
Chapter 18 — Nonuniformed Employees Pension Plan

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Article I — Title & General Definitions

§ 18-101 Short Title.

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

§ 18-102 Definitions: In General.

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

§ 18-103 Accounting Date.

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

§ 18-104 Administrator.

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

§ 18-105 Alternate Payee.

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

§ 18-106 Authorized Leave of Absence.

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

§ 18-107 Beneficiary.

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

§ 18-108 Code.

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

§ 18-109 Compensation.

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

(b) Elective Deferrals. “Compensation” shall also include amounts not currently includible in the Qualified Employee’s gross income by reason of the application of Code § 457 (relating to compensation deferred under an eligible deferred compensation plan for state and local governments and tax exempt organizations), Code § 414(h)(2) (relating to employee contributions to governmental plans that are picked up by the employing unit and thus are treated as employer contributions), Code § 125 (relating to cafeteria plans), Code § 402(a)(8) (relating to 401(k) contributions made by an employer at the election of the employee), Code § 402(h)(1)(B) (relating to salary reduction contributions under a simplified employee pension plan), or Code § 403(b) (relating to certain annuities purchased by charitable organizations or public schools), but only with respect to contributions made to plans maintained by the Employer.

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

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

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

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

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

(2) **Highly Compensated Immediate Families.** The "Compensation" for any given year of any Qualified Employee who is a member of a Highly Compensated Immediate Family shall be equal to the Compensation of the Qualified Employee for the year (determined without regard to this subsection (d)), multiplied by a fraction—

(A) whose numerator is equal to the amount in effect for such year under Code § 401(a)(17); **and**

(B) whose denominator is equal to the total Compensation of all members of the Highly Compensated Immediate Family from the Employer and all Related Employers for the year (determined without regard to this subsection (c)).

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

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

§ 18-110 Conversion Date.

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

§ 18-111 Disabled.

A person shall be considered "Disabled" if it has been finally determined that he is entitled to receive disability benefits under the Social Security Act as a result of a physical or mental condition which (i) can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months, and (ii) prevents him from engaging in any occupation for wage or profit for which he is reasonably fitted by training, education, or experience; *provided that* such condition was not caused by—

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

§ 18-112 Effective Date.

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

§ 18-113 Eligible Spouse.

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

§ 18-114 Employer.

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

§ 18-115 ERISA.

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

§ 18-116 Fiduciary.

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

§ 18-117 Highly Compensated Employee.

(a) **In General.** The term “Highly Compensated Employee” shall include Highly Compensated Active Employees and Highly Compensated Former Employees.

(b) **Highly Compensated Active Employees.** The term “Highly Compensated Active Employee” for any Plan Year includes any employee (including Leased Employees) who performs service for the Employer during the Plan Year and who, *either* (A) during the 12-month period immediately preceding the Plan Year, or (B) during the Plan Year—

(1) was at any time a 5-percent owner (within the meaning of Code § 416(i)(1)(B)(i)) of the Employer or any Related Employer;

(2) received total Compensation from the Employer and all Related Employers in excess of \$75,000 (as adjusted pursuant to Code § 415(d)). (For any year beginning in 1996, the adjusted amount is \$100,000.00);

(3) received total Compensation from the Employer and all Related Employers in excess of \$50,000 (as adjusted pursuant to Code § 415(d)) **and** was a member of the Top-Paid Group for such year. (For any year beginning in 1996, the adjusted amount is \$66,000.00);

(4) was an officer of the Employer or any Related Employer and received total Compensation during the year from the Employer and all Related Employers that is greater than 50% of the dollar limitation in effect for such year under Code § 415(b)(1)(A). (For any year beginning in 1996, the minimum Compensation for this clause (4) to be applicable is \$60,000);
or

(5) was the highest paid officer of the Employer or any Related Employer for such year.

However, when making the above determination with respect to the Plan Year, but not with respect to the 12-month period immediately preceding the Plan Year, a person shall not be treated as satisfying paragraphs (2), (3), (4), or (5) unless he was **also** one of the 100 employees who received the greatest total Compensation from the Employer and all Related Employers during the Plan Year.

(c) **Highly Compensated Former Employees.** The term “Highly Compensated Former Employee” for any Plan Year includes any former employee (including Leased Employees) who separated from service (or was deemed to have separated from service) prior to the beginning of the Plan Year, and was a Highly Compensated Active Employee for **either** the separation year **or** any Plan Year ending on or after the employee’s 55th birthday.

(d) **Determination under Code § 414(q) and Regulations.**

The determination of who is a Highly Compensated Employee, including the determinations of the number and identity of employees in the Top-Paid Group (generally, the most highly paid 20% of employees) and the top 100 employees, the separation year, and the number and identity of employees treated as officers, will be made in accordance with the detailed provisions set forth in Code § 414(q) and the regulations issued thereunder.

§ 18-118 Highly Compensated Family.

(a) **In General.** The term “Highly Compensated Family” shall mean any group of persons consisting of—

(1) either—

(A) a 5% owner (as defined in Code § 416(i)(1), Treas. Regs. § 1.416-1 T-17 & 18, and Treas. Regs. § 1.414(q)-1T Q&A 8) of the Employer or any Related Employer at any time during the year in question who is an active or former employee; **or**

(B) a Highly Compensated Employee who is in the group consisting of the 10 Highly Compensated Employees paid the greatest total Compensation (determined without regard to § 18-109(b) [relating to elective deferrals]) from the Employer and any Related Employer for the year;

(2) all lineal ascendants and descendants of the person described in paragraph (1);

and

(3) any person who is or was the spouse of the person described in paragraph (1) or the spouse of any person described in paragraph (2) on any day during the year in question.

(b) **Multiple Family Groups.** If any person is a member of more than one Highly Compensated Family (determined before the application of this subsection (b)), all members of all such Highly Compensated Families shall be considered as a single Highly Compensated Family.

§ 18-119 Highly Compensated Immediate Family.

The term “Highly Compensated Immediate Family” shall mean any group of persons consisting of—

(a) either—

(1) a 5% owner (as defined in Code § 416(i)(1), Treas. Regs. § 1.416-1 T-17 & 18, and Treas. Regs. § 1.414(q)-1T Q&A 8) of the Employer or any Related Employer at any time during the year in question who is an active or former employee; **or**

(2) a Highly Compensated Employee who is in the group consisting of the 10 Highly Compensated Employees paid the greatest total Compensation (determined without regard to § 18-109(b) [relating to elective deferrals]) from the Employer and any Related Employer for the year in question;

(b) any person who is or was the spouse of the person described in subsection (a) on any day during the year in question; **and**

(c) all lineal descendants of the person described in subsection (a) who have not attained age 19 before the close of the year in question;

provided that the total Compensation of the all such persons from the Employer for the year in question (considered before the application of § 18-109(b)) is greater than the amount in effect for such year under Code § 401(a)(17). (For any year beginning in 1996, the amount is \$150,000.00.)

§ 18-120 Investment Manager.

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

§ 18-121 Leased Employee.

The term “Leased Employee” means any person who, pursuant to an agreement between the Employer and any other person (“**leasing organization**”), performs services for the Employer (or for the Employer and “related persons” determined in accordance with Code § 414(n)(6)) on a substantially full time basis and such services are of a type historically performed by employees in the business field of the recipient employer; *provided that* such a person shall not be considered a “Leased Employee” until after the close of the first 12 consecutive month period of such service.

A person performs services on a substantially full time basis for a 12 consecutive month period if he either—

(a) has performed at least 1500 Hours of Service (*see* § 18-305) for the Employer (or the Employer and “related persons”); **or**

(b) has performed services for the Employer and “related persons” for a number of hours at least equal to 75% of the average number of hours that are customarily performed by the Employer's employees in the particular position.

The term “Leased Employee” also includes any other individual considered an employee of the Employer under Code §§ 414(n) and 414(o) and the regulations thereunder.

§ 18-122 Normal Retirement Age.

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

§ 18-123 Participant.

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

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

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

§ 18-124 Plan or Plan and Trust.

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

§ 18-125 Plan Year.

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

§ 18-126 Provisions of the Defined Benefit Plan.

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

§ 18-127 Qualified Employee.

(a) **In General.** The term “Qualified Employee” shall mean, as of any given date, any person who is receiving remuneration for personal services rendered to the Employer (other than as an independent contractor) or who would be receiving such remuneration except for an Authorized Leave of Absence or for a temporary lay-off which has not yet become a Separation from Service; *provided* such person is neither—

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

(2) a person who is included in a unit of employees covered by a negotiated collective bargaining agreement which does not provide for his inclusion as a Qualified Employee eligible for participation in this Plan, *provided that* retirement benefits were the subject of good faith bargaining and less than two percent of the employees of the Employer who are covered pursuant to that agreement are “professionals” as defined in Treas. Regs. § 1.410(b)-9(g); **nor**

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

(b) **Leased Employees.** Any Leased Employee as of a date on or after January 1, 1984 shall be treated as a Qualified Employee of the Employer **unless**—

(1) such Leased Employee is not a common law employee of the Employer,

(2) Leased Employees do not constitute more than 20% of the recipient’s nonhighly compensated workforce, **and**

- (3) such Leased Employee is covered by a money purchase pension plan providing:
- (A) a non-integrated employer contribution rate of at least 10% of Compensation;
 - (B) immediate participation; **and**
 - (C) full and immediate vesting.

However, contributions or benefits provided by the leasing organization which are attributable to services performed for the Employer shall be treated as having been provided by the Employer.

§ 18-128 Related Employer.

The term “Related Employer” shall mean any —

- (a) corporation which is a member of a controlled group of corporations (as defined in Code § 414(b)) which includes the Sponsor;
- (b) trade or business (whether or not incorporated) which is under common control (as defined in Code § 414(c)) with the Sponsor;
- (c) member of an affiliated service group (as defined in Code § 414(m)) which includes the Sponsor; **and**
- (d) other entity required to be aggregated with the Sponsor pursuant to Code § 414(o) and the regulations thereunder;

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

§ 18-129 Separation from Service.

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

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

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

(c) **Transfers Among Related Employers.** The term “Separation from Service” shall not include transfers between employers all of whom are included within the definition of “Employer” or “Related Employer,” or the mere cessation of a person’s status as a “Qualified Employee” if he remains in the employment of the Employer (or any Related Employer).

(d) **Sale of Business.**

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

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

§ 18-130 Sponsor.

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

§ 18-131 Trust.

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

§ 18-132 Trust Fund.

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

§ 18-133 Trustees.

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

§ 18-134 Wages.

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

Article II — Conversion of the Plan to a Defined Contribution Plan

§ 18-201 Conversion.

Effective as of the Conversion Date, the Plan is hereby converted from a defined benefit pension plan with the benefits and features set forth in the Provisions of the Defined Benefit Plan, to a defined contribution plan providing for contributions and benefits as set forth in this Chapter. No further benefits shall accrue in this Plan under the formulas and other Provisions of the Defined Benefit Plan from and after the Conversion Date. All Accrued Benefits under the Provisions of the Defined Benefit Plan shall be 100% vested as of the Conversion Date. The only benefits which shall accrue thereafter shall be the benefits which are derived from the contributions made under the provisions of this Chapter.

§ 18-202 Treatment of Accrued Benefits under the Provisions of the Defined Benefit Plan.

(a) **Persons in Pay Status.** As soon as practicable after the Conversion Date, the Trustees shall purchase a non-transferable single-premium immediate commercial annuity contract for each Participant or Beneficiary who is in pay status as of the Conversion Date (*i.e.*, is receiving periodic payments from the Plan which commenced before the Conversion Date), which shall provide for payments to such persons at the same times and in the same amounts, and subject to the same rights and limitations, as were provided under this Plan under the Provisions of the Defined Benefit Plan. The Trustees shall then distribute the contracts to the respective Participants or Beneficiaries in full satisfaction of all benefits under this Plan. The Trustees shall continue to make payments to such Participants or Beneficiaries from this Plan in accordance with the form of distribution in effect immediately prior to the Conversion Date until the date payments are to commence under their respective annuity contracts.

(b) Former Employees Not in Pay Status. As soon as practicable after the Conversion Date, the Trustees shall purchase a non-transferable single-premium deferred commercial annuity contract for each Participant or Beneficiary who is not a Qualified Employee and is not in pay status as of the Conversion Date, which shall provide for payments to such persons and/or their beneficiaries at the same times and in the same amounts, and subject to the same rights and limitations, as were to be provided under this Plan under the Provisions of the Defined Benefit Plan based on the rights accrued by such persons as of the Conversion Date. The Trustees shall then distribute the contracts to the respective Participants or Beneficiaries in full satisfaction of all benefits under this Plan.

(c) Current Employees. During the period beginning December 13, 1995 and ending on May 1, 1996, each Participant who is a Qualified Employee as of the Conversion Date shall have the right to elect to have his/her Accrued Benefit in this Plan as of the Conversion Date (as defined and determined under the Provisions of the Defined Benefit Plan) *either—*

(1) distributed to him/her in the form of a commercial annuity as described in subsection (d), *or*

(2) converted into balances in the Participant's individual Closed Employer Contribution Account and Employee Contribution Account which are created under this Chapter, as described in subsection (e).

If a Participant fails to file an election by May 1, 1996, he/she shall be deemed to have elected to receive a commercial annuity under subsection (d). The Administrator shall notify each affected Participant of his/her rights under this subsection (c) as soon as practicable after December 13, 1995, and provide official forms for making the election. An election may be changed at any time before May 1, 1996; however, on May 1, 1996 all elections shall become irrevocable.

(d) Annuity Option. As soon as practicable after May 1, 1996, the Trustees shall purchase a non-transferable single-premium deferred commercial annuity contract for each Participant who filed an election under subsection (c)(1) to receive an annuity, or who failed to file an election by May 1, 1996. The annuities shall provide for payments to such persons and/or their beneficiaries at the same times and in the same amounts, and subject to the same rights and limitations, as were provided by this Plan under the Provisions of the Defined Benefit Plan, based on the Participant's Accrued Benefit in this Plan as of the Conversion Date (as defined and determined under the Provisions of the Defined Benefit Plan). The Trustees shall then distribute the contracts to the respective Participants or Beneficiaries in full satisfaction of all benefits accrued under this Plan prior to the Conversion Date.

(e) Deposit of Accrued Benefits Into Individual Accounts in the Defined Contribution Plan. As soon as practicable after May 1, 1996—

(1) Employee Contribution Accounts. The Trustees shall allocate to the Employee Contribution Account of each Participant who filed an election under subsection (c)(2) an amount equal to the amount of mandatory employee contributions made to the Plan under the Provisions of the Defined Benefit Plan plus interest at the rate credited under the Provisions of the Defined Benefit Plan through the Conversion Date, plus interest from the Conversion Date to the date of allocation at the rate earned by the Plan during that period; **and**

(2) **Closed Employer Contribution Accounts.** The Trustees shall allocate to the Closed Employer Contribution Account of each Participant who filed an election under subsection (c)(2) an amount equal to the single sum Actuarial Equivalent of the Participant's Accrued Benefit in this Plan as of the Conversion Date (as defined and determined under the Provisions of the Defined Benefit Plan), *plus* interest from the Conversion Date to the date of allocation at the rate earned by the Plan during that period, *less* the amount allocated to that Participant's Employee Contribution Account under paragraph (1).

§ 18-203 Treatment of Excess or Shortfall.

(a) **Excess.** If, after the purchase of all annuities required to be purchased under § 18-202, the value of remaining Trust Fund assets is greater than the amount to be allocated to Participant accounts under § 18-202(e), the excess shall be allocated to the Forfeiture Account.

As soon as practicable after April 14, 1999, the Trustees are hereby authorized and directed to transfer all Trust Fund assets derived from the excess of Plan assets over the cost of providing annuities or individual account balances under § 18-202, to the Borough of Alburdis Police Pension Plan and Trust. In determining the amount of such transfer, transactions in the Plan shall be recharacterized (if necessary) such that:

(1) Closed Employer Contribution Accounts and Employee Contribution Accounts are established for each Participant who elected in early 1996 to allocate his/her accrued benefit under the defined benefit plan to his/her individual accounts in the defined contribution plan. These accounts are established as of the Conversion Date, and the total of the two accounts for each affected Participant as of the Conversion Date is equal to the single-sum Actuarial Equivalent of the Participant's Accrued Benefit in this Plan as of the Conversion Date (as defined and determined under the Provisions of the Defined Benefit Plan).

(2) All remaining Plan assets as of the Conversion Date are allocated to a Transition Account as of the Conversion Date.

(3) All distributions of monthly benefits to persons in pay status in 1996 (prior to the commencement of benefits under annuity contracts) are debited from the Transition Account as of the date of distribution.

(4) A special valuation of Plan assets and determination of Income was made as of June 26, 1996 to reflect the payment received from PSAB in transferring the Plan's assets to the new Trustees. As determined by the Pension Committee on June 26, 1996, each Participant's Closed Employer Contribution Account and Employee Contribution Account is credited with Income as of June 26, 1996, in an amount equal to 3.30519% of the balance in such account as of the Conversion Date.

(5) [RESERVED]

(6) Each Participant's Closed Employer Contribution Account and Employee Contribution Account was then individually invested in accordance with Participant directions (and/or invested in the default investment option until directions were received.) The Income earned on those investments is allocated to those Accounts as of each valuation date for those investments. The Transition Account was also invested in the default investment option, and the Income earned on its investments is allocated to that Account.

(7) The purchase price for all annuities required to be purchased under § 18-202 is debited from the Transition Account as of the date of payment.

(8) Upon the final payment under paragraphs (3) and (7), the remainder of the Transition Account is allocated to a Surplus Account and invested in the default Plan investment option.

(9) Distributions from a Participant's accounts is debited from the affected accounts as of the date of distribution.

(10) Any forfeitures of nonvested benefits from a Participant's account under Article IX is allocated to the Forfeiture Account, invested in the Plan's default investment option, and used to provide benefits for other Participants as described in paragraph (12) and § 18-503.

(11) Contributions made by the Employer are allocated when made to the Early Employer Contributions Account, and invested in the default Plan investment option.

(12) As of the last day of the 1996, 1997, and 1998 Plan Years, the Employer Contribution Account of each Qualified Employee is credited with an amount equal to 4.65% of the Qualified Recipient's Compensation for the portion of each such year during which he/she was an Active Participant. These allocations are transferred first from the Forfeiture Account (if any) and then from the Early Employer Contributions Account. Each Participant's Employer Contribution Account is individually invested in accordance with Participant directions (and/or invested in the default investment option until directions are received.) The Income earned on those investments is allocated to those Accounts as of each valuation date for those investments.

(13) The actual required Employer contributions for a given Plan Year cannot be known until the end of the Plan Year, since an employee's qualification for a contribution and the amount of his/her Compensation for the Plan Year cannot be determined until that time. Consequently, the estimates made by the Employer in determining the minimum municipal obligation for the Plan Year and in making contributions to the Plan during the Plan Year most likely will be either higher or lower than the actual required contributions.

(A) If the amount in the Early Employer Contributions Account as of the last day of the Plan Year is insufficient to cover the required allocations under paragraph (12), the Employer must contribute the amount of the shortfall to the Plan as soon as possible, together with interest as described in § 18-504(c).

(B) If there remains a positive balance in the Early Employer Contributions Account as of the last day of the Plan Year after making the required allocations under paragraph (12), and after the Income of that Account during the Plan Year has been allocated under paragraph (14), then that portion of the Early Employer Contributions Account as of the last day of the Plan Year which is attributable to grants by the Commonwealth under the General Municipal Pension System State Aid Program shall be transferred to the Surplus Account, together with the interest earned on that amount from the last day of the Plan Year until the date of the transfer. That portion of the Early Employer Contributions Account which is *not* attributable to state aid shall either be returned to the Employer, or be treated as a new Employer contribution for the following Plan Year and be retained in the Early Employer Contributions Account.

(C) For purposes of this Plan, Employer contributions to the Early Employer Contributions Account shall be deemed to be attributable to grants under the General Municipal Pension System State Aid Program to the extent the governing body of the Employer allocates

the grants to this Plan, and all amounts allocated to Participant accounts under paragraph (12) from the Early Employer Contributions Account shall be deemed to be attributable to grants under the General Municipal Pension System State Aid Program until the amount of such grants allocated to this Plan has been exhausted.

(14) As of the last day of the 1996, 1997, and 1998 Plan Years, all Income earned by the segregated investment of the Early Employer Contributions Account is allocated *pro rata* among the other Plan accounts in accordance with § 18-403.

