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## Chapter 17 — Police Pension Plan

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**Article I – Title & General Definitions**

**§ 17-101 Short Title.**

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

**§ 17-102 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.

**§ 17-103 Accumulated Contributions.**

The term “Accumulated Contributions” shall mean, with respect to any Participant on any given date, the amount of contributions made by the Participant to this Plan pursuant to § 17-403 through the given date.

**§ 17-104 Administrator.**

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

**§ 17-105 Alternate Payee.**

The term “Alternate Payee” shall mean a person entitled to receive, by virtue of a Qualified Domestic Relations Order (*see* § 17-313), some of the benefits under this Plan of a Participant .

**§ 17-106 Anniversary Date.**

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

**§ 17-107 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 any Related Employer) within the period provided by law.

**§ 17-108 Beneficiary.**

The term “Beneficiary” shall have the meaning provided in § 17-305(c)(2).



## § 17-109 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.

## § 17-110 Compensation.

(a) **In General.** Except as provided in subsections (b) through (f), 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) **Heart and Lung Act Payments.** “Compensation” shall also include amounts not currently includible in the Qualified Employee’s gross income but paid as income replacement during a period of temporary disability under the Heart and Lung Act, 53 PA. STAT. ANN. § 637.

(d) **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).

### (e) 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 (c)), **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 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.

(f) **Modified Definition of Compensation for Purposes of Certain Provisions.** For purposes of § 17-306 (relating to Limitation on Benefits), the term “Compensation” shall be modified as described in that Section.

### § 17-111 Disabled.

A person shall be considered “Disabled” if he/she has a physical or mental condition which renders him permanently disabled from performing one or more of the essential functions of a full-time police officer position of employment for the Employer (or any Related Employer), as determined by a licensed physician satisfactory to the Administrator; *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.

### § 17-112 Effective Date.

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

### § 17-113 Eligible Spouse.

The term “Eligible Spouse” shall mean the spouse to whom a Participant was married on the date of the Participant’s death (*except* to the extent a former spouse is to be treated as an Eligible Spouse under a Qualified Domestic Relations Order).

**§ 17-114 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.

**§ 17-115 Equivalent Actuarial Value.**

The term “Equivalent Actuarial Value” shall mean the equivalent value when computed on the basis of the following actuarial assumptions, which are the actuarial assumptions upon which this Plan is funded:

- (a) Mortality: UP-1984 table.
- (b) Interest: Seven percent (7%) per annum.

**§ 17-116 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.

**§ 17-117 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.

**§ 17-118 Final Average Monthly Compensation.**

The term “Final Average Monthly Compensation” shall mean the Compensation paid to a Participant as a Qualified Employee during the thirty-six (36) month period ending on his/her Final Police Date, divided by thirty-six (36). If the Participant shall not have been a Qualified Employee for a total of at least thirty-six (36) months before his/her Final Police Date, his/her “Final Average Monthly Compensation” shall be his/her Compensation during his employment as a Qualified Employee divided by the number of months of his employment as a Qualified Employee through the Final Police Date (rounded to the nearest 0.001 of a month).

**§ 17-119 Final Police Date.**

The term “Final Police Date” shall mean, with respect to any given Participant, the last date for which the Participant earned Compensation as a Qualified Employee on or before the date of his/her Separation from Service.

**§ 17-120 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 55<sup>th</sup> 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.

### § 17-121 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 § 17-109(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 § 17-109(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.)

### § 17-122 Investment Manager.

The term “Investment Manager” shall mean an investment manager appointed under § 17-605.

### § 17-123 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 II).

(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 an accrued benefit under this Plan (whether vested or not).

### § 17-124 Plan or Plan and Trust.

The terms “Plan” or “Plan and Trust” shall mean the **Borough of Alburdis Police 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 Effective Date, the term “Plan” shall mean the Sponsor’s pension plan for police officer employees under the Prior Provisions of the Plan.

### § 17-125 Plan Year.

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

### § 17-126 Prior Provisions of the Plan.

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

### § 17-127 Qualified Employee.

(a) **In General.** The term “Qualified Employee” shall mean, as of any given date, any person employed as a full-time police officer of the Employer or any Related Employer for a stated salary or compensation.

(b) **Definition of “Full-Time”.** For purposes of this Section, a “full-time” position is one for which work is regularly scheduled for an average of not less than forty (40) hours per week (or would be so scheduled except for authorized sick time, holidays, vacation time, and similar paid or unpaid time off.)

### § 17-128 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 § 17-306 (relating to Limitation on Benefits), the definitions of Code §§ 414(b) and (c) shall be read as modified by Code § 415(h).

### § 17-129 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, a condition which renders the person Disabled, 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. The mere cessation of a person’s status as a Qualified Employee shall not constitute a “Separation from Service”; only a termination from all employment with the Employer (and all Related Employers) shall be 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 § 17-129 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 transfer 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 § 17-129 as modified by substituting the corporation for which he works (and its related employers) for the Employer (and Related Employers).

**§ 17-130 Sponsor.**

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

**§ 17-131 Trust.**

The term “Trust” shall mean the trust established for this Plan in § 17-601.

**§ 17-132 Trust Fund.**

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

**§ 17-133 Trustees.**

The term “Trustees” shall mean those individuals or corporations who, at any given time are the trustees of the Trust (*see* § 17-602).

**§ 17-134 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 or 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 — Participation & Service

### § 17-201 Participation.

#### (a) Active Participants.

(1) **Eligibility Conditions.** In order to be eligible to become an Active Participant in this Plan, a person must be a Qualified Employee.

#### (2) Entry Dates.

(A) **Continuing Active Participants.** A Qualified Employee who was actively participating under the Prior Provisions of the Plan immediately before the Effective Date shall continue as an Active Participant under this amended and restated Plan.

(B) **New Employees.** After the Effective Date, a person shall become an Active Participant as of the first Anniversary Date that he satisfies all of the conditions described in paragraph (1).

(C) **Returning Employees.** Notwithstanding subparagraph (B), if a person who was an Active Participant ceases to be a Qualified Employee and then becomes a Qualified Employee again, he/she shall become an Active Participant again as of the date he again becomes a 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/her Plan benefits 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/her 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.

### § 17-202 Years of Service.

The number of Years of Service credited to a Participant as of any given date (the “**Determination Date**”) shall be determined as follows:

(a) **Complete Years.** One (1.0000) Year of Service shall be credited for each Computation Period (*see* § 17-204) ending before the Determination Date during which the Participant is credited with a Day of Service (*see* § 17-203) for each day within the Computation Period.

