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**Article I – Title & General Definitions**

**§ 17-101 Short Title.**

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

[Ord. 415 10-29-2003]

### § 17-102 Definitions: In General.

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

[Ord. 415 10-29-2003]

### § 17-103 Accumulated Contributions.

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

[Ord. 415 10-29-2003]

### § 17-104 Administrator.

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

[Ord. 415 10-29-2003]

### § 17-105 Alternate Payee.

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

[Ord. 415 10-29-2003]

### § 17-106 Anniversary Date.

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

[Ord. 415 10-29-2003]

### § 17-107 Authorized Leave of Absence.

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

the requirements of federal law in order to be entitled to reemployment and in fact does return to employment with the Employer (or any Related Employer) within the period provided by law.

[Ord. 415 10-29-2003]

### § 17-108 Beneficiary.

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

[Ord. 415 10-29-2003]

### § 17-109 Code.

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

[Ord. 415 10-29-2003]

### § 17-110 Compensation.

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

#### (b) Certain Non-taxable Compensation.

(1) “Compensation” shall also include amounts not currently includible in the Qualified Employee’s gross income by reason of the application of Code § 457 (relating to compensation deferred under an eligible deferred compensation plan for state and local governments and tax exempt organizations), Code § 414(h)(2) (relating to employee contributions to governmental plans that are picked up by the employing unit and thus are treated as employer contributions), Code § 132(f)(4) (relating to qualified transportation fringes; but only after July 1, 2001), or any elective deferrals (within the meaning of Code § 402(g)(3)), but only with respect to contributions made to plans maintained by the Employer.

(2) For periods before January 1, 2012, the term “Compensation” shall also include amounts not currently includible in the Qualified Employee’s gross income by reason of the application of Code § 125 (relating to cafeteria plans). For periods on and after January 1, 2012:

(A) “Compensation” shall also include employee contributions towards medical coverage under § 12-403(b.1) (relating to Personnel Policies—Benefits—Health & Hospitalization—Employee Contributions to Premiums) or corresponding provisions of the collective bargaining agreement for police officers as in effect from time to time (*e.g.*, § 18(a)(2) of the 2012-14 collective bargaining agreement), even though not includible in the Qualified Employee’s

gross income by reason of the application of Code § 125 (relating to cafeteria plans) or other provisions of the Code.

**(B)** “Compensation” shall *not* include cash payments made under § 12-403(c)(1) (relating to Personnel Policies—Benefits—Health & Hospitalization—Waiver of Coverage—In General), or corresponding provisions of the collective bargaining agreement for police officers as in effect from time to time (*e.g.*, § 18(a)(3)(B) of the 2012-14 collective bargaining agreement), due to the waiver of medical coverage, even though includible in the Qualified Employee’s gross income.

**(C)** The purpose of subparagraphs (A) and (B) is to insure that a Participant shall receive the same pension benefits under this Plan regardless of whether the Participant elects to receive medical coverage or waives the receipt of medical coverage, and regardless of the medical coverage option he/she elects. “Compensation” is the same as it would be if the Employer had maintained a medical coverage plan which covered all Qualified Employees, required no employee contributions, and provided no incentives to Qualified Employees to select any particular coverage option.

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

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

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

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

**(e) Maximum Amount Which May Be Treated As Compensation.**

**(1) General Rule.**

**(A) Code § 401(a)(17).** The “Compensation” of a Qualified Employee for any given year shall not exceed the amount in effect for such year under Code § 401(a)(17), as adjusted for changes in the cost of living. (The amount in effect for years beginning in the following calendar years are: 1994-96—\$150,000; 1997-99—\$160,000; 2000-01—\$170,000; 2002-03—\$200,000; 2004—\$205,000.)

**(B) Prior to January 1, 2002.** In determining benefits or restrictions as of any date on or after the Effective Date and before January 1, 2002, the “Compensation” taken into account for any year ending on or before December 31, 1993 shall not exceed \$150,000.

**(C) On and After January 1, 2002.** Notwithstanding any lower restrictions set forth in subparagraph (A), in determining benefits or restrictions as of any date on or after January 1, 2002, the “Compensation” taken into account for any year ending on or before December 31, 2001 shall not exceed \$200,000.

