

# *Municipal Retirement Trust*

## **MASTER PLAN AND TRUST**

### **CHAPTER II**

#### **DEFINED BENEFIT PENSION PLAN**

**(For Plans Subject to Act 600 or For Plans that  
Elect to be Covered Under Chapter II of the  
Master Trust)**

Amended October 13, 2017

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## CHAPTER II

### DEFINED BENEFIT PENSION PLAN

(For Plans Subject to Act 600 or for Plans Which  
Elect to be Covered Under Chapter II of the  
Master Plan)

#### ARTICLE I

#### DEFINITIONS

The following words and phrases as used in this Plan shall have the meaning set forth in this Article I, unless a different meaning is otherwise clearly required by the context:

1.01 "Accrued Benefit" shall mean, as of any given date, the benefit determined under Section 4.02 of this Plan, multiplied by a fraction, the numerator of which shall be the Participant's Aggregate Service determined as of such date and the denominator of which shall be the Aggregate Service which would be credited to the Participant as of the Participant's Normal Retirement Date if the Participant were to continue to be employed as a full-time police officer with the Employer until such date. Notwithstanding anything contained herein to the contrary, in no event shall the fraction exceed one (1.0).

The Accrued Benefit shall not exceed the maximum limitation, determined as of the date of computation, provided under Section 4.09 of this Plan. All Accrued Benefits are subject to all applicable limitations, reductions, offsets, and actuarial adjustments provided pursuant to the terms of the Plan prior to the actual payment thereof.

1.02 "Accumulated Contributions" shall mean the total amount contributed by any Participant to this Plan or its predecessor by way of payroll deduction or otherwise, plus interest credited thereon at the rate specified in **Part I-1** of the Joinder Agreement.

1.03 "Actuarial Equivalent" shall mean two forms of payment of equal actuarial present value on a specified date. The actuarial present value shall be determined by use of the UP-1984 Mortality Table and seven percent (7%) interest unless otherwise specifically provided in **Part I-2** of the Joinder Agreement.

1.04 "Aggregate Service" means the total period or periods of the Participant's Employment with the Employer whether or not interrupted. Should any Participant after any period of Employment, withdraw the Participant's Accumulated Contributions, with respect to said period, such period of Employment shall not be included in Aggregate Service thereafter unless, at the commencement of the next period of Employment, the individual repays to the Plan the amount of such withdrawal with interest. Years of Aggregate Service shall be rounded in accordance with **Part I-3** of the Joinder Agreement.

1.05 "Attending College" shall mean that the eligible children are registered at an accredited institution of higher learning and are carrying a minimum course load of seven credit hours per semester.

- 1.06 "Board" shall mean the governing body of the Employer as specified in **Part I-4** of the Joinder Agreement.
- 1.07 "Chief Administrative Officer" shall mean the person designated by the Employer with the primary responsibility for the execution of the administrative affairs for the Plan.
- 1.08 "Compensation" shall mean the compensation of the Employee, including differential wage payments under Section 3401(h) of the Code, and salary or hourly wages, as provided in subsections (a), (b) or (c) below, with the applicable subsection being specified in **Part I-5** of the Joinder Agreement. In any event, Compensation shall be limited on an annual basis to the amount specified for government plans pursuant to Code Section 401(a) (17), as adjusted under Code Section 415(d). Compensation specified in the Joinder Agreement shall mean either:
- (a) Those items specified in Treas. Reg. §1.415(c)-2(b)(1) or (b)(2) and excludes all those items listed in Treas. Reg. §1.415(c)-2(c);
  - (b) Wages within the meaning of Code section 3401(a) (for purposes of income tax withholding at the source), plus amounts that would be included in wages but for an election under Code section 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b). However, any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed are disregarded for this purpose; or
  - (c) Amounts that are compensation under subsection (b) of this section 1.08, plus all other payments of compensation to an Employee by the Employer (in the course of the Employer's trade or business) for which the Employer is required to furnish the Employee a written statement under Code sections 6041(d), 6051(a)(3), and 6052.
- 1.09 "Disability Retirement Date" shall mean the date when a Participant is determined by the Employer to be incapacitated due to "Total and Permanent Disability" or the date when the Participant's Employment terminates due to such Total and Permanent Disability, if later.
- 1.10 "Early Retirement Age" shall mean the date the Participant completes twenty (20) years of Aggregate Service.
- 1.11 "Early Retirement Date" shall mean the first day of the month coincident with or next following the date on which a Participant who has attained Early Retirement Age ceases Employment and chooses to commence receipt of retirement benefits prior to the Normal Retirement Date.
- 1.12 "Effective Date" shall mean the date set forth in **Part I-6** of the Joinder Agreement.
- 1.13 "Employee" means any regular police officer employed by the Employer on a full-time basis. Any conditions or restrictions applicable to such term shall be set forth in **Part I-7** of the Joinder Agreement.
- 1.14 "Employer" shall mean the municipality (or association of municipalities cooperating pursuant to the Intergovernmental Cooperation Law) named in **Part I-8** of the Joinder Agreement.

1.15 "Employment" shall mean for the purpose of determining Aggregate Service:

- (a) The period of time for which an Employee is directly or indirectly compensated or entitled to compensation by the Employer for the performance of duties as a police officer;
- (b) Any period of time for which an Employee is paid, either directly by the Employer or through a program to which the Employer has made contributions on behalf of the Employee, a fixed, periodic amount in the nature of salary continuation payments for reasons other than the performance of duties (such as vacation, holidays, sickness, entitlement to benefits under workers' compensation or similar laws);
- (c) Any period during which an Employee is entitled to disability benefits under this Plan, provided that the Employee returns to Employment within three (3) months of the date on which it is determined that the Employee is no longer Totally and Permanently Disabled if such determination occurs prior to the date a Participant attains Normal Retirement Age;
- (d) Any period of voluntary or involuntary military service with the armed forces of the United States of America, provided that the Participant has been employed as a regular full-time member of the Employer's police force for a period of at least six (6) months immediately prior to the period of military service; and the Participant returns to Employment within six (6) months following discharge from military service or within such longer period during which employment rights are guaranteed by applicable law or under the terms of a collective bargaining agreement with the Employer;
- (e) Any period of qualified military service as determined under the requirements of Chapter 43 of Title 38, United States Code, provided that the Participant returns to Employment following such period of qualified military service, and the Participant makes payment to the Plan in an amount equal to the Participant Contributions, if required, that would otherwise have been paid to the Plan during such period of qualified military service for pension benefits derived from Participant Contributions. The amount of Participant Contributions shall be based upon an estimate of the Compensation that would have been paid to the Participant during such period of qualified military service as determined by the average Compensation paid to the Participant during the twelve (12) months immediately preceding the period of qualified military service. The amount of Participant Contributions calculated must be paid into the Plan before the end of the period that begins on the date of re-employment and ends on the earlier of the date that ends the period that has a duration of three (3) times the period of qualified military service or the date that is five (5) years after the date of reemployment; and
- (f) (Optional) Non-intervening military service if elected in **Part I-9** of the Joinder Agreement. Any period of voluntary or involuntary military service with the armed forces of the United States of America not to exceed a total of five (5) years which occurred prior to the date on which a Participant first became employed as an Employee of the Employer, provided that the Participant shall purchase such credit and that such Participant is not entitled to receive, eligible to receive or is receiving retirement benefits for such military service under a retirement system administered and wholly or partially paid for by any other governmental agency except military

retirement pay earned by a combination of active and non-active duty with a reserve or national guard component of the armed forces which is payable upon the attainment of a specified age and period of service under 10 U.S.C. Ch. 67 (relating to retired pay for non-regular service). The purchase price for such service shall be computed by multiplying the average normal cost rate for boroughs, towns, townships and regional police pension plans as certified by the Public Employee Retirement Commission and not to exceed ten percent (10%) times the Participant's average annual rate of Compensation during the first three (3) years of Employment and multiplying the result times the number of years and fractions thereof being purchased. Interest shall be paid at a rate of four and three quarters percent (4.75%) compounded annually from the first date of Employment to the date of payment.

