

**Exeter Township Police Pension Plan**

**Originally Effective  
January 1, 1958**

**Amended and Restated Effective  
January 1, 2016**

**Further Amended and Restated Effective  
January 1, 2023**

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## **PREAMBLE**

Exeter Township, a governmental agency of the Commonwealth of Pennsylvania, hereinafter referred to as “the Employer,” established a pension plan effective January 1, 1958, for the members of its police force and desires to continue to maintain a permanent qualified plan, pursuant to Act 600 and applicable provisions of ERISA and the Internal Revenue Code, in order to provide these employees and their beneficiaries with tax qualified benefits and financial security upon retirement or in the event of earlier death or disability. The Plan is amended and restated in its entirety, as set forth herein, effective as of January 1, 2016, superseding all prior Plan provisions.

## ARTICLE I - DEFINITIONS

### Section 1.1 References

(a) **Act 205** means the Municipal Pension Plan Funding Standard and Recovery Act, act of December 18, 1984, P. L. 1005 no. 205, as amended, 53 P.S. 895.101, et seq. as enacted by the Commonwealth of Pennsylvania.

(b) **Act 600** means the Police Pension Fund Act, act of May 29, 1956, P. L. 1804 no. 600, as amended, 53 P.S. 761 et seq. as enacted by the Commonwealth of Pennsylvania. Cites herein to this Act shall use the Purdon Statute instead of the section number.

(c) **ERISA** means the Employee Retirement Income Security Act of 1974, as amended.

(d) **IRC** means the Internal Revenue Code of 1986, as it may be amended from time to time.

### Section 1.2 Actuarial Equivalent

(a) The present value of any benefit under the terms of this plan will be the actuarial equivalent of the accrued benefit in the normal form of benefit commencing at normal retirement date. Actuarial equivalence shall be determined based on the UP-1984 mortality table, set back two years, and interest at 5.0% per annum, compounded annually.

(b) In compliance with Act 600, this Plan does not provide optional forms of benefit payment; therefore, no actuarial equivalence for determining optional forms need be determined.

(c) For the purpose of implementing the limitations on benefits of IRC Section 415 and the provision of Section 8.1, the Applicable Interest Rate shall mean the adjusted first, second and third segment rates described in IRC Section 417(e) for the second calendar month preceding the first day of the stability period. For this purpose, the segment rates applied are the spot segment rates determined under IRC Section 430(h)(2)(C) without the 24-month averaging under IRC Section 430(h)(2)(D) and without regard to the adjustment for the 25-year average segment rates provided in IRC Section 430(h)(2)(C)(iv). The stability period is the Plan Year which contains the annuity starting date and for which the Applicable Interest Rate remains constant.

(d) For the purpose of implementing the limitations on benefits of IRC Section 415 and the provision of Section 8.1, the Applicable Mortality Table is the applicable mortality table under IRC Section 417(e) for the calendar year in which that stability period begins, as set forth in Treasury Regulation Section 1.430(h)(3)-1 and Notice 2008-85.

### **Section 1.3 Compensation/Average Monthly Compensation**

(a) **Compensation** means mean a Participant's total compensation which is reportable as W-2 income for federal income tax purposes, which is received from the Employer during the Plan Year for personal services rendered to the Employer in the course of employment, exclusive of reimbursements or other expense allowances, cash and non-cash fringe benefits, deferred compensation and welfare benefits, even if such items are includable in gross income, and exclusive of any severance benefit payable subsequent to severance from employment, and which is determined before reduction for any elective deferral contribution to a qualified cash or deferred arrangement under IRC Section 401(k) and before reduction for any elective amount which is excludable from the Participant's gross income under IRC Section 125, 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), 403(b) or 457(b). Picked-up contributions under IRC Section 414(h)(2) shall be included in the participant's compensation.

(b) Notwithstanding the foregoing, Compensation in excess of \$200,000.00, or such other amount as is specified by IRC Section 401(a)(17)(A), as adjusted for increases in the cost-of-living in accordance with IRC Section 401(a)(17)(B), shall be disregarded. The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding twelve months over which Compensation is determined (a "determination period") beginning with or within such calendar year. If a determination period consists of fewer than twelve months, the annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is twelve.

(c) **Average Monthly Compensation** means the average of a participant's monthly compensation over the 36-consecutive-month period ending on the date of employment termination. If a participant's entire period of service for the employer is less than 36 months, compensation shall be averaged on a monthly basis over the participant's entire period of service.

### **Section 1.4 Dates/Years**

(a) **Plan Entry Date** means the participation date(s) specified in Article II.

(b) **Plan Year** means the 12-consecutive-month period beginning on January 1 and ending on December 31.

(c) **Limitation Year** means the plan year.

### **Section 1.5 Employee**

(a) **Employee** means any person employed by the Employer or any other employer required to be aggregated with such employer under IRC Sections 414(b), (c), (m) or (o), as such provisions may be interpreted to apply to a governmental entity by the Internal Revenue Service. The term employee shall also include any Leased Employee as provided in IRC Sections 414(n) or (o) and as defined in Section 1.5(b).

(b) **Leased Employee** means an individual (who otherwise is not an employee of the Employer) who, pursuant to a leasing agreement between the Employer and a leasing organization, has performed services for the Employer (or for the Employer and any persons related to the Employer within the meaning of IRC section 414(n)(6)) on a substantially full time basis for at least one year and performed such services under the primary direction or control of the Employer. If a Leased Employee is treated as an employee by reason of this Section 1.5(b), compensation from the leasing organization that is attributable to services performed for the Employer shall be considered as compensation under the plan. Contributions or benefits provided a leased employee by the leasing organization that are attributable to services performed for the Employer shall be treated as provided by the Employer.

## **Section 1.6 Employer**

Employer means Exeter Township, a political subdivision of the Commonwealth of Pennsylvania, or any successor entity that may assume the obligations of this plan with respect to its employees by becoming a party to this plan.

## **Section 1.7 Fiduciaries**

(a) **Chief Administrative Officer** means the person appointed by the Employer or the Pension Board as described in Section 9.2 who has primary responsibility for the execution of the administrative affairs of the plan.

(b) **Plan Administrator** means the Chief Administrative Officer.

(c) **Investment Manager** means a person or corporation other than a trustee appointed for the investment of plan assets.

(d) **Pension Board** means the board established by the Employer as described in Section 9.2 and responsible for the administration of the plan.

## **Section 1.8 Participant/Beneficiary/Spouse**

(a) **Participant** means an eligible employee of the employer who becomes a member of the Plan pursuant to the provisions of Article II; participant also shall mean a former employee who previously participated and has an accrued benefit under the Plan.

(b) **Beneficiary** means any person or persons other than the participant who is entitled to receive benefits under this Plan by designation, under law, or in accordance with the provisions of this Plan. A beneficiary who becomes entitled to a benefit under the plan remains a beneficiary under the plan until the benefit has been fully distributed to him. A beneficiary's right to, the obligation of the Plan Administrator to provide, information or data concerning the plan shall not arise until he first becomes entitled to receive a benefit under the plan.

(c) **Spouse** means an individual to whom another individual is lawfully married. For this purpose, the terms married and marriage shall include a same-sex marriage performed in



a state or country in which same-sex marriage is lawful, even if the married couple is domiciled in a state that does not recognize the validity of same-sex marriage. The term spouse, however, does not include individuals who have entered into a registered domestic partnership, civil union, or other similar formal relationship that is recognized under state law but that is not denominated, under the laws of that state, as a marriage.

## **Section 1.9 Plan**

Plan means the Exeter Township Police Pension Plan as set forth herein and as it may be amended from time to time.

## **Section 1.10 Service**

(a) **Service** means any period of time the employee is in the employ of the Employer, including any period the employee is absent due to vacation, holidays, or sickness. Separation from service means that the employee no longer has an employment relationship with the employer.

(b) **Hour of Service** means each hour for which an employee is paid or entitled to payment for the performance of duties for the Employer and each hour of Qualified Military Service, as defined in Section 1.10(d), which must be counted in accordance with IRC Section 414(u).

(c) **Break in Service** means any period of severance, which is a continuous period of time during which the Employee is not credited with an hour of service with the Employer. Such period begins on the date the employee retires, separates from service, or if earlier, the date on which the employee otherwise was first absent from service.

(d) **Qualified Military Service** means service in the uniformed services of the United States performed by an individual who is entitled to reemployment rights with respect to such service in accordance with IRC Section 414(u). An employee reemployed after qualified military service shall not be treated as having incurred a break in service, for purposes of vesting and benefit accruals, solely because of an absence due to qualified military service.

(e) **Other Service Credited** - If the Employer is a member of an affiliated service group under IRC Section 414(m) or a controlled group under IRC section 414(b) or 414(c), or any other entity required to be aggregated with the Employer pursuant to IRC section 414(o) as these Internal Revenue Code provisions are applied to a governmental entity, service shall be credited for any employment for any period of time for any other member of such group. Service shall also be credited for any leased employee who is considered an employee for purposes of this plan under IRC Section 414(n) or (o).

(f) **Year of Service** generally means 12 months of service, excluding any breaks in service. No more than one year of service will be credited for any 12-consecutive-month period.

(g) **Predecessor Service** - If the Employer maintains the plan of a predecessor employer, service with such predecessor employer shall be treated as service for the Employer. The plan may be amended to provide for the crediting of service performed for a disbanded police force under an intermunicipal agreement pursuant to the Intergovernmental Cooperation Law as provided in 53 P.S. 770(e) and (f).

### **Section 1.11 Trust**

(a) **Trust** means the qualified trust created under the Employer's plan. The trust shall be known as the Exeter Township Police Pension Fund.

(b) **Trustee** means the person or persons appointed by the Employer to be the trustee of the trust, or any duly appointed successor trustee.

## **ARTICLE II – PARTICIPATION**

### **Section 2.1 Plan Participation**

(a) **Eligibility** - Employees of the Employer who are employed as police officers on a regularly scheduled, full time basis shall be eligible to be covered under the plan. Any police officer employed as a temporary, special, part-time, or permanent part-time officer of the employer shall not be considered a member of the eligible class of employees. An employee who is a member of the eligible class of employees shall be eligible for plan participation provided that he agrees to make the mandatory contributions as set forth in Section 6.2.

(b) **Entry Date** - An eligible employee shall participate in the plan on the first day he performs one hour of service.

### **Section 2.2 Termination of Participation**

A participant shall continue to be an active participant of the plan so long as he is a member of the eligible class of employees and employment is not terminated. He shall become an inactive participant immediately upon ceasing to be a member of the eligible class of employees or terminating employment. He shall cease participation completely upon the later of his receipt of a total distribution of his nonforfeitable accrued benefit under the plan or the forfeiture of the nonvested portion of the accrued benefit.

### **Section 2.3 Re-Participation**

(a) If a participant becomes an inactive participant, because he is no longer a member of the eligible class of employees; such inactive participant shall become an active participant immediately upon returning to the eligible class of employees. In the event an employee who is not a member of an eligible class of employees becomes a member of an eligible class, such employee shall participate immediately.

(b) If a participant incurs a break in service, he shall become an active participant immediately upon returning to employment.

## **ARTICLE III - RETIREMENT BENEFITS**

### **Section 3.1 Service Rules**

(a) **Year of Vesting Service** - For purposes of determining the nonforfeitable interest in the participant's accrued benefit, the employee shall receive credit for the aggregate of all time periods commencing with the employee's first day of employment or re-employment as a police officer and ending on the date a break in service begins, except for periods of service disregarded under the Break in Service rules below. Fractional periods of a year will be expressed in terms of days. One year of vesting service shall be credited for each 365-day period.

