.00
Jan 1 - Feb. 28, 2006	* \$5,667 x 6.5% =	\$368.00
Total Employee Contributions Due		\$4,593.00

*1/6 of \$34,000.00

The Plan Administrator advised that Jim had until February 28, 2011 (5 years after returning from Uniformed Service on March 1, 2006) to repay to the Plan the \$4,593.00 in the Employee Contributions which Jim had missed while in active Uniformed Service, without interest. The Plan Administrator advised Jim that upon receipt of these Employee Contributions Jim would be restored to his additional year of Service while in Uniformed Service, plus 2 months for his Report-Back Period.

Note that Jim is not required to repay the Employer Contributions due for his intervening Uniformed Service and Report-Back Periods. The Employer will pay its Employer Contributions related to any Employee Contributions which Jim owes to the Plan when and as Jim repays them.

To the extent that Jim pays less than all of his missed Employee Contributions due to the Plan within the Repayment Period, both the Employer's obligation to make Employer Contributions and Jim's Retirement Benefit accrued with respect to such Uniformed Service and Report-Back Periods shall be proportionately reduced.

- G. Death In Qualified Military Service: A Participant who dies on or after January 1, 2007 while performing "qualified military service" as defined in the Code and who would have had reemployment rights under USERRA shall be credited with Service equal to the period of his/her qualified military service for the purpose of being vested in a death benefit under the Plan, and shall be treated as if death had occurred while employed by the City for the purpose of death benefits payable under the Plan.
- H. Federal Income Tax and Withholding Requirement: Distributions from the Plan made directly to a Participant, spouse, Survivor or alternate payee, other than to an individual retirement account ("IRA") or another plan qualified under the Code, are subject to federal income taxes and require mandatory federal income tax withholding of 20%, except to the extent that such distributions are attributable to Employee Contributions made prior to January 1, 1994 and not picked up by the City under Subsection 414(h)(2) of the Code.
- I. Other Requirements of the Internal Revenue Code: The Internal Revenue Code and Regulations thereunder impose other requirements and limitations upon defined benefit plans of governmental entities which are not summarized here because they are considered to have no impact on the operation of this Plan or the Retirement Benefits which it provides. The Board recommends that Participants contact their attorneys, accountants and tax advisors regarding specific requirements and limitations of the Code, whether or not summarized here.

XII. ADMINISTRATION OF THE PLAN

- A. Plan Administrator: The Retirement Board is the Administrator of the Plan. The Board has the authority and discretion to interpret and apply the Plan in accordance with its terms and the requirements for qualification of the Plan under Section 401(a) of the Internal Revenue Code and the requirements of Pennsylvania law, including Act 205 of 1984. The Board may establish procedures, correct defects, supply information and reconcile any inconsistencies in the language of the Plan as it deems necessary or advisable to carry out the purposes of the Plan; provided that its procedures, actions and interpretations are based upon uniform principles consistently applied in a nondiscriminatory manner to

similarly situated Participants and beneficiaries in the Plan.

Determinations of the Board shall be conclusive and binding upon all persons.