(15) As soon as practicable after April 14, 1999, the Trustees shall transfer the balance of the Surplus Account (including the Income earned by the segregated investments in the Surplus Account through the date of transfer) to the Borough of Alburtis Police Pension Plan and Trust.

(b) **Shortfall.** If, after the purchase of all annuities required to be purchased under § 18-202, the value of remaining Trust Fund assets is less than the amount to be allocated to Participant accounts under § 18-202(e), the Employer shall contribute the amount of the shortfall to the Plan within sixty (60) calendar days after receipt of notice to do so from the Trustees.

§ 18-204 Termination of Participation in PSAB Plan.

The Borough of Alburtis hereby terminates its participation and joiner in the master/prototype non-uniformed defined benefit plan sponsored by the Pennsylvania State Association of Boroughs. The Trustees appointed under this Chapter are hereby authorized and directed to obtain all assets held in trust for this Plan by the previous trustees and hold the same under the Trust established in this Chapter.

§ 18-205 Supersession of Prior Ordinances and Joinder Agreements.

Effective as of the Conversion Date, the Provisions of the Defined Benefit Plan and all Ordinances and joinder agreements for or relating to the Borough of Alburtis Non-Uniformed Pension Plan are superseded by this Chapter.

Article III — Participation & Service

§ 18-301 Participation.

(a) Active Participants.

(1) **Eligibility Conditions.** In order to be eligible to become an Active Participant in this Plan, a person must simultaneously satisfy all of the following conditions:

(A) the person is a Qualified Employee;
(B) the person is age 21 or older; **and**
(C) the person has credit for at least one Year of Service (*see* § 18-302) which has not been cancelled under § 18-302(c).

(2) Entry Dates.

(A) Continuing Active Participants. A Qualified Employee who was actively participating under the Provisions of the Defined Benefit Plan immediately before the Conversion Date shall continue as an Active Participant under this amended, restated, and converted Plan.

(B) New Employees. A Qualified Employee who was actively participating under the Provisions of the Defined Benefit Plan immediately before the Conversion Date shall continue as an Active Participant under this amended, restated, and converted Plan.

After the Conversion Date, a person shall become an Active Participant as of the first December 31 that he satisfies all of the conditions described in paragraph (1).

(C) Rehired Employees, Transferees, etc. Notwithstanding subparagraph (B), a person who becomes a Qualified Employee at a time when he has already satisfied the age and service conditions of paragraph (1) (and after the first December 31 following the date he first satisfied those conditions), shall become an Active Participant as of the day he becomes a Qualified Employee.

(This subparagraph may apply, for example, to a an employee rehired after a prior period of employment, and to a person who becomes a Qualified Employee after working for the Employer in a position not included within the definition of “Qualified Employee.”)

(b) Discontinuation. A Participant shall remain an Active Participant only so long as he remains a Qualified Employee. After he ceases to be a Qualified Employee, he shall become an Inactive Participant until all of his Plan accounts are distributed, or until he becomes an Active Participant again.

(c) Required Information. The Administrator may require a Qualified Employee to submit relevant information to the Plan in connection with his entry into participation. The Administrator shall be fully protected from any loss which may result from the Qualified Employee’s failure to submit such information or from the Plan’s reliance on incorrect information.

(d) Voluntary Disclaimer. Any Qualified Employee may voluntarily disclaim participation in this Plan for any reason, unless, in the opinion of counsel for the Administrator, such disclaimer could jeopardize the qualification of the Plan under Code § 401(a) at that time or in the foreseeable future. Such a disclaimer must be made in writing on forms provided by the Administrator after the Qualified Employee has received an absolute and full disclosure of both his right to participate and benefits under the Plan. The disclaimer may only be made at the time the Qualified Employee first becomes eligible to become an Active Participant in this Plan. Further, the disclaimer must acknowledge such disclosure and be witnessed by a notary public. Once an employee has disclaimed participation in this Plan, he may never again become eligible to participate in any aspect of this Plan throughout his employment with the Employer or any Related Employer.

§ 18-302 Year of Service.

(a) **In General.** A person is credited with one Year of Service for each Computation Period (*see* § 18-304) during which he is credited with at least 1000 Hours of Service (*see* § 18-305). The Year is generally credited as of the end of the Computation Period. However, if a person Separated from Service during the Computation Period and had already been credited with at least 1000 Hours of Service, the Year will be credited as of the date of the Separation from Service.

(b) **Service Before Age 18.** Notwithstanding subsection (a), a person shall not be credited with a Year of Service for a Computation Period if he has not attained age 18 by the end of the Computation Period.

(c) Cancellation of Years of Service.

(1) **In General.** Years of Service may be cancelled if a person incurs a Lengthy Break in Service (*see* § 18-303). Specifically, all Years of Service credited to a person as of the last day before a Lengthy Break in Service shall be **cancelled** as of the *later* of—

(A) the date the person incurs the Lengthy Break in Service;

(B) the date he Separates from Service; or

(C) the date he has no vested right to any portion of his accounts in the Plan (*see* Article III) (other than his Employee Contribution Account), or has a zero balance in such accounts.

(2) **Service before Effective Date.** All Years of Service cancelled or disregarded under the Provisions of the Defined Benefit Plan shall be treated as cancelled under this Amended and Restated Plan as of the date they were originally cancelled or disregarded.

(3) **Service Before Adoption of the Plan.** Notwithstanding anything to the contrary contained in this Article, all Years of Service before a Break in Service which occurred before the Plan (including the Provisions of the Defined Benefit Plan) was first adopted shall not be counted. All such Years shall be treated as having been cancelled as of the day before the Plan was adopted.

§ 18-303 Break in Service.

(a) **In General.** A person incurs a Break in Service if he is not credited with more than 500 Hours of Service (*see* subsection (c)) during a Computation Period (*see* § 18-304).

(b) **Lengthy Breaks in Service.** A person incurs a Lengthy Break in Service if he incurs a Break in Service in each of a number of consecutive Computation Periods (*see* § 18-304) equal to the greater of—

(1) five (5), or

(2) the number of Years of Service credited to the person as of the beginning of the series of consecutive Breaks in Service.

The Lengthy Break in Service is incurred at the end of the above series of consecutive Computation Periods.

(c) **Hours of Service—Special Rule.**

(1) **In General.** For purposes of this § 18-303 **only**, the term “Hours of Service” shall mean—

(A) each hour credited to a person under § 18-305 (relating to Hours of Service), **plus**

(B) each hour for which the person normally would have received credit under § 18-305 *but for* the fact that the person was absent on a Parental Leave (*see* subsection (d)). (If normal hours cannot be determined, then 8 hours shall be credited for each day)

(2) **Limitation.** No more than 501 hours shall be credited under paragraph (1)(B) for any one period of Parental Leave.

(3) **Computation Period to which Parental Leave is Credited.** If a person is credited with fewer than 501 hours under paragraph (1)(A) for the Computation Period in which his/her Parental Leave begins, all of the hours credited under paragraph (1)(B) for any one period of Parental Leave shall be credited in the Computation Period in which his/her Parental Leave begins. Otherwise, all of the hours credited under paragraph (1)(B) for any one period of Parental Leave shall be credited in the first Computation Period after the Computation Period in which the person’s Parental Leave begins.

(d) **Parental Leave.**

(1) **In General.** For purposes of this § 18-303, a “Parental Leave” occurs when a person is absent from work or terminates employment due to:

(A) her pregnancy,

(B) the birth of his or her child,

(C) the placement of a child in connection with its adoption by him or her, **or**

(D) the caring of such a child during the period immediately following its birth or placement for adoption.

(2) **Administrative Determination.** The Administrator shall determine whether a person’s termination of employment or absence from work is due to a Parental Leave and the duration of such Leave based on information provided to the Administrator by the person. All information required by the Administrator to determine whether a Parental Leave has occurred shall be provided within such reasonable time, and all determinations under this section shall be made under such reasonable rules, as the Administrator may establish for each group of persons similarly situated. Nothing in this subsection shall be construed to affect in any way the Employer’s employment policy with respect to Parental Leaves.

(3) **Credit Only Granted for Post-1984 Parental Leaves.** Notwithstanding paragraph (1), the term “Parental Leave” does not include any period of absence from work which began before January 1, 1985.

§ 18-304 Computation Period.

Computation Periods shall be determined separately for each person. Each of the following periods of time shall constitute a Computation Period for any given person:

(a) The one year period which begins on the first day the person is credited with one Hour of Service under § 18-305(a) for the performance of duties.

(b) Each Plan Year which begins after a period described in subsection (a) and before the person has service cancelled under § 18-302(c). Accordingly, the first Plan Year under this subsection is the Plan Year which includes the first anniversary of the first day of the period described in subsection (a). Thus, a person who is credited with at least 1000 Hours of Service in both the initial Computation Period under subsection (a) and the first Plan Year which commences after the first day the person is credited with one Hour of Service for the performance of duties, will be credited with two (2) Years of Service as of the end of such Plan Year.

(c) The one year period which begins on the first day the person is credited with one Hour of Service under § 18-305(a) after service during a prior period of employment was cancelled for purposes of this Plan (*see* § 18-302(c)).

(d) Each Plan Year which begins after a period described in subsection (c) and before the person has service cancelled under § 18-302(c). Accordingly, the first Plan Year under this subsection is the Plan Year which includes the first anniversary of the first day of the period described in subsection (c).

§ 18-305 Hour of Service.

A person is credited with an Hour of Service for each of the following, as administered in accordance with the rules set forth in Section 2530.200b-2 of the Department of Labor Regulations relating to Minimum Standards for Employee Benefit Plans (Title 29, Code of Federal Regulations):

(a) **Work Time.** Each hour for which the person is paid, or entitled to payment, for the performance of duties for the Sponsor or any Related Employer (regardless of whether the Related Employer has adopted this Plan). These hours will be credited to the employee for the computation period in which the duties are performed;

(b) **Compensated Time Off.** Each hour, up to 501 hours for any single continuous period, during which the person performs no duties but is directly or indirectly paid or entitled to payment by the Sponsor or any Related Employer (regardless of whether employment has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence; *excluding*, however, any period for which a payment is made or due under this Plan or under a plan maintained solely for the purpose of complying with workmen's compensation or unemployment compensation or disability insurance laws, or solely to reimburse the person for medical or medically-related expenses. A person shall be deemed to be "directly or indirectly paid, or entitled to payment" by the Sponsor or any Related Employer regardless of whether such payment is (1) made by or due from the Sponsor or Related Employer directly, or (2) made indirectly through a trust fund, insurer or other entity to which the Sponsor or Related Employer contributes or pays premiums;

(c) **Back Pay.** Each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Sponsor or any Related Employer. However, Hours of Service credited under subsections (a) or (b) shall not be duplicated under this subsection (c). Periods for which back pay is awarded or agreed to which correspond to periods described in subsection (b) shall be subject to the same 501 hour restriction for single continuous periods which applies under subsection (b). These hours will be credited to the employee for the computation period or periods to which the award or agreement pertains rather than the computation period in which the award, agreement, or payment is made.

(d) **Military Time.** Each hour for which the person normally would have received credit *but for* the fact that the person was performing service in the uniformed services of the United States, *provided that*—

(1) such service immediately follows service with the Employer or any Related Employer as a Qualified Employee; and

(2) the person returns to employment with the Employer or any Related Employer at a time when the Employer or any Related Employer is legally obligated to reemploy the person under the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301 *et seq.*, and any amendments, supplements, or successor legislation.

Credit under this subsection (d) shall be granted upon the person's return to employment with the Employer or Related Employer, but shall be applied to the Computation Periods in which the person would have received credit under subsections (a) or (b) but for the performance of uniformed service.

(e) **Leased Employees.** Hours of service for Leased Employees will be credited under rules similar to those of subsections (a) through (d) for common law employees of the Sponsor or any Related Employer. For purposes of this subsection (e), the definition of Leased Employee in § 18-121 shall be modified by deleting therefrom the phrase: "*provided that* such a person shall not be considered a 'Leased Employee' until after the close of the first 12 consecutive month period of such service."

Article IV — Accounting

§ 18-401 Accounts.

(a) **Paper Accounts of Participants.** Effective on and after the Conversion Date, the Administrator shall create and maintain adequate records to disclose the interest in the Trust Fund of each Participant who was a Qualified Employee at any time on or after the Conversion Date and for each Beneficiary of such a Participant. Such records shall be in the form of individual accounts, created and closed as appropriate. Credits and charges shall be made to such accounts in the manner described in this Plan. Where appropriate, each such Participant and Beneficiary may have the following accounts:

(1) **Employer Contribution Account** (to hold most employer contributions to the Plan and their earnings).

(2) **Closed Employer Contribution Account** (to hold amounts attributable to employer contributions made under the Provisions of the Defined Benefit Plan, and employer contributions to the Plan which are fully vested following the forfeiture of any nonvested portion of employer contributions, plus earnings thereon).

(3) **Suspended Employer Contribution Account** (to hold employer contributions to the Plan, plus earnings, which are made after a Participant has incurred a one-year Break in Service and before he has completed one Year of Service following the Break in Service (*see* Article III and § 18-505)).

(4) **Employee Contribution Account** (to hold employee contributions and/or amounts attributable to employee contributions made under the Provisions of the Defined Benefit Plan, and their earnings).

(b) **Paper Accounts of the Plan.** The Administrator shall create and maintain adequate records to disclose the portions of the Trust Fund which represent amounts not currently allocated to the accounts of persons with an interest in the Plan. There shall be three such accounts created with respect to each particular Employer which maintains this Plan (unless there would be zero balances in any such account):

(1) **Forfeiture Account** (to hold amounts forfeited from the accounts of Inactive Participants plus any earnings).

(2) **Suspense Account** (to hold amounts which could not be allocated to the accounts of Active Participants because of the Maximum Additions limitations of Article VII).

(3) **Early Employer Contributions Account** (to hold amounts contributed to the Plan for a Plan Year before the end of that Plan Year; *see* § 18-504(a)).

In addition, the Administrator shall create, maintain, and dispose of a **Transition Account** and a **Surplus Account** in accordance with the provisions of § 18-203(a).

(c) **Alternate Payee Accounts.** Alternate Payee Accounts under this Plan and Trust shall be created at such times as provided in § 18-1405(c) (relating to Alternate Payee Accounts under Qualified Domestic Relations Orders).

(d) **Segregation of Assets.**

(1) **Paper Accounts.** The accounts described in subsections (a) through (c) together account for all of the assets of the Trust Fund. The maintenance of these individual accounts is for accounting purposes only. A segregation of the assets of the Trust Fund to each account shall not be required.

(2) **Segregated Accounts.** The Trustees may segregate the assets of the Trust Fund if they so desire. If the Trustees earmark any assets to the accounts of specific Participants, they shall first obtain the consent of the Participant or shall earmark such assets ratably among the accounts of all Participants.

(3) **Record Keeping.** Whenever assets are segregated, the Trustees shall maintain adequate records to disclose which of the accounts described in subsections (a) through (c) (or portions of such accounts) are identified with which segregated group of assets.

§ 18-402 Income of the Trust Fund.

(a) **Definition.** For the purposes of this Section, the “Income” of the Trust Fund or any group of assets shall mean the net gain or loss of the Trust Fund or group of assets from investments, as reflected by interest payments, dividends, realized and unrealized gains and losses on securities and other property, and administrative and other expenses paid from the Trust Fund or the group of assets. All administrative and other expenses which are fairly chargeable to one or more segregated groups of assets shall be charged to those assets alone, regardless of the fund from which those expenses were initially paid. All administrative and other expenses which are fairly chargeable to all of the assets of the Trust Fund shall be charged *pro rata* against all of the segregated groups of assets, regardless of the fund from which those expenses were initially paid.

(b) **Annual Determination.** The Trustees shall determine the Income of the Trust Fund since the most recent determination as of each Accounting Date.

(c) **Special Determination.** If a distribution of benefits is to begin from the general Trust Fund during a given month, the Trustees shall determine the Income of the Trust Fund since the most recent determination as of the end of the month immediately preceding the calendar month of the distribution.

(d) **Termination of Trust.** The Trustees shall determine the Income of the Trust Fund since the most recent determination upon the Termination of the Trust and liquidation of its assets.

(e) **Valuation of Assets upon Segregation.** The Trustees shall determine the Income of a group of assets at any time they choose to segregate certain assets from the larger group.

(f) **Return of Segregated Assets to General Pool of Investments.** Whenever any segregated group of assets are to be merged with another group of assets, the Trustees shall determine the Income of the two groups of assets in the Trust Fund since their most recent valuation.

(g) **Distribution of Segregated Group of Assets.** The Trustees shall determine the Income of a segregated group of assets earmarked to the accounts of a single Participant whenever they are to make a distribution from such segregated group of assets.

(h) **Other Determination.** The Trustees **may** determine the Income of the Trust Fund or any segregated portion of it since its most recent valuation at any time they think it prudent to do so (*e.g.*, the Trustees may decide to determine the Income for certain segregated bank accounts monthly or even daily); *provided* that elections to make such determinations are not made in a fashion likely to discriminate among persons with an interest in the Plan.

§ 18-403 Allocation of Income.

(a) **In General.** The Income of each segregated portion of the Trust Fund shall be allocated to the accounts described in § 18-401(a) through (c) (*except* the Suspense Account and the Early Employer Contributions Account) as of the day the Income is determined, **but only** to those accounts which have a positive balance on such day and which have been assigned to that segregated portion of the Trust Fund. If more than one of those accounts have been assigned to that segregated portion of the Trust Fund, the Income will be allocated among the accounts according to each account's portion of the following total:

(1) the balances in the accounts as of the last asset valuation date (to the extent the accounts are assigned to that segregated portion of the Trust Fund);

less (2) the amount of any distributions from the accounts during the period concerned (to the extent the segregated portion of the Trust Fund is used to make such distributions) **multiplied by** a fraction whose numerator is the number of days in the period after the date of distribution and whose denominator is the total number of days in the period;

plus (3) the amount of any contributions or transfers to the accounts during the period concerned (to the extent the contributions or transfers are assigned to the segregated portion of the Trust Fund) **multiplied by** a fraction whose numerator is the number of days in the period after the date as of which the contributions or transfers were credited to the accounts and whose denominator is the total number of days in the period.

(b) **Special Rule.** If the only account(s) assigned to a segregated portion of the Trust Fund are the Suspense Account and/or the Early Employer Contributions Account, the Income of such segregated portion shall be allocated among all the other accounts described in § 18-401(a) through (c) with a positive balance as of the day the Income is determined, according to each account's portion of the following total:

(1) the balances in the accounts as of the last asset valuation date of the segregated portion of the Trust Fund;

less (2) the amount of any distributions from the accounts during the period concerned multiplied by a fraction whose numerator is the number of days in the period after the date of distribution and whose denominator is the total number of days in the period;

plus (3) the amount of any contributions or transfers to the accounts during the period concerned multiplied by a fraction whose numerator is the number of days in the period after the date as of which the contributions or transfers were credited to the accounts and whose denominator is the total number of days in the period.

§ 18-404 Valuation of Assets.

In determining the value of Trust Fund assets for any purpose under this Plan, assets shall be valued on the basis of their fair market value as of the valuation date.

§ 18-405 Beneficiaries.

Accounts originally maintained on behalf of a deceased Participant shall be maintained on behalf of his current Beneficiaries (*see* Article XI).

Article V — Additions to Employer Contribution Accounts

§ 18-501 Annual Allocation.

Subject to the provisions of Article VII (relating to Maximum Additions), § 18-504(b) (relating to Uniformed Service), and § 18-505 (relating to Suspended Employer Contribution Account), as of the last day of each Plan Year, the Employer Contribution Account of each Qualified Recipient (*see* § 18-502(a)) shall be credited with an amount equal to:

(a) For the 1996, 1997, and 1998 Plan Years: **4.65%** of the Qualified Recipient's Compensation *for the portion* of the Plan Year during which he was an Active Participant; or

(b) For the 1999 and Subsequent Plan Years: **7.00%** of the Qualified Recipient's Compensation *for the portion* of the Plan Year during which he was an Active Participant.

§ 18-502 Qualified Recipients.

(a) **In General.** Except as provided in subsection (b), for purposes of this Article V, a "Qualified Recipient" for any Plan Year shall mean—

(1) a person who is an Active Participant on the last day of the Plan Year **and** has been credited with at least 1000 Hours of Service for the Plan Year (*see* § 18-305); **or**

(2) a person who Separated from Service during the Plan Year—

(A) after having attained age 62;

(B) as a result of a condition which rendered him Disabled; **or**

(C) as a result of his death,

and who was an Active Participant on the date of the Separation from Service.

