

City of Philadelphia



(Bill No. 110830)

AN ORDINANCE

Amending the Ordinance approved July 12, 1968, as last amended July 1, 2004, relating to pension benefits for employees working on behalf of Philadelphia Gas Works by revising the Philadelphia Gas Works Pension Plan to incorporate amendments thereto, clarify the operation thereof, and add certain provisions as required by the Internal Revenue Code of 1986, as amended; and permitting the establishment of a tax-qualified defined contribution plan for certain employees working on behalf of Philadelphia Gas Works; all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. The Ordinance approved July 12, 1968 and amended December 14, 1973, March 8, 1979, February 26, 1981, March 4, 1982, December 19, 1983, November 14, 1986, July 17, 1987, December 20, 1988, March 6, 1995, January 1, 1999, June 26, 2002, and July 1, 2004, relating to retirement benefits for employees working on behalf of the Philadelphia Gas Works, is hereby amended as follows, with deletions in strikeout, and additions underlined and in bold:

PHILADELPHIA GAS WORKS PENSION PLAN

SECTION 1

DEFINITIONS

* * *

Sec. 1.04 "Actuarial Equivalent" shall mean a benefit in a form other than a specified normal form of benefit provided under ~~the~~ **this** Plan which, as of the date of reference, has the same single-sum dollar value as the benefit in the specified normal form. The actuarial assumptions to be utilized in calculating any Actuarial Equivalent form of benefit are:

- (a) ~~an interest rate of seven percent (7%) per annum; and~~
- (b) ~~a mortality table equal to the 1971 TPF&C forecast mortality table, with ages set back one (1) year for Participants and five (5) years for beneficiaries.~~

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~~The actuarial assumptions may be revised at the directive~~ **shall be determined by application of the factors adopted by the Plan Administrator, upon the advice and consent** of the Director of Finance, pursuant to the recommendations of its retained actuary. ~~Such directive shall be deemed an appropriate action to set a new actuarial assumption under this Section.~~ **Notwithstanding any other provision of this plan to the contrary, the applicable mortality table used for purposes of adjusting any benefit or limitation under § 415(b)(2)(B), (C) or (D) of the Code as set forth in section 3.03 of the Plan is the table prescribed in Rev. Rul. 2001-62.**

* * *

Sec. 1.21 "Eligible Class Employee" shall mean any person who renders services exclusively and directly related to the operations of PGW, whose regularly scheduled work week consists of twenty (20) or more hours, and who receives Compensation. Services rendered for the Company, in its capacity as operator of PGW, or for the Gas Commission shall be deemed exclusively and directly related to the operations of PGW. The above notwithstanding, the following persons who render services related to the operations of PGW shall not be deemed Eligible Class Employees:

- (a) an individual who accrues a benefit under The City of Philadelphia Public Employees Retirement System as a result of such services; ~~and~~
- (b) an individual who renders such services in his/her capacity as a consultant or a contractor; **and**
- (c) an individual who renders such services on a seasonal, expressly temporary, or student basis.**

An individual identified in (a), ~~or~~ (b) **or (c)** above shall not be deemed an Eligible Class Employee even if such individual is classified as an "employee" of PGW, the Company, **or** the Gas Commission ~~or the Pension Committee~~ for Federal or state tax purposes. Such individual shall become an Eligible Class Employee only upon designation by the Plan Administrator.

* * *

Sec. 1.32 "Participant" shall mean any person who has been or who is an Eligible Class Employee and who has been admitted to participation in this Plan pursuant to the provisions of Section 2. The term "Participant" shall include Active Participants, Retired Participants, **Contributing Participants**, and Deferred Vested Participants.

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Sec. 1.59 "Contributing Participant" shall mean any Participant who is required to make Pickup Contributions to the Plan pursuant to Section 11.02.

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Sec. 1.60 “Pickup Contribution” shall mean required contributions as described in Tax Code Section 414(h) and made with respect to Credited Service on or after May 21, 2011 as provided in Section 11.01.

SECTION 2

PARTICIPATION ELIGIBILITY

Sec. 2.01 Initial Eligibility. ~~Every~~

(a) General. Except as provided in section 2.01(b) below, every Eligible Class Employee shall become a Participant on his/her Employment Commencement Date.