- B. Specific Authority and Duties: As Plan Administrator the Retirement Board has authority, responsibility and discretion to: (1) determine eligibility to participate in the Plan and to receive benefits thereunder; (2) calculate the amount of benefits payable; (3) maintain all records necessary for plan administration; (4) prepare and file reports with governmental authorities; (5) prepare and issue plan descriptions and reports to Participants and beneficiaries of the Plan; (6) determine the validity of and take appropriate action with respect to any domestic relations order, whether or not "qualified" under the Internal Revenue Code; (7) adopt bylaws regulating its organization and operations; (8) hold such meetings as the efficient discharge of its duties may require; (9) maintain a record of all actions taken; (10) appoint counsel, actuaries, accountants, physicians, advisors, agents and employees as necessary or appropriate for effective administration of the Plan; (11) pay out of the Pension Fund the fees, salaries and expenses of employees, advisors and agents of the Plan, and to pay other expenses of Plan administration, unless paid by the Employer; (12) perform all other functions regarding administration of the Plan and investment of the assets of the Pension Fund as are specified in the ordinances establishing the Fund.
- C. 1. Claims Procedure: Claims for Retirement Benefits under the Plan may be filed in writing by a Participant, former Participant or Survivor of either ("Claimant") with the Board. Written notice of the disposition of a claim shall be furnished to the Claimant within sixty (60) days after the application is filed, or such other period as may be required by applicable law. In the event the claim is denied, the reasons for the denial shall be specifically set forth in the notice in language calculated to be understood by the Claimant, citing pertinent provisions of the Plan, and, where appropriate, providing an explanation as to how the Claimant can perfect his/her claim. In addition, the Claimant shall be furnished with an explanation of the Plan's claims review and appeal procedure.
2. Claims Review Procedure: Within 30 days of receipt by a Claimant of the Board's written explanation for its denial of any claim, as provided by subparagraph (1), the Claimant may submit to the Board his/her written statement of the reasons why the claim should be allowed and request in writing a hearing thereon by the Board. The Board shall conduct the hearing within 30 days of receipt of the Claimant's written request. At the hearing the Claimant may be represented by an attorney or other representative of his/her choosing and expense. At the hearing, or prior

thereto upon 5 business days written notice to the Board the Claimant or his/her representative shall have an opportunity to review all documents of the Board which are pertinent to the claim and its disallowance. Either the Claimant or the Board may cause a court reporter to attend the hearing and record the proceedings. The court reporter shall furnish a complete written transcript of the proceedings to both parties. The full expense of such court reporter and transcripts shall be borne by the party causing the reporter to attend the hearing. Following the hearing, the Board shall render its final written decision as to the allowance or denial of the claim and the reasons therefor, with specific references to the Plan provisions on which the decision is based, in a manner calculated to be understood by the Claimant. The Board's written decision shall be delivered to the Claimant or to the Claimant's counsel personally, or by deposit in first class mail addressed to them, within 60 days following the Board's receipt of Claimant's request for a hearing on his/her claim.

3. Claims Appeal Procedure: Any Participant, former Participant or Survivor of either, who is aggrieved by a decision of the Board affecting his or her benefit under the Plan may appeal such decision to the Court of Common Pleas of Erie County in accordance with the Local Agency Law, 2 Pa.C.S.A. §752, and the Judicial Code, 42 Pa.C.S.A. §§933(a)(2) and 5571(b), within the 30-day period established by law for filing an appeal from the decision of a local agency.

- D. Aggregate Pension Board: Effective November 25, 1987, the assets of the Pension Fund were transferred to a trust fund under the control of the Aggregate Pension Board as set forth in Article 173 of the City of Erie Codified Ordinances. The Aggregate Pension Board establishes investment guidelines and is responsible for the investment of all assets of the Pension Fund. In the event that Article 173 is repealed or modified and the assets of the Pension Fund are no longer under the control of the Aggregate Pension Board, control of the assets of the Pension Fund will revert to the Board which shall have the investment powers and duties set forth in the ordinances governing the Plan.

XIII. MISCELLANEOUS

- A. Participant's Rights: The Plan shall not be deemed to constitute a contract between the Employer and any Participant or to be a consideration or an inducement for the employment of any Participant or Employee. Nothing contained in the Plan shall be deemed to give any Participant or Employee the right to be retained in the service of the Employer or to interfere with the right of the Employer to discharge any Participant or Employee at any time, regardless of the effect which such discharge shall

have upon the Employee as a Participant in this Plan.

B. Anti-Alienation Provision:

1. No benefit which shall be payable out of the Pension Fund to any person (including a Participant or any Survivor) shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, or claim of any creditor. Any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, or charge the same shall be void; and no such benefit shall in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements, or torts of any such person, nor shall it be subject to attachment or legal process for or against such person, and the same shall not be recognized by the Board, except as may be required by Paragraph 2 below.

2. Paragraph 1 shall not apply to a "qualified domestic relations order" defined in Internal Revenue Code Section 414(p), and those other domestic relations orders permitted to be so treated by the Administrator under the provisions of the Retirement Equity Act of 1984 or other federal or state law. The Administrator shall establish a written procedure to determine the qualified status of domestic relations orders and to administer distributions under such qualified orders.