(b) Compliance With Minimum Coverage Rules.

(1) In any Plan Year that the provisions of subsection (a) would not satisfy the minimum coverage requirements of subsection (c), subsection (a) shall be modified by substituting the number "501" for the number "1000" every time the latter appears therein.

(2) If the provisions of subsection (a), as so modified, still would not satisfy the minimum coverage requirements of subsection (c), term “Qualified Recipient” for that Plan Year shall also include a person who was an Active Participant on any day of the Plan Year and has been credited with at least 501 Hours of Service for the Plan Year (*see* § 18-305).

(3) If the provisions of subsection (a), as further modified, still would not satisfy the minimum coverage requirements of subsection (c), the term “Qualified Recipient” for that Plan Year shall also include a person who was an Active Participant on the last day of the Plan Year (regardless of the number of Hours of Service completed during the Plan Year).

(c) Minimum Coverage Requirements.

(1) **In General.** The requirements of this subsection (c) are satisfied in any Plan Year if the Nonhighly Compensated Employee Coverage Percentage for the Plan Year is greater than or equal to 70% of the Highly Compensated Employee Coverage Percentage for the Plan Year.

(2) **Nonhighly Compensated Employee Coverage Percentage.** For purposes of this subsection (c), the “Nonhighly Compensated Employee Coverage Percentage” for a Plan Year is the percentage equivalent of a fraction—

(A) whose numerator is equal to the number of Qualified Recipients for that Plan Year who are not Highly Compensated Employees; **and**

(B) whose denominator is equal to the number of persons who were Nonexcludable Employees for the Plan Year and were not Highly Compensated Employees.

However, if the number described in clause (B) shall be zero, the “Nonhighly Compensated Employee Coverage Percentage” shall be 100%.

(3) **Highly Compensated Employee Coverage Percentage.** For purposes of this subsection (c), the “Highly Compensated Employee Coverage Percentage” for a Plan Year is the percentage equivalent of a fraction—

(A) whose numerator is equal to the number of Qualified Recipients for that Plan Year who are Highly Compensated Employees; **and**

(B) whose denominator is equal to the number of persons who were Nonexcludable Employees for the Plan Year and were Highly Compensated Employees.

However, if the number described in clause (B) shall be zero, the “Highly Compensated Employee Coverage Percentage” shall be 100%.

(4) **Nonexcludable Employees.** For purposes of this subsection (c), the term “Nonexcludable Employees” shall include—

(A) all persons described in subsection (a);

(B) all persons who were Active Participants at any time during the Plan Year, **other than** persons who **both**—

(I) Separated from Service before the last day of the Plan Year; **and**

(II) have been credited with fewer than 501 Hours of Service (*see* § 18-305) during the Plan Year; **and**

(C) all persons who would have been Active Participants at any time during the Plan Year *but for* the fact that they were employed by a Related Employer which has not adopted this Plan. However, this subparagraph (C) shall not apply to the extent it is not required due to the applicability of Code § 410(b)(6)(C) (relating to satisfaction of coverage requirements during a transition period after certain acquisitions or dispositions of Related Employers by the Employer).

(5) Family Aggregation. In determining the number of persons who are Qualified Recipients for a Plan Year and the number of persons who are Nonexcludable Employees for a Plan Year, all members of a Highly Compensated Family shall be treated as being one single person who is a Highly Compensated Employee. If any of the members of the Highly Compensated Family are Qualified Recipients, the deemed “single person” shall be considered a Qualified Recipient, and if any of the members of the Highly Compensated Family are Nonexcludable Employees, the deemed “single person” shall be considered a Nonexcludable Employee.

§ 18-503 Funding of Credits; Employer Contributions.

The credits described in § 18-501 and § 18-504(b) shall be funded—

- (a) First, by withdrawals from the Suspense Account;
- (b) Second, if necessary, by withdrawals from the Forfeiture Account (including amounts forfeited on the last day of the Plan Year); **and**
- (c) Finally, if necessary, by contributions to the Plan and Trust Fund from the Employer, *which the Employer hereby covenants and agrees to make*, which may be from funds of the Employer and/or grants from the Commonwealth of Pennsylvania and/or others.

§ 18-504 Payment of Employer Contributions.

(a) **In General.** Employer contributions under this Article for a given Plan Year are due to be paid to the Trustees not later than December 31 of the Plan Year. All amounts contributed before the end of the Plan Year shall be held unallocated in a separate Early Employer Contributions Account until the end of the Plan Year, when they shall be withdrawn and allocated as if they were contributed on the last day of the Plan Year; the Early Employer Contributions Account shall not receive any allocations of Income (*see* Article IV) for that Plan Year.

(b) **Uniformed Service.** Employer contributions under this Article V for a Participant with respect to any period of service in the uniformed services of the United States shall be made at the *later* of—

- (1) the time set forth in subsection (a); **or**
- (2) within a reasonable period of time after the Participant returns to employment with the Employer or any Related Employer,

provided that the Participant returns to employment at a time when the Employer or any Related Employer is legally obligated to reemploy the person under the Uniformed Services Employment

and Reemployment Rights Act of 1994, 38 U.S.C. § 4301 *et seq.*, and any amendments, supplements, or successor legislation.

The amount of such contributions shall *not* be adjusted for any earnings or forfeitures which may otherwise have accrued to the benefit of the Participant during the period between the time when the contributions would have been made had the Participant not provided service in the uniformed services of the United States, and the time when the contributions were actually made.

(c) Additional Contributions for Interest on Late Contributions. If any amount of Employer contributions for a Plan Year remains unpaid as of December 31 of that Plan Year, the amount of Employer contributions for that Plan Year shall be increased by interest on the unpaid amount as of December 31, from January 1 of the Plan Year until the date of payment at a rate equal to the interest assumption used for the required actuarial valuation report under the Municipal Pension Plan Funding Standard and Recovery Act, 53 PA. STAT. ANN. § 891.101 *et seq.*, or the discount rate applicable to treasury bills issued by the Treasury Department of the United States with a six-month maturity as of the last business day in December of the Plan Year, whichever is greater, expressed as a monthly rate and compounded monthly. Such “interest” contributions shall be treated as Income of the Plan for the period after the end of the Plan Year.

(d) Mistake of Fact. The actual required Employer contributions for a given Plan Year cannot be known until the end of the Plan Year, since an employee’s qualification for a contribution and the amount of his/her Compensation for the Plan Year cannot be determined until that time. Consequently, the estimates made by the Employer in determining the minimum municipal obligation for the Plan Year and in making contributions to the Plan during the Plan Year most likely will be either higher or lower than the actual required contributions. Therefore, for the 1999 and succeeding Plan Years:

(1) If the amount in the Early Employer Contributions Account as of the last day of the Plan Year is insufficient to cover the required allocations to Participants under § 18-501, the Employer must contribute the amount of the shortfall to the Plan as soon as possible, together with interest as described in subsection (c).

(2) If there remains a positive balance in the Early Employer Contributions Account as of the last day of the Plan Year after making the required allocations to Participants under § 18-501 (and after the Income earned by any segregated portion of the Trust Fund to which the Early Employer Contributions Account is assigned has been allocated to other accounts under § 18-403), then that portion of the Early Employer Contributions Account as of the last day of the Plan Year which is attributable to grants by the Commonwealth under the General Municipal Pension System State Aid Program shall be transferred to the Borough of Albutis Police Pension Plan and Trust, together with the Income earned on that amount from the last day of the Plan Year until the date of the transfer. That portion of the Early Employer Contributions Account which is *not* attributable to state aid shall either be:

(A) returned to the Employer (if so directed by the Administrator within one year after the date the contributions were made to the Plan); **or**

(B) treated as a new Employer contribution for the following Plan Year, and retained in the Early Employer Contributions Account.

(3) For purposes of this Plan, Employer contributions to the Early Employer Contributions Account shall be deemed to be attributable to grants under the General Municipal Pension System State Aid Program to the extent the governing body of the Employer allocates the grants to this Plan, and all amounts allocated to Participant accounts under § 18-501 and § 18-503 from the Early Employer Contributions Account shall be deemed to be attributable to grants under the General Municipal Pension System State Aid Program until the amount of such grants allocated to this Plan has been exhausted.

§ 18-505 Suspended Employer Contribution Accounts.

(a) **Allocation.** The credits described in § 18-501 and § 18-504(b) shall be allocated to a person's Suspended Employer Contribution Account **instead** of his Employer Contribution Account for any Plan Year if—

(1) the person has incurred a Break in Service (*see* Article III) for that Plan Year or any previous Plan Year; **and**

(2) the person has not yet completed 1000 Hours of Service (*see* Article III) during any Plan Year which ends after the Break in Service **or** during the one year period beginning on the first day the person is credited with one Hour of Service for the performance of duties for the Employer after the Break in Service.

However, this subsection (a) shall not apply to any person who died, retired, or became Disabled during the Plan Year and is eligible to receive employer contributions for the Plan Year under § 18-502(a)(2), *unless* the person incurred a Break in Service for a Plan Year before the Plan Year of death, retirement, or disability, and has not yet completed 1000 Hours of Service during any Plan Year which ends after the Break in Service **or** during the one year period beginning on the first day the person is credited with one Hour of Service for the performance of duties for the Employer after the Break in Service.

(b) **Transfer.** All amounts in a person's Suspended Employer Contribution Account shall be transferred to his Employer Contribution Account on the **earlier** of—

(1) the date the person is credited with one Year of Service (*see* Article III) after the Break in Service; **or**

(2) the last day of the one year period beginning on the first day the person is credited with one Hour of Service for the performance of duties for the Employer after the Break in Service if he completes 1000 Hours of Service during such period.

§ 18-506 Multiple Employers.

For any Plan Year in which more than one employer is included within the definition of "Employer," the following rules shall apply:

(a) **Employer Contributions.** Employer contributions to be allocated to the account of a given Participant shall be made by his particular employer.

(b) Forfeitures & Suspense Account Allocations. For the purpose of allocating forfeitures and amounts in the Suspense Account, amounts derived from the contributions of a particular employer shall be allocated only to employees of that particular employer. Separate subaccounts shall be maintained in the Forfeiture and Suspense accounts for this purpose.

Article VI — Employee Contributions

§ 18-601 No Contributions.

No employee contributions shall be required or permitted under this Plan.

§ 18-602 Past Employee Contributions under the Provisions of the Defined Benefit Plan.

(a) Current Employees Who Have Elected Not to Receive an Annuity. All amounts contributed to this Plan as mandatory employee contributions under the Provisions of the Defined Benefit Plan by a Participant who is a Qualified Employee as of the Conversion Date and who has not elected (or deemed to have elected) to receive an annuity under § 18-202(d), *plus* all interest earned thereon under the Provisions of the Defined Benefit Plan through the Conversion Date, shall be allocated to and held in an Employee Contribution Account for the Participant.

(b) Other Participants and Former Participants. All amounts contributed to this Plan as mandatory employee contributions, and the interest earned thereon, under the Provisions of the Defined Benefit Plan for Participants and Former Participants not described in subsection (a) either—

- (1) are to be used to purchase annuities under § 18-202(a) or (b);
- (2) have been refunded; **or**

(3) have been absorbed into the Plan's obligation to make benefit payments under the Provisions of the Defined Benefit Plan for Participants whose benefits commenced before the Conversion Date.

Article VII — Maximum Additions

§ 18-701 General Definitions.

When used in this Article, the words and phrases defined in this Section shall have the following meaning, unless the context in which they are used clearly indicates a different meaning:

(a) **Compensation.** The term “Compensation” shall have the meaning provided in § 18-109, *with the following modifications*:

(1) all references to the “Employer” shall be deemed to be references to the “Employer and any Related Employer”; and

(2) § 18-109(b) (relating to elective deferrals) shall be deleted.

(b) **Limitation Year.** The term “Limitation Year” shall mean, for this Plan, those periods which are coextensive with the Plan Year after the Effective Date of this Plan, and those periods utilized as limitation years under the Provisions of the Defined Benefit Plan (but in no case extending beyond the Effective Date). Limitation Years for other plans shall be as elected for those plans.

§ 18-702 Definitions Relating to Defined Contribution Limitations.

When used in this Article, the words and phrases defined in this Section shall have the following meaning, unless the context in which they are used clearly indicates a different meaning:

(a) **Defined Contribution Plan Fraction.** The “Defined Contribution Plan Fraction” is a fraction—

(1) **Numerator.** The numerator of which is the sum of the Annual Additions made on behalf of a Participant for the current and all prior Limitation Years under all of the defined contributions plans (as defined in Code §§ 415(k), 414(i), and 414(k), including nondeductible employee contributions under defined benefit plans), welfare benefit funds (as defined in Code § 419(e)) and individual medical accounts (as defined in Code § 415(l)(2)) maintained by the Employer or any Related Employer at any time (whether or not terminated); **and**

(2) **Denominator.** The denominator of which is the sum of the Maximum Aggregate Amounts for the current Limitation Year and each prior Limitation Year for which the Participant completed 1000 Hours of Service (regardless of whether the Employer or any Related Employer maintained a defined contribution plan at the time).

(b) **Annual Additions.** The term “Annual Additions”, for any given Limitation Year, shall mean the sum of the following amounts which are allocated on behalf of a Participant for the given Limitation Year:

(1) all employer contributions under a defined contribution plan (as defined in Code § 415(k)), including elective deferrals under a Code § 401(k) cash or deferred arrangement;

(2) all employee contributions under a defined contribution plan (as defined in Code §§ 415(k), 414(i), and 414(k), including nondeductible employee contributions under defined benefit plans), *except* rollover contributions (as defined in Code §§ 402(a)(5), 403(a)(4), 403(b)(8), and 408(d)(3)) and employee contributions to a simplified employee pension which are excludable from gross income under Code § 408(k)(6);

(3) all forfeitures under a defined contribution plan (as defined in Code § 415(k));

(4) all withdrawals from maximum additions suspense accounts under a defined contribution plan (as defined in Code § 415(k));

(5) amounts allocated after March 31, 1984 to an individual medical account (as defined in Code § 415(l)(2)) which is part of a pension or annuity plan maintained by the Employer or any Related Employer; **and**

(6) amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after such date, which are attributable to post-retirement medical benefits allocated to the separate account of a key employee (as defined in Code § 419A(d)(3)) under a welfare benefit fund (as defined in Code § 419(e)) maintained by the Employer or any Related Employer.

(c) **Maximum Aggregate Amount.** The term “Maximum Aggregate Amount”, for any Limitation Year, shall mean the **lesser** of—

(1) 125% of the dollar limitation in effect for the Limitation Year under Code § 415(c)(1)(A), as adjusted under Code §§ 415(b)(1)(A) and 415(d) (\$30,000 for 1996; \$25,000 for years before Code § 415(c) was enacted); **or**

(2) 35% of the Participant’s Compensation for the Limitation Year.

(d) **Maximum Permissible Amount.**

(1) **In General.** The term “Maximum Permissible Amount”, for any Limitation Year, shall mean the **lesser** of—

(A) \$30,000 (or, if greater, one-fourth of the defined benefit dollar limitation set forth in Code § 415(b)(1)(A) as in effect for the Limitation Year); **or**

(B) 25% of the Participant’s Compensation for the Limitation Year (not including any amounts described in subsection (b)(5) and subsection (b)(6)) **plus** all amounts described in subsection (b)(5) and subsection (b)(6) for the Limitation Year.

(2) **Short Year.** If a short Limitation Year is created because of an amendment changing the Limitation Year to a different 12 consecutive month period, for purposes of the short Limitation Year, the number in paragraph (1)(A) shall be multiplied by the following fraction:

number of months in the short Limitation
Year (including fractional parts of a month)

(3) Family Aggregation. *Observation:* The family aggregation rules of § 18-109(d)(2) apply in determining the Compensation of certain Qualified Employees, and thus the 25% limitation of paragraph (1)(B) is applied to a person's compensation as reduced under § 18-109(d). However, there is no family aggregation with respect to the \$30,000 limitation of paragraph (1)(A). Therefore, for example, if in 1996 a Highly Compensated Employee earned \$750,000 and his spouse earned \$250,000, the Highly Compensated Employee's Compensation would be \$150,000, and his spouse's Compensation would be \$50,000; the Maximum Permissible Amount for the Highly Compensated Employee would be \$30,000, and the Maximum Permissible Amount for the spouse would be \$12,500.

§ 18-703 Definitions Relating to Defined Benefit Limitations.

When used in this Article, the words and phrases defined in this Section shall have the following meaning, unless the context in which they are used clearly indicates a different meaning:

(a) Defined Benefit Plan Fraction.

(1) In General. The "Defined Benefit Plan Fraction" is a fraction—

(A) Numerator. The numerator of which is the sum of the Participant's Projected Annual Benefits under all of the defined benefit plans (as defined in Code § 415(k)) maintained by the Employer or any Related Employer at any time (whether or not terminated); **and**

(B) Denominator. The denominator of which is the lesser of—

(I) 125% of the dollar limitation in effect for the Limitation Year under Code § 415(b)(1)(A), as adjusted under Code §§ 415(b) and 415(d) (for years beginning in 1995, the dollar limitation is \$120,000.00); **or**

(II) 140% of the Participant's average Compensation during his high 3 years of employment with the Employer or any Related Employer (within the meaning of Code § 415(b)(3) and the regulations thereunder), as adjusted under Code § 415(d). For purposes of this clause (II), the term "high 3 years" shall mean the period of three consecutive years during which the Participant was both an active participant in a defined benefit plan and had the greatest aggregate compensation from the Employer or any Related Employer. In addition, for these purposes the term "year" shall mean the 12-month period used by the Employer's defined benefit plans for purposes of computing "high 3 years" under Code § 415(b) and Treas. Regs. § 1.415-3(a)(3), *provided* that if no such period is designated under the defined benefit plans, or if different periods are designated under different defined benefit plans, then the 12-month period shall be the calendar year.

(2) Transition Rules. Notwithstanding paragraph (1), if the Participant was a Participant as of the first day of the first limitation year beginning after December 31, 1986, in one or more defined benefit plans maintained by the Employer or any Related Employer, which were in existence on May 6, 1986, the denominator under paragraph (1)(B) shall not be less than 125% of the sum of the Projected Annual Benefits under such plans which the Participant had accrued as of the close of the last limitation year beginning before January 1, 1987, disregarding any changes in the terms and conditions of the plan after May 5, 1986. The preceding sentence

applies only if defined benefit plans individually and in the aggregate satisfied the requirements of Code § 415 for all limitation years beginning before January 1, 1987.

(b) Projected Annual Benefit. The term “Projected Annual Benefit” shall mean the annual retirement benefit to which a Participant would be entitled under the terms of the plan at any given time, adjusted to the actuarial equivalent of a straight life annuity or qualified joint and survivor annuity under Section 1.415-3(c) of the Income Tax Regulations, *assuming that*—

(1) the Participant will continue employment until the normal retirement age under the plan (or current age, if later); **and**

(2) the Participant’s compensation for the current Limitation Year, and all other relevant factors used to determine benefits under the plan, will remain constant for all future Limitation Years.

§ 18-704 General Rule.

The amount of Annual Additions which would be allocated under this Plan on behalf of any Participant during any Limitation Year (whether of this Plan or any other plan of the Employer or any Related Employer) shall be reduced (under the procedures of § 18-707) to the extent necessary and possible to meet the limitations established in § 18-705 and § 18-706.

§ 18-705 Limitation for All Defined Contribution Plans.

The total amount of Annual Additions which may be allocated on behalf of any Participant during any Limitation Year (whether of this Plan or any other plan of the Employer or any Related Employer) under all of the defined contributions plans (as defined in Code §§ 415(k), 414(i), and 414(k)), welfare benefit funds (as defined in Code § 419(e)) and individual medical accounts (as defined in Code § 415(l)(2)) maintained by the Employer or any Related Employer shall not exceed the Maximum Permissible Amount.

§ 18-706 Overall Limitation for All Plans.

The sum of the Defined Benefit Plan Fraction and the Defined Contribution Plan Fraction for any Participant during any Limitation Year (whether of this Plan or any other plan of the Employer or any Related Employer) shall not exceed 1.0.

§ 18-707 Procedure for Reducing Contributions.