(b) **Break in Service Rules** - A former participant who had a nonforfeitable right to all or a portion of his accrued benefit derived from employer contributions at the time of his termination from service and who did not receive a distribution of his accumulated contributions shall retain credit for all years of vesting service prior to the break in service. In the case of a former participant who did not have any nonforfeitable right to his accrued benefit derived from employer contributions at the time of his termination from service or who received a distribution of his accumulated contributions, years of vesting service before a break in service shall not be taken into account in computing service, except as provided in Section 5.3.

(c) **Year of Benefit Service** - For the purpose of determining the participant's benefit under the pension benefit formula, the participant shall receive credit for the aggregate of all periods of service commencing with the participant's first day of active participation or active reparticipation and ending on the date a break in service begins or the date the participant ceases to be an eligible employee, except for periods of service which are disregarded under the Break in Service rules above. One year of benefit service shall be credited for each 365-day period. Any years of service disregarded under Section 5.3 shall be disregarded for this purpose.

## **Section 3.2 Normal Retirement**

(a) **Normal Retirement Age** – A participant shall attain his normal retirement age as of the day on which he has attained age 50 and completed 25 years of benefit service. An actively employed participant's right to his normal retirement benefit shall be 100% vested and nonforfeitable upon attainment of the normal retirement age, notwithstanding the plan's vesting schedule.

(b) **Normal Retirement Date** – A participant's normal retirement date shall be the first day of the month coincident with or next following the day on which he attains his normal retirement age as defined in Section 3.2(a)(1).

(c) **Normal Retirement Benefit** - A participant's normal retirement benefit shall be a monthly benefit commencing at his normal retirement date equal to 50% of his average monthly compensation, as defined in Section 1.3(c). The normal retirement benefit of each participant shall not be less than the largest periodic benefit that would have been payable to the participant upon separation from service at or prior to his normal retirement date under the plan exclusive of social security supplements, premiums on disability or term insurance, and the value of disability benefits not in excess of the normal retirement benefit, but taking into account any decrease in average monthly compensation. If a participant's benefit commences after his normal retirement date, his benefit will be determined in accordance with Section 3.4; if a participant's benefits commence before his normal retirement date, his benefit will be determined in accordance with Section 3.5.

(d) **Service Increment Benefit** – A participant's normal retirement benefit shall be supplemented by a service increment benefit of \$50 per month for each completed year of benefit service in excess of 25; provided however, that the total service increment benefit shall not exceed \$100 per month.

(e) **Normal Form of Payment** - The normal form of retirement benefit for each participant shall be a level monthly pension payable during the participant's lifetime, with payments commencing on his normal retirement date and ceasing upon the participant's death.

(f) **IRC Section 415 Limitation on Benefits** - Notwithstanding the benefits set forth in this Article, the annual benefit otherwise payable to a participant under this plan at any time shall be limited as provided in Section 8.1.

(g) **Cost-of-Living Adjustment to Normal Retirement Benefit** – A participant's normal retirement benefit as defined in Section 3.2(b) above shall be subject to cost-of-living adjustments as provided herein. The benefit adjustment shall occur, initially, as of the last day of the Plan Year that is at least twelve months after the later of the termination of the participant's employment or his retirement date, and, thereafter, as of the last day of each subsequent Plan Year. The cost-of-living adjustment, if any, shall be equal to the percentage of adjustment to Social Security benefits for the year under Section 215(i)(2)(A) of the Social Security Act. In no event, however, shall any adjustment be made to the extent that the adjustment (1) would cause the benefit

payable to exceed the maximum permissible defined benefit dollar limit as described in Section 8.1(c) for the calendar year as cumulatively adjusted; (2) cause the benefit payable to exceed 75% of participant's average monthly compensation used to compute his normal retirement benefit; or (3) in the judgment of the Plan Administrator, impair the actuarial soundness of the Plan. Further, the total cost-of-living adjustments to a participant shall not exceed 30%.

### **Section 3.3 Accrued Benefit**

A participant's accrued benefit at any time equals: (a) the product of the normal retirement benefit determined in accordance with Section 3.2(c) multiplied by a fraction, the numerator of which is the number of years of benefit service at such date, and the denominator of which is the number of years of benefit service the participant would have as of the year containing his normal retirement date, if he continues to work until such date; plus (b) any service increment benefit.

### **Section 3.4 Late Retirement**

(a) **Nonforfeitability** - If a participant remains employed beyond his normal retirement date, his benefits shall remain 100% vested and nonforfeitable. Payment of benefits shall not commence until his actual retirement date.

(b) **Suspension of Benefits Until Payment** - Payment of normal retirement benefits shall be suspended for each calendar month during which the participant remains employed after his normal retirement date. The amount of benefits that are paid later than his normal retirement date shall be computed under the pension benefit formula, and shall be increased by any service increment benefit. The participant's pension benefit shall be determined on the basis of the participant's years of service for benefit accrual completed before and during the period of suspension, and the participant's compensation with the employer during the period of suspension shall be included in any relevant determination of average monthly compensation.

(c) **Deferred Retirement Option Plan** - Effective January 1, 2005, any participant who has attained age 51 and completed of 25 years of benefit service but remains employed shall be eligible to participate under the Deferred Retirement Option Plan (DROP) program, subject to the following requirements.

(1) **Definitions** - For purposes of this Section 3.4(c), the following definitions shall apply.

(A) **DROP Beneficiary** means the individual(s) designated by the participant in accordance with Section 4.1(b) to receive the DROP account balance in the event of the participant's death during a period in which the participant is participating in the DROP program, but before the participant separates from employment.

(B) **DROP Account** means the separate account created to accept the DROP participant's monthly pension payments while a DROP participant.

(C) **DROP Period** means the period beginning as of the participant's written election notice as approved by the Employer and continuing until that participant's separation from employment of the Employer (his resignation date), but in no event shall such period exceed 60 months.

(D) **Resignation Date** means the date specified in the participant's irrevocable DROP election as approved by the Employer as of which the participant shall resign from employment with the Employer. In no event shall the resignation date be later than 60 months from the execution of the DROP election form.

(2) **DROP Election** – An eligible participant may elect to participate in the DROP program by completing and submitting to the Employer a DROP election form provided by the Employer. The election form must be signed by the participant, must be notarized, and must include the participant's irrevocable designation of his resignation date. The participant shall cease to work as of his designated resignation date, unless the Employer terminates or honorably discharges him prior to such resignation date, and shall be paid the entire balance of his DROP account as of that date.

(A) **Pension Benefit Distribution** - The participant must complete and file with the Plan Administrator any forms required for the commencement of the pension distribution, other than tax-related forms necessary for a distribution payment outside of the trust. Implementation of the DROP election shall be subject to the Employer's approval of the retirement application and payment of the pension.

(B) **Finality of Election** - Once the Employer approves the retirement application and the DROP election, both the application and election are irrevocable.

(3) **Pension Contributions** – A participant shall not be required to make any mandatory employee contributions to the plan under the provisions of Section 6.2 during his DROP period.

(4) **Limitation on Pension Accrual** – A participant shall not accrue additional years of benefit service for pension calculation purposes during his DROP period. No benefit increases that may occur after a participant's commencement of participation in the DROP program, including bargained pension enhancements, mandated pension enhancements through arbitration or pension enhancements mandated by law will increase the frozen DROP pension as calculated and determined in accordance with Section 3.4(c)(5).

(5) **Benefit Calculation** - For purposes of calculating the participant's pension benefit, a participant's years of benefit service and average monthly compensation shall remain as they existed on the effective date of his DROP period. The pension benefit payable to the participant shall increase only as a result of cost-of-living adjustments specifically granted as of the commencement of the DROP period or thereafter.

(6) **Deposits to and Maintenance of the DROP Account** - The monthly retirement benefits that would have been payable had the participant elected to cease employment

and receive a retirement benefit shall, upon commencement of participation in the DROP program, be deposited to his DROP account within the plan trust. The DROP account shall be maintained by the trustee as a separate, segregated investment account which shall be invested as directed by the participant, subject to such terms and conditions as shall be established by the plan administrator with regard to investment direction and the payment of associated investment and administrative fees. Investment earnings and losses of such separate investment account shall be allocated solely to the participant's DROP account.

(7) **Accrual of Non-Pension Benefits** – During the participant's DROP period, all other contractual benefits shall continue to accrue in accordance with any collective bargaining agreement applicable to the participant with the exception of those provisions relating to this plan.

(8) **Disability During DROP Period** – Participation in the DROP period shall not be affected by the participant's temporary incapacity during his DROP period, and the participant shall be entitled to disability pay in the same amount as disabled employees who are not participating in the DROP program. In no event, however, shall a temporarily disabled participant have the ability to draw from his DROP account. Further, the participant shall retire as of the resignation date designated in his DROP election form, without regard to his disability. Notwithstanding the foregoing, in the event the participant has been disabled for a period of six months during the DROP period, he shall be honorably discharged from employment at the end of such six-month period; on such date he shall receive the DROP account balance and, thereafter, commence receiving his frozen DROP pension benefit. Such participant shall not receive any other disability payment under the plan.

(9) **Death During DROP Period** – In the event of the death of the participant during the DROP period under such circumstances that the killed-in-service death benefit described in Section 4.2(a) becomes payable, the DROP election shall be revoked and the DROP account shall not be payable to any designated beneficiary. If the participant's death occurs during the DROP period but the Killed in Service Benefit described in Section 4.2(a) is not payable, then the participant's designated DROP beneficiary shall be entitled to a lump sum payment of the DROP account balance, in addition to any death benefit payable under Section 4.2(b). The beneficiary shall not be permitted to defer receipt of the DROP account.

(10) **Termination of Employment** – In the event the participant voluntarily terminates his employment during the DROP period and prior to his resignation date, his DROP election shall be revoked.

(11) **Distribution of DROP Account** – Payment of monthly benefits to the participant's DROP account shall cease upon the resignation date specified in his DROP election or the participant's earlier separation from service, and the balance in his DROP account shall be paid to him, as soon as administratively possible thereafter, in a single lump sum payment or the form of payment described in Section 3.7(b). If the DROP Account balance exceeds \$200, the plan administrator shall provide to the participant, at least 30 days before the scheduled distribution date, written notice of his eligible rollover distribution rights.



(12) **Forfeiture of Benefits** – A participant who becomes subject to the forfeiture provisions of Section 5.2(c) shall forfeit any amounts deposited in the DROP Account.

### **Section 3.5 Early Retirement**

Upon written application to the Plan Administrator, an early retirement benefit shall be provided to a participant with twenty or more years of benefit service who terminates employment prior to the attainment of his normal retirement date. The early retirement benefit shall equal the participant's accrued benefit, determined in accordance with Section 3.3, actuarially reduced, using the actuarial assumptions reported in the last actuarial valuation report filed with the Public Employee Retirement Commission under Act 205, for commencement in advance of normal retirement age.

### **Section 3.6 Disability Benefits**

If, prior to his normal retirement date, an actively employed participant suffers a service-related disability which renders him unable to perform his normal duties, he shall be entitled to a monthly disability benefit equal to 50% of his average monthly compensation at the time the disability was incurred, reduced by any Social Security disability benefit received by the participant. Disability benefits payments shall cease upon the participant's death or upon recovery from disability prior to the date on which the participant would have reached his normal retirement date, had he continued as an active participant under the plan. If the participant remains disabled as of the date on which he would have reached his normal retirement date, had he continued as an active participant under the plan, the disability benefits shall continue until the participant's death. If disability benefits cease due to the participant's death prior to his normal retirement date, the death benefit payable shall be the appropriate preretirement death benefit described in Section 4.2, without any reduction with respect to disability payments that have been made.