(b) **Incomplete Years.** In addition to the number of Years of Service credited under subsection (a), a Participant shall receive credit for a number of Years of Service equal to—

(1) the number of Days of Service credited to the Participant on or before the Determination Date during Computation Periods *other than* those for which service is credited under subsection (a); **divided by**

- (2) three hundred sixty-five and one-quarter (365.2500);
- (3) with the result rounded to four decimal places (the nearest 0.0001).

(c) **Interrupted Service.** Notwithstanding subsections (a) and (b) and § 17-203, if a person who was a Participant—

- (1) Separates from Service;
- (2) receives a distribution of Accumulated Contributions under § 17-304 with respect to the period of service prior to the Separation from Service; and
- (3) later becomes an Active Participant again,

*then* no Days of Service and Years of Service with respect to the period before the Separation from Service shall be credited for purposes of receiving any further benefits under this Plan **unless** and **until** the Participant repays the Plan the amount of Accumulated Contributions received *plus* interest from the date of distribution to the date of repayment at the rate(s) in effect during such period under § 17-115(b). **All repayments under this subsection must be made no later than one (1) year after the person becomes a Qualified Employee again and returns to Active Participation in this Plan.**

### § 17-203 Days of Service.

(a) **In General.** Except as provided in subsection (f) and § 17-202(c), a person is credited with one Day of Service for each calendar day in which he/she is employed by the Employer (or any Related Employer) as a Qualified Employee, including working days, vacations, sick days, holidays, bereavement days, jury duty time, and nonscheduled days (such as weekends or the equivalent).

(b) **Military Service.** A person is also credited with one Day of Service for each calendar day of 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 (b) shall be granted upon the person's return to employment with the Employer (or any Related Employer).

(c) **Paid Temporary Disability.** A person is also credited with one Day of Service for each calendar day during a period of time for which he/she is entitled to receive—

- (1) compensation from the Employer (or any Related Employer) under the Heart and Lung Act, 53 PA. STAT. ANN. § 637; or
- (2) compensation or benefits under the Employer's (or any Related Employer's) sick leave policy or short-term disability plan, *provided that*—

(A) no more than 180 Days of Service may be credited under this paragraph (2) for any one continuous period of temporary disability, **and**

(B) no credit may be received under this paragraph (2) for any period after the person has become Disabled.

(d) **Permanent Disability.** A person is also credited with one Day of Service for each calendar day during any period—

(1) in which he/she is considered Disabled, if **either**—

(A) he/she became Disabled due to injuries incurred while performing the duties of his/her employment as a Qualified Employee, **or**

(B) he/she was a Participant on the Effective Date,

(2) **but in any case only if** the Participant ceases to be Disabled and returns immediately thereafter to employment as a Qualified Employee.

(e) **Back Pay.** A person is also credited with one Day of Service for each calendar day during any period for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Employer.

(f) **Exclusions.** Notwithstanding anything to the contrary contained in this Chapter, a Day of Service shall *not* be credited for any day—

(1) during any lay-off, including temporary lay-offs under § 17-129(b);

(2) during any period of military service longer than fourteen (14) days, *except* as provided in subsection (b);

(3) within any period of temporary or permanent disability longer than fourteen (14) days, *except* as provided in subsections (c) and (d); or

(4) within any unpaid leave of absence, *except* as provided in subsections (b), (c), and (d).

## § 17-204 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 Day of Service for the performance of duties as a full-time police officer of the Employer or any Related Employer.

(b) Each one year period which begins on an anniversary of the date described in subsection (a).

## Article III — Benefits

### § 17-301 Normal Retirement Benefit.

(a) **Qualification.** A Participant shall be entitled to receive a Normal Retirement Benefit if he/she incurs a Separation from Service—

- (1) after having attained the age of fifty-five (55) years, and
- (2) at a time when he/she has credit for at least twenty-five (25.0000) Years of Service.

(b) **Form and Amount of Payments.** The Normal Retirement Benefit shall be paid in a series of equal monthly payments—

(1) beginning on the first day of the calendar month following the calendar month of the Separation from Service, and

(2) continuing on the first day of each succeeding month until the first day of the calendar month in which the Participant dies,

(3) in a monthly amount equal to fifty percent (50%) of the Participant's Final Average Monthly Compensation, **plus**—

(A) \$25.00, if the Participant has credit for at least twenty-six (26.0000) but less than twenty-seven (27.0000) Years of Service at the time of the Separation from Service;

(B) \$50.00, if the Participant has credit for at least twenty-seven (27.0000) but less than twenty-eight (28.0000) Years of Service at the time of the Separation from Service;

(C) \$75.00, if the Participant has credit for at least twenty-eight (28.0000) but less than twenty-nine (29.0000) Years of Service at the time of the Separation from Service; or

(D) \$100.00, if the Participant has credit for at least twenty-nine (29.0000) Years of Service at the time of the Separation from Service.

(c) **Deferred Retirement.** No adjustment shall be made in the method of calculating the Normal Retirement Benefit if the Participant defers retirement beyond the first day that he/she is entitled to retire with a Normal Retirement Benefit. (Of course, the Final Average Monthly Compensation is always determined based on the last months of employment, not the last months of employment before the earliest day on which the Participant could have retired with a Normal Retirement Benefit.) No benefits shall be paid before Separation from Service.

### § 17-302 Disability Retirement Benefit.

(a) **Qualification.** A Participant shall be entitled to receive a Disability Retirement Benefit if he/she incurs a Separation from Service as a result of becoming Disabled due to injuries incurred while performing the duties of his/her employment as a Qualified Employee.

**(b) Form and Amount of Payments.** The Disability Retirement Benefit shall be paid in a series of monthly payments—

(1) beginning on the first day of the calendar month following the calendar month of the Separation from Service, and

(2) continuing on the first day of each succeeding month until the *earlier of*—

(A) the first day of the calendar month in which the Participant ceases to be Disabled, or

(B) the first day of the calendar month in which the Participant dies,

(3) in an amount for any given month equal to—

(A) fifty percent (50%) of the Participant's Final Average Monthly Compensation, less

(B) the amount of any Social Security disability payments to which the Participant is entitled for that month.

**(c) Transition Disability Retirement Benefit.**

(1) **Purpose.** Prior to the date this Plan became subject to Act 600 of 1955, 53 PA. STAT. ANN. § 767 *et seq.*, it provided for a disability benefit for persons who became Disabled without regard to whether the disability was caused by injuries incurred while performing the duties of his/her employment as a Qualified Employee. Act 600 permits a vested benefit only for service-related disabilities. *Chirico v. Board of Supervisors for Newtown Township*, 518 Pa. 572, 544 A.2d 1313 (1988). The Transition Disability Retirement Benefit recognizes the right of a person who was a Participant under the Prior Provisions of the Plan to receive a disability benefit for a non-service-related disability to the extent of his accrued benefits on the Effective Date.

