

City of Philadelphia



(Bill No. 020348)

AN ORDINANCE

Amending and restating the Ordinance approved July 12, 1968, as last amended effective January 1, 1999, 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.

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, and January 1, 1999, relating to retirement benefits for employees working on behalf of Philadelphia Gas Works is amended and restated in its entirety to read as follows:

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PHILADELPHIA GAS WORKS

PENSION PLAN

SECTION 1

DEFINITIONS

Sec. 1.01 “Accumulated Sick Leave” shall mean the Participant’s aggregate number of Sick Leave Days (not to exceed 200) as of the reference date; provided, however, that if a Participant shall have elected payment of the vested cash value attributable to some or all of the Participant’s accumulated Sick Leave Days, then the Participant’s Accumulated Sick Leave shall be deemed to equal zero.

Sec. 1.02 “Accrued Benefit” shall mean, in the case of a Participant who has not reached his/her Retirement Date, that portion of the Participant’s prospective benefit, payable in the Normal Form and commencing upon retirement at the Participant’s Normal Retirement Date, that has been earned or accrued to the date of reference, as computed pursuant to the provisions of Section 3 of this Plan. In the case of a Participant who has reached his/her Retirement Date, “Accrued Benefit” shall mean the pension benefit, in the Normal Form, that would be payable upon the retirement of the Participant as of the date of reference.

Sec. 1.03 “Active Participant” shall mean any Participant who has not retired, or otherwise been separated from employment.

Sec. 1.04 “Actuarial Equivalent” shall mean a benefit in a form other than a specified normal form of benefit provided under 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 shall be determined by application of the factors adopted by the Plan Administrator, upon the advice and consent of the Finance Director, pursuant to the recommendations of its retained actuary.

Sec. 1.05 “Age” shall mean the chronological age attained by the Participant at his/her most recent birthday.

Sec. 1.06 “Alternate Payee” shall mean any person entitled to current or future payment of benefits under this Plan pursuant to an ADRO.

Sec. 1.07 “Anniversary Date” shall mean the first day of the Plan Year.

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Sec. 1.08 “Approved Domestic Relations Order” or “ADRO” shall mean a “domestic relations order” within the meaning of Tax Code Section 414(p)(1)(B) which has been approved by the Plan Administrator pursuant to Section 10.04 of this Plan.

Sec. 1.09 “Authorized Investment” shall mean bonds, debentures, notes, or other evidences of indebtedness; stocks (regardless of class), or other evidences of ownership, in any corporation, mutual investment fund, common or collective trust, pooled investment fund, investment company, association, or business trust; life insurance, retirement income or annuity contracts; and real and personal property of all kinds, including leaseholds on improved and unimproved real estate. “Authorized Investments” shall be limited to that class of investments which are defined as legal investments for trusts under the laws of the Commonwealth of Pennsylvania.

Sec. 1.10 “Bargaining Agreement” shall mean the collective bargaining agreement, as the same shall be amended or succeeded from time to time, between the Company and the Union.

Sec. 1.11 “Benefit Commencement Date” shall mean the first day of the first period for which an amount is paid as an annuity or in any other form.

Sec. 1.12 “Company” shall mean the Philadelphia Facilities Management Corporation, or any successor thereto, which operates PGW in its capacity as operator only.

Sec. 1.13 “Compensation” shall mean the following:

(a) In General. Compensation shall mean wages and other compensation paid to an individual that are caused by the Company to be reported in Box 1 of Internal Revenue Service Form W-2 and paid from the revenues of PGW. Compensation shall include any amount contributed pursuant to a salary reduction agreement and which is not includable in the gross income of the Participant in accordance with a cafeteria plan under Tax Code Section 125 or an eligible deferred compensation plan under Tax Code Section 457(b). If a Participant is granted Credited Service for military service, his/her Compensation shall also be deemed to include an amount equal to the regular earnings the Participant would have received if he had continued in employment during military service, computed using the higher of the rate received immediately before or immediately following such military service.

(b) Amounts Excluded. Compensation shall not include any amounts which are paid to a Participant during such year under the PGW Employees’ Deferred Compensation Plan and which are included on the Participant’s annual W-2 form for income-tax purposes for such year.

(c) Limitation on Compensation.

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(1) For Plan Years Beginning January 1, 2002 and Thereafter. In addition to other applicable limitations set forth in this Plan, and notwithstanding any other provision of this Plan to the contrary, for Plan Years beginning on or after January 1, 2002, the Compensation of each Participant taken into account under this Plan shall not exceed \$200,000, as adjusted by the Internal Revenue Service for increases in the cost of living in accordance with Tax Code Section 401(a)(17)(B). The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding twelve (12) months, over which Compensation is determined (“Determination Period”), beginning in such calendar year. If such Determination Period consists of fewer than twelve (12) months, the annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the Determination Period, and the denominator of which is twelve (12).

If Compensation for any prior Determination Period is taken into account in determining a Participant’s benefits accruing in the current Plan Year, Compensation for that prior Determination Period is subject to the Tax Code Section 401(a)(17) annual compensation limit in effect for such prior Determination Period. For this purpose, for Determination Periods beginning before the first day of the first Plan Year beginning on or after January 1, 2002, the annual compensation limit is \$150,000 (as adjusted in accordance with Tax Code Section 401(a)(17)(B)).

Sec. 1.14 “Covered Compensation” shall mean \$6,600.

Sec. 1.15 “Credited Service” shall mean all service credited by the Sponsor for the Eligible Class Employee as of the Restatement Effective Date, and all service credited to an Eligible Class Employee up to the individual’s date of retirement or date of separation from service. Absence for any of the following reasons shall not constitute a separation from service and, except as stated below, such period of absence shall be included in a Participant’s Credited Service:

(a) Due to illness provided that such Participant has not separated from service;

(b) Any authorized leave of absence. However, except in such special situations as may be authorized by the Company, any such period of absence which exceeds one (1) month shall be deducted in computing a Participant’s period of continuous Credited Service for purposes of determining his/her Accrued Benefit;

(c) Military service, provided (1) such service is required by law or is with the approval of the Company; (2) the Participant does not voluntarily re-enlist, except in time of war; and (3) he/she returns to service within ninety (90) days after his/her discharge from such service or from hospitalization (for a period of not more than one (1) year)

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continuing after discharge. If a participant returns to service after the period specified in (3) above, he/she will be granted Credited Service for the intervening military service only to the extent required by USERRA.

(d) **Interruption of Service; Layoff.** With respect to any Participant who separates from service (either voluntarily, involuntarily or due to layoff) and later returns to service:

(1) If such Participant's Retirement Date is on or after January 1, 1995, Credited Service shall include service rendered both before the date of separation and service rendered after the date of return to employment;

(2) With respect to any Participant whose Retirement Date is prior to January 1, 1995, Credited Service shall not include service rendered before the date of separation if the length of the separation is greater than 365 days. In such case, the Participant shall be treated as a new Eligible Class Employee on the date of his/her return to employment and his/her Credited Service shall be calculated from that date.

(e) Any leave of absence for which service credit must be granted under the Family and Medical Leave Act.

Service performed: (i) as a consultant, (ii) as a contractor, (iii) during any period in which the Participant's regularly scheduled work week is less than twenty (20) hours; or (iv) in any capacity other than an Eligible Class Employee, shall not be deemed Credited Service.

Sec. 1.16 "Death Beneficiary" shall mean the Participant's Spouse or a person with whom the Participant has filed a currently valid verification statement pursuant to Section 9-1106 of The Philadelphia Code.

Sec. 1.17 "Deferred Retirement Age" shall mean the date of a Participant's retirement from the service which is subsequent to his/her Normal Retirement Date.

Sec. 1.18 "Deferred Vested Participant" shall mean any Participant who has been terminated before attainment of a Retirement Date and who has a 100% vested interest (pursuant to Section 8.1) in his/her Accrued Benefit.