(2) **Certain Highly Compensated Employees Prior to 1997.** The “Compensation” for any given year which begins after December 31, 1988 and before January 1, 1997 of any Qualified Employee who is a member of a Highly Compensated Immediate Family shall be equal to the Compensation of the Qualified Employee for the year (determined without regard to this subsection (e)), **multiplied** by a fraction—

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

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

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

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

(g) **Lump-Sum Payments for Accumulated Unused Leave.** The “Compensation” of a Qualified Employee shall not include any lump-sum payment upon retirement for accumulated unused leave (*e.g.*, vacation, sick, or personal leave) to the extent that such amounts are not permitted to be included in Compensation by the Pennsylvania Department of the Auditor General.

(h) **Extraordinary Payments Attributable to a Different Period.** In determining the “Compensation” of a Qualified Employee for any particular period of time, any extraordinary payments, such as back pay awards, which are made at one time but are attributable to service for a different period of time, shall be treated as “Compensation” for the period to which they are attributable and not “Compensation” at the time of payment.

[Ords. 415 10-29-2003, 432 12-29-2004, 506 07-25-2012]

## § 17-111 Disabled.

A person shall be considered “Disabled” if he/she has a physical or mental condition which renders him permanently disabled from performing one or more of the essential functions of a full-time police officer position of employment for the Employer (or any Related Employer), as determined by a licensed physician satisfactory to the Administrator; *provided that* such condition was not caused by—

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

[Ord. 415 10-29-2003]

**§ 17-112 Effective Date.**

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

[Ord. 415 10-29-2003]

**§ 17-113 Eligible Spouse.**

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

[Ord. 415 10-29-2003]

**§ 17-114 Employer.**

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

[Ord. 415 10-29-2003]

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

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

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

[Ord. 415 10-29-2003]

**§ 17-116 ERISA.**

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

[Ord. 415 10-29-2003]

### § 17-117 Fiduciary.

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

[Ord. 415 10-29-2003]

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

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

[Ord. 415 10-29-2003]

### § 17-119 Final Police Date.

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

[Ord. 415 10-29-2003]

### § 17-120 Highly Compensated Employee.

(a) **In General.** The term “Highly Compensated Employee” shall include Highly Compensated Active Employees and Highly Compensated Former Employees. However, since the term is only applicable under this Plan for purposes of the definition of Compensation prior to 1997 (other nondiscrimination requirements not being applicable to collectively-bargained government plans), this term shall only be defined for the period before January 1, 1997.

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

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

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

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

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

**or**

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

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

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

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

[Ords. 415 10-29-2003, 432 12-29-2004]

## § 17-121 Highly Compensated Immediate Family.

For the period prior to January 1, 1997, the term “Highly Compensated Immediate Family” shall mean any group of persons consisting of—

(a) either—

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

(2) a Highly Compensated Employee who is in the group consisting of the 10 Highly Compensated Employees paid the greatest total Compensation (determined without regard to § 17-109(b) [relating to elective deferrals]) from the Employer and any Related Employer for the year in question;

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

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

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

[Ords. 415 10-29-2003, 432 12-29-2004]

### § 17-122 Investment Manager.

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

[Ord. 415 10-29-2003]

### § 17-123 Participant.

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

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

(b) **Inactive Participant.** An “Inactive Participant” shall mean any person, other than an Active Participant, who had previously been an Active Participant, and still has an accrued benefit under this Plan (whether vested or not).

[Ord. 415 10-29-2003]

### § 17-124 Plan or Plan and Trust.

The terms “Plan” or “Plan and Trust” shall mean the **Borough of Alburtis Police Pension Plan and Trust**, as set forth in this Chapter and as it may be amended from time to time. For periods prior to the Effective Date, the term “Plan” shall mean the Sponsor’s pension plan for police officer employees under the Prior Provisions of the Plan.

