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**PART 1**

**ELECTED AND APPOINTED OFFICIALS**

**A. ELECTED OFFICIALS**

**§ 101. Compensation of Supervisors.**

Any supervisor elected to the Board after March 16, 1994, shall be paid at a rate of \$50.00 per attendance for Township Meetings, not to exceed \$2,500.00 annually, per the Second Class Township Code.

(Ordinance No. 99-03, 3/16/99)

**B. TOWNSHIP MANAGER**

**§ 111. Office of Township Manager Created.**

The office of Township Manager is hereby created by the Township of Robeson.

**§ 112. Appointment, Tenure and Removal of Manager.**

The Township Manager, hereinafter referred to as “Manager”, shall be appointed annually for a one (1) year term, commensurate with this Ordinance, by a majority of all the members of the Board of Supervisors, hereinafter referred to as the “Board”. The Manager shall serve at the pleasure of the Board and may be removed, for cause, at any time by a majority vote of the Board.

**§ 113. Qualification of Manager.**

The Manager shall be chosen solely on the basis of his/her executive and administrative abilities. He/She shall qualify for the position by having obtained not less than five (5) years’ experience in the field of government and/or business administration.

**§ 114. Residence Requirements.**

The Manager need not be a resident of the Township at the time of the appointment or during his tenure in office.

**§ 115. Manager’s Salary.**

The salary of the Manager shall be fixed from time to time by appropriate Resolution of the Board.

**§ 116. Manager’s Bond.**

Before entering upon his/her duties, the Manager shall give a bond to the Township, with corporate surety, to be approved by the Board, in an amount of not less than \$300,000.00 and said bond shall be conditioned upon the faithful performance of his/her duties. The premium of said bond shall be paid by the Township.



## § 117. Powers and Duties of Manager.

The Manager shall be the chief administrative officer of the Township and shall be responsible to the Board as a whole for the proper and efficient administration of the affairs of the Township. His/Her powers and duties shall be nonlegislative, and shall relate to the general management of all Township affairs not expressly by statute or ordinance conferred upon other Township officers or employees. Subject to recall by ordinance of the Board, the powers and duties of the Township Manager shall include the following:

- A. He/She shall supervise and be responsible for the activities of all Township departments. He/She shall work with the senior, or ranking police officer in the administrative work of the Police Department, but shall not exercise operational control or supervision.
- B. He/She shall hire Township employees on a probationary basis, and, when deemed necessary for the good of the Township, shall suspend or discharge, all employees under his/her direct supervision, except that the hiring of employees and the compensation to be paid to employees shall be subject to approval by majority vote of the Board. The Manager shall report at the next meeting of the Board any action taken by authority of this subsection.
- C. He/She shall prepare and submit to the board before the close of its fiscal year, or on such alternate dates as the Board may determine, a budget for the next fiscal year and an explanatory message. In preparation of the budget the Manager, or an employee designated by him/her, shall obtain from the head of each department, including the Police Department, estimates of revenue and expenditures and other supporting data as he/she requests. The Manager shall review such estimates and may revise them before submitting the budget to the Board.
- D. He/She shall hold such other Township offices or employment or head one or more of the departments as the Board may from time to time specifically direct, including but not limited to Township Secretary, Township Treasurer, Superintendent of Roads, Zoning Officer, Building Official and/or Purchasing Agent.
- E. He/She shall be notified of and shall attend, as directed by Board, all meetings of the Board, of its committees, and of the Zoning Hearing Board, Planning Commission and Robeson Township Municipal Authority.
- F. He/She shall prepare the agenda and supply facts and pertinent data for each meeting of the Board or such of its committees or other aforementioned bodies as may be directed by the Board.
- G. He/She shall keep the Board informed as to the conduct of the Township affairs, submit periodic reports on the condition of Township finances and such other reports as may be requested by the Board, and such reports or recommendations that he/she deems necessary.
- H. Except where the responsibility is expressly imposed by statute or ordinance upon, or is specifically directed by the Board to be performed by, another officer or person, the

Manager shall enforce the laws of the Commonwealth, and the ordinances and resolutions of the Township.

- I. All complaints regarding services or personnel of the Township shall be referred to the office of the Manager. He/She, or an employee designated by him/her, shall report thereon to the Board.

**§ 118. Relationship Between Board of Supervisors and Manager.**

Except for the approval by the Board of employees hired by the Manager and the amount of compensation to be paid to such employees, neither the Board nor any of its members shall dictate or attempt to dictate the hiring of any particular person, or the suspension or discharge of an employee, by the Manager.

**§ 119. Illness or Absence of Manager.**

If the Manager becomes ill or needs to be absent from the Township, the duties of the Manager shall be performed during his/her absence or disability by such person as may be recommended by the Manager and approved by the Board.

(Ord No. 87-04, 6/26/87; amended by Ord. No. 92-03, 5/19/92 ).

**C. Tax Collector**

**§120 Compensation of Tax Collector**

The Compensation of the duly elected Tax Collector for the Township of Robeson shall be two and one-half percent (2.5%) for real estate tax and five percent (5%) for local services tax. No compensation shall be paid on any unpaid Township real estate or local service taxes returned by the Tax Collector to the Berks County Tax Claim Bureau.

## PART 2

### BOARDS AND COMMISSIONS

#### A. ENVIRONMENTAL ADVISORY COUNCIL

##### § 201. Creation.

An advisory council to be known as the Robeson Township Environmental Advisory Council (“Council”), is hereby created and shall continue to function until this ordinance is repealed.

##### § 202. Composition.

The Council shall be composed of five (5) residents of the Township.

##### § 203. Appointment.

Council members shall be appointed in accordance with the following procedures:

- A. All Council members shall be appointed by the Board.
- B. Council members’ terms of office shall expire on the first Monday in (January) following the last year of their term of office.
- C. Duly appointed Council members shall serve a term of three (3) years, except that initial appointments shall be so staggered that the terms of approximately one-third of the Council members shall expire each year.
- D. Whenever possible, one (1) Council member shall also be a member of the Township Planning Commission.
- E. All members are to comply with the Pennsylvania Ethics Law, Act 170 of 1978, as amended, and the conflicts of interest policies under the bylaws of the Berks County EAC.

##### § 204. Compensation.

Council members shall receive no compensation for their services, but may be reimbursed for the expenses actually and necessarily incurred by them in the performance of their duties, with the approval of the Board.

##### § 205. Advisory.

The Council shall be advisory to, and shall coordinate its activities with, the Board, the Township Planning Commission, the Township Park and Recreation Board, and other local governmental boards and agencies.

**§ 206. Officers.**

The members of the Council shall designate the chairman, vice chairman and secretary of the Council.

**§ 207. Powers.**

The Council shall have the following powers:

- A. Identify environmental issues affecting the Township, the areas surrounding the Township, and the Township's residents.
- B. Recommend plans and programs to the appropriate agencies for promotion and conservation of natural resources and for the protection and improvement of the quality of the environment within the Township and the areas surrounding the Township.
- C. Make recommendations as to the possible use of open land areas within the Township.
- D. Promote a community environmental program.
- E. Keep an index of all open areas, publicly or privately owned, including, but not limited to, flood prone areas, swamps and unique natural areas.
- F. Advise the appropriate local governmental agencies in the acquisition of real property within the Township.
- G. To undertake such environmental tasks as requested by the Board, and/or to propose environmental issues that the Council considers to be significant to be undertaken within the community.
- H. The Council shall operate in accordance with the Bylaws of the Council as approved and amended from time to time by the Board.

**§ 208. Records.**

The Council shall keep records of its meetings and activities and shall make an annual report to the Board which shall be made publicly available. Minutes of each meeting of the Council shall be forwarded to the board.

**§ 209. Funds.**

The Board may, from time to time, appropriate funds for expenses to be incurred by the Council.

(Ordinance No. 05-04, 5/12/05)

## APPENDIX

### ROBESON TOWNSHIP ENVIRONMENTAL ADVISORY COUNCIL BYLAWS

#### Article I. Name and Location

The name of this organization shall be the Robeson Township Environmental Advisory Council (“EAC”), and its principal place of business shall be 2689 Main Street, Robeson Township, Berks County, Pennsylvania 19508.

#### Article II. Authorization

The authorization for the establishment of this EAC is set forth by the Robeson Township Ordinance No. 05-04, enacted on May 12, 2005.

#### Article III. Purpose

The EAC duly organized under these bylaws shall have the power to study environmental issues at the request of the Board of Supervisors of Robeson Township (“Board”) and to make recommendations to the Board on those issues. The EAC will work with the Board in an advisory capacity in an effort to help them analyze environmental issues and issue recommendations on courses of action necessary to protect the health, safety and welfare of the residents of Robeson Township (“Township”).

#### Article IV. Membership

- 1) The EAC is composed of five (5) voting members, chosen to serve three (3) year staggered terms and appointed by a majority vote of the Board. These members shall reflect the geographic, demographic, technical, and non-technical backgrounds of the citizens of the Township. Members shall be selected from the Township at large.
- 2) The Board will select among themselves one (1) Supervisor to attend meetings and to serve as a member of the EAC in a nonvoting capacity. The Supervisor cannot be an officer of the EAC, and his or her presence shall not count towards determining a quorum. The Supervisor shall receive all notices and communications provided to voting members of the EAC.
- 3) Any vacancy on the EAC, except Chair, shall be filled at the earliest convenience of the Board. A vacancy of the Chair shall be filled automatically by the Vice-Chair at the time of the vacancy.
- 4) EAC members having three (3) or more unexcused absences in a calendar year may be replaced by the Board. Notification of potential dismissal from the EAC shall be mailed by the Chair to the affected board member following a second absence within a calendar year.
- 5) Throughout their term on the EAC, all EAC members must notify the EAC and the Board of any potential conflicts of interest that could result in personal or professional gain either directly or indirectly to them, their families, or associates, by their involvement with the Council.

## **Article V. Meetings and Voting**

- 1) Monthly meetings. Regular meetings of the EAC shall be held at the Robeson Township Building at 2689 Main Street at such times as will be determined by the membership of the EAC. Notice of meetings of the EAC shall be posted at the Robeson Township Building and advertised in a newspaper of general circulation at least seven (7) days prior to each meeting.
- 2) Special Meetings. Special meetings may be requested by the Chair, or by a majority of the EAC members. Such special meetings shall be held at the Robeson Township Building at such date and hour as may be designated by the person or persons authorized herein to call such a meeting. Notice of special meetings of the EAC shall be posted at the Robeson Township Building and advertised in a newspaper of general circulation at least twenty-four (24) hours prior to each meeting.
- 3) Written or phone notice of such a special meeting shall be given by the Chair to the EAC members at least twenty-four (24) hours prior to the special meeting.
- 4) Quorum. In the event a quorum is not present at any meeting, the members may reschedule the meeting for a later date with the required notice. A quorum shall consist of three (3) of the current voting members. The act of the majority of the members present at a meeting at which a quorum is present shall be the act of the EAC.
- 5) Voting. Each voting member is entitled to one (1) vote, with the voting governed by parliamentary procedure according to Robert's Rules of Order.
- 6) Notes: notes from meetings will be kept and copies of the meeting's notes will be sent to the board and each member of the EAC.
- 7) Any Code of Conduct of the Township approved by the board shall apply to the EAC and all of its meetings.
- 8) All meetings or portions of meetings shall be open to the public and subject to the Sunshine Act. The EAC may meet in closed session for any of the limited exceptions provided in Section 707 of the Sunshine Act, as amended.

## **Article VI. Officers and Compensation**

- 1) Officers. The EAC shall elect from among their members a Chair and a Vice-Chair at the first meeting of each calendar year. Officers shall serve for one (1) year or until their successors are elected.
- 2) Chair. The Chair shall preside at all meetings of the Council and shall have the duties and powers normally invested in the Office of Chair. He/she shall enforce the bylaws and regulations of the EAC. He/she shall be the official spokesperson for the EAC.
- 3) Vice-Chair. The Vice-Chair shall carry out the Chair's duties in case of absence, incapacity, or resignation.

- 4) Secretary. The Secretary will be responsible for keeping the official minutes of the EAC and preparing all correspondence on behalf of the EAC.
- 5) Compensation. No board member shall receive any salary or payment for his/her services. Financial support of the EAC shall be provided by the Township with the approval of the Board.

#### **Article VII. Duties of Environmental Advisory Council Members**

- 1) Management of business. Each EAC member shall assist in the study and review of an issue approved by the Board. Given the EAC's mission of providing an objective set of recommendations to the Board on each given issue, each member shall assist in preparing an analysis of the strengths and weaknesses of potential courses of action.
  - a. Special Task Forces may be formed by a majority vote of a quorum of EAC members at any regular or special meeting of the EAC. The EAC may appoint members of the general public to the special task force as it deems necessary and appropriate.
  - b. The EAC shall prepare an annual report to the board on its activities, accomplishments, goals and objectives.
  - c. For each issue that the EAC reviews, it will generate a report to each member of Board that sets forth its findings and dissenting opinions, if any.
  - d. The Environmental Advisory Council shall set an agenda with the help of the Board and Township staff and consultants.
  - e. The study of issues: The EAC will hear issues from the community regarding the environment and will determine which issue(s) need to be explored, or can be explored effectively. Upon deciding which issue(s) the EAC has preliminarily decided to study, the EAC will promptly issue a one (1) page letter to the Board stating the issue(s) that it has selected, the resources needed, the length of the study, why it feels the issue is pertinent and requesting that the Board approve the study. Upon receiving this letter, the Board will notify the EAC which issues it would like the EAC to explore.

After receiving a request for a study from the Board, the EAC will examine the issue and provide the Board with a written report setting forth its recommendations and dissenting opinions (if any).

#### **Article VIII. Order of Business for Meetings**

- 1) Call to order
- 2) Citizens' comments on Agenda
- 3) Chair's comments
- 4) Board comments
- 5) Approval of minutes

- 6) Amendments to agenda
- 7) Discussion items
- 8) Updates
- 9) Action log update
  - a. Review of DEP permit modifications and NOV's
  - b. Review of any other Environmental Agency matter
- 10) Summary of communication issues and planning
- 11) Agenda for next meeting
- 12) Citizens' comments
- 13) Adjourn

#### **Article IX. Amendments**

The EAC shall have the power to recommend amendments to the bylaws, subject to the approval of the Board. Recommendations for amendments to the bylaws may be voted on at any regular or special meeting of the EAC and requires three (3) votes of the Council. No amendment shall be recommended unless a copy of such proposed amendment has been included in or enclosed with the notice of such meeting.

The EAC shall not have the power to recommend any amendment to the bylaws which would alter the status of the Environmental Advisory Council.

#### **Article X. Hearings**

- 1) In addition to those required by law, the EAC may hold public hearings when the EAC and the Board decide that such hearings would be in the public interest.
- 2) Notice of the time and place of such hearings shall be published in at least one (1) newspaper of general circulation in the territorial jurisdiction of the hearing, not earlier than two (2) weeks prior to the hearing and not less than one (1) week prior to the hearing.
- 3) The matter before the EAC shall be presented in summary by some person designated by the Chair, and parties in interest shall have privilege of the floor.
- 4) No record or statement shall be recorded or sworn to by the EAC as evidence for any Court of Law without notice to the parties mentioned in the record or statement.
- 5) A record shall be kept of those speaking before the EAC at such hearings.



## **B. PARK AND RECREATION BOARD**

### **§ 211. Title.**

This Ordinance shall be known and may be cited as the “Township of Robeson, Berks County, Pennsylvania, Park and Recreation Board Ordinance”.

### **§ 212. Powers and Duties of the Park and Recreation Board.**

- A. The power and authority equip, supervise and maintain parks, recreation areas and facilities and to conduct recreation programs shall be placed in a Park and Recreation Board and such Board shall possess all of the powers and be subject to all of the responsibilities under Article XIX of the Act of Assembly of May 1, 1933, P.L. 103, as amended, and as hereinafter amended, including but not limited to the right to select, employ and discharge all recreation personnel used to carry out the provisions of Article XIX of the foregoing Act of Assembly.
- B. Subject to the approval of the Board of Supervisors of the Township of Robeson, Berks County, Pennsylvania, the Park and Recreation Board, herein created, shall exercise its powers and duties in establishing standards, qualifications and salary classifications of recreation personnel; provided, however, that whenever boroughs, cities, counties, townships, school districts, or any of them shall develop a cooperative plan of recreation service within the Township of Robeson, Berks County, Pennsylvania the Park and Recreation Board, herein created, shall have the further power to adjust its established personnel standards, qualifications and salary schedule to be approved by the Board of Supervisors of the Township of Robeson, Berks County, Pennsylvania, to meet the terms of a joint operation agreed upon.
- C. The Park and Recreation Board of the Township of Robeson, Berks County, Pennsylvania, shall have the power to adopt rules and regulations for the conduct of all business within its jurisdiction.
- D. The jurisdiction of the Park and Recreation Board of the Township of Robeson, Berks County, Pennsylvania, shall include the right to select, employ and discharge all recreation personnel used to carry out the provisions of Article XIX, P.L. 103, as amended, and as hereinafter amended.
- E. It shall be the duty of the Park and Recreation Board of the Township of Robeson, Berks County, Pennsylvania, to submit an annual report to the Board of Supervisors of the Township of Robeson, Berks County, Pennsylvania, on or before the first day of October of each year, including an analysis of the Township recreation areas, facilities and leadership with particular reference to the extent and adequacy of the program and its effectiveness in view of the public expenditure involved and the public needs to be met, together with a proposed budget of moneys to be appropriated and expended during the following fiscal year for park and recreation purposes within the Township of Robeson, Berks County, Pennsylvania.

**§ 213. Composition and Organization of the Park and Recreation Board.**

- A. The Park and Recreation Board, herein created, shall consist of five (5) persons. All members of the Park and Recreation Board herein created shall consist of adult residents of the Township of Robeson, Berks County, Pennsylvania, and serve for a term of five (5) years or until their successors are appointed, except that the members of such Board first appointed shall be appointed for such terms that the terms of not more than one (1) member shall expire annually thereafter.
- B. The members of the Park and Recreation Board of the Township of Robeson, Berks County, Pennsylvania, shall serve without pay.
- C. All persons appointed to the Park and Recreation Board of the Township of Robeson, Berks County, Pennsylvania, shall serve their full terms unless voluntarily resigned or removed by the Board of Supervisors of the Township of Robeson, Berks County, Pennsylvania for the dereliction or neglect of duty.
- D. Vacancies in the Park and Recreation Board of the Township of Robeson, Berks County, Pennsylvania, occurring otherwise than by expiration of term shall be for the unexpired term and shall be filled in the same manner as original appointments.
- E. The members of the Park and Recreation Board of the Township of Robeson, Berks County, Pennsylvania, shall elect their own chairperson and secretary and appoint all other officers to serve for a period of one (1) year.

**§ 214. Joint Ownership and Maintenance of Certain Parks and Public Recreation Areas and Facilities.**

The Township of Robeson, Berks County, Pennsylvania, may jointly with any one (1) or more townships, boroughs and cities, acquire property for and to operate and maintain any parks and public recreation areas and facilities. Any school district may join with the Township of Robeson, Berks County, Pennsylvania, in equipping, operating and maintaining parks, public recreation areas and facilities and the Board of Supervisors of the township of Robeson, Berks County, Pennsylvania, may appropriate money therefor.

**§ 215. Bond Issue.**

The Board of Supervisors of the Township of Robeson, Berks County, Pennsylvania, may issue bonds for the purpose of acquiring lands for buildings or parks, public recreation areas and facilities and for the equipment thereof.

**§ 216. Maintenance and Tax Levy.**

All expenses incurred in the operation of such parks, recreation areas and facilities established as provided in Article XIX of the Act of Assembly of May 1, 1933, P.L. 103, as amended, and as hereinafter amended, shall be payable from the general Township fund of the Township of Robeson, Berks County, Pennsylvania, or from the treasury of such township, borough, city, county or school district as may be provided for by the agreement of the corporate authorities. The Board of Supervisors of the Township of Robeson, Berks County, Pennsylvania, may annually appropriate an amount necessary for carrying out the provisions of Article XIX of the foregoing Act of Assembly and may

cause to be raised by special taxation such tax, for the purpose of maintaining, equipping and operating the parks, recreation areas and facilities of the programs thereof.

(Ordinance No. 90-01, 3/29/90)

## **C. PLANNING COMMISSION**

### **§ 221. Creation.**

A Township Planning Commission consisting of five (5) duly qualified adult residents of the Township of Robeson is hereby created and established in accordance with the authority vested in the Board of Supervisors by the Act of July 13, 1953, P.L. 404, Section 1.

### **§ 222. Composition.**

The members of the commission shall be appointed by the supervisors of Robeson Township for the terms of five (5) years, except that the terms of the members first appointed shall be so fixed that one (1) member shall be appointed for one (1) year, one for two (2) years, one for three (3) years, one for four (4) years, and one for five (5) years; and annual thereafter, a member of said commission shall be appointed for a term of five (5) years.

### **§ 223. Powers.**

The Commission shall exercise such powers and authority as are conferred by law upon Township Planning Commissions.

### **§ 224. Repealed.**

Repealed by Municipalities Planning Code of Pennsylvania, 53 P.S. §10101, et. seq. and Township of Robeson Zoning Ordinance.

(Ordinance No. 14, 6/2/60).

## PART 3

### FIRE DEPARTMENTS

#### § 301. Fire Companies Recognized.

The Gibraltar Fire Company No. 1 and Friendship Fire Company of Geigertown, organized and existing in the Township of Robeson, County of Berks, Commonwealth of Pennsylvania, are hereby designated as the officially recognized fire companies for the Township.

#### § 302. Authorized Activities of the Fire Companies.

- A. The fire companies recognized by the Township are hereby authorized to provide such services to the township as may be necessary for the protection of property and persons situate therein, which include, by way of example and not limitation, the extinguishment and prevention of loss of life and property from fire, automobile accidents, medical emergencies, hazardous materials incidents, and other dangerous situations.
- B. The companies may also provide non-emergency and public service functions, such as, again by way of example and not of limitation, removing water from property after storms, and assisting in the removal, abatement and prevention of damage or injury to persons or property, whether through natural causes or man-made situations.
- C. The companies may also conduct and participate in such training activities and drills, either within or outside of the Township as may be deemed necessary by the officers of the companies to maintain proficiency in providing service.
- D. The companies may also respond to calls and provide services to municipalities outside of the Township.

#### § 303. Authorized Activities of Members of the Fire Companies.

- A. In addition to actually participating in the activities of the fire companies as authorized above, or in going to or returning from any activity, the members of the fire companies recognized by the Township are also authorized to do the following things:
  - 1. Engage in any type of drill, training, ceremony, practice, test or parade when duly called for or authorized by an officer or officers of the fire companies;
  - 2. Engage in fund-raising activities for the fire companies, when authorized by an officer or officers of the fire companies;
  - 3. Engage in the performance of any other duty or activity authorized by any officer of the recognized fire companies.
  - 4. Engage in non-firefighting activities and provide non-emergency fire police assistance in Robeson Township and other Pennsylvania municipalities as authorized

**§ 304. Chairman’s Authorization Execute Documents**

The Chairman of the Board of Supervisors is authorized to approve and execute documentation authorizing participation by members of the Fire Companies in ancillary, non-firefighting, activities.

**§ 305. Monthly Report.**

The Fire Companies shall submit a monthly report to the Board of Supervisors of their participation in ancillary / non-firefighting activities to the Township.

**§ 307. Revocation of Authority Non-Firefighting Activities.**

At the annual reorganizational meeting or at any time it is determined by the Board of Supervisors to be in the best interest of the Township, the Board of Supervisors may by Resolution suspend or revoke the authority granted to the Fire Companies to participate without specific authorization from the Board of Supervisors in non-firefighting or ancillary activities.

**§ 307. Purpose.**

The purpose of this Ordinance is to recognize the Fire Companies as the official fire companies of the Township, and to state additional authorized activities for firefighters for workers’ compensation purposes.

(Ordinance No. 93-06, 10/19/93).

## PART 4

### POLICE PENSION PLAN

#### A. DEFINITIONS

##### § 401. References

- A. Act 205 means the Municipal Pension Plan Funding Standard and Recovery Act, act of December 18, 1984, P.L. 1005 no. 205, as amended, 53 P.S. 895.101, at seq. as enacted by the Commonwealth of Pennsylvania.
- B. Act 600 means the Police Pension Fund Act, act of May 29, 1956, P.L. 1804 no. 600, as amended, 53 P.S. 761 at seq. as enacted by the Commonwealth of Pennsylvania. Cites herein to this Act shall use the Purdon Statute instead of the section number.
- C. ERISA means the Employee Retirement Income Security Act of 1974, as amended.
- D. IRC means the Internal Revenue Code of 1986, as it may be amended from time to time.