Disability means inability to engage in the same occupation as prior to disablement by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months and that is the result of the performance of police services for the employer. The plan administrator shall determine whether the participant is disabled as defined hereunder after consultation with a physician chosen by the plan administrator. The Plan Administrator may require evidence of continued disability, including periodic evaluation by a physician selected by the Plan Administrator. The participant's refusal to submit to medical examinations shall render him ineligible for disability benefits. In the administration of this Section, all similarly situated employees shall be treated in a uniform and consistent manner.



### **Section 3.7 Distribution of Retirement Benefits**

(a) **Commencement of Benefits** - Subject to the limitations of this Plan, distribution of retirement benefits shall commence as soon as administratively feasible after the participant's termination of employment, provided that he has satisfied the requirements for normal or early retirement, as the case may be, and provided that he has made written application for the retirement benefits.

(b) **Form of Payment** - A participant shall receive distribution of his retirement benefit as a monthly pension payable as of the first day of each month for so long as he lives.

(c) **General Payment Provisions**

(1) If any person entitled to receive benefits hereunder is physically or mentally incapable of receiving or acknowledging receipt thereof, and if a legal representative has been appointed for him, the Plan Administrator may direct the benefit payment to be made to such legal representative.

(2) At the direction of the Plan Administrator, the trustee may make pension payments directly from the fund or may take such steps as may be required to purchase an annuity contract from an insurance company sufficient to provide the benefits to which the participant is entitled. The ownership of the annuity contract shall remain with the trustee, unless the Plan Administrator determines otherwise. Any annuity contract which is distributed shall be non-transferable. The application and directions to the insurance company for such annuity contract shall be made by the Plan Administrator. The terms of any such annuity contract purchased by the plan shall comply with the requirements of this plan. Any dividend, refund or recovery on an annuity contract shall be used to reduce subsequent employer contributions.

(3) The benefits due any participant on account of his most recent period of employment shall not duplicate any benefits due the same participant under this plan on account of previous employment with the employer.

### **Section 3.8 Suspension of Benefits**

Subject to the requirements of Section 7.2, retirement benefits in pay status shall be suspended, if a participant returns to active employment; however, there shall be no suspension if the participant is required to perform services for the Employer from time to time as a police reserve in compliance with 53 P.S. 769. If the participant accrues an additional benefit, the plan shall offset the actuarial value of the distributions made to the participant by the last day of the preceding plan year against the retirement benefit redetermined as of such date. However, to determine the benefit payable to the participant on or after his succeeding termination of employment, the plan shall offset the actuarial value of such benefit distributions that are made to the participant by the date of his succeeding termination of employment against his retirement benefit determined as of such date.

### **Section 3.9 Domestic Relations Orders**

Nothing contained in this plan prevents the trustee, in accordance with the direction of the Plan Administrator, from complying with the provisions of an acceptable domestic relations order that creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to receive all or a portion of the benefits payable with respect to a participant under the plan. No distribution to an alternate payee under an acceptable domestic relations order will not be made until the participant is entitled to a distribution under this plan and commences such distribution, and no alternate payee shall be entitled to a form of payment not otherwise permitted under the plan.

The Plan Administrator shall establish reasonable procedures to determine the acceptability of a domestic relations order in accordance with IRC Section 414(p). Upon receiving a domestic relations order, the Plan Administrator promptly will notify the participant and any alternate payee named in the order, in writing, of the receipt of the order and the plan's procedures for determining the acceptability of the order. Within a reasonable period of time after receiving the domestic relations order, the Plan Administrator shall determine the acceptability of the order and shall notify the participant and each alternate payee, in writing, of its determination. The Plan Administrator shall provide notice under this paragraph by mailing to the individual's address specified in the domestic relations order.

If any portion of the participant's benefit is payable during the period the Plan administrator is making its determination of the acceptability of the domestic relations order, the Plan Administrator shall reserve and make a separate accounting of the amounts payable. If the Plan Administrator determines the order is an acceptable domestic relations order within 18 months of the date amounts first are payable following receipt of the order, it shall direct the trustee to distribute the payable amounts in accordance with the order. If the Plan Administrator does not make its determination of the acceptability of the order within the 18-month determination period or determines that the order is not acceptable, it shall direct the trustee to distribute the payable amounts as if the order did not exist and will apply the order prospectively if it later determines the order is an acceptable domestic relations order.

### **Section 3.10 Military Service Provisions**

(a) **Nonintervening Military Service** – Participants who have performed military service prior to employment with the Township shall be permitted to buy back their service time, consistent with the present provisions of Act 600.

(1) A police officer may purchase military service time to be applied to his/her pension pursuant to the terms and conditions of 53 P.S. § 770. Every participant of the Police Pension Plan and of the Township, who has not served in such employment prior to entering the military service of the United States of America, shall be entitled to full service credit for each year of military service or a fraction thereof, not to exceed five years upon purchasing of credit for such nonintervening military service to be computed by applying the average normal cost rate for Borough and Township Police Pension Plans as certified by the Public Employee Retirement

Commission, but not to exceed 10%, to the participant's averaged annual rate of compensation over the first three years of municipal service and multiplying the result by the number of years and fractional part of a year of creditable nonintervening military service being purchased together with interest at the rate of 4 3/4% compounded annually from the date of initial entry into municipal service to the date of payment.

(2) Participants of the Police Pension Plan shall be eligible to receive military service credit as provided in this section provided that he/she is not entitled to receive, eligible to receive now or in the future, or is receiving retirement benefits for such service under a retirement system administered and wholly or partially paid for, by any other governmental agency with the exception of a participant eligible to receive or receiving military retirement pay earned by a combination of active duty and nonactive duty with a Reserve or National Guard component of the armed forces which retirement pay is payable only upon the attainment of a specified age and period of service under 10 U.S.C. Ch. 67 (related to retired pay for nonregular service).

**(b) Intervening Military Service.**

(1) With Six Months or More of Prior Service. Members who have been a regularly appointed employee of the Township for a period of six months and who thereafter shall enter into the military service of the United States shall have credited to his or her employment record for pension or disability benefits all of the time spent by him or her in such service of the United States military if such person returns or has heretofore returned to his or her employment within six months after his or her separation from the service.

(2) With Less Than Six Months of Prior Service. Members who were employed by the Township for less than six months before leaving to enter the military service of the United States shall have such military service credited for the pension or disability benefits, provided:

(A) 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; and

(B) Such person pays to the plan the amount of employee contributions that such person would have had to make had he been employed by the employer during the time he was in military service. Any payment to the plan shall be made during the period beginning with the date of reemployment and whose duration is three times the period of the person's service in the military, not to exceed five years.

## **ARTICLE IV - DEATH BENEFITS**

### **Section 4.1 Death Benefit With Respect to Employee Contributions**

(a) **Benefit Payable** - If a participant dies prior to his benefit commencement date, as defined in Section 7.7(b), and if no death benefit is payable under Section 4.2, an amount equal

to the participant's accumulated contributions, as determined under Section 6.2(c), shall be payable to the participant's designated beneficiary in one lump sum.

(b) **Beneficiary Designation** - The participant shall have the right to designate one or more beneficiaries, including any contingent beneficiary, and shall have the right at any time to change such beneficiaries. The designation shall be made in writing, on a form supplied by the Plan Administrator, and shall be filed with the Plan Administrator. If the participant fails to designate a beneficiary, or if the designated beneficiary predeceases the participant, the benefit shall be paid to the participant's surviving spouse or, if none, to the participant's eligible child or children. In the case of multiple eligible children, the benefit payable shall be divided equally among the children. If the participant is not survived by any designated beneficiary, and has neither a surviving spouse nor an eligible child, the benefit shall be payable to the participant's estate; provided, however, in the event that no administration of the estate has been raised within six months after death and the death benefit payable is less than \$100, the death benefit shall be applied to pay or reimburse the expenses of the participant's funeral or burial.

(c) **Eligible Child** - For purposes of this Article IV, an eligible child is a child of the participant who is under the age of 18 or, if attending college, under the age of 23. Child shall include the adopted child of the participant. For this purpose, attending college means being registered at an accredited institution of higher learning and carrying a minimum course load of seven credit hours per semester.

#### **Section 4.2 Killed in Service Benefit and Survivor Benefit**

(a) **Killed in Service Benefit** – In the event of the death of an active participant on or after April 17, 2002, and while performing police services for the Employer, the participant's surviving spouse and/or eligible children, if any, shall receive a monthly benefit equal to 100% of the participant's average monthly salary at the time of death and as further described in Section 4.2(d).

(b) **Survivor Benefit** - In the event of the death of a retired or disabled participant who is receiving a benefit, or in the event of the death of a participant who had satisfied the requirements for retirement but had not begun to receive benefits (and whether or not he had terminated employment), the participant's surviving spouse and/or eligible children, if any, shall receive a benefit equal to 50% of the retirement benefit that the participant was receiving or would have been receiving, had the participant been retired on the date of death and as further described in Section 4.2(d).

(c) **Integration of Provisions** - If the Plan Administrator determines that the conditions for a benefit under both Section 4.2(a) and Section 4.2(b) have been satisfied, the greater of the two benefits shall be paid.

(d) **Terms of Payment** – Both the Killed in Service Benefit and the Survivor Benefit shall be paid as a monthly benefit (without actuarial adjustment with respect to the age of the beneficiary) and shall commence as of the first day of the month following the date of death. Payment shall be made, first, to the surviving spouse. Upon the death of the surviving spouse, or

upon the death of the participant, if there is no surviving spouse, the benefit shall be payable to any eligible child (or children) of the participant as defined in Section 4.1(c). In the case of multiple eligible children, the benefit payable shall be divided equally among the children, and each shall be treated as a separate benefit. Payment to an eligible child shall cease upon the earlier of the death of the eligible child or his attainment of age 18 (or age of 23, if attending college).

The participant's spouse cannot waive receipt of this benefit. In the case of an unmarried participant who has no child under the age of 18 (or child under the age of 23, who is attending college), no death benefit shall be payable under this Section 4.2, but a death benefit may be payable under Section 4.1, in which case, the death benefit payable shall not be less than the benefit payable under Section 4.1. The distribution shall comply with the distribution requirements of Section 7.2.

If there is an acceptable domestic relations order in force with respect to the participant, the alternate payee shall receive a portion of the death benefit to the extent specified in the order, provided that the alternate payee has not died. In no event, however, shall a domestic relations order be accepted, if it provides that the alternate payee shall be deemed to be the surviving spouse for purposes of this Section 4.2 as the death benefit hereunder is only payable with respect to a widow, widower or eligible child.

## **ARTICLE V – BENEFITS ON TERMINATION OF EMPLOYMENT**

### **Section 5.1 Vesting**

If a participant separates from service with the Employer other than by reason or retirement or disability, and prior to completion of 12 years of vesting service, he shall forfeit his accrued benefit as defined in Section 3.3. A participant who has been credited with 12 years of vesting service or more prior to separation from service shall be vested in his accrued benefit and shall be entitled to a deferred vested pension equal to the benefit accrued to the date of termination.

### **Section 5.2 Payment of Benefits**

(a) **Payment as of Normal Retirement Date** - Payment of the deferred vested pension may begin at the date which would have been the participant's normal retirement date, had he remained actively employed. If payments do not commence until after his normal retirement date, distribution must begin by the required commencement date specified in Section 7.3, and the amount of the benefit payable shall be determined as provided in Section 3.4.