(2) **Qualification.** A person who was an Active Participant on the Effective Date shall be entitled to receive a Transition Disability Retirement Benefit if he/she incurs a Separation from Service as a result of becoming Disabled due to injuries *not* incurred while performing the duties of his/her employment as a Qualified Employee.

(3) **Form and Amount of Payments.** The Transition Disability Retirement Benefit shall be paid in a series of monthly payments—

(A) beginning on the first day of the calendar month following the calendar month of the Separation from Service, and

(B) continuing on the first day of each succeeding month until the *earlier of*—

(I) the first day of the calendar month in which the Participant ceases to be Disabled, or

(II) the first day of the calendar month in which the Participant dies,

(C) in a monthly amount equal to—

(I) fifty percent (50%) of the Participant's average monthly compensation during the thirty-six month period ending on the Effective Date, **multiplied by**

(II) the number of Years of Service credited to the Participant as of the Effective Date, **divided by**

(III) the number of Years of Service which would have been credited to the Participant through the date of retirement if the Participant had continued as a Qualified Employee without a Separation from Service through the *later* of—

(i) the day as of which the Participant would have first received credit for at least twenty-five (25.0000) Years of Service if the Participant had continued as a Qualified Employee without a Separation from Service through such date; or

(ii) the Participant's sixtieth (60<sup>th</sup>) birthday; **less**

(IV) the amount of any Social Security disability payments to which the Participant is entitled for that month.

**(d) Other Benefits.**

(1) **Recovery of Disabled Participant.** If a person who received a Disability Retirement Benefit or Transition Disability Retirement Benefit ceases to be Disabled, he/she remains eligible to receive a Normal Retirement Benefit, a Vested Benefit, or a Transition Vested Benefit, and/or his/her beneficiaries remain eligible to receive Death Benefits in accordance with the applicable provisions of this Plan so long as he/she satisfies the criteria for the payment of such benefits; the receipt of a Disability Retirement Benefit or Transition Disability Retirement Benefit does not affect the right to receive such benefits. However, no payment of Accumulated Contributions made prior to the date the person ceases to be Disabled, and the interest thereon, shall be made under § 17-304 to any person who has received a Disability Retirement Benefit.

(2) **No Recovery of Disabled Participant.** If a person who received a Disability Retirement Benefit or Transition Disability Retirement Benefit remains Disabled for the remainder of his/her life, he/she shall not be eligible to receive any other benefits or payments from this Plan other than the Disability Retirement Benefit or Transition Disability Retirement Benefit. However, his/her beneficiaries remain eligible to receive Death Benefits in accordance with § 17-305.

(e) **Verification that Disability Continues.** The Administrator may require a Participant receiving a Disability Retirement Benefit or a Transition Disability Retirement Benefit to undergo a medical examination from time to time (but not more than once every twelve (12) months) in order to verify that the Participant continues to be Disabled. If a Participant fails or refuses to undergo such a medical examination, the Participant shall be deemed to be no longer Disabled as of the date by which the medical examination was to have been completed.

**§ 17-303 Vested Benefit.**

(a) **Qualification.** A Participant shall be entitled to receive a Vested Benefit if he/she—

(1) incurs a Separation from Service at a time when he/she has credit for at least twelve (12.0000) Years of Service but is not entitled to receive a Normal Retirement Benefit;

(2) elects to vest his/her benefits under this Plan and waive a return of Accumulated Contributions plus interest under § 17-304 within ninety (90) calendar days after the Separation from Service; and

(3) survives until the date the first payment would have been made under a Normal Retirement Benefit if the Participant had continued as a Qualified Employee without a Separation from Service through the earliest date he/she could retire with eligibility for a Normal Retirement Benefit.

**(b) Form and Amount of Payments.** The Vested Benefit shall be paid in a series of monthly payments—

(1) beginning on the date the first payment would have been made under a Normal Retirement Benefit if the Participant had continued as a Qualified Employee without a Separation from Service through the earliest date he/she could retire with eligibility for a Normal Retirement Benefit, and

(2) continuing on the first day of each succeeding month until the first day of the calendar month in which the Participant dies,

(3) in a monthly amount equal to—

(A) fifty percent (50%) of the Participant's Final Average Monthly Compensation, **multiplied by**

(B) the number of Years of Service credited to the Participant as of the date of his Separation from Service, **divided by**

(C) the number of Years of Service which would have been credited to the Participant through the date of retirement if the Participant had continued as a Qualified Employee without a Separation from Service through the earliest date he/she could retire with eligibility for a Normal Retirement Benefit.

**(c) Transition Vested Benefit.**

(1) **Purpose.** Prior to the date this Plan became subject to Act 600 of 1955, 53 PA. STAT. ANN. § 767 *et seq.*, it provided for a vested benefit after only ten (10) years of service. Act 600 permits a vested benefit only after twelve (12) years of service. The Transition Vested Benefit recognizes the right of a person who was a Participant under the Prior Provisions of the Plan to receive a vested benefit after ten (10) years of service to the extent of his accrued benefits on the Effective Date.

(2) **Qualification.** A person who was an Active Participant on the Effective Date shall be entitled to receive a Transition Vested Benefit if he/she—

(A) incurs a Separation from Service at a time when he/she has credit for at least ten (10.00) but fewer than twelve (12.0000) Years of Service;

(B) elects to vest his/her benefits under this Plan and waive a return of Accumulated Contributions plus interest under § 17-304 within ninety (90) calendar days after the Separation from Service; and

(C) survives until the first day of the first calendar month after the *later* of—

(I) the month in which the Participant would have first received credit for at least twenty-five (25.0000) Years of Service if the Participant had continued as a Qualified Employee without a Separation from Service through such date; or

(II) the month which contains the Participant's sixtieth (60<sup>th</sup>) birthday.

**(3) Form and Amount of Payments.** The Transition Vested Benefit shall be paid in a series of monthly payments—

(A) beginning on the date described in paragraph (2)(C), and

(B) continuing on the first day of each succeeding month until the first day of the calendar month in which the Participant dies,

(C) in a monthly amount equal to—

(I) fifty percent (50%) of the Participant's average monthly compensation during the thirty-six month period ending on the Effective Date, **multiplied by**

(II) the number of Years of Service credited to the Participant as of the Effective Date, **divided by**

(III) the number of Years of Service which would have been credited to the Participant through the date of retirement if the Participant had continued as a Qualified Employee without a Separation from Service through the *later* of—

(i) the day as of which the Participant would have first received credit for at least twenty-five (25.0000) Years of Service if the Participant had continued as a Qualified Employee without a Separation from Service through such date; or

(ii) the Participant's sixtieth (60<sup>th</sup>) birthday.