(a) Timing of Reductions. Reductions in allocations made on behalf of a Participant under this Article shall be made as soon after the end of a Limitation Year (whether it be a Limitation Year under this Plan or one under another plan of the Employer or any Related Employer) as is administratively feasible to determine the Participant’s actual Compensation for such Limitation Year (which amount is necessary to determine the limitations of § 18-705 and § 18-706).

(b) Additions Affected. For purposes of this Section, Annual Additions shall only be reduced to the extent that such reductions lower the Defined Contribution Plan Fraction. Accordingly, Annual Additions shall be reduced “in full” whenever further reductions will not affect the Defined Contribution Plan Fraction.

(c) Priority vs. Defined Benefit Plans. Annual Additions under this Plan shall be reduced in full before benefits are reduced under any defined benefit plans of the Employer or any Related Employer.

(d) Priority vs. Medical and Welfare Plans. Annual Additions under this Plan shall be reduced in full before Annual Additions are reduced under any welfare benefit funds (as defined in Code § 419(e)) and individual medical accounts (as defined in Code § 415(l)(2)) of the Employer or any Related Employer.

(e) Priority vs. Earlier Defined Contribution Plan Allocations. Annual Additions under this Plan which are allocated as of later dates shall be reduced in full before any earlier allocations under this or any other defined contribution plan of the Employer or any Related Employer are reduced.

(f) Priority vs. Contemporaneous Allocations Under All Defined Contribution Plans. Annual Additions under this Plan which are allocated on the same day as other Annual Additions under this Plan or under other defined contribution plans, shall be reduced according to the order of priority which follows (to the extent necessary). Where a full reduction is not necessary under any given category, the amount of Annual Additions to be reduced under this Plan shall be determined by the following product:

$$\begin{array}{r} \text{The total amount of} \\ \text{Annual Additions to be} \\ \text{reduced in that category.} \end{array} \quad \times \quad \begin{array}{l} \text{The amount of Annual} \\ \text{Additions allocated under} \\ \text{this Plan in that category.} \\ \text{The total amount of Annual} \\ \text{Additions allocated under all} \\ \text{defined contribution plans} \\ \text{in that category.} \end{array}$$

(1) Nondeductible Employee Contributions. First, nondeductible employee contributions under this Plan and other defined contribution plans of the Employer or any Related Employer shall be returned to the Participant and not allocated. (See subsection (h) for the treatment of any related matching contributions.)

(2) Elective Deferrals. Second, elective deferrals under any other plans of the Employer or any Related Employer shall be distributed to the Participant. This distribution shall not be subject to any of the provisions of Articles XII, XIII, or XIV, and shall not be considered in determining whether the Participant has satisfied the minimum distribution requirements under those Articles and Code § 401(a)(9). (See subsection (g) for the treatment of any related matching contributions.)

(3) Profit Sharing Employer Contributions. Third, allocations which would be attributable to nonelective employer contributions under profit sharing plans of the Employer or any Related Employer shall be reduced. These reductions shall be used to increase the amount

of additions to be allocated to Participants who have not reached their Code § 415 limit (as provided in this Article VII). After each such allocation, the provisions of this Article VII and similar Code § 415 provisions in other plans executed to that point shall be re-executed in accordance with the new allocations. Successive reductions and reallocations under this paragraph shall continue until all employer contributions are allocated to Participants consistent with the Code § 415 limitations or all eligible Participants have received the maximum amount permitted under this Article VII and similar Code § 415 provisions in other plans. In the later event, any remaining reductions shall be returned to the relevant employer; if they cannot be so returned, they shall be allocated to the suspense accounts of such profit sharing plans. All amounts allocated to Participants under this paragraph are considered employer contributions.

(4) Money Purchase Employer Contributions. Fourth, allocations which would be attributable to nonelective employer contributions under this and other money purchase pension plans of the Employer or any Related Employer shall be reduced and the Employer or Related Employer shall not be required to make contributions to such plans in such amounts. If through some mistake in computation or estimation, the Employer or any Related Employer does in fact contribute amounts which may not be allocated to a Participant's account because of the limitations of this Article VII and similar Code § 415 provisions of other plans, and such amounts cannot be returned to the Employer or Related Employer, such amounts shall be allocated to the suspense accounts under such money purchase pension plans of the Employer or Related Employer.

(5) Forfeitures. Finally, allocations which would be attributable to withdrawals from Forfeiture or Suspense Accounts of all defined contribution plans of the Employer or any Related Employer shall be reduced. The amount of such reductions shall be allocated to the Suspense Accounts under such plans.

(g) Matching Contributions. Allocations which would be attributable to employer matching contributions made with respect to employee contributions or elective deferrals under defined contribution plans of the Employer or any Related Employer that are returned or distributed to the Participant by virtue of this Article VII, shall not be made and the Employer or Related Employer shall not be required to make such contributions (since there are no underlying contributions to match).

§ 18-708 Conformance to Code Section 415.

The limitations provided by this Article are intended to comply with Code § 415 and the regulations promulgated thereunder. To the extent there is any discrepancy between this Article and Code § 415 and related regulations, or any ambiguity in the terms of this Article, the discrepancy or ambiguity (whether this Article is more or less stringent than Code § 415 and related regulations) shall be resolved in such a way as to give full effect to the provisions of Code § 415 and regulations promulgated thereunder.

Article VIII – Qualified Rollovers

§ 18-801 Rollovers.

No person may roll over any property to the Trust Fund which was received from other qualified plans (whether received directly or indirectly through an Individual Retirement Account, and whether as a “Direct Rollover” under Code § 401(a)(31) or a rollover via the Participant).

§ 18-802 Plan-to-Plan Transfers.

The Trustees may not accept transfers of assets from other qualified plans to this Plan.

Article IX – Vesting & Forfeitures

§ 18-901 Accounts Which Are 100% Vested.

The entire balance in any of the following accounts of a Participant (or Beneficiary) shall be 100% vested at all times:

- (a) Closed Employer Contribution Account.
- (b) Employee Contribution Account.

§ 18-902 Vesting of Other Accounts.

(a) **Employer Contribution Accounts.** Except as provided in subsections (c) through (f), the vested portion of the Employer Contribution Account of any Participant or Beneficiary shall be a percentage of the account balance determined in accordance with the following schedule (*see* § 18-202):

<u>Years of Service</u>	<u>Vested Portion</u>
less than 10	0%
10 or more	100%

(b) **Suspended Employer Contribution Accounts.** Except as provided in subsections (c) through (e), the Suspended Employer Contribution Accounts of any Participant or Beneficiary shall be 0% vested.

(c) **Normal Retirement Age.** The balance in all the Plan accounts created for any Participant who has attained the Normal Retirement Age (age 65) at a time when he is a Qualified Employee (or become a Qualified Employee after attaining the Normal Retirement Age) shall be 100% vested.

(d) **Death or Disability.** The balance in all the Plan accounts of any Participant or Beneficiary shall be 100% vested at all times after the Separation from Service of the Participant for whom the account was created if the Separation from Service occurred due to the death of the Participant or a condition which rendered the Participant Disabled.

(e) **Plan Termination.** The balance in all the Plan accounts of any Participant or Beneficiary shall become 100% vested upon the termination or complete discontinuance of Employer contributions under this Plan and Trust. In the event of a partial termination of the Plan, the accounts of those Participants (and Beneficiaries) included in that part of the Plan which has terminated shall become 100% vested.

(f) **Payments from a Partially Vested Account.** If any payments have been made out of any account of a person at a time when such account was not 100% vested, the vested portion of such account shall be:

(1) the amount which results when the otherwise applicable vesting percentage is applied to the sum of the account balance and the amount of payments which have been made from the account; **less**

(2) the amount of payments which have been made from the account.

§ 18-903 Forfeiture of Nonvested Employer Contributions.

(a) **Cash-Out of Plan Benefits.** In the case of any Participant who is not 100% vested in all of his Plan accounts (*see* § 18-902), the nonvested portion of the Participant's Plan accounts *shall be forfeited* —

(1) on any date, after the Participant Separates from Service, that all of the Participant's remaining vested Plan benefits are paid from the Plan; **or**

(2) on the date the Participant Separates from Service, if he has no vested balance in any account under the Plan.

(b) **Lengthy Break In Service.** With respect to any Plan account of any Participant (other than the Participant's Employee Contribution Account) for which there has not been a forfeiture under subsection (a), the portion of the account which is not vested *shall be forfeited* if and when the Participant incurs a Lengthy Break in Service (*see* § 18-303(b)). In the event of such a forfeiture, the portion of the Plan account which is vested shall be transferred to the Closed Employer Contribution Account.

(c) **Death.** The nonvested portion of the Plan accounts of any Participant who is not a Qualified Employee at the time of his death *shall be forfeited* as of the date of the Participant's death. The remainder of those accounts shall be transferred to the Participant's Closed Employer Contribution Account.

(d) **Withdrawal of Employee Contributions.** No forfeitures will occur solely as a result of an employee's withdrawal of employee contributions to the Plan.

§ 18-904 Application of Forfeitures.

All funds forfeited under § 18-903 shall be allocated to the Forfeiture Account. Amounts in the Forfeiture Account under this Plan shall be applied on the last day of each Plan Year under the provisions of Article V to reduce Employer contributions to the Plan for the given Plan Year.

§ 18-905 Repurchase Right In The Case of Reemployment Following a Forfeiture Due To a Cash-Out.

(a) **Cash-Out Distribution.** If a Participant who suffered a forfeiture under § 18-903(a)(1) (relating to forfeitures after a Separation from Service and distribution of all vested benefits) becomes a Qualified Employee again before he incurs a Lengthy Break in Service (*see* § 18-303(b)), and repays to the Plan the full amount of all distributed Plan benefits at a time when he is a Qualified Employee and before the first (1st) anniversary of the date the person became a Qualified Employee again, then the amount of the repayment shall be credited to the accounts from which they were derived. Further, the Employer shall contribute to each such account an amount equal to the amount which was forfeited from such account (without any adjustment for imputed interest or imputed Plan Income or loss). The contributions specified in this subsection (a) shall take place as of the date the person repays the amount of Plan benefits previously received.

(b) **Return of Formerly Non-Vested Participant.** If a Participant who suffered a forfeiture under § 18-903(a)(2) (relating to forfeitures of a Participant with no vested account balances after a Separation from Service) becomes a Qualified Employee again, before he incurs a Lengthy Break in Service (*see* § 18-303(b)), **then** the Employer shall contribute to the account(s) from which the forfeiture was made an amount equal to the amount which was forfeited from such account (without any adjustment for imputed interest or imputed Plan Income or loss). The contributions specified in this subsection (b) shall take place as of the date the person becomes a Qualified Employee again.

(c) **No Limitations.** The Employer contributions under this § 18-905 shall not be subject to any limitations provided in Article V (relating to Employer contributions) or Article VII (relating to Maximum Additions), and shall not be treated as Employer contributions for those purposes.

Article X — Loans & Withdrawals

§ 18-1001 Loans.

The Trustees shall not make any loans to Participants or Beneficiaries from the Trust Fund.

§ 18-1002 Withdrawals.

A Participant may not elect to withdraw any funds from any of his accounts under this Plan, including his Employee Contribution Account, prior to the time for distribution under Article XII.

Article XI — Beneficiaries

§ 18-1101 Designation of Beneficiaries.

Each Participant and Alternate Payee (if permitted by the Qualified Domestic Relations Order) may designate any person or persons (natural or legal) as his Beneficiary or Beneficiaries to whom his Plan benefits are to be paid if he dies before receipt of all such benefits. A Beneficiary may also designate his own Beneficiary, but his designation shall only take effect if—

(a) the Beneficiary's benefits have commenced in the form of a Ten Year Certain Annuity (see § 18-1201(e)); **or**

(b) no successor Beneficiaries selected by the Participant or Alternate Payee are able to receive the Plan benefits after the Participant's or Alternate Payee's death and, in the case of a Beneficiary of a Participant, the Participant's Eligible Spouse is not then alive.

Beneficiaries may be designated primarily, contingently, jointly, or successively.

§ 18-1102 Procedure.

Beneficiary designations shall be made on a form prescribed by the Administrator and will only be effective if filed with the Administrator during the Participant's, Alternate Payee's, or Beneficiary's lifetime.

§ 18-1103 Revocation.

Each effective beneficiary designation filed with the Administrator by a Participant, Alternate Payee, or Beneficiary will revoke all previously filed designations by such person. The revocation of a beneficiary designation shall not require the consent of any designated beneficiary.

§ 18-1104 Default Beneficiaries.

If a Participant (or Alternate Payee whose Beneficiary is entitled to receive Plan benefits) fails to designate a Beneficiary in the manner provided in § 18-1101 and § 18-1102, **or** if all the Beneficiaries designated by a deceased Participant or Alternate Payee die before him or before a complete distribution of his benefits (unless the last Beneficiary of the Participant/Alternate Payee who received any benefits under this Plan, has designated a successor Beneficiary who survives him), the benefits with respect to the Participant or Alternate Payee shall be paid to those of his survivor(s) who are highest in the following list:

- (a) his Eligible Spouse;
- (b) his surviving spouse;
- (c) his children, in equal parts;
- (d) his parents, in equal parts;
- (e) his estate.

Article XII — Commencement of Benefits

§ 18-1201 In General.

The Plan benefits of a Participant (or his Beneficiary) may commence after the Participant has Separated from Service. The Separation from Service may be for any reason, including normal retirement (age 65), early retirement (age 62), death, Disability, voluntary quit, or involuntary termination.

§ 18-1202 Commencement Date.

Except as otherwise provided in this Article XII—

(a) **Immediate Payment.** Benefits derived from the vested portion of all of the Participant's Plan accounts (as of the date of distribution) shall commence within ninety (90) days after the Participant Separates from Service.

(b) **Amounts Allocated After Commencement of Benefits.** All benefits derived from amounts credited to a Participant's account after his benefits commence under subsection (a), shall commence within ninety (90) days after the end of the Plan Year for which they were contributed (or, if later, within thirty (30) days after they were contributed to the Plan).

§ 18-1203 Commencement of Benefits to a Participant Under Age 65.

(a) **In General.** Notwithstanding anything to the contrary contained in this Plan, if—

(1) any Plan benefits would commence under § 18-1202 during the Participant's lifetime but before the Participant attains age 65, **and**

(2) the vested portion of all the Participant's accounts in the Plan is greater than \$3,500.00 (or was greater than \$3,500.00 at the time of any prior distribution),

then the benefits shall only commence at the time set forth in § 18-1202 if the Participant's consent is first obtained in accordance with subsection (c).

(b) **Commencement.** If any consents required under this Section are not obtained for a distribution in accordance with § 18-1202 during the Participant's lifetime, benefits derived from the vested portion of all of the Participant's Plan accounts (as of the date of distribution) shall commence within 90 days after the **earliest** of—

(1) the date the Participant elects to receive Plan benefits (with proper consents under this Section),

(2) the date the Participant attains age 65, **or**

(3) the date the Participant dies,

but in no case earlier than the commencement date specified in § 18-1202.

(c) **Required Consent.** To be valid under this Section, a Participant's consent to receive benefits prior to age 65 must:

(1) be filed with the Administrator during the 90 day period ending on the Annuity Starting Date (*see* § 18-1301);

(2) be in writing on forms provided by the Administrator;

(3) contain an acknowledgment that the Participant has received the notice required under subsection (d); **and**

(4) be signed by the Participant.

(d) **Notice by Administrator.** Whenever benefits which would otherwise commence under this Plan cannot commence without the filing of a consent described in subsections (a) and (c), the Administrator shall provide the affected Participant with the following information, in writing:

(1) the Participant's right to defer the benefits until after the Participant attains age 65; and

(2) a general description of the material features of the optional forms of benefit available under the Plan and an explanation of their relative values.

§ 18-1204 Reemployment of Participant.

Notwithstanding anything to the contrary contained in this Article XII, no benefits shall commence to any Participant under § 18-1202, or § 18-1203(b) if the Participant is re-employed by the Employer or any Related Employer by the time the benefits would otherwise commence. In that case, such benefits shall only commence after the next event under this Article XII which permits or requires a distribution of benefits.

§ 18-1205 Production of Information.

Notwithstanding anything to the contrary contained in this Article XII, no benefits shall commence under this Plan to any recipient until an administratively reasonable period of time after the recipient shall file with or make available to the Plan Administrator such information as the Plan Administrator may require to determine that the recipient is entitled to receive such benefits under this Plan at that time, or to administer the payment of such benefits.

Article XIII — Form of Benefits

§ 18-1301 Definitions.

When used in this Article, the words and phrases defined in this Section shall have the following meaning, unless the context in which they are used clearly indicates a different meaning:

(a) Annuity Starting Date.

(1) Annuity. In the case of a distribution in the form of a commercial annuity, the term "Annuity Starting Date" shall mean the first day of the first period for which an amount is paid under the annuity.

(2) Lump Sum. In the case of a Lump Sum distribution, the term "Annuity Starting Date" shall mean the date the Lump Sum is distributed.

(b) Joint & Survivor Annuity. The term "Joint and Survivor Annuity" shall mean a non-transferable single-premium immediate commercial annuity contract which provides a level payment monthly annuity for the life of the Participant, with a survivor annuity for the life of the

Participant's Eligible Spouse which provides monthly payments in an amount equal to 50%, 66.67%, or 100% (as elected by the Participant) of the amount of each payment during their joint lives. All annuities purchased under this Plan shall be based on unisex mortality tables.

(c) **Life Annuity.** The term "Life Annuity" shall mean a nontransferable single-premium immediate commercial annuity contract which provides monthly level payments for the life of the annuitant. All annuities purchased under this Plan shall be based on unisex mortality tables.

(d) **Lump Sum.** The term "Lump Sum" shall mean the distribution of a given amount of benefits in a single cash payment.

(e) **Ten Year Certain Annuity.** The term "Ten Year Certain Annuity" shall mean a nontransferable single-premium immediate commercial annuity contract which provides level monthly payments during a period equal to the *greater* of the life of the annuitant *or* 120 months. Any amounts payable after the death of the Participant shall be paid to the beneficiary(ies) selected by the Participant or the default beneficiary(ies) provided under the annuity. All annuities purchased under this Plan shall be based on unisex mortality tables.

§ 18-1302 Form of Distribution.

(a) **Living Participant.** Except as provided in § 18-1405 (relating to Qualified Domestic Relations Orders), **if** the Participant is living at the time benefits commence with respect to his Plan accounts, **then** the benefits which commence shall be used to purchase a Life Annuity for the life of the Participant and the Participant's benefits shall be distributed in that form, **except that** if the Participant files a timely election under § 18-1303 to receive the benefits in an optional form under § 18-1304, **then** the Participant's benefits shall be paid in the optional form selected.

(b) **Deceased Participant.** Except as provided in § 18-1405 (relating to Qualified Domestic Relations Orders), **if** the Participant is not living at the time benefits commence with respect to his Plan accounts, **and** —

(1) **Beneficiary is Eligible Spouse.** The Participant's Beneficiary is his Eligible Spouse, **then** the benefits which commence shall be used to purchase a Life Annuity for the life of the Eligible Spouse and be distributed in that form, **except that** if the Participant's Eligible Spouse files a timely election under § 18-1303 to receive the benefits in a Lump Sum, **then** the Participant's benefits shall be paid to the Eligible Spouse in a Lump Sum.

(2) **Beneficiary is not Eligible Spouse.** The Participant's Beneficiary is not his Eligible Spouse (or there is no Eligible Spouse), then the benefits which commence shall be distributed to the Beneficiary in a Lump Sum.

(c) **Small Distributions.** Notwithstanding anything to the contrary in this Section, all Plan benefits with respect to a person whose total vested account balance is less than \$3,500.00 at the time of the given distribution, **and** whose total vested account balance was less than \$3,500.00 at the time of all previous distributions (if there were any) shall be distributed in the form of a Lump Sum.

§ 18-1303 Election by Participant to Receive Benefits in an Optional Form.

(a) **In General.** To be valid under this Section, a Participant's election to receive benefits in an optional form must:

- (1) be filed with the Administrator during the 90 day period ending on the Annuity Starting Date;
- (2) be in writing on forms provided by the Administrator;
- (3) contain an acknowledgment that the Participant has received the notice required under subsection (b); **and**
- (4) be signed by the Participant.

(b) **Notice by Administrator.** Whenever benefits may commence under this Plan, the Administrator shall provide the affected Participant with a general description of the material features of the optional forms of benefit available under the Plan and an explanation of their relative values.