(b) Contributing Participants. The above notwithstanding, if (i) an Eligible Class Employee is a member of the Union, and has an Employment Commencement Date on or after May 21, 2011, then he/she shall become a Participant only upon completion of an irrevocable written election to participate in the Plan, or (ii) an Eligible Class Employee is not a member of the Union and has an Employment Commencement Date on or after the Effective Date of this Ordinance, then he/she shall become a Participant only upon completion of an irrevocable written election to participate in the Plan. Such elections must be made within thirty (30) days of his/her Employment Commencement Date, or, if later, thirty (30) days after the Effective Date of this Ordinance. All Eligible Class Employees subject to this section 2.01(b) who elect to participate in the Plan shall be deemed Contributing Participants.

* * *

SECTION 3

CALCULATION OF BENEFITS

Sec. 3.01 “Normal Form” of Benefits. All benefit accruals described herein are stated in the “Normal Form” which is an annuity for life ceasing with the periodic installment payable for the month in which the Participant’s death occurs. **To the extent that a benefit is payable in the Normal Form, and a Contributing Participant’s death occurs before he/she has received payments equal to his/her aggregate Pickup Contributions made to the Plan, the Participant’s Survivor (or estate in the absence of a Survivor) shall receive the balance of such aggregate Pickup Contributions.**

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Sec. 3.03 Maximum Benefit Limitations

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(d) Adjustment of Limitations.

(1) To the extent the limitations set forth herein may be from time to time adjusted by statutes, regulations or other publications, such adjusted amounts shall be substituted for the amounts set forth in this section, provided that no such adjustment shall reduce a Participant's Accrued Benefit unless such adjustment is required to preserve the qualified status of this Plan. To the extent that the limitations under this section become unnecessary by amendment of law, the limitations shall be deemed inoperative under this Plan.

(2) If a benefit is to be distributed in a form other than a single or straight life annuity or Joint and Survivor Annuity (with the spouse ~~Survivor~~ **Death Beneficiary** as Survivor), the Actuarial Equivalent (using an interest rate, however, not less than the greater of (i) five percent; or (ii) the interest rate used by this Plan for such purposes) of a single life annuity of such benefit must satisfy the limitations set forth in this section. Further adjustments may be made by the Plan Administrator, as permitted by Tax Code Section 415 and the regulations promulgated thereunder, under the appropriate circumstances, including receipt by this Plan of rollover contributions or assets or liabilities transferred from another plan.

(3)

(e) Adjustment for Benefits Commencing Before Age 62.

(1) In the event that a Participant's benefit is to be distributed prior to Age 62, the currently effective dollar amount — in Paragraph (a) of this section — **Limitation Year beginning before July 1, 2007, the currently effective dollar amount in Paragraph (a)** shall be actuarially reduced to the Actuarial Equivalent (using an interest rate, however, not less than the greater of (i) five percent; or (ii) the interest rate used by this Plan for such purposes) of an annual **amount of a** benefit equal to the dollar amount **payable in the form of a straight life annuity** commencing at Age 62, as determined the Participant's annuity starting date that is the Actuarial Equivalent of the dollar limitation under the preceding sentence. (4) **Section 415(b)(1)(A) of the Code (as adjusted under Section 415(d) of the Code), with Actuarial Equivalence computed using whichever of the following produces the smaller annual amount: (i) the interest rate and mortality table or other tabular factor specified in the plan for determining Actuarial Equivalence for early retirement purposes; or (ii) a 5 percent interest rate assumption and the applicable mortality table.**

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(4) (2) In the event that a Participant's benefit is to be distributed in a Limitation Year beginning on or after attainment of Age 65, July 1, 2007, and the Plan does not have an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the currently effective dollar amount in Paragraph (a) of this section shall be actuarially increased shall be the annual amount of a benefit payable in the form of a straight life annuity commencing at the Participant's Annuity Starting Date that is the Actuarial Equivalent (of the dollar limitation under Section 415(b)(1)(A) of the Code (as adjusted under Section 415(d) of the Code), with Actuarial Equivalence computed using an a 5 percent interest rate; however, not greater than the lesser of: (1) five percent; or (ii) the interest rate used by this Plan for such purposes) of an annual benefit equal to such dollar amount commencing at Age 65. assumption and the applicable mortality table and expressing the Participant's age based on completed calendar months as of the Annuity Starting Date.