**(d) Waiver of Return of Accumulated Contributions.** Any waiver under this § 17-303 of a Return of Accumulated Contributions shall be irrevocable, unless the Participant returns to employment as a Qualified Employee and later incurs another Separation from Service. While a waiver waives a return of accumulated contributions under § 17-304, it does not constitute a waiver of the death benefit return of accumulated contributions under § 17-305(d).

### § 17-304 Return of Accumulated Contributions.

**(a) In General.** A Participant who—

(1) incurs a Separation from Service at a time when he/she is not eligible to receive a Normal Retirement Benefit or Disability Retirement Benefit;

(2) incurs the Separation from Service at a time when he/she is not eligible to receive a Transition Disability Retirement Benefit or elects not to receive a Transition Disability Retirement Benefit; **and**

(3) either:

(A) incurs the Separation from Service at a time when he/she is not eligible to vest any benefits under § 17-303; **or**

(B) does not make a timely election to vest his/her benefits under § 17-303,

shall be entitled to receive a distribution from the Plan equal to the amount of his/her Accumulated Contributions *plus* interest.



(b) **Interest.** For purposes of subsection (a), “interest” shall mean interest from the day of contribution to the Plan to the date of distribution under this Section at the rate(s) in effect during such period under § 17-115(b).

(c) **Time of Payment.** A distribution under this Section shall be made as soon as practicable after the Participant files an election to receive the distribution.

### § 17-305 Death Benefits.

(a) **Qualification for Normal Death Benefit.** The Beneficiaries of a Participant shall be entitled to receive a Normal Death Benefit if the Participant dies —

(1) after he/she has begun receiving benefits under a Normal Retirement Benefit, a Vested Benefit, or a Transition Vested Benefit;

(2) after he/she has begun receiving Disability Retirement Benefits or Transition Disability Retirement Benefits, *provided* that such benefits did not terminate prior to his/her death because he/she ceased to be Disabled; or

(3) while still employed by the Employer (or any Related Employer) **and** —

(A) after having attained the age of fifty-five (55) years, and

(B) at a time when he/she has credit for at least twenty-five (25.0000) Years of Service.

(b) **Form and Amount of Payments.** The Normal Death Benefit shall be paid in a series of monthly payments —

(1) beginning on the first day of the month following the month of the Participant’s death, and

(2) continuing on the first day of each succeeding month until there is no person who qualifies as a Beneficiary,

(3) in a monthly amount equal to —

(A) fifty percent (50%) of the monthly amount being received by the Participant at the time of his/her death, in the case of a Participant described in subsection (a)(1); **or**

(B) twenty-five percent (25%) of the Participant’s Final Average Monthly Compensation, in the case of a Participant described in subsection (a)(2); **or**

(C) twenty-five percent (25%) of the Participant’s Final Average Monthly Compensation *plus* the applicable amount (if any) set forth below, in the case of a Participant described in subsection (a)(3):

(I) \$12.50, if the Participant has credit for at least twenty-six (26.0000) but less than twenty-seven (27.0000) Years of Service at the time of his/her death;

(II) \$25.00, if the Participant has credit for at least twenty-seven (27.0000) but less than twenty-eight (28.0000) Years of Service at the time of his/her death;

(III) \$37.50, if the Participant has credit for at least twenty-eight (28.0000) but less than twenty-nine (29.0000) Years of Service at the time of his/her death; **or**

(IV) \$50.00, if the Participant has credit for at least twenty-nine (29.0000) Years of Service at the time of his/her death.

(c) **Beneficiaries.**

(1) **In General.** Any given payment in the series of payments which constitutes the Normal Death Benefit shall be paid to the person(s) who is/are a Beneficiary as of the date for which the payment is being made.

(2) **Definition.** For purposes of the Normal Death Benefit, a person is a “Beneficiary” of a Participant as of the date of any given payment if:

(A) he/she is the Eligible Spouse of the Participant, is then living, and has not remarried following the death of the Participant; **or**

(B) he/she is the child of the Participant, is then living, and has not yet attained age 18, **and** there is no person as of that date who qualifies under subparagraph (A).

(3) **Multiple Beneficiaries.** For purposes of the Normal Death Benefit, if there is more than one Beneficiary at the time of any given payment, the amount of the payment shall be split into equal shares, one for each Beneficiary.

(d) **Death Benefit Return of Accumulated Contributions.**

(1) **In General.** If a Participant—

(A) dies at a time when his/her Beneficiaries are not eligible to receive a Normal Death Benefit **or** has no Beneficiaries, **and**

(B) did not receive any payments under a Normal Retirement Benefit, Disability Retirement Benefit, Transition Disability Retirement Benefit, Vested Benefit, or Transition Vested Benefit during his/her lifetime,

then the Plan shall distribute an amount equal to the amount of the Participant’s Accumulated Contributions *plus* interest to the person(s) designated by the Participant in writing on forms prescribed by the Administrator. Recipients may be designated contingently and/or concurrently. If the Participant failed to designate a recipient or if no designated recipient shall have survived the Participant, the distribution shall be made to the estate of the Participant.

(2) **Interest.** For purposes of paragraph (1), “interest” shall mean interest from the day of contribution to the Plan to the date of distribution under this subsection (d) at the rate(s) in effect during such period under § 17-115(b).

(3) **Time of Payment.** A distribution under this subsection shall be made as soon as practicable after the designated recipient or personal representative of the Participant files an election to receive the distribution.

(e) **No Other Death Benefits.** Except as provided in this § 17-305, no Participant or former Participant and no estate, heir, or beneficiary of any Participant or former Participant shall receive any payment or benefit under this Plan or from the Trust due to the death of a Participant or former Participant.

### § 17-306 Limitation on Benefits.

(a) **Definitions.** For purposes of this Section, the following words and phrases shall have the meanings provided in this subsection (a):

(1) **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:

(A) 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;

(B) 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);

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

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

(E) 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**

(F) 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.

(2) **Compensation.** For purposes of this Section *only*, the term “Compensation” shall have the meaning provided in § 17-110, *with the following modifications*:

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

(B) § 17-110(b) and (c) shall be deleted.