[Ord. 415 10-29-2003]

### § 17-125 Plan Year.

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

[Ord. 415 10-29-2003]

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

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

[Ord. 415 10-29-2003]

### § 17-127 Qualified Employee.

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

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

[Ord. 415 10-29-2003]

### § 17-128 Related Employer.

The term “Related Employer” shall mean any—

(a) corporation which is a member of a controlled group of corporations (as defined in Code § 414(b)) which includes the Sponsor;

(b) trade or business (whether or not incorporated) which is under common control (as defined in Code § 414(c)) with the Sponsor;

(c) member of an affiliated service group (as defined in Code § 414(m)) which includes the Sponsor; **and**

(d) other entity required to be aggregated with the Sponsor pursuant to Code § 414(o) and the regulations thereunder;

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

[Ord. 415 10-29-2003]

## § 17-128.1 Salary

The monthly “Salary” of a Qualified Employee as of any given date on or after April 17, 2002 shall mean the Qualified Employee’s base hourly rate of compensation as of that date, multiplied by 2080 and divided by 12. {The term “Salary” is defined for purposes of the new Pa. Act 2002-30 minimum disability benefits which are based on salary at the time of the injury causing disability, in contrast to the pre-existing Act 600 benefits which are based on compensation averaged over a 36-month period—“Final Monthly Average Compensation”.}

[Ords. 432 12-29-2004, 494 12-29-2010]

## § 17-129 Separation from Service.

(a) **In General.** The term “Separation from Service” shall mean the end of a continuous period of employment of a given person by the Employer (or any Related Employer) and may result from retirement, death, resignation, involuntary termination, unauthorized absence, a condition which renders the person Disabled, or by failure to return to active employment with the Employer (or any Related Employer) or to retire by the date on which an Authorized Leave of Absence expires. For purposes of the preceding sentence, periods of Authorized Leaves of Absence and temporary lay-offs are considered to be periods of employment by the Employer. A person “Separates from Service” if he incurs a Separation from Service. The mere cessation of a person’s status as a Qualified Employee shall not constitute a “Separation from Service”; only a termination from all employment with the Employer (and all Related Employers) shall be a “Separation from Service”.

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

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

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

(d) **Sale of Business.**

(1) A person shall not incur a “Separation from Service” if the Employer or any Related Employer sells the trade or business for which the person performs services to an unrelated purchaser, but the person continues to work for the trade or business. Thereafter, the person shall incur a “Separation from Service” if he does so under the provisions of this § 17-129 as modified by substituting the purchaser of the trade or business (and his related employers) for the Employer (and Related Employers).

(2) A person shall not incur a “Separation from Service” if the corporation for which he works shall cease to be included within the definition of Employer or Related Employer (*e.g.*, through the transfer of its stock), but the person continues to work for the corporation. Thereafter, the person shall incur a “Separation from Service” if he does so under the provisions of this § 17-129 as modified by substituting the corporation for which he works (and its related employers) for the Employer (and Related Employers).

[Ord. 415 10-29-2003]

### § 17-130 Sponsor.

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

[Ord. 415 10-29-2003]

### § 17-131 Trust.

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

[Ord. 415 10-29-2003]

### § 17-132 Trust Fund.

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

[Ord. 415 10-29-2003]

### § 17-133 Trustees.

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

[Ord. 415 10-29-2003]

### § 17-134 Wages.

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

(such as the exception for agricultural labor in Code § 3401(a)(2)). (This amount is the amount shown on the “Wages, Tips, and Other Compensation” box on Form W-2.)

[Ord. 415 10-29-2003]

## Article II — Participation & Service

### § 17-201 Participation.

#### (a) Active Participants.

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

#### (2) Entry Dates.

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

(B) **New Employees.** A person shall become an Active Participant as of the date he becomes a Qualified Employee.

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

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

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

[Ords. 415 10-29-2003, 466 12-26-2007]

### § 17-202 Years of Service.

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

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

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

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

(2) three hundred sixty-five and one-quarter (365.2500);

(3) with the result rounded to four decimal places (the nearest 0.0001).

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

(1) Separates from Service;

(2) receives a distribution of Accumulated Contributions under § 17-304 with respect to the period of service prior to the Separation from Service; and

(3) later becomes an Active Participant again,

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

[Ord. 415 10-29-2003]

## § 17-203 Days of Service.

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

(b) **Military Service.** A person is also credited with one Day of Service for each calendar day of service in the uniformed services of the United States, *provided that*—

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

(2) the person returns to employment with the Employer (or any Related Employer) at a time when the Employer (or any Related Employer) is legally obligated to reemploy the per-

son under the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301 *et seq.*, and any amendments, supplements, or successor legislation.