(b) **Payment as of Early Retirement Date** - Upon the request of an eligible terminated participant who has completed 20 years of vesting service, payment of the vested accrued pension may begin on or after his early retirement date. In the event of such earlier commencement of benefits, the benefit shall be paid pursuant to the early retirement provisions of Section 3.5.

(c) **Forfeiture for Malfeasance** - Notwithstanding any other provision of this plan, a participant who is convicted of, or pleads guilty to, engaging in criminal misconduct which constitutes a “crime related to public office or public employment,” as that phrase is defined in Pennsylvania Pension Forfeiture Act, 43 P.S. 1311-1314 and interpreted thereunder, shall forfeit his right to receive a pension benefit under this plan. In such a case, the participant shall be entitled to receive only the contributions, if any, he made under Section 6.2, without interest.

### **Section 5.3 Accumulated Contribution Distribution and Restoration**

(a) **Accumulated Contribution Distribution** - If an employee receives a distribution of his accumulated contributions pursuant to Section 6.2(d), the employee’s vested accrued benefit shall be zero. For purposes of this section, if the value of an employee’s accumulated contributions is zero, he shall be deemed to have received a distribution of such vested accrued benefits. In determining the participant’s accrued benefit after the occurrence of such a distribution, the plan shall disregard all years of benefit service and all years of vesting service performed by such employee before the date of distribution.

(b) **Restoration of Accrued Benefit and Service Credits** - If a participant who received a distribution of his accumulated contributions pursuant to Section 6.2(d) resumes covered employment under the plan, he shall have the right to restore his accrued benefit under Section 3.3 by the repayment to the plan of the full amount of the distribution plus interest, compounded annually from the date of distribution at the rate set forth in Section 6.2(c). In order to make a total or partial repayment, the employee may transfer to the plan the account balance of the individual retirement account or annuity to which the distribution being repaid was transferred, provided that both transfers are accomplished in compliance with IRC Section 408(d). Such repayment must be made within five years after the participant returns to active participation. In determining the participant’s accrued benefit after such restoration, all years of benefit service and all years of vesting service performed by such employee before the date of distribution shall be counted. Upon the reemployment of a participant who is deemed to have received a distribution pursuant to Section 5.3(a) because the value of his accumulated contributions is zero, the plan shall take into account all years of benefit and vesting service performed by such employee before the date of such deemed distribution.

(c) **Forfeiture of Service Credits** – If a participant resumes covered employment after having received a distribution of his accumulated contributions and is eligible to restore his accrued benefit in accordance with Section 5.3(b) but fails to do so, the plan shall disregard all years of benefit service and all years of vesting service performed by such employee before the date of distribution.

## **ARTICLE VI – CONTRIBUTIONS**

### **Section 6.1 Contributions Other Than Employee Contributions**

(a) **Application of Certain Receipts** - The amounts of the payments made by the Treasurer of the Commonwealth from the monies received from taxes paid upon premiums by



foreign casualty insurance companies and foreign fire insurance companies, that are determined by the employer to be deposited in the fund, shall be applied as follows:

- (1) To pay expenses incurred for the administration of the fund and the plan;
- (2) To reduce any unfunded liability, with unfunded liability meaning the present value of the liability of the fund on account of retirement benefits payable under this plan that accrued prior to the date as of which mandatory employee contributions were first required, offset by the value of any assets in the fund;
- (3) After the unfunded liability has been funded, to apply against the annual obligation of the employer for future service cost, with future service cost meaning the amount of money required to be contributed annually into the fund on account of benefits payable under the plan with respect to years of service credited after the establishment of the plan;
- (4) To the extent that the payments may be in excess of such obligation, to reduce mandatory employee contributions hereunder.

Any other monies paid into the fund including gifts, grants, devises or bequests granted to the trust fund pursuant to 53 P.S. 768 shall be applied equally against the participant mandatory employee contribution obligation and the employer obligation for future service cost.

(b) **Employer Contributions** - The Chief Administrative Officer shall determine the financial requirements of the plan on the basis of the most recent actuarial report and shall determine the minimum obligation of the Employer with respect to funding the plan for any given plan year. The Chief Administrative Officer shall submit the financial requirements of the plan and the minimum obligation of the Employer to the Employer (or its governing body) annually and shall certify the accuracy of such calculations and their conformity with Act 205. To the extent that the payments received under Section 6.2(a) do not exceed the Employer's annual obligation for future service cost, as determined by the actuary in accordance with Act 205, the Employer shall be obligated to make such contribution to the trust by annual appropriations.

## **Section 6.2 Mandatory Employee Contributions**

(a) **Mandatory Contribution Amount** - As a condition of participation in this plan, each active participant must contribute, on an after-tax basis, a percentage of his compensation as established each year. In general, this mandatory contribution shall be at least 5.00%, but not more than 8.00% of the participant's compensation, if not covered by Social Security. The Employer may reduce or eliminate the contribution required provided any reduction or elimination of contributions is authorized on an annual basis by ordinance or resolution.

(b) **Employee Contributions** - The employer shall remit employee contributions to the trust of the plan as soon as administratively feasible.

(c) **Determination of Accumulated Contributions** - The participant's accumulated contributions shall be equal to his mandatory employee contributions with interest.

The interest rate to be credited shall be the actual interest rate earned under the trust. A participant shall be 100% vested in his accumulated contributions.

(d) **Withdrawal of Accumulated Contributions** - Upon termination of employment, a participant who is not vested in his accrued benefit, as defined in Section 3.3, shall receive an amount that is equal to his total accumulated contributions. The withdrawal shall be payable in one lump sum. Thereafter, and subject to restoration in accordance with Section 5.3(b), the former participant shall have no further right to any benefit under this plan. In no event may any amount be withdrawn or distributed until the participant's retirement, disability, death or termination of employment, regardless of the income tax accounting treatment required by IRC section 72(e)(8)(D).

### **Section 6.3 Rollover/Transfer Contributions**

Rollover and transfer contributions shall not be permitted under this plan and there shall be no rollover/transfer account.

## **ARTICLE VII - DISTRIBUTIONS**

### **Section 7.1 Normal Form of Benefit**

The normal form of benefit for each participant shall be an immediate life annuity payable during the participant's lifetime. Unless benefits hereunder are paid to the participant, the participant's spouse or beneficiary in the form of an annuity purchased from an insurance company or in a single lump sum payment on or before the required commencement date, the requirements of this Section 7.1 shall apply. Further, if the participant's benefit is distributed in the form of an annuity purchased from an insurance company, distributions thereunder shall be made in accordance with the requirements of IRC Section 401(a)(9) and the regulations issued thereunder.

(a) The annuity distributions must be paid in periodic payments made at intervals not longer than one year;

(b) The distribution period must be over a life (or lives) or over a period certain not longer than a life expectancy (or joint life and last survivor expectancy), whichever is applicable, in accordance with the provisions of Section 7.2, if distributions commence during the participant's lifetime, or Section 7.4, if distributions commence after the participant's death.

(c) Once payments have begun over a period certain, the period certain may not be lengthened even if the period certain is shorter than the maximum permitted;

(d) Payments must be non-increasing or increase only as follows:

(1) by an annual percentage increase that does not exceed the percentage increase in an eligible cost-of-living index for a twelve-month period ending in the year during which the increase occurs or in a prior year;



(2) by a percentage increase that occurs at specified times and does not exceed the cumulative total of annual percentage increases in an eligible cost-of-living index since the annuity starting date or, if later, the date of the most recent percentage increase;

(3) by a constant percentage of less than 5% per year, applied not less frequently than annually;

(4) as a result of dividend or other payments that result from actuarial gains, provided that (A) actuarial gain is measured not less frequently than annually; (B) the resulting dividend or other payments either are paid no later than the year following the year for which the actuarial experience is measured or paid in the same form as the payment of the annuity over the remaining period of the annuity (beginning no later than the year following the year for which the actuarial experience is measured); (C) the actuarial gain taken into account is limited to actuarial gain from investment experience; (D) the assumed interest rate used to calculate such actuarial gain is not less than 3%, and (E) the annuity payments are not increased by a constant percentage as described in (3) above;

(5) to the extent of the reduction in the amount of the participant's payments to provide for a survivor benefit, but only if there no longer is a survivor benefit because the beneficiary whose life was being used to determine the distribution period dies or no longer is the participant's beneficiary pursuant to a qualified domestic relations order within the meaning of IRC Section 414(p);

(6) to provide a final payment upon the participant's death not greater than the excess of the actuarial present value of the participant's accrued benefit (within the meaning of IRC Section 411(a)(7)), calculated as of the annuity starting date using the Applicable Interest Rate and Applicable Mortality Table, as defined in Section 1.2 of the plan (or, if greater, the total amount of employee contributions) over the total of payments before the participant's death;

(7) to allow a beneficiary to convert the survivor portion of a joint and survivor annuity into a single sum distribution upon the Participant's death, or

(8) to pay increased benefits that result from a plan amendment.

(e) If the annuity is a life annuity, the amount which must be distributed on or before the participant's required commencement date (or, in the case of distributions after the death of the participant, the date on which commencement of distribution is required pursuant to Section 7.4) shall be the payment which is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the participant's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the participant's required commencement date.

(f) Any additional benefits accruing to the Participant in the calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such benefit accrues.

## **Section 7.2 Distribution of Benefits**

All distributions required herein shall be determined and made in accordance with IRC Section 401(a)(9), including the incidental death benefit requirements of IRC Section 401(a)(9)(G) and regulations issued thereunder. As of the first distribution calendar year, distributions to a participant, unless made in a single lump sum payment, shall be made over (a) the life of the participant, (b) the joint lives of the participant and a designated beneficiary, (c) a period certain not extending beyond the life expectancy of the participant, or (d) a period certain not extending beyond the joint life and last survivor expectancy of the participant and a designated beneficiary. Once payments have commenced, the period of time over which they are made will not be changed, except as provided in Section 7.6. If the annuity starting date precedes the year in which the participant attains age 70, the applicable distribution period for the participant is the distribution period for age 70 under said Uniform Lifetime Table, plus the excess of 70 over the age of the participant as of the participant's birthday in the year that contains the annuity starting date.

## **Section 7.3 Required Commencement Date**

The required commencement date of a participant is the later of: (i) the first day of April of the calendar year following the calendar year in which the participant attains age 70-1/2 and (ii) the first day of April of the calendar year following the calendar year in which the participant retires.

## **Section 7.4 Distribution of Benefits Upon Death**

The following distribution provisions shall take effect upon the death of a participant, if any benefits then are payable:

(a) If the participant's death occurs after distribution of his benefits has commenced, any remaining portion of such benefits shall be distributed at least as rapidly as under the method of distribution being applied prior to his death.

(b) If the participant's death occurs prior to the commencement of distribution of his benefits, distribution of his entire benefit shall be completed by December 31 of the calendar year containing the 5th anniversary of the participant's death, except to the extent that an election is made to receive distributions in accordance with subparagraph (1) or (2) below.

(1) If any portion of the participant's benefit is payable to a designated beneficiary other than the participant's surviving spouse, distribution may be made in substantially equal installments over the life or life expectancy of, the beneficiary, commencing on or before December 31 of the calendar year immediately following the calendar year in which the participant died.