Sec. 1.19 "Director of Finance" shall mean the Director of Finance of The City of Philadelphia.

Sec. 1.20 "Early Retirement Date" shall mean the date of a Participant's retirement which is prior to his/her Normal Retirement Date and on or after attainment of Age 55 and completion of fifteen (15) Years of Credited Service.

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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.

An individual identified in (a) or (b) above shall not be deemed an Eligible Class Employee even if such individual is classified as an “employee” of PGW, the Company, 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. 1.22 “Employment Commencement Date” shall mean, with respect to any individual, the first date on which that individual performs service as an Eligible Class Employee or returns to service following separation from employment.

Sec. 1.23 “Excess Final Average Compensation” shall mean the amount by which a Participant’s Final Average Compensation exceeds his/her Covered Compensation.

Sec. 1.24 “Final Average Compensation” shall mean the average of the Compensation of a Participant over any five (5) years yielding the highest such average and occurring during the last ten (10) year period of Credited Service preceding his/her retirement or other separation from service. Notwithstanding the foregoing, with respect to any Participant who became a Deferred Vested Participant prior to January 1, 1995, or the surviving spouse of a Participant who died prior to January 1, 1995, Final Average Compensation shall mean average Compensation during the five (5) consecutive calendar years yielding the highest such average and occurring in the last ten (10) year period of Credited Service preceding retirement or other separation from service.

Sec. 1.25 “Gas Commission” shall mean the Philadelphia Gas Commission as constituted from time to time in accordance with the Philadelphia Home Rule Charter.

Sec. 1.26 “Gross Compensation” shall mean the lifetime total Compensation received during periods of Credited Service by an Eligible Class Employee.

Sec. 1.27 “Internal Revenue Code” or “Code” shall mean the Internal Revenue Code of 1986 as the same may be amended from time to time.

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Sec. 1.28 “Joint and Survivor Annuity” shall mean an annuity benefit payable for the joint lives of the Participant and his/her designated Survivor, with an annuity benefit payable after the death of either to the surviving party for the remainder of his/her life.

Sec. 1.29 “Medical Director” shall mean the physician designated as such from time to time by Company.

Sec. 1.30 “Normal Retirement Date” shall mean the date on which occurs the later of (a) the attainment by the Participant of Age 65 or (b) the fifth (5th) anniversary of the date on which the Participant first became an Active Participant under this Plan.

Sec. 1.31 “Operating Agreement” shall mean the agreement, or any successor thereto, for the operation and management of PGW, as provided by the Philadelphia Home Rule Charter.

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, and Deferred Vested Participants.

Sec. 1.33 “Pension Committee” shall mean the committee that consists of members appointed pursuant to Section 14 hereof.

Sec. 1.34 “Plan” shall mean the Philadelphia Gas Works Pension Plan.

Sec. 1.35 “Plan Administrator” shall mean the Sponsor, operating through the PGW Human Resources Department as its designee for the duties set forth in this Plan.

Sec. 1.36 “Plan Year” shall mean the twelve-month period commencing each September 1 and ending on the subsequent August 31.

Sec. 1.37 “Preretirement Death Annuity” shall mean an annuity for the life of the Participant’s Death Beneficiary where the periodic benefit payable to such Death Beneficiary is equal to one hundred percent (100%) of the periodic benefit which would have been payable to the Participant under Option 1, described in Section 10.02, during his/her lifetime.

Sec. 1.38 “PGW” or “Philadelphia Gas Works” shall mean all of the property, real and personal, collectively known as the Philadelphia Gas Works, owned by the Sponsor, and managed and operated by the Company under the Operating Agreement.

Sec. 1.39 “Required Beginning Date” shall mean the April 1 of the calendar year following the calendar year in which the Participant attains Age 70-1/2 or if later, the April 1 of the calendar year following the calendar year in which he/she retires.

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Sec. 1.40 “Restatement Effective Date” shall mean the date that this Ordinance takes effect. However, those provisions of this Plan which are required for compliance with the Tax Reform Act of 1986, the Omnibus Budget Reconciliation Act of 1986, the Omnibus Budget Reconciliation Act of 1987, the Technical and Miscellaneous Revenue Act of 1988, Omnibus Budget Reconciliation Act of 1989, the Unemployment Compensation Act of 1992, the Uniformed Services Employment and Reemployment Rights Act of 1994 and the Small Business Jobs Protection Act of 1996, the Taxpayer Relief Act of 1997 and the Economic Growth and Tax Relief Reconciliation Act of 2001 shall be effective no later than the dates required by such Acts.

Sec. 1.41 “Retired Participants” shall mean those Participants receiving benefit payments under this Plan.

Sec. 1.42 “Retirement Date” shall mean the Participant’s Normal Retirement Date, Early Retirement Date, Special Early Retirement Date or Thirty and Out Retirement Date.

Sec. 1.43 “Sick Leave Days” shall mean Participant’s unused sick leave days granted and banked in conformity with PGW policies.

Sec. 1.44 “Sinking Fund” or “Fund” shall mean all of the assets of this Plan as held by the Trustees (or any nominee thereof) to which the Sponsor shall make contributions from revenues of PGW.

Sec. 1.45 “Sinking Fund Commission” shall mean the board, established pursuant to Section 3-915 of the Philadelphia Home Rule Charter, which has the authority to hold and invest the assets of this Plan, and to authorize the payment of benefits hereunder pursuant to the Trust to the extent provided in Section 15 of this Plan.

Sec. 1.46 “Special Early Retirement Date” shall mean the date of a Participant’s retirement which is prior to his/her Normal Retirement Date and on or after attainment of Age 55 and completion of twenty-five (25) Years of Credited Service.

Sec. 1.47 “Sponsor” shall mean The City of Philadelphia.

Sec. 1.48 “Spouse” shall mean (a) the person to whom the Participant was married on his/her Benefit Commencement Date, or (b) if the Participant’s Benefit Commencement Date had not occurred at the time of his/her death, the person to whom the Participant was married at the time of his/her death. When the word “spouse” is used without an initial capital letter in this Plan, the term shall mean the person to whom the Participant was married or is married as of the date of reference.

Sec. 1.49 “Survivor” shall mean the Participant’s Death Beneficiary, mother, father, brother, sister, son or daughter, as designated by the Participant in the form and manner prescribed by the Plan Administrator to receive Survivor’s benefits. The designated Survivor shall be one individual.

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Sec. 1.50 “Tax Code” or “Code” shall mean the Internal Revenue Code of 1986, as amended.

Sec. 1.51 “Thirty and Out Retirement Date” shall mean the date of a Participant’s retirement from service upon completion of thirty (30) years of Credited Service pursuant to Section 5.05.

Sec. 1.52 “Total Disability” shall mean a physical or mental condition of such severity and probable prolonged duration as to render it unlikely that the Participant will be able to resume the duties he/she was performing prior to the onset of the condition resulting in Total Disability and that suitable substitute occupation is not available.

Sec. 1.53 “Trust” shall mean the Sinking Fund established pursuant to Section 15 which shall consist of all assets under this Plan plus income and gains thereon minus losses, expenses and distributions.

Sec. 1.54 “Trustee(s)” shall mean the Sinking Fund Commission.

Sec. 1.55 “Union” shall mean the certified collective bargaining agent representing the majority of union represented Eligible Class Employees (as of the Restatement Effective Date: the Gas Works Employees’ Union of Philadelphia, Local 686, Service Employees’ International Union, AFL-CIO, CLC).

Sec. 1.56 “USERRA” shall mean the Uniformed Services Employment and Reemployment Rights Act.

Sec. 1.57 “Valuation Date” shall mean the last day of the Plan Year (the “Annual Valuation Date”) and each other interim date during the Plan Year on which a valuation of the Sinking Fund is made.