Credit under this subsection (b) shall be granted upon the person's return to employment with the Employer (or any Related Employer).

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

(1) compensation from the Employer (or any Related Employer) under the Heart and Lung Act, 53 PA. STAT. ANN. § 637; or

(2) compensation or benefits under the Employer's (or any Related Employer's) sick leave policy or short-term disability plan, *provided that*—

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

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

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

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

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

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

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

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

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

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

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

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

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

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## Article III — Benefits

### § 17-301 Normal Retirement Benefit.

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

- (1) after having attained the age of fifty (50) years, and
- (2) at a time when he/she has credit for at least twenty-five (25.0000) Years of Service.

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

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

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

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

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

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

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

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

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

[Ords. 415 10-29-2003, 466 12-26-2007]

## § 17-302 Disability Retirement Benefit.

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

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

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

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

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

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

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

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

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

(4) *provided* that if the Participant became Disabled on or after April 17, 2002, the amount of the monthly payments shall be the *greater* of the amount provided under paragraph (3) or the following amount—

(A) fifty percent (50%) of the Participant's monthly Salary at the time the disability was incurred, less

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

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

(1) **Purpose.** Prior to the date this Plan became subject to Act 600 of 1955, 53 PA. STAT. ANN. § 767 *et seq.*, it provided for a disability benefit for persons who became Disabled without regard to whether the disability was caused by injuries incurred while performing the duties of his/her employment as a Qualified Employee. Act 600 permits a vested benefit only for service-related disabilities. *Chirico v. Board of Supervisors for Newtown Township*, 518 Pa.

572, 544 A.2d 1313 (1988). The Transition Disability Retirement Benefit recognizes the right of a person who was a Participant under the Prior Provisions of the Plan to receive a disability benefit for a non-service-related disability to the extent of his accrued benefits on the Effective Date.

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

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

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

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

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

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

(C) in a monthly amount equal to—

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

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

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

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

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

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

(d) **Other Benefits.**

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

(2) **No Recovery of Disabled Participant.** If a person who received a Disability Retirement Benefit or Transition Disability Retirement Benefit remains Disabled for the remain-

der of his/her life, he/she shall not be eligible to receive any other benefits or payments from this Plan other than the Disability Retirement Benefit or Transition Disability Retirement Benefit. However, his/her beneficiaries remain eligible to receive Death Benefits in accordance with § 17-305.

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

[Ords. 415 10-29-2003, 432 12-29-2004]

### § 17-303 Vested Benefit.

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

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

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

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

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

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

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

(3) in a monthly amount equal to—

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

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

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

**(c) Transition Vested Benefit.**

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

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

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

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

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

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

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

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

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

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

(C) in a monthly amount equal to—

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

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

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

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

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

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

[Ord. 415 10-29-2003]

## § 17-304 Return of Accumulated Contributions.

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

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

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

(3) either:

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

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

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

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

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

[Ord. 415 10-29-2003]

## § 17-305 Death Benefits.

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

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

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

(3) while still employed by the Employer (or any Related Employer) **and**—  
(A) after having attained the age of fifty (50) years, and  
(B) at a time when he/she has credit for at least twenty-five (25.0000) Years of Service.

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

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

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

(3) in a monthly amount equal to—

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

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

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

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

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

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

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

(c) **Beneficiaries.**

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

(2) **Definition—Before April 17, 2002.** In the case of a Participant who dies before April 17, 2002, for purposes of the Normal Death Benefit, a person is a "Beneficiary" of a Participant as of the date of any given payment if:

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

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

(2.1) **Definition—On or After April 17, 2002.** In the case of a Participant who dies on or after April 17, 2002, for purposes of the Normal Death Benefit, a person is a “Beneficiary” of a Participant as of the date of any given payment if:

(A) he/she is the Eligible Spouse of the Participant and is then living; **or**

(B) he/she is the child of the Participant, is then living, has not yet attained age 18 (or is attending college and has not yet attained age 23), **and** there is no person as of that date who qualifies under subparagraph (A). For purposes of this subparagraph (B), a person is “attending college” if he/she is registered at an accredited institution of higher learning and is carrying a minimum course load of seven (7) credit hours per semester.