C. Ownership of Plan Assets: Nothing contained herein shall be deemed to give any Participant or his beneficiary any interest in any specific property of the Pension Fund or any right beyond the right to receive such distributions as are expressly provided for in this Plan.

D. Incapacity of Recipient of Benefits: If any person entitled to receive benefits shall be physically or mentally incapable of receiving or acknowledging receipt of any payment of benefits, the Board, upon the receipt of satisfactory evidence that such person is so incapacitated and that another person or institution is maintaining him/her and that no guardian or committee has been appointed for him/her, may provide for the payment of benefits hereunder to such person or institution so maintaining him, and any such payments so made shall be deemed for every purpose to have been made to or for the benefit of such incapacitated person.

E. Receipt and Release for Payments: Any payment to a Participant, the Participant's legal representative, Survivor, or to any guardian or committee appointed for such Participant or Survivor in accordance with the provisions of the Plan, shall, to the extent thereof, be in full satisfaction of all claims hereunder against the Board and the Employer, either of whom may require such Participant, legal representative,

Survivor, guardian or committee, as a condition precedent to such payment, to execute a receipt and release thereof in such form as shall be determined by the Board or the Employer.

- F. Payments on Behalf of a Minor: In the event that any distribution or payment under this Plan is to be made to a minor, then the Board shall direct that such distribution be paid to the guardian of the estate of, or if none, to the trustee for, or if none to a parent of, such minor, or if no parent survives, then to a responsible adult with whom such minor resides. Payment to such guardian, trustee or parent of a minor, or to a responsible adult with whom such minor resides, shall fully discharge the Board, Employer and Plan from liability on account thereof.
- G. Applicable Law: The Plan shall be governed by, and construed in accordance with the laws of the Commonwealth of Pennsylvania, including Act 205 of 1984, except to the extent that such laws have been specifically preempted by the Code or other Federal legislation. The Plan and benefits provided hereunder shall be conformed and amended to the extent necessary to comply with applicable laws.
- H. Amendment or Termination: Although the City expects to continue the Plan indefinitely, it realizes that circumstances not now foreseen or circumstances beyond its control, including changes in governing law or declines in tax revenues, may make it either impossible or inadvisable to continue to sponsor the Plan or to make further Employer Contributions. If the Plan is terminated or partially terminated, affected Participants will become fully vested in their accrued Plan benefits as of the date of termination to the extent funded. If the Plan is terminated or discontinued, the Plan Administrator will determine the allocation of the assets of the Pension Fund and the timing of the payment of benefits to Participants and their survivors in accordance with applicable law and regulations.
- I. Benefit Modification: Prior to the adoption of any benefit plan modification by the Employer, the Chief Administrative Officer of the Plan (the Mayor of the City or his designee) shall provide to City Council a cost estimate of the proposed plan benefit modification. Such estimate shall be made in writing by an approved actuary under Act 205 of 1984. This estimate shall disclose to City Council the impact of the proposed modification on the future financial requirements of the Plan and the future Minimum Municipal Obligation (defined in Act 205) of the Employer with respect to the Plan.
- J. Indemnification: To the extent required by Act 205 of 1984 and regulations issued thereunder, the Employer shall defend, indemnify and

hold harmless members of City Council and members of the Board, against any and all claims or liabilities which may be asserted against any of them by reason of any action or omission in the administration or operation of the Plan, except for any criminal liability, fraud or willful wrongdoing.

- K. Water Authority Employees: A separate Water Authority was established effective January 1, 1992. Generally, employees of the City who transferred their employment to the Water Authority are treated as though they terminated service with the City as of the date of their transfer.

The only exception to a Water Authority employee being treated as a terminated employee under the terms of the Plan is if the employee elected to continue active status in the City Plan. To continue active status in the City Plan the Water Authority employee must have been employed by the City as of December 31, 1991 and must have made a positive election by August 10, 1993 under the terms of Act 49 of 1992. If active status was elected all provisions of this Plan will be applied as though the Water Authority employee had remained employed by the City.