##### § 402. Actuarial Equivalent

- A. The present value of any benefit under the terms of this plan will be the actuarial equivalent of the accrued benefit in the normal form of benefit commencing at normal retirement date.
- B. In compliance with Act 600, this Plan does not provide optional forms of benefit payment; therefore, no actuarial equivalence for determining optional forms need be determined.
- C. Limitations on Benefits - For the purpose of implementing the limitations on benefits of IRC section 415, actuarial equivalence shall be determined based on the following mortality and interest assumptions:

Mortality table: UP-1984 (-2)

Interest rate: 5.00% per annum compounded annually  
(except as limited under Section 431E(13))

For the purpose of implementing the limitations on benefits of IRC section 415 for limitation years beginning on or after January 1, 1995, the IRC section 417 mortality table is the mortality table prescribed by the Secretary of the United States Treasury under Revenue Ruling 95-6 or subsequent guidance. Such table shall be based on the prevailing commissioners' standard table used to determine reserves for group annuity contracts issued on the date as of which the present value is being determined.

Notwithstanding the preceding, effective for the purpose of implementing the limitations on benefits of IRS section 415 for limitation years beginning on or after December 31, 2002, the reference in this Section 402C to the mortality table prescribed in Revenue Ruling 95-6 shall be construed as a

reference to the mortality table prescribed in Revenue Ruling 2001-62 for all purposes under the plan.

### § 403. Compensation/Average Monthly Compensation

A.(1) Compensation means any earnings reportable as W-2 wages for federal income tax withholding purposes, plus elective contributions, for the applicable period. Elective contributions are amounts excludable from the employee's gross income and contributed by the employer, at that employee's election to:

- A cafeteria plan (excludable under IRC section 125 and as provided in Section 431E(3));
- A tax sheltered annuity (excludable under IRC section 403(b)); or
- A deferred compensation plan (excludable under IRC section 457).

Any reference in this plan to compensation shall be a reference to the definition in this Section 403, unless the plan reference specifies a modification to this definition. The plan administrator shall take into account only compensation actually paid by the employer for the relevant period. A compensation payment includes compensation by the employer through another person under the common paymaster provisions in IRC sections 3121 and 3306. Compensation from a related employer that is not a participating employer under this plan shall be excluded.

(2) Exclusions From Compensation - Notwithstanding the provisions of Section 403A(1), the following types of remuneration shall be excluded from the participant's compensation:

- Unused vacation, personal day, and sick pay paid on account of termination of employment
- Any lump sum payment made upon termination of employment

B. Limitations on Compensation - For any plan year beginning after December 31, 2001, the plan administrator shall take into account only the first \$200,000 (or beginning January 1, 2003, such larger amount as the Commissioner of Internal Revenue may prescribe) of any participant's compensation for determining all benefits provided under the plan. For any plan year beginning after December 31, 1995 but before January 1, 2002, the plan administrator shall take into account only the first \$150,000 (or, for plan years beginning after December 31, 1996 but before January 1, 2002, such larger amount as the Commissioner of Internal Revenue may prescribe) of any participant's compensation for determining all benefits provided under the plan for a determination period. The compensation dollar limitation for a plan year shall be the limitation amount in effect on January 1 of the calendar year in which the plan year begins. If the plan should determine compensation on a period of time that contains less than 12 calendar months (such as for a short plan year), the annual compensation dollar limitation shall be an amount equal to the compensation dollar limitation for the plan year multiplied by the ratio obtained by dividing the number of full months in the period by 12.

Notwithstanding the preceding, in the case of an eligible participant, the annual compensation dollar limitation shall not apply to the extent that the application of the limitation would reduce the amount of compensation that is allowed to be taken into account under the plan below the amount that was allowed to be taken into account under this plan as in effect on July 1, 1993. For this purpose, an eligible participant is an individual who first became a participant in the plan during a plan year prior to the first day of the first plan year beginning after December 31, 1995.

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

If compensation for any plan year beginning prior to January 1, 1996 is taken into account in determining average annual compensation for any plan year beginning after December 31, 1993, such compensation shall be subject to the \$150,000 compensation dollar limitation, but only to the extent described in Section 403B.

#### **§ 404. Dates/Years**

- A. Accounting Date means the last day of the plan year.
- B. The Effective Date of the plan is June 12, 1977.

The effective date of this amendment and restatement is January 1, 2001 as amended; provided, however that the plan provisions required to comply with the Tax Reform Act of 1986 (TRA '86), the Omnibus Budget Reconciliation Act of 1986 (OBRA '86), the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), and the Technical and Miscellaneous Revenue Act of 1988 (TAMRA) shall generally be effective on the first day of the plan year beginning after December 31, 1988, except as specified otherwise in this plan or in TRA '86, OBRA '86, OBRA '87 or TAMRA for a government sponsored plan. The plan provisions required to comply with the 1989 Revenue Reconciliation Act shall generally be effective on the first day of the plan year beginning after December 31, 1989, except as specified otherwise in this plan or in said Act. The plan provisions required to comply with the Unemployment Compensation Amendments of 1992 shall be effective on January 1, 1993, except as specified otherwise for a government sponsored plan. The plan provisions required to comply with the Omnibus Budget Reconciliation Act of 1993 shall generally be effective on the first day of the plan year beginning after December 31, 1993, except as specified otherwise in said Act.

The plan provision required to comply with the Family and Medical Leave Act shall be effective August 5, 1993, the plan provisions required to comply with the Uniformed Services Employment and Re-Employment Rights Act of 1994 shall be effective December 12, 1994, the plan provisions required to comply with the Retirement Protection Act of 1994 shall generally be effective on the first day of the first limitation year beginning after December 31, 1994, the plan provisions required to comply with the Small Business Job Protection Act of 1996 shall generally be effective on the first day of the plan year beginning after December 31, 1996, the plan provisions required to comply



with the Taxpayer Relief Act of 1997 shall generally be effective on the first day of the plan year beginning after August 5, 1997, and the plan provisions required to comply with the Economic Growth and Tax Relief Reconciliation Act of 2001 shall generally be effective on the first day of the plan year beginning after December 31, 2001, except as specified otherwise in this plan or in said Acts for a government sponsored plan.

- C. Plan Entry Date means the participation date(s) specified in B.
- D. Plan Year means the 12-consecutive-month period beginning on January 1 and ending on December 31.
- E. Limitation Year means the plan year.

#### **§ 405. Employee**

- A. Employee means any person employed by the employer. The term employee shall include any employee of the employer maintaining the plan or of any other employer required to be aggregated with such employer under IRC sections 414(b), (c), (m) or (o), as such provisions may be interpreted to apply to a governmental entity by the Internal Revenue Service. The term employee shall also include any leased employee deemed to be an employee of any such employer as provided in IRC sections 414(n) or (o) and as defined in Section 405B.
- B. Leased Employee means an individual (who otherwise is not an employee of the employer) who, pursuant to a leasing agreement between the employer and any other person, has performed services for the employer (or for the employer and any persons related to the employer within the meaning of IRC section 414(n)(6) on a substantially full time basis for at least one year and such services are performed under the primary direction or control of the employer. If a leased employee is treated as an employee by reason of this Section 405B, compensation from the leasing organization that is attributable to services performed for the employer shall be considered as compensation under the plan. Contributions or benefits provided a leased employee by the leasing organization that are attributable to services performed for the employer shall be treated as provided by the employer.

#### **§ 406. Employer**

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

#### **§ 407. Fiduciaries**

- A. Chief Administrative Officer means the person appointed by the employer or the pension board as described in Section 434 who has primary responsibility for the execution of the administrative affairs of the plan.
- B. Plan Administrator means the Chief Administrative Officer.

- C. Investment Manager means a person or corporation other than a trustee appointed for the Investment of plan assets.

#### **§ 408. Participant/Beneficiary**

- A. Participant means an eligible employee of the employer who becomes a member of the plan pursuant to the provisions of B, or a former employee who has an accrued benefit under the plan.
- B. Beneficiary means a person designated by a participant who is or may become entitled to a benefit under the plan. The beneficiary may be someone other than the participant's spouse, but only to the extent that this plan provides for a benefit to be payable to a non-spouse beneficiary. A beneficiary who becomes entitled to a benefit under the plan remains a beneficiary under the plan until the trustee has fully distributed his benefit to him. A beneficiary's right to (and the plan administrator's, or a trustee's duty to provide to the beneficiary) information or data concerning the plan shall not arise until he first becomes entitled to receive a benefit under the plan.

#### **§ 409. Plan**

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

#### **§ 410. Service**

- A. Service means any period of time the employee is in the employ of the employer, including any period the employee is absent due to vacation, holidays, or sickness or on an unpaid leave of absence authorized by the employer. Separation from service means that the employee no longer has an employment relationship with the employer.
- B. Hour of Service means each hour for which an employee is paid or entitled to payment for the performance of duties for the employer.
- C. Break in Service means any period of severance.
- D. Period of Severance means a continuous period of time during which the employee is not employed by the employer and is not credited with an hour of service. Such period begins on the date the employee retires, terminates service, or if earlier, the date on which the employee was otherwise first absent from service.
- E. Credit for Military Service - Any employee employed as a member of the police force who has been a regularly appointed employee for a period of at least six months and who thereafter enters into the military service of the United States shall receive credit for all such military service, if he returns to employment with the employer within six months after his separation from military service.

Further, any employee who entered into the military service of the United States before employment with the employer shall receive credit for each year of military service or fraction thereof for a period not to exceed five years. Such service shall not be credited if

the employee fails to make the required payment. The required payment for such crediting shall be computed by: (a) applying the lesser of 10% or the average normal cost rate for borough and township police pension plans as certified by the Public Employee Retirement Study Commission to the employee's average annual rate of compensation over the first 3 years of service and (b) multiplying the result by the number of years and fractional parts of years of creditable non-intervening military service being purchased together with interest at the rate of 4.75% compounded annually from the date of employment to the date of payment, as provided under Act 600, 53 P.S. 770(b).

No service shall be credited under this Section 410E if the employee is entitled to receive retirement benefits for such service under a retirement system administered and wholly or partially paid for by any other governmental agency with the exception of an employee eligible to receive military retirement pay earned by a combination of active duty and non-active duty with a reserve or national guard component of the armed forces which retirement pay is payable only upon attainment of a specified age and period of service under 10 U.S.C. Ch 67 (relating to retired pay for non-regular service).

Notwithstanding the preceding, effective December 12, 1994, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with IRC section 414(u).

- F. Other Service Credited - If the employer is a member of an affiliated service group under IRC section 414(m) or a controlled group of corporations under IRC section 414(b), or any other entity required to be aggregated with the employer pursuant to IRC section 414(o) as these Internal Revenue Code provisions are applied to a governmental entity, service shall be credited for any employment for any period of time for any other member of such group. Service shall also be credited for any leased employee who is considered an employee for purposes of this plan under IRC section 414(n) or (o).
- G. 1. Year of Service means 12 months of service, excluding any breaks in service. For purposes of determining an employee's initial year of service upon his employment, the initial year of service shall commence on the employee's first day of employment. The first day of employment is the first day the employee performs an hour of service. The first day of re-employment is the first day the employee performs an hour of service following a break in service. An initial year of service shall end on the day immediately preceding the first anniversary of the employee's date of hire or rehire. Any subsequent year of service shall commence on the day following the completion of the immediately preceding year of service.
2. Crediting Years of Service - Service may be credited for the purpose of eligibility to participate, vesting, benefit accrual, or determining the benefit payable under the normal retirement benefit formula. Generally, no service shall be credited for periods during which the employee performs no services for the employer. Further, no more than one year of service will be credited for any 12-consecutive-month period.
3. Predecessor Service - If the employer maintains the plan of a predecessor employer, service with such predecessor employer shall be treated as service for the employer. If the employer does not maintain the plan of a predecessor employer, then service as an employee of a predecessor employer shall not be considered as service under the plan,

The plan may be amended to provide for the crediting of service performed for a disbanded police force under an intermunicipal agreement pursuant to the Intergovernmental Cooperation Law as provided in 53 P.S. 770(e) and (f).

#### **§ 411. Trust**

- A. Trust means the qualified trust created under the employer's plan. The trust shall be known as the Robeson Township Police Pension Fund.
- B. Trustee means that person or persons appointed by the employer to be the trustee of the trust, or any duly appointed successor trustee.

#### **B. Participation**

##### **§ 412. Plan Participation**

- A. Eligibility - An employee who is a member of the eligible class of employees shall be eligible for plan participation provided that he agrees to make the mandatory contributions as set forth in Section 429.
- B. Eligible Class of Employees - Employees of the employer who are employed as police officers on a regularly scheduled, full time basis shall be eligible to be covered under the plan. Any police officer employed as a temporary, special, part-time, or permanent part-time officer of the employer shall not be considered a member of the eligible class of employees.
- C. Entry Date - An eligible employee shall participate in the plan on the first day he performs one hour of service.

##### **§ 413. Termination of Participation**

A participant shall continue to be an active participant of the plan so long as he is a member of the eligible class of employees. He shall become an inactive participant immediately if he ceases to be a member of the eligible class of employees or terminates employment. He shall cease participation completely upon the later of his receipt of a total distribution of his nonforfeitable accrued benefit under the plan or the forfeiture of the non-vested portion of the accrued benefit.

##### **§ 414. Re-Participation**

- A. If a participant becomes an inactive participant, because he is no longer a member of the eligible class of employees; such inactive participant shall become an active participant immediately upon returning to the eligible class of employees. In the event an employee who is not a member of an eligible class of employees becomes a member of an eligible class, such employee shall participate immediately.
- B. If a participant incurs a break in service, he shall become an active participant immediately upon returning to employment.

#### **C. Retirement Benefits**

## § 415. Service Rules

- A. 1. Year of Vesting Service - For purposes of determining the nonforfeitable interest in the participant's accrued benefit, the participant shall receive credit for the aggregate of all time periods commencing with the participant's first day of employment or re-employment and ending on the date a break in service begins, except for periods of service disregarded below. The first day of employment or re-employment is the first day the participant performs an hour of service. Fractional periods of a year will be expressed in terms of days. One year of vesting service shall be credited for each 365-day period.
2. Break In Service Rules
- (a) Vested Participant - A former participant who had a nonforfeitable right to all or a portion of his accrued benefit derived from employer contributions at the time of his termination from service and who did not receive a distribution of his accumulated contributions shall retain credit for all years of vesting service prior to a break in service.
- (b) Nonvested Participant - In the case of a former participant who did not have any non-forfeitable right to his accrued benefit derived from employer contributions at the time of his termination from service or who received a distribution of his accumulated contributions, years of vesting service before a break in service shall not be taken into account in computing service, except as provided in Section 503.
- B. Year of Benefit Service - For the purpose of determining the participant's benefit under the pension benefit formula, the participant shall receive credit for the aggregate of all time periods commencing with the participant's first day of active participation or active re-participation and ending on the date a break in service begins or the participant is no longer a member of an eligible class of employees, except for periods of service disregarded herein. One year of benefit service shall be credited for each 365-day period. Any years of service disregarded under Section 503 Cashout Distributions and Restoration shall be disregarded for this purpose.

## §416. Normal Retirement

- A. Normal Retirement Date - The normal retirement date of each participant shall be the day on which he satisfies both of the following requirements:
1. he attains age 55; and
  2. he completes 25 years of vesting service.

A participant's right to his normal retirement benefit shall be 100% vested and non-forfeitable upon attainment of the normal retirement date, notwithstanding the plan's vesting schedule. If the employer enforces a mandatory retirement age, the normal retirement age shall be the lesser of the mandatory age or the age specified herein.

Retired participants shall be subject to service, from time to time, as a police reserve, in cases of riot, tumult, or preservation of public peace until unfitted for such service, when they may be finally discharged by reason of age or disability.

- B. 1. Normal Retirement Benefit- The normal retirement benefit of each participant shall not be less than the largest periodic benefit that would have been payable to the participant upon separation from service at or prior to his normal retirement date under the plan exclusive of social security supplements, premiums on disability or term insurance, and the value of disability benefits not excess of the normal retirement benefit, but taking into account any decrease in average monthly compensation and any offset as of the participant's Social Security retirement age for the participant's Social Security old-age insurance benefit.
- 2. Normal Form of Payment - The normal form of retirement benefit for each participant shall be a level monthly pension payable during the participant's lifetime, with payments commencing on the first day of the month coincident with or next following his normal retirement date, and ceasing upon the participant's death.
- C. Pension Benefit Formula - Each eligible participant shall receive a monthly benefit payable at his normal retirement date equal to 50% of average monthly compensation.
- D. Service Increment Benefit- Each eligible participant shall receive 1.25% of average monthly compensation per month for each completed year of benefit service in excess of twenty-five (25) years, not to exceed one hundred dollars (\$100.00) per month, in addition to the eligible participant's monthly benefit payable under the terms of the Plan.

Any police officer who retired after October 19, 1982 and before September 26, 2004 shall receive service increment benefit equal to 1/40 of the basic fifty (50%) pension, multiplied by the years of service in excess of twenty-five (25), but not after age sixty-five (65), capped at one hundred dollars (\$100.00) per month.

- E. IRC Section 415 Limitations and Conditions - Notwithstanding the benefits set forth in this Subpart, the annual benefit otherwise payable to a participant at any time shall be limited or modified to the extent required to comply with the provisions of Section 431 (limitations on benefits under IRC section 415 and related employer provisions under IRC section 414).

In any limitation year commencing before January 1, 2000 in which the accrued benefit of one or more participants would be in excess of the limitations on annual benefits under IRC section 415, the annual benefits under any other plan that the employer also sponsors will be reduced to the extent necessary to comply with such limitations first. If any further reduction is required, the annual benefits under this plan will then be reduced with respect to such participants.

If any reduction is required in any limitation year commencing on or after January 1, 2000, the annual benefits under any other defined benefit plan that the employer sponsors will be reduced to the extent necessary to comply with such limitations first. If any further reduction is required, the annual benefits under this plan will then be reduced with respect to such participants.

## **§ 417. Accrued Benefit**

A participant's accrued benefit at any time equals: (a) the product of the normal retirement benefit determined in accordance with Section 416C, multiplied by a fraction, the numerator of which is the number of years of benefit service at such date, and the denominator of which is the number of years of benefit service the participant would have as of the year containing his normal retirement date if he continues to work until such date; plus (b) any service increment benefit.

If a participant begins receiving benefits at a time other than his normal retirement date, the participant's benefit will be determined in accordance with Section 418 if benefits commence after his normal retirement date.

## **§ 418. Late Retirement**

- A. Nonforfeitability - If a participant remains employed after his normal retirement date, his benefits shall remain 100% vested and non-forfeitable. Payment of benefits shall not commence until his actual retirement date.
- B. Suspension of Benefits Until Payment - Payment of normal retirement benefits shall be suspended for each calendar month during which the participant remains employed after his normal retirement date. The amount of benefits that are paid later than his normal retirement date shall be computed under the pension benefit formula, and shall be increased by any service increment benefit. The participant's pension benefit shall be determined on the basis of the participant's years of service for benefit accrual completed before and during the period of suspension; and the participant's compensation with the employer during the period of suspension shall be included in any relevant determination of average monthly compensation.

## **§ 419. Disability Retirement**

If an actively employed participant suffers a service-connected disability and is unable to perform his normal duties prior to his normal retirement date, he may receive a disability benefit under the plan. Such disabled participant shall be entitled to a monthly disability benefit equal to fifty percent (50%) of the participant's salary at the time the disability is incurred. This amount is offset by any disability benefits payable under Social Security for the same injuries.

Disability benefit payments shall cease upon death or upon recovery from disability prior to the date on which the disabled participant would have reached his normal retirement date if he had continued as an active participant under the plan. If disability benefits cease due to death before the participant's attainment of his normal retirement date, the death benefit payable shall be the survivor benefit (if any) described in Section 424B, without any reduction with respect to disability payments that have been made. For the purpose of determining whether there has been a recovery, the plan administrator may require evidence of continued disability. Such evidence may include examination by a doctor selected by the plan administrator. The participant's refusal to submit to medical examinations shall render him ineligible for disability benefits.

If disability continues until attainment of normal retirement date, the disability benefit shall continue until death.

Disability means inability to engage in any substantial gainful activity for which the participant is reasonably fitted through training, education, and experience by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months and that is the result of the performance of police services for the employer. .

The permanence and degree of the impairment shall be supported by medical evidence. The plan administrator shall determine whether the participant is disabled as defined hereunder after consultation with a physician chosen by the plan administrator. The physician shall examine the participant at the participant's place of residence or at a place mutually agreed upon. In the administration of this Section, all employees shall be treated in a uniform manner in similar circumstances.

#### **§ 420. Benefit Distribution**

- A. Commencement of Benefits - Subject to the limitations of this plan, the benefit distribution shall commence as soon as administratively feasible after the later of the participant's termination of employment or his satisfaction of the normal retirement date requirements, provided that he files a written application for the retirement benefit.
- B. Form of Payment - A participant shall receive distribution of his accrued benefit as a monthly pension payable as long as the participant lives.
- C. General Payment Provisions
  - 1. If any person entitled to receive benefits hereunder is physically or mentally incapable of receiving or acknowledging receipt thereof, and if a legal representative has been appointed for him, the plan administrator may direct the benefit payment to be made to such legal representative.
  - 2. At the direction of the plan administrator, the trustee may make pension payments directly from the fund or may take such steps as may be required to purchase an annuity contract from an insurance company for the participant, provided that the annuity contract purchased on behalf of such participant shall be sufficient to provide the benefits to which the participant is entitled. The ownership of the annuity contract shall remain with the trustee, unless the plan administrator determines otherwise. Any annuity contract distributed herefrom shall be non-transferable. The application and directions to the insurance company for such annuity contract shall be made by the plan administrator. The terms of any such annuity contract purchased by the plan shall comply with the requirements of this plan. Any dividend, refund or recovery on an annuity contract shall be used to reduce subsequent employer contributions.
  - 3. The benefits due any participant on account of his most recent period of employment shall not duplicate any benefits due the same participant under this plan on account of previous employment with the employer.



## **§ 421. Suspension of Benefits**

Under this plan, normal retirement benefits in pay status shall be suspended if a participant returns to employment; however, there shall be no suspension if the participant is required to perform services for the employer from time to time as a police reserve in compliance with 53 P.S. 769. If the participant accrues an additional benefit, the plan shall offset the actuarial value of the distributions made to the participant by the last day of the preceding plan year against the benefit accrual for the current plan year.

## **§ 422. Domestic Relations Orders**

Nothing contained in this plan prevents the trustee, in accordance with the direction of the plan administrator, from complying with the provisions of an acceptable domestic relations order that creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to receive all or a portion of the benefits payable with respect to a participant under the plan.

A distribution under an acceptable domestic relations order will not be made to an alternate payee until the participant is entitled to a distribution under this plan and commences such distribution. Nothing in this Section permits the alternate payee to receive a form of payment not otherwise permitted under the plan.

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

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

## **D. Death Benefits**

### **§ 423. Death Benefit With Respect to Employee Contributions**

- A. Benefit Payable - Effective April 17, 2002, if no death benefit is payable under Section 424, an amount equal to the participant's accumulated contributions as determined under Section 429 shall be payable to the participant's named beneficiary designated under Section 423B in one lump sum. If there is no named beneficiary, then the benefit shall be payable to the participant's surviving spouse. If there is neither a named beneficiary nor a surviving spouse, then the benefit shall be payable to any child (or children) of the

participant who is under the age of eighteen (18) or, if attending college, who is under or attaining the age of twenty-three (23). For this purpose, attending college shall mean being registered at an accredited institution of higher learning and carrying a minimum course load of seven (7) credit hours per semester. In the case of multiple eligible children, the benefit payable shall be divided equally among the children. Child shall include adopted child of the participant.

- B. Beneficiary Designation - The participant shall have the right to designate his beneficiaries, including a contingent beneficiary, and shall have the right at any time to change such beneficiaries for the purpose of specifying the recipient of any benefits payable under Section 423A. The designation shall be made in writing on a form supplied by the plan administrator. No designation shall be effective until filed with the plan administrator. If the participant fails to designate a beneficiary and no benefit is otherwise payable under Section 423A, "beneficiary" shall mean the estate of the participant. However, in the event that no letters have been taken out on the estate within six (6) months after death and the death benefit payable is less than one hundred dollars (\$100.00), the death benefit shall be paid to the undertaker or any person or municipality that paid the claim of the undertaker.