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

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

(1) **In General.** If a Participant—

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

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

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

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

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

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

[Ords. 415 10-29-2003, 432 12-29-2004, 466 12-26-2007, 494 12-29-2010]

## § 17-306 Limitation on Benefits.

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

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

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

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

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

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

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

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

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

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

(B) § 17-110(b) shall be deleted for periods before January 1, 1998; and

(C) § 17-110(c), (g), and (h) shall be deleted.

(3) [RESERVED]

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

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

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

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

(i) 125% of the dollar limitation in effect for the Limitation Year under Code § 415(b)(1)(A), as adjusted under Code § 415(d) (for years beginning in 1996, the dollar limitation is \$120,000.00); **or**

(ii) 140% of the Participant’s average Compensation during his high 3 years of employment with the Employer or any Related Employer (within the meaning of

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

**(B) Transition Rules.** Notwithstanding subparagraph (A), if the Participant was a Participant as of the first day of the first limitation year beginning after December 31, 1986, in one or more defined benefit plans maintained by the Employer or any Related Employer, which were in existence on May 6, 1986, the denominator under subparagraph (A)(II) shall not be less than 125% of the sum of the Projected Annual Benefits under such plans which the Participant had accrued as of the close of the last limitation year beginning before January 1, 1987, disregarding any changes in the terms and conditions of the plan after May 5, 1986. The preceding sentence applies only if defined benefit plans individually and in the aggregate satisfied the requirements of Code § 415 for all limitation years beginning before January 1, 1987.

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

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

**(B) Denominator.** The denominator of which is the sum of the Maximum Aggregate Amounts for the current Limitation Year and each prior Limitation Year for which the Participant completed 1000 hours of service (within the meaning of 29 C.F.R. § 2530.200b-2) (regardless of whether the Employer or any Related Employer maintained a defined contribution plan at the time).

**(6) Dollar Limitation.** The term “Dollar Limitation” shall mean, for any Participant in any Limitation Year, the dollar amount in effect under Code § 415(b)(1)(A) for such Limitation Year as adjusted under Code § 415(d) (\$165,000 for Limitation Years ending in 2004; 160,000 for Limitation Years ending in 2002 or 2003; \$140,000 for 2001; \$135,000 for 2000; \$130,000 for 1998 or 1999; \$125,000 for 1997; \$120,000 for 1995 or 1996; \$118,800 for 1994; \$115,641 for 1993; \$112,221 for 1992; \$108,963 for 1991; \$102,582 for 1990; \$98,064 for 1989; \$94,023 for 1988; and \$90,000 for 1987) (“**Standard Adjusted Dollar Limitation**”), with the following modifications, as applicable—

**(A)** If the series of benefit payments under this Plan commenced after the Participant attained age 65, the Dollar Limitation shall be adjusted to the amount equal to the annual payment under a straight life annuity for the life of the Participant commencing on the date benefit payments under this Plan actually commenced which is actuarially equivalent to a straight life annuity for the life of the Participant commencing at age 65 with an annual payment equal to the Standard Adjusted Dollar Limitation. Actuarial equivalence shall be determined in accordance

with subparagraph (C), except that mortality between age 65 and the age at which benefits commence shall be ignored.

(B) If the series of benefit payments under this Plan commenced before the Participant attained age 62, the Dollar Limitation shall be adjusted to the amount equal to the annual payment under a straight life annuity for the life of the Participant commencing on the date benefit payments under this Plan actually commenced which is actuarially equivalent to a straight life annuity for the life of the Participant commencing at age 62 with an annual payment equal to the Standard Adjusted Dollar Limitation. Actuarial equivalence shall be determined in accordance with subparagraph (C), except that the Dollar Limitation shall not be reduced below the amount described in subparagraph (E), and the adjustment in the Dollar Limitation shall not reflect a mortality decrement if benefits are not forfeited upon the death of the Participant. If any benefits are forfeited upon death, the full mortality decrement is taken into account.

(C) In adjusting the Dollar Limitation, actuarial equivalence is determined as the **lesser** of—

(I) the actuarial equivalent computed using the interest rate and mortality table specified in § 17-115; **or**

(II) the actuarial equivalent computed using a five percent (5%) interest rate and the Applicable Mortality Table. For distributions with annuity starting dates in Plan Years beginning before January 1, 2000, the “Applicable Mortality Table” shall mean the table specified in § 17-115(a). For distributions with annuity starting dates in Plan Years beginning after December 31, 1999, the “Applicable Mortality Table” shall mean the mortality table based on the prevailing commissioner’s standard table (as described in Code § 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on the date as of which present value is being determined (without regard to any other subparagraph of Code § 807(d)(5)), that is prescribed by the Commissioner of Internal Revenue in revenue rulings, notices, or other guidance, published in the Internal Revenue Bulletin.