(2) If the sole designated beneficiary is the participant's surviving spouse, the commencement date provided in subparagraph (1) above shall not be earlier than the later of (A)

December 31 of the calendar year immediately following the calendar year in which the Participant died, or (B) December 31 of the calendar year in which the participant would have attained age 70-1/2.

(c) For purposes of Section 7.4(b), if the participant's surviving spouse dies after the participant, but before payments to such spouse begin, the provisions of Section 7.4(b), with the exception of subparagraph (2) therein, shall be applied as if the surviving spouse were the participant, but without regard to Section 7.4(b)(2).

(d) For purposes of this Section 7.4, any amount paid to a child of the participant will be treated as it had been payable to the surviving spouse, if the amount becomes payable to the surviving spouse when the child reaches the age of majority. For purposes of this Section 7.4(d), a child shall not be deemed to have reached the age of majority, if the child has not yet completed a specified course of education and is under the age of 26. In addition, a child who is disabled, within the meaning of IRC Section 72(m)(7), shall not be deemed to have reached the age of majority for so long as such child continues to be disabled.

(e) For purposes of this Section 7.4, distribution of a participant's benefit is considered to begin on the participant's required commencement date, as defined in Section 7.3, or, if Section 7.4(c) is applicable, the required commencement date for distribution to the surviving spouse, pursuant to Section 7.4(b). If distribution in the form of any annuity irrevocably commences to the participant prior to his required commencement date, distribution is considered to begin on the date distribution actually commences.

## **Section 7.5 Changes to Annuity Payment Period**

(a) An annuity payment may be changed, and the annuity payments may be modified in accordance with that change, provided that the modification occurs when the Participant retires or in connection with a plan termination. The future payments, after the modification, must satisfy the requirements of IRC Section 401(a)(9) and Regulation §1.401(a)(9) when the date of the change is treated as a new annuity starting date and the actuarial present value of the payments remaining prior to the modification is treated as the entire interest of the Participant.

(b) The modification will be treated as a new annuity starting date for purposes of IRC Sections 415 and 417, and the annuity (including all past and future payments) must satisfy the requirements of Code Section 415 (determined at the original annuity starting date, using the interest rates and mortality table applicable to such date) after taking the modification into account.

(c) The end point of the period certain, if any, for any modified payment period shall be no later than the end point available to the employee at the original annuity starting date under Code Section 401(a)(9) and the provisions of this Article VII.

## **Section 7.6 Definitions**

For purposes of applying the provisions of this Article VII:

(a) “Actuarial Gain” shall mean the difference between an amount determined using the actuarial assumptions (including investment return, mortality, expense and similar assumptions) used to calculate the initial payments before adjustment for any increases and the amount determined based on actual experience with respect to those factors. Actuarial gain also shall include differences between the amount determined with reference to actuarial assumptions when an annuity was purchased or commenced and the amount determined with reference to the actuarial assumptions used in calculated payments at the time the actuarial gain is determined.

(b) “Benefit Commencement Date” shall mean the first day of the first period for which an amount is payable as an annuity or any other form. The “benefit commencement date” for disability benefits shall be the date such benefits commence.

(c) “Designated Beneficiary” shall mean the individual designated by the participant as the designated beneficiary within the meaning of IRC Section 401(a)(9) and Regulation §1.401(a)(9)-4.

(d) “Distribution Calendar Year” shall mean a calendar year for which a minimum distribution is required. For distributions beginning before the participant’s death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the participant’s required beginning date.

(e) “Eligible Cost-of-Living Index” shall mean an index described in paragraph (b)(2), (b)(3) or (b)(4) of Regulation §1.401(a)(9)-6, Q&A-14.

(f) “Life Expectancy” shall mean life expectancy as computed by use of the Single Life Table in Regulation § 1.401(a)(9)-9, Q&A-1.

## **Section 7.7 Direct Rollover of Eligible Distribution**

Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee’s election under this Section 7.7, a distributee may elect, at the time and in the manner prescribed by the Plan 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. For purposes of applying this Section 7.7:

(a) 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: 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 years or more, any distribution to the extent such distribution is required under IRC Section 401(a)(9), or the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities). Notwithstanding the foregoing, an eligible rollover distribution may include the portion of any distribution that is not includable in gross income by virtue of consisting of

after-tax employee contributions, provided that the qualified plan described in IRC Section 401(a) or annuity contract described in IRC Section 403(b) to which such amounts are to be paid in a direct rollover will accept such amounts and provides for separate accounting of such amounts and any earnings thereon.

(b) An “eligible retirement plan” is an individual retirement account described in IRC Section 408(a); a Roth IRA, as described in IRC Section 408A; an individual retirement annuity described in IRC Section 408(b); an annuity plan described in IRC Section 403(a); an annuity contract described in IRC Section 403(b); or a qualified trust described in IRC Section 401(a) that accepts the distributee’s eligible rollover distribution. In addition, “eligible retirement plan” shall mean an eligible plan under IRC Section 457(b) which is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to account for separately amounts transferred into such plan from this Plan.

(c) 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 IRC Section 414(p), are distributees with regard to the interest of the spouse or former spouse. Further, any other individual who is the designated beneficiary, as defined in IRC Section 401(a)(9)(E), of the employee or former employee is a distributee; provided, however, that in the case of a nonspouse beneficiary, the direct rollover may be made only to an individual retirement account or annuity described in IRC Section 408(a) or IRC Section 408(b) that is established on behalf of the designated beneficiary and that will be treated as an inherited IRA pursuant to the provisions of IRC Section 402(c)(11).

(d) A “direct rollover” is a payment by the plan to the eligible retirement plan specified by the distributee.

## **ARTICLE VIII- LIMITATION ON BENEFITS**

### **Section 8.1 Maximum Annual Benefit**

(a) Notwithstanding the provisions of Article III and subject to the exceptions below, in no event shall the Annual Benefit payable under this Plan exceed the lesser of the Defined Benefit Dollar Limitation, or the participant’s Compensation Limit. If the benefit a participant would otherwise accrue in a limitation year would produce an Annual Benefit in excess of the maximum permissible amount, such benefit shall be reduced automatically so that the Annual Benefit will equal to maximum permissible amount. For purposes of this Section 8.1, all qualified defined benefit pension plans maintained by the Employer shall be treated as a single plan.

(b) The participant’s Compensation Limit shall be 100% of the participant’s average compensation for the three consecutive years of service (or, if the participant has less than three consecutive years of service, the participant’s longest consecutive period of service, including fractions of years, but not less than one year) with the Employer that produce the highest

average. A participant's compensation for a year of service shall not include compensation in excess of the limitation under IRC Section 401(a)(17) as in effect for the calendar year in which such year of service begins.

(1) In the case of a participant who is rehired by the Employer after a severance from employment, the participant's high three-year average compensation shall be calculated by excluding all years for which the participant performs no services for, and receives no compensation from, the Employer (the break period) and by treating years immediately preceding and following the break period as consecutive.

(2) In the case of a participant who has had a severance from employment with the Employer, the Defined Benefit Compensation Limitation applicable to the participant in any limitation year beginning after the date of severance shall be adjusted automatically by multiplying the limitation applicable to the participant in the prior limitation year by the annual adjustment under IRC Section 415(d). The adjusted compensation limit shall apply to Limitation Years ending with or within the calendar year of the date of the adjustment, but a participant's benefit shall not reflect the adjusted limit prior to January 1 of that calendar year.

(3) In the case of a participant who is rehired after a severance from employment, the Defined Benefit Compensation Limit is the greater of 100% of the participant's high three-year average compensation as determined prior to the severance from employment, as adjusted pursuant to Section 8.1(b)(2), if applicable or 100% of the participant's high three-year average compensation, as determined after the severance from employment pursuant to Section 8.1(b)(1).

(c) Effective for Limitation Years ending after December 31, 2001, the "Defined Benefit Dollar Limitation" shall mean \$160,000, as adjusted automatically, effective January 1 of each year, under Code Section 415(d) in such manner as the Secretary shall prescribe. Any new limitation, under Code Section 415(d) will apply to Limitation Years ending with or within the calendar year of the date of the adjustment, but a participant's benefits shall not reflect the adjusted limit prior to January 1 of that calendar year.

## **Section 8.2 Definitions**

As used in this Article VIII, the following words and phrases shall have the meanings set forth in this Section 8.2, unless the context clearly indicates otherwise.

(a) "Annual Benefit" shall mean the benefit under the plan which is payable annually in the form of a straight life annuity. The Annual Benefit shall include any picked-up contributions made by the Employer under IRC 414(h)(2). Except as provided in this Section 8.2(a), if the benefit is payable in any other form, the "Annual Benefit" shall be adjusted to an actuarially equivalent straight life annuity, beginning at the same time and payable on the first day of each month, before applying the limitations of this Article VIII. With respect to a participant who has or will have distributions commencing at more than one annuity starting date, the Annual Benefit shall be determined as of each such annuity starting date and shall satisfy the limitations of this Article VIII as of each such date, actuarially adjusting for past and future distributions of



benefits commencing at the other annuity starting dates. For this purpose, the determination of whether a new starting date has occurred shall be made without regard to Regulation §1.401(a)-20, Q&A 10(d), and with regard to Regulation §§1.415(b)-1(b)(1)(iii)(B) and (C). No actuarial adjustment to the benefit shall be made for (1) survivor benefits payable to a surviving spouse under a Qualified Joint and Survivor Annuity to the extent such benefits would not be payable, if the participant's benefit were paid in another form; (2) benefits that are not related directly to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, or post-retirement medical benefits), or (3) the inclusion in the form of benefit of an automatic benefit increase feature, provided that the form of benefit is not subject to IRC Section 417(e)(3) and otherwise would satisfy the limitations of this Article VIII, and provided, further, that the amount payable under the form of benefit in any Limitation Year shall not exceed the limits of this Article VIII applicable at the annuity starting date, as increased in subsequent years pursuant to IRC Section 415(d). For this purpose, an automatic benefit increase feature is included in a form of benefit, if the form of benefit provides for automatic, periodic increases to the benefit paid in that form. The determination of the Annual Benefit shall take into account Social Security supplements described in IRC Section 411(a)(9) and benefits transferred from another defined benefit plan (other than transfers of distributable benefits pursuant to Regulation §1.411(d)(4), Q&A-3(c)) but shall disregard benefits attributable to employee contributions and rollover contributions. Effective for distributions in Plan Years beginning after December 31, 2003, the determination of actuarial equivalence of forms of benefit other than straight life annuity shall be made in accordance with Sections 8.2(a)(1) and 8.2(a)(2) below.

(1) Benefit Forms Not Subject to IRC Section 417(e)(3): This Section 8.2(a)(1) shall apply if the form of the participant's benefit is either (A) a nondecreasing annuity (other than a straight life annuity) payable for a period of not less than the life of the participant (or, in the case of a qualified pre-retirement survivor annuity, the life of the surviving spouse) or (B) an annuity that decreases during the life of the participant merely because of the death of the survivor annuitant (but only if the reduction is not below 50% of the benefit payable prior to the death of the survivor annuitant) or the cessation of reduction of Social Security supplements or qualified disability benefits (as defined in IRC Section 401(a)(11)).

(A) For Limitation Years beginning before July 1, 2007, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the participant's form of benefit computed using whichever of the following produces the greater annual amount: (I) the interest rate and mortality table (or other tabular factor) specified in Section 1.2, or (II) a 5% interest assumption and the applicable IRC Section 417 mortality table for that annuity starting date.