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Sec. 1.58 “Year of Credited Service” shall mean each period of 365 (or 366, if applicable) consecutive days of Credited Service beginning on the Participant’s Employment Commencement Date and ending on the date upon which the Participant separates from service. A period of less than 365 (or 366, if applicable) days shall be deemed a fractional Year of Credited Service. In the event that the Participant experiences an interruption in Credited Service, any fractional Years of Credited Service shall be combined to form a complete Year of Credited Service, or fraction thereof. Accumulated Sick Leave shall be added to the Participant’s days of Credited Service for the sole purpose of determining whether a participant has the requisite number of Years of Credited Service for attainment of Normal Retirement Date, Early Retirement Date, Special Early Retirement Date and Thirty and Out Retirement Date. Accumulated Sick Leave shall not be considered for determining a Year of Credited Service for any other purpose.

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SECTION 2

PARTICIPATION ELIGIBILITY

Sec. 2.01 Initial Eligibility. Every Eligible Class Employee shall become a Participant on his/her Employment Commencement Date.

Sec. 2.02 Procedure for and Effect of Admission. Each Eligible Class Employee who becomes eligible for admission to participation in this Plan shall complete such forms and provide such data as are reasonably required by the Plan Administrator as a pre-condition of such admission. By becoming a Participant, each Eligible Class Employee shall for all purposes be deemed conclusively to have assented to the terms and provisions of this Plan, and to all amendments hereto.

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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.

Sec. 3.02 Accrued Benefit. If a Participant’s Employment Commencement Date is before March 24, 1967 and such Participant retires at his/her Normal Retirement Date, he/she shall be entitled to receive an annual normal retirement benefit, payable in the Normal Form, equal to the greater of:

(a) The sum of: (1) two percent (2%) of the Gross Compensation earned during total Credited Service; and (2) an additional monthly allowance equal to twenty-two and one-half percent (22.5%) of the first one hundred dollars (\$100) or less of the Participant’s monthly retirement income; or

(b) The sum of:

(1) one and one-quarter percent (1.25%) of that portion of his/her Final Average Compensation less than or equal to Covered Compensation multiplied by his/her Years of Credited Service (including partial Years of Credited Service), and

(2) one and three-quarters percent (1.75%) of his/her Excess Final Average Compensation multiplied by his/her Years of Credited Service (including partial Years of Credited Service).

The maximum annual normal retirement benefit calculated under this subsection (b) shall not exceed sixty percent (60%) of the Participant’s Compensation in the year in which it is highest over the last ten (10) years preceding retirement or separation from service.

If a Participant’s Employment Commencement Date is on or after March 24, 1967, his/her annual normal retirement benefit, payable in the Normal Form, is equal to the amount as calculated under Subsection (b) above.

(c) Accrued Benefit Calculation Adjustment. The periodic benefit payable to any Retired or Deferred Vested Participant, or to the Survivor of any such person, shall be the amount determined pursuant to the provisions of Section 3.02, adjusted actuarially for such factors as may be required by reason of the provisions of this Plan or operation of applicable law, regulations and/or rulings that require further adjustment of this Plan.

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Sec. 3.03 Maximum Benefit Limitations.

(a) General Limitation. Except as otherwise provided in this section, the annual retirement benefit payable to any Participant shall not exceed \$160,000 (or such other limit as may be the maximum permissible for the applicable Plan Year pursuant to Tax Code Section 415(b)(1)(A) as adjusted pursuant to Tax Code Section 415(d)).

(b) Short Service Limitations. In the case of a Participant who has less than ten (10) Years of Credited Service, the limitations set forth in Subsection (a) of this section shall be reduced by multiplying them by a fraction, the numerator of which is the number of Years of Credited Service (or parts thereof) completed by the Participant, and the denominator of which is ten (10).

(c) Combined Plan Limitations. With respect to any Plan Year which begins on or before January 1, 2002, in no event shall a Participant's combined benefit under this Plan and any other qualified plan(s) maintained by the Sponsor exceed the limitations of Tax Code Section 415(e).

(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 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) 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 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

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Plan for such purposes) of an annual benefit equal to the dollar amount commencing at Age 62, as determined under the preceding sentence.

(4) In the event that a Participant's benefit is to be distributed after attainment of Age 65, the currently effective dollar amount in Paragraph (a) of this section shall be actuarially increased to the Actuarial Equivalent (using an 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.

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SECTION 4

NORMAL RETIREMENT

Sec. 4.01 Entitlement to Benefits. Each Participant retiring at his/her Normal Retirement Date shall be entitled to receive a benefit commencing as of his/her Normal Retirement Date equal to his/her Accrued Benefit in the Normal Form, as determined in accordance with Section 3.01 of this Plan.

Sec. 4.02 Form and Duration of Benefit Payments. A Participant whose benefit first becomes payable pursuant to Section 4.01 may receive payments in the Normal Form or, if elected pursuant to Section 10.02, in the form of a Joint and Survivor Annuity. Such Joint and Survivor Annuity payments shall be the Actuarial Equivalent of the Participant's Accrued Benefit in the Normal Form.

Sec. 4.03 Effect of ADRO. All benefits provided under this Section 4 are subject to the provisions of any ADRO in effect with respect to the Participant at the Participant's Benefit Commencement Date, and are subject to diminution thereby.

Sec. 4.04 Impact of Accumulated Sick Leave. A Participant who attains his/her Normal Retirement Date as a result of the inclusion of Accumulated Sick Leave in the Year of Credited Service calculation shall be deemed to have retired, for purposes of Section 4.01, upon his/her separation from service.

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SECTION 5

EARLY RETIREMENT, SPECIAL EARLY RETIREMENT, AND THIRTY AND OUT RETIREMENT

Sec. 5.01 Entitlement to Benefits. Each Participant retiring at his/her Early Retirement Date, Special Early Retirement Date or Thirty and Out Retirement Date shall be entitled to receive a benefit commencing as of such date. Such benefit shall be based on his/her Accrued Benefit in the Normal Form, as adjusted in accordance with the provisions of this Section.

Sec. 5.02 Form and Duration of Benefit Payments. A Participant whose benefit first becomes payable pursuant to Section 5.01 may receive payments in the Normal Form or, if elected pursuant to Section 10.02, in the form of a Joint and Survivor Annuity. Such Joint and Survivor Annuity payments shall be the Actuarial Equivalent of the Participant's Accrued Benefit in the Normal Form.

Sec. 5.03 Early Retirement Benefit. A Participant may elect in writing to receive, in lieu of the benefit starting as of his/her Normal Retirement Date, a benefit starting as of the first day of any month after his/her Early Retirement Date and prior to Normal Retirement Date. The following conditions shall apply to benefit payments commencing prior to Normal Retirement Date:

(a) The form and duration of benefit payments shall be determined as provided in Section 5.02 above; and

(b) The amount of the benefit shall be a percentage of the Participant's Accrued Benefit calculated to the date of actual retirement (including months), based upon the Participant's attained Age in accordance within the following schedule:

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<u>Attained Age at Retirement</u>	<u>Percentage of Accrued Benefit</u>
64	97
63	94
62	91
61	88
60	85
59	80
58	75
57	70
56	65
55	60

Sec. 5.04 Special Early Retirement Benefit Commencement. A Participant may elect in writing to receive, in lieu of the benefit starting as of his/her Normal Retirement Date, a benefit starting as of the first day of any month after his/her Special Early Retirement Date and prior to Normal Retirement Date. The following conditions shall apply to benefit payments commencing prior to Normal Retirement Date:

(a) The form and duration of benefit payments shall be determined as provided in Section 5.02 above; and

(b) The amount of the benefit shall be a percentage of the Participant's Accrued Benefit, calculated to the date of actual retirement (including months), based upon the Participant's attained Age as of his/her date of actual retirement.

<u>Attained Age at Retirement</u>	<u>Percentage of Accrued Benefit</u>
64	100
63	100
62	100
61	97
60	94
59	89
58	84
57	79
56	74
55	69

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Sec. 5.05 “Thirty and Out” Retirement Program.