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

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

(II) whose denominator is ten (10.0000).

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

(E) For Limitation Years ending before January 1, 2002, the Dollar Limitation shall not be reduced below \$75,000.00 if the benefit payments commence at or after age 55, and shall not be reduced below the actuarial equivalent of \$75,000.00 for age 55 if the benefit payments commence before age 55. For Limitation Years ending after December 31, 2001, nothing in this paragraph (6) shall permit a reduction in the accrued benefit of any Participant (as limited under this § 17-306) below the Participant’s accrued benefit as limited under this § 17-306 as of the last day of the last Limitation Year ending in 2001.

(F) In the case of a Participant who has at least fifteen (15.0000) Years of Service, subparagraph (B) shall not apply.

(G) In the case of a Participant receiving a Disability Retirement Benefit, or a Beneficiary receiving a Normal Death Benefit, subparagraphs (B) and (D) shall not apply.

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

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

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

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

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

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

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

(b) **General Rule.** The amount of benefits provided under this Plan on behalf of any Participant during any Limitation Year (whether of this Plan or any other plan of the Employer or any Related Employer) shall be reduced (under the procedures of subsection (e)) to the extent necessary and possible to meet the limitations established in subsections (c) and (d). Since the limitations set forth in this Section change annually, benefit payments which had been limited by the provisions of this Section in one Limitation Year may be increased with respect to payments in following Limitation Years so long as they stay within the applicable limits in each Limitation Year. Benefit increases resulting from an increase in the Code § 415 limitations due to an amendment of the Code (as opposed to an automatic increase under the cost-of-living adjustment provisions of the Code) will be provided only to those then-current or former Participants who have an accrued benefit under this Plan immediately prior to the effective date of the Code amendment (other than an accrued benefit resulting from a benefit increase *solely* as a result of the Code amendment).

(c) **Limitation for All Defined Benefit Plans.**

(1) **In General.** The total amount of benefits which may be distributed on behalf of any Participant with respect to any Limitation Year (whether of this Plan or any other plan of the Employer or any Related Employer) under all of the defined benefit plans (as defined in Code § 415(k)) maintained by the Employer or any Related Employer (not including any benefits attributable to employee or rollover contributions, nor, for Limitation Years beginning after December 31, 2001, any multiemployer plan, when expressed as an Annual Benefit, shall not exceed the Dollar Limitation for that Limitation Year.

(2) **Annual Benefit.** For purposes of this § 17-306, the term “Annual Benefit” means a benefit payable annually in the form of a straight life annuity with no ancillary benefits. If the form of benefits being paid from a defined benefit plan is other than an Annual Benefit, the form shall be adjusted to an Annual Benefit as follows:

(A) Any ancillary benefit which is not directly related to retirement income benefits shall not be taken into account;

(B) That portion of any joint and survivor annuity which constitutes a qualified joint and survivor annuity (within the meaning of the Code) shall not be taken into account;

(C) The interest rate assumption shall not be less than the **greater** of—

(I) the rate specified in the plan (in the case of this Plan, § 17-115(b)); **or**

(II) five percent (5%) in the case of a Qualified Distribution, **or** the Applicable Interest Rates in any other case.

(D) The mortality assumption shall be the Applicable Mortality Table (as defined in § 17-306(a)(6)(C)(II)).

(E) For purposes of this paragraph, a “Qualified Distribution” is a nondecreasing annuity payable for a period not less than the life of the Participant, or, in the case of a qualified preretirement survivor annuity, the life of the surviving spouse. A nondecreasing annuity includes a qualified joint and survivor annuity, and an annuity that decreases merely because of the cessation or reduction of Social Security supplement or qualified disability payments (as defined in Code § 411(a)(9)).