(B) For Limitation Years beginning on or after July 1, 2007, the actuarially equivalent straight life annuity is equal to the greater of (I) the annual amount of the straight life annuity, if any, payable to the Participant commencing at the same annuity starting date as the participant's form of benefit and (II) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the participant's form of benefit computed using a 5% interest rate assumption and the applicable IRC Section 417 mortality table for that annuity starting date.

(2) Benefit Forms Subject to IRC Section 417(e)(3): If the participant's form of benefit is other than a form of benefit described in 8.2(a)(1), the actuarially equivalent straight life annuity shall be determined as provided herein.

(A) If the annuity starting date of the participant's benefit occurs during a Plan Year beginning after 2005, the actuarially equivalent straight life annuity is equal to the greatest of (I) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the participant's form of benefit computed by using the interest rate and mortality table (or other tabular factor) specified in Section 1.2, (II) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the participant's form of benefit computed by using a 5.5% interest rate and the IRC Section 417 applicable mortality table, and (III) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the participant's form of benefit computed by using the interest rate specified in Section 1.2 and the IRC Section 417 applicable mortality table, divided by 1.05; provided, however, that effective with respect to annuity starting dates occurring in Limitation Years beginning after December 31, 2008, this Section 8.2(a)(2)(A) shall be applied without regard to the amount specified in (III) if the Employer is an eligible employer under IRC Section 408(p)(2)(C)(i) which, generally, is an employer which, during the preceding year, had no more than 100 employees who received \$5,000 or more in compensation from the employer.

(B) If the annuity starting date of the participant's form of benefit is in a Plan Year beginning in 2004 or 2005, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity start date that has the same actuarial present value as the participant's form of benefit computed using whichever of the following produces the greater annual amount: (I) the interest rate and mortality table (or other tabular factor) specified in Section 1.2, or (II) a 5.5% interest rate and the IRC Section 417 applicable mortality table.

(C) If the annuity starting date of the participant's benefit is on or after the first day of the Plan Year beginning in 2004, but before December 31, 2004, the application of Section 8.2(a)(2)(B) shall not cause the amount payable under the Participant's form of benefit to be less than the benefit calculated under the Plan, taking into account the limitations of this Article VIII, except that the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the participant's form of benefit, computed using whichever of the following produces the greatest annual amount: (I) the interest rate and mortality table (or other tabular factor) specified in Section 1.2 as in effect as of the date of distribution, (II) the Applicable Interest Rate specified in Section 1.2 and the Applicable Mortality Table under IRC Section 417(e)(3) as provided under the terms of the plan in effect as of the date of distribution, and (III) the Applicable Interest Rate specified in Section 1.2 of the plan (as in effect on the last day of the last Plan Year beginning before January 1, 2004, under provisions of the plan then adopted and in effect) and the Applicable Mortality Table under IRC Section 417(e)(3).



(b) “Compensation” shall mean the participant’s wages, salaries, fees for professional services and other amounts received (whether or not paid in cash) for personal services actually rendered in the course of employment with the Employer to the extent that such amounts are includable in gross income, including, but not limited to, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, reimbursements and other expense allowances under a nonaccountable plan [as described in Regulation §1.62-2(c)], and including differential wage payments under IRC Section 3401(h) made after December 31, 2008; a participant’s Compensation shall exclude (A) Employer contributions [other than elective contributions described in IRC Section 402(e)(3), 408(k)(6), 408(p)(2)(A)(i) or 457] to a plan of deferred compensation [including a simplified employee pension described in IRC Section 408(k) or a simple retirement account described in IRC Section 408(p), and whether or not qualified] to the extent such contributions are not includable in the participant’s gross income for the taxable year in which contributed, or any distributions (whether or not includible in gross income when distributed) from a plan of deferred compensation (whether or not qualified), other than amounts received during the year by a participant pursuant to a nonqualified unfunded deferred compensation plan to the extent includible in gross income; (B) amounts realized from the exercise of a non-statutory stock option [that is, an option other than a statutory stock option as defined in Regulation §1.421-1(b)], or when restricted stock (or property) held by the Participant either becomes freely transferable or is no longer subject to a substantial risk of forfeiture; (C) amounts realized from the sale, exchange or other disposition of stock acquired under a statutory stock option; (D) other amounts that receive special tax benefits, such as premiums for group-term life insurance (but only to the extent that the premiums are not includible in the gross income of the participant and are not salary reduction amounts described in IRC Section 125), and (E) other items of remuneration that are similar to any of the foregoing items. Picked-up contributions under IRC Section 414(h)(2) shall not be included in a participant’s Compensation. Back pay, within the meaning of Regulation §1.415(c)-2(g)(8), shall be treated as Compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that otherwise would be included under this definition. With respect to a participant who is a self-employed individual, Compensation shall mean Earned Income.

(1) Except as provided herein, for limitation years beginning after December 31, 1991, Compensation for a limitation year shall include the Compensation actually paid or made available during such limitation year and amounts earned but not paid during the limitation year solely because of the timing of pay periods and pay dates, provided that the amounts are paid during the first few weeks of the next limitation year, the amounts are included on a uniform and consistent basis with respect to all similarly situated employees and no amount is included as Compensation in more than one limitation year.

(2) For limitation years beginning after December 31, 1997, Compensation paid or otherwise made available during such limitation year shall include amounts that otherwise would be included but for an election under IRC Section 125(a), 402(e)(3), 402(h)(1)(B), 402(k) or 457(b).

(3) For limitation years beginning after December 31, 2000, Compensation also shall include any elective amounts that are not includible in the participant's gross income by reason of IRC Section 132(f).

(4) For limitation years beginning on or after July 1, 2007, Compensation also shall include compensation paid by the later of 2-1/2 months after a participant's severance from employment with the Employer or the end of the limitation year that includes the date of the participant's severance from employment with the Employer, if:

(A) the payment is regular compensation for services during the employee's regular working hours, or compensation for services outside the employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments, and, absent a severance from employment, the payments would have been made to the participant while the participant continued in employment with the Employer;

(B) the payment is for unused accrued bona fide sick, vacation or other leave that the employee would have been able to use, if employment had continued, or

(C) the payment is received by the participant pursuant to a nonqualified unfunded deferred compensation plan and would have been paid at the same time, if employment had continued, but only to the extent included in gross income.

Any payment not described in (A), (B), or (C) above shall not be considered compensation, if paid after severance from employment, even if paid by the later of 2-1/2 months after the date of severance from employment.

(c) "Limitation Year shall be defined as in Section 1.4(c).

(d) "Predecessor Employer" shall mean a former entity that antedates the Employer if, under the facts and circumstances, the Employer constitutes a continuation of all or a portion of the trade or business of that former entity. In addition, if the Employer maintains a plan that provides a benefit which the participant accrued while performing services for a former employer, that former employer shall be deemed to be a predecessor employer with respect to that participant.

(e) "Severance from Employment" shall mean cessation of employment by a participant with the Employer; provided, however, that, if the participant's new employer maintains the plan with respect to that participant, the change in employment shall not constitute a severance from employment.

(f) "Year of Participation" shall mean each accrual computation period (computed to fractional parts of a year) for which the following conditions are met: (1) the participant is credited with at least the period of service for benefit accrual purposes, required under the terms of the plan in order to accrue a benefit for the accrual computation period, and (2) the participant is included as a participant under the eligibility provisions of the plan for at least one day of the accrual computation period. If these two conditions are met, the portion of a year of participation credited to the participant shall equal the amount of benefit accrual service credited to the

participant for such accrual computation period. A participant who is permanently and totally disabled within the meaning of IRC Section 415(c)(3)(C)(i) for an accrual computation period shall receive a year of participation with respect to that period. In addition, for a participant to receive a year of participation (or part thereof) for an accrual computation period, the plan must be established no later than the last day of such accrual computation period. In no event will more than one year of participation be credited for any 12-month period.

(g) “Annuity Starting Date” shall mean the first day of the first period for which an amount is paid as an annuity or in any other form.

### **Section 8.3 Adjustments to Defined Benefit Dollar Limitation**

(a) If the participant has less than ten years of participation in the plan, the Defined Benefit Dollar Limitation shall be multiplied by a fraction, (1) the numerator of which is the number of years (or part thereof, but not less than one year) of participation in the plan, and (2) the denominator of which is ten.

(b) If the participant has completed less than ten years of service with the Employer, the Defined Benefit Dollar Limitation shall be multiplied by a fraction, (1) the numerator of which is the number of years of service (or part thereof, but not less than one year) with the Employer, and (2) the denominator of which is ten.

(c) If the participant’s annuity starting date is prior to the participant’s attainment of age 62, the following adjustments shall apply:

(1) If the participant’s annuity starting date is prior to the participant’s attainment of age 62 and occurs in a limitation year beginning before July 1, 2007, the Defined Benefit Dollar Limitation for the participant’s annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the participant’s annuity starting date that is the actuarial equivalent of the Defined Benefit Dollar Limitation adjusted pursuant to Section 8.3(a) for years of participation less than ten, if required, with actuarial equivalence computed using whichever of the following produces the small annual amount: (A) the interest rate and mortality table (or other tabular factor) specified in Section 1.2 of the plan, or (B) a 5% interest rate assumption and the applicable IRC Section 417 mortality table.

(2) If the participant’s annuity starting date is prior to the participant’s attainment of age 62 and occurs in a limitation year beginning on or after July 1, 2007, and the plan does not have an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the Defined Benefit Dollar Limitation for the participant’s annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the participant’s annuity starting date that is the actuarial equivalent of the Defined Benefit Dollar Limitation adjusted pursuant to Section 8.3(a) for years of participation less than ten, if required, with actuarial equivalence computed using a 5% interest rate assumption and the applicable Section 417 mortality table for the annuity starting date (and expressing the participant’s age based on completed calendar months as of the annuity starting date); provided, however, that

the age-adjusted Dollar Limitation shall not decrease on account of an increase in age or the performance of additional services.

(3) If the participant's annuity starting date is prior to the participant's attainment of age 62 and occurs in a limitation year beginning on or after July 1, 2007, and the Plan has an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the Defined Benefit Dollar Limitation for the participant's annuity starting date is the lesser of the limitation determined under Section 8.3(c)(2) and the Defined Benefit Dollar Limitation (adjusted pursuant to Section 8.3(a) for years of participation less than ten, if required) multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under the plan at the participant's annuity starting date to the annual amount of the immediately commencing straight life annuity under the Plan at age 62, both determined without applying the limitations of this Article VIII; provided, however, that the age-adjusted Dollar Limitation shall not decrease on account of an increase in age or the performance of additional services.

(d) If the participant's annuity starting date is subsequent to the participant's attainment of age 65, the following adjustments shall apply:

(1) If the participant's annuity starting date is subsequent to the participant's attainment of age 65 and occurs in a limitation year beginning before July 1, 2007, the Defined Benefit Dollar Limitation for the participant's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the participant's annuity starting date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted pursuant to Section 8.3(a) for years of participation less than ten, if required) with actuarial equivalence computed using whichever of the following produces the small annual amount: (A) the interest rate and mortality table (or other tabular factor) specified in Section 1.2 of the plan, or (B) a 5% interest rate assumption and the applicable IRC Section 417 mortality table.

(2) If the participant's annuity starting date is subsequent to the participant's attainment of age 65 and occurs in a limitation year beginning on or after July 1, 2007, and the plan does not have an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the Defined Benefit Dollar Limitation for the participant's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the participant's annuity starting date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted pursuant to Section 8.3(a) for years of participation less than ten, if required), with actuarial equivalence computed using a 5% interest rate assumption and the applicable Section 417 mortality table for the annuity starting date (and expressing the participant's age based on completed calendar months as of the annuity starting date).