- 1.16 "Final Monthly Average Salary" shall mean the Compensation earned by the Participant and paid by the Employer for police services rendered during the final months of active Employment immediately preceding retirement which are included in the averaging period as specified in **Part I-10** of the Joinder Agreement. Final Monthly Average Salary shall exclude any extraordinary payments such as back pay damage awards not attributable to the averaging period.

Salary used to determine Final Monthly Average Salary shall be limited on an annual basis to the amount specified for government plans in accordance with Code section 401(a) (17) as adjusted under Code section 415(d).

- 1.17 "Joinder Agreement" shall mean the document adopted by the Employer of the participating Plan, which sets forth specific definitions, benefits and provisions elected by the Employer and which, together with the Master Plan and Trust, constitutes the participating Plan.
- 1.18 "Late Retirement Date" shall mean the first day of the month coincident with or next following the date on which the Participant retires from Employment after Normal Retirement Date and on which the payment of retirement benefits pursuant to this Plan shall commence.
- 1.19 "Minimum Municipal Obligation" shall mean the minimum obligation of the municipality as determined by the Actuary pursuant to the provisions of the Act.
- 1.20 "Normal Retirement Age" shall mean the age as specified in **Part IV-1** of the Joinder Agreement.
- 1.21 "Normal Retirement Date" shall mean the first day of the month coincident with or next following the date on which a Participant has attained Normal Retirement Age.
- 1.22 "Notice" or "Election" shall mean a written or electronically transmitted document prepared in the form specified by the Plan Administrator. If such Notice or Election is to be provided by the Plan or the Plan Administrator, it shall be mailed in a properly addressed envelope, postage prepaid, to the last known address of the person entitled thereto, on or before the last day of the specified Notice or Election period. If such Notice or Election is to be electronically transmitted by the Plan or the Plan Administrator, it shall be transmitted in a format, which is readily accessible to the Participant, on or before the last day of the specified Notice or Election period. If such Notice or Election is to be provided by the Plan or the Plan Administrator, it must be received by the intended recipient on or before the last day of the specified Notice or Election period.

- 1.23 "Participant" shall mean an Employee who has met the eligibility requirements to participate in the Plan as provided in section 2.01 of Chapter II of the Master Plan, and who has not for any reason ceased to be a Participant hereunder.
- 1.24 "Plan" or "Plan Name" shall mean the terms set forth herein, together with the terms contained in either the (i) Joinder Agreement adopted by the Employer; or (ii) the pension ordinance and/or resolution adopted by the Employer. The name of the Plan shall be specified in **Part I-11** of the Joinder Agreement or in the pension ordinance and/or resolution.
- 1.25 "Plan Administrator" shall mean the committee appointed by the Employer for the purpose of supervising and administering the provisions of the Plan. In the event the Employer does not appoint a Plan Administrator, the Plan Administrator shall be the governing body of the Employer.
- 1.26 "Plan Year" shall mean the twelve (12) month period beginning on January 1 and ending December 31 of each year.
- 1.27 "Total and Permanent Disability" means a physical or mental condition of a Participant which has rendered the Participant incapacitated (as defined in **Part I-12** of the Joinder Agreement). For purposes of this section 1.27 and Article V of Chapter II of the Master Plan, a condition shall not be treated as a Total and Permanent Disability unless such condition is a direct result of and occurs in the line of duty of Employment. Therefore, an Employee whose physical or mental impairment does not occur in the line of duty or which is the result of alcoholism, addiction to narcotics, perpetration of a felonious criminal activity or is willfully self-inflicted, is not entitled to receive disability benefits under the Plan.

Certification of such condition shall be made by the Plan Administrator in accordance with uniform principles consistently applied, upon the basis of such competent medical evidence as the Plan Administrator deems necessary and desirable, and in accord with the provisions elected under **Part I-12** of the Joinder Agreement.

## ARTICLE II

### PARTICIPATION IN THE PLAN

- 2.01 Eligibility Requirements - All persons employed as regular, full-time members of the police department of the Employer shall be eligible for participation herein and shall become Participants upon completion of any eligibility requirements set forth in **Part II-1** of the Joinder Agreement, subject to any exceptions therein set forth.
- 2.02 Notification of Plan Administrator - The Employer shall furnish the Plan Administrator with written notification of the appointment of any new, full-time Employees who are eligible for participation hereunder, within sixty (60) days of the date of such appointment.
- 2.03 Designation of Beneficiary - Any new, full-time Employee who becomes a Participant hereunder shall designate a Beneficiary or Beneficiaries on the forms supplied by the Plan Administrator at the time participation commences. The Participant's Election of any such Beneficiary may be rescinded or changed, without the consent of the Beneficiary, at any time provided the Participant provides the written Notice of the changed designation to the Plan Administrator in the manner prescribed by the Plan Administrator. Any designation of a Beneficiary made in any manner other than one acceptable to the Plan Administrator shall be null and void and have no effect under the terms of this Plan.
- 2.04 Change in Status - A Participant who remains in the service of the Employer but ceases to be an Employee eligible for participation hereunder, or ceases or fails to make any contributions which are required as a condition of participation hereunder, shall have no further benefit accruals occur until the individual again qualifies as a Participant hereunder eligible to resume such accrual of benefits.
- 2.05 Recordkeeping - The Employer shall furnish the Plan Administrator with such information as will aid the Plan Administrator in the administration of the Plan. Such information shall include all pertinent data on Employees for purposes of determining their eligibility to participate in this Plan.



## ARTICLE III

### CONTRIBUTIONS

- 3.01 Participant Contributions - Each Participant shall make regular monthly contributions to the Plan at a rate set forth in **Part III-1** of the Joinder Agreement. If specified in the Joinder Agreement, Participant contributions shall be picked up by the Employer and treated as Employer contributions pursuant to Code section 414(h)(2).
- (a) Where positions covered by the Plan are included in an agreement under the Federal Social Security Act, Participants shall pay into the Plan, an amount determined as follows:
- (1) if the Plan provides for no offset under section 4.02, five percent (5%) of Compensation; or
- (2) if the Plan provides for an offset under section 4.02;
- (i) on Compensation on which Social Security taxes are payable, at a rate calculated by subtracting from five percent (5%), the product obtained by multiplying three percent (3%) by such offset percentage; and
- (ii) on Compensation in excess of that on which Social Security taxes are payable, if any, five percent (5%).
- (b) Where positions covered by the Plan are not included in an agreement under the Federal Social Security Act, Participants shall pay into the Plan an amount which shall not be less than five percent (5%) nor more than eight percent (8%) of the Participant's Compensation.
- (c) Section 415(c) Limit. Participant contributions or other annual additions (within the meaning of Code section 415(c)(2)) with respect to a Participant shall not exceed the lesser of \$40,000 (as adjusted pursuant to Code section 415(d)) or one hundred percent (100%) of the Participant's Compensation for the respective Plan year.
- 3.02 Payment of Participant Contributions - Such Participant contributions shall be deducted from the Participant's Compensation in each month of the Participant's Aggregate Service during which the Participant is a Participant hereunder. Each Participant shall complete the necessary forms to authorize the payment of Participant Contributions by way of payroll deduction, if necessary.
- 3.03 Reduction of Participant Contributions - The Employer may, on an annual basis, by ordinance or resolution, reduce or eliminate payments into the Plan by Participants subject to the restrictions, if any, specified in **Part III-2** of the Joinder Agreement.
- 3.04 Employer Contributions - The Chief Administrative Officer, in accordance with the Act, shall determine the Minimum Municipal Obligation of the Employer. The Employer shall pay into the Trust Fund, by annual appropriations or otherwise, the necessary to satisfy the Minimum Municipal Obligation. Notwithstanding the foregoing, nothing contained herein

shall preclude the Employer from contributing an amount in excess of the Minimum Municipal Obligation.