(a) A Participant who has attained at least thirty (30) Years of Credited Service may elect, in writing, in the form and manner prescribed by the Plan Administrator, to retire under the “Thirty and Out Retirement Program”, on a date to be determined as follows:

(1) Except as provided in subsections (2) or (3) below, a Participant shall retire on the first working day following the date that is thirty (30) days after the date of application.

(2) Notwithstanding subsection (1) above, the Company and the Participant may mutually agree on a retirement date other than that determined in subsection (1) above, provided that such date is no more than 90 days after the date determined in subsection (1).

(3) Further, notwithstanding subsections (1) and (2) above, the Company may require that the Participant retire on a date set by the Company as determined in (c) below.

(b) The retirement income under the “Thirty and Out Retirement Program” shall be payable from the date of retirement, and shall be an annual amount equal to one hundred percent (100%) of the Participant’s normal retirement benefit, without, however, any reduction for age.

(c) The Company may in its discretion require that a Participant who applies and is eligible for the “Thirty and Out” Retirement Program, and who is not otherwise eligible to retire, defer retirement for a transition period of no more than six (6) months beyond the date determined in (a)(1) above and remain employed for purposes of training replacement employees and completing projects for the Company. Upon the expiration of such transition period, the Participant shall retire as provided under this “Thirty and Out” Retirement Program.

Sec. 5.06 Effect of ADRO. All benefits provided under this Section 5 are subject to the provisions of any ADRO in effect with respect to the Participant at the Participant’s Benefit Commencement Date, and are subject to diminution thereby.

Sec. 5.07 Impact of Accumulated Sick Leave. A Participant who attains his/her Early Retirement Date, Special Early Retirement Date or Thirty and Out Retirement Date as a result of the inclusion of Accumulated Sick Leave in the Year of Credited Service calculation shall be deemed to have retired, for purposes of Section 5.01, upon his/her separation from service.

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SECTION 6

DEFERRED RETIREMENT

Sec. 6.01 Entitlement to Benefits. Each Active Participant remaining employed beyond his/her Normal Retirement Date shall be entitled to receive a benefit commencing as of his/her Deferred Retirement Age equal to the Actuarial Equivalent of his/her Accrued Benefit in the Normal Form as of his/her Deferred Retirement Age, determined pursuant to the provisions of Section 3.02.

Sec. 6.02 Form and Duration of Benefit Payments. A Participant whose benefit first becomes payable pursuant to Section 6.01 may receive payments in the Normal Form or, if elected pursuant to Section 10.02, in the form of a Joint and Survivor Annuity. Such payments shall be the Actuarial Equivalent of the Participant's Accrued Benefit in the Normal Form.

Sec. 6.03 Effect of ADRO. All benefits provided under this Section 6 are subject to the provisions of any ADRO in effect with respect to the Participant at the Participant's Benefit Commencement Date, and are subject to diminution thereby.

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SECTION 7

DISABILITY BENEFIT

Sec. 7.01 Entitlement to Benefits.

(a) A Participant who has completed at least fifteen (15) Years of Credited Service and attained Age forty-five (45) may be retired for Total Disability upon recommendation of the Medical Director or may apply to the Plan Administrator in writing to retire for Total Disability, provided that the sum of Years of Credited Service plus attained Age is equal to at least sixty-five (65).

(b) A Participant who has completed at least twenty (20) Years of Credited Service may be retired for Total Disability upon recommendation of the Medical Director or may apply to the Plan Administrator in writing to retire for Total Disability.

Sec. 7.02 Certification of Total Disability. The Medical Director must certify that such Total Disability resulted from injury or natural causes. The Plan Administrator must conclude that the disabled Participant can no longer perform his/her regular duties and that a suitable substitute occupation is not available.

Sec. 7.03 Disability Benefit Calculation. If a Participant is retired for Total Disability pursuant to Section 7.01, he/she shall be entitled to a benefit, equal to the Accrued Benefit calculated pursuant to Section 3, as of the date of such retirement.

Sec. 7.04 Disability Benefit Commencement. In the event of retirement pursuant to Section 7.01, the date of such retirement shall be the first day of the month as designated by the Plan Administrator.

Sec. 7.05 Effect of ADRO. All benefits provided under this Section 7 are subject to the provisions of any ADRO in effect with respect to the Participant at the Participant's Benefit Commencement Date, and are subject to diminution thereby.

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SECTION 8

VESTING PROVISIONS

Sec. 8.01 Vested Interests. 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.

Sec. 8.02 Timing and Form of Benefit Payments.

(a) Benefit Commencement. The vested interest of any Deferred Vested Participant who has separated from employment prior to his/her attainment of Normal Retirement Date shall normally be payable as of the date that would have been the Participant's Normal Retirement Date.

(b) Early, Special Early, and Thirty and Out Retirement Benefits. Notwithstanding the provisions of Paragraph (a) of this section, if a Participant, at the time of his/her separation from service, is eligible for Early Retirement Benefits, Special Early Retirement Benefits, or Thirty and Out Retirement Benefits under this Plan, the distribution of his/her vested interest shall be governed under such provisions if elected by the Participant.

Sec. 8.03 Adjustment For Deferred Vested Pension.

(a) A Deferred Vested Participant may elect, in writing, in the form and manner prescribed by the Plan Administrator, to receive payments commencing on the first day of any month between his/her fifty-fifth (55th) and sixty-fifth (65th) birthdays and, if he/she so elects, the deferred benefit to which he/she would have been entitled on his/her Normal Retirement Date, shall be reduced to the following percentage:

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<u>Attained Age of Participant at Start of Payment of Deferred Vested Pension</u>	<u>Percentage of Normal Normal Retirement Income</u>
64	97%
63	94%
62	91%
61	88%
60	85%
59	80%
58	75%
57	70%
56	65%
55	60%

If the Deferred Vested Participant making such election has completed at least twenty-five (25) years of Credited Service before he/she separated from service, the deferred benefit to which he/she would have been entitled on his/her Normal Retirement Date shall be reduced to the following percentage:

<u>Attained Age of Participant at Start of Payment of Deferred Vested Pension</u>	<u>Percentage of Normal Retirement Income</u>
64	100%
63	100%
62	100%
61	97%
60	94%
59	89%
58	84%
57	79%
56	74%
55	69%

Sec. 8.04 Involuntary Termination Benefit. If a Participant is involuntarily separated from employment (other than a discharge for cause), because of disability, layoff, or any other reason, and the Participant has not vested pursuant to Section 8.01, he/she shall be entitled to a separation allowance equal to one-quarter (1/4) of his/her last month's pay for each Year of Credited Service.

Sec. 8.05 Effect of ADRO. All benefits provided under this Section 8 are subject to the provisions of any ADRO in effect with respect to the Participant at the Participant's Benefit Commencement Date, and are subject to diminution thereby.

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SECTION 9

DEATH BENEFITS

Sec. 9.01 Death Benefits. Except as described in Section 9.02, or Section 10.02, there shall be no benefit payable under this Plan by reason of the death of a Participant.

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.

Sec. 9.03 Application for Benefits. As a condition to the right to receive a Preretirement Death Annuity, the Death Beneficiary shall make application to the Plan Administrator in writing and shall furnish proof of Age and status as the Death Beneficiary satisfactory to the Plan Administrator.

Sec. 9.04 Effect of ADRO. Notwithstanding any other provision of this Section 9, the Plan Administrator and the Trustees shall give full effect to any ADRO applicable at the time of death of the Participant, even to the extent that giving effect to such ADRO defeats or diminishes the interest of any Death Beneficiary or other person hereunder.

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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 benefits) and Section 10.02 (regarding survivor benefits), 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.

Sec. 10.02 Joint and Survivor Annuity Options.