(3) **Compensation Limitation.** The term “Compensation Limitation” shall mean, for any Limitation Year, 100% of the Participant’s Compensation for the period of three (3) consecutive calendar years during which the Participant both was an Active Participant in this Plan and had the greatest aggregate compensation from the employer, with the following modifications, as applicable—

(A) in the case of a Participant who has incurred a Separation from Service, the Compensation Limitation shall be adjusted for changes in the cost of living since the applicable base period in the calendar year before the calendar year of the Separation from Service, in accordance with the provisions of Code § 415(d);

(B) if the Participant has fewer than ten (10.0000) Years of Service, the Computation Limitation as computed under the preceding provisions of this paragraph (3) shall be adjusted by multiplying the previously computed amount by a fraction—

(I) whose numerator is equal to the number of Years of Service in the Plan (rounded to four decimal places), *but not less* than one (1.0000), **and**

(II) whose denominator is ten (10.0000).

**(4) Defined Benefit Plan Fraction.**

**(A) In General.** The “Defined Benefit Plan Fraction” is a fraction—

**(I) 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**

**(II) 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(d) (for years beginning in 1996, 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 subclause (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.

**(B) Transition Rules.** Notwithstanding subparagraph (A), 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 subparagraph (A)(II) 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.

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

**(A) 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**

**(B) 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 (within the meaning of 29 C.F.R. § 2530.200b-2) (regardless of whether the Employer or any Related Employer maintained a defined contribution plan at the time).

**(6) Dollar Limitation.** The term “Dollar Limitation” shall mean, for any Participant in any Limitation Year, the dollar amount in effect under Code § 415(b)(1)(A) for such Limitation Year as adjusted under Code § 415(d) (\$120,000 for 1996) (“**Standard Adjusted Dollar Limitation**”), with the following modifications, as applicable—

**(A)** if the series of benefit payments under this Plan commenced after the Participant attained age 65, the Dollar Limitation shall be adjusted:

**(I)** to the amount equal to the annual payment under a straight life annuity for the life of the Participant commencing on the date benefit payments under this Plan actually commenced which is actuarially equivalent to a straight life annuity for the life of the Participant commencing at age 65 with an annual payment equal to the Standard Adjusted Dollar Limitation,

**(II)** with actuarial equivalence determined based on the mortality assumptions prescribed under Code § 415(b)(2)(e)(v), and interest assumptions equal to the **lesser** of—

- (i)** five percent (5%); **or**
- (ii)** the rate in effect under § 17-115(b).

**(B)** if the series of benefit payments under this Plan commenced before the Participant attained age 62 but after the Participant attained age 55, the Dollar Limitation shall be adjusted to the **greater** of \$75,000 **or**:

**(I)** the amount equal to the annual payment under a straight life annuity for the life of the Participant commencing on the date benefit payments under this Plan actually commenced which is actuarially equivalent to a straight life annuity for the life of the Participant commencing at age 62 with an annual payment equal to the Standard Adjusted Dollar Limitation,

**(II)** with actuarial equivalence determined based on the mortality assumptions prescribed under Code § 415(b)(2)(e)(v), and interest assumptions equal to the **greater** of—

- (i)** five percent (5%); **or**
- (ii)** the rate in effect under § 17-115(b).

**(C)** if the series of benefit payments under this Plan commenced before the Participant attained age 55, the Dollar Limitation shall be adjusted to the **greatest** of:

**(I)** the amount determined under clauses (I) and (II) of subparagraph (B);

**(II)** the amount equal to the annual payment under a straight life annuity for the life of the Participant commencing on the date benefit payments under this Plan actually commenced which is actuarially equivalent to a straight life annuity for the life of the Participant commencing at age 65 with an annual payment of \$75,000, with actuarial equivalence determined as described in subparagraph (B)(II); **or**

**(III)** if the Participant has credit for at least fifteen (15.0000) Years of Service, the dollar amount in effect under Code § 415(b)(2)(G) for such Limitation Year as adjusted under Code §§ 415(b)(2)(G) and 415(d) (originally \$50,000).

(D) if the Participant has fewer than ten (10.0000) years of participation in the Plan, the Dollar Limitation as computed under the preceding provisions of this paragraph (6) shall be adjusted by multiplying the previously computed amount by a fraction—

(I) whose numerator is equal to the number of years of participation in the Plan (rounded to four decimal places), *but not less* than one (1.0000), **and**

(II) whose denominator is ten (10.0000).

For purposes of this subparagraph (D), the term “years of participation” shall have the same meaning as the term Years of Service, *except* that no Days of Service prior to the date the Participant first became a Participant in this Plan shall be credited.

(7) **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.

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

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

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

(9) **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*—

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

(B) 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.

(b) **General Rule.** The amount of benefits provided 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 subsection (e)) to the extent necessary and possible to meet the limitations established in subsections (c) and (d). Since the limitations set forth in this Section change annually, benefit payments which had been limited by the provisions of this Section in one Limitation Year may be increased with respect to payments in following Limitation Years so long as they stay within the applicable limits in each Limitation Year.

(c) **Limitation for All Defined Benefit Plans.** The total amount of benefits which may be distributed on behalf of any Participant with respect to any Limitation Year (whether of this Plan or any other plan of the Employer or any Related Employer) under all of the defined benefit plans (as defined in Code § 415(k)) maintained by the Employer or any Related Employer (not including any benefits attributable to employee or rollover contributions, and as adjusted so that

the benefits paid under this Plan are equivalent to an annual benefit payable in the form of a straight life annuity with no ancillary benefits) shall not exceed the **lesser** of—

- (1) the Dollar Limitation for that Limitation Year, **or**
- (2) the Compensation Limitation for that Limitation Year.

(d) **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.

(e) **Procedure for Reducing Contributions.**

(1) **Priority vs. Plans Which Are Not Defined Benefit Plans.** Annual Additions shall be reduced under plans other than defined benefit plans to the maximum possible extent before any benefits under this Plan are reduced under this § 17-306.

(2) **Priority vs. Other Defined Benefit Plans.** The extent to which benefits are reduced under this Plan as compared to other defined benefit plans in order to comply with the limitations of this § 17-306 shall be determined by the Administrator—

(A) first, in such a manner as to maximize the aggregate benefits payable, **and**

(B) second, to the extent the objective of subparagraph (A) is achieved, by reducing benefits under other defined benefit plans to the maximum possible extent before any benefits under this Plan are reduced.

(f) **Conformance to Code Section 415.** The limitations provided by this § 17-306 are intended to comply with Code § 415 and the regulations promulgated thereunder. To the extent there is any discrepancy between this Section and Code § 415 and related regulations, or any ambiguity in the terms of this Section, the discrepancy or ambiguity (whether this Section 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.

### § 17-307 **Withdrawals.**

A Participant may not elect to withdraw any funds from the Plan at any time, except as provided in § 17-304.

### § 17-308 **Loans.**

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

### § 17-309 **Direct Rollovers of Distributions.**

(a) **In General.** Notwithstanding any provision of the Plan to the contrary, 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 contri-

bution 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.