#### **§ 424. Service-Connected Death Benefit and Survivor Benefit**

- A. Service-Connected Death Benefit - No service-connected death benefit is payable under the plan.
- B. Survivor Benefit -If no benefit is payable under Section 424A, then a survivor benefit may be payable under this Section 424B. Further, if the plan administrator determines that the conditions for a benefit under both Section 424A and Section 424B have been satisfied, the greater of the two benefits shall be paid. If a retired or disabled participant who is receiving a pension benefit dies or if a participant dies after satisfying the requirements for retirement whether or not he had previously terminated employment, the participant's surviving spouse or eligible child (if any) shall receive a benefit equal to 50% of the retirement benefit that the participant was receiving or would have been receiving if the participant had been retired at the time of his death.
- C. Payment shall be in the form of a pension (without actuarial adjustment with respect to the age of the beneficiary) and shall commence as of the first day of the month following the date of death. Payment to the surviving spouse shall cease upon the death of the surviving spouse.

Effective April 17, 2002, if there is no surviving spouse or if the surviving spouse dies (thereby ceasing to be the surviving spouse of the participant), then the benefit shall be payable to any child (or children) of the participant who is under the age of eighteen (18) or, if attending college who is under or attaining the age of twenty-three (23). For this purpose, attending college shall mean being registered at an accredited institution of higher learning and carrying a minimum course load of seven (7) credit hours per semester. In the case of multiple eligible children, the benefit payable shall be divided equally among the children. Payment shall cease upon the earlier of death or the attainment of age eighteen (18) (or under or attaining the age of twenty-three (23) if attending college). Child shall include adopted child of the participant.

The participant's spouse cannot waive receipt of this benefit. In the case of an unmarried participant who has no children under the age of eighteen (18) (or under or attaining the age of twenty-three (23) if attending college), no death benefit shall be payable under this Section 424, but a death benefit may be payable under Section 423. The death benefit payable shall not be less than the benefit payable under Section 423. In the event that there is no spouse or child eligible to receive the death benefit payable under this Section 424, the death benefit provided under Section 401 shall be paid as described therein. The distribution shall comply with the Distribution Requirements of Section 432D(2).

If there is an acceptable domestic relations order in force with respect to the participant, the alternate payee shall receive a portion of the death benefit otherwise payable with respect to any actual surviving spouse or eligible child to the extent provided in the order, but only if the alternate payee has not died. However, no order shall be accepted if it provides that the alternate payee shall be the surviving spouse creating a right to a death benefit under this Section 402 as the death benefit payable hereunder is only payable with respect to a surviving spouse or an eligible child.

## **E. Termination of Employment Benefits**

### **§ 425. Vesting**

If a participant separates from the service of the employer other than by retirement, disability, or death, he shall forfeit any benefit accrued under Section 416 unless he has been credited with 12 years of vesting service. A participant who has been credited with 12 years of vesting service shall be entitled to a vested deferred pension if he files with the plan administrator a written notice of his intention to vest within 90 days of the date he terminates employment or ceases to be a member of the eligible class of employees. Such vested deferred pension shall be equal to the benefit accrued to the date of termination.

### **§ 426. Payment of Benefits**

- A. Payment as of Normal Retirement Date - If the participant terminates his employment on or before his normal retirement date, payment of the vested accrued pension may begin at his normal retirement date. If payments do not commence until after his normal retirement date, distribution must begin by the required beginning date for minimum required distributions and the amount of the benefit payable shall be determined as provided in Section 418.
- B. Payment Prior to Normal Retirement Date - No accrued benefit is payable before the normal retirement date, except in the event of death or disability. Nevertheless, if the participant is not eligible to receive his benefit accrued under Section 417 at the time of his termination of employment (either due to his years of vesting service or his failure to file a written notice under Section 425), he shall receive an amount equal to his accumulated contributions as soon as administratively possible after severance of employment as provided in Section 429.
- C. Death Before Retirement - If a participant terminates employment and dies before beginning to receive retirement benefits, a pre-retirement death benefit may be payable, to the extent provided under Subpart D..

## **§ 427. Cashout Distributions and Restoration**

- A. Cashout Distribution - If an employee receives a distribution of his accumulated contributions under Section 429, the present value of the employee's vested accrued benefit shall be zero. In determining the participant's accrued benefit after the occurrence of such a distribution, the plan shall disregard all years of benefit service performed by such employee before the date of distribution.
  
- B. Restoration - If a participant receives a distribution pursuant to this Section and if he resumes covered employment under the plan, he shall have the right to restore his accrued benefit under Section 416 upon the repayment to the plan of the full amount of the distribution plus interest, compounded annually from the date of distribution at the rate set forth in Section 429C. In order to make a total or partial repayment, the employee may transfer to the plan the account balance of the individual retirement account or annuity to which the distribution being repaid was transferred, provided that the employee has made no other contribution to the account or annuity and both transfers are accomplished in compliance with IRC section 408(d). Such repayment must be made within five years after the participant returns to active participation.

If a participant is eligible to restore his accrued benefit, but such restoration has not been made; then, for the purpose of determining years of benefit service and years of vesting service, years of service before the employee's break-in-service shall be disregarded.

## **F. Contributions**

### **§ 428. Contributions Other Than Employee Contributions**

- A. Application of Certain Receipts - The amounts of the payments made by the Treasurer of the Commonwealth from the monies received from taxes paid upon premiums by foreign casualty insurance companies and foreign fire insurance companies, that are determined by the employer to be deposited in the fund, shall be applied as follows:
  - 1. To pay expenses incurred for the administration of the fund and the plan.
  - 2. To reduce any unfunded liability. Unfunded liability means the present value of the liability of the fund on account of retirement benefits payable under this plan that accrued prior to the date as of which mandatory employee contributions were first required, offset by the value of any assets in the fund.
  - 3. After the unfunded liability has been funded, to apply against the annual obligation of the employer for future service cost. Future service cost means the amount of money required to be contributed annually into the fund on account of benefits payable under the plan with respect to years of service credited after the establishment of the plan.
  - 4. To the extent that the payments may be in excess of such obligation, to reduce mandatory employee contributions hereunder.

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

- B. Employer Contributions - The Chief Administrative Officer 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 obligation of the employer with respect to funding the plan for any given plan year. The Chief Administrative Officer shall submit the financial requirements of the plan and the minimum obligation of the employer to the employer (or its governing body) annually and shall certify the accuracy of such calculations and their conformance with Act 205. To the extent that the payments received under Section 436A(2) do not exceed the employer's annual obligation for future service cost, as determined by the actuary in accordance with Act 205, the employer shall be obligated to make such contribution to the trust by annual appropriations.

#### **§ 429. Mandatory Employee Contributions**

- A. Mandatory Contribution Amount – As a condition of participation in this plan, each active participant must contribute, on or after-tax basis, a percentage of his compensation as established each year. In general, this mandatory contribution shall be five percent (5.00%) but no more than eight percent (800%), of the participant's compensation.

Effective April 17, 2002, the employer may reduce or eliminate the contribution required provided that any reduction or elimination of contributions is authorized on an annual basis by an ordinance or resolution by the employer.

- B. Employee Contributions - The employer shall remit employee contributions to the trust of the plan as soon as administratively feasible.
- C. Determination of Accumulated Contributions - The participant's accumulated contributions shall be equal to his mandatory employee contributions, with interest credited at the rate of 5.000% per annum. Such interest shall be credited annually in the form of a compound Interest rate. A participant shall be 100% vested in his accumulated contributions.
- D. Withdrawal of Accumulated Contributions - Upon termination of employment, a participant who is not vested in his benefit accrued under Section 416 shall receive an amount that is equal to his total accumulated contributions. The withdrawal shall be payable in one lump sum. Thereafter, the former participant shall have no further right to any benefit under this plan.

In no event may any amount be withdrawn or distributed until the participant's retirement, disability, death or termination of employment, regardless of the income tax accounting treatment required by IRC section 702(e)(8)(o).

- 1. Eligible Rollover Distribution - Effective for distributions made on or after January 1, 1993, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any eligible portion of a lump sum distribution

paid directly to an eligible retirement plan specified by the distributee in a direct rollover payment.

- (a) Effective for distributions made after December 31, 2001, any eligible portion of a lump sum distribution shall include after-tax employee contributions. A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includable in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in IRC section 408(a) or (b) or to a qualified defined contribution plan described in IRC section 401 (a) or 403(a) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includable in gross income and the portion of such distribution which is not so includable.
- (b) An eligible retirement plan is an individual retirement account described in IRC section 408(a), an individual retirement annuity described in IRC section 408(b), an annuity plan described in IRC section 403(a), or a qualified trust described in IRC section 401 (a), that accepts the distributee's lump sum distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an Individual retirement account or individual retirement annuity. Effective for distributions made after December 31, 2001, an eligible retirement plan shall also mean an annuity contract described in IRC section 403(b) and an eligible plan under IRC section 457(b) 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 separately account for amounts transferred into such plan from this plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in IRC section 414(p).
- (c) A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in IRC section 414(p), are distributee's with regard to the interest of the spouse or former spouse.

## 2. Special Rule Relating to Time for Written Explanation

Effective for distributions made on or after January 1, 1993, for any distribution in excess of \$200 that may be paid in the form of a lump sum, the plan administrator shall give the participant written notice of his eligible rollover distribution rights as required under IRC section 402(f) no less than 30 days and no more than 90 days before the annuity starting date with respect to the distribution. Effective for distributions made on or after January 1, 1994, such

distribution may commence less than 30 days after the notice is given, provided that:

- (a) The participant is provided with information that clearly states that the participant has a right to a period of at least 30 days after receiving the written explanation and notice to consider the decision of whether or not to elect a distribution;
- (b) The participant, after receiving the written notice, affirmatively elects a distribution.

E. Forfeiture - The death benefit payable under Subpart D shall not be less than the participant's accumulated contributions.

### **§ 430. Rollover Transfer Contributions**

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

### **G. Additional Qualification Rules**

#### **§ 431. Limitation on Benefits Under IRC Section 415**

##### **A. Single Defined Benefit Plan Limitations**

- 1. This Section 431 applies regardless of whether any participant is or has ever been a participant in another qualified plan maintained by the adopting employer. If any participant is or has ever been a participant in another qualified plan maintained by the employer, or a welfare benefit fund maintained by the employer (as defined in IRC section 419(e)) under which amounts attributable to postretirement medical benefits are allocated to separate accounts of key employees (as defined in IRC section 419A(d)(3)), maintained by the employer, or an individual medical account (as defined in IRC section 415(1)(2)) maintained by the employer, or a simplified employee pension (as defined in IRC section 408(k)) maintained by the employer, that provides an annual addition as defined in Section 431E(1); Section 431C is also applicable to that participant's benefits.
- 2. The annual benefit otherwise payable to a participant at any time shall not exceed the maximum permissible benefit. If the benefit the participant would otherwise accrue in a limitation year would produce an annual benefit in excess of the maximum permissible benefit, the rate of accrual shall be reduced so that the annual benefit will equal the maximum permissible benefit.

##### **B. Defined Contribution Plan limitations**

If a participant has made mandatory employee contributions (as defined in IRC section 411(C)(2)(C)), under the terms of this plan, the amount of such contributions shall be treated as an annual addition to a qualified defined contribution plan.

1. The amount of annual additions that may be credited to the participant's employee nondeductible contribution account for any limitation year will not exceed the lesser of the maximum permissible amount or any other limitation contained in this plan. If a contribution that would otherwise be contributed to the participant's account would cause the annual additions for the limitation year to exceed the maximum permissible amount, the amount contributed will be reduced so that the annual additions for the limitation year will equal the maximum permissible amount.
  - (a) Prior to determining the participant's actual compensation for the limitation year, the employer may determine the maximum permissible amount for a participant on the basis of a reasonable estimation of the participant's compensation for the limitation year, uniformly determined for all participants similarly situated.
  - (b) As soon as is administratively feasible after the end of the limitation year, the maximum permissible amount for the limitation year will be determined on the basis of the participant's actual compensation for the limitation year.
  - (c) If there is an excess amount, the mandatory employee contributions shall be reduced.
2. This Section 431b(2) shall apply if, in addition to this plan, the participant is covered under a plan maintained by the employer that is a qualified defined contribution plan, a welfare benefit fund, a simplified employee pension, or an individual medical account that provides an annual addition as defined in Section 431E(1), during any limitation year. The annual additions that may be credited to a participant's account under this plan for any such limitation year will not exceed the maximum permissible amount reduced by the annual additions credited to a participant's account under the other plans and welfare benefit funds for the same limitation year. If the annual additions with respect to the participant under the defined contribution plans and welfare benefit funds maintained by the employer are less than the maximum permissible amount and the contribution that would otherwise be contributed to the participant's employee nondeductible contribution account under this plan would cause the annual additions for the limitation year to exceed this limitation, the amount contributed will be reduced so that the annual additions under all such plans and funds for the limitation year will equal the maximum permissible amount. If the annual additions with respect to the participant under such defined contribution plans and welfare benefit funds in the aggregate are equal to or greater than the maximum permissible amount, no amount will be contributed to the participant's account under this plan for the limitation year.
3. If, pursuant to Section 431B(1)(b) or as a result of the allocation of forfeitures under the other plans, a participant's annual additions under this plan and such other plans would result in an excess amount for a limitation year, the excess amount will be deemed to consist of the annual additions last allocated, except that annual additions attributable to a welfare benefit fund or individual medical



account will be deemed to have been allocated first regardless of the actual allocation date.

4. If an excess amount was contributed by a participant as of a date that coincides with an allocation date of another plan, any excess amount shall be disposed of in the manner provided under such other plan.

C. Combined Limitations: Other Plans

1. This section applies if any participant is also a participant, or has ever participated in another plan maintained by the employer, including a qualified plan, a simplified employee pension, a welfare benefit fund (as defined in IRC section 419(e)) under which amounts attributable to post-retirement medical benefits are allocated to separate accounts of key employees (as defined in IRC section 419A(d)(3), or an individual medical account that provides an annual addition as described in Section 431E(1).
2. If a participant is, or has ever been, a participant in more than one defined benefit plan maintained by the employer, the sum of the participant's annual benefits from all such plans may not exceed the maximum permissible benefit. If the maximum permissible benefit is exceeded solely due to the accrued benefit under a frozen or terminated defined benefit plan, the benefit accrual under this plan shall be reduced until the maximum permissible benefit is no longer exceeded.
3. For limitation years beginning before January 1, 2000, if the employer maintains, or at any time maintained, one or more qualified defined contribution plans in which any participant in this plan participated, a welfare benefit fund maintained by the employer (as defined in IRC section 419(e)) under which amounts attributable to post-retirement medical benefits are allocated to separate accounts of key employees (as defined in IRC section 419A(d)(3), or an Individual medical account, or a simplified employee pension, the sum of the participant's defined contribution fraction and defined benefit fraction shall not exceed 1.0 in any limitation year and, where the sum exceeds 1.0 for a participant for a limitation year, any excess amount attributed to this plan will be disposed of in the manner described in Section 431B(1)(c).

Benefit Increases resulting from the repeal of IRC section 415(e) shall be provided to all current and former participants (with benefits limited by IRC section 415(e)) who have an accrued benefit under the plan immediately before the first day of the first limitation year beginning in 2000.

4. Where the participant's employer-provided benefits under all defined benefit plans ever maintained by the employer (determined as of the same age) would exceed the maximum permissible benefit applicable at that age, the order in which the employer's sponsored plans will be reduced shall be as provided in Section 416F.

D. Protection of Accrued Benefit

In the case of an individual who was a participant in one or more defined benefit plans of the employer as of the first day of the first limitation year beginning after December 31, 1986, the application of the limitations of this Section 431 shall not cause the maximum permissible benefit amount for such individual under all such defined benefit plans to be less than the individual's Tax Reform Act of 1986 (TRA '86) accrued benefit. The preceding sentence applies only if all such defined benefit plans met the requirements of IRC section 415, for all limitation years beginning before January 1, 1987.

E. Definitions (IRC Section 415 limitations)

1. Annual Additions - The sum of the following amounts credited to a participant's account for the limitation year: (A) employer contributions, (B) employee contributions, (C) forfeitures, (D) allocations under a simplified employee pension, and (E) amounts allocated, after March 31, 1984, to an individual medical account that is part of a pension or annuity plan maintained by the employer that are treated as annual additions to a defined contribution plan. Also amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after such date, that are attributable to post-retirement medical benefits, allocated to the separate account of a key employee, as defined in IRC section 419A(d)(3), under a welfare benefit fund maintained by the employer are treated as annual additions to a defined contribution plan.

Picked-up contributions under IRC section 414(h)(2) shall not be included as an annual addition with respect to a participant.

2. Annual Benefit - A benefit under the plan that is payable annually in the form of a straight life annuity. The annual benefit shall include any picked-up contributions made by the employer under IRC section 414(h)(2). Except as provided below, a benefit payable in a form other than a straight life annuity must be adjusted to an actuarially equivalent straight life annuity before applying the limitations of this Section 431. For limitation years beginning before January 1, 1995, where a participant's benefit must be adjusted to an actuarially equivalent straight life annuity, the actuarially equivalent straight life annuity shall be equal to the greater of the annuity benefit computed using the interest rate specified in Section 402 or 5%.

For limitation years beginning on or after January 1, 1995, where a participant's benefit must be adjusted to an actuarially equivalent straight life annuity, the actuarially equivalent straight life annuity shall be equal to the greater of the annuity benefit computed using the actuarial assumptions specified in Section 402C and the annuity benefit computed using a 5% interest rate assumption and the IRC section 417 mortality table defined in Section 402(c).

For limitation years beginning after December 31, 1994, in the case of a lump sum payment, the actuarially equivalent benefit shall be equal to the greater of the equivalent annual benefit computed using the interest rate and mortality table specified in Section 402(c) and the equivalent annual benefit computed using a

5% interest rate assumption and the IRC section 417 mortality table as defined in Section 402C. This determination of the actuarially equivalent benefit shall also apply in determining the actuarially equivalent straight life annuity for any benefit form other than (A) a non-decreasing annuity payable for a period of not less than the life of the participant (or, in the case of a preretirement survivor annuity, the life of the surviving spouse), or (B) an annuity that decreases during the life of the participant merely because of (i) the death of the survivor annuitant (but only if the reduction is not below 50% of the annual benefit payable before the death of the survivor annuitant), or (ii) the cessation or reduction of Social Security supplements or qualified disability payments (as defined in IRC section 401 (a)(11)).

The annual benefit does not include any benefits attributable to employee contributions or rollover contributions or the assets transferred from a qualified plan that was not maintained by the employer. No actuarial adjustment to the benefit is required for (A) the value of a qualified joint and survivor annuity, (B) the value of benefits that are not directly related to retirement benefits (such as a qualified disability benefit, pre-retirement death benefits, and post-retirement medical benefits), and (C) the value of post-retirement cost-of-living increases made in accordance with IRC section 415(d) and Regulation section 1.415-3(c)(2)(iii).

3. Compensation - A participant's earned income and any earnings reportable as W-2 wages for federal income tax withholding purposes. W-2 wages means wages as defined in IRC section 3401 (a) but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed, Picked-up contributions under IRC section 414(h)(2) shall not be included in the participant's compensation.

For limitation years beginning after December 31, 1991, for purposes of applying the limitations of this Section 431, compensation for a limitation year is the compensation actually paid or includable in gross income during such limitation year.

For limitation years beginning after December 31, 1997, compensation shall include elective contributions. Elective contributions are amounts excludable from the employee's gross income and contributed by the employer, at the employee's election to a cafeteria plan excludable under IRC section 125 or to a IRC section 401 (k) arrangement, a simplified employee pension, a tax sheltered annuity excludable under IRC section 402(g)(3), to a IRC section 457 plan, or to a IRC section 501 (c)(18) plan. Effective for limitation years beginning on or after January 1, 1998, compensation shall also include any elective amounts that are not includable in gross Income of the employee by reason of an IRC section 132(f)(4) qualified transportation fringe benefit plan.

Effective for limitation years beginning after December 31, 1997, elective contribution amounts under a cafeteria plan excludable under IRC section 125 include any amounts not available to a participant in cash in lieu of group health coverage because the participant is unable to certify that he has other health

coverage. An amount will be treated as an amount under IRC section 125 only if the employer does not request or collect information regarding the participant's other health coverage as part of the enrollment process for the health plan.

4. TRA '86 Accrued Benefit - A participant's accrued benefit under the plan, determined as if the participant had separated from service as of the close of the last limitation year beginning before January 1, 1987, when expressed as an annual benefit within the meaning of IRC section 415(b)(2). In determining the amount of a participant's TRA '86 accrued benefit, the following shall be disregarded:
  - (a) any change in the terms and conditions of the plan after May 5, 1986; and
  - (b) any cost of living adjustments occurring after May 5, 1986.
5. Defined Benefit Dollar Limitation - \$90,000 for limitation years beginning before January 1, 2002, Effective January 1, 1988, and each January thereafter, the \$90,000 limitation above will be automatically adjusted by multiplying such limit by the cost of living adjustment factor prescribed by the Secretary of the Treasury under IRC section 415(d) in such manner as the Secretary shall prescribe, and payable in the form of a straight life annuity. The new limitation will apply to limitation years ending with or within the calendar year of the date of the adjustment. The defined benefit dollar limitation shall be \$160,000 for limitation years beginning after January 1, 2001. Effective January 1, 2002, and each January thereafter, the \$160,000 limitation above will be automatically adjusted by multiplying such limit by the cost of living adjustment factor prescribed by the Secretary of the Treasury under IRC section 415(d) in such manner as the Secretary shall prescribe, and payable in the form of a straight life annuity. The new limitation will apply to limitation years ending with or within the calendar year of the date of the adjustment.
6. Defined Contribution Dollar Limitation - \$30,000, as adjusted under IRC section 415(d) for limitation years beginning after December 31, 1994 and not beginning before January 1, 2002. For limitation years beginning after December 31, 2001, the defined contribution dollar limitation shall be \$40,000, as adjusted under IRC section 415(d) for limitation years beginning after December 31, 2002.
7. Defined Benefit Fraction - A fraction, the numerator of which is the sum of the participant's projected annual benefits under all the defined benefit plans (whether or not terminated) maintained by the employer, and the denominator of which is 125% of the defined benefit dollar limitation applicable to the participant determined for the limitation year under IRC sections 415(b)(1)(A) and (d) and in accordance with Section 431E(13) below.

However for limitation years beginning before January 1, 1995, the denominator of this fraction will be the lesser of 125% of the defined benefit dollar limitation applicable to the participant determined for the limitation year under IRC sections 415(b)(1)(A) and (d) and in accordance with Section 431E(13) below or 140% of the highest average compensation, including any adjustments under IRC section 415(b)(5).

Notwithstanding the above, 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 that were in existence on May 6, 1986, the denominator of this fraction will not be less than 125% of the sum of the annual benefits under such plans that 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 the defined benefit plans individually and in the aggregate satisfied the requirements of IRC section 415 for all limitation years beginning before January 1, 1987.

8. **Defined Contribution Fraction** - A fraction, the numerator of which is the sum of the annual additions to the participant's account under all the defined contribution plans (whether or not terminated) maintained by the employer for the current and all prior limitation years (including the annual additions attributable to the participant's nondeductible employee contributions to this and all other defined benefit plans, whether or not terminated, maintained by the employer, and the annual additions attributable to all simplified employee pensions, welfare benefit funds maintained by the employer (as defined in IRC section 419(e) under which amounts attributable to post-retirement medical benefits are allocated to separate accounts of key employees (as defined in IRC section 419A(d)(3), and Individual medical accounts maintained by the employer), and the denominator of which is the sum of the maximum aggregate amounts for the current and all prior limitation years of service with the employer (regardless of whether a defined contribution plan was maintained by the employer). The maximum aggregate amount in any limitation year is the lesser of 125% of the defined contribution dollar limitation or 35% (1.4 x 25%) of the participants compensation for such year.

If the employee was a participant as of the end of the first day of the first limitation year beginning after December 31, 1986, in one or more defined contribution plans maintained by the employer that were in existence on May 6, 1986, the numerator of this fraction will be adjusted. If the sum of this fraction and the defined benefit fraction would otherwise exceed 1.0 under the terms of this plan. Under the adjustment, an amount equal to the product of (1) the excess of the sum of the fractions over 1.0 times (2) the denominator of this fraction, will be permanently subtracted from the numerator of this fraction. The adjustment is calculated using the fractions as they would be computed as of the end of the last limitation year beginning before January 1, 1987, and disregarding any changes in the terms and conditions of the plan made after May 5, 1986, but using the IRC section 415 limitation applicable to the first limitation year beginning on or after January 1, 1987.

The annual addition for any limitation year beginning before January 1, 1987, shall not be recomputed to treat all employee contributions as annual additions.