(a) General. At any time prior to his/her Retirement Date, a Participant may elect, by giving notice in writing of such election to the Plan Administrator, a Joint and Survivor Annuity Option in favor of any designated Survivor. (Reasonable proof of Age and eligibility for Survivor designation may be required in the absolute discretion of the Plan Administrator.) In such case, Participants may select from among the following Joint and Survivor Annuity Options each of which will be the Actuarial Equivalent of the Normal Form benefit set forth in Section 3.

Option 1 - A monthly benefit paid to the Participant during the joint lifetimes of the Participant and the designated Survivor. Upon the death of either, a monthly benefit payable to the surviving party (Participant or Survivor) equal to one hundred percent (100%) of the monthly benefit paid to the Participant.

Option 2 - A monthly benefit paid to the Participant during his/her lifetime. Upon the death of the Participant, a monthly benefit payable to his/her designated Survivor equal to:

- A. Seventy-five percent (75%) of the monthly benefit paid to the Participant,
or
- B. Fifty percent (50%) of the monthly benefit paid to the Participant.

Option 3 - A monthly benefit paid to the Participant during the joint lifetimes of the Participant and the designated Survivor. Upon the death of either, a monthly benefit payable to the surviving party (Participant or Survivor) equal to:

- A. Seventy-five percent (75%) of the monthly benefit paid to the Participant,
or
- B. Fifty percent (50%) of the monthly benefit paid to the Participant.

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(b) All adjustments to the Normal Form benefit which may result from the election of a Joint and Survivor Annuity Option shall be based on such actuarial factors as may be adopted from time to time by the Plan Administrator.

(c) Any election of a Joint and Survivor Annuity Option may be altered, amended or revoked by the Participant or former Participant prior to his actual retirement date. However, the election may not be so changed on or after the actual date of retirement.

(d) In the event a Participant has elected a Joint and Survivor Annuity Option and the designated Survivor dies prior to the Participant's date of retirement, his/her election shall not be effective and the Participant, after retiring, shall receive the retirement income otherwise payable to him in accordance with the provisions of this Plan.

(e) When a Participant who has elected a Joint and Survivor Annuity Option dies prior to his/her retirement, the only Survivor eligible for benefits shall be his/her Death Beneficiary (if any) at time of death, regardless of the named Survivor. The Death Beneficiary shall be paid benefits in accordance with Section 9 of this Plan.

Sec. 10.03 Suspension of Benefit Payment. Benefit payments that have commenced under this Section 10 shall be suspended in the event that the Participant is reemployed in a capacity in which he/she renders Credited Service. In such case, the member's Accrued Benefit shall be recalculated to include the additional Credited Service. Upon the Participant's subsequent separation from service, benefit payments shall recommence and all future payments shall be based on the Participant's recalculated Accrued Benefit.

Sec. 10.04 Approved Domestic Relations Orders.

(a) Determination of ADRO Status. Upon receipt of notification of any judgment, decree or order (including approval of a property settlement agreement) which relates to the provision of child support, alimony payments, or marital property rights of a spouse, former spouse, child, or other dependent of a Participant and which is made pursuant to a state domestic relations law (including a community property law) (herein referred to as a "domestic relations order"), the Plan Administrator shall (1) notify the Participant and any prospective Alternate Payee named in the order, of the receipt of such domestic relations order and of this Plan's procedures for determining the status of the domestic relations order as an Approved Domestic Relations Order ("ADRO"), and (2) within a reasonable period after receipt of such order, determine whether it constitutes an ADRO.

(b) Provisions Relating to Alternate Payees.

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(1) None of the payments, benefits or rights of any Alternate Payee shall be subject to any claim of any creditor, and, in particular, to the fullest extent permitted by law, all such payments, benefits and rights shall be free from attachment, garnishment, trustee's process, or any other legal or equitable process available to any creditor of such Alternate Payee. No Alternate Payee shall have the right to alienate, anticipate, commute, pledge, encumber or assign any of the benefits or payments which he/she may expect to receive, contingently or otherwise, under this Plan.

(2) Alternate Payees shall not have any right to (i) exercise any other election, privilege, option or direction rights of the Participant under this Plan except as specifically provided in the ADRO, or (ii) receive communications with respect to this Plan except as specifically provided by law, regulation or the ADRO.

(3) Each Alternate Payee shall advise the Plan Administrator in writing of each change of his/her name, address or marital status, and of each change in the provisions of the ADRO or of any circumstance set forth therein which may be material to the Alternate Payee's entitlement to benefits thereunder or the amount thereof. Until such written notice has been received by the Plan Administrator, the Plan Administrator shall (i) have no liability whatsoever for not complying with, and in conducting the affairs of this Plan in a manner inconsistent with, the information set forth in the notice, and (ii) be required to act with respect to such notice prospectively only, and then only to the extent provided for in the ADRO. The Plan Administrator shall not be required to modify or reverse any payment, transaction or application of funds occurring before the receipt of any notice that would have affected such payment, transaction or application of funds, nor shall the Plan Administrator any other party be liable for any such payment, transaction or application of funds.

(4) Except as specifically provided for in the ADRO, an Alternate Payee shall have no right to interfere with the exercise by the Participant, or Survivor of their respective rights, privileges and obligations under this Plan.

(c) Division of Benefits. An ADRO shall divide the Participant's benefit under a "separate interest" approach or "shared payment" approach as such terms are defined in Internal Revenue Service Notice 97-11.

(1) An ADRO that creates a separate interest divides the Participant's Accrued Benefits into two separate parts: one for the Participant and one for the Alternate Payee. The ADRO may provide that the Alternate Payee can determine the form in which his/her benefits are paid and when benefits commence. The Plan Administrator reserves the right to reject any form of benefit payment which

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is inconsistent with the terms of this Plan. Benefit payments under a separate interest shall not be affected by a suspension of benefit payments under Section 10.03.

(2) An ADRO that creates a shared payment divides the benefit payments from this Plan between the Participant and the Alternate Payee. The Alternate Payee shall receive benefit payments under this approach only when the Participant receives benefit payments. Benefit payments under a shared payment shall be suspended in the event of a suspension of benefit payments under Section 10.03.

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SECTION 11

CONTRIBUTIONS TO PROVIDE BENEFITS

Sec. 11.01 General. 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 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 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.

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SECTION 12

APPLICATION FOR BENEFITS AND CLAIMS PROCEDURES

Sec. 12.01 Application for Benefits. Each Participant, Survivor or Alternate Payee who believes that he/she is eligible for benefits under this Plan may file an application for such, by timely completing and filing with the Plan Administrator an application for benefits on a form supplied by the Plan Administrator. Each such application must be supported by such information and data as the Plan Administrator deems relevant and appropriate. Evidence of age, marital status (and, in the appropriate instances, health, death or disability), and location and residence shall be required of all applicants for benefits. The Plan Administrator shall make its best efforts to render a determination within sixty (60) days of the date on which the application is filed.

Sec. 12.02 Appeals to the Gas Commission. A Participant, Survivor, Alternate Payee, the Union, the Sponsor and the Company shall have the right to appeal any decision or determination of the Plan Administrator to the Gas Commission. All such appeals shall be filed within thirty (30) days of the Plan Administrator's mailing of written notice of such decision or determination (or in absence of such decision or determination within thirty (30) days of the expiration of the sixty (60) day period set forth in Section 12.01). Such appeal shall be filed with the Pension Committee who will evaluate the appeal and make its recommendation to the Gas Commission which will then make a finding and decision on the appeal. The findings and decisions of the Gas Commission, and any action taken in conformance therewith as a result thereof shall be final and there shall be no further appeal on the merits, except that there may be an appeal to a court of appropriate jurisdiction by the Participant, Survivor, Alternate Payee, the Sponsor, the Company, the Plan Administrator and/or the Union on the grounds of an alleged abuse of discretion or an error of law committed by the Gas Commission.

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SECTION 13

PLAN ADMINISTRATION

Sec. 13.01 Administrative Interpretations of the Plan. The Plan Administrator shall administer this Plan in accordance with its terms and shall have all powers necessary to carry out the provisions of this Plan. Subject to the provisions of Section 12, the Plan Administrator shall interpret this Plan and shall resolve all questions arising in the administration, interpretation and application of this Plan. The Plan Administrator shall make all determinations regarding claims for benefits, eligibility, vesting and other rights of Participants arising from this Plan.