(3) In the event that a benefit is distributed in a Limitation Year beginning on or after July 1, 2007, and the Plan has an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the currently effective dollar amount in Paragraph (a) shall be the lesser of (i) the adjusted dollar limitation determined in accordance with (2); and (ii) the product of the dollar limitation under Section 415(b)(1)(A) of the Code (as adjusted under Section 415(d) of the Code) multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under the plan at the Participant's Annuity Starting Date to the annual amount of the immediately commencing straight life annuity under the plan at age 62, both determined without applying the limitations of Section 415 of the Code.

(f) Adjustment for Benefits Commencing After Age 65.

(1) In the event that a benefit is distributed in a Limitation Year beginning before July 1, 2007, the currently effective dollar amount in Paragraph (a) shall be the annual amount of a Benefit payable in the form of a straight life annuity commencing at the Participant's Annuity Starting Date that is the Actuarial Equivalent of the dollar limitation under section 415(b)(1)(A) of the Code (as adjusted under section 415(d) of the Code), with Actuarial Equivalence computed using whichever of the following produces the smaller annual amount: (i) the interest rate and mortality table or other tabular factor specified in the plan for determining Actuarial Equivalence for delayed retirement purposes; or (ii) a 5 percent interest rate assumption and the applicable mortality table.

(2) In the event that a benefit is distributed in a Limitation Year beginning on or after July 1, 2007, and the Plan does not have an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the currently effective dollar amount in Paragraph (a) shall be the

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annual amount of a benefit payable in the form of a straight life annuity commencing at the Participant's Annuity Starting Date that is the Actuarial Equivalent of the dollar limitation under section 415(b)(1)(A) of the Code (as adjusted under section 415(d) of the Code), with Actuarial Equivalence computed using a 5 percent interest rate assumption and the applicable mortality table and expressing the Participant's age based on completed calendar months as of the Annuity Starting Date.

(3) In the event that a benefit is distributed in a Limitation Year beginning on or after July 1, 2007, and the Plan has an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the currently effective dollar amount in Paragraph (a) shall be the lesser of (i) the adjusted dollar limitation determined in accordance with (2); and (ii) the product of the dollar limitation under section 415(b)(1)(A) of the Code (as adjusted under section 415(d) of the Code) multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under the plan at the Participant's Annuity Starting Date to the annual amount of the immediately commencing straight life annuity under the plan at age 65, both determined without applying the limitations of Section 415 of the Code.

For purposes of this Section 3, the "Limitation Year" shall be the calendar year.

* * *

SECTION 8

VESTING PROVISIONS

Sec. 8.01 Vested Interests. Except as provided below, Any any Participant who is an Active Participant on or after the Restatement Effective Date shall have a vested interest in his/her Accrued Benefit as determined from the following schedule:

<u>Participant's Years of Credited Service</u>	<u>Participant's Vested Percentage</u>
(a) Less than 5	None
(b) 5 years of credited service or more	100%

Any other Participant shall have a vested interest in his/her Accrued Benefit as determined under the terms of the Plan as in effect on the date of his/her separation from employment. Consistent with the above, an Active Participant shall be 100% vested in his/her Accrued Benefit at his/her Normal Retirement Date. Additionally, a

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Contributing Participant shall be 100% vested in all Pickup Contributions made on his/her behalf pursuant to Section 11.02.

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SECTION 9

DEATH BENEFITS

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Sec. 9.02 Eligibility. If an Active Participant or a Deferred Vested Participant at the time of his/her death:

(a) has combined Years of Credited Service and attained Age of sixty-five (65) or more of which at least fifteen (15) represent Years of Credited Service and at least forty-five (45) represent attained Age; or

(b) has twenty (20) Years of Credited Service regardless of attained Age,

then there shall be paid to his/her Death Beneficiary (if any) a benefit in the form of a Preretirement Death Annuity, with the benefit commencing as if the Participant has retired due to Total Disability, pursuant to Section 7, on the day preceding the date of his/her death and selected Survivor Benefit Option 1 in Section 10.02. **The above notwithstanding, if an Active Participant or Deferred Vested Participant does not satisfy the conditions of (a) or (b) above at the time of his/her death, the aggregate Pickup Contributions of such Participant shall be distributed in a single sum to his/her Survivor (or estate in the absence of a Survivor). To the extent that such distribution is to be made to the Spouse of the Participant, or any other individual who is eligible to make a tax-free rollover of the distribution, the provisions of Section 10.06 below shall apply.**