9. Employer - For purposes of this Section 431, employer shall mean the employer that adopts this plan and any entity required to be aggregated with the employer pursuant to regulations.
10. Excess Amount - The excess of the participant's annual additions for the limitation year over the maximum permissible amount.
11. Limitation Year - The 12 consecutive month period defined in Section 404E.
12. Maximum Permissible Amount - The maximum annual addition that may be contributed or allocated to a participant's account under a plan for any limitation year shall not exceed the lesser of:
  - (a) the defined contribution dollar limitation as defined in Section 431E(6), or
  - (b) 25% of the participants compensation for the limitation year for limitation years beginning before January 1, 2002; 100% of the participant's compensation for the limitation year for limitation years beginning after December 31, 2001.

The compensation limitation referred to in (b) shall not apply to any contribution for medical benefits (within the meaning of IRC section 401 (h) or IRC section 419A(f)(2)) that is otherwise treated as an annual addition under IRC section 415(1)(1) or 419A(d)(2).

If a short limitation year is created because of an amendment changing the limitation year to a different 12 consecutive-month period, the maximum permissible amount will not exceed the defined contribution dollar limitation multiplied by the following fraction:

$$\frac{\text{Number of months in the short limitation year}}{12}$$

13. Maximum permissible Benefit
  - (a) The maximum permissible benefit is the defined benefit dollar limitation. However, for limitation years beginning before January 1, 1995, the maximum permissible benefit is the lesser of the defined benefit dollar limitation or 100% of the participant's highest average compensation.
  - (b) If the participant has less than 10 years of participation in the plan, the defined benefit dollar limitation shall be multiplied by a fraction: (i) the numerator of which is the number of years (or part thereof) of participation in the plan, and (ii) the denominator of which is 10. In the case of a participant who has less than ten years of service with the employer, defined benefit compensation limitation shall be multiplied by a fraction: (i) the numerator of which is the number of years (or part thereof) of service with the employer, and (ii) the denominator of which is 10.

Where a defined benefit plan fraction is calculated, the adjustments of this Section 431E(13)(b) shall be applied in the denominator of the fraction based upon years of service. For purposes of computing the defined benefit plan fraction only, years of service shall include future years of service (or part thereof) commencing before the participant's normal retirement date. Such future years of service shall include the year that contains the date the participant reaches his normal retirement date, only if it can be reasonably anticipated that the participant will receive a year of service for such year, or the year in which the participant terminates employment, if earlier.

This Section 431E(13)(b) shall not apply to disability benefit paid in accordance with Section 419 or to benefits payable under Subpart D.

- (c) Effective for distributions made in limitation years ending on or before December 31, 2001, if the annual benefit of the participant commences on or before age 65 but on or after age 62, the defined benefit dollar limitation shall be as determined in (a) and (b) above. Effective for distributions made in limitation years ending after December 31, 2001, If the annual benefit of the participant commences on or before age 65, the defined benefit dollar limitation shall be as determined in (a) and (b) above.
- (d) Effective for distributions made in limitation years ending on or before December 31, 2001, if the benefit of a participant commences prior to age 62 but on or after age 55, the defined benefit dollar limitation applicable to the participant at such earlier age shall be the greater of:
  - (1) \$75,000, or (b) an annual benefit payable in the form of a straight life annuity that is the actuarial equivalent of the defined benefit dollar limitation for age 62, as determined above. The annual benefit beginning prior to age 62 but on or after age 55 shall be determined as the lesser of the actuarial equivalent benefit computed using the interest rate and mortality table specified in Section 402C.

This Section 431E(13)(d) shall not apply to disability benefit paid in accordance with Section 419 or to benefits payable under Subpart D..

- (e) Effective for distributions made in limitation years ending on or before December 31, 2001, If the benefit of a participant commences prior to age 55, the defined benefit dollar limitation applicable to the participant at such earlier age shall be the greater of: (a) the actuarial equivalent of a \$75,000 annual benefit beginning at age 55; or (b) an annual benefit that is the actuarial equivalent of the defined benefit dollar limitation for age 62 that is equal to the defined benefit dollar limitation as determined in (a) and (b) above. The annual benefit beginning prior to age 55 shall be determined as the lesser of the actuarial equivalent benefit computed using the interest rate and mortality table specified in Section 402C and the

equivalent amount computed using a 5% interest rate assumption and the IRC section 417 mortality table as described in Section 402C.

This Section 431 E(13)(e) shall not apply to disability benefit paid in accordance with Section 419 or to benefits payable under Subpart D.

- (f) If the benefit of a participant commences after age 65, the defined benefit dollar limitation applicable to the participant at the later age shall be the annual benefit payable in the form of a straight life annuity commencing at the later age that is the actuarial equivalent of the defined benefit dollar limitation applicable to the participant (adjusted under (a) and (b) above, if necessary) at age 65. The actuarial equivalent annual benefit beginning after age 65 shall be determined as the lesser of the equivalent amount computed using the interest rate and mortality table specified in Section 402(c) and the equivalent amount computed using a 5% interest rate assumption and the IRC section 417 mortality table as described in Section 402C.
- (g) Notwithstanding the provisions of this Section 431E(13), in limitation years beginning before 1997 for participants who have 15 or more years of full-time service at retirement (including military service), the maximum annual straight life annuity shall not be reduced below \$50,000 (as indexed pursuant to IRC section 415(d)), regardless of the participant's age at retirement.
- (h) Minimum Benefit Permitted - Notwithstanding anything else in this Section to the contrary, the benefit otherwise accrued or payable to a participant under this plan shall be deemed not to exceed the maximum permissible benefit if:
  - (i) The retirement benefits payable for a plan year under any form of benefit with respect to such participant under this plan and under all other defined benefit plans (regardless of whether terminated) ever maintained by the employer do not exceed \$1,000 multiplied by the participant's number of years of service or parts thereof (not to exceed 10) with the employer;

and

  - (ii) The employer has not at any time maintained a defined contribution plan, a welfare benefit fund under which amounts attributable to post-retirement medical benefits are allocated to separate accounts of key employees (as defined in IRC section 419A(d)(3)), or an individual medical account in which the participant participated (for these purposes, employee contributions, whether voluntary or involuntary, under a defined benefit plan are not treated as a separate defined contribution plan).



14. Projected Annual Benefit- The annual benefit as defined in Section 431E(2), to which the participant would be entitled under the terms of the plan assuming:
  - (a) the participant will continue employment until his normal retirement date 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.
  
15. Year of Participation- For the purpose of this Section 431, a participant shall be credited with a year of participation (computed to fractional parts of a year) for each accrual computation period for which the following conditions are met: (1) The participant is credited with at least the number of hours of service for benefit accrual purposes, required under the terms of the plan in order to accrue a benefit for the accrual computation period and (2) the participant is included as a participant under the eligibility provisions of the plan for at least one day of the accrual computation period. If these two conditions are met, the portion of a year of participation credited to the participant shall equal the amount of benefit accrual service credited to the participant for such accrual computation period. A participant who is permanently and totally disabled within the meaning of IRC section 415(c)(3)(C)(i) for an accrual computation period shall receive a year of participation with respect to that period. In addition, for a participant to receive a year of participation (or part thereof) for an accrual computation period, the plan must be established no later than the last day of such accrual computation period. In no event will more than one year of participation be credited for any 12-month period.

## § 432. Distribution Requirements

- A. Applicability - The requirements of this Section 432 shall apply to any distribution of a participant's interest. All distributions required under this Section 432 shall be determined and made in accordance with the proposed regulations under IRC section 401 (a)(9), including the minimum distribution incidental benefit requirement of Proposed Treasury Regulation section 1.401 (a)(9)-2.

With respect to distributions under the plan made for calendar years beginning on or after January 1, 2002, the Plan will apply the minimum distribution requirements of IRC section 401 (a)(9) in accordance with the regulations under IRC section 401 (a)(9) that were proposed in January 2001, notwithstanding any provision of the plan to the contrary. This preceding sentence shall continue in effect until the end of the last calendar year beginning before the effective date of final regulations under IRC section 401 (a)(9) or such other date specified in guidance published by the Internal Revenue Service.

With respect to distributions under the Plan made on or after August 1, 2002 for calendar years beginning on or after January 1, 2002, the Plan will apply the minimum distribution requirements of IRC section 401(a)(9) in accordance with the regulations under section 401(a)(9) that were made final on April 17, 2002 (the 2002 Final Regulations) and the provisions of Section 432H, notwithstanding any provision of the Plan to the contrary. If

the total amount of required minimum distributions made to a participant for 2002 prior to August 1, 2002 are equal to or greater than the amount of required minimum distributions determined under the 2002 Final Regulations, then no additional distributions are required for such participant for 2002 on or after such date. If the total amount of required minimum distributions made to a participant for 2002 prior to August 1, 2002 are less than the amount determined under the 2002 Final Regulations, then the amount of required minimum distributions for 2002 on or after such date will be determined so that the total amount of required minimum distributions for 2002 is the amount determined under the 2002 Final Regulations.

- B. Required Beginning Date - The entire interest of a participant must be distributed or begin to be distributed no later than the participant's required beginning date.
- C. Limits on Distribution Periods - As of the first distribution calendar year, distributions, if not made in a single-sum, may only be made over one of the following periods (or a combination thereof):
  - 1. the life of the participant,
  - 2. the life of the participant and a designated beneficiary,
  - 3. a period certain not extending beyond the life expectancy of the participant, or
  - 4. a period certain not extending beyond the joint life and last survivor expectancy of the participant and a designated beneficiary.
- D. Determination of Amount to Be Distributed Each Year
  - 1. If the participant's interest is to be paid in the form of annuity distributions under the plan, payments under the annuity shall satisfy the following requirements:
    - (a) the annuity distribution must be paid in periodic payments made at intervals not longer than one year; .
    - (b) the distribution period must be over a life (or lives) or over a period certain not longer than a life expectancy (or joint life and last survivor expectancy) described in IRC section 401 (a)(9) (A)(ii) or IRC section 401 (a)(9)(B)(iii), whichever is applicable;
    - (c) the life expectancy (or joint life and last survivor expectancy) for purposes of determining the period certain shall be determined without recalculation of life expectancy;
    - (d) once payments have begun over a period certain, the period certain may not be lengthened even if the period certain is shorter than the maximum permitted;
    - (e) payments must either be non-increasing or increase only as follows:

- (i) with any percentage Increase in a specified and generally recognized cost-of-living index;
  - (ii) to the extent of the reduction to the amount of the participant's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period described in (c) above dies and the payments continue otherwise in accordance with that section over the life of the participant;
  - (iii) to provide cash refunds of employee contributions upon the participant's death; or
  - (iv) because of an Increase in benefits under the plan.
- (f) If the annuity is a life annuity (or a life annuity with a period certain not exceeding 20 years), the amount that must be distributed on or before the participant's required beginning date (or, in the case of distributions after the death of the participant, the date distributions are required to begin pursuant to Section 432E below) shall be the payment that is required for one payment interval. The second payment need not be made until the end of the next payment Interval even If that payment Interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually.

If the annuity is a period certain annuity without a life contingency (or is a life annuity with a period certain exceeding 20 years) periodic payments for each distribution calendar year shall be combined and treated as an annual amount. The amount that must be distributed by the participant's required beginning date (or, in the case of distributions after the death of the participant, the date distributions are required to begin pursuant to Section 432E below) is the annual amount for the first distribution calendar year. The annual amount for other distribution calendar years, including the annual amount for the calendar year in which the participant's required beginning date (or the date distributions are required to begin pursuant to Section 432E below) occurs, must be distributed on or before December 31 of the calendar year for which the distribution is required.

2. Annuities purchased after December 31, 1988, are subject to the following additional conditions:

- (a) If the participant's interest is being distributed in the form of a life annuity with a period certain for the life of the participant, the period certain as of the beginning of the first distribution calendar year may not exceed the applicable period determined using the table set forth in Proposed Treasury Regulation section 1.401 (a)(9)-2, Q&A A-4.

- (b) Unless the participant's spouse is the designated beneficiary, if the participant's interest is being distributed in the form of a period certain annuity without a life contingency, the period certain as of the beginning of the first distribution calendar year may not exceed the applicable period determined using the table set forth in Proposed Treasury Regulation section 1.401 (a)(9)-2, Q&A A-5.
  - (c) If the participant's Interest is being distributed in the form of a joint and survivor annuity for the joint lives of the participant and a non-spouse beneficiary, annuity payments to be made on or after the participant's required beginning date to the designated beneficiary after the participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the participant using the table set forth in Proposed Regulation section 1.401 (a)(9)-2, O&A A-5.
- 3. Transitional Rule - If payments under an annuity that complies with provision (a) above began prior to January 1, 1989, the minimum distribution requirements in effect as of July 27, 1987, shall apply to such distributions from this plan, regardless of whether the annuity form of payment is irrevocable. This transitional rule also applies to deferred annuity contracts distributed to or owned by the employee prior to January 1, 1989, unless additional contributions are made under the plan by the employer with respect to such contract.
  - 4. If the form of distribution is an annuity made in accordance with this Section 432B(4) any additional benefits accruing to the participant after his or her required beginning date shall be distributed as a separate and identifiable component of the annuity beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.
  - 5. Any part of the participant's interest that is in the form of an individual account shall be distributed in a manner satisfying the requirements of IRC section 401 (a)(9) and the proposed regulations thereunder.

E. Death Distribution Provisions

- 1. Distribution Beginning Before Death -If the participant dies after distribution of his interest has begun, the remaining portion of such Interest will continue to be distributed at least as rapidly as under the method of distribution being used prior to the participant's death.
- 2. Distribution Beginning After Death - If the participant dies before distribution of his interest begins, distribution of the participant's entire interest shall be completed by December 31 of the calendar year containing the fifth anniversary of the participant's death except to the extent that an election is made to receive distributions in accordance with (a) or (b) below:

- (a) If any portion of the participant's interest is payable to a designated beneficiary, distributions may be made over the life or over a period certain not greater than the life expectancy of the designated beneficiary commencing on or before December 31 of the calendar year immediately following the calendar year in which the participant died;
- (b) If the designated beneficiary is the participant's surviving spouse, the date distributions are required to begin in accordance with (A) above shall not be earlier than the later of (i) December 31 of the calendar year immediately following the calendar year in which the participant died and (ii) December 31 of the calendar year in which the participant would have attained age 70.

If the participant has not made an election pursuant to this Section 432 by the time of his death, the participant's designated beneficiary must elect the method of distribution no later than the earlier of (1) December 31 of the calendar year in which distributions would be required to begin under this Section 432E(2), or (2) December 31 of the calendar year that contains the fifth anniversary of the date of death of the participant. If the participant has no designated beneficiary, or if the designated beneficiary does not elect a method of distribution, distribution of the participant's entire Interest must be completed by December 31 of the calendar year containing the fifth anniversary of the participant's death. This provision shall not create a right to an installment payment option providing installments over 5 or less calendar years.

- 3. For purposes of Section 432E(2) above, if the surviving spouse dies after the participant, but before payments to such spouse begin, the provisions of Section 432E(2) with the exception of Section 432E(2)(b) therein, shall be applied as if the surviving spouse were the participant.
- 4. For purposes of this Section 432E, any amount paid to a child of the participant will be treated as if it had been paid to the surviving spouse if the amount becomes payable to the surviving spouse when the child reaches the age of majority.
- 5. For the purposes of this Section 432E, distribution of a participant's interest is considered to begin on the participants required beginning date (or, if Section 432E(3) above is applicable, the date distribution is required to begin to the surviving spouse pursuant to Section 432E(2)(b) above). If distribution in the form of an annuity described in Section 432D(1) irrevocably commences to the participant before the required beginning date, the date distribution is considered to begin is the date distribution actually commences.

F. Definitions (IRC Section 401(a)(9) Requirements)

- 1. Designated Beneficiary - The individual who is designated as the beneficiary under the plan in accordance with IRC section 401 (a)(9) and the proposed regulations thereunder.

2. **Distribution Calendar Year** - A calendar year for which a minimum distribution is required. For distributions beginning before the participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year that contains the participant's required beginning date. For distributions beginning after the participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to Section 432E above.
3. **Life Expectancy** - Life expectancy (or joint life and last survivor expectancy) calculated using the attained age of the participant (or designated beneficiary) as of the participant's (or designated beneficiary's) birthday in the applicable calendar year. The applicable calendar year shall be the first distribution calendar year. If annuity payments commence before the required beginning date, the applicable calendar year is the year such payments commence.

Life expectancy and joint and last survivor expectancy are computed by use of the expected return multiples in Tables V and VI of Section 1.72-9 of the Income Tax Regulations.
4. **Required Beginning Date** - The required beginning date of a participant is the later of: (i) the first day of April of the calendar year following the calendar year in which the participant attains age 70 ½ and (ii) the first day of April of the calendar year following the calendar year in which the participant retires.

G. **Transitional Rule**

1. Notwithstanding the other requirements of this Section 432, distribution on behalf of any employee may be made in accordance with all of the following requirements (regardless of when such distribution commences).
  - (a) The distribution by the trust is one which would not have disqualified such trust under IRC section 401 (a)(9) as in effect prior to amendment by the Deficit Reduction Act of 1984.
  - (b) The distribution is in accordance with a method of distribution designated by the employee whose interest in the trust is being distributed or, if the employee is deceased, by a beneficiary of such employee.
  - (c) Such designation was in writing, was signed by the employee or the beneficiary, and was made before January 1, 1984.
  - (d) The employee had accrued a benefit under the plan as of December 31, 1983.
  - (e) The method of distribution designated by the employee or the beneficiary specifies the time at which distribution will commence, the period over which distributions will be made, and in the case of any distribution upon the employee's death, the beneficiaries of the employee listed in order of priority.

A distribution upon death will not be covered by this transitional rule unless the Information in the designation contains the required Information described above with respect to the distributions to be made upon the death of the employee.

2. For any distribution that commences before January 1, 1984, but continues after December 31, 1983, the employee, or the beneficiary, to whom such distribution is being made, will be presumed to have designated the method of distribution under which the distribution is being made If the method of distribution was specified in writing and the distribution satisfies the requirements in this Section 432G.
3. If a designation is revoked any subsequent distribution must satisfy the requirements of IRC section 401 (a)(9) and the proposed regulations thereunder. If a designation is revoked subsequent to the date distributions are required to begin, the trust must distribute by the end of the calendar year following the calendar year in which the revocation occurs the total amount not yet distributed that would have been required to have been distributed to satisfy IRC section 401 (a)(9) and the proposed regulations thereunder, but for the election made with respect to section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act of 1982. For calendar years beginning after December 31, 1988, such distributions must meet the minimum distribution incidental benefit requirements in Proposed Regulation section 1.401 (a)(9)-2. Any changes in the designation will be considered to be a revocation of the designation. However, the mere substitution or addition of another beneficiary (one not named in the designation) under the designation will not be considered to be a revocation of the designation, so long as such substitution or addition does not alter the period over which distributions are to be made under the designation, directly or Indirectly (for example, by altering the relevant measuring life). In the case in which an amount is transferred or rolled over from one plan to another plan, the rules in Proposed Regulation section 1.401 (a)(9)-1 O&A J-2 and O&A J-3 shall apply.

H. Compliance with Final Regulations. – The requirements of this Section 432H shall take precedence over any inconsistent provisions of the plan. All distributions required under Section 432 will be determined and made in accordance with the treasury regulations under IRC section 401(a)(9).

Notwithstanding the other provisions of this Section 432, distributions may be made under a designation made before January 1, 1984, in accordance with Tax Equity and Fiscal Responsibility Act of 1982 (TERFA) section 242(b)(2) and the provisions of the plan that relate to TERFA section 242(b)(2).

1. Time and Manner of Distribution.
  - (a) Required Beginning Date. – The participants entire interest will be distributed, or begin to be distributed to the participant no later than the participant’s required beginning date.

- (b) Death of Participant Before Distribution Begin. – If the participant dies before distributions begin, the participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
- (i) If the participant's surviving spouse is the participant's sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the participant died, or by December 31 of the calendar year in which the participant would have attained age 70 ½, if later.
  - (ii) If the participant's surviving spouse is not the participant's sole designated beneficiary, then distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the participant died.
  - (iii) If there is no designated beneficiary as of September 30 of the year following the year of the participant's death or if a lump sum death benefit is otherwise payable, the participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the participant's death.
  - (iv) If the participant's surviving spouse is the participant's sole designated beneficiary and the surviving spouse dies after the participant but before distributions to the surviving spouse begin, this Paragraph 1(b), other than Paragraph 1(b)(i), will apply as if the surviving spouse were the participant.

For purposes of this Paragraph 1(b) and Paragraph 4, distributions are considered to begin on the participant's required beginning date (or, if Paragraph 1(b)(iv) applies, the date distributions are required to begin to the surviving spouse under Paragraph 1(b)(i). If annuity payment irrevocably commence to the participant before the participant's required beginning date (or to the participant's surviving spouse before the date distributions are required to begin to the surviving spouse under Paragraph 1(b)(i)), the date distributions are considered to begin is the date distributions actually commence.

- (c) Forms of Distribution – Unless the participant's interest is distributed in the form an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distribution will be made in accordance with Paragraphs 2, 3, and 4. If the participant's interest is distributed in the form an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of IRC section 401(a)(9) and the Treasury regulations. Any part of the participant's interest which is in the form of an individual account described in IRC section 414(k) will be distributed in a manner satisfying the requirements of IRC section



401(a)(9) and the Treasury regulations that apply to the individual accounts.

2. Determination of Amount to be Distributed Each Year.

- (a) General Annuity Requirements. – If the participant’s interest is paid in the form of annuity distributions under the plan, payments under the annuity will satisfy the following requirements:
- (i) The annuity distributions will be paid in periodic payments made at intervals not longer than one year;
  - (ii) The distribution period will be over a life (or lives) or over a period certain not longer than the period described in Paragraph (3) or (4);
  - (iii) Once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted;
  - (iv) Payment will either be nonincreasing or increase only as follows:
    - (a) by an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the Bureau of Labor Statistics;
    - (b) to the extent of the reduction in the amount of the participant’s payment to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period described in Paragraph (3) dies or is no longer the participant’s beneficiary pursuant to a qualified domestic relations order within the meaning of IRC section 414(p);
    - (c) to provide case refunds of employee contributions upon the participant’s death; or
    - (d) to pay increased benefits that result from a plan amendment.
- (b) Amount Required to be Distributed by Required Beginning Date. – The amount that must be distributed on or before the participant’s required beginning date (or, if the participant dies before distributions being, the date distributions are required to being under Paragraph 1(a) or (b) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if the payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-

annually, or annually. All of the participant's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending or after the participant's beginning date.

- (c) **Additional Accruals After First Distribution Calendar Year.** – Any additional benefits accruing to the participant in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.
3. **Requirements for Annuity Distributions that Commence During Participant's Lifetime** – The participant's interest cannot be distributed in the form of a joint and survivor annuity under the terms of this plan. Further, no death benefit can be paid in the form of a period certain annuity. Section 432D(1)(f) shall not apply.
4. **Requirements for Minimum Distributions Where Participant Dies Before Date Distributions Begin.**
- (a) **Participants Survived by Designated Beneficiary.** – If the participant dies before the date distribution of his or her interest begins and there is a designated beneficiary, the participant's entire interest will be distributed beginning not later than the time described in Paragraph 1(b)(i) or (ii), over the life of the designated beneficiary or over a period certain not exceeding:
    - (i) unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the participant's death; or
    - (ii) if the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.
  - (b) **No Designated Beneficiary.** - If the participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the participant's death, distribution of the participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the participant's death.
  - (c) **Death of Surviving Spouse Before Distributions to the Surviving Spouse Begin.** – If the participant dies before the date distribution of his or her interest begins, the participant's surviving spouse is the participant's surviving spouse is the participant's sole designated beneficiary, and the surviving spouse dies before distributions to the surviving spouse begin, this Paragraph 4 will apply as if the surviving spouse were the participant,

except that the time by which distributions must begin will be determined without regard to Paragraph 1(b)(ii).

5. Definitions.

- (a) Designated Beneficiary. – The individual who is designated as the beneficiary under Section 432F(1) and is the designated beneficiary under IRC section 401(a)(9) and Regulation section 1.401(a)(9)-1, Q&A-4.
- (b) Distribution Calendar Year. – A calendar year for which a minimum distribution is required. For distributions beginning before the participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the participant's required beginning date. For distributions beginning after the participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to Paragraph 1(b).
- (c) Life Expectancy. – Life expectancy as computed by use of the Single Life Table in Regulation section 1.401(a)(9)-9.
- (d) Required Beginning Date.- the date specified in Section 432F(4).