### § 17-310 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.

### § 17-311 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.

### § 17-312 Spendthrift Provisions.

(a) **General Rule.** Except as provided in subsection (b), benefits payable under this Plan 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 (and any Related 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 § 17-313).

### § 17-313 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/her subsequent spouse;

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

(I) the date on which the Participant is entitled to a distribution under the Plan, **or**

(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 from Service with the Employer (or any Related 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 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) Otherwise.** All amounts in Alternate Payee accounts created with respect to such judgment, decree, or order shall be reintegrated into the general Plan assets 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,

*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.

**§ 17-314 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.

### **§ 17-315 Forms.**

All applications for benefit payments, beneficiary designations, and elections to waive, vest, or receive optional forms of benefits, shall be made on forms supplied by the Administrator and within such reasonable periods of time as may be prescribed by the Administrator.

### **§ 17-316 Production of Information.**

Notwithstanding anything to the contrary contained in this Article III, 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.

### **§ 17-317 Compliance with Code § 401(a)(9).**

The provisions of this Article III are designed to comply with the latest commencement of benefit and minimum distribution requirements of Code § 401(a)(9) and the regulations promulgated thereunder. To the extent any provision of this Article III does not provide for the payment of the minimum distributions required through any given date under Code § 401(a)(9) and the regulations promulgated thereunder, this Plan shall be deemed amended in such a way as to comply with the minimum requirements of Code § 401(a)(9) and the regulations promulgated thereunder.

### **§ 17-318 Public Employee Pension Forfeiture Act.**

Notwithstanding anything to the contrary contained in this Chapter, all benefits under this Plan are subject to reduction or complete forfeiture in accordance with the provisions of the Public Employee Pension Forfeiture Act, 43 PA. STAT. ANN. § 1311 *et seq.*

## Article IV — Funding

### § 17-401 Employer Contributions.

(a) **In General.** The Employer shall, from time to time, contribute to the Plan and Trust the amounts required to fund all benefits provided under this Plan to the extent they are not funded by employee contributions under § 17-403. The minimum amount of Employer contributions shall be determined in accordance with the requirements of the Municipal Pension Plan Funding Standard and Recovery Act, 53 PA. STAT. ANN. § 895.101 *et seq.*

(b) **Source of Contributions.** Employer contributions may be derived from grants of state aid, disbursements from the Employer's general fund, and other sources.

(c) **Multiple Employers.** For any Plan Year in which more than one employer is included within the definition of "Employer," Employer contributions to fund the benefits accrued by any given Participant shall be made by his/her particular employer.

### § 17-402 Payment of Employer Contributions.

(a) **In General.** All Employer contributions shall be paid to the Trustees to be held in the Trust. The Trust shall be used to pay all benefits under this Plan. 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.

(b) **Uniformed Service.** Employer contributions under this Article IV 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.

(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.

(d) **Mistake of Fact.** If, due to a mistake of fact, the Employer contributes an amount to the Plan for a given Plan Year in excess of the amount the Employer would have contributed had there not been a mistake of fact, the Administrator may direct the Trustees to return the excess to the Employer, or treat the contribution as having been made for the following Plan Year.

### § 17-403 Employee Contributions.

(a) **In General.** Each month, each Qualified Employee shall contribute an amount equal to five percent (5%) of his/her Compensation for the month to the Trust *via* payroll deduction. The Employer shall transmit the contributions to the Trust within a reasonable period after deduction, and in no case later than thirty (30) days after the date of the paycheck.

#### (b) Reduction or Elimination of Employee Contributions for a Plan Year.

(1) **In General.** Notwithstanding the provisions of subsection (a), if an actuarial study shows that the condition of the Plan and Trust is such that if the contributions specified in subsection (a) are reduced below five percent (5%) of Compensation or eliminated in the following Plan Year, the Employer will not be obligated to contribute any amounts under § 17-401 for that Plan Year (other than amounts derived from grants of state aid which the Employer has elected or will elect to contribute to this Plan), then the governing body of the Sponsor *may*, by Ordinance or Resolution, so reduce or eliminate the contributions required under subsection (a) for the following Plan Year. (The reduction for the Plan Year which includes the Effective Date may be made at any time prior to the Effective Date.)

(2) **Annual Reductions.** No Ordinance or Resolution adopted under paragraph (1) may affect any Plan Year beyond the first Plan Year which begins after the date the Ordinance or Resolution is adopted. Reductions or eliminations of employee contributions must be made on an annual basis.

#### (c) Uniformed Service.

(1) **In General.** No Participant shall be required to make any contributions to this Plan during any period of service in the uniformed services of the United States. If such a Participant returns to employment with the Employer, he/she shall contribute to the Plan an amount equal to the rate in effect under subsections (a) and (b) for the period of uniformed service **multiplied** by the deemed Compensation of the Participant for such period. (Where more than one rate is in effect during the period of uniformed service, a calculation shall be performed for each portion of the period of uniformed service governed by a separate rate, and the total required contribution shall be equal to the sum of such calculations.)

(2) **Time of Contributions.** The contribution required under paragraph (1) shall be made during the period beginning with the date of reemployment and whose duration is the **lesser** of—

(A) three (3) times the period of the person's service in the uniformed services;

or

(B) five (5) years.

(d) **Failure or Refusal to Pay.** If a Qualified Employee fails or refuses, at any time, to contribute any amounts required under this § 17-403, he/she shall forfeit, in the case of a failure under subsection (c), all benefits under this Plan which are based on service for the period of the unformed service; and in all other cases, all benefits under this plan which are based on service prior to the refusal and after the Effective Date, *except* for a return of Accumulated Contributions *plus* interest under § 17-304.

(e) **Treatment of Employee Contributions as Employer Pick-Up Contributions.** The employee contributions under this Section which are made *via* payroll deduction, although designated as employee contributions, shall be treated for federal income tax purposes as salary reductions rather than deductions and thus as being paid by the Employer as “pick up” contributions under Code § 414(h)(2). Under current law, such contributions are not subject to federal income tax at the time of the contributions, but only at the time when Plan benefits are paid. (However, these amounts are considered “wages” subject to current FICA taxation and also current income for Pennsylvania state and local income taxes.) A Qualified Employee shall not have the option of receiving the amount of employee contributions required under this Section directly instead of having them paid by the Employer to the Plan. This subsection shall be construed to include all requirements necessary to satisfy the provisions of Code § 414(h)(2).

(f) **Voluntary Contributions.** No voluntary employee contributions beyond those mandated by this Section may be made to this Plan by any Qualified Employee.

## Article V – Claims Procedure

### § 17-501 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.

### § 17-502 Notice of Denial.

If the Administrator denies a request for benefits under § 17-501 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 § 17-503.