(3) If the participant's annuity starting date is subsequent to the participant's attainment of age 65 and occurs in a limitation year beginning on or after July 1, 2007, and the Plan has an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the Defined Benefit Dollar Limitation for the participant's annuity starting date is the lesser of the limitation determined under Section 8.3(d)(2) and the Defined Benefit Dollar Limitation (adjusted pursuant to Section 8.3(a) for years of participation less than ten, if

required) multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under the plan at the participant's annuity starting date to the annual amount of the immediately commencing straight life annuity under the plan at age 65, both determined without applying the limitations of this Article VIII. For this purpose, the adjusted immediately commencing straight life annuity under the plan at the participant's annuity starting date is the annual amount of such annuity payable to the participant, computed disregarding the participant's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing straight life annuity under the plan at age 65 is the annual amount of such annuity that would be payable under the plan to a hypothetical participant who is age 65 and has the same accrued benefit as the participant.

(4) Notwithstanding the other requirements of this Section 8.3, in adjusting the Defined Benefit Dollar Limitation for the participant's annuity starting date under this Section 8.3(d), no adjustment shall be made to reflect the probability of a participant's death between the annuity starting date and age 62, or between age 65 and the annuity starting date, as applicable, if benefits are not forfeited upon the death of the participant prior to the annuity starting date. To the extent benefits are forfeited upon death prior to the annuity starting date, such an adjustment shall be made. For this purpose, no forfeiture shall be treated as occurring upon the participant's death, if the plan does not charge participants for providing a qualified preretirement survivor annuity, as defined in IRC Section 417(c), upon the participant's death.

#### **Section 8.4 Minimum Benefit Permitted**

Notwithstanding any provision in this Article VIII to the contrary, in no event shall the benefit otherwise accrued by or payable to a participant under the plan be deemed to exceed the Maximum Annual Benefit, as defined in Section 8.1, if (a) the retirement benefits payable for a limitation year under any form of benefit with respect to such participant under this plan and under all other defined benefit plans (whether or not terminated) ever maintained by the Employer do not exceed \$10,000 multiplied by a fraction, the numerator of which is the number of years of service (or portion thereof, but not less than one) completed by the participant with the Employer, and the denominator of which is ten, and (b) neither the Employer nor any predecessor employer at any time has maintained a defined contribution plan in which the participant participated. For this purpose, mandatory employee contributions under a defined benefit pension plan, individual medical accounts established under IRC Section 401(h), and accounts for post-retirement medical benefits established pursuant to IRC Section 419(d)(1) shall not be considered to be separate defined contribution plans.

#### **Section 8.5 General Rules**

(a) If a defined benefit plan maintained by the Employer has terminated with assets sufficient to pay benefit liabilities to all plan participants but one or more participants in the plan have not yet commenced benefits, the benefits provided under the annuities purchased for purposes of providing benefits under that terminated plan at each possible annuity starting date shall be taken into account in applying the limitations of this Article VIII. If the assets are not sufficient to pay all benefit liabilities, the benefits to be taken into account in applying the limitations of this Article VIII shall be the benefits actually provided to the participants under the terminated plan.

(b) If a participant's benefits under a defined benefit plan maintained by the Employer are transferred to another defined benefit plan maintained by the Employer, other than by a transfer of distributable benefits pursuant to Regulation §1.411(d)-4, Q&A-3(c), the transferred benefits shall not be treated as being provided under the transferor plan but are taken into account as benefits provided under the transferee plan. If a participant's benefits under a defined benefit plan maintained by the Employer are transferred to another defined benefit plan that is not maintained by the Employer, other than by a transfer of distributable benefits pursuant to Regulation §1.411(d)-4, Q&A-3(c), the transferred benefits shall be treated by the Employer's plan as if such benefits were provided under annuities purchased for purposes of providing benefits under a plan, maintained by the Employer, that terminated immediately prior to the transfer with assets sufficient to pay all participants' benefit liabilities under the plan. If a participant's benefits under a defined benefit plan maintained by the Employer are transferred to another defined benefit plan in a transfer of distributable benefits pursuant to Regulation §1.411(d)-4, Q&A-3(c), the amount transferred shall be treated as a benefit paid from the transferor plan.

(c) A formerly affiliated plan of an employer shall be treated as a plan maintained by the employer, but the formerly affiliated plan shall be treated as if it has terminated immediately prior to the cessation of the affiliation with assets sufficient to pay all benefit liabilities under the plan and had purchased annuities to provide benefits.

(d) If an employer maintains a defined benefit plan that provides benefits accrued by a participant while performing services for a predecessor employer, the participant's benefits under a plan maintained by the predecessor employer shall be treated as provided under a plan maintained by the employer. However, for this purpose, the plan of the predecessor employer shall be treated as if it had terminated immediately prior to the event giving rise to the predecessor employer relationship with assets sufficient to pay all benefit liabilities under the plan and had purchased annuities to provide benefits; the employer and predecessor employer shall be treated as if they were a single employer immediately prior to such event and as unrelated employers immediately after the event, and, if the event giving rise to the predecessor relationship is a benefit transfer, the transferred benefits shall be excluded in determining the benefits provided under the plan of the predecessor employer.

(e) If the Employer maintains a multiemployer plan, as defined in IRC Section 414(f), and the multiemployer plan so provides, only those benefits under the multiemployer plan that are provided by the Employer shall be treated, for purposes of this Article VIII, as benefits provided under a plan maintained by the Employer. Effective for limitation years ending after December 31, 2001, a multiemployer plan shall be disregarded for purposes of applying the Compensation limits under this Article VIII to a plan which is not a multiemployer plan.

(f) The limitations of this Article VIII shall be determined and applied with reference to Regulation §§ 1.415(f)-1(d), (e) and (h).

## **ARTICLE IX- ADMINISTRATION OF THE PLAN**



## **Section 9.1    Fiduciary Responsibility**

(a)        A fiduciary of this plan is required to exercise the judgment and care under the circumstances then prevailing that men of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.

(b)        When the plan administrator is required to follow the directions of the trustee or the trustee is required to follow the directions of the plan administrator, they shall not be deemed to share such responsibility. Instead, the responsibility of the person giving the directions shall be deemed to be his sole responsibility and the responsibility of the person receiving directions shall be to follow those directions insofar as such instructions on their face are proper under applicable law.

(c)        The plan administrator or trustee under this plan may employ one or more persons, including independent accountants, attorneys, actuaries, administrators and investment managers, as deemed necessary or desirable in connection with the operation and administration of the plan and to allocate to such individuals any of its duties and responsibilities under the plan.

(d)        Subject to Act 205, no past, present, or future officer of the employer or of any participating employer shall be personally liable to any participant, beneficiary, or other person under any provision of the plan or trust or any insurance policy or contract issue pursuant thereto. No individual fiduciary shall be liable for any act or omission of any other fiduciary. Unless resulting from the gross negligence, willful misconduct or lack of good faith on the part of the fiduciary, the employer shall indemnify and save harmless such fiduciary from, against, for and in respect of any and all damages, losses, obligations, liabilities, liens, deficiencies, costs, and expenses, including without limitation, reasonable attorney's fees and other costs and expenses incident to any suit, action, investigation, claim or proceedings suffered in connection with his acting as a fiduciary under the plan.

## **Section 9.2 Administration by Pension Board**

(a) The governing body of the Employer shall establish a Pension Board to be responsible for the administration of the plan. The pension board shall consist of five members as follows: (1) two duly elected or appointed members of the governing body of the Employer serving in such position as selected by the governing body of the employer; (2) two police officers in the active employment of the Employer; and (3) one individual chosen by majority consent of the four other members. The pension board shall choose from its members a chairperson. The duly appointed manager of the Employer shall serve as the secretary of the pension board and shall keep minutes of the board's proceedings and all dates, records, and documents pertaining to the board's administration of the plan. The term of office for members of the pension board shall be two years, except as provided herein.

(b) The term of office for members of the Pension Board shall be two years, except as provided herein. A member who is a police officer shall cease to be a member on the last day of his employment as a police officer of the Employer. A member who is also a member of the governing body of the employer shall cease to be a member on the day he ceases to hold office. Members may be reappointed or reelected. Vacancies shall be filled in the same manner as the departing member was selected.

(c) The Pension Board shall appoint the chief administrative officer who shall serve at the discretion of the Pension Board. The Pension Board may delegate such of its duties and powers to the chief administrative officer as it determines to be appropriate.

(d) The Pension Board shall have the following duties and discretionary powers and such other duties and discretionary powers as relate to the administration of the plan:

(1) To determine in a non-discriminatory manner all questions relating to the eligibility of employees to become participants.

(2) To determine in a non-discriminatory manner eligibility for benefits and to determine and certify the amount and kind of benefits payable to participants.

(3) To authorize all disbursements from the fund.

(4) To appoint or employ, upon approval of the Employer, any independent person to perform necessary plan functions and to assist in the fulfillment of administrative responsibilities as it deems advisable, including the retention of a third party administrator, custodian, auditor, accountant, actuary, or attorney.

(5) When appropriate, to select an insurance company and annuity contracts that, in its opinion, will best carry out the purposes of the plan.



(6) To construe and interpret any ambiguities in the plan and to make, publish, interpret, alter, amend or revoke rules for the regulation of the plan that are consistent with the terms of the plan and with the applicable provisions of the Internal Revenue Code.

(7) To prepare and distribute, in such manner as determined to be appropriate, information explaining the plan.

(8) To make rules and regulations for the governance of the affairs of the pension board to better enable it to carry out its powers and duties imposed hereunder.

(e) The Pension Board shall meet at least once annually and at other times at the call of the chairperson or the request of the majority of its members.

(f) The actions of the Pension Board shall be determined by the vote or other affirmative expression of a majority of its members. All actions of the board shall be certified by its chairperson and attested to by its secretary. A member of the Pension Board who is a participant shall not vote on any question relating specifically to himself. If the remaining members of the Pension Board, by majority vote thereof, are unable to come to a determination of any such question, the employer shall appoint a substitute member who shall act as a member of the pension board for the special vote.

(g) The members of the pension board shall serve without compensation for service as such. All reasonable expenses of the pension board shall be paid by the plan.

(h) Members of the Pension Board shall serve without bond.

(i) The Pension Board shall make available to a participant for examination upon request and during reasonable business hours such of the plan records as pertain to decisions made solely with respect to that participant.

(j) To enable the Pension Board to perform its administrative functions, the Employer shall provide to the Pension Board on a timely basis such information pertaining to employees and participants as the Pension Board may require or request, and the Pension Board shall be entitled to rely upon the accuracy of all information provided by the Employer.

### **Section 9.3 Claims Procedure**

(a) Participants and beneficiaries shall direct all benefit claims to the Plan Administrator. Such claims may be made either orally or in writing. The Plan Administrator shall allow or deny the claim within sixty days after it is made. If the claim is denied, the Plan Administrator shall notify the claimant of the denial in writing within the above sixty day period. The notice of denial shall give the specific reason or reasons for denial, shall refer to the plan provisions upon which the denial is based, shall describe any information or material with which the claimant could perfect his claim and explain why such material is necessary, and shall describe the claims review procedure.

(b) The participant or beneficiary may demand a review of his claim within ninety days after the denial of his claim. The review shall be made, at the claimant's written request, by the Pension Board and the Plan Administrator. The claimant shall have access to all pertinent documents and shall be entitled to submit oral and written arguments to the reviewing group. Decisions on any review shall be made within thirty days after the request for review. If the claim is denied after review, the decision shall be in writing and shall contain the same information as the notice of denial.