## **H. Administration of the Plan**

### **§ 433. Fiduciary Responsibility**

- A. Management and Control of Plan Assets - The governing body of the employer shall designate the persons responsible for the management and control of plan assets. Such persons shall discharge their duties with respect to the plan in accordance with the documents and Instruments governing the plan insofar as such documents and Instruments are consistent with the applicable provisions of the Internal Revenue Code.
- B. A fiduciary of this plan is required to exercise the judgment and care under the circumstances then prevailing that men of prudence, discretion, and Intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable Income as well as the probable safety of their capital.
- C. Allocation of Responsibility
  - 1. When the plan administrator is required to follow the directions of the trustee or the trustee is required to follow the directions of the plan administrator, they shall not be deemed to share such responsibility. Instead, the responsibility of the person giving the directions shall be deemed to be his sole responsibility and the responsibility of the person receiving directions shall be to follow those directions Insofar as such instructions on their face are proper under applicable law.

2. The plan administrator or trustee under this plan may employ one or more persons, including independent accountants, attorneys, and actuaries to render advice with regard to any responsibility such person has under the plan.
- D. Liability and Indemnification - Subject to Act 205, no past, present, or future officer of the employer nor of any participating employer shall be personally liable to any participant, beneficiary, or other person under any provision of the plan or trust or any Insurance policy or contract issue pursuant thereto. No individual fiduciary shall be liable for any act or omission of any other fiduciary. Unless resulting from the gross negligence, willful misconduct or lack of good faith on the part of the fiduciary, the employer shall Indemnify and save harmless such fiduciary from, against, for and in respect of any and all damages, losses, obligations, liabilities, liens, deficiencies, costs, and expenses, including without limitation, reasonable attorney's fees and other costs and expenses incident to any suit, action, investigation, claim or proceedings suffered in connection with his acting as a fiduciary under the plan.

#### **§ 434. Chief Administrative Officer**

A. Appointment of Chief Administrative Officer

The governing body of the employer shall be responsible for the administration of the plan. It shall appoint the chief administrative officer. The employer shall review at regular intervals the performance of the person appointed to be the chief administrative officer and shall re-evaluate the appointment of such chief administrative officer.

B. Duties and Powers of Chief Administrative Officer

The chief administrative officer shall be the plan administrator and as such shall have the following duties and discretionary powers and such other duties and discretionary powers as relate to the administration of the plan:

1. To determine in a non-discriminatory manner all questions relating to the eligibility of employees to become participants.
2. To determine in a non-discriminatory manner eligibility for benefits and to determine and certify the amount and kind of benefits payable to participants.
3. To authorize all disbursements from the fund.
4. To appoint or employ, upon approval of the employer, any independent person to perform necessary plan functions and to assist in the fulfillment of administrative responsibilities as he deems advisable, including the retention of a third party administrator, custodian, auditor, accountant, actuary, or attorney.
5. When appropriate, to select an insurance company and annuity contracts that, in his opinion, will best carry out the purposes of the plan.

6. To construe and interpret any ambiguities in the plan and to make, publish, interpret, alter, amend or revoke rules for the regulation of the plan that are consistent with the terms of the plan and with the applicable provisions of the Internal Revenue Code.
7. To prepare and distribute, in such manner as determined to be appropriate, information explaining the plan.

C. Miscellaneous Provisions

1. Expenses - The chief administrative officer shall serve without compensation for service as such. All reasonable expenses of the chief administrative officer shall be paid by the plan.
2. Examination of Records - The chief administrative officer shall make available to any participant for examination during business hours such of the plan records as pertain only to the participant involved.
3. Information to the Chief Administrative Officer - To enable the chief administrative officer to perform the administrative functions, the employer shall supply full and timely information to the chief administrative officer on all participants as the chief administrative officer may require.

**§ 435. Claims Procedure**

- A. Notification - The chief administrative officer shall notify each participant in writing of his determination of benefits. If the chief administrative officer denies any benefit, such written denial shall include:
- The specific reasons for denial;
  - Reference to provisions on which the denial is based;
  - A description of and reason for any additional information needed to process the claim; and
  - An explanation of the claims procedure.
- B. Appeal - The participant or his duly authorized representative may:
- Request a review of the participant's case in writing to the employer;
  - Review pertinent documents;
  - Submit issues and comments in writing.

The written request for review must be submitted no later than 60 days after receiving written notification of denial of benefits.

- C. Review - The employer must render a decision no later than 60 days after receiving the written request for review, unless circumstances make it impossible to do so; but in no event shall the decision be rendered later than 120 days after the request for review is received.
- D. Limitation on Time Period for litigation of a Benefit Claim - Following receipt of the written rendering of the employer's decision under Section 435C, the participant shall have 365 days in which to file suit in the appropriate court. Thereafter, the right to contest the decision shall be waived.

## § 436. Trust Fund

- A. Creation and Maintenance of the Fund - The trust fund shall be created and maintained in the following manner:
  - 1. All funds on deposit and held for pension or retirement benefits of the participants shall continue to be part of the trust fund created and maintained hereby subject to any liabilities that may exist against such fund.
  - 2. The employer shall allocate to the fund the payments made by the Treasurer of the Commonwealth of Pennsylvania from monies received from taxes paid upon premiums by foreign casualty Insurance companies and foreign fire insurance companies pursuant to the General Municipal Pension System State Aid Program.
  - 3. The employer shall also allocate to the fund any mandatory employee contributions received in accordance with the plan.
  - 4. The fund shall accept and maintain any payments made by other gifts, grants, devises, or bequests to the fund.
  - 5. The employer shall contribute to the fund such other payments as may, from time to time, be authorized to be made from the general revenue of the employer.

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

- B. Appointment of Trustee<sup>1</sup>

The employer, or its delegee, shall appoint a trustee for the proper care and custody of all funds, securities and other properties in the trust, and for investment of plan assets (or for execution of such orders as it receives from an investment manager appointed for Investment of plan assets). The duties and powers of the trustee shall be set forth in a trust agreement executed by the employer, that is incorporated herein by reference. The employer shall review at regular intervals the performance of the trustee and shall re-

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<sup>1</sup> By Ordinance 07-02 enacted March 17, 2007, Robeson Township appointed National Penn Investors Trust Company as the Trustee of the Trust.

evaluate the appointment of such trustee. After the employer has appointed the trustee and has received a written notice of acceptance of its responsibility, the responsibility with respect to the proper care and custody of plan assets shall be considered as the responsibility of the trustee.

Unless otherwise allocated to an investment manager, the responsibility with respect to investment of plan assets shall likewise be considered as the responsibility of the trustee.

C. Appointment of Corporate Custodian

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

D. Appointment of Investment Manager

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

E. Funding Policy

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

F. Valuation of the Fund

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

**§ 437. Actuarial Valuation and Funding**

- A. Actuarial Valuation - In compliance with Act 205, the actuarial valuation report shall be prepared and filed under the supervision of the chief administrative officer of the municipality or of the association of municipalities cooperating pursuant to the Intergovernmental Cooperation Act and named as the sponsoring employer of this plan.

The actuary shall perform an actuarial valuation at least biennially. Each biennial actuarial valuation report shall be made as of the beginning of such plan year and shall be prepared and certified by an approved actuary. An approved actuary means a person who has at least five years of actuarial experience with public pension plans and who is either enrolled as a member of the American Academy of Actuaries or enrolled as an actuary pursuant to ERISA.

If the employer is applying or has applied for Supplemental State Assistance pursuant to Section 603 of the Act, the actuarial valuation report shall be made annually.

- B. Allowable Administrative Expenses - The expenses attributable to the preparation of any actuarial valuation report or investigation required by Act 205 or any other expense that is permissible under the terms of Act 205 and that are directly associated with administering the plan shall be an allowable administrative expense payable from the assets of the trust.
- C. Benefit Modifications - Prior to the adoption of any benefit plan modification by the employer, the chief administrative officer shall provide to the employer a cost estimate of the proposed benefit plan modification prepared by an approved actuary. Such estimate shall disclose to the employer the impact of the proposed benefit plan modification on the future financial requirements of the plan and the future minimum obligation of the employer with respect to the plan.

## **I. Amendment And Termination Of Plan**

### **§ 438. Right to Discontinue and Amend**

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

### **§ 439. Amendments**

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

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



#### **§ 440. Protection of Benefits in Case of Plan Merger**

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

#### **§ 441. Termination of Plan**

- A. When Plan Terminates - This plan shall terminate upon the legal dissolution of the employer or the termination of the plan by the amendment action of the employer. Subject to the provisions of the Municipal Pension Plan Funding Standard and Recovery Act (P.L. 1005, Act 205 of 1984) governing financially distressed municipalities, the liability of the employer to make contributions to the plan shall automatically terminate upon liquidation or dissolution of the employer, upon its adjudication as a bankrupt, or upon the making of a general assignment for the benefit of its creditors.
- B. Allocation of Assets - Upon termination or partial termination, the accrued benefit of each affected participant who is an active participant or who is not an active participant but has not incurred a one-year break in service shall be 100% vested and non-forfeitable; however, no participant or other individual shall have recourse towards the satisfaction of any benefit accrued under the plan other than from the fund. The amount of the fund assets shall be allocated to participants and beneficiaries subject to provisions for expenses of administration of liquidation. The allocation of assets shall be in accordance with the following (to the extent assets are sufficient).
1. There shall be allocated an amount equal to that portion of each individual's accrued benefit that is derived from the participant's voluntary' contributions.
  2. There shall be allocated an amount equal to that portion of each individual's accrued benefit that is derived from the participant's mandatory contributions.
  3. (a) There shall be allocated amounts sufficient to provide the pension of each participant or beneficial)' who was receiving such a benefit three years before the date of termination.  
  
(b) There shall likewise be allocated amounts sufficient to provide the normal form of pension for each participant who was eligible to retire three years before the date of termination but had not done so.  
  
In both cases, the benefits shall be based upon the plan provisions in effect during the five years before the date of termination under which such benefits would be the least.
  4. There shall be allocated amounts sufficient to provide all vested benefits due participants.
  5. There shall be allocated amounts sufficient to provide all other benefits of the plan.

If assets are insufficient to provide all benefits within anyone of the above paragraphs 1 through 5, they shall be allocated pro rata among the participants or beneficiaries within that paragraph on the basis of the present value of such benefits.

The allocation of assets, when determined by the actuary, may be implemented through the continuation of the existing fund or through the purchase of insurance company annuity contracts, or by a combination of these media.

- C. Remaining Fund Balance - Notwithstanding any provision in this plan to the contrary, upon the termination of the plan, but only after all liabilities to the participants and their respective beneficiaries have been satisfied, the employer shall be entitled to any balance of the net assets of the fund that shall remain by reason of erroneous actuarial computations or overpayments during the life of the plan.

## **J. Miscellaneous Provisions**

### **§ 442. Exclusive Benefit - Non-Reversion**

The plan is created for the exclusive benefit of the employees of the employer and shall be interpreted in a manner consistent with its being a qualified plan as defined in IRC section 401 (a). The corpus or income of the trust may not be diverted to or used for other than the exclusive benefit of the participants or their beneficiaries.

Notwithstanding the above, any contribution made by the employer because of a mistake of fact must be returned to the employer within one year of the contribution. Further, a reversion to the employer is permissible upon plan termination in accordance with Section 441C.

### **§ 443. Inalienability of Benefits**

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

### **§ 444. Employer-Employee Relationship**

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

### **§ 445. Binding Agreement**

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

#### **§ 446. Inconsistency or Conflict of Prior Ordinances or Resolutions**

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

#### **§ 447. Severability**

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

#### **§ 448. Construction**

The plan shall be construed in accordance with the laws of the Commonwealth of Pennsylvania and with the applicable portions of the Internal Revenue Code. It is Intended that the plan comply with the interpretations of P.L. 1804, as amended (53 P.S. 767) (Act 600), issued by the judicial and regulatory bodies of the Commonwealth of Pennsylvania.

#### **§ 449. Copies of Plan**

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

#### **§ 450. Interpretation**

Wherever appropriate, words used in this plan in the singular may include the plural or the plural may be read as singular, and the masculine may include the feminine.

(Police Pension Plan Originally Effective 6/12/1977 amended and restated January 1, 2001; Ord. 82-57, 10/14/1982; Ord. 94-06, 12/20/1994; Ord. No. 00-11, 11/21/2000; Ord. No. 01-03, 1/19/2001; Ord. No. 02-03, 3/19/2002; Ord. No. 03-04, 11/18/2003; Ord. No. 04-01, 1/5/2004; Ord. No. 04-05, 9/21/2004; Ord. No. 07-02, 5/17/2007; Ord. No. 10-01, 1/4/2010)

## PART 5

### NON-UNIFORM PENSION PLAN

#### A. Definitions

##### § 501. References

- A. Act 205 means the Municipal Pension Plan Funding Standard and Recovery Act, act of December 18, 1984, P.L. 1005 no. 205, as amended, 53 P.S. 895.101, et seq. as enacted by the Commonwealth of Pennsylvania.
- B. ERISA means the Employee Retirement Income Security Act of 1974, as amended.
- C. IRC means the Internal Revenue Code of 1986, as it may be amended from time to time.

##### § 502. Actuarial Equivalent

- A. The present value of any benefit under the terms of this plan will be the actuarial equivalent of the accrued benefit in the normal form of benefit commencing at normal retirement date.
- B. To the extent that the Plan provides for a late retirement benefit, an early retirement benefit, or optional forms of benefit payment, the actuarial equivalent of the accrued benefit paid in the normal form commencing at the normal retirement date shall be determined as set forth below.

1. Reserved

2. Reserved

- 3. The Monthly Pension Payment Options shall be determined by multiplying the amount of the normal form monthly pension by the factors set forth in Appendix O. In the event no factor is specified for the difference between the age of the participant and the age of his designated second annuitant under a joint and survivor annuity, actuarial equivalence for the monthly pension payment option shall be determined based on the following mortality and interest assumptions:

Mortality table: 1983 Group Annuity Mortality Table  
(Average of Male and Female Rates)

Interest rate: 7.500%

- C. Limitations on Benefits - For the purpose of implementing the limitations on benefits of IRC section 415, actuarial equivalence shall be determined based on the following mortality and interest assumptions:

Mortality table: UP1984 Table

Interest rate: 5.00% per annum compounded annually  
(except as limited under Section 533E(13))

For the purpose of implementing the limitations on benefits of IRC section 415 for limitation years beginning on or after January, 1995, the IRC section 417 mortality table is the mortality table prescribed by the Secretary of the United States Treasury under Revenue Ruling 95-6 or subsequent guidance. Such table shall be based on the prevailing commissioners' standard table used to determine reserves for group annuity contracts Issued on the date as of which the present value is being determined.

Notwithstanding the preceding, effective for the purpose of implementing the limitations on benefits of IRC Section 415 for limitation years beginning on or after December 31, 2002, the reference in this Section 502C to the mortality table prescribed in Revenue Ruling 95-6 shall be construed as a reference to the mortality table prescribed in Revenue Ruling 2001-62 for all purposes under the plan.

(Ordinance No. 03-05, 11/18/03)

### **§ 503. Compensation/Average Monthly Compensation**

A. 1. Compensation means any earnings reportable as W,2 wages for federal income tax withholding purposes, plus elective contributions and worker's compensation benefits. for the calendar year ending with or within the plan year.

Elective contributions are amounts Excludable from the employee's gross income and contributed by the employer, at the employee's election, to:

A cafeteria plan (excludable under IRC section 125 and as provided in Section 533E(3));

A tax sheltered annuity (excludable under IRC section 403(b));

A deferred compensation plan (excludable under IRC section 457); or

Any reference in this plan to compensation shall be a reference to the definition in this Section 503, unless the plan reference specifies a modification to this definition. The plan administrator shall take into account only compensation actually paid by the employer for the relevant period. A compensation payment Includes compensation by the employer through another person under the common paymaster provisions in IRC sections 3121 and 3306. Compensation from a related employer that is not a participating employer under this plan shall be excluded.

(Ordinance No. 03-05, 11/18/03)

2. Exclusions From Compensation- Notwithstanding the provisions of Section 503A(1), the following types of remuneration shall be excluded from the participant's compensation:

- B. Limitations on Compensation - For any plan year beginning after December 31, 2001, the plan administrator shall take into account only the first \$200,000 (or beginning January 1, 2003, such larger amount as the Commissioner of Internal Revenue may prescribe) of any participant's compensation for determining all benefits provided under the plan for a determination period. For any plan year beginning after December 31, 1995 but before January 1, 2002, the plan administrator shall take into account only the first \$150,000 (or, for plan years beginning after December 31, 1996 but before January 1, 2002, such larger amount as the Commissioner of Internal Revenue may prescribe) of any participant's compensation for determining all benefits provided under the plan for a determination period. The compensation dollar limitation for a plan year shall be the limitation amount in effect on January 1 of the calendar year in which the plan year begins. If the plan should determine compensation on a period of time that contains less than 12 calendar months (such as for a short plan year), the annual compensation dollar limitation shall be an amount equal to the compensation dollar limitation for the plan year multiplied by the ratio obtained by dividing the number of full months in the period by 12.

Notwithstanding the preceding, in the case of an eligible participant, the annual compensation dollar limitation shall not apply to the extent that the application of the limitation would reduce the amount of compensation that is allowed to be taken into account under the plan below the amount that was allowed to be taken into account under this plan as in effect on July 1, 1993. For this purpose, an eligible participant is an individual who first became a participant in the plan during a plan year prior to the first day of the first plan year beginning after December 31, 1995.

- C. Average Monthly Compensation means 1/12 of the average of a participant's annual compensation over the highest 5-consecutive-year period including the current calendar year ending with or within the plan year. If a participant's entire period of service for the employer is less than the specified period, compensation shall be averaged on an annual basis over the participant's entire period of service.

If compensation for any plan year beginning prior to January 1, 1996 is taken into account in determining average monthly compensation for any plan year beginning after December 31, 1993, such compensation shall be subject to the \$150,000 compensation dollar limitation, but only to the extent described in Section 503B.

#### **§504. Dates/Years**

- A. Accounting Date means the last day of the plan year.

- B. The Effective Date of the plan is January 1, 1989.

The effective date of this amendment and restatement is January 1, 2001; provided, however that the plan provisions required to comply with the Tax Reform Act of 1986 (TRA '86), the Omnibus Budget Reconciliation Act of 1986 (OBRA '86), the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), and the Technical and Miscellaneous Revenue Act of 1988 (TAMRA) shall generally be effective on the first day of the plan year beginning after December 31, 1988, except as specified otherwise in this plan or in TRA '86, OBRA '86, OBRA '87 or TAMRA for a government sponsored plan. The plan provisions required to comply with the 1989 Revenue Reconciliation Act shall generally be effective on the first day of the plan year beginning after December 31, 1989, except as specified otherwise in this plan or in said Act. The plan provisions required to comply with the Unemployment Compensation Amendments of 1992 shall be effective on

January 1, 1993, except as specified otherwise for a government sponsored plan. The plan provisions required to comply with the Omnibus Budget Reconciliation Act of 1993 shall generally be effective on the first day of the plan year beginning after December 31, 1993, except as specified otherwise in said Act.

The plan provision required to comply with the Family and Medical Leave Act shall be effective August 5, 1993, the plan provisions required to comply with the Uniformed Services Employment and Re-Employment Rights Act of 1994 shall be effective December 12, 1994, the plan provisions required to comply with the Retirement Protection Act of 1994 shall generally be effective on the first day of the first limitation year beginning after December 31, 1994, the plan provisions required to comply with the Small Business Job Protection Act of 1996 shall generally be effective on the first day of the plan year beginning after December 31, 1996, the plan provisions required to comply with the Taxpayer Relief Act of 1997 shall generally be effective on the first day of the plan year beginning after August 5, 1997, and the plan provisions required to comply with the Economic Growth and Tax Relief Reconciliation Act of 2001 shall generally be effective on the first day of the plan year beginning after December 31, 2001, except as specified otherwise in this plan or in said Acts for a government sponsored plan.

- C. Plan Entry Date means the participation date(s) specified in Subpart B.
- D. Plan Year means the 12-consecutive month period beginning on January 1 and ending on December 31.
- E. Limitation Year means the plan year.

#### **§505. Employee**

- A. Employee means any person employed by the employer. The term employee shall include any employee of the employer maintaining the plan or of any other employer required to be aggregated with such employer under IRC sections 414(b), (c), (m) or (o), as such provisions may be interpreted to apply to a governmental entity by the Internal Revenue Service. The term employee shall also include any leased employee deemed to be an employee of any such employer as provided in IRC sections 414(n) or (o) and as defined in Section 505B.
- B. Leased Employee means an individual (who otherwise is not an employee of the employer) who, pursuant to a leasing agreement between the employer and any other person, has performed services for the employer (or for the employer and any persons related to the employer within the meaning of IRC section 414(n)(6)) on a substantially full time basis for at least one year and such services are performed under the primary direction or control of the employer. If a leased employee is treated as an employee by reason of this Section 505B, compensation from the leasing organization that is attributable to services performed for the employer shall be considered as compensation under the plan. Contributions or benefits provided a leased employee by the leasing organization that are attributable to services performed for the employer shall be treated as provided by the employer.

## **§506. Employer**

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

## **§507. Fiduciaries**

- A. Chief Administrative Officer means the person appointed by the employer or the pension board as described in Section 536 who has primary responsibility for the execution of the administrative affairs of the plan.
- B. Plan Administrator means the Chief Administrative Officer.
- C. Investment Manager means a person or corporation other than a trustee appointed for the investment of plan assets.

## **§508. Participant/Beneficiary**

- A. Participant means an eligible employee of the employer who becomes a member of the plan pursuant to the provisions of Subpart B, or a former employee who has an accrued benefit under the plan.
- B. Beneficiary means a person designated by a participant who is or may become entitled to a benefit under the plan. The beneficiary may be someone other than the participant's spouse, but only to the extent that this plan provides for a benefit to be payable to a non-spouse beneficiary. A beneficiary who becomes entitled to a benefit under the plan remains a beneficiary under the plan until the trustee has fully distributed his benefit to him. A beneficiary's right to (and the plan administrator's, or a trustee's duty to provide to the beneficiary) information or data concerning the plan shall not arise until he first becomes entitled to receive a benefit under the plan.

## **§ 509. Plan**

Plan means Robeson Township Non-Uniformed Employees' Pension Plan as set forth herein and as it may be amended from time to time.

## **§ 510. Service**

- A. Service means any period of time the employee is in the employ of the employer, including any period the employee is on an unpaid leave of absence authorized by the employer. Separation from service means that the employee no longer has an employment relationship with the employer.



B. Hour of Service means:

1. Each hour for which an employee is paid, or entitled to payment, for the performance of duties for the employer. These hours shall be credited to the employee for the computation period in which the duties are performed; and
2. Each hour for which an employee is paid, or entitled to payment, by the employer on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability which includes periods during which the employee is receiving worker's compensation payments), layoff, jury duty, military duty, or leave of absence. No more than 501 hours of service shall be credited under this Paragraph 2 for any single continuous period (whether or not such period occurs in a single computation period). An hour of service shall not be credited to an employee under this Paragraph 2 if the employee is paid, or entitled to payment, under a plan maintained solely for the purpose of complying with applicable unemployment compensation or disability insurance laws; and
3. Each hour for which back pay, Irrespective of mitigation of damages, is either awarded or agreed to by the employer. The same hours of service shall not be credited both under Paragraph 1 or Paragraph 2, as the case may be, and under this Paragraph 3. These hours shall be credited to the employee for the computation period or periods to which the award or agreement pertains rather than the computation period in which the award, agreement, or payment is made.  
Hours of service shall be determined on the basis of actual hours for which an employee is paid or entitled to payment. The above provisions shall be construed so as to resolve any ambiguities in favor of crediting employees with hours of service.
4. Solely for purposes of determining whether a break in service for participation and vesting purposes has occurred in a computation period, an individual who is absent from work on unpaid leave under the Family and Medical Leave Act shall receive credit for the hours of service that would otherwise have been credited to such individual but for such absence, or in any case in which such hours cannot be determined, 8 hours of service per day of such absence. Such an individual shall be treated as actively employed for the purposes of participation. Notwithstanding the preceding, this paragraph shall not apply if the employer or the particular employee is not subject to the requirements of the Family and Medical Leave Act at the time of the absence.
5. If the employer is a member of an affiliated service group under IRC section 414(m) or a controlled group of corporations under IRC section 414(b), or any other entity required to be aggregated with the employer pursuant to IRC section 414(o) as these Internal Revenue Code provisions are applied to a governmental entity, service shall be credited for any employment for any period of time for any other member of such group. Service shall also be credited for any leased employee who is considered an employee for purposes of this plan under IRC section 414(n) or (o).