* * *

SECTION 10

METHOD AND TIMING OF BENEFIT DISTRIBUTION

Sec. 10.01 General Rules: Except as specifically provided in Section 4 (regarding normal retirement), Section 5 (regarding early, special early and thirty and out retirement), Section 6 (regarding deferred retirement), Section 7 (regarding disability retirement), Section 8 (regarding deferred vested benefits), Section 9 (regarding death

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benefits), Section 10.02 (regarding survivor benefits), **and Sections 10.05 and 10.06 (regarding distribution of Pickup Contributions)**, payment of annual retirement income under this Plan shall be made in twelve (12) equal monthly installments beginning the first month of retirement and continuing thereafter for the remainder of the Participant's life, with the last payment to be made in the month in which the Participant's death occurs. **Notwithstanding any provision of this Plan to the contrary, benefits payable under this Plan shall commence on or before a Participant's Required Beginning Date as required and in compliance with Section 401(a)(9) of the Code.**

* * *

Sec. 10.05 Distribution of Aggregate Pickup Contributions. In the event that a Participant separates from service prior to vesting in his/her Accrued Benefit pursuant to Section 8.01, he/she shall be eligible to receive a single sum distribution of his/her aggregate Pickup Contributions made to the Plan pursuant to Section 11.02. A Participant entitled to receive a distribution of aggregate Pickup Contributions under this Section shall receive such distribution only upon the Participant's written request of same and as soon as administratively practicable, thereafter. Such request shall be made in the manner prescribed by the Plan Administrator. Any such distribution shall be an "eligible rollover distribution" as defined in Section 10.06.

Sec. 10.06 Direct Rollover Option of Aggregate Pickup Contribution.

(a) A Participant or a Participant's surviving Spouse (or an alternate payee under an ADRO) who is to receive an "eligible rollover distribution" as defined in Subsection (c) may elect to have the amount of such distribution transferred directly in a direct rollover to an "eligible retirement plan" (as defined in Subsection (d)).

(b) If a Participant or surviving Spouse or alternate payee is to receive an eligible rollover distribution of more than \$100, he/she may choose to have part of the distribution transferred directly in a direct rollover to an eligible retirement plan and to have the remainder paid to him/her. The amount that is to be transferred must be at least \$100.

(c) An "eligible rollover distribution" shall mean any distribution of all or any portion of the sum set forth in Section 10.05, except that an eligible rollover distribution does not include:

(1) Any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the

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distributee and the distributee's designated beneficiary, or for a specified period of ten years or more;

(2) Any distribution to the extent such distribution is required under section 401(a)(9) of the Code;

(3) The portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and

(d) An "eligible retirement plan" shall mean an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, or a qualified trust described in section 401(a) of the Code, that accepts a distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to a surviving Spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

For purposes of the direct rollover provisions in Section 10.05 of the Plan, an eligible retirement plan shall also mean an annuity contract described in section 403(b) of the Code and an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving Spouse or former Spouse who is the alternate payee under an ADRO.

(e) (1) The Committee shall provide to the Participant or surviving Spouse or alternate payee an explanation of his/her right to elect a direct rollover and the federal tax withholding consequences to him/her if s/he does not elect a direct rollover. The Participant, surviving Spouse or alternate payee shall then have at least 30 days (but not more than 90 days) in which to elect a direct rollover.

(2) A Participant or surviving Spouse or alternate payee who elects a direct rollover must provide all information that the Committee may require to complete the direct rollover.

(3) A Participant or alternate payee who is entitled to elect a direct rollover with respect to all or any portion of a distribution from the Plan but who does not make any election shall be deemed to have rejected the direct rollover option.

(f) If the aggregate value of the Pickup Contributions is \$1,000 or less, the Plan shall immediately distribute to the Participant the entire amount of

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Pickup Contributions. If the value of Pickup Contributions exceeds \$1,000 and the Participant has not yet attained Normal Retirement Date, the Plan Administrator shall distribute the payment in a direct rollover to an individual retirement account or individual retirement annuity designated by the Plan Administrator for the benefit of the Participant, unless the Participant elects to have such payment (i) paid directly to an eligible retirement plan, as defined above, specified by the Participant in a direct rollover, or (ii) paid directly to the Participant.