Sec. 13.02 Recordkeeping. The Plan Administrator shall maintain a record of all its proceedings and acts and shall keep such books of account, records and other data as may be necessary for proper administration of this Plan.

Sec. 13.03 Right to Request Information. The Plan Administrator may require any Participant, Survivor and/or Alternate Payee to furnish such information affecting his/her rights as it may request and, on the failure to furnish such information, may withhold or suspend benefits until it is received.

Sec. 13.04 Benefit Payments. The Plan Administrator shall direct the Trustees with regard to the eligibility, timing, form and amount of benefits payable under this Plan to any Participant, Survivor or Alternate Payee hereunder.

Sec. 13.05 Engagement of Assistants and Advisers, Plan Expenses. The Plan Administrator shall have the right to hire such professional assistants and consultants as it deems necessary or advisable (subject to the advice and consent of the Director of Finance) including, but not limited to:

- (a) investment managers and/or advisers;
- (b) accountants;
- (c) actuaries;
- (d) attorneys;
- (e) consultants;
- (f) clerical and office personnel; and
- (g) medical practitioners.

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The expenses incurred by the Plan Administrator in connection with the operation of this Plan, including, but not limited to, the expenses incurred by reason of the engagement of professional assistants and consultants, shall be expenses of this Plan and shall be payable from the Fund at the direction of the Plan Administrator.

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SECTION 14

PENSION COMMITTEE

Sec. 14.01 Structure of Pension Committee. The Pension Committee shall consist of five members. One member shall be designated by the Company, one member shall be designated by the Union and three members shall be designated by the Gas Commission. Each member of the Pension Committee shall serve at the pleasure of the entity which appointed him/her. Any member may resign by delivering his/her written resignation to the Gas Commission. Vacancies in the Pension Committee arising by resignation, death, removal or otherwise shall be filled by the entity authorized to designate the member whose resignation, death or removal created the vacancy in order that the composition of the Pension Committee shall remain as above set forth.

Sec. 14.02 Duties of the Pension Committee. The Pension Committee shall be authorized to evaluate the appeal of any benefit or eligibility claims determination made by the Plan Administrator and make recommendation to the Gas Commission on the merits of such appeal pursuant to Section 12.02. The Pension Committee may request any information it deems necessary to evaluate such appeal.

Sec. 14.03 Authority to Act. The Pension Committee shall act by a majority of its members at the time in office. Such action may be taken either by a vote at a meeting or by written proxy without a meeting, provided, however, all members shall be given adequate notice to consider such action. Any such action shall require approval of at least three (3) members of the Pension Committee. A member of the Pension Committee who is a Participant shall not take part in any appeal in which he/she has an interest. Any such action shall be voted or decided by a majority of the remaining members of the Pension Committee. The Pension Committee may act to authorize any one or more of its members to execute any document or documents on behalf of the Pension Committee.

Sec. 14.04 Operation of the Pension Committee. The Pension Committee shall select its own chairman and secretary and such other officers as it may determine and may adopt such rules as it deems desirable for the conduct of its affairs. Counsel for the Pension Committee are to be selected and appointed by the City Solicitor.

Sec. 14.05 Expenses of Pension Committee. The compensation to be paid to the members of the Pension Committee shall be determined by the Gas Commission. All expenses of the Pension Committee shall be paid out of the revenues of PGW. Such expenses shall include any expenses incident to the functioning of the Pension Committee, including but not limited to, fees of accountants, actuaries and other specialists. The fees and compensation of all accountants, actuaries or other persons retained or employed by the Pension Committee shall be fixed by the Pension Committee, subject to the approval of the Gas Commission.

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Sec. 14.06 Indemnification. No member of the Pension Committee may incur any liability for any loss or damage or depreciation which may result in connection with the execution of his/her duties or the exercise of his/her discretion or from any other action or failure to act hereunder, excepting any liability for his/her own gross negligence or willful misconduct. The Sponsor shall, out of the revenues of PGW and with the approval of the Gas Commission, indemnify each member of the Pension Committee against any and all claims, loss, damages, expense and liability (including any amounts paid in settlement with the Gas Commission's approval) arising from any act or failure to act, in connection with the execution of his/her duties, except when the same is due to the gross negligence or willful misconduct of such person.

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SECTION 15

SINKING FUND

Sec. 15.01 General.

(a) The Sponsor hereby establishes and reaffirms with the Trustees a trust consisting of such sums of money or property as shall from time to time be paid to the Trustees under this Plan, and such earnings, profits, increments, additions and appreciation thereto and thereon as may accrue from time to time. All such sums of money, all investments made therewith or proceeds thereof, and all earnings, profits, increments, appreciation and additions thereto and thereon, less the payments which shall have been made by the Trustees, as authorized herein, to carry out this Plan, are referred to herein as the Sinking Fund.

(b) It shall be the duty of the Trustees hereunder:

(1) To hold, to invest, to reinvest, to manage, and to administer the Sinking Fund for the exclusive benefit of the Participants, their Survivors, Death Beneficiaries, and Alternate Payees in accordance with the provisions of this Plan.

(2) From time to time, on the written direction of the Plan Administrator, to make payments out of the Sinking Fund to such persons, in such manner, in such amounts, and for such purposes as may be specified in such written direction. The Trustees shall be under no liability for any payment made by them pursuant to such a direction.

(c) Except as may otherwise be authorized by law, neither the Sponsor, the Plan Administrator, PGW, the Company, nor any other party shall have any right, title, interest, claim or demand whatsoever in or to the Sinking Fund held by the Trustees, other than the right to a proper application thereof and accounting therefor by the Trustees as provided herein, nor shall any funds be applied for purposes other than the exclusive benefit of the Participants, their Survivors, and Alternate Payees prior to the satisfaction of the liabilities of this Plan.

(d) Neither the provisions of this Section nor any other provision of this Plan shall prohibit any of the following transactions:

(1) The return of all or any part of one or more contributions made by reason of a mistake of fact if such return is made within one (1) year after the payment of such contribution; and

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(2) The return of all or any part of one or more contributions made if all of the following conditions apply: (i) the contribution was conditioned on the qualification of this Plan under Tax Code Section 401 (or successor provisions of that or other statutes of similar intent), (ii) this Plan is found not to so qualify, and (iii) the contribution(s) is/are returned within one (1) year of the date of denial of qualification of this Plan; and

This Section 15.01 shall not be construed to permit any payment which would deprive the Sinking Fund of its tax-exempt status.

(e) Whenever payments to a Participant, Survivor, or Alternate Payee are to be made in the form of an annuity based upon one or more lives or life expectancies, the Trustees shall have the option of making the required payments directly from the Sinking Fund as and when they become due or at any time purchasing from any legal reserve insurance company a single premium or other annuity contract providing for the payment of the benefits. This provision shall not be construed as compelling the Sponsor, the Plan Administrator, the Pension Committee, Trustees or any other party to allow benefit payments in the form of an annuity.

Sec. 15.02 Investment of the Sinking Fund.

(a) The Trustees shall continue to invest and reinvest the principal and income of the Sinking Fund and keep the same invested without distinction between principal and income. The selection and retention or disposition of any investment shall be determined by the Trustees, who shall have the exclusive authority to manage and control the assets of the Sinking Fund except to the extent that the authority to acquire, manage, retain and dispose of assets to the Sinking Fund has been delegated to an appointed investment manager.

(b) The Trustees shall have the following powers in addition to the powers customarily vested in trustees by law and in no way in derogation thereof:

(1) With any cash at any time held by them, to purchase or subscribe for any authorized investment, and to retain such Authorized Investment in the Sinking Fund.