- 3.05 State Aid - General Municipal Pension System State Aid, or any other amount of State Aid received by the Employer in accordance with the Act from the Commonwealth may be deposited into the Trust Fund governed by this Plan in amounts determined by the Board, and shall be used to reduce the amount of the Minimum Municipal Obligation of the Employer.
- 3.06 Acceptance of Gifts, Grants, Etc. - The Board is authorized to take by gift, grant, devise or otherwise any money or property, real or personal, for the benefit of the Plan and cause the same to be held in trust. The care, management, investment and disposal of such said trust funds is hereby vested in the Trustee hereinbefore designated, subject to the provisions of the law of the Commonwealth of Pennsylvania and of this Plan and any amendment thereto, and subject to such direction not inconsistent therewith as the donors of such funds and property may prescribe, amounts shall be vested in the Board or its delegate, the Plan Administrator, subject to the direction of the donor and not inconsistent with applicable laws and the terms of this Plan.
- 3.07 Employer Reversion - At no time shall it be possible for the Plan assets to be used for, or diverted to, any purpose other than for the exclusive benefit of the Participants and their Beneficiaries, including payment of any reasonable Plan expenses. Notwithstanding the foregoing, any contributions made by the Employer may be returned to the Employer if the contribution was made due to a mistake and the contribution is returned within one (1) year of the date on which the discovery of the mistaken payment of the contribution was made or reasonably should have been made or the Plan is terminated, as provided in Article V of Chapter 1.

## ARTICLE IV

### RETIREMENT BENEFITS

- 4.01 Normal Retirement Age - Each Participant shall be one hundred percent (100%) vested and entitled to Normal Retirement Benefits provided the Participant retires on or after the Participant's Normal Retirement Age as set forth in **Part IV-1** of the Joinder Agreement.
- 4.02 Normal Retirement Benefit - Each Participant entitled to normal retirement benefits pursuant to section 4.01 herein shall receive, during the Participant's lifetime, a monthly retirement income, which shall be equal to fifty percent (50%) of the Participant's Final Monthly Average Salary. If positions covered by the Plan are included in an agreement under the Federal Social Security Act, such benefit shall be offset by up to seventy-five percent (75%) of a Participant's full Social Security old-age insurance benefit calculated in accordance with the provisions of the Federal Social Security Act in effect on the date of the Participant's termination of employment, except that such amount shall be included only upon attainment of the age at which the Employee would be eligible to receive the Social Security old-age insurance benefits, and, in determining such eligibility and such amounts, only compensation for services actually rendered by the Employee and covered by the Plan shall be included.

The percentage of such Social Security offset to be applied under this Plan shall be set forth in **Part IV-2** of the Joinder Agreement.

If the Employer or the Commonwealth shall have contributed monies raised by taxation to a pension plan established by a private organization or association for the members of the police force, the pension benefits to be taken into account under this section shall be that portion of the total pension benefits payable as the assets attributable to contributions or monies raised by taxation bears to the total assets of the Trust Fund.

- 4.03 Early Retirement (Optional) - If elected by the Employer in **Part IV-3** of the Joinder Agreement, a Participant shall be entitled to an Early Retirement Benefit after retirement on or after attainment of Early Retirement Age.
- 4.04 Early Retirement Benefit (Optional) - If elected by the Employer in **Part IV-3** of the Joinder Agreement, each Participant who shall become entitled to a benefit pursuant to section 4.03 herein must make application in writing to the Board to receive such a benefit. The Early Retirement Benefit shall become effective as of the date the application is filed with the Board or the date designated on the application, whichever is later. The benefit shall be in an amount equal to the actuarial equivalent of the Participant's Accrued Benefit. The actuarial equivalent of the Participant's Accrued Benefit shall be determined by actuarially reducing the Accrued Benefit to reflect that it will commence on the Participant's Early Retirement Date rather than on the date which would have been the Participant's Normal Retirement Date if the Participant continued in Employment to such date. The actuarial assumptions reported in the last actuarial valuation report filed with the Public Employee Retirement Commission under the Act shall be the actuarial assumptions used to calculate the actuarial equivalent of the Participant's Accrued Benefit.

- 4.05 Late Retirement - A Participant may continue to work beyond the Participant's Normal Retirement Date subject to the Employer's rules and regulations regarding retirement age. If a Participant who has met the requirements of section 4.01 herein shall continue to work beyond the Participant's Normal Retirement Date, there shall be no retirement benefits paid until the Participant's Employment ceases and retirement begins. The retirement benefit of a Participant who continues Employment after attainment of Normal Retirement Age shall be calculated in accordance with section 4.02 on the basis of the Final Monthly Average Salary as of such Participant's actual retirement and shall commence on the Participant's Late Retirement Date.
- 4.06 Service Increment Benefits (Optional) - If elected by the Employer in **Part IV-4(A)** of the Joinder Agreement, in addition to the pension benefit provided in section 4.02 or 4.04 (if applicable) of this Plan, a service increment benefit shall be payable to a Participant for years of service beyond twenty-five (25) years for each completed year of service in excess of twenty-five (25) years. The service increment benefit shall be equal to the monthly dollar amount set forth in **Part IV-4(B)** of the Joinder Agreement, based on the Participant's Aggregate Service in excess of twenty-five (25) years; provided, however, in no case shall such service increment benefit exceed five hundred dollars (\$500) per month.
- 4.07 Cost-of-Living Increases (Optional) - If elected by the Employer in **Part IV-5** of the Joinder Agreement, for Participants who have retired and commenced receipt of retirement benefits, an annual cost-of-living adjustment shall be made to the pension benefit payable to such Participant; this adjustment shall apply to the regular pension amount and if elected, to the Service Increment Benefit amount set forth in section 4.06. The amount of such cost-of-living increase shall be specified in **Part IV-5** of the Joinder Agreement, along with any special conditions or requirements associated with such cost-of-living increase.
- Such cost-of-living increases shall not exceed the following limits: (1) the percentage increase in the Consumer Price Index from the year in which the Participant was last employed as an Employee of the Employer; (2) the total retirement benefits payable under this Plan shall not exceed seventy-five percent (75%) of the Participant's Final Monthly Average Salary; (3) the total cumulative cost-of-living increases shall not exceed thirty percent (30%) of the Participant's original regular retirement benefit under this Plan; and (4) the cost-of-living increases shall not impair the actuarial soundness of the Trust Fund.
- 4.08 Payment of Benefits - Retirement benefit payments shall be payable as of the Participant's Early, Normal or Late Retirement Date and each month thereafter during the Participant's lifetime. Monthly payments are disbursed either at the beginning of the month for the month or at the end of the month for the month, as elected by the Employer in **Part IV-6** of the Joinder Agreement. Such retirement benefit payments shall be prorated, if necessary. A Participant must complete an application for retirement in the manner prescribed by the Plan Administrator and deliver such application to the Plan Administrator at least thirty (30) days prior to the date on which benefit payments shall commence. Notwithstanding anything contained herein to the contrary, no retirement benefit payments nor any other payments shall be due or payable on or before the date that is thirty (30) days after the date the Plan Administrator receives the application for benefits. Payment of benefits hereunder shall cease as of the date of death of the Participant.
- 4.09 Maximum Benefit Limitations - Notwithstanding any provision of this Plan to the contrary, no benefit provided under this Plan attributable to contributions of the Employer shall exceed, as an annual amount, the amount specified in Code section 415(b) (1) (A) as

adjusted pursuant to Code section 415(d), assuming the form of benefit shall be a straight life annuity (with no ancillary benefits). The limitations described in this section 4.09 shall be governed by the following conditions and definitions:

- (a) with respect to benefits paid or payable in a form other than a straight life annuity (with no ancillary benefits) or where the Employee contributes to the Plan or makes rollover contributions, the annual benefit shall be determined as the straight life annuity payable on the first day of each month that is actuarially equivalent to the benefit payable in such other form, determined under the rules of Treas. Reg. §1.415(b)-1(c);
- (b) in the case of a benefit which commences prior to the attainment of age sixty-two (62) by the Participant and for limitation years before July 1, 2007, the limitation herein shall be adjusted on an actuarially equivalent basis to the amount determined pursuant to this section commencing at age sixty-two (62); however, in the case of a qualified Participant (a Participant with respect to whom a period of at least fifteen (15) years of service, including applicable military service, as a full-time employee of a police or fire department is taken into account in determining the amount of benefit), the limitation contained in this subsection 4.09(b) shall not apply;
- (c) in the case of a benefit which commences after attainment of age sixty-five (65) by the Participant and for limitation years before July 1, 2007, the limitation herein shall be adjusted on an actuarially equivalent basis to the amount determined herein commencing at age sixty-five (65);
- (d) for limitation years after July 1, 2007, in the case of a benefit with an annuity starting date that occurs before the Participant attains age 62 or after the Participant attains age 65, the age-adjusted Section 415(b)(1)(A) dollar limit shall be computed pursuant to Treas. Reg. §1.415(b)-1(d) or Treas. Reg. §1.415(b)-1(e), as appropriate, in place of the dollar limitation described in Code Section 415(b)(1)(A);
- (e) benefits paid to a Participant which total less than ten thousand dollars (\$10,000.00) from all defined benefit plans maintained by the Employer expressed as an annual benefit shall be deemed not to exceed the limitation of this section provided that the Employer has not at any time maintained a defined contribution plan in which the Participant has participated;
- (f) in the case of a Participant with fewer than ten (10) years of service or participation, the limitation expressed in this section 4.09 shall be reduced by one-tenth (1/10) for each year of participation less than ten (10) with respect to Code section 415(b)(1)(A) or each year of service less than ten (10) years in the case of the limitation in subsection (d); but in no event shall this limitation be less than one-tenth (1/10) of the applicable limit;
- (g) the limitations expressed herein shall be based upon Plan Years for calculation purposes, shall be applied to all defined benefit plans maintained by the Employer as one (1) defined benefit plan and to all defined contribution plans maintained by the Employer as one (1) defined contribution plan, and shall be applied and interpreted consistent with Code section 415 and regulations thereunder as applicable to government plans in general and this Plan in particular; and

- (h) in the case of a survivor benefit under section 6.02 or 6.03, or a Disability Retirement Benefit under section 5.02, the adjustment under subsections (b) and (f) hereof shall not apply and the applicable limitation shall be the limitation contained herein without regard to the age or years of service or participation of the benefit recipient.

Notwithstanding anything contained in this section to the contrary, the limitations, adjustments, and other requirements prescribed in this section shall at all times comply with the provisions of Code section 415 and the Regulations thereunder (as such apply to governmental plans), the terms of which are specifically incorporated herein by reference. Compensation for purposes of applying the limitations in this section shall be specified in the Joinder Agreement and shall be as defined in either Treas. Reg. §1.415(c)-2(d)(2), §1.415(c)-2 (d)(3) or §1.415(c)-2 (d)(4).

#### 4.10 Required Distributions

- (a) Notwithstanding any other provision of this Plan, the entire benefit of any Participant who becomes entitled to benefits prior to death shall be distributed either:

- (1) not later than the Required Beginning Date, or
- (2) over a period beginning not later than the Required Beginning Date and extending over the life of such Participant or over the lives of such Participant and a designated Beneficiary (or over a period not extending beyond the life expectancy of such Participant, or the joint life expectancies of such Participant and a designated Beneficiary).

If a Participant who is entitled to benefits under this Plan dies prior to the date when the entire interest has been distributed after distribution of the benefits has begun in accordance with paragraph (2) above, the remaining portion of such benefit shall be distributed at least as rapidly as under the method of distribution being used under paragraph (2) as of the date of the death.

- (b) If a Participant who is entitled to benefits under this Plan dies before distribution of the benefit has begun, the entire interest of such Employee shall be distributed within five (5) years of the death of such Employee, unless the following sentence is applicable. If any portion of the Employee's interest is payable to (or for the benefit of) a designated Beneficiary, such portion shall be distributed over the life of such designated Beneficiary (or over a period not extending beyond the life expectancy of such Beneficiary), and such distributions begin not later than one (1) year after the date of the Employee's death or such later date as provided by regulations issued by the Secretary of the Treasury, then for purposes of the five-year rule set forth in the preceding sentence, the benefit payable to the Beneficiary shall be treated as distributed on the date on which such distributions begin. Provided, however, that notwithstanding the preceding sentence, if the designated Beneficiary is the surviving spouse of the Participant, then the date on which distributions are required to begin shall not be earlier than the date upon which the Employee would have attained age seventy and one-half (70 1/2) and, further provided, if the surviving spouse dies before the distributions to such spouse begin, this subparagraph shall be applied as if the surviving spouse were the Employee.

- (c) For purposes of this section, the following definitions and procedures shall apply:
- (1) "Required Beginning Date" shall mean April 1 of the calendar year following the later of the calendar year in which the Employee attains age seventy and one-half (70 1/2), or the calendar year in which the Employee retires.
  - (2) The phrase "designated Beneficiary" shall mean any individual designated by the Employee under this Plan according to its rules.
  - (3) Any amount paid to a child shall be treated as if it had been paid to the surviving spouse if such amount will become payable to the surviving spouse upon such child's reaching majority (or other designated event permitted under regulations issued by the Secretary of the Treasury).
  - (4) For purposes of this section, the life expectancy of an Employee and/or the Employee's spouse (other than in the case of a life annuity) may be re-determined but not more frequently than annually.

#### 4.11 Rollover Distributions

- (a) Small Amounts
- (1) In the absence of a directive from the Participant to pay a distribution directly to an Eligible Retirement Plan in a Direct Rollover or to receive the distribution directly, subject to subsection 4.11 (b) hereof, the Employer in its sole discretion, may direct the Plan Administrator to distribute in the form of a lump sum payment the vested benefit of a Participant who is terminating participation in the Plan if the actuarial present value of such benefit is five thousand dollars (\$5,000.00) or less and such Participant is vested in any portion of the Accrued Benefit hereunder.
  - (2) In the event that a distribution greater than \$1,000 pursuant to subsection 4.11 (a) or otherwise initiated by the Employer is made to a Participant before the Participant attains the later of age 62 or Normal Retirement Age and the Participant does not elect to have such distribution paid directly to an Eligible Retirement Plan specified by the Participant or to receive the distribution directly, the Plan Administrator will pay the distribution in a Direct Rollover to an individual retirement account or an individual retirement annuity described in section 408(a) or 408(b) of the Code, as designated by the Plan Administrator.

Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this section, 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 that is equal to at least five hundred dollars (\$500) paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

- (b) For purposes of this section, the following definitions shall apply:

- (1) "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; and any distribution to the extent such distribution is required under Code section 401(a)(9).

For purposes of the Direct Rollover provisions in this section of the Plan, a portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be paid only to an individual retirement account or annuity described in sections 408A(b), 408(a) or 408(b) of the Code, or to a qualified defined contribution plan described in section 401 (a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including, separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

- (2) "Eligible Retirement Plan" is a qualified trust described in Code section 401(a), an individual retirement account described in Code sections 408A(b), or 408(a), an individual retirement annuity described in Code section 408(b), an annuity plan described in Code section 403(a), an annuity contract described in Code section 403(b), or an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to accept such distribution and to separately account for amounts transferred into such plan from this Plan.
- (3) "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 section 414(p), are distributees with regard to the interest of the spouse or former spouse. Effective for the Plan Year beginning in 2010, "Distributee" shall also include a non-spouse Beneficiary.
- (4) "Direct Rollover" is a direct trustee-to-trustee transfer by the Plan to the Eligible Retirement Plan so specified.