§ 18-1304 Optional Forms of Benefits.

(a) **In General.** The optional forms of benefits specified by this Section shall be—

- (1) **Lump Sum.** One immediate Lump Sum payment from the Trust Fund.
- (2) **Joint and Survivor Annuity.** The purchase of and delivery to the Participant by the Trustees of a 50% Joint and Survivor Annuity, a 66.67% Joint and Survivor Annuity, or a 100% Joint and Survivor Annuity.
- (3) **Ten Year Certain Annuity.** The purchase of and delivery to the Participant by the Trustees of a Ten Year Certain Annuity.

(b) **Limitations.** Notwithstanding anything in subsection (a) to the contrary, any form of benefit which is selected under this Section, and any payments to be made under a commercial annuity selected under this Section, must satisfy the requirements of § 18-1305 and § 18-1306.

§ 18-1305 Minimum Distribution Requirements—In General.

The following minimum distribution requirements, as construed in accordance with the provisions of § 18-1306, shall apply to any benefits received under an optional form permitted by § 18-1304, including any payments to be made under a commercial annuity:

(a) **Benefits to a Living Participant.** If a given group of benefits commence to a living Participant, the benefit payments in that group of benefits must be distributed over a period not extending beyond the life or life expectancy of the Participant or the lives or joint life and last survivor life expectancy of the Participant and a designated Beneficiary, **and** the amount required to be distributed for each calendar year beginning with the calendar year in which the Participant attains age 70 1/2 (or, if later, Separates from Service) shall be no less than—

(1) the remaining amount of the Participant's benefits under that group of benefits, **divided by**

(2) (A) if benefits are distributed over a period not extending beyond the life expectancy of the Participant: the life expectancy of the Participant;

(B) if subparagraph (A) does not apply, and the designated Beneficiary is the Participant's spouse: the joint and last survivor life expectancy of the Participant and the designated Beneficiary;

(C) if subparagraph (A) does not apply, and the designated Beneficiary is not the Participant's spouse: the **lesser** of—

(I) the joint and last survivor life expectancy of the Participant and the designated Beneficiary, **or**

(II) the applicable divisor determined from the table set forth in Treas. Regs. § 1.401(a)(9)-2, Q&A 4(a)(2).

(b) Benefits to a Beneficiary which Originally Commenced to a Living Participant.

If any group of benefits which commenced to a living Participant are not completely distributed during the Participant's lifetime—

(1) Death After Code § 401(a)(9) Required Beginning Date or Under Annuity.

If the Participant died on or after the April 1 following the calendar year in which he attained age 70 1/2 (or, if later, that he Separated from Service), **or** if the distribution to the Participant was made in the form of a commercial annuity which satisfies the requirements of Treas. Regs. § 1.401(a)(9)-1 [F-3] and [F-4], **then** any distributions made to Beneficiaries of those benefits must be made at least as rapidly as were distributions to the Participant during his lifetime. However, subparagraph (a)(2)(C)(II) shall not apply after the death of the Participant.

(2) Death Before Code § 401(a)(9) Required Beginning Date In A Form Other Than An Annuity. If paragraph (1) does not apply, any distributions made to Beneficiaries of those benefits must be made in accordance with the rules stated in subsections (c) and (d) below, as if those remaining benefits had commenced after the death of the Participant.

(c) Benefits which Commence to a Beneficiary. If the Participant dies before a given group of benefits commence, the benefit payments in that group of benefits must meet **one** of the following two criteria (*except* as provided in subsection (d)):

(1) Five Year Period. The entire amount of the benefits in such group of benefits must be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(2) Over Life Expectancy of Beneficiary.

(A) Spousal Beneficiary. If the designated Beneficiary is the surviving spouse of the Participant, **and** no other individual is designated as a primary beneficiary in addition to the surviving spouse as of the date of the Participant's death—

(I) The benefits must be distributed to the spouse-Beneficiary (and any contingent Beneficiaries) over the course of the spouse's life or a period not extending beyond the spouse's life expectancy;

- (II) the distributions must begin not later than the **later** of—
 - (i) December 31 of the calendar year immediately following the calendar year in which the Participant died, **or**
 - (ii) December 31 of the calendar year in which the Participant would have attained age 70 1/2;
- (III) the method of distribution must be *elected* (irrevocably) by the Participant or by his surviving spouse not later than the **earlier** of—
 - (i) December 31 of the calendar year which contains the fifth anniversary of the death of the Participant, **or**
 - (ii) the date specified in clause (II); **and**
- (IV) the amount required to be distributed for each calendar year beginning with distributions for the **later** of—
 - (i) the calendar year immediately following the calendar year in which the Participant died, **or**
 - (ii) the calendar year in which the Participant would have attained age 70 1/2,

shall be no less than—

 - (iii) the remaining amount of the Participant's benefits under that group of benefits, **divided by**
 - (iv) the life expectancy of the spouse-Beneficiary.

(B) Nonspouse Beneficiary. If subparagraph (A) does *not* apply, but there is a designated Beneficiary—

- (I) The benefits must be distributed to all Beneficiaries (primary or contingent) over the course of the designated Beneficiary's life or a period not extending beyond his life expectancy;
- (II) the distributions must begin not later than December 31 of the calendar year immediately following the calendar year in which the Participant died;
- (III) the method of distribution must be *elected* (irrevocably) by the Participant or by his Beneficiary not later than the date specified in clause (II); **and**
- (IV) the amount required to be distributed for each calendar year beginning with distributions for the calendar year immediately following the calendar year in which the Participant died shall be no less than—
 - (i) the remaining amount of the Participant's benefits under that group of benefits, **divided by**
 - (ii) the life expectancy of the designated Beneficiary.

(d) Benefits Which Commence to Another Beneficiary Because Surviving Spouse Died. If the Participant's surviving spouse is the Participant's designated Beneficiary (and only Beneficiary, other than beneficiaries contingent upon the death of the spouse) and such spouse dies after the Participant but before the date specified in subparagraph (c)(2)(A)(II) and before the date benefits actually commence (or, in the case of the distribution of a commercial annuity which satisfies the requirements of Treas. Regs. § 1.401(a)(9)-1 [F-3] and [F-4], before the date

payments begin under the annuity), the remaining benefit payments in that group of benefits must meet **one** of the following two criteria:

(1) **Five Year Period.** The entire amount of the remaining benefits in such group of benefits must be distributed by December 31 of the calendar year containing the fifth anniversary of the death of the surviving spouse.

(2) **Over Life Expectancy of Beneficiary.** If there is a new designated Beneficiary—

(A) The remaining benefits must be distributed to all remaining Beneficiaries over the course of the new designated Beneficiary's life or a period not extending beyond his life expectancy;

(B) The distributions must begin not later than December 31 of the calendar year immediately following the calendar year in which the Participant's surviving spouse died;

(C) The method of distribution must be *elected* (irrevocably) by the Participant or by his Beneficiary not later than the date specified in subparagraph (B); **and**

(D) The amount required to be distributed for each calendar year beginning with distributions for the calendar year immediately following the calendar year in which the Participant's spouse died shall be no less than—

(I) the remaining amount of the Participant's benefits under that group of benefits, **divided by**

(II) the life expectancy of the designated Beneficiary.

§ 18-1306 Minimum Distribution Requirements—Special Rules.

(a) **Treatment of Payments to Children.** For purposes of § 18-1305, any amount paid to a child of the Participant shall be treated as if it had been paid to the surviving spouse of the Participant if such amount will become payable to the surviving spouse when such child reaches majority.

(b) **Designated Beneficiary.** For purposes of § 18-1305, the existence and identity of “designated” Beneficiaries, and of “the” designated Beneficiary for purposes of measuring life expectancies, shall be determined in accordance with Treas. Regs. § 1.401(a)(9)-1 [part D] and [E-5] (which contain special rules for multiple beneficiaries, substitute beneficiaries, class beneficiaries, trust beneficiaries, the date for determining designated beneficiaries, etc.).

(c) **Spouse.** For purposes of § 18-1305 and this Section, the existence and identity of a Participant's “spouse”, shall be determined in accordance with Treas. Regs. § 1.401(a)(9)-1 [H-3A] and [H-4] (which contain special rules for determining the date as of which the spouse is identified and the effect of Qualified Domestic Relations Orders, etc.).

(d) Life Expectancies.

(1) **In General.** For purposes of § 18-1305, life expectancies and joint and last survivor expectancies are computed by the use of the return multiples contained in Treas. Regs. § 1.72-9, Tables V and VI.

(2) Participant and Spouse. The life expectancy of a Participant and his spouse shall be *recalculated* in each calendar year, using the attained age of each individual as of the individual's birthday during the calendar year. Upon the death of the Participant or his spouse, the recalculated life expectancy of the Participant or spouse will be reduced to zero in the calendar year following the calendar year of death. Joint and last survivor life expectancies in cases where one life expectancy is being recalculated and the other is not are illustrated in Treas. Regs. § 1.401(a)(9)-1 [E-8].

(3) Non-spouse Beneficiary. The life expectancy of a non-spouse Beneficiary may not be recalculated. The life expectancy of a non-spouse Beneficiary in any given calendar year is equal to—

(A) the life expectancy of such Beneficiary as of his birthday during:

(I) in the case of a commercial annuity which meets the requirements of Treas. Regs. § 1.401(a)(9)-1 [F-3] and [F-4]: the calendar year in which payments commence under the annuity;

(II) except as provided in subclause (I), for purposes of § 18-1305(a): the calendar year in which the Participant attains age 70 1/2;

(III) except as provided in subclause (I), for purposes of § 18-1305(c)(2)(B): the calendar year following the calendar year in which the Participant died;

(IV) except as provided in subclause (I), for purposes of § 18-1305(d)(2): the calendar year following the calendar year in which the Participant's surviving spouse died;

minus

(B) the number of years between the first day of the given calendar year and the first day of the calendar year specified in subparagraph (A).

(e) Time of Distributions. The minimum distribution required under § 18-1305 for any given calendar year must be made on or before December 31 of such calendar year, **except** that the minimum distribution required under § 18-1305(a) for the calendar year in which the Participant attains age 70 1/2 (or, if later, Separates from Service) must be made on or before April 1 of the following calendar year. Any amount distributed under this exception between January 1 and April 1 of the following calendar year shall not be treated as a distribution which satisfies the minimum distribution required under § 18-1305 for the following calendar year.

(f) Remaining Amount of Benefits. For purposes of § 18-1305, the “remaining amount of a Participant's benefits” as of any given calendar year is the balance of the Participant's benefits within a given group of benefits valued as of the last valuation date under § 18-402 in the calendar year immediately preceding the given calendar year **less** all distributions of such benefits since that time.

(g) Annuities. If a commercial annuity contract is purchased to pay benefits from this Plan, only the payments under the annuity contract, and not the distribution of the contract, will be considered in determining whether the distribution satisfies the minimum distribution rules of § 18-1305 and this Section. An annuity contract must also meet the applicable requirements of Treas. Regs. § 1.401(a)(9)-1 [F-1(e)], [F-3], [F-3A], and [F-4], and § 1.401(a)(9)-2 [Q&A 4(b), 5, 6, and 7]. The provisions of those regulations expressly supersede §§ 18-1305(a)(1), 18-1305(a)(2), 18-1305(c)(2)(A)(IV), 18-1305(c)(2)(B)(IV), 18-1305(d)(2)(D) (all relating to the

minimum amount to be distributed in each year), and § 18-1306(d)(2) (relating to recalculation of life expectancies) in the case of annuity contracts.

(h) Compliance with Regulations. This Section and § 18-1305 shall be interpreted in accordance with the more detailed provisions of Treas. Regs. §§ 1.401(a)(9)-1 and -2, and are intended to comply with those regulations. To the extent that this Section and § 18-1305 are in conflict with such regulations, this Section and § 18-1305 shall be deemed modified so as to comply with such regulations.

§ 18-1307 Direct Rollovers of Distributions.

(a) In General. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Article, a Distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

(b) Definitions. When used in this Section, the words and phrases defined in this subsection shall have the following meaning:

(1) Direct Rollover. A "Direct Rollover" is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

(2) Distributee. A "Distributee" includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the Alternate Payee under a Qualified Domestic Relations Order, as defined in Code § 414(q), are "Distributee's" with regard to the interest of the spouse or former spouse.

(3) Eligible Rollover Distribution. An "Eligible Rollover Distribution" is any distribution of all or any portion of the balance to the credit of the Distributee, *except* that an Eligible Rollover Distribution does *not* include:

(A) 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 Distributee and the Distributee's designated beneficiary, or for a specified period of ten (10) years or more;

(B) any distribution to the extent such distribution is required under Code § 401(a)(9); and

(C) the portion of any distribution that is not includible in gross income for federal income tax purposes (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).

(4) Eligible Retirement Plan.

(A) In General. Except as provided in subparagraph (B), an "Eligible Retirement Plan" is—

- (I)** an individual retirement account described in Code § 408(a);
- (II)** an individual retirement annuity described in Code § 408(b);

(III) an annuity plan described in Code § 403(a); or
(IV) a qualified trust described in Code § 401(a) which is a defined contribution plan,
that accepts the Distributee's Eligible Rollover Distribution.

(B) **Distributions to Surviving Spouses.** In the case of an Eligible Rollover Distribution to a surviving spouse, an "Eligible Retirement Plan" is—

(I) an individual retirement account described in Code § 408(a); or
(II) an individual retirement annuity described in Code § 408(b),
that accepts the Distributee's Eligible Rollover Distribution.

Article XIV — Benefits: Miscellaneous Provisions

§ 18-1401 Provision of Benefits.

The Administrator shall direct the Trustees to provide benefit payments to the appropriate recipients from time to time in accordance with the provisions of this Plan. The **entire** vested portion of all accounts created with respect to a Participant shall be used to provide benefits for the Participant or his Beneficiaries or Alternate Payees under this Plan.

§ 18-1402 Determination of Marital Status by the Administrator.

Before receiving any benefits under this Plan in the form of a Joint and Survivor Annuity or a Life Annuity for the Participant's surviving spouse, the recipient must establish to the satisfaction of the Administrator the current marital status of the Participant (or the marital status of a deceased Participant at the time of his death). A Participant will be deemed not married at any given time if no spouse can be located or if other circumstances described in regulations issued by the U.S. Secretary of the Treasury exist.

§ 18-1403 Notice Requirements.

The Administrator shall provide each person receiving benefits under this Plan with the notice required under Section 402(f) of the Code (regarding federal income tax treatment of Plan benefits and rollover rights). To the extent possible, the notice shall be based on statements supplied by the U.S. Secretary of the Treasury.

§ 18-1404 Spendthrift Provisions.

(a) **General Rule.** Except as provided in subsection (b), benefits payable under this Plan (whether made directly from the Plan or as payments under annuity contracts purchased by the Plan and transferred to the recipient) shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, change, garnishment, execution, or levy of any kind, either voluntary or involuntary, including any such liability which is for alimony or other payments for support of a spouse, former spouse, or any other relative or dependent of the Participant before actually being received by the Participant, Former Participant, Beneficiary, or Alternate Payee under the terms of the Plan, **except** with respect to federal income tax withholding. Any attempt to anticipate, alienate, transfer, assign, pledge, encumber, change, or otherwise dispose of any right to benefits payable under this Plan shall be void. The Trustees and the Employer shall not be liable for or subject to, in any manner, the debts, contracts, liabilities, engagements or torts of any person entitled to benefits under this Plan.

(b) **Qualified Domestic Relations Orders.** Notwithstanding the provisions of subsection (a), the Administrator may direct the Trustees to comply with a Qualified Domestic Relations Order (as described in § 18-1405).

§ 18-1405 Qualified Domestic Relations Orders.

(a) **Definition.** A Qualified Domestic Relations Order is a judgment, decree, or order (including approval of a property settlement agreement) made pursuant to a state domestic relations law (including community property law) that relates to the provision of child support, alimony payments or marital property rights to a spouse, former spouse, child, or other dependent of a Participant (hereinafter referred to as an “Alternate Payee”), **which** was entered before January 1, 1985, **or** which—

(1) **Rights Recognized.** Creates or recognizes a right on the part of the Alternate Payee to receive all or a portion of the benefits payable on behalf of a Participant under this Plan;

(2) **Required Provisions.** Specifies—

(A) the name and last known mailing address (if any) of the Participant and each Alternate Payee covered by the order;

(B) the amount or percentage of the Participant's Plan benefits to be paid to any Alternate Payee, or the manner in which such amount or percentage is to be determined; **and**

(C) the number of payments or the period to which the order applies and each Plan to which the order relates;

(3) **Prohibited Provisions.** Does not require the Plan to do any of the following:

(A) provide any type or form of benefit or any option not otherwise provided under the Plan;

(B) pay any benefit in the form of a Joint and Survivor Annuity with respect to the Alternate Payee and his or her subsequent spouse;

(C) pay any benefits to an Alternate Payee before the **earlier** of—

Plan, or

- (I) the date on which the Participant is entitled to a distribution under the

- (II) the later of—

- (i) the date the Participant attains age 50, or

- (ii) the earliest date on which the Participant could begin receiving benefits under the Plan if the Participant incurred a Separation of Service with the Employer;

- (D) provide increased benefits; or

- (E) pay benefits to an Alternate Payee that are required to be paid to another Alternate Payee under a prior Qualified Domestic Relations Order; and

(4) **Permitted Provision.** May or may not provide that an Alternate Payee who had been married to the Participant for at least one year will be treated as an Eligible Spouse with respect to the portion of the Participant's benefit in which such Alternate Payee has an interest.

(b) **Procedure.**

(1) **Notification.** Upon receipt of any judgment, decree, or order (including approval of a property settlement agreement) relating to the provision of payment by the Plan to an Alternate Payee pursuant to a state domestic relations law, the Administrator shall promptly notify the affected Participant and any Alternate Payee of:

- (A) the receipt of such judgment, decree, or order; and

- (B) the Administrator's procedure for determining whether or not the judgment, decree, or order is a Qualified Domestic Relations Order.

(2) **Establishment of Procedure.** The Administrator shall establish a procedure to determine the status of a judgment, decree, or order as a Qualified Domestic Relations Order and to administer Plan distributions in accordance with them. Such procedure shall—

- (A) be in writing;

- (B) permit an Alternate Payee to designate a representative for receipt of communications from the Administrator;

- (C) include a provision specifying the notification requirements set forth in paragraph (1);

- (D) include a provision describing the Alternate Payee Accounts provided in subsection (c); and

- (E) include such other provisions as may be required by regulations promulgated by the Secretary of the Treasury.

(c) **Alternate Payee Accounts.**

(1) **Creation.** During any period in which the Administrator or a court (or other tribunal) of competent jurisdiction is determining whether a judgment, decree, or order is a Qualified Domestic Relations Order, the Administrator shall create separate accounts under this Plan ("**Alternate Payee accounts**") and shall credit such accounts with the amounts, if any, which would have been payable to each Alternate Payee during such period (as they would have become due) if the judgment, decree, or order had already been determined to be a Qualified Domestic Relations Order. The amounts credited to the Alternate Payee accounts shall be debited

from the accounts of the Participant potentially subject to the putative Qualified Domestic Relations Order. The Alternate Payee accounts need not be segregated from the general assets of the Trust Fund; they only must be accounted for separately.

(2) Disposition.

(A) To Alternate Payee. If a judgment, decree, or order is determined to be a Qualified Domestic Relations Order within 18 months after the date on which the first payment would be required to be made under the judgment, decree, or order, the Administrator shall direct the Trustees to pay the amounts in Alternate Payee accounts created with respect to such judgment, decree, or order to the Alternate Payees.

(B) Return to Participant's Accounts. All amounts in Alternate Payee accounts created with respect to such judgment, decree, or order shall be returned to the accounts with respect to the Participant from which they were derived upon the **earliest** of the following events:

(I) the date 18 months after the date on which the first payment would be required to be made under the judgment, decree, or order;

(II) the conclusive determination that such judgment, decree, or order is **not** a Qualified Domestic Relations Order; **or**

(III) the termination, partial termination, or complete discontinuance of Employer contributions to the Plan and Trust.

Such returned amounts shall be paid at such time and in such manner as is otherwise provided in this Plan (*except* that any amounts already due for distribution shall be paid to the proper recipient immediately).

(d) Compliance with Qualified Domestic Relations Order. If a judgment, decree, or order is conclusively determined to be to be a Qualified Domestic Relations Order, the Administrator shall direct the Trustees to provide benefits under the Plan in accordance with such Qualified Domestic Relations Order.