### § 17-503 Review of Denial.

(a) **Petition.** Within 60 days of the receipt of a notice of denial under § 17-502, 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 § 17-502; 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 § 17-503 shall comply with the provisions of the Local Agency Law, 2 PA. CONS. STAT. § 551 *et seq.*

## Article VI — Trust & Investments

### § 17-601 Establishment & Acceptance of Trust.

The Trustees shall receive all property which constituted the trust fund under the Prior Provisions of the 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.



## § 17-602 Trustees.

(a) **Qualification.** A Trustee under this Plan may be any individual or corporation not prohibited from serving as a Trustee under § 17-801.

(b) **Initial Trustees.** The initial Trustees shall be the members of the Borough of Alburdis Pension Committee as of the Effective 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 § 17-803 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 reserve remaining after the payment of such fees and expenses shall be paid over to the new or reconstituted body of Trustees as soon as possible.

### § 17-603 Investment of the Trust Fund.

(a) **In General.** Except as provided in this Section and §§ 17-605 (relating to Investment Managers), and 17-609 (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 § 17-803 and the other fiduciary requirements of Article VIII) 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.

### § 17-604 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.

## § 17-605 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 Manager 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 VIII 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.

### § 17-606 Other Powers of the Trustees.

Subject to the other provisions of this Article and the provisions of Article VIII (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 § 17-801, 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.

### **§ 17-607 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).

### **§ 17-608 Plan-to-Plan Transfers.**

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

### **§ 17-609 Limiting Directions from the Administrator.**

The Trustees shall comply with any directions given by the Administrator under § 17-703 (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.

### **§ 17-610 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.

## § 17-611 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.

## § 17-612 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.

### § 17-613 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 re-investment 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 § 17-702(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.

### § 17-614 Purpose: Exclusive Benefit Rule.

Except as provided in § 17-402(d) (relating to return of contributions made on the basis of a mistake of fact), no assets of the Trust Fund, including investment income, shall be used for or diverted to any purpose other than the exclusive benefit of Participants, Alternate Payees, and Beneficiaries, or be used for any purpose other than 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, prior to the satisfaction of all liabilities under this Plan with respect to such persons.

### § 17-615 Standard of Care.

The Trustees, all agents, counsel, consultants, specialists, and accountants retained by them under § 17-606(k), and all Investment Managers under § 17-605 shall be subject to the fiduciary requirements detailed in Article VIII.



## Article VII – Administration

### § 17-701 In General.

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

### § 17-702 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 § 17-610, 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 § 17-801, 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 § 17-801, the Administrator may appoint such actuaries, 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 actuary, 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 state and federal law.

(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.

### **§ 17-703 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.

### **§ 17-704 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.

### **§ 17-705 Standard of Care.**

The Administrator and all accountants, counsel, specialists, consultants, and other retained by it under § 17-702(d) shall be subject to the fiduciary requirements detailed in Article VIII.

## Article VIII – Fiduciaries

### § 17-801 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).

### § 17-802 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).

### § 17-803 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.

### § 17-804 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/her individual capacity or any other.

### § 17-805 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.

### § 17-806 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 IX — Amendment, Termination & Merger

### § 17-901 Amendment.

(a) **In General.** Subject to the provisions of subsection (b) and the procedural requirements of the Municipal Pension Plan Funding Standard and Recovery Act, 53 PA. STAT. ANN. § 895.101 *et seq.* and other applicable laws, 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, prior to the satisfaction of all liabilities to such persons, 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.

(4) **Conformance to Applicable State Law.** Not conform to Act 600 of 1955, 53 PA. STAT. ANN. § 767, *et seq.* or any successor legislation authorizing or mandating retirement benefits for Qualified Employees.

(c) **Effect of Amendments on Inactive Participants.** No amendment under this Section shall be construed to increase or accelerate the benefits payable to any person with respect to a Participant who Separates from Service prior to the **later** of the effective date or the adoption date of the amendment, or provide any payments to any person who would not have received any benefits with respect to such a Participant under this Plan as in effect prior to the amendment, unless that Participant becomes an Active Participant again thereafter.

(d) **Retroactive Amendments.** The Borough Council of the Sponsor shall have the right to amend the Plan retroactively if necessary or appropriate to make the Plan conform to the requirements of any law or governmental regulation now or hereafter enacted or promulgated, or to qualify the Plan and Trust as exempt under existing or future federal, state, or local income or estate tax laws and regulations.

## § 17-902 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 by Ordinance at any time such action is permitted under applicable state and federal law.

(b) **Use of Funds Upon Termination; Reversion to Employer.** In case of termination of this Plan, the funds of the Plan and Trust shall be used for the exclusive benefit of Participants, former Participants, and beneficiaries to the extent of their rights under the Plan. However, if the Employer, because of experience gains, investment gains, or other results different from actuarial calculations, or for other reasons, shall have contributed funds in excess of the amount required to satisfy all liabilities of the Plan for benefits, then such excess shall be returned to the Employer.

(c) **Order of Payments in the Event of Shortfall.** In the event this Plan is terminated or the Employer discontinues making contributions to this Plan, the Administrator shall determine the share of the funds of the Plan and Trust allocable to each Participant in the following order, except as may be required by rule, regulation, or direction of the Internal Revenue Service, the Pension Benefit Guaranty Corporation, or the Pennsylvania Auditor General's office:

(1) Any benefits that Participants or beneficiaries have accrued to the date of termination or discontinuance of contributions, to the extent that these benefits are then funded or credited to their individual accounts, shall be non-forfeitable and payable to them. If the funds of the Plan are insufficient to provide for all such benefits in full, each benefit shall be reduced *pro rata*.

(2) To the extent that the accrued benefits are not funded or credited on an individual basis, they shall be payable in the following order:

(A) Each retired Participant or his beneficiary receiving a retirement benefit and each Participant who has not yet retired from employment with the Employer but who is entitled to retire and receive a Normal Retirement Benefit shall be entitled to a benefit equal to the reserve computed to be required to provide his full accrued benefits. If the funds of the Plan and Trust are insufficient to provide in full for all benefits under this subparagraph (A), then all benefits under this subparagraph (A) shall be reduced *pro rata*.

(B) After the benefits under the provisions of subparagraph (A) above have been set aside in full, each other person entitled to a benefit hereunder shall be entitled to a benefit equal to the reserve computed to be required to provide his accrued benefits. If the funds of the Plan and Trust are insufficient to provide in full for all benefits under this subparagraph (B), then all benefits under this subparagraph (B) shall be reduced *pro rata*.