4.12 Retired Participants - Any Participants who have retired prior to the adoption of this Plan or prior to the Effective Date of any Joinder Agreement that may be adopted by the Board shall not have their benefit altered in any way by the provisions of this amended and restated Plan or new Joinder Agreement adopted, except where otherwise expressly provided herein. Such retired Participants shall continue to have their benefits governed by the terms of the Plan in effect on the day preceding the adoption of this Plan. Any Participants who have terminated Employment and elected to receive a deferred retirement benefit under section 7.03 hereunder shall have such benefit determined based upon the



provisions of the Plan in effect as of the date of such termination of Employment and shall not have their benefit altered by the provisions of this amended and restated Plan.

- 4.13 Limitation of Liability - Nothing contained herein shall obligate the Employer, the Plan Administrator, any fiduciary or any agent or representative of any of the foregoing, to provide any retirement or other benefit to any Participant or Beneficiary which cannot be provided from the assets of this Plan available in the Trust Fund, whether such benefits are in pay status or otherwise payable under the terms of the Plan. The Board retains the right to amend or terminate this Plan consistent with applicable law at any time, with or without cause and whether or not such action directly or indirectly results in the suspension, reduction or termination of any benefit payable under the Plan or in pay status, and without liability to any person for any such action.
- 4.14 Personal Right of Participant - The right to receive any benefits under this Plan is a personal right of the Participant and shall expire upon the death of the Participant. No heir, legatee, devisee, Beneficiary, assignee or other person claiming by or through a Participant shall have any interest in any benefits hereunder unless clearly and expressly so provided by the terms of this Plan or the provisions of applicable law. A Participant's Election, failure to make an Election or revocation of an Election hereunder shall be final and binding on all persons.
- 4.15 Non-duplication of Benefit - To avoid any duplication of benefits, a Participant who is receiving a retirement benefit under the Plan and who shall resume Employment shall have benefit payments suspended until the first day of the month coincident with or next following the date such Employment shall cease. Upon resumption of benefit payments, such Participant shall receive the greater of the amount of the suspended benefit or the amount of benefit based upon Final Monthly Average Salary and Aggregate Service as of the date that such period of resumed Employment shall cease.

## ARTICLE V

### DISABILITY RETIREMENT

- 5.01 Disability Retirement - A Participant who shall incur a Total and Permanent Disability shall be entitled to a Disability Retirement Benefit as of the Disability Retirement Date in accordance with this Article.
- 5.02 Disability Retirement Benefits - A Participant who retires due to a Total and Permanent Disability pursuant to Section 5.01 shall be eligible for a Disability Retirement Benefit equal to the amount specified in **Part V-I (A)** of the Joinder Agreement. Such amount may be offset by the amount of disability benefits provided by the Social Security Administration for the same injury or illness in accordance with **Part V-I (B)** of the Joinder Agreement. The amount of the monthly disability benefit (before social security offset) shall be no less than fifty percent (50%) of the Participant's salary at the time of disablement. If a disabled Participant is later re-employed by the Employer, the Participant's Aggregate Service shall be determined in accordance with **Part V-I(C)** of the Joinder Agreement.
- 5.03 Payment of Disability Benefits - Disability retirement benefit payments shall be made monthly with the first installment payable as of the first day of the month next following the Disability Retirement Date continuing for the duration of the disability or in accordance with **Part V-I(D)** of the Joinder Agreement.

A Participant who shall fail to return within three (3) months to Employment as an Employee of the Employer upon cessation of Total and Permanent Disability prior to attainment of Normal Retirement Age shall be deemed to have terminated Employment as of the Disability Date, shall not be entitled to any distribution of Accumulated Contributions pursuant to Section 7.02 except to the extent that the total amount of disability payments exceeds the value of the Participant's Accumulated Contributions as of the Disability Date, and shall not be entitled to any other benefits under the Plan on account of any Aggregate Service as of the Disability Date.

- 5.04 Verification of Disability Benefits - The Plan Administrator on behalf of the Employer shall in its sole discretion determine whether a Participant shall have incurred a Total and Permanent Disability. The Plan Administrator shall rely on the report of a physician acceptable to the Plan Administrator to make its determination. The payment of Disability Retirement Benefits shall cease:
- (a) if the Employer through the Plan Administrator shall determine, on the basis of a medical examination by a physician acceptable to the Employer, that the Participant, prior to Normal Retirement Date, has sufficiently recovered to return to full duties of a police officer;
  - (b) if the Participant refuses to undergo a medical examination prior to Participant's Normal Retirement Date, which may be ordered by the Employer or the Plan Administrator; provided that the Participant may not be required to undergo a medical examination more often than once every twelve (12) months; or

(c) if the Participant is employed as a police officer in any jurisdiction.

5.05 Notification to Plan Administrator of Cessation of Disability - A Participant who is receiving payment of Disability Retirement Benefits under this Plan must notify the Plan Administrator of any change which may cause a cessation of entitlement to receipt of such benefits hereunder. If a Participant fails to provide immediate Notice to the Plan Administrator of any such change in status and continues to receive payment of benefits hereunder to which the Participant is not entitled, then the Plan Administrator may take whatever action is necessary to recover any amount of improperly paid amounts, including legal action or offsetting such amounts against any future payments of retirement or other benefits under the Plan, including the costs of such actions.

## ARTICLE VI

### DEATH BENEFITS

- 6.01 Death Benefits- Upon the occurrence of the death of a Participant, there shall be benefits provided in accordance with this Article VI. Notwithstanding any contrary provision in this Plan, effective January 1, 2007, the Beneficiary of a Participant on a leave of absence to perform military service with re-employment rights described in Code Section 414(u), where the Participant cannot return to employment on account of his or her death, shall be entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) that would have been provided under the Plan had the Participant died as an active Employee, in accordance with Code Section 401(a)(37).
- 6.02 Killed in Service Survivor Benefit - This section 6.02 shall only apply to those Employers that are (and only as long as such Employers are) parties to a collective bargaining agreement which requires a Killed in Service benefit under Act 600. A survivor benefit shall be payable in the event of the death of a Participant who is killed in service. In the event such a benefit becomes payable, the spouse or dependent child(ren) of the Participant shall receive a monthly benefit equal to the amount specified in **Part VI-1** of the Joinder Agreement. Such death benefit shall be payable in accordance with Section 6.04 and in lieu of a benefit under Section 6.03 or any refund of Accumulated Contributions to which the deceased Participant may have been entitled.
- 6.03 Surviving Spouse Benefit - A survivor benefit shall be payable in the event of the death of a Participant who is eligible to receive or is receiving retirement benefits under the Plan. In such event, the Participant's surviving spouse or dependent child(ren) shall receive a monthly benefit equal to the amount specified in **Part VI-2** of the Joinder Agreement, but no less than fifty percent (50%) of the monthly retirement benefit the Participant was receiving or would have been receiving had the Participant been retired at the time of the Participant's death and payable in accordance with Section 6.04.
- 6.04 Payment of Survivor Benefits - Survivor benefit payments under Section 6.02 or 6.03 shall be made monthly to the Participant's surviving spouse beginning with the first full month following the date of death, until the month that the death of the spouse occurs. If no spouse survives or if the spouse survives and subsequently dies, then the child(ren) of the Participant under the age of eighteen (18) or if Attending College, under or attaining the age of twenty-three (23), shall receive the monthly benefit in equal portions until each ceases to be eligible for such benefit. In no event will a Participant or the Participant's Beneficiaries be eligible to receive both the benefit described in this section and the benefit described in section 7.02.
- 6.05 Death of Participant Prior to Retirement - If a Participant shall die before payment of a benefit has commenced or before completing the period of Aggregate Service set forth in **Part VII-1** of the Joinder Agreement and without eligibility for payment of a survivor benefit under Section 6.02 or 6.03, the Beneficiary shall be eligible to receive a distribution in an amount equal to the Accumulated Contributions of the Participant as of the date of death of the Participant. If the Participant has received Disability Retirement Benefits hereunder, the amount of distribution of Accumulated Contributions shall be reduced by the amount of Disability Retirement Benefits, which have been paid hereunder.