(2) To sell for cash or on credit, convert, redeem, exchange for another Authorized Investment, or otherwise dispose of, any Authorized Investment at any time held by them.

(3) To retain uninvested all or any part of the Sinking Fund and to deposit the same in any banking or savings institution.

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(4) To exercise any option appurtenant to any Authorized Investment in which the Sinking Fund is invested for conversion thereof into another authorized investment, or to exercise any rights to subscribe for additional Authorized Investments, and to make all necessary payments therefor.

(5) To join in, consent to, dissent from, or oppose, the reorganization, recapitalization, consolidation, sale, merger, foreclosure, or readjustment of the finances of any corporations or properties in which the Sinking Fund may be invested, or the sale, mortgage, pledge or lease of any such property or the property of any such corporation upon such terms and conditions as it may deem wise; to do any act (including the exercise of options, making of agreements or subscriptions, and payment of expenses, assessments, or subscriptions) which may be deemed necessary or advisable in connection therewith; and to accept any Authorized Investment which may be issued in or as a result of any such proceeding, and thereafter to hold the same.

(6) To vote, in person or by general or limited proxy, at any election of any corporation in which the Sinking Fund is invested, and similarly to exercise, personally or by a general or limited power of attorney, any right appurtenant to any authorized investment held in the Sinking Fund.

(7) To sell, either at public or private sale, option to sell, mortgage, lease for a term of years less than or continuing beyond the possible date of the termination of the Sinking Fund created hereunder, partition or exchange any real property which may from time to time or at any time constitute a portion of the Sinking Fund, for such prices and upon such terms as it may deem best, and to make, execute and deliver to the purchasers thereof good and sufficient deeds of conveyance therefor and all assignments, transfers and other legal instruments, either necessary or convenient for passing the title and ownership thereof to the purchaser, free and discharged of all trusts and without liability on the part of such purchasers to see to the proper application of the purchase price.

(8) To repair, alter or improve any buildings which may be on any real estate forming part of the Sinking Fund or to erect entirely new structures thereon.

(9) To renew or extend or participate in the renewal or extension of any mortgage, upon such terms as may be deemed advisable, and to agree to a reduction in the rate of interest on any mortgage or to any other modification or change in the terms of any mortgage or of any guarantee pertaining thereto, in any manner and to any extent that may be deemed advisable for the protection of the Sinking Fund or the preservation of the value of the investment; to waive any default, whether in the performance of any covenant or condition of any mortgage or in the performance of any guarantee, or to enforce any such default in such

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manner and to such extent as may be deemed advisable; to exercise and enforce any and all rights of foreclosure, to bid on property in foreclosure, to take a deed in lieu of foreclosure with or without paying a consideration therefor, and in connection therewith to release the obligation on the bond secured by such mortgage; and to exercise and enforce in any action, suit or proceeding at law or in equity any rights or remedies in respect to any mortgage or guarantee.

(10) To purchase Authorized Investments at a premium or discount.

(11) To employ suitable agents, actuaries, accountants, investment advisors or managers and counsel and to pay their reasonable expenses and compensation.

(12) To borrow, raise or lend moneys, for the purposes of the Sinking Fund, in such amounts and upon such terms and conditions as the Trustees in their absolute discretion may deem advisable, and for any such moneys so borrowed to issue their promissory note as Trustees and to secure the repayment thereof by pledging or mortgaging all or any part of the Sinking Fund. No person lending money to the Trustees shall be bound to see to the application of the money lent or to inquire into the validity, expediency or propriety of any such borrowing.

(13) To cause any investment in the Sinking Fund to be registered in, or transferred into, their names as Trustees or the name of their nominee or nominees or to retain them unregistered or in form permitting transfer by delivery, but the books and records of the Trustees shall at all times show that all such investments are part of the Sinking Fund, and the Trustees shall be fully responsible for any misappropriation or defalcation in respect of any investment held by their nominee or held in unregistered form and shall cause the indicia of ownership to be maintained within the jurisdiction of the district courts of the United States.

(14) To do all acts which they may deem necessary or proper and to exercise any and all powers of the Trustees under this Plan upon such terms and conditions which they may deem are for the best interests of the Sinking Fund.

(15) To apply for, purchase, hold, transfer, pay premiums on, surrender, and exercise all incidents of ownership of any life insurance, retirement income or annuity contract which they are directed to purchase by the Plan Administrator, provided, however, that if Trustees shall borrow against the cash surrender values of any insurance contracts for the general purposes of the Sinking Fund, they shall borrow and repay the amounts so borrowed on a pro rata basis so as to preclude discrimination.

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Sec. 15.03 Accounts to be Kept and Rendered by the Trustees. The Trustees shall keep accurate and detailed accounts of all investments, receipts and disbursements and other transactions hereunder, including such specific records as shall be required by law and such additional records as may be agreed upon in writing between the Plan Administrator and the Trustees.

Sec. 15.04 The Trustees.

(a) The members of the Sinking Fund Commission shall serve as the Trustees of the Sinking Fund.

(b) The Trustees accept and reaffirm the Sinking Fund hereby created and agree to perform the duties hereby required by them, subject, however, to the following conditions:

(1) The Trustees shall incur no liability (except in the event of gross negligence or misconduct) for any action taken pursuant to a direction, request or approval given by the Plan Administrator, Pension Committee, or by any other party to whom authority to give such directions, requests or approvals is delegated under the powers conferred upon the Plan Administrator, Pension Committee, or such other party under the Plan. Any such direction, request, or approval shall be evidenced by delivery to the Trustees of a statement in writing signed by the authorized initiator thereof.

(2) Except as otherwise provided herein, any proper expense of the Trustee for the Sinking Fund including all real and personal property taxes, income taxes, transfer taxes, and other taxes of any and all kinds whatsoever that may be levied or assessed under existing or future laws of any jurisdiction upon or in respect of the Sinking Fund hereby created, or any money, property or securities forming a part thereof shall be paid out of the Sinking Fund. The Sponsor, Philadelphia Gas Works or Company shall have the option, but not the obligation, to pay any such expenses, in whole or in part, and by so doing, to relieve the Sinking Fund from the obligation of bearing such expenses. Payment of any such expenses by the Sponsor, Philadelphia Gas Works or Company on any occasion shall not bind the Sponsor, Philadelphia Gas Works or Company to thereafter pay any similar expenses.

(3) The Trustees shall have no liability whatsoever for any action taken pursuant to any direction, consent, request, or other paper or document on the belief that the same is genuine and signed by the proper person if such direction, consent, request or other paper or document relates to a matter with respect to which the purported initiator or signatory has authority under this Plan.

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(4) The Trustees shall be indemnified by the Sponsor against their prospective costs, expenses, and liability in connection with all litigation relating to this Plan, or the Sinking Fund, except where the litigation is occasioned by the fault of the Trustees or involves a question of their fault. No such indemnification shall extend or exist to the extent such costs, expenses and liability are covered by insurance or would be so covered if any policy then in force included a waiver of subrogation.

(5) Nothing in this Section 15 shall preclude the purchase by or for the Trustees of one or more policies of insurance to protect each Trustee from liability for breach of fiduciary or co-fiduciary responsibility, provided, however, that if such insurance shall be purchased by the Fund utilizing the assets thereof to pay premiums, such insurance must permit recourse by the insurer against the Trustee in the case of a breach by that Trustee of his fiduciary responsibilities.

(c) Resignation, removal and/or appointment as a member of the Sinking Fund Commission shall be deemed resignation, removal and/or appointment as a Trustee.

(d) The Trustees may conduct their meetings pursuant to the rules of the Sinking Fund Commission.

(e) Each Trustee shall be bonded to the extent required by law, and the premiums for such bonds shall be treated as expenses of this Plan.

Sec. 15.05 Delegation of Duties and Responsibilities.