§ 18-1406 Facility of Payment.

Whenever the Administrator determines that a person entitled to receive any payment of a benefit or installment is under a legal disability or is incapacitated in any way so as to be unable to manage his financial affairs, the Administrator may direct the Trustees to make payments to such person, to his legal representative, to a relative, or to a friend of such person for his benefit. Any payment of a benefit or installment in accordance with the provisions of this Section shall be a complete discharge from any liability for the making of such payment under the provisions of the Plan.

§ 18-1407 Unclaimed Distribution.

(a) Segregation. If, after diligent inquiry, the Administrator is unable to locate a person for the purpose of distribution of benefits under this Plan by the end of the Plan Year following the Plan Year in which the distribution was to have been made, the Administrator shall direct the Trustees to segregate the person's unclaimed Plan benefits in a separate interest bearing account

under the Plan. Such separate account shall be entitled to all income it earns and shall bear all expenses it incurs.

(b) Payment. If a person entitled to benefits segregated in an account under subsection (a) files a claim for benefits under this Plan and the Administrator approves such claim, the Administrator shall direct the Trustees to pay the segregated amounts over to the claimant.

(c) Escheat. Amounts which remain unclaimed in an account under subsection (a) upon the termination and liquidation of this Plan and Trust or, if earlier, at the time when such property shall escheat under applicable state law (or be delivered to the state under applicable abandoned and unclaimed property law), shall be distributed to the state with jurisdiction over the amounts. In the event of a distribution under this subsection, the Plan and Trust shall have no further responsibility for such amounts.

Article XV — Claims Procedure

§ 18-1501 Filing a Claim.

A Participant, Beneficiary, or Alternate Payee shall make a claim for benefits under this Plan by filing a written request with the Administrator on a form supplied by the Administrator.

§ 18-1502 Notice of Denial.

If the Administrator denies a request for benefits under § 18-1501 in whole or in part, it shall notify the claimant of the same in writing within 60 days of the date the request was filed with the Administrator. Any notice of denial shall contain—

- (a) the reason for the denial;
- (b) specific references to the Plan provisions on which the denial is based;
- (c) a description of any additional information needed to perfect the claim and an explanation of why such information is necessary; **and**
- (d) an explanation of the Plan's claim procedure, including the opportunity for review under § 18-1503.

§ 18-1503 Review of Denial.

(a) Petition. Within 60 days of the receipt of a notice of denial under § 18-1502, a claimant may petition the Administrator in writing for a review of the denial.

(b) **Rights.** With respect to any review under this Section, the claimant shall have the right—

- (1) to a hearing;
- (2) to representation;
- (3) to review pertinent documents;
- (4) to submit comments in writing within 60 days of the receipt of the notice of denial under § 18-1502; and
- (5) to all rights afforded under subsection (d).

(c) **Decision.** The Administrator shall issue a written decision at the conclusion of a review under this Section within 60 days following its receipt of a petition for such review under subsection (a). Such decision shall give specific reasons for the decision and provide specific references to the plan provisions on which it is based.

(d) **Compliance with Local Agency Law.** All reviews under this § 18-1503 shall comply with the provisions of the Local Agency Law, 2 PA. CONS. STAT. § 551 *et seq.*

Article XVI — Trust & Investments

§ 18-1601 Establishment & Acceptance of Trust.

The Trustees shall receive all property which constituted the trust fund under the Provisions of the Defined Benefit Plan, and any contributions paid to them under this Plan in cash or other property approved by the Administrator for acceptance by the Trustees. All property so received, together with income on such property, shall be held, managed, and administered in trust pursuant to the terms of this Plan agreement, and shall constitute the Trust Fund under this Plan. The Trustees shall be responsible only for such sums as shall actually be received by them as Trustees. They shall have no duty to collect any sums from the Employer or the Participants, and shall have no duties and responsibilities other than those set forth in this Plan and Trust or as imposed by applicable law. The Trustees may segregate invested assets. However, notwithstanding any other provision of this Plan, the Trustees may only earmark specific investments to the accounts of specific persons if the persons consent or if the investments are purchased ratably.

§ 18-1602 Trustees.

(a) **Qualification.** A Trustee under this Plan may be any individual or corporation not prohibited from serving as a Trustee under § 18-1801.

(b) Initial Trustees. The initial Trustees shall be the members of the Borough of Alburdis Pension Committee as of the Conversion Date, *provided* that no person shall be a Trustee unless and until he/she signs a document accepting the Trust and agreeing to perform the duties of a Trustee under this Plan and Trust.

(c) Joint Trustees. If at any time there is more than one (1) Trustee, the decision of the majority of the Trustees shall determine the actions of the Trustees. Notwithstanding the foregoing, the Administrator may allocate responsibilities among the Trustees from time to time by written notice to the Trustees. In such case, a Trustee (the “**first Trustee**”) shall not be liable, either individually or as a Trustee, for any breaches of duty or losses to the Plan and Trust arising out of the acts or omissions of a co-Trustee in connection with areas of responsibility allocated to the co-Trustee to the exclusion of the first Trustee **unless**—

(1) the first Trustee participates knowingly in, or knowingly undertakes to conceal, an act or omission of the co-Trustee, including knowing such act or omission is a breach of duty;

(2) by the first Trustee’s failure to comply with the standards set forth in § 18-1803 with respect to his own areas of responsibility, the first Trustee enables the co-Trustee to commit a breach of duty; **or**

(3) the first Trustee has knowledge of a breach of duty by the co-Trustee and fails to make reasonable efforts under the circumstances to remedy the breach.

(d) Resignation. Any Trustee may resign at any time upon 15 days notice in writing to the Borough Council of the Sponsor and the Administrator.

(e) Removal. The Borough Council of the Sponsor may remove one or more of the Trustees at any time upon 15 days notice in writing to the Trustees and the Administrator. In addition, unless otherwise provided by Ordinance or Resolution of Borough Council, a Trustee shall automatically be removed from office upon his resignation or removal from the Borough of Alburdis Pension Committee or upon the expiration of his term of office on the Borough of Alburdis Pension Committee and the appointment of a successor.

(f) Successor & Additional Trustees. Upon the removal, resignation, or death of a Trustee, the Borough Council of the Sponsor may appoint a successor Trustee *provided* that the Board must act to insure that there will be at least one Trustee. In addition, at any time the Borough Council of the Sponsor may appoint one or more additional Trustees. All Trustees appointed under this subsection shall have the same powers and duties as those conferred upon the initial Trustees under this Plan and Trust. Unless otherwise provided by Ordinance or Resolution of Borough Council, all persons appointed to the Borough of Alburdis Pension Committee shall automatically be appointed as Trustees of this Trust as well, *provided* that no person shall be a Trustee unless and until he/she signs a document accepting the Trust and agreeing to perform the duties of a Trustee under this Plan and Trust.

(g) Transfer of Assets to New Trustees. Upon the appointment of a successor or additional Trustee under subsection (f), the former body of Trustees (or their personal representatives) shall assign, transfer, and pay over to the new or reconstituted body of Trustees the funds and properties then constituting the Trust Fund. However, the former body of Trustees are authorized to reserve such sum of money as may seem to them advisable for payment of their fees and expenses in connection with the settlement of their accounts; any balance of such re-

serve remaining after the payment of such fees and expenses shall be paid over to the new or re-constituted body of Trustees as soon as possible.

§ 18-1603 Investment of the Trust Fund.

(a) **In General.** Except as provided in this Section and §§ 18-1605 (relating to Participant-directed investments), 18-1606 (relating to Investment Managers), and 18-1608 (relating to limiting directions from the Administrator), the Trustees shall have the power to invest and re-invest at any time all money or other property of any description held by them and constituting part of the Trust Fund. They may make such investments in any manner they deem advisable (subject to the duty of care required under § 18-1803 and the other fiduciary requirements of Article XVIII) and will not be limited to investments which are lawful for Trustees. For example, without limiting the generality of the foregoing, the Trustees may invest in bonds, notes, mortgages, property, oil, gas, and mineral rights, royalties, or interests, life insurance, annuity contracts, other contracts, choses in action, and shares or certificates of participation issued by investment companies or investment trusts. However, in making investments, the Trustees shall keep in mind the need for a certain degree of liquidity in order to provide benefits under this Plan.

(b) **Location.** The Trustees may not maintain the indicia of ownership of any assets of the Plan and Trust outside the jurisdiction of the United States District Courts.

§ 18-1604 Life Insurance Policies and Annuity Contracts.

(a) **Restrictions on Purchase.** The Trustees may not invest in insurance policies on the lives of Participants, and may only invest in annuity contracts on the lives of Participants which are retirement annuity policies, retirement income endowment policies, disability income policies, a combination of such policies, or other annuity contracts permitted under Pennsylvania law and approved by the Department of the Auditor General for inclusion in municipal pension plans eligible for general municipal pension system state aid.

(b) **Requirements for Permitted Contracts.** The Trustee may apply for permitted annuity contracts on any day of any month, and may continue to hold contracts on the lives of Inactive Participants which were purchased earlier. Each contract shall provide that the Trustees shall be the owner of such contract while it is held under this Trust, and that it may be cash surrendered or exchanged for another policy before the annuitant attains the Normal Retirement Age (at least). All rights, options, and privileges which are available by the terms of such contracts shall be vested *exclusively* in or exercised *solely* by the Trustees. In the event of any conflict between the terms of this Plan and the terms of any insurance contract purchased hereunder, the Plan provisions shall control.

§ 18-1605 Participant-Directed Investments.

(a) **In General.** If the Administrator shall so allow, Active Participants (or all Participants) may direct the Trustees to invest all or a portion of the amounts allocated to their Plan ac-

counts in particular investments. A Participant or Beneficiary may also direct the Trustees to resume responsibility for any portion of such investments. Participant directions shall expire to the extent that amounts which have been so directed are forfeited or distributed, or are invested in investments which are no longer permitted under the participant-directed investment program. Investment directions by a Participant under this Section shall relieve the Administrator and the Trustees of all fiduciary responsibilities in the management of such funds.

(b) Investment Instructions.

(1) In General. The Trustees shall identify a specific fiduciary or agent to receive investment instructions, and all investment instructions must be made through such fiduciary or agent. All Participant investment instructions shall be made on such written forms as may be prescribed by the Trustees or the identified fiduciary or agent. Instructions may relate to amounts allocated to the Participant's accounts to date and/or to amounts as they are so allocated in the future. Each Participant who is qualified to participate in the participant-directed investment program shall have an opportunity to obtain written confirmation of such instructions.

(2) Restrictions and Procedures.

(A) In General. The Trustees may promulgate nondiscriminatory rules restricting Participant directions to such times, investments, amounts, and features as may be necessary or desirable to avoid undue administrative expenses or complexity in the overall operation of the Participant-directed investment program, *provided* that such rules comply with requirements of this paragraph (2) and of subsection (c). For example, without limiting the foregoing, the Trustees may restrict investment to identified specific investment alternatives.

(B) Range of Risk and Return Characteristics. The Trustees shall permit a sufficient number and variety of investment alternatives to provide Participants with a reasonable opportunity to materially affect the potential return on amounts in their accounts and the degree of risk to which such amounts are subject.

(C) General Frequency Standard. The rules applicable to any given investment alternative made available under the participant-directed investment program must permit Participants to give investment instructions with a frequency which is appropriate in light of the market volatility to which the investment alternative may reasonably be expected to be subject.

(D) Core Investment Funds. The rules applicable to each of the investment alternatives included in the group of "core funds" described in subsection (c) must permit a Participant to give instructions no less frequently than once within any three month period.

(E) Investment Alternative Available to Receive Transfers. Under the rules established by the Trustees, **either**—

(I) at least *one* of the "core funds" described in subsection (c) must permit a Participant to transfer *into* that fund as frequently as Participants are permitted to give investment instructions with respect to any investment alternative included in the participant-directed investment program which permits Participants to give investment instructions more frequently than once within any three month period; **or**

(II) with respect to each investment alternative which permits Participants to give investment instructions more frequently than once within any three month period, Participants are permitted to direct their investments *from* such investment alternative *to* a Liquid Investment as frequently as they are permitted to give investment instructions with respect to

such investment alternative, **and**, with respect to the Liquid Investment, Participants are permitted to direct investments *from* the Liquid Investment *to* at least *one* of the “core funds” described in subsection (c) as frequently as they are permitted to give investment instructions with respect to that core fund. For purposes of this clause (II), a “Liquid Investment” is an income producing, low risk, liquid fund, subfund, or account.

(F) Employer Securities. With respect to transfers *from* an investment alternative which is designed to permit a Participant to directly or indirectly acquire or sell any employer security (an “employer security alternative”), **either**—

(I) *each* of the “core funds” described in subsection (c) must permit a Participant to transfer *into* that fund as frequently as Participants are permitted to give investment instructions with respect to the employer security alternative; **or**

(II) Participants are permitted to direct their investments *from* each employer security alternative *to* a Liquid Investment as frequently as they are permitted to give investment instructions with respect to such employer security alternative, **and**, with respect to the Liquid Investment, Participants are permitted to direct investments *from* the Liquid Investment *to each* of the “core funds” described in subsection (c) as frequently as they are permitted to give investment instructions with respect to those core fund. For purposes of this clause (II), a “Liquid Investment” is an income producing, low risk, liquid fund, subfund, or account.

(G) Annuity Contracts. If the Trustees permit investment in annuity contracts under the participant-directed investment program, an Active Participant may only direct investment in annuity contracts which are on his own life.

(3) Compliance With Instructions. The fiduciary or agent receiving the instructions shall be obligated to comply with such instructions, unless an instruction, if implemented—

(A) would not be permitted under this § 18-1605 or would otherwise not be in accordance with the provisions of this Plan;

(B) would not comply with the procedures, limitations, or restrictions established by the Trustees for the participant-directed investment program;

(C) would cause a Fiduciary to maintain the indicia of ownership of any assets of the Plan outside the jurisdiction of the district courts of the United States other than as permitted under the standards of ERISA § 404(b) and 29 C.F.R. § 2550.404b-1;

(D) would jeopardize the Plan’s tax qualified status under the Code;

(E) could result in a loss in excess of a Participant’s account balance;

(F) would result in a prohibited transaction described in Plan § 18-1805;

(G) would result in the acquisition of a “collectible”, as that term is defined in Code § 408(m) and the regulations thereunder;

(H) would generate income that would be taxable to the Plan; **or**

(I) would violate any applicable law, statute, regulation, rule, order, or decree.

(4) Unavailable Investments. In the event the Trustees find that an investment meeting the requirements of this Trust cannot be procured for a Participant under this Section, **or** a given investment is or becomes unavailable, the Trustees shall report the same to the Participant as soon as practicable and request further instructions.

(c) **Core Investment Funds.** Throughout the time that a Participant-directed investment program is in effect under this Section, the permitted investment alternatives under the program shall include a group of at least three (3) investment funds—

(1) each of whose underlying assets are diversified so as to minimize the risk of large losses;

(2) each of which has materially different risk and return characteristics;

(3) which in the aggregate enable the Participant by choosing among them to achieve a portfolio with aggregate risk and return characteristics at any point within the range normally appropriate for the Participant;

(4) each of which, when combined with investments in either of the other funds in the group, tends to minimize through diversification the overall risk of a Participant's portfolio; **and**

(5) each of which is either—

(A) An investment company described in § 3(a) of the Investment Company Act of 1940, or a series investment company described in § 18(f) of the Investment Company Act of 1940, or any of the segregated portfolios of such company;

(B) A common or collective trust fund or a pooled investment fund maintained by a bank or similar institution, a deposit in a bank or similar institution, or a fixed rate investment contract of a bank or similar institution;

(C) A pooled separate account or a fixed rate investment contract of an insurance company qualified to do business in a state; **or**

(D) Any entity whose assets include plan assets by reason of a plan's investment in the entity (such as a "group trust" as defined in Rev. Rul. 81-100).

These investment funds may be Designated Investment Alternatives (*see* subsection (h)(2)), or they may merely be permitted without specific identification under a general rule allowing investment in broad categories of assets or in all assets which are administratively feasible for the Plan to hold.

(d) **Provision of Sufficient Investment Information.**

(1) **Information Required to Be Furnished Automatically.** The Trustees shall insure that each Participant who is qualified to participate in the participant-directed investment program is provided by an identified Plan Fiduciary (or a person or persons designated by the Fiduciary to act on his behalf) with the following information. The information shall be furnished before the Participant is permitted to give investment instructions. If, after the information described in subparagraphs (A) through (G) has been provided to a Participant, there is a material change to such information, the Trustees shall provide updated information or notice of the material change to the Participant.

(A) **Notice of Limited Liability.** An explanation that the Plan is intended to constitute the kind of plan described in ERISA § 404(c) and 29 C.F.R. § 2550.404-1, and that the Fiduciaries of the Plan may be relieved of liability for any losses which are the direct and necessary result of investment instructions given by such Participant.

(B) Description of All Investment Alternatives. A description of the investment alternatives available under the participant-directed investment program, and, with respect to each Designated Investment Alternative (*see* subsection (h)(2)) under the program, a general description of the investment objectives and risk and return characteristics of each such alternative, including information relating to the type and diversification of assets comprising the portfolio of the Designated Investment Alternative. If the participant-directed investment program does not limit the investment alternatives to Designated Investment Alternatives, a general statement of the types of non-identified investments that are permitted and the types which are prohibited, as provided under the rules established for the participant-directed investment program, shall be a sufficient description of such investments, *provided that* Participants are encouraged to obtain and review materials relating to any such non-identified investments prior to actually making an investment.

(C) Identification of Investment Managers. Identification of any designated Investment Managers.

(D) Investment Instructions and Restrictions. An explanation of the circumstances under which Participants may give investment instructions (including the persons to whom instructions may be given, the times when instructions may be given, and the manner in which instructions may be given), and an explanation of any specified limitations on such instructions under the terms of the Plan, including any restrictions on transfers to or from a Designated Investment Alternative (such as absolute restrictions, minimum investment periods, penalties, or valuation adjustments), and any restrictions on the exercise of voting, tender, and similar rights appurtenant to a Participant's investment in an investment alternative (including whether the Plan does or does not pass through such right to Participants). To the extent that the Trustees do not pass through such rights to Participants, they shall not be protected for the exercise of those rights.

(E) Transaction Fees. A description of any transaction fees, charges, and expenses which affect a Participant's account balance in connection with purchases or sales of interests in investment alternatives (*e.g.*, commissions, sales loads, deferred sales charges, and redemption or exchange fees).

(F) Provider of Information. The name, address, and phone number of the Plan Fiduciary (and, if applicable, the person or persons designated by the Plan Fiduciary to act on his behalf) responsible for providing the information described in paragraph (2), below, upon the request of a Participant, and a description of the information described in paragraph (2), below, which may be obtained upon request.

(G) Confidentiality Procedures Concerning Employer Securities. If the Plan offers an investment alternative which is designed to permit a Participant to directly or indirectly acquire or sell any employer security, a description of the procedures established to provide for the confidentiality of information relating to the purchase, holding, and sale of employer securities, and the exercise of voting, tender, and similar rights, by Participants, and the name, address, and phone number of the Plan Fiduciary responsible for monitoring compliance with the procedures.

(H) Prospectuses. In the case of an investment alternative which is subject to the Securities Act of 1933, and in which the Participant has *no* assets invested, a copy of the most recent prospectus provided to the Plan. This copy must be provided immediately following the Participant's initial investment, or immediately prior to the Participant's investment.

(I) Pass-Through Proxy Materials. Subsequent to an investment in an investment alternative, any materials provided to the Plan relating to the exercise of voting, tender, or similar rights which are incidental to the holding in the account of the Participant of an ownership interest in such investment alternative, *to the extent* that such rights are passed through to Participants under the terms of the Plan and the participant-directed investment program, as well as a description of or reference to Plan provisions, or terms of the participant-directed investment program, relating to the exercise of voting, tender, or similar rights.

(2) Information That Must Be Supplied Upon Request. The Trustees shall insure that each Participant who is qualified to participate in the participant-directed investment program is provided by an identified Plan Fiduciary (or a person or persons designated by the Fiduciary to act on his behalf) with the following information, either directly or upon request, which shall be based on the latest information available to the Plan:

(A) Financial Reports. Copies of any prospectuses, financial statements and reports, and of any other materials relating to the investment alternatives available under the participant-directed investment program, to the extent such information is provided to the Plan.