6.06 Survivor Vesting Benefit - In the event a Participant dies after completing the periods of an Aggregate Service set forth in **Part VII-I** of the Joinder Agreement or otherwise ceases to be an Employee of the Employer for any reason other than being Killed in Service as described in Section 6.02, retirement or Total and Permanent Disability, the surviving spouse shall act on behalf of the Participant in selecting the alternatives addressed in Section 7.02 and 7.03. If an election of a deferred vested benefit is selected in accordance with Section 7.03, the surviving spouse shall receive fifty percent (50%) of the Participant's accrued monthly benefit as of the date Employment terminates, commencing upon attainment of what would have been the Participant's Normal Retirement Date, had the Participant continued to be an Employee of the Employer.

## ARTICLE VII

### TERMINATION OF EMPLOYMENT

- 7.01 Rights of Terminated Employees - If a Participant shall cease to be an Employee except as otherwise hereinbefore provided, the Participant's interest and rights under the Plan shall be limited to those contained in the following sections of this Article VII.
- 7.02 Refund of Accumulated Contributions - If a Participant whose Employment with the Employer has been terminated for any reason prior to the Participant's Normal, Early or Disability Retirement Date, and the Participant is neither eligible for a pension under the Plan nor has the Participant elected to vest the Participant's benefit, such Participant or the Participant's Beneficiary shall be entitled to receive a refund of the Participant's Accumulated Contributions to the Plan. Notwithstanding the previous sentence, a Participant whose Employment with the Employer has been terminated for any reason prior to the Participant's Normal, Early or Disability Retirement Date, and the Participant is eligible for a pension under the Plan which would commence on the Participant's Normal, Early or Disability Retirement Date, the Participant may elect a refund of the Participant's Accumulated Contributions following termination of Employment. Upon receipt of such Accumulated Contributions, said Participant and the Participant's Beneficiary shall not be entitled to any further payments from the Plan. Notwithstanding the preceding, if a Participant's survivors or Beneficiaries shall be entitled to a death benefit in accordance with Article VI, such benefit shall be paid in lieu of a refund of the Participant's Accumulated Contributions; provided, however, that if the amount of the Participant's Accumulated Contributions exceeds the total amount of death benefits paid to such survivors or Beneficiaries, the difference shall be refunded to the Participant's Beneficiary in addition to the payment of the death benefit.
- 7.03 Election of Deferred Vested Benefits (Optional) - If the Employer elects to provide vested benefits in **Part VII-1** of the Joinder Agreement, such vested benefits shall be provided in accordance with this section 7.03.

In lieu of receiving a refund of the Participant's Accumulated Contributions, a Participant who has completed the period of Aggregate Service set forth in **Part VII-1** of the Joinder Agreement and who ceases to be an Employee of the Employer for any reason other than death, retirement or Total and Permanent Disability shall vest at the option of the Participant. Such vesting option must be exercised by the Participant by filing a written Notice of the Participant's intention to vest with the Plan Administrator within ninety (90) days of the date the Participant ceases to be an Employee of the Employer. A Participant who exercises such an option shall be eligible, upon attainment of what would have been the Participant's Normal Retirement Date, had the Participant continued to be an Employee of the Employer, to receive a vested retirement benefit equal to the Participant's Accrued Benefit as of the date Employment terminates.

- 7.04 Application of Forfeitures – Amounts, if any, forfeited by any Participant may not be used to increase the benefits which other Participants would otherwise receive under the Plan; they shall be used only to reduce the Employer's contributions to the Plan, as permitted by applicable law.

## ARTICLE VIII

### ADMINISTRATION

- 8.01 Plan Administrator - The Plan Administrator shall be the Committee or the individual appointed by the Board who shall have the power and authority to do all acts and to execute, acknowledge and deliver all instruments necessary to implement and effectuate the purpose of this Plan. The Plan Administrator may delegate authority to act on its behalf to any persons it deems appropriate. If a Plan Administrator is not appointed, the Board shall be the Plan Administrator.
- 8.02 Authority and Duties of the Plan Administrator - The Plan Administrator shall have full power and authority to do whatever shall, in its judgment, be reasonably necessary for the proper administration and operation of the Plan. The interpretation or construction placed upon any term or provision of the Plan by the Plan Administrator or any action of the Plan Administrator taken in good faith shall, upon the Board's review and approval thereof, be final and conclusive upon all parties hereto, whether Employees, Participants or other persons concerned. By way of specification and not limitation and except as specifically limited hereafter, the Plan Administrator is authorized:
- (a) to construe this Plan;
  - (b) to determine all questions affecting the eligibility of any Employee to participate herein;
  - (c) to compute the amount and source of any benefit payable hereunder to any Participant or Beneficiary;
  - (d) to authorize any and all disbursements;
  - (e) to prescribe any procedure to be followed by any Participant or other person in filing any application or Election under the Plan;
  - (f) to prepare and distribute, in such manner as may be required by law or as the Plan Administrator deems appropriate, information explaining the Plan;
  - (g) to require from the Employer or any Participant such information as shall be necessary for the proper administration of the Plan; and
  - (h) to appoint and retain any individual to assist in the administration of the Plan, including such legal, clerical, accounting and actuarial services as may be required by any applicable law or laws.

The Plan Administrator shall have no power to add to, subtract from or modify the terms of the Plan or change or add to any benefits provided by the Plan, or to waive or fail to apply any requirements of eligibility for benefits under the Plan. Further, the Plan Administrator shall have no power to adopt, amend, or terminate the Plan, to select or appoint any Trustee or to determine or require any contributions to the Plan, said powers being exclusively reserved to the Board.

- 8.03 Plan Administrator Costs - The Plan Administrator shall serve without compensation for services unless otherwise agreed by the Board in writing. All reasonable expenses incident to the functioning of the Plan Administrator, including, but not limited to, fees of accountants, counsel, actuaries and other specialists, and other costs of administering the Plan, may be paid from the Trust Fund upon approval by the Board to the extent permitted under applicable law and not otherwise paid by the Employer.
- 8.04 Hold Harmless - No member of the Board, the Plan Administrator, the Enrolled Actuary, nor any other person involved in the administration of the Plan shall be liable to any person on account of any act or failure to act which is taken or omitted to be taken in good faith in performing their respective duties under the terms of this Plan. To the extent permitted by law, the Employer shall, and hereby does agree to, indemnify and hold harmless the Plan Administrator and each successor and each of any such individual's heirs, executors and administrators, and the delegates and appointees (other than any person, bank, firm or corporation which is independent of the Employer and which renders services to the Plan for a fee) from any and all liability and expenses, including counsel fees, reasonably incurred in any action, suit or proceeding to which the Participant is or may be made a party by reason of being or having been a member, delegate or appointee of the Plan Administrator, except in matters involving criminal liability, intentional or willful misconduct. If the Employer purchases insurance to cover claims of a nature described above, then there shall be no right of indemnification except to the extent of any deductible amount under the insurance coverage or to the extent of the amount the claims exceed the insured amount.
- 8.05 Approval of Benefits - The Plan Administrator shall review and approve or deny any application for retirement benefits within thirty (30) days following receipt thereof or within such longer time as may be necessary under the circumstances. Any denial of an application for retirement benefits shall be in writing and shall specify the reason for such denial.
- 8.06 Appeal Procedure - Any person whose application for retirement benefits is denied, who questions the amount of benefit paid, who believes a benefit should have commenced which did not so commence or who has some other claim arising under the Plan ("Claimant"), shall first seek a resolution of such claim under the procedure hereinafter set forth.
- (a) Any Claimant shall file a Notice of the claim with the Plan Administrator which shall fully describe the nature of the claim. The Plan Administrator shall review the claim and make an initial determination approving or denying the claim.
- (b) If the claim is denied in whole or in part, the Plan Administrator shall, within ninety (90) days (or such other period as may be established by applicable law) from the time the application is received, mail Notice of such denial to the Claimant. Such ninety (90) day period may be extended by the Plan Administrator if special circumstances so require for up to ninety (90) additional days by the Plan Administrator's delivering Notice of such extension to the Claimant within the first ninety (90) day period. Any Notice hereunder shall be written in a manner calculated to be understood by the Claimant and, if a Notice of denial, shall set forth (i) the specific Plan provisions on which the denial is based, (ii) an explanation of additional material or information, if any, necessary to perfect such claim and a statement of why such material or information is necessary, and (iii) an explanation of the review procedure.