SECTION 11

CONTRIBUTIONS TO PROVIDE BENEFITS

Sec. 11.01-~~General~~- **Sponsor Contributions.** The Sponsor shall annually cause to be contributed from the revenues of PGW, such amounts to the Sinking Fund as are necessary to provide for the annual retirement cost of Participants on the following basis:

- (a) With respect to Retired Participants, an amount necessary to meet current benefit obligations under the retirement schedules; and
- (b) With respect to Active Participants and Deferred Vested Participants, an additional amount as determined by the Director of Finance to be appropriate to fund future benefit obligations with respect to such Participants.

The Director of Finance shall take into consideration certain factors, including current payrolls, earnings assumptions, retirement schedules applicable to various classes of employees and other factors as necessary to assure adequate funding of the Sinking Fund in current and future years.

Sec. 11.02. **Pickup Contributions.** Any individual who becomes a Participant in the Plan pursuant to Section 2.01(b) shall be deemed a Contributing Participant and shall be required to make annual Pickup Contributions in an amount equal to six percent (6%) of his/her Compensation. Any such Pickup Contributions shall be made by means of periodic payroll deductions determined by the Sponsor and shall be treated as employer contributions for purposes of Section 414(h) of the Tax Code. Pickup Contributions shall be made by Contributing Participants except for any period of Credited Service in which a limitation on contributions is imposed by Sections 401(a)(17) and/or 415 of the Tax Code.

Sec. 11.03 Restoration Contributions.

(a) If a Contributing Participant separates from service prior to vesting under Section 8.01, and is subsequently rehired, he/she may apply for a restoration of the Credited Service accrued prior to such separation provided that he/she makes restoration contributions to the Plan equal to (i) the total aggregate Pick-up Contributions distributed to the individual pursuant to Section 10.05; plus (ii)

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interest accrued from the date on which such aggregate Pick-up Contributions were distributed from the Plan. (Items (i) and (ii) above shall be referenced hereinafter as “Restoration Contributions”). The interest rate in Item (ii) above shall be the assumed earnings rate on Plan investments as determined by the Plan Administrator from time to time.

(b) If a Contributing Participant applies to restore Credited Service, he/she must either (i) pay the full amount calculated under subsection (a) within the first year of reemployment or (ii) make arrangements to pay such amount on an installment basis amortized over a period not to exceed five (5) years calculated at the same interest rate as set forth in subsection (a). In the event that the Contributing Participant separates from service prior to completing the installment payments, he/she shall forfeit such restored Credited Service and all Restoration Contributions shall be distributed as described in Section 10.05.

Sec. 11.02 04 Actuarial Soundness. The Director of Finance shall obtain competent actuarial advice and shall have available at all times a report made within the immediately preceding five (5) Plan Years by a competent actuary based on ~~an~~ actuarial investigation of the pertinent factors.

Sec. 11.03–05 Other Contributions Prohibited. The Fund shall not accept “rollover contributions” from any Participant, from any “individual retirement account” or annuity, (as defined in Tax Code Section 408) or from any other qualified or non-qualified plan of any employer.

* * *

SECTION 2. Philadelphia Facilities Management Corporation, on behalf of PGW, is authorized to establish, and may amend from time to time with the approval of the Director of Finance, a tax-qualified defined contribution plan for PGW pursuant to Section 401(a) of the Internal Revenue Code of 1986, as amended, for the benefit of certain Eligible Class Employees (as that term is defined in the Pension Plan) hired on or after May 21, 2011. Such defined contribution plan shall be upon terms and conditions not inconsistent with the terms of PGW’s collective bargaining agreement with its union, as may be amended, and shall be in accordance with the requirements for retirement plans set forth in that certain agreement between the City of Philadelphia and the Philadelphia Facilities Management Corporation, dated December 29, 1972, as may be amended from time to time.

SECTION 3. Effective Date. This Ordinance shall be effective immediately.

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CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on December 8, 2011. The Bill was Signed by the Mayor on December 21, 2011.



Michael A. Decker
Chief Clerk of the City Council