(a) The Trustees may appoint one or more consultants, managers and/or investment advisors to manage, acquire or dispose of assets of the Sinking Fund and/or process benefit payments from the Sinking Fund. Such consultants, managers and/or advisors appointed by the Trustees shall be subject to dismissal by the Trustees, and the fees charged by such person for their services shall be considered expenses of the Sinking Fund. The Trustees shall be authorized to enter into such agreements with such consultants, managers and advisors as they deem necessary or desirable, including, but not limited to, compensation agreements.

(b) The Trustees may enter into a written agreement among themselves, to allocate specific responsibilities, obligations and duties among themselves, in which event those Trustees to whom a specific responsibility, obligation or duty has not been delegated shall be free from liability for breach of the same by a co-fiduciary to the fullest extent permitted by law.

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SECTION 16

AMENDMENT OF PLAN

Sec. 16.01 This Plan may be amended provided that any action shall be in accordance with the terms of the Operating Agreement and the Bargaining Agreement. No amendment shall use or divert the Fund for purposes other than the exclusive benefit of Participants.

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SECTION 17

TERMINATION OF PLAN

Sec. 17.01 General. This Plan may be terminated by appropriate action of the Sponsor.

Sec. 17.02 Vesting Upon Termination. If this Plan is completely terminated, all surviving Participants, Survivors and Alternate Payees hereunder affected by such complete termination shall be fully vested in their Accrued Benefits as of the date of termination to the extent then funded.

Sec. 17.03 Right of Reversion. If there remain any assets in the Sinking Fund after this Plan has been terminated and all accrued benefit obligations to Participants, Survivors and Alternate Payees have been satisfied or funded by insured annuity contracts, such excess assets shall be deemed attributable to actuarial error and shall revert to the Sponsor.

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SECTION 18

MISCELLANEOUS PROVISIONS

Sec. 18.01 Notices. Each Participant, Survivor or Alternate Payee shall be responsible for furnishing the Plan Administrator with the current and proper address for the mailing of notices, reports and benefit payments. Any notice required or permitted to be given shall be deemed given if directed to the person to whom addressed at such address and mailed by regular United States mail, first-class and prepaid. If any check mailed to such address is returned as undeliverable to the addressee, mailing of checks will be suspended until the Participant, Survivor or Alternate Payee furnishes the proper address.

Sec. 18.02 Unclaimed Benefits. In the event that any monthly benefit payable hereunder is not claimed within two (2) years, such benefit payment shall be forfeited by the payee unless the Plan Administrator, in its absolute discretion, elects to pay same. If the Plan Administrator elects to pay the unclaimed benefit, the Plan Administrator may, in its absolute discretion, pay any or all previously forfeited monthly benefits. The payment of the unclaimed benefit, together with the previously forfeited benefits which the Plan Administrator elects to pay, shall be paid in a single sum. There shall be no interest on other earnings credit to the single sum payment made pursuant to this Section 18.02.

Sec. 18.03 Nonalienation of Benefits.

(a) Any benefits payable to a Participant, Survivor or Alternate Payee are non-assignable, may not be pledged, hypothecated or encumbered and shall not be subject to the debts or obligations of such payee or of any other person. Such benefits shall not be liable or to be subjected to attachment, execution, or any other process of law, equity, bankruptcy, insolvency or otherwise, to or for any debts or obligations of such payee or any other person. In case of attachment of or other legal proceedings against any benefits payable under this Plan resulting from the attempted pledge, hypothecation or encumbrance thereof, the Plan Administrator shall have the exclusive right to revoke such benefits for so long as in its discretion seems proper, or to continue the payment of such benefits, or any portion thereof, to the Participant, Survivor or Alternate Payee entitled to such benefits.

(b) Applicability of an ADRO. Compliance with the provisions and conditions of any ADRO shall not be considered a violation of this provision.

Sec. 18.04 Reliance on Data and Consents. The Company, the Trustees, Pension Committee, Plan Administrator, Sponsor and all other persons or entities associated with the operation of this Plan, the management of its assets, and the provision of benefits thereunder, may reasonably rely on the truth, accuracy and completeness of all data provided by the

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Participant, Survivor and/or Alternate Payee or beneficiaries, including, without limitation, data with respect to age, health and marital status. Furthermore, the Company, the Trustees, Plan Administrator, and Pension Committee and the Sponsor may reasonably rely on all consents, elections and designations filed with this Plan or those associated with the operation of this Plan by any Participant, Survivor and/or Alternate Payee, or the representatives of such persons without duty to inquire into the genuineness of any such consent, election or designation. None of the aforementioned persons or entities associated with the operation of this Plan, its assets and the benefits provided under this Plan shall have any duty to inquire into any such data, and all may rely on such data being current to the date of reference, it being the duty of the Participant, Survivor and/or Alternate Payee, to advise the appropriate parties of any change in such data.

Sec. 18.05 No Contract of Employment. Neither the establishment of this Plan, nor any modification thereof, nor the creation of any fund, trust or account, nor the payment of any benefits shall be construed as giving any Participant, or any person whomsoever, the right to be retained in the service of the Sponsor, PGW, Gas Commission or Company, and all Participants shall remain subject to discharge to the same extent as if this Plan had never been adopted.

Sec. 18.06 Severability of Provisions. If any provision of this Plan shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions hereof, and this Plan shall be construed and enforced as if such provisions had not been included.

Sec. 18.07 Heirs, Assigns and Personal Representatives. This Plan shall be binding upon the heirs, executors, administrators, successors and assigns of the parties, including each Participant, Survivor and/or Alternate Payee.

Sec. 18.08 Funding Policy. The Director of Finance shall establish and communicate a funding policy consistent with the objectives of this Plan. Such policy shall be in writing and shall have due regard for the emerging liquidity needs of the Fund. Such funding policy shall also state the general investment objectives of the Fund and the philosophy upon which maintenance of this Plan is based.

Sec. 18.09 Title to Assets. No Participant, Survivor or Alternate Payee shall have any right to, or interest in, any assets of the Fund upon separation from employment or otherwise, except as provided from time to time under this Plan, and then only to the extent of the benefits payable under this Plan to such Participant or out of the assets of the Fund. All payments of benefits as provided for in this Plan shall be made from the assets of the Fund, and neither PGW, the Sponsor, the Plan Administrator or Company nor any other person shall be liable therefor in any manner.

Sec. 18.10 Payments to Minors, Etc. Any benefit payable to or for the benefit of a minor, an incompetent person or other person incapable of receipting therefor shall be deemed paid when paid to such person's guardian or to the party providing or reasonably appearing to provide for the care of such person, and such payment shall fully discharge the Plan Administrator,

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Sponsor, Trustee, the Pension Committee, the Company and all other parties with respect thereto.

Sec. 18.11 Authority of Company. With regard to the administration of this Plan, the Company acts solely in its capacity as the operator and manager of the municipally-owned Philadelphia Gas Works under the provisions of the Operating Agreement between it and the City and not otherwise.

Sec. 18.12 Headings and Captions. The headings and captions herein are provided for reference and convenience only, shall not be considered part of this Plan, and shall not be employed in the construction of this Plan.

Sec. 18.13 Gender and Number. Except where otherwise clearly indicated by context, the masculine and the neuter shall include the feminine and the neuter, the singular shall include the plural, and vice versa.

Sec. 18.14 USERRA. Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Tax Code Section 414(u).

Sec. 18.15 Controlling Law. This Plan shall be construed and enforced according to the laws of The City of Philadelphia and the Commonwealth of Pennsylvania except to the extent Federal law applies. Citation to any statutory provision shall include any successor provisions thereto.

SECTION 2. The foregoing provisions shall apply and supplant the provisions of the Ordinance approved July 12, 1968, and all amendments thereto, with respect to any determination made, act done, liability incurred, right accrued, benefit payable, or any suit, arbitral proceeding or prosecution pending thereunder, on or after the effective date of this Ordinance.

SECTION 3. 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 June 13, 2002. The Bill was Signed by the Mayor on June 26, 2002.



Marie B. Hauser
Chief Clerk of the City Council