**(d) Termination & Liquidation of the Trust.**

(1) **Termination of Trust.** Following a termination of the Plan, the Sponsor may terminate the Trust if permitted by applicable law. In that event, the Trustees may require that all interests in the Trust be distributed as soon as practicable in a lump sum cash distribution, in immediate annuities, in deferred annuities, or in other periodic payment forms as permitted by the Administrator and elected by the recipient.

(2) **Continuation of Trust.** Following a termination of the Plan, the Sponsor may also elect to continue the Trust if permitted by applicable law. In that event, the Trust shall pay benefits at the times specified in Article III to the extent of the benefits accrued through the date of Plan termination and available under the Trust.

(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 § 17-614 (relating to Exclusive Benefit Rule).

(e) **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 § 17-614 (relating to Exclusive Benefit Rule)). Any election by a Related Employer under this subsection (e) 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.

**§ 17-903 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 X — Miscellaneous

### § 17-1001 Acquittance.

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. The Trust is designed to be and shall be the sole source of the benefits provided under this Plan. 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 or assume any obligation with respect to benefits under this Plan other than to pay the contributions required under § 17-401.

### § 17-1002 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.

### § 17-1003 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.

### § 17-1004 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.



### **§ 17-1005 Effect of this Amendment on Persons Who Separated From Service Before the Effective Date.**

This Chapter shall not be construed to increase or accelerate the benefits payable to any person with respect to a Participant who Separates from Service prior to the Effective Date, or provide any payments to any person who would not have received any benefits with respect to such a Participant under the Prior Provisions of the Plan, unless that Participant becomes an Active Participant again after the Effective Date.

### **§ 17-1006 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 Effective Date shall not be less than the accrued benefit of such person under the Prior Provisions of the Plan as of the day before such date, except as permitted by law.

### **§ 17-1007 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.

### **§ 17-1008 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.

### **§ 17-1009 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.

### **§ 17-1010 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.

### **§ 17-1011 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 in accordance with applicable law.

### **§ 17-1012 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.

### **§ 17-1013 Type of Plan.**

This Plan is a defined benefit pension plan under Act 600 of 1955, 53 PA. STAT. ANN. § 767 *et seq.* To the extent there is any discrepancy between the provisions of this Plan and of the requirements of Act 600, this Plan shall be interpreted and construed as if it were written in conformity with the requirements of Act 600. Prior to the Effective Date, this Plan was established under the authority of 53 PA. STAT. ANN. § 46131 *et seq.*

## **Appendix**

### **¶ 17-A Disposition of Ordinance 327.**

Ordinance 327 was never codified to the 1981 Code.

<u>Ordinance 327</u>	<u>2003 Codified Ordinances</u>
Art. I (intro)	§ 17-101
§ 101	§ 17-103
§ 102	§ 17-104
§ 103	§ 17-105
§ 104	§ 17-106
§ 105	§ 17-107
§ 106	§ 17-108
§ 107	§ 17-109
§ 108	§ 17-110
§ 109	§ 17-111
§ 110	§ 17-112
§ 111	§ 17-113
§ 112	§ 17-114
§ 113	§ 17-115
§ 114	§ 17-116
§ 115	§ 17-117
§ 116	§ 17-118
§ 117	§ 17-119
§ 118	§ 17-120
§ 119	§ 17-121
§ 120	§ 17-122
§ 121	§ 17-123
§ 122	§ 17-124
§ 123	§ 17-125
§ 124	§ 17-126
§ 125	§ 17-127
§ 126	§ 17-128
§ 127	§ 17-129
§ 128	§ 17-130
§ 129	§ 17-131
§ 130	§ 17-132
§ 131	§ 17-133
§ 132	§ 17-134
§§ 201 to 1013	§§ 17-201 to 17-1013

## ¶ 17-B Source Ordinances.

Ordinance 327	01-31-1996
Ordinance 415	10-29-2003

### § 17-C Prior Ordinances Concerning Related Subject Matter.

Ordinance 194	11-21-1978
Ordinance 213	07-08-1981
Ordinance 215	11-11-1981
Ordinance 232	07-11-1984
Ordinance 247	03-11-1987

### § 17-D Disposition of Ordinance 194 to 1981 Code (prior to Ordinance 247).

Ordinance 194 was codified to Chapter 18 of the 1981 Code by Ordinance 215. That Chapter was subsequently amended by Ordinance 232. Ordinance 247 superseded and replaced that Chapter 18 with new material. (*Cf.*, § 17-E.)

<u>Ordinance 194</u>	<u>1981 Code prior to Ord. 247</u>
§ xx	§ 18-xx
§ 19 (repealer)	deleted

### § 17-E Derivation of Former Unofficial Chapter 18 to 1981 Code (after Ordinance 247).

In 1988, General Code Publishers Corp. printed an unofficial codification of Ordinance 247 to Chapter 18 of the 1981 Code. (Ordinance 247, § 7.01 provided that Ordinance 247 superseded and replaced the previous official Chapter 18 of the 1981 Code.) Borough Council did not formally add Ordinance 247 to the 1981 Code, and did not formally adopt any of the numbering and stylistic changes made by General Code Publishers Corp. In 1996, Council replaced the language of Ordinance 247/unofficial Chapter 18 of the 1981 Code with amended and restated plan language by Ordinance 327. Ordinance 327 was never codified to the 1981 Code.

A copy of the GCP unofficial Chapter 18 after Ordinance 247 and prior to Ordinance 322 is provided with the on-line and CD-ROM versions of the Codified Ordinances.

The provisions of the GCP unofficial Chapter 18 were derived from Ordinance 247 as follows:

Unofficial Chapter 18 after  
Ordinance 247Ordinance 247

§ 18-1	Art. I
§ 18-2	§ 2.01
§ 18-3	§ 2.02
§ 18-4	§ 2.03
§ 18-5	§ 2.04
§ 18-6	§ 2.05
§ 18-7	§ 3.01
§ 18-8	§ 3.02
§ 18-9	§ 3.03
§ 18-10	§ 3.04
§ 18-11	§ 3.05
§ 18-12	§ 4.01
§ 18-13	§ 4.02
§ 18-14	§ 4.03
§ 18-15	§ 4.04
§ 18-16	§ 4.05
§ 18-17	§ 4.06
§ 18-18	§ 4.07
§ 18-19	§ 4.08
§ 18-20	§ 5.01
§ 18-21	§ 5.02
§ 18-22	§ 5.03
§ 18-23	§ 5.04
§ 18-24	§ 5.05
§ 18-25	§ 5.06
§ 18-26	§ 6.01
§ 18-27	§ 6.02
§ 18-28	§§ 6.03, 6.04
§ 18-29	§ 7.01