(F) For purposes of this paragraph, the “Applicable Interest Rates” shall mean—

(I) For distributions with annuity starting dates in Plan Years beginning after December 31, 1986 and before January 1, 2000: The rate or rates that would be used by the Pension Benefit Guaranty Corporation for a trustee single-employer plan to value the participant’s (or beneficiary’s) vested benefit (“**PBGC interest rate**”) if the present value of such benefit does not exceed \$25,000. The PBGC interest rate(s) are determined as of the first day of the Plan Year which contains the annuity starting date.

(II) For distributions with annuity starting dates in Plan Years beginning after December 31, 1999: The applicable interest rate for a month is the annual interest rate on 30-year Treasury securities as specified by the Commissioner for that month in revenue rulings, notices, or other guidance, published in the Internal Revenue Bulletin. The applicable interest rate for a distribution is the rate for the lookback month for the stability period that contains the annuity starting date for the distribution. Each calendar quarter shall constitute a “stability period,” and the “lookback month” is the second full calendar month preceding the first day of the stability period.

(3) **Total Annual Benefits Not In Excess of \$10,000.** Paragraph (1) shall not apply to a Participant for a Limitation Year if—

(A) the retirement benefits payable with respect to such Participant under this Plan and all defined benefit plans of the Employer and Related Employers (without adjustment to an Annual Benefit) do not exceed \$10,000.00 for the Limitation Year or any prior Limitation Year (as modified under Code § 415(b)(5) for persons with less than ten years of participation in

a defined benefit plan, other than for persons described in subsection (a)(6)(G) of this § 17-306);  
**and**

(B) the Employer and any Related Employers have never maintained a defined contribution plan in which the Participant participated.

(4) **Transition Rule.** If a Participant was a participant as of the first day of the first Limitation Year beginning after December 31, 1986, in one or more defined benefit plans maintained by the Employer or any Related Employer, which were in existence on May 6, 1986, the limitation of paragraph (1) shall not be less than the accrued benefit of the Participant as of the close of the last Limitation Year beginning before December 31, 1986, when expressed as an Annual Benefit (disregarding any changes in the terms and conditions of the plan after May 5, 1986 and any cost-of-living adjustments after May 5, 1986). This paragraph (4) applies only if defined benefit plans individually and in the aggregate satisfied the requirements of Code § 415 for all Limitation Years beginning before January 1, 1987.

(d) **Overall Limitation for All Plans.** For any Limitation Year beginning before January 1, 2000, the sum of the Defined Benefit Plan Fraction and the Defined Contribution Plan Fraction for any Participant during any Limitation Year (whether of this Plan or any other plan of the Employer or any Related Employer) shall not exceed 1.0.

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

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

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

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

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

(f) **Conformance to Code Section 415.** The limitations provided by this § 17-306 are intended to comply with Code § 415 and the regulations promulgated thereunder. To the extent there is any discrepancy between this Section and Code § 415 and related regulations, or any ambiguity in the terms of this Section, the discrepancy or ambiguity (whether this Section is more or less stringent than Code § 415 and related regulations) shall be resolved in such a way as to give full effect to the provisions of Code § 415 and regulations promulgated thereunder.

[Ords. 415 10-29-2003, 432 12-29-2004, 494 12-29-2010]

### § 17-306.1 Special Ad-Hoc Cost of Living Adjustments.

Since no Participants have received any benefits under the Plan at any time on or before July 1, 2002, the 1989 and 2002 special ad-hoc cost of living adjustments provided by Pennsylvania law are not applicable to this Plan.

[Ord. 432 12-29-2004]

### § 17-307 Withdrawals.

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

[Ord. 415 10-29-2003]

### § 17-308 Loans.

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

[Ord. 415 10-29-2003]

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

(a) **In General.** Notwithstanding any provision of the Plan to the contrary, a Distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

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

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

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

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

(A) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee

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

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

(C) the portion of any distribution that is not includible in gross income for federal income tax purposes (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities), other than Qualified After-Tax Contributions (which do qualify as an Eligible Rollover Distribution).