(c) Following receipt of the written decision by the Pension Board on review, the participant shall have 365 days within which to file suit in the appropriate court. Thereafter, neither the participant nor beneficiary shall have any right to contest the decision.

#### **Section 9.4 Trust Fund**

(a) The trust fund shall be created and maintained in the following manner:

(1) All funds on deposit and held for pension or retirement benefits of the participants shall continue to be part of the trust fund created and maintained hereby subject to any liabilities that may exist against such fund.

(2) The Employer shall allocate to the fund the payments made by the Treasurer of the Commonwealth of Pennsylvania from monies received from taxes paid upon premiums by foreign casualty insurance companies and foreign fire insurance companies pursuant to the General Municipal Pension System State Aid Program.

(3) The Employer shall also allocate to the fund any mandatory employee contributions received in accordance with the plan.

(4) The fund shall accept and maintain any payments made by other gifts, grants, devises, or bequests to the fund.

(5) The Employer shall contribute to the fund such other payments as may, from time to time, be authorized to be made from the general revenue of the employer.

(6) All such payments received shall be part of the trust fund and shall not be applied to any other account or disbursed in any manner except as provided by this plan. Payments required under the plan shall be a charge only upon the trust fund and not upon other monies or funds of the employer.

(b) The Employer shall appoint a trustee for the proper care and custody of all funds, securities and other properties in the trust, and for investment of plan assets (or for execution of such orders as it receives from an investment manager appointed for investment of plan assets) or agree to serve in such capacity. The duties and powers of the trustee shall be set forth in a trust agreement executed by the employer, that is incorporated herein by reference. The Employer shall review at regular intervals the performance of the trustee and shall re-evaluate the appointment of such trustee. After the Employer has appointed the trustee and has received a written notice of

acceptance of its responsibility, the responsibility with respect to the proper care and custody of plan assets shall be considered as the responsibility of the trustee. Unless otherwise allocated to an investment manager, the responsibility with respect to investment of plan assets shall likewise be considered as the responsibility of the trustee.

(c) If the Employer serves as trustee, it shall appoint a corporate custodian to hold and invest the fund. The corporate custodian shall carry out its responsibilities in accordance with the terms of the custodial agreement and the investment policy and guidance as the employer shall, from time to time, provide. The Employer shall review at regular intervals no less frequently than annually, the performance of such corporate custodian and shall re-evaluate the appointment of such corporate custodian.

(d) The Employer may appoint an investment manager who is other than the trustee, which investment manager may be a bank or an investment advisor registered with the Securities and Exchange Commission under the Investment Advisors Act of 1940. Such investment manager, if appointed, shall have sole discretion in the investment of plan assets, subject to the funding policy. The Employer shall review at regular intervals no less frequently than annually, the performance of such investment manager and shall re-evaluate the appointment of such investment manager. After the Employer has appointed an investment manager and has received a written notice of acceptance of his responsibility, the responsibility with respect to investment of plan assets shall be considered as the responsibility of the investment manager.

(e) The Employer shall determine and communicate in writing to the person responsible for investment of plan assets the funding policy for the plan. The funding policy shall set forth the plan's short-range and long-range financial needs, so that said person may coordinate the investment of plan assets with the plan's financial needs.

(f) The trust fund shall be valued by the trustee as of the last day of each plan year and as of any interim accounting date determined by the plan administrator. The valuation shall be made on the basis of the current fair market value of all property in the fund.

## **Section 9.5 Actuarial Valuation and Funding**

In compliance with Act 205, the actuarial valuation report shall be prepared and filed under the supervision of the Chief Administrative Officer of the municipality or of the association of municipalities cooperating pursuant to the Intergovernmental Cooperation Act and named as the sponsoring employer of this plan. The actuary shall perform an actuarial valuation at least biennially. Each biennial actuarial valuation report shall be made as of the beginning of such plan year and shall be prepared and certified by an approved actuary. An approved actuary means a person who has at least five years of actuarial experience with public pension plans and who is either enrolled as a member of the American Academy of Actuaries or enrolled as an actuary pursuant to ERISA. If the Employer is applying or has applied for Supplemental State Assistance pursuant to Section 603 of the Act, the actuarial valuation report shall be made annually.

## **Section 9.6 Allowable Administrative Expenses**

The expenses attributable to the preparation of any actuarial valuation report or investigation required by Act 205 or any other expense that is permissible under the terms of Act 205 and that are directly associated with administering the plan shall be an allowable administrative expense payable from the assets of the trust.

#### **Section 9.7 Benefit Modifications**

Prior to the adoption of any benefit plan modification by the Employer, the Chief Administrative Officer shall provide to the Employer a cost estimate of the proposed benefit plan modification prepared by an approved actuary. Such estimate shall disclose to the Employer the impact of the proposed benefit plan modification on the future financial requirements of the plan and the future minimum obligation of the Employer with respect to the plan.

### **ARTICLE X - AMENDMENT AND TERMINATION OF PLAN**

#### **Section 10.1 Right to Discontinue and Amend**

It is the expectation of the Employer that it will continue this plan indefinitely and make the payments of its contributions hereunder, unless permitted to terminate under the provisions of Act 600.

#### **Section 10.2 Amendments**

Except as herein limited, the Employer shall have the right to amend this plan at any time to any extent that it may deem advisable. Such amendment shall be stated in writing and shall be by ordinance or resolution of the governing body of the Employer. The Employer's right to amend the plan shall be limited as follows:

- (a) No amendment shall be adopted in violation of Act 600.
- (b) No amendments shall have the effect of vesting in the employer any interest in or control over any contracts issued pursuant hereto or any other property in the fund.
- (c) No amendment to the vesting schedule adopted by the Employer hereunder shall deprive a participant of his vested portion of his Employer-derived accrued benefit to the date of such amendment.

#### **Section 10.3 Protection of Benefits in Case of Plan Merger**

In the event of a merger or consolidation with, or transfer of assets or liabilities to any other plan, each participant will receive a benefit immediately after such merger, consolidation or transfer (if the plan then terminated) that is at least equal to the benefit the participant was entitled to immediately before such merger, consolidation or transfer (if the plan had terminated).

#### **Section 10.4 Termination of Plan**

(a) This plan shall terminate upon the legal dissolution of the Employer or the termination of the plan by the amendment action of the Employer. Subject to the provisions of the Municipal Pension Plan Funding Standard and Recovery Act (P. L. 1005, Act 205 of 1984) governing financially distressed municipalities, the liability of the Employer to make contributions to the plan shall automatically terminate upon liquidation or dissolution of the Employer, upon its adjudication as a bankrupt, or upon the making of a general assignment for the benefit of its creditors.

(b) **Allocation of Assets** - Upon termination or partial termination, the accrued benefit of each affected participant who is an active participant or who is not an active participant but has not incurred a one-year break in service shall be 100% vested and nonforfeitable; however, no participant or other individual shall have recourse towards the satisfaction of any benefit accrued under the plan other than from the fund. The amount of the fund assets shall be allocated to participants and beneficiaries subject to provisions for expenses of administration of liquidation. The allocation of assets shall be in accordance with the following (to the extent assets are sufficient).

(1) There shall be allocated an amount equal to that portion of each individual's accrued benefit that is derived from the participant's voluntary contributions.

(2) There shall be allocated an amount equal to that portion of each individual's accrued benefit that is derived from the participant's mandatory contributions.

(3) There shall be allocated amounts sufficient to provide the pension of each participant or beneficiary who was receiving such a benefit three years before the date of termination. There shall likewise be allocated amounts sufficient to provide the normal form of pension for each participant who was eligible to retire three years before the date of termination but had not done so. In both cases, the benefits shall be based upon the plan provisions in effect during the five years before the date of termination under which such benefits would be the least.

(4) There shall be allocated amounts sufficient to provide all vested benefits due participants.

(5) There shall be allocated amounts sufficient to provide all other benefits of the plan.

If assets are insufficient to provide all benefits within any one of the above paragraphs (1) through (5), they shall be allocated pro rata among the participants or beneficiaries within that paragraph on the basis of the present value of such benefits. The allocation of assets, when determined by the actuary, may be implemented through the continuation of the existing fund or through the purchase of insurance company annuity contracts, or by a combination of these media.

(c) Notwithstanding any provision in this plan to the contrary, upon the termination of the plan, but only after all liabilities to the participants and their respective beneficiaries have been satisfied, the employer shall be entitled to any balance of the net assets of

the fund that shall remain by reason of erroneous actuarial computations or overpayments during the life of the plan.

## **ARTICLE XI - MISCELLANEOUS PROVISIONS**

### **Section 11.1 Exclusive Benefit and Non-Reversion**

The plan is created for the exclusive benefit of the employees of the Employer and shall be interpreted in a manner consistent with its being a qualified plan as defined in IRC section 401(a). The corpus or income of the trust may not be diverted to or used for other than the exclusive benefit of the participants or their beneficiaries. Notwithstanding the above, any contribution made by the Employer because of a mistake of fact must be returned to the Employer within one year of the contribution. Further, a reversion to the Employer is permissible upon plan termination in accordance with Section 10.4(c).

### **Section 11.2 Inalienability of Benefits**

No benefit or interest available hereunder, including any distributed annuity contract, shall be subject to assignment or alienation, either voluntarily or involuntarily. The preceding sentence shall also apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a participant pursuant to a domestic relations order, unless such order is determined to be an acceptable domestic relations order as defined in IRC Section 414(p), or any domestic relations order entered before January 1, 1985.

### **Section 11.3 Employer-Employee Relationship**

This plan is not to be construed as creating or changing any contract of employment between the Employer and its employees, and the employer retains the right to deal with its employees in the same manner as though this plan had not been created.

### **Section 11.4 Miscellaneous Receipts**

Any amounts received by the trustee or custodian which are not attributable to a specific account or investment, including, but not limited to, recovery of amounts previously written off as uncollectible, group insurance experience refunds, recoveries through correction of trade, clerical or administrative errors, claims settlements and recoveries, payments received as a result of demutualization of insurance companies, and recoveries from service providers or their insurers, shall be treated as general assets of the Trust.

### **Section 11.5 Binding Agreement**

This plan shall be binding on the heirs, executors, administrators, successors and assigns as such terms may be applicable to any or all parties hereto, and on any participants, present or future.

### **Section 11.6 Inconsistency or Conflict of Prior Ordinances or Resolutions**

Any ordinance or resolution with an effective date prior to the adoption date of this amendment and restatement of the plan shall be of no effect.

### **Section 11.7 Separability**

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

### **Section 11.8 Construction**

The plan shall be construed in accordance with the laws of the Commonwealth of Pennsylvania and with the applicable portions of the Internal Revenue Code. It is intended that the plan comply with the interpretations of P.L. 1804, as amended (53 P.S. 767) (Act 600), issued by the judicial and regulatory bodies of the Commonwealth of Pennsylvania. The heading used in the plan are for convenience only and shall not be deemed to limit, construe or interpret any of the provisions of the plan. Wherever appropriate, words used in this plan in the singular may include the plural or the plural may be read as singular, and the masculine may include the feminine.

### **Section 11.9 Copies of Plan**

This plan may be executed in any number of counterparts, each of which shall be deemed as an original, and said counterparts shall constitute but one and the same instrument that may be sufficiently evidenced by any one counterpart.

IN WITNESS WHEREOF, the Employer has caused this Plan to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Exeter Township

By: \_\_\_\_\_

Title: \_\_\_\_\_