- (c) Upon receipt of Notice denying the claim, the Claimant shall have the right to request a full and fair review by the Board of the initial determination. Such request for review must be made by Notice to the Board within sixty (60) days of receipt of such Notice of denial. During such review, the Claimant or a duly authorized representative shall have the right to review any pertinent documents and to submit any issues or comments in writing. The Board shall, within sixty (60) days after receipt of the Notice requesting such review, (or in special circumstances, such as where the Board in its sole discretion holds a hearing, within one hundred twenty (120) days of receipt of such Notice), submit its decision in writing to the person or persons whose claim has been denied. The decision shall be final, conclusive and binding on all parties, shall be written in a manner calculated to be understood by the Claimant and shall contain specific references to the pertinent Plan provisions on which the decision is based.
- (d) Any Notice of a claim questioning the amount of a benefit in pay status shall be filed within ninety (90) days following the date of the first payment which would be adjusted if the claim is granted unless the Plan Administrator allows a later filing for good cause shown.
- (e) A Claimant who does not submit a Notice of a claim or a Notice requesting a review of a denial of a claim within the time limitations specified above shall be deemed to have waived such claim or right to review.
- (f) Nothing contained herein is intended to abridge any right of a Claimant to appeal any final decision hereunder to a court of competent jurisdiction under 2 Pa. C.S.A Section 752. No decision hereunder is a final decision from which such an appeal may be taken until the entire appeal procedure of this section 8.06 of the Plan has been exhausted.

**ARTICLE IX**  
**THE TRUST FUND**

9.01 Operation of the Trust Fund - The amount allocated to the Plan's account in the Trust Fund shall be held, managed, and administered pursuant to the terms of Article III, Chapter 1 of the Master Plan, subject to the provisions of the laws of the Commonwealth.

The Plan's account within the Trust Fund shall be used to pay benefits as provided in the Plan and, to the extent not paid directly by the Employer, to pay the expenses of administering the Plan pursuant to authorization by the Employer.

The Employer intends the Plan to be permanent and for the exclusive benefit of its Employees. It expects to make the contributions to the Trust Fund required under the Plan. The Employer shall not be liable in any manner for any insufficiency in the amount allocated to the Plan's account in the Trust Fund. Benefits to Participants are payable only from the Plan's account in the Trust Fund, and only to the extent that there are monies available therein. The Plan's account in the Trust Fund will consist of all funds held by the Employer under the Plan, including contributions made pursuant to the provisions hereof and the investments, reinvestments and proceeds thereof. The Trust Fund shall be held, managed, and administered pursuant to the terms of the Master Plan and Trust.

9.02 Powers and Duties of the Employer - With respect to the Plan's account in the Trust Fund, the Employer shall have the following powers, rights and duties in addition to those vested in it elsewhere in the Plan or by law.

- (a) To consent to the investment of the assets of the Plan with assets of other eligible, participating plans through such a medium as hereby specifically authorized. Any assets of the Plan which may be so added to such collective trusts shall be subject to all of the provisions of the applicable declaration of trust, as amended from time to time, which declaration, if required by its terms or by applicable law, is hereby adopted as part of the Plan, to the extent of the participation in such collective or commingled Trust Fund by the Plan;
- (b) To consent to any payment or distribution required or advisable to carry out the provisions of the Plan;
- (c) To compromise, contest, arbitrate, enforce or abandon claims and demands with respect to the Plan;
- (d) To retain any funds or property subject to any dispute without liability for the payment of interest thereon, and to decline to make payment or delivery thereof, until final adjudication is made by a court of competent jurisdiction;
- (e) To pay, and to deduct from and charge against the Plan's account in the Trust Fund, any taxes which may be imposed thereon, whether with respect to the income, property or transfer thereof, or upon or with respect to the interest of any person therein, which the Trust Fund is required to pay; to contest, in its discretion, the validity or amount of any tax, assessment, claim or demand which may be levied or

made against or in respect of the Trust Fund, the income, property or transfer thereof, or in any matter or thing connected therewith; and

- (f) The Employer shall have all of the powers, rights, and privileges conferred upon trustees by the Pennsylvania Fiduciaries Investment Act, or as the same may be subsequently modified or amended, and the power to do all acts, take all proceedings and execute all rights and privileges, although not specifically mentioned herein, as the Employer may deem necessary to administer this Plan.

- 9.03 Common Investments - The Employer shall not be required to make separate investments for individual Participants or to maintain separate investments for each Participant's account, but may invest contributions and any profits or gains therefrom in common investments.
- 9.04 Compensation and Expenses of Appointed Trustee - If a trustee is appointed, the trustee shall be entitled to such reasonable compensation as shall from time to time be agreed upon by the Employer and the Trustee, unless such compensation is prohibited by law. Such compensation and all expenses reasonably incurred by the Trustee in carrying out its functions, shall constitute a charge upon the Employer or the Trust Fund, which may be executed at any time after thirty (30) days written Notice to the Employer. The Employer shall be under no obligation to pay such costs and expenses, and, in the event of its failure to do so, the Trustee shall be entitled to pay the same, or to be reimbursed for the payment thereof, from the Trust Fund.
- 9.05 Periodic Accounting - The Trust Fund shall be evaluated annually, or at more frequent intervals, by the Trustee and a written accounting rendered as of each fiscal year end of the Trust Fund, and as of the effective date of any removal or resignation of the Trustee, and such additional dates as requested by the Employer, showing the condition of the Trust Fund and all receipts, disbursements and other transactions effected by the Trustee during the period covered by the accounting, based on fair market values prevailing as of such date.
- 9.06 Value of the Trust Fund - All determinations as to the value of the assets of the Trust Fund, and as to the amount of the liabilities thereof, shall be made by the Employer or Trustee, whose decisions shall be final and conclusive and binding on all parties hereto, the Participants and Beneficiaries and their estates. In making any such determination, the Employer or Trustee shall be entitled to seek and rely upon the opinion of or any information furnished by brokers, appraisers and other experts reasonably believed by the Trustee to be reliable, and shall also be entitled to rely upon reports as to sales and quotations, both on security exchanges and otherwise as contained in reputable newspapers and financial publications.

## ARTICLE X

### AMENDMENT AND TERMINATION

- 10.01 Amendment of the Joinder Agreement - The Employer shall have the right to amend its Joinder Agreement at any time. Any such amendment by the Employer shall be made by execution of a revised Joinder Agreement executed on behalf of the Employer by a duly authorized official and by transmitting said revised Joinder Agreement to the Administrator for acceptance hereunder. However, in the case of any Plan maintained pursuant to Chapter II, and where local or State law so requires, no such amendment shall be executed unless adopted by resolution or ordinance on the part of the Employer. Upon execution and filing of such amendment with the Administrator, the Plan and the Joinder Agreement of the Employer shall be deemed to have been amended in the manner therein set forth and the Employer and all Participants and Beneficiaries thereunder shall be bound thereby.
- 10.02 Restriction on Amendments - Notwithstanding section 10.01, the right of the Employer to amend the Joinder Agreement shall be subject to the following restrictions:
- (a) no amendment shall deprive any Participant or any Beneficiary of a deceased Participant of any of the benefits to which each is entitled under this Plan with respect to contributions previously made;
  - (b) no amendment shall provide for the use of funds or assets held under this Plan other than for the benefit of Employees and no funds contributed to this Plan or assets of this Plan shall, except as provided in Section 10.05, ever revert to or be used or enjoyed by the Employer; and
  - (c) no amendment to the Joinder Agreement which provides for a benefit modification shall be made unless the cost estimate described in section 11.03 has been prepared and presented to the Board in accordance with the Act.
- 10.03 Automatic Termination of Contributions - Subject to the provisions of the Act 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.
- 10.04 Distribution Upon Termination - In the event of the termination of the Plan, all amounts of vested benefits accrued by the affected Participants as of the date of such termination, to the extent funded on such date, shall be non-forfeitable hereunder. In the event of termination of this Plan, the Employer shall direct either:
- (a) that the Trustee continue to hold the vested Accrued Benefit of Participants in the Trust Fund in accordance with the provision of the Plan (other than those provisions related to forfeitures) without regard to such termination until all funds have been distributed in accordance with such provisions; or
  - (b) that the Plan Administrator immediately distribute to each Participant an amount equal to the vested Accrued Benefit to the date of termination of the Plan.