(4) **Eligible Retirement Plan.** An "Eligible Retirement Plan" is—

(A) an individual retirement account described in Code § 408(a);

(B) an individual retirement annuity described in Code § 408(b);

(C) an annuity plan described in Code § 403(a), *provided*, however that this subparagraph (C) shall only apply to distributions made before January 1, 2002 if the Distributee is the employee or former employee;

(D) a qualified trust described in Code § 401(a) which is a defined contribution plan, *provided*, however that this subparagraph (C) shall only apply to distributions made before January 1, 2002 if the Distributee is the employee or former employee;

(E) an annuity contract described in Code § 403(b), but only for distributions made after December 31, 2001; **or**

(F) an eligible deferred compensation plan described in Code § 457(b) which is maintained by a state, political subdivision of a state, or an agency or instrumentality of a state, and which agrees to separately account for the amount transferred into such plan from this Plan, but only for distributions made after December 31, 2001,

that accepts the Distributee's Eligible Rollover Distribution.

(5) **Qualified After-Tax Contributions.** A portion of a distribution consists of "Qualified After-Tax Contributions" if—

(A) all of that portion consists of after-tax employee contributions which are not includible in gross income;

(B) all of that portion is to be rolled into—

(I) an Eligible Retirement Plan described in paragraph 4(A) or 4(B); **or**

(II) an Eligible Retirement Plan described in paragraph 4(C) or 4(D) that agrees to separately account for the amounts so transferred, including separately accounting for the part of the rollover which is includible in gross income and the part of the rollover which is not includible in gross income; **and**

(C) the distribution was made after December 31, 2001.

### § 17-310 Provision of Benefits.

The Administrator shall direct the Trustees to provide benefit payments to the appropriate recipients from time to time in accordance with the provisions of this Plan.

[Ord. 415 10-29-2003]

### § 17-311 Notice Requirements.

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

[Ord. 415 10-29-2003]

### § 17-312 Spendthrift Provisions.

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

(b) **Qualified Domestic Relations Orders.** Notwithstanding the provisions of subsection (a), the Administrator may direct the Trustees to comply with a Qualified Domestic Relations Order (as described in § 17-313).

[Ord. 415 10-29-2003]

### § 17-313 Qualified Domestic Relations Orders.

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

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

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

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

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

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

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

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

(B) pay any benefit in the form of a joint and survivor annuity with respect to the Alternate Payee and his/her subsequent spouse;

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

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

(II) the **later** of—

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

(ii) the earliest date on which the Participant could begin receiving benefits under the Plan if the Participant incurred a Separation from Service with the Employer (or any Related Employer);

(D) provide increased benefits; **or**

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

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

(b) **Procedure.**

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

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

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

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

(A) be in writing;

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

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

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

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

**(c) Alternate Payee Accounts.**

(1) **Creation.** During any period in which the Administrator or a court (or other tribunal) of competent jurisdiction is determining whether a judgment, decree, or order is a Qualified Domestic Relations Order, the Administrator shall create separate accounts under this Plan (“**Alternate Payee accounts**”) and shall credit such accounts with the amounts, if any, which would have been payable to each Alternate Payee during such period (as they would have become due) if the judgment, decree, or order had already been determined to be a Qualified Domestic Relations Order. The Alternate Payee accounts need not be segregated from the general assets of the Trust Fund; they only must be accounted for separately.

**(2) Disposition.**

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

(B) **Otherwise.** All amounts in Alternate Payee accounts created with respect to such judgment, decree, or order shall be reintegrated into the general Plan assets upon the **earliest** of the following events:

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

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

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

*except* that any amounts already due for distribution shall be paid to the proper recipient immediately.

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

### § 17-314 Facility of Payment.

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

[Ord. 415 10-29-2003]

### § 17-315 Forms.

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

[Ord. 415 10-29-2003]

### § 17-316 Production of Information.

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

[Ord. 415 10-29-2003]

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

The provisions of this Article III are designed to comply with the latest commencement of benefit and minimum distribution requirements of Code § 401(a)(9) and the regulations promulgated thereunder, except as specifically required by Act 600 of 1955, 53 PA. STAT. ANN. § 767 *et seq.* To the extent any provision of this Article III does not provide for the payment of the minimum distributions required through any given date under Code § 401(a)(9) and the regulations promulgated thereunder (except as required by Act 600), this Plan shall be deemed amended in such a way as to comply with the minimum requirements of Code § 401(a)(9) and the regulations promulgated thereunder.

[Ords. 415 10-29-2003, 432 12-29-2004]

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

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

[Ord. 415 10-29-2003]