- C. Break In Service (or One Year Break in Service) means a 12-consecutive-month computation period during which a participant or former participant does not complete the specified number of hours of service with the employer as set forth in Section 512B (Eligibility Service) and Section 516A(2) (Vesting Service).
- D. 1. Year 01 Service means a 12-consecutive-month computation period during which the employee completes the required number of hours of service with the employer as specified in Section 512 (Eligibility Service) or Section 516 (Vesting and Benefit Service).
- 2. Crediting Years of Service - Service may be credited for the purpose of eligibility to participate, vesting, benefit accrual, or determining the benefit payable under the normal retirement benefit formula. Generally, no service shall be credited for periods during which the employee performs no services for the employer. Further, no more than one year of service will be credited for any 12-consecutive-month period.
- 3. Predecessor Service -If the employer maintains the plan of a predecessor employer, service with such predecessor employer shall be treated as service for the employer. If the employer does not maintain the plan of a predecessor employer, then service as an employee of a predecessor employer shall not be considered as service under this plan, unless this plan is so amended.
- E. Qualified Military Service Notwithstanding any provision of this plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with IRC section 414(u).

**§511. Trust**

- A. Trust means the qualified trust created under the employer's plan, The trust shall be known as the Robeson Township Non-Uniformed Employees' Pension Fund.
- B. Trustee means the person or persons appointed by the employer to be the trustee of the trust, or any duly appointed successor trustee.

**B. Participation**

**§512. Eligibility Service**

- A. Eligibility Year of Service means an eligibility computation period during which the employee completes at least 1,000 hours of service with the employer.
- B. One Year Break in Service means for the purposes of this Subpart B an eligibility computation period during which the participant or former participant does not complete more than 500 hours of service with the employer.
- C. Eligibility Computation Period - The initial eligibility computation period shall be the 12-consecutive-month period beginning with the day on which the employee first performs an hour of service with the employer (employment commencement date).

Succeeding eligibility computation periods shall coincide with the plan year, beginning with the first plan year that commences prior to the first anniversary of the employee's employment commencement date regardless of whether the employee is credited with the required number of hours of service during the initial eligibility computation period. An employee who is credited with the required number of hours of service in both the initial eligibility computation period and the first plan year that commences prior to the first anniversary of the employee's employment commencement date shall be credited with two years of eligibility service for purposes of eligibility to participate.

### **§513. Plan Participation**

#### **A. Eligibility**

1. **Age/Service Requirements** - An employee who is a member of the eligible class of employees shall be eligible for plan participation after he has satisfied the following participation requirement(s):

(a) Completion of one year of service with the employer.

(b) Attainment of age 21.

2. **Eligible Class of Employees** - All employees of the employer shall be eligible to be covered under the plan except for employees in the following category(ies):

Individuals not directly employed by the employer as defined in Section 1.6. An employee of an entity that is not a participating employer in this plan shall not participate in this plan.

Employees employed as police officers.

**B. Entry Date** - An eligible employee shall participate in the plan on the first day of the month coinciding with or immediately following the date on which he meets the age and service requirements.

### **§514. Termination of Participation**

A participant shall continue to be an active participant of the plan so long as he is a member of the eligible class of employees. He shall become an inactive participant immediately if he ceases to be a member of the eligible class of employees or terminates employment. He shall cease participation completely upon the later of his receipt of a total distribution of his nonforfeitable accrued benefit under the plan or the forfeiture of the nonvested portion of the accrued benefit.

### **§515. Re-Participation**

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

class, such employee shall participate immediately.

- B. If a participant incurs a break in service, he shall become an active participant immediately upon returning to employment.

## C. RETIREMENT BENEFITS

### § 516. Service Rules

- A. 1. Year of Vesting Service means a vesting computation period during which the employee completes at least 1,000 hours of service with the employer. All of an employee's years of service with the employer shall be counted to determine the employee's vested accrued benefit derived from employer contributors, except:

- Years of service disregarded under the break in service rules in Section 516A(4).

Years of service before January 1, 1989 are computed under the rules in effect at that time.

2. One-Year Break in Service means, with respect to a determination of years of vesting service, a vesting computation period during which the participant or former participant does not complete more than 500 hours of service with the employer.
3. Vesting Computation Period means the 12-consecutive-month period coinciding with the plan year.
4. Break in Service Rules
- (a) Vested Participant - A former participant who had a nonforfeitable right to all or a portion of his accrued benefit derived from employer contributions at the time of his termination from service and who did not receive a distribution of his accumulated contributions shall retain credit for all years of vesting service prior to a break in service.
- (b) Nonvested Participant - in the case of a former participant who did not have any nonforfeitable right to his accrued benefit derived from employer contributions at the time of his termination from service or who received a distribution of his accumulated contributions, years of vesting service before a break in service shall not be taken into account in computing service, except as provided in Section 529.
- B. 1. Year of Benefit Service means a benefit computation period during which the participant completes at least 1000 hours of service with the employer. Years of benefit service shall exclude:

- Years of service disregarded under Section 529 Cashout Distributions and Restoration.

Years of service before January 1, 1989 are computed under the rules in effect at that time.

2. Benefit Computation Period means the 12.consecutive.month period coinciding with the plan year.

## § 517. Normal Retirement

- A. Normal Retirement Date - The normal retirement date of each participant shall be the day on which he attains age 60.

A participant's right to his normal retirement benefit shall be 100% vested and nonforfeitable upon attainment of the normal retirement date, notwithstanding the plan's vesting schedule. If the employer enforces a mandatory retirement age, the normal retirement age shall be the lesser of the mandatory age or the age specified herein.

- B. 1. Normal Retirement Benefit - The normal retirement benefit of each participant shall not be less than the largest periodic benefit that would have been payable to the participant upon separation from service at or prior to his normal retirement date under the plan exclusive of social security supplements, premiums on disability or term Insurance, and the value of disability benefits not in excess of the normal retirement benefit, but taking into account any decrease in average monthly compensation. For purposes of comparing periodic benefits in the same form, commencing prior to and at his normal retirement date, the greater benefit shall be determined by converting the benefit payable prior to his normal retirement date into the same form of annuity benefit payable at his normal retirement date and comparing the amount of such annuity payments.
2. Normal Form of Payment - The normal form of retirement benefit for each participant shall be a level monthly pension payable during the participant's lifetime, with payments commencing on the first day of the month coincident with or next following his normal retirement date, and ceasing upon the participant's death.

- C. Pension Benefit Formula

Each eligible participant shall receive a monthly benefit payable at his normal retirement date equal to:

1.226% of average monthly compensation for each year of benefit service credited.

- D. IRC Section 415 Limitations and Conditions - Notwithstanding the benefits set forth in this Subpart, the annual benefit otherwise payable to a participant at any time shall be limited or modified to the extent required to comply with the provisions of Section 533 (limitations on benefits under IRC section 415 and related employer provisions under IRC section 414).

In any limitation year commencing before January 1, 2000 in which the accrued benefit of one or more participants would be in excess of the limitations on annual benefits under IRC section 415, the annual benefits under any other plan that the employer also sponsors will be reduced to the extent necessary to comply with such limitations first. If any further reduction is required, the annual benefits under this plan will then be reduced with respect to such participants.

If any reduction is required in any limitation year commencing on or after January 1, 2000, the annual benefits under any other defined benefit plan that the employer sponsors will be reduced to the extent necessary to comply with such limitations first. If any further reduction is required, the annual benefits under this plan will then be

reduced with respect to such participants.

### **§ 518. Accrued Benefit**

A participant's accrued benefit at any time equals the amount computed in accordance with the normal retirement pension formula in Section 517C, but based upon his compensation and years of benefit service to date.

If a participant begins receiving benefits at a time other than his normal retirement date, the participant's benefit will be determined in accordance with Section 519 if benefits commence after his normal retirement date and In accordance with Section 520 if benefits commence before his normal retirement date.

### **§ 519. Late Retirement**

- A. Nonforfeitability - If a participant remains employed after his normal retirement date, his benefits shall remain 100% vested and nonforfeitable. Payment of benefits shall not commence until his actual retirement date.
- B. Suspension of Benefits Until Payment - Payment of normal retirement benefits shall be suspended for each calendar month during which the participant remains employed after his normal retirement date. The amount of benefits that are paid later than his normal retirement date shall be computed under the pension benefit formula. The participant's pension benefit shall be determined on the basis of the participant's years of service for benefit accrual completed before and during the period of suspension; and the participant's compensation with the employer during the period of suspension shall be included in any relevant determination of average monthly compensation.

### **§ 520. Early Retirement**

No early retirement benefit is provided under this plan.

### **§ 521. Disability Benefit**

If an actively employed participant becomes disabled prior to his normal retirement date and remains so for six months, he may receive a disability benefit under the plan. Such disabled participant shall be entitled to a monthly disability benefit equal to 50% of average monthly compensation at the date of disability, but not less than \$20.00 per month.

The form of payment is not subject to participant election.

Disability benefit payments shall cease upon death or upon recovery from disability prior to the date on which the disabled participant would have reached his normal retirement date if he had continued as an active participant under the plan. If disability benefits cease due to death before the participant's attainment of his normal retirement date, the death benefit payable shall be the preretirement death benefit without any reduction with respect to disability payments that have been made. For the purpose of determining whether there has been a recover, the plan administrator may require evidence of continued disability. Such evidence may include examination by a doctor selected by the plan

administrator. The participant's refusal to submit to medical examinations shall render him ineligible for disability benefits.

If disability continues until attainment of normal retirement date, the participant shall be 100% vested and shall receive an unreduced normal retirement benefit. Payment shall be made in the form elected by the participant as described in Section 522.

Compensation for the purpose of determining an unreduced normal retirement benefit shall be the participant's annual compensation for the plan year preceding the plan year in which he became disabled.

Disability means inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months.

Notwithstanding such definition, a participant who is eligible for Social Security disability benefits shall automatically satisfy the definition of disability. In the absence of an award of Social Security disability benefits with respect to the disability, the permanence and degree of the impairment shall be supported by medical evidence. The plan administrator shall determine whether the participant is disabled as defined hereunder after consultation with a physician chosen by the plan administrator. In the administration of this Section, all employees shall be treated in a uniform manner in similar circumstances.

## **§ 522. Benefit Distribution**

- A. Commencement of Benefits - Subject to the limitations of this plan, the benefit distribution shall commence as soon as administratively feasible after the later of the participant's termination of employment or his satisfaction of the normal retirement date requirements, provided that he files a written application for the retirement benefit.
  
- B. Optional Forms of Payment - A participant may elect to receive distribution of his accrued benefit in one of the optional forms of payment outlined below, provided that such distribution complies with the Distribution Requirements of Section 534. The participant shall file a written request for benefits with the plan administrator before payments will commence. Optional forms of payment include:
  - 1. Lifetime Pension - A monthly pension payable for the lifetime of the participant with payments guaranteed for the first 0, 60, 120, or 180 months.
  
  - 2. Joint & Survivor Pension - A monthly pension payable as long as the participant or his designated survivor annuitant live. The amount of monthly pension continued after the participant's death during the lifetime of the survivor annuitant may be 100%, 75%, or 50% of the actuarially adjusted amount payable during the participant's lifetime. The plan administrator shall reject the designation of a survivor annuitant if the age of such person would cause a monthly pension to violate the Distribution Requirements of Section 534D(2).



C. General Payment Provisions

1. If any person entitled to receive benefits hereunder is physically or mentally incapable of receiving or acknowledging receipt thereof, and if a legal representative has been appointed for him, the plan administrator may direct the benefit payment to be made to such legal representative.
2. At the direction of the plan administrator, the trustee may make pension payments directly from the fund or may take such steps as may be required to purchase an annuity contract from an insurance company for the participant, provided that the annuity contract purchased on behalf of such participant shall be sufficient to provide the benefits to which the participant is entitled. The ownership of the annuity contract shall remain with the trustee, unless the plan administrator determines otherwise. Any annuity contract distributed herefrom shall be non-transferable. The application and directions to the insurance company for such annuity contract shall be made by the plan administrator. The terms of any such annuity contract purchased by the plan shall comply with the requirements of this plan. Any dividend, refund, or recovery on an annuity contract shall be used to reduce subsequent employer contributions.
3. The benefits due any participant on account of his most recent period of employment shall not duplicate any benefits due the same participant under this plan on account of previous employment with the employer.
4. The participant's election of a form of benefit payment shall be irrevocable as of the annuity starting date, subject to the notice requirements contained in Section 522F.

D. Eligible Rollover Distribution - Effective for distributions made on or after January 1, 1993, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any eligible portion of a lump sum distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover payment.

1. Effective for distributions made after December 31, 2001, any eligible portion of a lump sum distribution shall include after-tax employee contributions. A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includable in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in IRC section 408(a) or (b) or to a qualified defined contribution plan described in IRC section 401 (a) or 403(a) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is Includable in gross income and the portion of such distribution which is not so includable.
2. An eligible retirement plan is an individual retirement account described in IRC section 408(a), an Individual retirement annuity described in IRC section 408(b), an annuity plan described in IRC section 403(a), or a qualified trust described In IRC section 401 (a), that accepts the distributee's lump sum distribution. However, in the case of an eligible rollover distribution to the surviving spouse,

an eligible retirement plan is an individual retirement account or individual retirement annuity. Effective for distributions made after December 31, 2001, an eligible retirement plan shall also mean an annuity contract described in IRC section 403(b) and an eligible plan under IRC section 457(b) 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 separately account for amounts transferred into such plan from this plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in IRC section 414(p).

3. A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in IRC section 414(p), are distributees with regard to the interest of the spouse or former spouse.

#### E. Unclaimed Benefits

1. Forfeiture - The plan does not require the trustee or the plan administrator to search for, or to ascertain the whereabouts of, any distributee. At the time the distributee's benefit becomes distributable under the plan, the plan administrator, by certified or registered mail addressed to his last known address of record, shall notify any distributee that he is entitled to a distribution under this plan. If the distributee fails to claim his distributive share or make his whereabouts known in writing to the plan administrator within twelve months from the date of mailing of the notice, the plan administrator shall treat the distributee's unclaimed payable accrued benefit as forfeited. A forfeiture under this Section 522E shall occur at the end of the notice period or, if later, the earliest date applicable federal Treasury regulations would permit the forfeiture. These forfeiture provisions apply solely to the distributee's accrued benefit derived from employer contributions.
2. Restoration -- If a distributee who has incurred a forfeiture of his accrued benefit under the provisions of this Section 522E makes a claim, at any time, for his forfeited accrued benefit; the plan administrator shall restore the distributee's forfeited accrued benefit to the present value of the accrued benefit forfeited. The plan administrator shall make the restoration during the plan year in which the distributee makes the claim. If necessary, the employer shall make a contribution to the plan to satisfy the restoration. The plan administrator shall direct the trustee to distribute the distributee's restored accrued benefit to him not later than 60 days after the close of the plan year in which the plan administrator restores the forfeited accrued benefit.

#### F. Special Rule Relating to Time for Written Explanation

Effective for distributions made on or after January 1, 1993, for any distribution in excess of \$200 that may be paid in the form of a lump sum, the plan administrator shall give the participant written notice of his eligible rollover distribution rights as required under IRC section 402(f) no less than 30 days and no more than 90 days before the annuity starting

dale with respect to the distribution. Effective for distributions made on or after January 1, 1994, such distribution may commence less than 30 days after the notice is given, provided that:

1. The participant is provided with information that clearly states that the participant has a right to a period of at least 30 days after receiving the written explanation and notice to consider the decision of whether or not to elect a distribution;
2. The participant, after receiving the written notice, affirmatively elects a distribution.

### **§ 523. Suspension of Benefits**

Under this plan, normal or early retirement benefits in pay status shall be suspended if a participant returns to employment. If the participant accrues an additional benefit, the plan shall offset the actuarial value of the distributions made to the participant by the last day of the preceding plan year against the benefit accrual for the current plan year.

### **§ 524. Distributions Under Domestic Relations Orders**

Nothing contained in this plan prevents the trustee, in accordance with the direction of the plan administrator, from complying with the provisions of an acceptable domestic relations order that creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to receive all or a portion of the benefits payable with respect to a participant under the plan.

A distribution under an acceptable domestic relations order will not be made to an alternate payee until the participant is entitled to a distribution under this plan and commences such distribution. Nothing in this Section permits the alternate payee to receive a form of payment not otherwise permitted under the plan.

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

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

## D. Death Benefits

### § 525. Preretirement Death Benefit

- A. Preretirement Survivor Annuity Benefit - If a vested participant who has been married for at least one year dies after the plan's earliest retirement age, the participant's surviving spouse (if any) shall receive the same benefit that would be payable if the participant had retired with an immediate joint and 50% survivor annuity on the day before the participant's date of death.

The surviving spouse may elect to commence payment under such annuity within a reasonable period after the participant's death. The actuarial value of benefits that commence later than the date on which payments would have been made to the surviving spouse under a joint and survivor annuity in accordance with this provision shall be adjusted to reflect the delayed payment.

If a vested participant who has been married for at least one year dies on or before the plan's earliest retirement age as described in Section 528, the participant's surviving spouse (if any) shall receive the same benefit that would be payable if the participant had:

- separated from service on the date of death (or on the date of separation from service, if earlier),
- been vested strictly in accordance with the vesting schedule,
- survived to the earliest retirement age,
- retired with an immediate joint and 50% survivor annuity at the earliest retirement age, and
- died on the day after the earliest retirement age.

For purposes of the preceding sentence, a surviving spouse shall begin to receive payments at the earliest retirement age unless such surviving spouse elects a later date. Benefits commencing after the earliest retirement age will be the actuarial equivalent of the benefit to which the surviving spouse would have been entitled if benefits had commenced at the earliest retirement age under an immediate joint and 50% survivor annuity.

In determining this benefit, the employee-provided accrued benefit is 100% vested. If the surviving spouse dies before the plan has commenced distribution or before the pension payments made to the surviving spouse equal the present value of the spouse's portion of the accumulated contributions as described in Section 531 as of the annuity starting date, the excess over the payments made shall be payable to the surviving spouse's estate.

The survivor benefit set forth above shall not be payable unless the participant and spouse have been married throughout the one-year period ending on the date of the participant's death. The participant's spouse cannot waive receipt of this benefit to the extent that this benefit is an employer-provided accrued benefit. To the extent that this benefit is an employee-provided benefit under Section 531, the participant may designate another beneficiary in accordance with the provisions of Section 525C.

If there is an acceptable domestic relations order in force with respect to the participant, the alternate payee shall be treated as the surviving spouse to the extent provided in the order. However, no order shall be accepted if it provides that the alternate payee shall be

the surviving spouse with respect to benefits accrued as a result of years of benefit service credited after the termination of the marriage.

- B. Employee Contributions - The participant's accumulated contributions as described in Section 531 shall be payable under this Section 525B to the extent not payable under Section 525A. In the case of a participant who dies prior to becoming vested in any employer-provided accrued benefit or prior to being married for at least one year, such employer-provided benefit shall be payable to the participant's named beneficiary.
- C. Beneficiary Designation - With respect to his accumulated contributions, the participant shall have the right to designate his beneficiaries, including a contingent beneficiary, and shall have the right at any time to change such beneficiaries. The designation shall be made in writing on a form supplied by the plan administrator. No designation shall be effective until filed with the plan administrator. If the participant fails to designate a beneficiary, or if the designated person or persons predeceases the participant, "beneficiary" shall mean the spouse, children, parents, brothers and sisters, or estate of the participant, in the order listed.
- In the absence of a beneficiary designation form duly filed with the plan administrator by the designated beneficiary for any preretirement death benefit, if such designated beneficiary dies before the plan has commenced distribution of the death benefit to the designated beneficiary, the death benefit shall be paid to such person's estate in one lump sum.
- If the deceased designated beneficiary is not the participant's surviving spouse, distribution shall be completed by the December 31 of the fifth year following the participant's date of death. If the deceased designated beneficiary is the participant's surviving spouse, distribution shall be completed by the December 31 of the fifth year following the beneficiary's date of death.
- D. Form and Manner of Payment- The accumulated contribution death benefit payable to the participant's beneficiary shall be payable as a lump sum benefit payment in cash from the fund.

## **§ 526. Postretirement Death Benefit**

Upon the death of a participant after his annuity starting date, no death benefit shall be payable, except such benefit as is provided by the particular form of pension payment under which pension benefits are being distributed.

## **E. Termination Of Employment Benefits**

### **§527. Vesting**

If a participant separates from the service of the employer other than by retirement, disability, or death, he shall be entitled to a vested deferred pension equal to the benefit accrued to the date of termination multiplied by the vesting percentage, based upon his years of vesting service to the date of termination. His vesting percentage shall be determined by the vesting schedule set forth below:

| <u>Years of Service</u> | <u>Vesting Percentage</u> |
|-------------------------|---------------------------|
| 0-4 Years               | 0%                        |
| 5 or more years         | 100%                      |

## **§528. Payment of Benefits**

- A. Payment as of Normal Retirement Date - If the participant terminates his employment on or before his normal retirement date, payment of the vested accrued pension may begin at his normal retirement date. If payments do not commence until after his normal retirement date, distribution must begin by the required beginning date for minimum required distributions and the amount of the benefit payable shall be determined as provided in Section 519. The vested accrued pension shall be payable in the same optional forms and in the same manner as described in Section 522
- B. Payment Prior to Normal Retirement Date - No employer-provided benefit is payable before the normal retirement date, except in the event of death or disability. Nevertheless, If the participant is not eligible for normal retirement at the time of his termination of employment, he may elect to have paid to him an amount equal to his accumulated contributions as soon as administratively possible after severance of employment as provided in Section 531.
- C. Death Before Retirement-If a participant terminates employment and dies before beginning to receive retirement benefits, a preretirement death benefit may be payable, to the extent provided under Subpart D.

## **§ 529. Cashout Distributions and Restoration**

- A. Cashout Distribution - If an employee receives a distribution of his accumulated contributions under Section 531, the present value of the employee's vested accrued benefit shall be zero. In determining the participant's accrued benefit after the occurrence of such a distribution, the plan shall disregard all years of benefit service performed by such employee before the date of distribution.
- B. Restoration - If a participant receives a distribution pursuant to this Section and if he resumes covered employment under the plan; he shall have the right to restore his accrued benefit under Section 517 upon the repayment to the plan of the full amount of the distribution plus interest, compounded annually from the date of distribution at the rate of 0.00%. In order to make a total or partial repayment, the employee may transfer to the plan the account balance of the individual retirement account or annuity to which the distribution being repaid was transferred, provided that the employee has made no other contribution to the account or annuity and both transfers are accomplished in compliance with IRC section 408(d). Such repayment must be made within five years after the participant returns to active participation.

If a participant is eligible to restore his accrued benefit, but such restoration has not been

made; then, for the purpose of determining years of benefit service and years of vesting service, years of service before the employee's break-in-service shall be disregarded.

C. Forfeitures

1. Time of Forfeiture - If a participant terminates employment before his accrued benefit under Section 517 is fully vested, his accrued benefit shall be forfeited on the earlier of:
  - (a) The date the participant receives his entire vested accumulated contributions.
  - (b) The date the participant terminates employment or ceases to be a member of the eligible class of employees.
2. Disposition of Forfeiture - Forfeitures shall serve to reduce subsequent employer contributions under the plan.

F. Contributions

**§530. Employer Contributions**

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 obligation of the employer with respect to funding the plan for any given plan year after taking into account any contribution to be made by the Commonwealth of Pennsylvania and any participant contributions. The Chief Administrative Officer shall submit the financial requirements of the plan and the minimum obligation of the employer to the employer (or its governing body) annually and shall certify the accuracy of such calculations and their conformance with Act 205. The employer shall be obligated to make such contribution to the trust by annual appropriations.

**§ 531. Mandatory Employee Contributions**

- A. Mandatory Contribution Amount - As a condition of participation in this plan, each active participant must contribute, on an after-tax basis, a percentage of his compensation as established each year and set forth in Appendix A as attached hereto and made a part hereof.

The plan administrator shall not require or accept mandatory employee contributions for plan years beginning after December 31, 1995.
- B. Employee Contributions - The employer shall remit employee contributions to the trust of the plan as soon as administratively feasible.
- C. Determination of Accrued Benefit - The accrued benefit derived from a participant's mandatory employee contributions as of any applicable date is an annual benefit, in the form of a straight life annuity (without ancillary benefits) commencing at his normal retirement date, equal to the actuarial equivalent of the participant's accumulated

contributions. The participant's accumulated contributions shall be computed by crediting interest to his mandatory employee contributions.

The interest rate to be credited shall be 5.000% per annum. Such interest shall be credited annually in the form of a compound interest rate. A participant shall be 100% vested in his accumulated contributions.