(B) Operating Expenses. A description of the annual operating expenses of each Designated Investment Alternative under the participant-directed investment program (*e.g.*, investment management fees, administrative fees, transaction costs) which reduce the rate of return to Participants, and the aggregate amount of such expenses expressed as a percentage of average net assets of the specific investment alternative.

(C) List of Assets. A list of the assets comprising the portfolio of each Designated Investment Alternative under the participant-directed investment program which constitute “plan assets” within the meaning of 29 C.F.R. § 2510.3-101, the value of each such asset (or the proportion of the investment alternative which it comprises), and, with respect to each such asset which is a fixed rate investment contract issued by a bank, savings and loan association, or insurance company, the name of the issuer of the contract, the term of the contract, and the rate of return on the contract.

(D) Overall Investment Performance. Information concerning the value of shares or units in each Designated Investment Alternative, as well as the past and current investment performance of such Designated Investment Alternatives, determined, net of expenses, on a reasonable and consistent basis.

(E) Individualized Investment Performance. Information concerning the value of shares or units in any Designated Investment Alternative held in the account of the Participant. The Trustees may establish procedures which limit the frequency with which investment performance and account balance requests may be made or which provide that such requests may be made only at specified times, provided that such limitations do not deprive Participants of information which is necessary for them to make informed investment decisions.

(e) Independent Control by Participants.

(1) In General. The Trustees shall not interfere with the exercise of independent control by Participants regarding transactions related to the participant-directed investment program (including, without limitation, the acquisition or disposition of investments, and the exercise of any voting, tender, and similar rights appurtenant to a Participant’s ownership interest in an investment alternative).

(2) **Improper Influence.** No Plan Fiduciary or Plan sponsor shall subject any Participant to improper influence with regard to any transaction related to the participant-directed investment program.

(3) **Concealment of Material Non-Public Facts.** No Plan Fiduciary shall conceal any material non-public facts regarding an investment from a Participant, *unless* the disclosure of such information by the Plan Fiduciary to the Participant would violate any provision of federal law or any provision of state law which is not preempted by ERISA.

(4) **Incompetent Participant.** No Plan Fiduciary shall accept the instructions of any person whom the Plan Fiduciary knows is legally incompetent.

(5) **Transactions Involving a Fiduciary.** In the case of any transaction permitted under the participant-directed investment program and this § 18-1605 which involves the sale, exchange, or leasing of property between the Plan and a Plan Fiduciary or an Affiliate of a Plan Fiduciary, or a loan to a Plan Fiduciary or an Affiliate of a Plan Fiduciary, the Participant shall not be required to pay more than, or shall not receive less than, “adequate consideration” (as defined in ERISA § 3(18)) in connection with the transaction. (In general terms, “adequate consideration” for a security traded on a registered national securities exchange is the prevailing price on such market; for a security not so traded for which there is a generally recognized market, the current offering price for the security; and for an asset other than a security for which there is a generally recognized market, the fair market value of the asset as determined in good faith by the Plan Fiduciary.)

(f) **Segregation; Expenses.** The portion of any Participant’s Plan accounts which are invested according to Participant instructions under this Section shall be segregated from the rest of the Trust Fund. Such portion shall not share in any gains or losses of the general Trust Fund, but shall instead reap the benefits and bear the expenses of the segregated investments. The Plan and Trust may charge a Participant’s account for the reasonable expenses of carrying out investment instructions, *provided* that procedures are established to periodically inform the Participant of the actual expenses incurred with respect to his/her individual account.

(g) **ERISA § 404(c) Requirements.** Any Participant-directed investment program established under this § 18-1605 must satisfy all other requirements established by the U.S. Department of Labor for “ERISA § 404(c) plans.” (*Cf.* 29 C.F.R. § 2550.404c-1.)

(h) **Definitions.** For purposes of this § 18-1605—

(1) **Affiliate.** The term “Affiliate” shall include:

(A) any person directly or indirectly controlling, controlled by, or under common control with the person. For purposes of this subparagraph (A), the term “control” means, with respect to a person other than an individual, the power to exercise a controlling influence over the management or policies of such person;

(B) any officer, director, partner, employee, an employee of an affiliated employer, relative (as defined in ERISA § 3(15)), brother, sister, or spouse of a brother or sister, of the person; **and**

(C) any corporation or partnership of which the person is an officer, director, or partner.

(2) **Designated Investment Alternative.** The term “Designated Investment Alternative” shall mean a *specific* investment identified by a Plan Fiduciary as an available investment alternative under the participant-directed investment program. An investment alternative permitted under the participant-directed investment program which is *not* specifically identified by a Plan Fiduciary, such as an investment alternative covered by a general rule that allows Participants to invest in any asset administratively feasible for the Plan to hold and not otherwise prohibited under the program, is *not* a “Designated Investment Alternative”, and the information production and other requirements applicable to Designated Investment Alternatives shall not apply to such a non-specified investment alternative.

§ 18-1606 Investment by Investment Managers.

(a) **In General.** The Administrator may appoint one or more persons qualified under subsection (b) to be Investment Managers under this Plan, with powers to manage, acquire, and/or dispose of specified assets in the Trust. Each such appointment shall specify the powers granted to the Investment Manager, the assets involved, and the duties and responsibilities, if any, of the Trustees with respect to the assets subject to investment by the Investment Manager. The Administrator shall have the authority and responsibility for establishing operational and administrative procedures to coordinate the activities of the Trustees and any Investment Manager. The Trustees shall have no obligation to take any action with respect to those assets of the Trust subject to the direction of an Investment Manager without receipt of written directions acceptable to the Trustees from the Investment Manager, and the Trustees shall be under no duty to review such directions. The Administrator may revoke an appointment under this Section or change its terms at any time. Upon receipt of a written notice from the Administrator of the resignation or removal of an Investment Manager, the Trustees shall assume management responsibility for the assets previously appointed to the direction of the Investment Manager .

(b) **Qualification.** An Investment Manager must be **either** —

- (1) registered as an investment adviser under the Investment Advisers Act of 1940;
- (2) a bank (as defined in the Investment Advisers Act of 1940); **or**
- (3) an insurance company qualified to perform the duties of an Investment Manager under the laws of more than one State.

(c) **Acceptance & Communication.** A person appointed under subsection (a) shall not exercise the powers of an Investment Manager until he has acknowledged in writing that he is a Fiduciary under this Plan and until the appointment and acknowledgment have been transmitted to the Administrator and the Trustees.

(d) **Security Transactions.** If an Investment Manager appointed pursuant to this Section elects to place security transactions directly with a broker or dealer, the Trustees shall not recognize such transactions unless and until the Trustees have received instructions or confirmations from the Investment Manager in such manner of communication customary to the Trustees. Should the Investment Manager direct the Trustees to utilize the services of any person with regard to the assets under its management or control, such instructions shall specifically set forth the actions to be taken by the Trustees as to such services. In the event that an Investment Man-

ager places security transactions directly or directs the utilization of services, the Investment Manager shall be solely responsible for the acts of the persons utilized. The sole duty of the Trustees as to such transactions shall be incident to the Trustees' practices as a custodian.

(e) **Release and Indemnification of Trustee.** To the extent that the Trust is subject to the direction of an Investment Manager—

(1) the Trustees shall not be responsible nor have any liability for acting pursuant to any direction of the Investment Manager or failing to act in the absence of any direction from the Investment Manager (except as may otherwise be imposed by applicable law), and shall not be required to consult with or advise the Administrator or the Employer regarding the investment quality of any investments; **and**

(2) the Employer shall indemnify and hold the Trustees harmless from any and all losses or claims which arise with respect to the Trust,

unless the Trustees—

(A) knowingly participate in or knowingly conceals an act or omission of the Investment Manager, knowing such act to be a breach of fiduciary duty;

(B) have enabled the Investment Manager to commit a breach by failing to discharge the Trustees' duties in accordance with the fiduciary requirements of Article XVIII and applicable law; **or**

(C) has knowledge of a breach of fiduciary responsibility by the Investment Manager and fails to make reasonable efforts under the circumstances to remedy the breach.

§ 18-1607 Other Powers of the Trustees.

Subject to the other provisions of this Article and the provisions of Article XVIII (relating to Fiduciaries), the Trustees shall be entitled to exercise, in their own discretion, the following powers regarding the administration of the Trust Fund:

(a) **Purchase of Property.** To purchase, or subscribe for, any securities or other property and to retain the same in trust, regardless of whether such property is specifically authorized as a legal investment for trust funds under applicable law;

(b) **Disposition of Property.** To sell, exchange, convey, transfer, mortgage, pledge, lease, grant options with respect to, or otherwise dispose of any securities or other property held by the Trustees, by private contract or at public auction. No person dealing with the Trustees shall be bound to see to the application of the purchase money or to inquire into the validity, expediency, or propriety or any such sale or other disposition;

(c) **Exercise of Ownership Rights.** To vote any stock, bonds, or other securities; to give general or special proxies or powers of attorney, with or without powers of substitution; to exercise any conversion privileges, subscriptions rights, or other options, and to make any payment incidental thereto; to oppose, or to consent to, or otherwise participate in, corporate reorganizations or other changes affecting corporate securities, and to delegate discretionary powers, and to pay any assessments or charges in connection therewith; to manage, operate, improve, develop, repair, and preserve any real property or any oil, gas, or mineral properties, royalties, or interests;

and generally to exercise any of the powers of an owner with respect to stock, bonds, securities, or other property held as part of the Trust Fund;

(d) Registration of & Title to Investments. To cause any securities or other property held as part of the Trust Fund to be registered in the name(s) of the Trustees or in the name(s) of one or more nominees of the Trustees, or to hold any investments in bearer form, **so long as** the books and records of the Trustees shall at all times show that all such investments are part of the Trust Fund;

(e) Borrowing. To borrow or raise money for the purposes of the Trust in such amount and upon such terms and conditions as the Trustees shall deem advisable. For any sum so borrowed, the Trustees may issue a promissory note as Trustees and secure repayment by pledging all, or any part, of the Trust 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;

(f) Collection. To collect and receive any and all money and other property of whatsoever kind or nature due or owing or belonging to the Trust Fund and to give full discharge and acquittance therefor; and to extend the time of payment of any obligation at any time owing to the Trust Fund, as long as such extension is for a reasonable period, and continues reasonable interest;

(g) Retention of Cash. To keep such portion of the Trust Fund in cash or cash balance as the Trustees may from time to time deem to be in the best interests of the Trust, without liability for interest thereon;

(h) Retention of Property Acquired. To accept and retain for such time as the Trustees may deem advisable any securities or other property received or acquired as Trustees under this Plan, whether or not such securities or other property would normally be purchased as investments under this Plan;

(i) Execution of Instruments. To make, execute, acknowledge, and deliver any and all documents or transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers granted under this Plan;

(j) Settlement of Claims & Debts. To settle, compromise, or submit to arbitration any claims, debts, or damages due or owing to or from the Trust Fund; to commence or defend suits or legal or administrative proceedings; and to represent the Trust Fund in all suits and legal and administrative proceedings;

(k) Employment of Agents & Counsel. Subject to the prohibitions of § 18-1801, to employ suitable agents, counsel, consultants, specialists, and accountants, any one of whom may also be so engaged by the Employer; to pay their reasonable expenses and compensation in the event the Employer has not so paid them; and to rely exclusively upon, and be fully protected in any action taken in good faith in relying upon, any opinions or reports which shall be furnished by any such accountant, counsel, specialist, or other consultant.

(l) Incorporation. To organize and incorporate under the laws of any state (or participate in the organization or incorporation of) a corporation for the purpose of acquiring and holding title to any property which the Trustees are authorized to acquire for the Trust Fund and

to exercise with respect thereto any of the powers, rights, and duties they have with respect to other assets of the Trust Fund;

(m) Pooling of Assets. To transfer any of the assets of this Trust to any pooled investment fund or group trust (including those which have one or more trustees who are Trustees under this Trust) which has been ruled by the Internal Revenue Service to be, and which is, a qualified trust exempt from tax under the Code and which has been established for the purpose of permitting separate qualified pension and profit sharing trusts to pool some or all of their funds for investment purposes and as to which it has been ruled by the Internal Revenue Service that the pooling of funds by the separate trusts will not adversely affect the qualified status of the separate trusts. Any such common trust fund shall constitute an integral part of this Plan and Trust. The commingling of assets of this Trust with assets of other qualified participating trusts in such pooled funds is specifically authorized;

(n) Legal Actions. To prosecute, defend against, or participate in any legal actions involving the Trust or any Trustee in the manner and to the extent the Trustees deem advisable. The Trustees need not participate in any litigation concerning the Trust or the Trustees' management of the Trust unless first indemnified against expense by the Employer in a form satisfactory to the Trustee, unless the litigation is occasioned by the negligence or fault of the Trustee and the Trustee is found to be negligent or at fault pursuant to such litigation; and

(o) Necessary Acts. To do all such acts, take all such proceedings, and exercise all such rights and privileges as the Trustees may deem necessary to administer the Trust Fund and carry out the purposes of this Plan and Trust, even though not specifically mentioned in this document.

§ 18-1608 Limiting Directions from the Administrator.

The Trustees shall comply with any directions given by the Administrator under § 18-1703 (relating to limiting directions from the Administrator) as promptly as possible. The Trustees shall not be responsible for any loss which may result from compliance with the directions of the Administrator or the failure or refusal of the Administrator to approve any actions which require the Administrator's approval, and the Employer shall indemnify and hold the Trustees harmless for any such loss.

§ 18-1609 Distributions from the Trust Fund.

From time to time, the Trustees shall make payments out of the Trust Fund to such persons, in such manner, for such purposes, and in such amounts as may be specified in written directions by the Administrator. Such directions must be accompanied by a certificate executed by the Administrator or its designate that the payment is in accordance with this Plan. Once made, the amount of any such payment shall no longer constitute a part of the Trust Fund. The Trustees shall not be responsible in any way for the application of such payments or for the adequacy of the Trust Fund to meet and discharge any and all liabilities under the Plan.

§ 18-1610 Administrative Payments.

(a) **Compensation of Trustees and Investment Managers.** Trustees who are also officers or employees of the Employer shall receive no compensation for their services as Trustees under this Plan. All other Trustees may be paid such reasonable compensation as shall from time to time be agreed upon in writing by the Borough Council of the Sponsor and the Trustees. Investment Managers shall be paid such fees as shall from time to time be agreed upon in writing by the Investment Manager and the Administrator. Trustee and Investment Manager fees may be paid by the Employer, but unless or until so paid they shall constitute a charge upon the Trust Fund.

(b) **Expenses.** The Trustees shall be reimbursed for any reasonable expenses, including reasonable counsel fees, incurred by them in the administration of the Trust. Such reimbursement may be made by the Employer, but unless or until so paid it shall constitute a charge upon the Trust Fund.

(c) **Taxes.** All taxes of any and all kinds whatsoever that may be levied or assessed (under existing or future laws) upon or with respect to the Trust Fund or the income of the Trust Fund shall be paid from the Trust Fund.

§ 18-1611 Accounting.

(a) **Record Keeping.** The Trustees shall keep accurate and detailed accounts of all investments, receipts, disbursements, and other transactions under this Trust. All accounts, books, and records relating to such transactions shall be open to inspection and audit at all reasonable times by any person designated by the Administrator.

(b) **Reports to Administrator.** Within 60 days following the close of each fiscal year of the Trust, within 60 days following the effective date of the termination of the Plan or Trust, and within 60 days after the removal or resignation of a Trustee, the Trustees shall file with the Administrator a written account of all investments, receipts, disbursements, and other transactions affected by them during such fiscal year (or during the period from the close of the last fiscal year to the date on which the Trustee resigned or was removed, or the effective date of the termination of the Plan or Trust). Such account shall also set forth the current value of the Trust Fund and its assets. Neither the Administrator nor any other person shall be entitled to any further accounting by the Trustees, except as provided by law.

(c) **Discharge from Liability.** Thirty-one (31) days after an accounting has been filed under subsection (b), the Trustees shall be forever released and discharged from all liability and accountability to anyone with respect to the propriety of their actions and transactions shown in the accounting, **except** with respect to any actions or transactions as to which the Administrator has objected in a writing filed with the Trustees before such time. If such an objection is filed, the Trustees shall, unless the matter is compromised with the Administrator, file its account in any court of competent jurisdiction for audit and adjudication.

§ 18-1612 Immunity.

(a) **Persons to whom Responsible.** No person other than the Employer or the Administrator may require an accounting or bring an action against the Trustees with respect to the Trust created under this Plan or their actions as Trustees.

(b) **Ordinary Negligence.** The Trustees shall not be liable for the making, retention, or sale of any investment or reinvestment made by them as provided under this Plan, nor for any loss to, or diminution of, the Trust Fund unless caused by their own gross negligence, willful misconduct, or lack of good faith.

(c) **Permitted Reliance.** The Trustees shall be fully protected in relying upon—

(1) **Action by the Administrator.** A certification by the Administrator or by any person designated by the Administrator (under § 18-1702(b)) with respect to any instruction or direction of the Administrator. The Trustees may rely upon any such designation until they have received a revocation of same;

(2) **Other Writings.** Any instrument, certificate, or paper believed by them to be genuine and be signed or presented by the proper person or persons; the Trustees shall be under no duty to make any investigation or inquiry as to any statement contained in any such writing, but may accept the writing as conclusive evidence of the truth and accuracy of such statements.

§ 18-1613 Purpose: Exclusive Benefit Rule.

Except as provided in § 18-1902(b) (relating to return of Suspense Accounts to Employer upon Plan termination) and § 18-504(d) (relating to return of contributions made on the basis of a mistake of fact), all assets of the Trust Fund, including investment income, shall be retained for the exclusive benefit of Participants, Alternate Payees, and Beneficiaries, and shall be used to pay benefits to such persons or to pay administrative expenses of the Plan and Trust Fund to the extent not paid by the Employer; they shall not revert to or inure to the benefit of the Employer. The Trustees shall exercise all powers and discharge all duties under this Plan and Trust solely in the general interest of Participants, Alternate Payees, and Beneficiaries.

§ 18-1614 Standard of Care.

The Trustees, all agents, counsel, consultants, specialists, and accountants retained by them under § 18-1607(k), and all Investment Managers under § 18-1606 shall be subject to the fiduciary requirements detailed in Article XVIII.

Article XVII – Administration

§ 18-1701 In General.

The Plan Administrator and named fiduciary of this Plan shall be the Borough of Alburdis Pension Committee.

§ 18-1702 Powers & Duties.

(a) **In General.** The Administrator shall administer the Plan in accordance with its terms, shall direct the Trustees to make payments in accordance with the Plan from the Trust under § 18-1609, and shall have all powers necessary to carry out the provisions of the Plan. The Administrator shall have absolute and exclusive discretion to decide all issues arising in the administration, interpretation, and application of the Plan, including eligibility for benefits. The Administrator may from time to time set forth rules of interpretation and administration, subject to modification as appropriate in the light of experience. No such rule will be ineffective by reason of the fact that such rule may amend the purely administrative provisions of the Plan or conform to any changes in the Plan or applicable law relating to qualified retirement plans. Decisions and rules established by the Administrator shall be conclusive and binding on all persons. The Administrator shall act without discrimination among persons similarly situated at any given time, although it may change its policies from time to time.

(b) **Delegation.** Subject to the prohibitions of § 18-1801, the Administrator may delegate to any person or group of persons its authority to perform any act under this Plan and Trust, including those matters involving the exercise of discretion, *provided* that such delegation shall be subject to revocation at any time at the Administrator's discretion.

(c) **Designation of Chief Administrative Officer.** The Administrator shall designate, from time to time, an individual to be the Chief Administrative Officer of the Plan for purposes of the Municipal Pension Plan Funding Standard and Recovery Act, 53 PA. STAT. ANN. § 895.101 *et seq.*, subject to the control of the Administrator.

(d) **Employment of Professionals & Others.** Subject to the prohibitions of § 18-1801, the Administrator may appoint such accountants, counsel, specialists, consultants, and other persons as it may deem necessary or desirable in connection with the administration of this Plan, including persons who may also be engaged by the Employer or who may be Trustees. The Administrator shall be entitled to rely exclusively upon, and shall be fully protected in any action taken in good faith by it in relying upon, any opinions or reports which shall be furnished to it by any such accountant, counsel, specialist, or other consultant.

(e) **Records.** The Administrator shall keep a record of all its proceedings and acts, and shall keep all such books of account, records, and other data as may be necessary for the proper administration of the Plan under ERISA.