If there are insufficient assets in the Plan's account in the Trust Fund to provide for all vested Accrued Benefits as of the date of Plan termination, priority shall first be given to the distribution of any amounts attributable to mandatory or voluntary Employee contributions before assets are applied to the distribution of any vested benefits attributable to other sources hereunder.

All other assets attributable to the terminated Plan shall be distributed and disposed of in accordance with the provisions of applicable law and the terms of any instrument adopted by the Employer which affects such termination.

- 10.05 Residual Assets - If all liabilities to vested Participants and any others entitled to receive a benefit under the terms of the Plan have been satisfied and there remain any residual assets in the Plan's account within the Trust Fund, such residual assets remaining shall be returned to the Employer insofar as such return does not contravene any provision of law, and any remaining balance, in excess of Employer contributions, shall be returned to the Commonwealth.
- 10.06 Exclusive Benefit Rule - In the event of the discontinuance and termination of this Plan as provided herein, the Employer shall dispose of its account in the Trust Fund in accordance with the terms of the Plan and applicable law; at no time prior to the satisfaction of all liabilities under the Plan shall any part of the corpus or income of the Plan's account within the Trust Fund, after deducting any administrative or other expenses properly chargeable to the Plan account, be used for or diverted to purposes other than for the exclusive benefit of the Participants in the Plan, their Beneficiaries or their estates.

## ARTICLE XI

### FUNDING STANDARD REQUIREMENTS

- 11.01 Actuarial Valuations - The Plan's Chief Administrative Officer shall perform an actuarial valuation at least biennially unless the Employer is applying or has applied for supplemental state assistance pursuant to Section 603 of the Act, whereupon actuarial valuation reports shall be made annually.

Such biennial actuarial valuation report shall be made as of the beginning of each Plan Year occurring in an odd-numbered calendar year, beginning with the year 1985.

Such actuarial valuation shall be prepared and certified by an approved Actuary, as such term is defined in the Act.

The expenses attributable to the preparation of any actuarial valuation report or investigation required by the Act or any other expense which is permissible under the terms of the Act and which are directly associated with administering the Plan shall be an allowable administrative expense payable from the assets of the Plan. Such allowable expenses shall include but not be limited to the following:

- (a) investment costs associated with obtaining authorized investments and investment management fees;
- (b) accounting expenses;
- (c) premiums for insurance coverage on Fund assets;
- (d) reasonable and necessary counsel fees incurred for advice or to defend the Fund; and
- (e) legitimate travel and education expenses for Plan officials; provided, however, that the municipal officials of the Employer, in their fiduciary role, shall monitor the services provided to the Plan to ensure that the expenses are necessary, reasonable and benefit the Plan; and further provided, that the Plan Administrator shall document all such expenses item by item, and where necessary, hour by hour.

- 11.02 Duties of Chief Administrative Officer - Such actuarial reports shall be prepared and filed under the supervision of the Chief Administrative Officer.

The Chief Administrative Officer of the Plan shall determine the financial requirements of the Plan on the basis of the most recent actuarial report and shall determine the Minimum Municipal 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 Municipal Obligation of the Employer to the Board annually and shall certify the accuracy of such calculations and their conformance with the Act.

- 11.03 Benefit Plan Modifications - Prior to the adoption of any benefit plan modification by the Employer, the Chief Administrative Officer of the Plan shall provide to the Board a cost estimate of the proposed benefit plan modification. Such estimate shall be prepared by an

approved Actuary, which estimate shall disclose to the Board the impact of the proposed benefit plan modification on the future financial requirements of the Plan and the future Minimum Municipal Obligation of the Employer with respect to the Plan.

## ARTICLE XII

### MISCELLANEOUS PROVISIONS

- 12.01 Employment Rights - No Employee of the Employer nor anyone else shall have any rights whatsoever against the Employer or the Plan Administrator as a result of this Plan except those expressly granted hereunder. Participation in this Plan shall not give any right to any Employee to be retained in the employ of the Employer, or interfere with the right of the Employer to discharge any Employee and to deal with such Employee without regard to the effect such treatment might have upon participation in this Plan.
- 12.02 Meaning of Certain Words - For purposes of this Plan, the masculine gender shall include the feminine gender and the singular shall include the plural, and vice versa, in all cases wherever the person or context shall plainly so require. Headings of Articles and sections are inserted only for convenience of reference and are not to be considered in the construction of the Plan.
- 12.03 Information to Be Furnished By the Employer - The Employer shall furnish to the Plan Administrator (and where applicable, the Trustee) information in the Employer's possession as the Plan Administrator and the Trustee shall require from time to time to perform their duties under the Plan.
- 12.04 Severability of Provisions - Should any provisions of this Plan be held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining provisions of this Plan; and this Plan shall be construed and enforced as if said illegal and invalid provisions had never been included herein.
- 12.05 Incapacity of Participant - If any Participant shall be physically or mentally incapable of receiving or acknowledging receipt of any payment of pension benefits hereunder, the Plan Administrator, upon the receipt of satisfactory evidence that such Participant is so incapacitated and that another person or institution is maintaining the Participant and that no guardian or committee has been appointed for the Participant, may provide for such payment of pension benefits hereunder to such person or institution so maintaining the Participant, and any such payments so made shall be deemed for every purpose to have been made to such Participant.
- 12.06 Trust Fund for Sole Benefit of Participants - The income and principal of the Plan assets are for the sole use and benefit of the Participants covered hereunder, and to the extent permitted by law, shall be free, clear and discharged from and are not to be in any way liable for debts, contracts or agreements, now contracted or which may hereafter be contracted, and from all claims and liabilities now or hereafter incurred by any Participant or Beneficiary.
- 12.07 Benefits for a Deceased Participant - If any benefit shall be payable under the Plan to or on behalf of a Participant who has died, if the Plan provides that the payment of such benefits shall be made to the Participant's estate, and if no administration of such Participant's estate is pending in the court of proper jurisdiction, then the Plan Administrator, at its sole option, may pay such benefits to the surviving spouse of such deceased Participant, or, if there is no surviving spouse, to such Participant's then living issue, per stirpes; provided, however, that nothing contained herein shall prevent the Plan Administrator from insisting upon the



commencement of estate administration proceedings and the delivery of any such benefits to a duly appointed executor or administrator.

- 12.08 Assets of the Plan - Nothing contained herein shall be deemed to give any Participant or Beneficiary any interest in any specific property of the Plan or any right except to receive such distributions as are expressly provided for under this Plan.
- 12.09 Personal Liability - Subject to the provisions of the Act and unless otherwise specifically required by other applicable laws, no past, present or future officer or agent of the Employer or Plan Administrator shall be personally liable to any Participant, Beneficiary or other person under any provision of this Plan.
- 12.10 Construction of Document - This Plan may be executed and/or conformed in any number of counterparts, each of which shall be deemed an original and shall be construed and enforced according to the laws of the Commonwealth, excepting such Commonwealth's choice of law rules.