If this plan or a prior plan is or has been amended so as to no longer require employee mandatory contributions, the participant's employee-provided accrued benefit and employer-provided accrued benefit shall be determined as if the plan required contributions of the employee as a condition of participation at the time of termination of employment. This Section, however, shall not apply to the extent the contributions the participant has made to the plan (or prior plan) have been refunded to him.

- D. **Withdrawal of Accumulated Contributions** - A participant who is not vested in his benefit accrued under Section 517 may withdraw an amount that is equal to his total accumulated contributions. The withdrawal shall be payable in one lump sum. Thereafter, the former participant shall have no further right to any benefit under this plan.

In no event may any amount be withdrawn or distributed until the participant's retirement, disability, death or termination of employment regardless of the Income tax accounting treatment required by IRC section 72(e)(8)(0).

- E. **Forfeiture** - The death benefit payable under Subpart D shall not be less than the participant's accumulated contributions.

## **§ 532. Rollover/Transfer Contributions**

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

## **G. Additional Qualification Rules**

### **§ 533. Limitation on Benefits Under IRC Section 415**

#### **A. Single Defined Benefit Plan Limitations**

1. This Section 533 applies regardless of whether any participant is or has ever been a participant in another qualified plan maintained by the adopting employer. If any participant is or has ever been a participant in another qualified plan maintained by the employer, or a welfare benefit fund maintained by the employer (as defined in IRC section 419(e)) or an individual medical account (as defined in IRC section 415(1)(2) maintained by the employer, or a simplified employee pension (as defined in IRC section 408(k) maintained by the employer, under which amounts attributable to postretirement medical benefits are allocated to separate accounts of key employees (as defined in IRC Section 419A(d)(3), maintained by the employer, that provides an annual addition as defined in Section 533E(1); Section 533C is also applicable to that participant's benefits.
2. The annual benefit otherwise payable to a participant at any time shall not exceed



the maximum permissible benefit. If the benefit the participant would otherwise accrue in a limitation year would produce an annual benefit in excess of the maximum permissible benefit, the rate of accrual shall be reduced so that the annual benefit will equal the maximum permissible benefit.

## B. Defined Contribution Plan Limitations

The amount of any employee nondeductible contributions or mandatory employee contributions made under the terms of this plan shall be treated as an annual addition to a qualified defined contribution plan.

1. The amount of annual additions that may be credited to the participant's employee nondeductible contribution account for any limitation year will not exceed the lesser of the maximum permissible amount or any other limitation contained in this plan. If a contribution that would otherwise be contributed to the participant's account would cause the annual additions for the limitation year to exceed the maximum permissible amount, the amount contributed will be reduced so that the annual additions for the limitation year will equal the maximum permissible amount.
  - (a) Prior to determining the participant's actual compensation for the limitation year, the employer may determine the maximum permissible amount for a participant on the basis of a reasonable estimation of the participant's compensation for the limitation year, uniformly determined for all participants similarly situated.
  - (b) As soon as is administratively feasible after the end of the limitation year, the maximum permissible amount for the limitation year will be determined on the basis of the participant's actual compensation for the limitation year.
  - (c) If there is an excess amount, the mandatory employee contributions shall be reduced.
2. This Section 533B(2) shall apply if, in addition to this plan, the participant is covered under a plan maintained by the employer that is a qualified defined contribution plan, a welfare benefit fund, a simplified employee pension, or an individual medical account that provides an annual addition as defined in Section 533E(1), during any limitation year. The annual additions that may be credited to a participant's account under this plan for any such limitation year will not exceed the maximum permissible amount reduced by the annual additions credited to a participant's account under the other plans and welfare benefit funds for the same limitation year. If the annual additions with respect to the participant under the defined contribution plans and welfare benefit funds maintained by the employer are less than the maximum permissible amount and the contribution that would otherwise be contributed to the participant's employee nondeductible contribution account under this plan would cause the annual additions for the limitation year to exceed this limitation, the amount contributed will be reduced so that the annual additions under all such plans and funds for the limitation year will equal the maximum permissible amount. If the annual additions with respect to the

participant under such defined contribution plans and welfare benefit funds in the aggregate are equal to or greater than the maximum permissible amount, no amount will be contributed to the participant's account under this plan for the limitation year.

3. If, pursuant to Section 533B(1)(b) or as a result of the allocation of forfeitures under the other plans, a participant's annual additions under this plan and such other plans would result in an excess amount for a limitation year, the excess amount will be deemed to consist of the annual additions last allocated, except that annual additions attributable to a welfare benefit fund *or* individual medical account will be deemed to have been allocated first regardless of the actual allocation date.
4. If an excess amount was contributed by a participant as of a date that coincides with an allocation date of another plan, any excess amount shall be disposed of in the manner provided under such other plan.

C. Combined Limitations: Other Plans

1. This section applies if any participant is also a participant, or has ever participated in another plan maintained by the employer, including a qualified plan, a simplified employee pension, a welfare benefit fund (as defined in IRC section 419(e)) under which amounts attributable to postretirement medical benefits *are* allocated to separate accounts of key employees (as defined in IRC Section 419A(d)(3), or an individual medical account that provides an annual addition as described in Section 533E(1).
2. If a participant is, or has ever been, a participant in more than one defined benefit plan maintained by the employer, the sum of the participant's annual benefits from all such plans may not exceed the maximum permissible benefit. If the maximum permissible benefit is exceeded solely due to the accrued benefit under a frozen or terminated defined benefit plan, the benefit accrual under this plan shall be reduced until the maximum permissible benefit is no longer exceeded.
3. For limitation years beginning before January 1, 2000, if the employer maintains, or at any time maintained, one or more qualified defined contribution plans in which any participant in this plan participated, a welfare benefit fund maintained by the employer (as defined in IRC section 419(e)) under which amounts attributable to postretirement medical benefits are allocated to separate accounts of key employees (as defined in IRC section 419A(d)(3), or an Individual medical account, or a simplified employee pension, the sum of the participant's defined contribution fraction and defined benefit fraction shall not exceed 1.0 in any limitation year and, where the sum exceeds 1.0 for a participant for a limitation year, any excess amount attributed to this plan will be disposed of in the manner described in Section 533B(1)(c).

Benefit increases resulting from the repeal of IRC section 415(e) shall be provided to all current and former participants (with benefits limited by IRC section 415(e)) who have an accrued benefit under the plan immediately before the first day of the first limitation year beginning in 2000.

4. Where the participant's employer-provided benefits under all defined benefit plans ever maintained by the employer (determined as of the same age) would exceed the maximum permissible benefit applicable at that age, the order in which the employers sponsored plans will be reduced shall be as provided in Section 517F.

D. Protection of Accrued Benefit

In the case of an individual who was a participant in one or more defined benefit plans of the employer as of the first day of the first limitation year beginning after December 31, 1986, the application of the limitations of this Section 533 shall not cause the maximum permissible benefit amount for such individual under all such defined benefit plans to be less than the individual's Tax Reform Act of 1986 (TRA '86) accrued benefit. The preceding sentence applies only if all such defined benefit plans met the requirements of IRC section 415, for all limitation years beginning before January 1, 1987.

E. Definitions (IRC Section 415 Limitations)

1. Annual Additions - The sum of the following amounts credited to a participant's account for the limitation year: (a) employer contributions, (b) employee contributions, (c) forfeitures, (d) allocations under a simplified employee pension, and (e) amounts allocated, after March 31, 1984, to an individual medical account that is part of a pension or annuity plan maintained by the employer that are treated as annual additions to a defined contribution plan. Also amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after such date, that are attributable to postretirement medical benefits, allocated to the separate account of a key employee, as defined in IRC section 419A(d)(3), under a welfare benefit fund maintained by the employer are treated as annual additions to a defined contribution plan.

Picked-up contributions under IRC section 414(h)(2.) shall not be included as an annual addition with respect to a participant.

2. Annual Benefit - A benefit under the plan that is payable annually in the form of a straight life annuity. The annual benefit shall include any picked-up contributions made by the employer under IRC section 414(h)(2). Except as provided below, a benefit payable in a form other than a straight life annuity must be adjusted to an actuarially equivalent straight life annuity before applying the limitations of this Section 533. For limitation years beginning before January 1, 1995, where a participant's benefit must be adjusted to an actuarially equivalent straight life annuity, the actuarially equivalent straight life annuity shall be equal to the greater of the annuity benefit computed using the, interest rate specified In Section 1.2. for adjusting benefits in the same form or 5%.

For limitation years beginning on or after January 1. 1995, where a participant's benefit must be adjusted to an actuarially equivalent straight life annuity, the actuarially equivalent straight life annuity shall be equal to the greater of the annuity benefit computed using the actuarial assumptions specified in Section 533. for a monthly pension payment option and the annuity benefit computed

using a 5% interest rate assumption and the IRC section 417 mortality table defined in Section 1.2..

For limitation years beginning after December 31, 1994, in the case of a lump sum pension payment option, the actuarially equivalent benefit shall be equal to the greater of the equivalent annual benefit computed using the interest rate and mortality table specified in Section 502 for a lump sum pension payment option and the equivalent annual benefit computed using a 5% interest rate assumption and the IRC section 417 mortality table as defined in Section 502. This determination of the actuarially equivalent benefit shall also apply in determining the actuarially equivalent straight life annuity for any benefit form other than (a) a nondecreasing annuity payable for a period of not less than the life of the participant (or, in the case of a preretirement survivor annuity, the life of the surviving spouse), or (b) an annuity that decreases during the life of the participant merely because of (i) the death of the survivor annuitant (but only if the reduction is not below 50% of the annual benefit payable before the death of the survivor annuitant), or (ii) the cessation or reduction of Social Security supplements of qualified disability payments (as defined in IRC section 401 (a)(11)).

The annual benefit does not include any benefits attributable to employee contributions or rollover contributions or the assets transferred from a qualified plan that was not maintained by the employer. No actuarial adjustment to the benefit is required for (a) the value of a qualified joint and survivor annuity, (b) the value of benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement death benefits, and postretirement medical benefits), and (c) the value of postretirement cost-of-living increases made in accordance with IRC section 415(d) and Regulation section 1.415-3(c)(2)(iii).

3. Compensation - A participant's earned income and any earnings reportable as W-2 wages for federal Income tax withholding purposes. W-2. wages means wages as defined in IRC section 3401 (a) but determined without regard to any rules that limit the remuneration included In wages based on the nature or location of the employment or the services performed. Picked-up contributions under IRC section 414(h)(2) shall not be Included in the participants compensation.

For limitation years beginning after December 31, 1991, for purposes of applying the limitations of this Section 533, compensation for a limitation year is the compensation actually paid or Includable In gross Income during such limitation year.

For limitation years beginning after December 31, 1997, compensation shall include elective contributions. Elective contributions are amounts excludable from the employee's gross income and contributed by the employer, at the employee's election to a cafeteria plan excludable under IRC section 125 or to a IRC section 401 (k) arrangement, a simplified employee pension, a tax sheltered annuity excludable under IRC section 402(g)(3), to a IRC section 457 plan, or to a IRC Section 501 (c)(180 plan. Effective for limitation years beginning on or after

January 1, 1998, compensation shall also include any elective amounts that are not includable in gross income of the employee by reason of a IRC section 132Cf)(4) qualified transportation fringe benefit plan.

Effective for limitation years beginning after December 31, 1997, elective contribution amounts under a cafeteria plan excludable under IRC Section 125 include any amounts not available to a participant in cash in lieu of group health coverage because the participant is unable to certify that he has other health coverage. An amount will be treated as an amount under IRC Section 125 only if the employer does not request or collect information regarding the participant's other health coverage as part of the enrollment process for the health plan.

(Ordinance No. 03-05, 11/18/03)

4. TRA '88 Accrued Benefit - A participant's accrued benefit under the plan, determined as if the participant had separated from service as of the close of the last limitation year beginning before January 1, 1987, when expressed as an annual benefit within the meaning of IRC section 415(b)(2). In determining the amount of a participant's TRA '86 accrued benefit, the following shall be disregarded:
  - (a) Any change in the terms and conditions of the plan after May 5, 1986; and
  - (b) any cost of living adjustments occurring after May 5, 1986.
5. Defined Benefit Dollar Limitation - \$90,000 for limitation years beginning before January 1, 2002. Effective January 1, 1988, and each January thereafter, the \$90,000 limitation above will be automatically adjusted by multiplying such limit by the cost of living adjustment factor prescribed by the Secretary of the Treasury under IRC section 415(d) in such manner as the Secretary shall prescribe, and payable in the form of a straight life annuity. The new limitation will apply to limitation years ending with or within the calendar year of the date of the adjustment. The defined benefit dollar limitation shall be \$160,000 for limitation years beginning after January 1, 2001. Effective January 1, 2002, and each January thereafter, the \$160,000 limitation above will be automatically adjusted by multiplying such limit by the cost of living adjustment factor prescribed by the Secretary of the Treasury under IRC section 415(d) in such manner as the Secretary shall prescribe, and payable in the form of a straight life annuity. The new limitation will apply to limitation years ending with or within the calendar year of the date of the adjustment.
6. Defined Contribution Dollar Limitation - \$30,000, as adjusted under IRC section 415(d) for limitation years beginning after December 31, 1994 and not beginning before January 1, 2002. For limitation years beginning after December 31, 2001, the defined contribution dollar limitation shall be \$40,000, as adjusted under IRC section 415(d) for limitation years beginning after December 31, 2002.

7. Defined Benefit Fraction - A fraction, the numerator of which is the sum of the participant's projected annual benefits under all the defined benefit plans (whether or not terminated) maintained by the employer, and the denominator of which is 125% of the defined benefit dollar limitation applicable to the participant determined for the limitation year under IRC sections 415(b)(1)(A) and (d) and in accordance with Section 533E(13) below.

However, for limitation years beginning before January 1, 1995, the denominator of this fraction will be the lesser of 125% of the defined benefit dollar limitation applicable to the participant determined for the limitation year under IRC sections 415(b)(1)(A) and (d) and in accordance with Section 533E(13) below or 140% of the highest average compensation, including any adjustments under IRC Section 415(b)(5).

Notwithstanding the above, 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 that were in existence on May 6, 1986, the denominator of this fraction will not be less than 125% of the sum of the annual benefits under such plans that 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 the defined benefit plans individually and in the aggregate satisfied the requirements of IRC section 415 for all limitation years beginning before January 1, 1987.

8. Defined Contribution Fraction - A fraction, the numerator of which is the sum of the annual additions to the participant's account under all the defined contribution plans (whether or not terminated) maintained by the employer for the current and all prior limitation years (including the annual additions attributable to the participant's nondeductible employee contributions to this and all other defined benefit plans, whether or not terminated, maintained by the employer, and the annual additions attributable to all simplified employee pensions, welfare benefit funds maintained by the employer (as defined in IRC section 419(e)) under which amounts attributable to postretirement medical benefits are allocated to separate accounts of key employees (as defined in IRC Section 419A(d)(3), and individual medical accounts maintained by the employer), and the denominator of which is the sum of the maximum aggregate amounts for the current and all prior limitation years of service with the employer (regardless of whether a defined contribution plan was maintained by the employer). The maximum aggregate amount in any limitation year is the lesser of 125% of the defined contribution dollar limitation or 35% (1.4 x 25%) of the participant's compensation for such year.

If the employee was a participant as of the end of the first day of the first limitation year beginning after December 31, 1986, in one or more defined contribution plans maintained by the employer that were in existence on May 6, 1986, the numerator of this fraction will be adjusted if the sum of this fraction and the defined benefit fraction would otherwise exceed 1.0 under the terms of this plan. Under the adjustment, an amount equal to the product of (1) the excess of the sum of the fractions over 1.0 times (2) the denominator of this fraction, will be permanently subtracted from the numerator of this fraction. The adjustment is calculated using the fractions as they would be computed as of the end of the last

limitation year beginning before January 1, 1987, and disregarding any changes in the terms and conditions of the plan made after May 5, 1986, but using the IRC section 415 limitation applicable to the first limitation year beginning on or after January 1, 1987.

The annual addition for any limitation year beginning before January 1, 1987, shall not be recomputed to treat all employee contributions as annual additions.

9. Employer - For purposes of this Section 533, employer shall mean the employer that adopts this plan and any entity required to be aggregated with the employer pursuant to regulations.
10. Excess Amount - The excess of the participant's annual additions for the limitation year over the maximum permissible amount.
11. Limitation Year - The 12-consecutive-month period defined in Section 504E.
12. Maximum Permissible Amount - The maximum annual addition that may be contributed or allocated to a participant's account under a plan for any limitation year shall not exceed the lesser of:

- (a) the defined contribution dollar limitation as defined in Section 533E(6), or
- (b) 25% of the participant's compensation for the limitation year for limitation years beginning before January 1, 2002: 100% of the participant's compensation for the limitation year for limitation years beginning after December 31, 2001.

The compensation limitation referred to in (b) shall not apply to any contribution for medical benefits (within the meaning of IRC section 401(h) or IRC section 419A(f)(2) that is otherwise treated as an annual addition under IRC Section 415(1)(1) or 419A(d)(2).

If a short limitation year is created because of an amendment changing the limitation year to a different 12-consecutive-month period, the maximum permissible amount will not exceed the defined contribution dollar limitation multiplied by the following fraction:

$$\frac{\text{Number of months in the short limitation year}}{12}$$

13. Maximum Permissible Benefit
  - (a) The maximum permissible benefit is the defined benefit dollar limitation. However, for limitation years beginning before January 1, 1995, the maximum permissible benefit is the lesser of the defined benefit dollar limitation or 100% of the participant's highest average compensation.
  - (b) If the participant has less than 10 years of participation in the plan, the defined benefit dollar limitation shall be multiplied by a fraction: (i) the numerator of which is the number of years (or part thereof) of participation in the plan, and (ii) the denominator of which is 10. In the case of a participant who has less than ten years of service with the

employer, defined benefit compensation limitation shall be multiplied by a fraction: (I) the numerator of which is the number of years (or part thereof) of service with the employer, and (II) the denominator of which is 10. Where a defined benefit plan fraction is calculated, the adjustments of this Section 533E(13)(b) shall be applied in the denominator of the fraction based upon years of service. For purposes of computing the defined benefit plan fraction only, years of service shall include future years of service (or part thereof) commencing before the participant's normal retirement date. Such future years of service shall include the year that contains the date the participant reaches his normal retirement date, only if it can be reasonably anticipated that the participant will receive a year of service for such year, or the year in which the participant terminates employment, if earlier. This Section 533E(13)(b) shall not apply to disability benefit paid in accordance with Section 521 or to benefits payable under Subpart D.

- (c) If the annual benefit of the participant commences on or before age 65 but on or after age 62, the defined benefit dollar limitation shall be as determined in (a) and (b) above.
- (d) Effective for distributions made in limitation years ending on or before December 31, 2001, if the benefit of a participant commences prior to age 62 but on or after age 55, the defined benefit dollar limitation applicable to the participant at such earlier age shall be the greater of:
  - (i) \$75,000, or (b) an annual benefit payable in the form of a straight life annuity that is the actuarial equivalent of the defined benefit dollar limitation for age 62, as determined above. The annual benefit beginning prior to age 62 but on or after age 55 shall be determined as the lesser of the actuarial equivalent benefit computed using the Interest rate and mortality table specified in Section 502 for a monthly pension payment option.

Effective for distributions made in limitation years ending after December 31, 2001, if the benefit of a participant commences prior to age 62, the defined benefit dollar limitation applicable to the participant at such earlier age is an annual benefit payable in the form of a straight life annuity that is the actuarial equivalent of the defined benefit dollar limitation for age 62, as determined above, reduced for each month by which benefits commence before the month in which the participant attains age 62. The defined benefit dollar limitation applicable at an age prior to age 62 is determined as the lesser of the actuarial equivalent of the defined benefit dollar limitation for age 62 computed using the interest rate and mortality table specified in Section 502 for an early retirement benefit (or the tabular factors appended thereto), and the actuarial equivalent of the defined benefit dollar limitation for age 62 equivalent annual benefit computed using a 5% interest rate assumption and the IRC section 417 mortality table as defined in Section 502. Any decrease



in the defined benefit dollar limitation determined In accordance with this Section 533E(13)(d) 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.

This Section 533E(13)(d) shall not apply to disability benefit paid in accordance with Section 521 or to benefits payable under Subpart D.

- (e) Effective for distributions made In limitation years ending on or before December 31, 2001, if the benefit of a participant commences prior to age 55, the defined benefit dollar limitation applicable to the participant at such earlier age shall be the greater of: (a) the actuarial equivalent of a \$75,000 annual benefit beginning at age 55; or (b) an annual benefit that is the actuarial equivalent of the defined benefit dollar limitation for age 62 that is equal to the defined benefit dollar limitation as determined in (a) and (b) above. The annual benefit beginning prior to age 55 shall be determined as the lesser of the actuarial equivalent benefit computed using the interest rate and mortality table specified in Section 502 for a monthly pension payment option and the equivalent amount computed using a 5% interest rate assumption and the IRC section 417 mortality table as defined in Section 1.2.

This Section 533E(13)(e) shall not apply to disability benefit paid in accordance with Section 521 or to benefits payable under Subpart D.

- (f) If the benefit of a participant commences after age 65, the defined benefit dollar limitation applicable to the participant at the later age shall be the annual benefit payable In the form of a straight life annuity commencing at the later age that Is the actuarial equivalent of the defined benefit dollar limitation applicable to the participant (adjusted under (a) and (b) above, if necessary) at age 65. The actuarial equivalent annual benefit beginning after age 65 shall be determined as the lesser of the equivalent amount computed using the Interest rate and mortality table specified in Section 502 for a monthly pension payment option and the equivalent amount computed using a 5% interest rate assumption and the IRC section 417 mortality table as defined in Section 502.
- (g) Minimum Benefit Permitted - Notwithstanding anything else in this Section to the contrary, the benefit otherwise accrued or payable to a participant under this plan shall be deemed not to exceed the maximum permissible benefit if:
  - (i) The retirement benefits payable for a plan year under any form of benefit with respect to such participant under this plan and under all other defined benefit plans (regardless of whether terminated) ever maintained by the employer do not exceed \$1,000 multiplied by the participant's number of years of service or parts thereof (not to exceed 10) with the employer, and

- (ii) The employer has not at any time maintained a defined contribution plan, a welfare benefit fund under which amounts attributable to postretirement medical benefits are allocated to separate accounts of key employees (as defined in IRC section 419A(d)(3)}, or an individual medical account in which the participant participated (for these purposes, employee contributions, whether voluntary or Involuntary, under a defined benefit plan are not treated as a separate defined contribution plan).
  
- 14. Projected Annual Benefit - The annual benefit as defined in Section 533E(2) , to which the participant would be entitled under the terms of the plan assuming:
  - (a) the participant will continue employment until his normal retirement date 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.
  
- 15. Year of Participation - For the purpose of this Section 533, a participant shall be credited with a year of participation (computed to fractional parts of a year) for each accrual computation period for which the following conditions are met: (1) The participant is credited with at least the number of hours of service for benefit accrual purposes, required under the terms of the plan in order to accrue a benefit for the accrual computation period, and (2) the participant is included as a participant under the eligibility provisions of the plan for at least one day of the accrual computation period. If these two conditions are met, the portion of a year of participation credited to the participant shall equal the amount of benefit accrual service credited to the participant for such accrual computation period. A participant who is permanently and totally disabled within the meaning of IRC section 415(c)(3)(C)(i) for an accrual computation period shall receive a year of participation with respect to that period. In addition, for a participant to receive a year of participation (or part thereof) for an accrual computation period, the plan must be established no later than the last day of such accrual computation period. In no event will more than one year of participation be credited for any 12-month period.

#### **§ 534. Distribution Requirements**

- A. Applicability - The requirements of this Section 534 shall apply to any distribution of a participant's interest. All distributions required under this Section 534 shall be determined and made in accordance with the proposed regulations under IRC section 401 (a)(9), including the minimum distribution incidental benefit requirement of Proposed Treasury Regulation section 1.401 (a)(9)-2.

With respect to distributions under the plan made for calendar years beginning on or after January 1,2002, the Plan will apply the minimum distribution requirements of IRC section 401 (a)(9) in accordance with the regulations under section 401 (a)(9) that were proposed in January 2001, notwithstanding any provision of the plan to the contrary. This

preceding sentence shall continue in effect until the end of the last calendar year beginning before the effective date of final regulations under IRC section 401 (a)(9) or such other date specified in guidance published by the Internal Revenue Service.