(f) **Notifications.** The Administrator shall notify the Trustees of all its actions, and, when required by law, it shall also notify any other interested persons of its actions.

(g) **Reports, Documents, and Communications.** The Administrator shall prepare and file all reports and documents required to be filed with a governmental agency, shall prepare and provide or make available all reports and documents required to be provided or made available to persons with an interest under the Plan, **and** shall communicate with employees and other persons with respect to all matters relating to the Plan and Trust, including rights and benefits under this Plan.

§ 18-1703 Direction of the Trustees.

(a) **Direction to Request Approval.** The Administrator may at any time direct the Trustees in writing to obtain the written approval of the Administrator before exercising certain of the powers granted the Trustees under this Plan and Trust. Any such direction may be of a continuing nature or otherwise, and may be revoked in writing by the Administrator at any time.

(b) **Funding Policy and Method.** The Administrator shall, from time to time, establish a funding policy and investment objectives and guidelines for the Trust consistent with the purposes of the Plan and state and federal law, and shall direct the Trustees to comply with such policy, objectives, and guidelines. The Administrator shall periodically review the operation of the Trust and all financial reports, investment reviews, and other reports prepared for the Plan or Trust.

(c) **Duty to Question Direction by Administrator.** Neither the Trustees nor any other person shall be under any duty to question a direction by the Administrator under this Section.

§ 18-1704 Compensation & Expenses.

All expenses incident to the administration of the Plan by the Administrator, including but not limited to fees of accountants, counsel, consultants, and other specialists, and other costs of administering the Plan, may be paid by the Employer, but until and unless they are paid by the Employer they shall constitute a charge upon the Trust Fund.

§ 18-1705 Standard of Care.

The Administrator and all accountants, counsel, specialists, consultants, and other retained by it under § 18-1702(d) shall be subject to the fiduciary requirements detailed in Article XVIII.

Article XVIII – Fiduciaries

§ 18-1801 Prohibition Against Certain Persons Holding Positions under this Plan.

No person may serve under this Plan and Trust as a Fiduciary **if** he has been convicted of any of the crimes enumerated in ERISA § 411 **until** after the expiration of 13 years from the later of conviction or release from imprisonment (or such earlier period as allowed under ERISA § 411).

§ 18-1802 Bonding.

Every Fiduciary and every other person who handles funds or other property under this Plan (except properly capitalized corporate fiduciaries organized, doing business, and authorized to exercise trust powers under the laws of the Commonwealth of Pennsylvania or the United States, and their directors, officers, and employees) shall be bonded in the same manner as if this Plan and Trust were subject to ERISA § 412 (which generally requires a bond not less than 10% of the amount of funds handled, though not less than \$1000 nor more than \$500,000).

§ 18-1803 Duty of Care.

To the extent of their powers, the Fiduciaries shall discharge their duties with respect to the Plan and Trust–

(a) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character;

(b) by diversifying the investments of the Plan and Trust so as to minimize the risk of large losses **unless** under the circumstances it is clearly prudent not to do so; **and**

(c) in accordance with the documents and instruments governing the Plan and Trust **to the extent** they are consistent with the applicable provisions of ERISA, the Code, and other laws.

§ 18-1804 Duty of Loyalty.

(a) **Self-Dealing.** Fiduciaries shall not deal with the income or assets of the Plan in their own interests or for their own accounts, nor shall they receive any consideration for their own personal accounts from any party dealing with the Plan in connection with a transaction involving the income or assets of the Plan.

(b) **Adverse Interests.** A Fiduciary shall not act in any transaction involving the Plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the Plan or the interests of the Participants, Alternate Payees, or Beneficiaries, whether in his individual capacity or any other.

§ 18-1805 Prohibited Transactions.

(a) **General Rule.** Fiduciaries shall not engage on behalf of the Plan, either directly or indirectly, in any of the following transactions with Disqualified Persons (*except* transactions exempt under ERISA §§ 407 or 408 and Code § 4975, and regulations promulgated thereunder) or in any other transactions which would be prohibited under ERISA § 406 or Code § 4975 if those provisions were applicable to this Plan, **unless** federal regulations would permit such transactions or Borough Council explicitly permits a particular transaction or group of transactions by Ordinance:

- (1) sale, exchange, or lease of property;
- (2) lending of money or other extension of credit;
- (3) furnishing of goods, services, or facilities;
- (4) transfer, or allowance of actual or beneficial use, of Plan income or assets.

(b) **Disqualified Persons.** For purposes of this Section, “Disqualified Persons” shall mean—

- (1) the Employer or any Related Employer;
- (2) those rendering services to the Plan;
- (3) unions whose members are Plan Participants, and officers and agents of those unions;
- (4) Plan Fiduciaries;
- (5) 50% owners of the Employer or any Related Employer;
- (6) officers, directors, 10% shareholders and highly compensated employees (earning 10% or more of the yearly wages of an employer) of the Employer or any Related Employer.
- (7) members of the family of an individual described in paragraphs (1), (2), (4), and (5);
- (8) a corporation, partnership, trust, or estate 50% controlled by a person described in paragraphs (1) through (5);
- (9) a 10% partner or joint venturer of a person described in paragraphs (1), (3), (5), or (8); **and**
- (10) any other person who is a “disqualified person” within the meaning of Code § 4975 or a “party in interest” within the meaning of ERISA § 3(14).

(c) **Definitions.** The terms used in this Section shall be interpreted in the same manner as corresponding terms utilized in Code § 4975, and Title I, Part 4 and Section 3(14) of ERISA.

§ 18-1806 Indemnification.

The Employer hereby agrees to indemnify any officer, director, elected official, or employee of the Employer for any expenses, penalties, damages, or other pecuniary losses which such person may suffer as a result of his responsibilities, obligations, or duties in connection with the Plan or fiduciary activities actually performed in connection with the Plan, **but only** to the extent that—

- (a) fiduciary liability insurance is not available to cover the payment of such item; **and**
- (b) the person is not being relieved of his fiduciary responsibilities and liabilities to the Plan for breaches of fiduciary obligations.

Article XIX — Amendment, Termination & Merger

§ 18-1901 Amendment.

(a) **In General.** Subject to the provisions of subsection (b), the Borough Council of the Sponsor shall have the right at any time, and from time to time, to amend in whole or in part, any or all of the provisions of this Plan and Trust, by Ordinance.

(b) **Prohibited Amendments.** No amendment under this Section shall be effective to the extent that it shall—

(1) **Exclusive Benefit.** Authorize or permit any part of the Trust Fund to revert to or become the property of the Employer or any Related Employer, or to be used or diverted to purposes other than the exclusive benefit of the Participants, Beneficiaries, and Alternate Payees, except as permitted under ERISA and the Code for qualified retirement plans which are government plans;

(2) **Accrued Rights.** Cause any reduction in the accrued benefit of any Participant, Alternate Payee, or Beneficiary except as permitted under applicable law;

(3) **Trustees.** Affect the rights, duties, or responsibilities of the Trustees without the written consent of the Trustees.

§ 18-1902 Termination.

(a) **Right to Terminate Plan.** The Sponsor shall have the right to discontinue its contributions to the Plan and Trust and terminate its participation under this Plan at any time by Ordinance.

(b) Plan Accounts. Following a termination of the Plan or complete discontinuance of Employer contributions to the Plan, the amounts in the Forfeiture Account shall be allocated on the day of termination as if they were end-of-Plan-Year Employer contributions under Article V. Any amounts in the Suspense Account shall be returned to the Employer.

(c) Termination & Liquidation of the Trust.

(1) In General. Except as provided in the remaining paragraphs of this subsection (c), following a termination of the Plan, the Sponsor shall terminate the Trust. In that event, the Trustees shall distribute the accounts of all Plan Participants, Alternate Payees, and Beneficiaries to such persons as quickly as possible under the provisions of Articles XII, XIII, and XIV as if the Plan and Trust termination were an event described in § 18-1201.

(2) Distributions In The Event Any Required Consents Are Not Filed. In the event the Trust is terminated under paragraph (1), if any recipients do not file a consent required under § 18-1203(c), the Plan and Trust may distribute non-transferable deferred commercial annuities which provide all of the optional forms of benefit and benefit commencement features that would have been available under this Plan if it had not been terminated, and which in all other respects comply with the provisions of Articles XII, XIII, and XIV.

Alternatively, the Sponsor may transfer their accounts to another qualified plan of the Employer (*provided* that all optional forms of benefits are preserved in the transferee plan, *or* the Participant, Beneficiary or Alternate Payee consents to the transfer), **or** the Sponsor may elect to terminate the Plan and trust conditioned on the receipt of adequate consents, and in the absence of adequate consents, choose to freeze the Plan and continue the Trust rather than terminate the Plan and Trust. In the latter case, the frozen Plan shall make distributions to Participants, Beneficiaries, and Alternate Payees at the times and in the manners specified in Articles XII, XIII, and XIV, and the Sponsor shall be obligated to make such amendments to the Plan and Trust as are necessary, from time to time, to retain its qualified status.

(3) Termination of Trust Without Termination of Plan. The Sponsor may also elect to terminate the Trust *without* terminating the Plan so long as the Sponsor directs the Trustees to transfer the assets of the Trust Fund to another funding medium for the Plan consistent with applicable law concerning qualified retirement plans and plans of Pennsylvania boroughs, and § 18-1613 (relating to Exclusive Benefit Rule).

(d) Termination or Spin-Off by Related Employer. Any Related Employer (or former Related Employer) which has adopted this Plan and Trust may at any time elect to terminate its participation in this Plan and Trust by written notice to the Administrator and the Trustees, to the extent permitted by state and federal law. In such event, the Trustee shall segregate assets attributable to employer and employee contributions (and liabilities allocable to investments thereof) made by or with respect to employees of the Related Employer from the Trust Fund and distribute such assets in accordance with the written directions of the (former) Related Employer (consistent with applicable law concerning qualified retirement plans and § 18-1613 (relating to Exclusive Benefit Rule)). Any election by a Related Employer under this subsection (d) shall be deemed an amendment and separation of the Related Employer's plan and trust from the provisions of this Plan and Trust Agreement, and not a termination of the Related Employer's plan, unless the Related Employer specifically terminates its plan.

§ 18-1903 Merger of Plans; Transfer of Assets.

(a) **Definition.** For purposes of this Section, the term “merger” shall mean any merger or consolidation of this Plan and/or the Trust Fund with any other plan, or any transfer of the assets or liabilities of the Plan and/or the Trust Fund to any other plan.

(b) **Accrued Rights.** The terms of any merger must specify that if this Plan or its successor were to terminate immediately after the merger, each Participant shall receive a benefit which is not less than he would have received in the event this Plan terminated immediately before such merger.

Article XX – Miscellaneous

§ 18-2001 Acquittance.

This Plan and Trust is purely voluntary on the part of the Employer. Except as provided in this Plan and Trust document, neither the establishment of the Trust, any modification thereof, the creation of any fund or account, nor the payment of any benefits shall be construed as giving to any Participant or any other person any legal or equitable right against the Employer, any officer or Employee of the Employer, the Trustees, or the Administrator. Neither the Trustees, the Administrator, nor the Employer in any way guarantees the Trust Fund from loss or depreciation, nor do they guarantee any payment to any person. The liability of such persons to make any payments hereunder is limited to the available assets of the Trust Fund.

§ 18-2002 Limitation of Liability.

Each Employee who becomes a Participant under this Plan expressly agrees and understands that neither the Employer, the members of the Administrator, the Trustees in their individual capacity, nor any of their officers and agents shall be subject in any way to any suit or litigation, or to any personal liability for any reason whatsoever in connection with this Plan and Trust or its operation, *except* for their willful neglect or fraud.

§ 18-2003 Legal Actions.

In any action or proceeding involving the Trust Fund, its administration, or any of its constituent property—

(a) **Necessary Parties.** The only necessary parties shall be the Employer, the Administrator, and the Trustees;

(b) **Notice.** No Employees or former Employees of the Employer, Alternate Payees, Beneficiaries, or any other person having or claiming to have an interest in the Trust Fund or under the Plan shall be entitled to any notice or process; **and**

(c) **Final Judgment.** Any final judgment which is either not appealed or appealable shall be binding and conclusive on all parties, the Administrator, and all persons having or claiming to have any interest in the Trust Fund or under the Plan.

§ 18-2004 Delegation of Authority by Employer.

Whenever any Employer is permitted or required to do or perform any act, matter, or thing under this Plan, it shall be done or performed by any officer duly authorized to perform same by the Employer.

§ 18-2005 Clerical Errors.

If the Administrator discovers that a person who should have received any contribution or allocation under this Plan for any Plan Year did not, or did not receive as large a contribution or allocation as he should have, the Employer shall make a contribution for such person in the amount erroneously omitted, plus the amount of Income which would have been earned by such contribution had it been timely made.

Conversely, if the Administrator discovers that a person received a contribution or allocation under this Plan for any Plan Year to which he was not entitled, the amount of such erroneous contribution or allocation shall be deducted from the person's account and transferred to the Forfeiture Account, to be distributed in accordance with the provisions of Article V. The amount shall **not** be returned to the Employer.

§ 18-2006 Effect of this Amendment on Accrued Benefits.

Notwithstanding anything to the contrary contained herein, the accrued benefit of every Participant, Alternate Payee, and Beneficiary hereunder as of the Conversion Date shall not be less than the accrued benefit of such person under the Provisions of the Defined Benefit Plan as of the day before such date, except as permitted by law.

§ 18-2007 Construction.

This Plan and Trust Agreement shall be construed and administered according to the laws of the United States of America and the Commonwealth of Pennsylvania. Further, this Plan and Trust Agreement shall be construed and administered so as to conform to the applicable requirements for qualification under Code §§ 401(a) and 501(a) and shall be deemed amended automatically to conform to such legal requirements as in effect from time to time to the extent necessary.

§ 18-2008 Gender & Number.

Whenever any words are used in this Plan and Trust in the masculine gender, they shall be construed as though they were also used in the feminine gender in all appropriate cases. Whenever any words are used in either the singular or plural form, they shall be construed as though they were also used in the other form in all appropriate cases.

§ 18-2009 Headings.

Article, section, subsection, paragraph, subparagraph, clause, subclause, and other headings are included in this document for convenience only and shall in no manner be construed as a part of this Plan and Trust Agreement.

§ 18-2010 Severability.

Any provision of this Plan which is prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating or rendering unenforceable the remaining provisions of this Plan. To the extent permitted by applicable law, the Employer and Trustees hereby waive any provision of law which renders any provision of this Plan prohibited or unenforceable in any respect.

§ 18-2011 Employment Rights.

Nothing contained in this Plan and Trust shall be construed or interpreted as giving any employee of the Employer the right to be retained in the service of any Employer or shall affect or impair any terms of employment with any Employer, the right of any Employer to control its employees, and the right of any Employer to terminate the service of any employee at any time.

§ 18-2012 Communications.

(a) To the Administrator or Trustees. All elections, designations, requests, notices, instructions, or other communications made to the Administrator or the Trustees shall be in such form as may be prescribed by the Administrator or the Trustees and shall be mailed by first-class mail or delivered to such location as shall be specified by the Administrator or the Trustees. The communication shall be deemed to have been given and delivered only upon actual receipt thereof at such location.

(b) By the Administrator, Trustees, or Employer. All notices, statements, reports, or other communications from the Administrator, the Trustees, or the Employer to any person with an interest under this Plan shall be deemed to have been duly given when delivered to, or when mailed by first-class mail, postage prepaid and addressed to such person at his address last appearing on the records of the Administrator, the Trustees, or the Employer.

§ 18-2013 Type of Plan.

This Plan is a money purchase, defined contribution pension plan.

Appendix

¶ 18-A Disposition of Ordinance 322.

Ordinance 322 was never codified to the 1981 Code.

<u>Ordinance 322</u>	<u>2003 Codified Ordinances</u>
Art. I (intro)	§ 18-101
§ 101	§ 18-103
§ 102	§ 18-104
§ 103	§ 18-105
§ 104	§ 18-106
§ 105	§ 18-107
§ 106	§ 18-108
§ 107	§ 18-109
§ 108	§ 18-110
§ 109	§ 18-111
§ 110	§ 18-112
§ 111	§ 18-113
§ 112	§ 18-114
§ 113	§ 18-115
§ 114	§ 18-116
§ 115	§ 18-117
§ 116	§ 18-118
§ 117	§ 18-119
§ 118	§ 18-120
§ 119	§ 18-121
§ 120	§ 18-122
§ 121	§ 18-123
§ 122	§ 18-124
§ 123	§ 18-125
§ 124	§ 18-126
§ 125	§ 18-127
§ 126	§ 18-128
§ 127	§ 18-129
§ 128	§ 18-130
§ 129	§ 18-131
§ 130	§ 18-132
§ 131	§ 18-133

<u>Ordinance 322</u>	<u>2003 Codified Ordinances</u>
§ 132	§ 18-134
§§ 201 to 2013	§§ 18-201 to 18-2013

¶ 18-B Source Ordinances.

Ordinance 322	12-13-1995
Ordinance 330	03-27-1996
Ordinance 333	05-29-1996
Ordinance 366	04-14-1999
Ordinance 374	10-13-1999
Ordinance 415	10-29-2003

¶ 18-C Prior Ordinances Concerning Related Subject Matter.

Ordinance 234	12-26-1984
Ordinance 246	09-10-1986
Ordinance 262	02-08-1989

¶ 18-D Derivation of Former Semi-official Chapter 6 to 1981 Code.

In 1986, General Code Publishers Corp. printed an unofficial codification of Ordinance 234 to Chapter 6 of the 1981 Code. Borough Council did not formally add Ordinance 234 to the 1981 Code, and did not formally adopt any of the numbering and stylistic changes made by General Code Publishers Corp. However, Ordinances 246 and 262, which amended the plan, were drafted as amendments to Chapter 6 of the 1981 Code, and General Code Publishers Corp. printed a revision of Chapter 6 incorporating those changes (although GCP changed some of the section numbers provided by Ordinance 262). Ordinances 246 and 262 also “ratified and affirmed” Chapter 6 to the extent not in conflict with Ordinance 246. In 1995, Council replaced the language of Ordinance 234/unofficial Chapter 6 of the 1981 Code (as amended by Ordinances 246 and 262), with amended and restated plan language by Ordinance 322. Ordinance 322 was never codified to the 1981 Code.

A copy of the GCP unofficial Chapter 6 prior to Ordinance 322 is provided with the online and CD-ROM versions of the Codified Ordinances.

The provisions of the GCP unofficial Chapter 6 were derived from Ordinance 234 (as amended by Ordinances 246 and 262) as follows:

<u>Semi-official Chapter 6</u>	<u>Ordinance 234</u>	<u>Amendments prior to Ord. 322</u>
§ 6-1	§ I	
§ 6-2	§ II	
§ 6-3	§ III	
§ 6-4	§ IV	
§ 6-5	§ V	Ord. 262, § II
§ 6-6	§ VI	
§ 6-7	§ VII	Ord. 262, § III
§ 6-8	§ VIII	Ord. 246, § I; Ord. 262, §§ IV, V
§ 6-9	§ IX	
§ 6-10	§ X	Ord. 262, §§ VI, VII, VIII, IX
§ 6-11	§ XI	
§ 6-12	§ XII	
§ 6-13	§ XIII	
§ 6-14	§ XIV	
§ 6-15	§ XV	
§ 6-16	§ XVI	
§ 6-17	§ XVII	
§ 6-18	§ XVIII	
§ 6-19	§ XIX	
§ 6-20	§ XX	
§ 6-21	§ XXI	
§ 6-22	§ XXIII	
§ 6-23		Added by Ord. 262, § X
§ 6-24		Added by Ord. 262, § XI as § 6-25 (but printed by GCP as § 6-24)
§ 6-25		Added by Ord. 262, § XII as § 6-26 (but printed by GCP as § 6-25)
§ 6-26		Added by Ord. 262, § XIII as § 6-27 (but printed by GCP as § 6-26)
§ 6-27		Added by Ord. 262, § XIV as § 6-29 (but printed by GCP as § 6-27)
§ 6-28		Added by Ord. 262, § XV as § 6-30 (but printed by GCP as § 6-28)
§ 6-29		Added by Ord. 262, § XVI as § 6-31 (but printed by GCP as § 6-29)
§ 6-30		Added by Ord. 262, § XVII as § 6-32 (but printed by GCP as § 6-30)