With respect to distributions under the Plan made on or after August 1, 2002, for calendar years beginning on or after January 1, 2002, the plan will apply the minimum distribution requirements of IRC Section 401(a)(9) in accordance with the regulations under Section 401(a)(9) that were made final on April 17, 2002, (the 2002 Final Regulations) and the provisions of Section 7.2(h), notwithstanding any provision of the Plan to the contrary. If the total amount of required minimum distributions made to a participant for 2002 prior to August 1, 2002, are equal or greater than the amount of required minimum distributions determined under the 2002 Final Regulations, then no additional distributions are required for such participant for 2002 on or after such date. If the total amount of required minimum distributions made to a participant for 2002 prior to August 1, 2002, are less than the amount determined under the 2002 Final Regulations, then the amount of required minimum distributions for 2002 on or after such date will be determined so that the total amount of required minimum distributions for 2002 is the amount determined under the 2002 Final Regulations.

- B. Required Beginning Date - The entire interest of a participant must be distributed or begin to be distributed no later than the participant's required beginning date.
  
- C. Limits on Distribution Periods - As of the first distribution calendar year, distributions, if not made in a single-sum, may only be made over one of the following periods (or a combination thereof):
  - 1. the life of the participant.
  - 2. the life of the participant and a designated beneficiary,
  - 3. a period certain not extending beyond the life expectancy of the participant, or
  - 4. a period certain not extending beyond the joint life and last survivor expectancy of the participant and a designated beneficiary.
  
- D. Determination of Amount to Be Distributed Each Year
  - 1. If the participant's interest is to be paid in the form of annuity distributions under the plan, payments under the annuity shall satisfy the following requirements:
    - (a) the annuity distribution must be paid in periodic payments made at intervals not longer than one year,
    - (b) the distribution period must be over a life (or lives) or over a period certain not longer than a life expectancy (or joint life and last survivor expectancy) described in IRC section 401 (a)(9)(A)(ii) or IRC section 401 (a)(9)(B)(iii), whichever is applicable;
    - (c) the life expectancy (or joint life and last survivor expectancy) for purposes of determining the period certain shall be determined without recalculation of life expectancy;
    - (d) once payments have begun over a period certain, the period certain may

not be lengthened even if the period certain is shorter than the maximum permitted;

- (e) payments must either be nonincreasing or increase only as follows:
  - (i) with any percentage increase in a specified and generally recognized cost-of-living index;
  - (ii) to the extent of the reduction to the amount of the participant's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period described in (c) above dies and the payments continue otherwise in accordance with that section over the life of the participant;
  - (iii) to provide cash refunds of employee contributions upon the participant's death; or
  - (iv) because of an increase in benefits under the plan.
- (f) If the annuity is a life annuity (or a life annuity with a period certain not exceeding 20 years), the amount that must be distributed on or before the participant's required beginning date (or, in the case of distributions after the death of the participant, the date distributions are required to begin pursuant to Section 534E below) shall be the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually.

If the annuity is a period certain annuity without a life contingency (or is a life annuity with a period certain exceeding 20 years) periodic payments for each distribution calendar year shall be combined and treated as an annual amount. The amount that must be distributed by the participant's required beginning date (or, in the case of distributions after the death of the participant, the date distributions are required to begin pursuant to Section 534E below) is the annual amount for the first distribution calendar year. The annual amount for other distribution calendar years, including the annual amount for the calendar year in which the participant's required beginning date (or the date distributions are required to begin pursuant to Section 534E below) occurs, must be distributed on or before December 31 of the calendar year for which the distribution is required.

2. Annuities purchased after December 31, 1988, are subject to the following additional conditions:

- (a) If the participant's interest is being distributed in the form of a life annuity

with a period certain for the life of the participant, the period certain as of the beginning of the first distribution calendar year may not exceed the applicable period determined using the table set forth in Proposed Treasury Regulation section 1.401 (a)(9)-2, Q&A A-4.

- (b) Unless the participant's spouse is the designated beneficiary, if the participant's Interest is being distributed in the form of a period certain annuity without a life contingency, the period certain as of the beginning of the first distribution calendar year may not exceed the applicable period determined using the table set forth in Proposed Treasury Regulation section 1.401 (a)(9)-2, Q&A A-5.
  - (c) If the participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the participant and a nonspouse beneficiary, annuity payments to be made on or after the participant's required beginning date to the designated beneficiary after the participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the participant using the table set forth in Proposed Regulation section 1.401 (a)(9)-2, Q&A A-6.
- 3. Transitional Rule - If payments under an annuity that complies with provision (A) above began prior to January 1, 1989, the minimum distribution requirements in effect as of July 27, 1987, shall apply to such distributions from this plan, regardless of whether the annuity form of payment is irrevocable. This transitional rule also applies to deferred annuity contracts distributed to or owned by the employee prior to January 1, 1989, unless additional contributions are made under the plan by the employer with respect to such contract.
  - 4. If the form of distribution is an annuity made in accordance with this Section 534B(4), any additional benefits accruing to the participant after his or her required beginning date shall be distributed as a separate and identifiable component of the annuity beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.
  - 5. Any part of the participant's interest that is in the form of an individual account shall be distributed in a manner satisfying the requirements of IRC section 401 (a)(9) and the proposed regulations thereunder.

#### E. Death Distribution Provisions

- 1. Distribution Beginning Before Death - If the participant dies after distribution of his interest has begun, the remaining portion of such interest will continue to be distributed at least as rapidly as under the method of distribution being used prior to the participant's death.
- 2. Distribution Beginning After Death - If the participant dies before distribution of

his interest begins, distribution of the participant's entire interest shall be completed by December 31 of the calendar year containing the fifth anniversary of the participant's death except to the extent that an election is made to receive distributions in accordance with (a) or (b) below:

- (a) If any portion of the participant's interest is payable to a designated beneficiary, distributions may be made over the life or over a period certain not greater than the life expectancy of the designated beneficiary commencing on or before December 31 of the calendar year immediately following the calendar year in which the participant died;
- (c) If the designated beneficiary is the participant's surviving spouse, the date distributions are required to begin in accordance with (a) above shall not be earlier than the later of
  - (i) December 31 of the calendar year immediately following the calendar year in which the participant died and (ii) December 31 of the calendar year in which the participant would have attained age 70 ½

If the participant has not made an election pursuant to this Section 534 by the time of his death, the participant's designated beneficiary must elect the method of distribution no later than the earlier of (1) December 31 of the calendar year in which distributions would be required to begin under this Section 534E(2), or (2) December 31 of the calendar year that contains the fifth anniversary of the date of death of the participant. If the participant has no designated beneficiary, or if the designated beneficiary does not elect a method of distribution, distribution of the participant's entire Interest must be completed by December 31 of the calendar year containing the fifth anniversary of the participant's death. This provision shall not create a right to an installment payment option providing installments over 5 or less calendar years.

- 3. For purposes of Section 534E(2) above, If the surviving spouse dies after the participant, but before payments to such spouse begin, the provisions of Section 534E(2) with the exception of Section 534E(2)(b) therein, shall be applied as if the surviving spouse were the participant.
- 4. For purposes of this Section 534E, any amount paid to a child of the participant will be treated as if it had been paid to the surviving spouse if the amount becomes payable to the surviving spouse when the child reaches the age of majority.
- 5. For the purposes of this Section 534E, distribution of a participant's interest is considered to begin on the participant's required beginning date (or, if Section 534E(3) is applicable, the date distribution is required to begin to the surviving spouse pursuant to Section 534E(2)(B)) If distribution in the form of an annuity

described in Section 534D(1) irrevocably commences to the participant before the required beginning date, the date distribution is considered to begin is the date distribution actually commences.

F. Definitions (IRC Section 401 (a)(9) Requirements)

1. Designated Beneficiary - The individual who is designated as the beneficiary under the plan in accordance with IRC section 401 (a)(9) and the proposed regulations thereunder.
2. Distribution Calendar Year - A calendar year for which a minimum distribution is required. For distributions beginning before the participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year that contains the participant's required beginning date. For distributions beginning after the participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to Section 534E above.
3. Life Expectancy - Life expectancy (or joint life and last survivor expectancy) calculated using the attained age of the participant (or designated beneficiary) as of the participant's (or designated beneficiary's) birthday in the applicable calendar year. The applicable calendar year shall be the first distribution calendar year. If annuity payments commence before the required beginning date, the applicable calendar year is the year such payments commence.  
  
Life expectancy and joint and last survivor expectancy are computed by use of the expected return multiples in Tables V and VI of Section 1.72-9 of the Income Tax Regulations.
4. Required Beginning Date - The required beginning date of a participant is the later of: (i) the first day of April of the calendar year following the calendar year in which the participant attains age 70 ½ and (ii) the first day of April of the calendar year following the calendar year in which the participant retires.

G. Transitional Rule

1. Notwithstanding the other requirements of this Section 534, distribution on behalf of any employee may be made in accordance with all of the following requirements (regardless of when such distribution commences).
  - (a) The distribution by the trust is one which would not have disqualified such trust under IRC section 401 (a)(9) as in effect prior to amendment by the Deficit Reduction Act of 1984.
  - (b) The distribution is in accordance with a method of distribution designated

by the employee whose interest in the trust is being distributed or, if the employee is deceased, by a beneficiary of such employee.

- (c) Such designation was in writing, was signed by the employee or the beneficiary, and was made before January 1, 1984.
- (d) The employee had accrued a benefit under the plan as of December 31, 1983.
- (e) The method of distribution designated by the employee or the beneficiary specifies the time at which distribution will commence, the period over which distributions will be made, and in the case of any distribution upon the employee's death, the beneficiaries of the employee listed in order of priority.

A distribution upon death will not be covered by this transitional rule unless the information in the designation contains the required information described above with respect to the distributions to be made upon the death of the employee.

- 2. For any distribution that commences before January 1, 1984, but continues after December 31, 1983, the employee, or the beneficiary, to whom such distribution is being made will be presumed to have designated the method of distribution under which the distribution is being made if the method of distribution was specified in writing and the distribution satisfies the requirements in this Section 534G.
- 3. If a designation is revoked any subsequent distribution must satisfy the requirements of IRC section 401 (a)(9) and the proposed regulations thereunder. If a designation is revoked subsequent to the date distributions are required to begin, the trust must distribute by the end of the calendar year following the calendar year in which the revocation occurs the total amount not yet distributed that would have been required to have been distributed to satisfy IRC section 401 (a)(9) and the proposed regulations thereunder, but for the election made with respect to section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act of 1982. For calendar years beginning after December 31, 1988, such distributions must meet the minimum distribution incidental benefit requirements in Proposed Regulation section 1.401 (a)(9)-2. Any changes in the designation will be considered to be a revocation of the designation. However, the mere substitution or addition of another beneficiary (one not named in the designation) under the designation will not be considered to be a revocation of the designation, so long as such substitution or addition does not alter the period over which distributions are to be made under the designation, directly or indirectly (for example, by altering the relevant measuring life). In the case in which an amount is transferred or rolled over from one plan to another plan, the rules in Proposed Regulation section 1.401 (a)(9)-1 Q&A J-2 and O&A J-3 shall apply.



- H. Compliance with Final Regulations – The requirements of this Section 534H shall take precedence over any inconsistent provisions of the plan. All distributions required under Section 534 will be determined and made in accordance with the Treasury regulations under IRC Section 401(a)(9).

Notwithstanding the other provisions of this Section 534., distributions may be made under a designation made before January 1, 1984, in accordance with Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) Section 242(b)(2) and the provisions of the plan that relate to TEFRA Section 242(b)(2).

1. Time and Manner of Distribution

- (a) Required Beginning Date – The participant’s entire interest will be distributed , or begin to be distributed, to the participant no later than the participant’s required beginning date.
- (b) Death of Participant Before Distributions Begin – If the participant dies before distributions begin, the participant’s entire interest will be distributed, or begin to be distributed, no later than as follows:
  - (i) If the participant’s surviving spouse is the participant’s sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the participant died, or by December 31 of the calendar year in which the participant would have attained age 70 1/2 , if later. If this plan provides in Subpart D for a lump sum death benefit in excess of \$5,000 and the surviving spouse so elects with respect to a benefit of such actuarial present value or greater, the participant’s entire interest will be distributed to such designated beneficiary by December 31 of the calendar year containing the fifth anniversary of the participant’s death.
  - (ii) If the participant’s surviving spouse is not the participant’s sole designated beneficiary, then distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the participant died. If this plan provides in Subpart D for a lump sum death benefit in excess of \$5,000 and the designated beneficiary so elects with respect to a benefit of such actuarial present value or greater, the participant’s entire interest will be distributed to such designated beneficiary by December 31 of the calendar year containing the fifth anniversary of the participant’s death.
  - (iii) If there is no designated beneficiary as of September 30 of the year following the year of the participant’s death, the participant’s entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the participant’s death.

- (iv) If the participant's surviving spouse is the participant's sole designated beneficiary and the surviving spouse dies after the participant but before distributions to the surviving spouse begin, this Paragraph 1(b), other than Paragraph 1(b)(i), will apply as if the surviving spouse were the participant.

For purposes of this Paragraph 1(b) and Paragraph (4), distributions are considered to begin on the participant's required beginning date (or, if Paragraph 1(b)(iv) applies, the date distributions are required to begin to the surviving spouse under Paragraph 1(b)(i). If annuity payments irrevocably commence to the participant before the participant's required beginning date (or to the participant's surviving spouse before the date distributions are required to begin to the surviving spouse under Paragraph 1(b)(i), the date distributions are considered to begin is the date distributions actually commence.

- (c) Forms of Distribution – Unless the participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with Paragraphs (2), (3), and (4). If the participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of IRC Section 401(a)(9) and the Treasury regulations. Any part of the participant's interest which is in the form of an individual account described in IRC Section 414(k) will be distributed in a manner satisfying the requirements of IRC Section 401(a)(9) and the Treasury regulations that apply to individual accounts.

## 2. Determining of Amount to be Distributed Each Year

- (a) General Annuity Requirements – If the participant's interest is paid in the form of annuity distributions under the plan, payments under the annuity will satisfy the following requirements:
  - (i) The annuity distributions will be paid in periodic payments made at intervals not longer than one year;
  - (ii) The distribution period will be over a life (or lives) or over a period certain no longer then the period described in Paragraph (3) or (4);
  - (iii) Once payments have begun over a period certain, the period certain will not be changed even if nth period certain is shorter than the maximum permitted;
  - (iv) Payments will either be nonincreasing or increase only as follows:
    - a. By an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that is

based on prices of all items and issued by the Bureau of Labor Statistics.

- b. To the extent of the reduction in the amount of the participant's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period described in Paragraph (3) dies or is no longer the participant's beneficiary pursuant to a qualified domestic relations order within the meaning of IRC Section 414(p);
  - c. To provide cash refunds of employee contributions upon the participant's death; or
  - d. To pay increased benefits that result from a plan amendment.
- (b) Amount Required to be Distributed by Required Beginning Date – The amount that must be distributed on or before the participant's required beginning date (or, if the participant dies before distributions begin, the date distributions are required to begin under Paragraph 1(a) or (b)) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the participant's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the participant's required beginning date.
- (c) Additional Accruals After First Distribution Calendar Year – Any additional benefits accruing to the participant in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.
3. Requirements for Annuity Distributions That Commence During Participant's Lifetime
- (a) Joint Life Annuities Where the Beneficiary is Not the Participant's Spouse – If the participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the participant and a nonspouse beneficiary, annuity payments to be made on or after the participant's required beginning date to the designated beneficiary after the participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the participant using the table set forth in Regulation Section 1.40a(a)(9)-6T, Q&A-2. If the form of distribution combines a joint and survivor annuity for the joint lives of the participant and a nonspouse beneficiary

and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the designated beneficiary after the expiration of the period certain.

- (b) Period Certain Annuities – Unless the participant’s spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the participant’s lifetime may not exceed the applicable distribution period to the participant under the Uniform Lifetime Table set forth in Regulation Section 1.401(a)(9)-9 for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the participant reaches age 70, the applicable distribution period for the participant is the distribution period for age 70 1/2 under the Uniform Lifetime Table set forth in Regulation Section 1.401(a)(9)-0 plus the excess of 70 ½ over the age of the participant as of the participant’s birthday in the year that contains the annuity starting date. If the participant’s spouse is the participant’s sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period may not exceed the longer of the participant’s applicable distribution period, as determined under this Paragraph 3(b), or the joint life and last survivor expectancy of the participant and the participant’s spouse as determined under the Joint and Last Survivor Table set forth in Regulation Section 1.401(a)(9)-0, using the participant’s and spouse’s attained ages as of the participant’s and spouse’s birthdays in the calendar year that contains the annuity starting date.

4. Requirements for Minimum Distributions Where Participant Dies Before Date Distributions Begin.

- (a) Participant Survived by Designated Beneficiary – If the participant dies before the date distribution of his or her interest begins and there is a designated beneficiary, the participant’s entire interest will be distributed, beginning no later than the time described in Paragraph 1(b)(i) or (ii), over the life of the designated beneficiary or over a period certain not exceeding:
  - (i) Unless the annuity starting date is before the first distribution calendar, the life expectancy of the designated beneficiary determined using the beneficiary’s age as of the beneficiary’s birthday in the calendar year immediately following the calendar year of the participant’s death; or
  - (ii) If the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary’s age as of the beneficiary’s birthday in the calendar year that contains the annuity starting date.
- (b) No Designated Beneficiary – If the participant dies before the date distributions begin and there is no designated beneficiary as of September

30 of the year following the year of the participant's death, distribution of the participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the participant's death.

- (c) **Death of Surviving Spouse Before Distribution to Surviving Spouse Begins** – If the participant dies before the date distribution of his or her interest begins, the participant's surviving spouse is the participant's sole designated beneficiary, and the surviving spouse dies before distributions to the surviving spouse begin, this Paragraph (4) will apply as if the surviving spouse were the participant, except that the time by which distributions must begin will be determined without regard to Paragraph 1(b)(ii).

## 5. Definitions

- (a) **Designated Beneficiary** – The individual who is designated as the beneficiary under Section 534F(1) and is the designated beneficiary under IRC Section 401(a)(9) and Regulation Section 1.401(a)(9)-1, Q&A-4.
- (b) **Distribution Calendar Year** – A calendar year for which a minimum distribution is required. For distributions beginning before the participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the participant's required beginning date. For distributions beginning after the participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to Paragraph (1)(B).
- (c) **Life Expectancy** – Life expectancy as computed by use of the Single Life Table in Regulation Section 1.401(a)(9)-9.
- (d) **Required Beginning Date** – The date specified in Section 534F(4).

(Ordinance No. 03-05, 11/18/03)

## H. Administration of the Plan

### §535. Fiduciary Responsibility

- A. **Management and Control of Plan Assets** - The governing body of the employer shall designate the persons responsible for the management and control of plan assets. Such persons shall discharge their duties with respect to the plan in accordance with the documents and Instruments governing the plan insofar as such documents and instruments are consistent with the applicable provisions of the Internal Revenue Code.
- B. A fiduciary of this plan is required to exercise the judgment and care under the circumstances then prevailing that men of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.

C. Allocation of Responsibility

1. When the plan administrator is required to follow the directions of the trustee or the trustee is required to follow the directions of the plan administrator, they shall not be deemed to share such responsibility. Instead, the responsibility of the person giving the directions shall be deemed to be his sole responsibility and the responsibility of the person receiving directions shall be to follow those directions insofar as such Instructions on their face are proper under applicable law.
2. The plan administrator or trustee under this plan may employ one or more persons, including independent accountants, attorneys, and actuaries to render advice with regard to any responsibility such person has under the plan.

D. Liability and Indemnification - Subject to Act 205, no past, present, or future officer of the employer nor of any participating employer shall be personally liable to any participant, beneficiary, or other person under any provision of the plan or trust or any insurance policy or contract issue pursuant thereto. No individual fiduciary shall be liable for any act or omission of any other fiduciary. Unless resulting from the gross negligence, willful misconduct or lack of good faith on the part of the fiduciary, the employer shall indemnify and save harmless such fiduciary from, against, for and in respect of any and all damages, losses, obligations, liabilities, liens, deficiencies, costs and expenses, including without limitation, reasonable attorney's fees and other costs and expenses incident to any suit, action, investigation, claim or proceedings suffered in connection with his acting as a fiduciary under the plan.

**§ 536. Chief Administrative Officer**

A. Appointment of Chief Administrative Officer

The governing body of the employer shall be responsible for the administration of the plan. It may appoint a member of itself to be the chief administrative officer. The employer shall review at regular intervals the performance of the person appointed to be the chief administrative officer and shall re-evaluate the appointment of such chief administrative officer.

B. Duties and Powers of Chief Administrative Officer

The chief administrative officer shall be the plan administrator and as such shall have the following duties and discretionary powers and such other duties and discretionary powers as relate to the administration of the plan:

1. To determine in a non-discriminatory manner all questions relating to the eligibility of employees to become participants.
2. To determine in a non-discriminatory manner eligibility for benefits and to determine and certify the amount and kind of benefits payable to participants.
3. To authorize all disbursements from the fund.

4. To appoint or employ, upon approval of the employer, any independent person to perform necessary plan functions and to assist in the fulfillment of administrative responsibilities as he deems advisable, including the retention of a third party administrator, custodian, auditor, accountant, actuary, or attorney.
5. When appropriate, to select an insurance company and annuity contracts that, in his opinion, will best carry out the purposes of the plan.
6. To construe and interpret any ambiguities In the plan and to make, publish, interpret, alter, amend or revoke rules for the regulation of the plan that are consistent with the terms of the plan and with the applicable provisions of the Internal Revenue Code.
7. To prepare and distribute, in such manner as determined to be appropriate, information explaining the plan.

C. Miscellaneous Provisions

1. Expenses - The chief administrative officer shall serve without compensation for service as such. All reasonable expenses of the chief administrative officer shall be paid by the plan.
2. Examination of Records - The chief administrative officer shall make available to any participant for examination during business hours such of the plan records as pertain only to the participant involved.
3. Information to the Chief Administrative Officer - To enable the chief administrative officer to perform the administrative functions, the employer shall supply full and timely information to the chief administrative officer on all participants as the chief administrative officer may require.

**§ 537. Claims Procedure**

- A. Notification - The chief administrative officer shall notify each participant in writing *of* his determination of benefits. If the chief administrative officer denies any benefit, such written denial shall include:

The specific reasons for denial;  
Reference to provisions on which the denial is based;  
A description of and reason for any additional information needed to process the claim;  
and an explanation of the claims procedure.

- B. Appeal - The participant or his duly authorized representative may:

Request a review of the participant's case in writing to the employer;  
Review pertinent documents;  
Submit issues and comments in writing.

The written request for review must be submitted no later than 60 days after receiving written notification of denial of benefits.

- C. Review - The employer must render a decision no later than 60 days after receiving the written request for review, unless circumstances make it impossible to do so; but in no event shall the decision be rendered later than 120 days after the request for review is received.
- D. Limitation on Time Period for Litigation of a Benefit Claim - Following receipt of the written rendering of the employer's decision under Section 537C, the participant shall have 365 days in which to file suit in the appropriate court. Thereafter, the right to contest the decision shall be waived.

### § 538. Trust Fund

- A. Creation and Maintenance of the Fund - The trust fund shall be created and maintained in the following manner:
  - 1. All funds on deposit and held for pension or retirement benefits of the participants shall continue to be part of the trust fund created and maintained hereby subject to any liabilities that may exist against such fund.
  - 2. The employer shall allocate to the fund the payments made by the Treasurer of the Commonwealth of Pennsylvania from monies received from taxes paid upon premiums by foreign casualty insurance companies and foreign fire insurance companies pursuant to the General Municipal Pension System State Aid Program.
  - 3. The employer shall also allocate to the fund any mandatory employee contributions received in accordance with the plan.
  - 4. The fund shall accept and maintain any payments made by other gifts, grants, devises, or bequests to the fund.
  - 5. The employer shall contribute to the fund such other payments as may, from time to time, be authorized to be made from the general revenue of the employer.

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

- B. Appointment of Trustee<sup>2</sup>

The employer, or its delegee, shall appoint a trustee for the proper care and custody of all funds, securities and other properties in the trust, and for investment of plan assets (or for execution of such orders as it receives from an investment manager appointed for investment of plan assets). The duties and powers of the trustee shall be set forth in a trust agreement executed by the employer, that is incorporated herein by reference. The

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<sup>2</sup> By Ordinance 07-01 enacted March 17, 2007, Robeson Township appointed National Penn Investors Trust Company as the Trustee of the Trust.



employer shall review at regular Intervals the performance of the trustee and shall re-evaluate the appointment of such trustee. After the employer has appointed the trustee and has received a written notice of acceptance of its responsibility, the responsibility with respect to the proper care and custody of plan assets shall be considered as the responsibility of the trustee. Unless otherwise allocated to an Investment manager, the responsibility with respect to Investment of plan assets shall likewise be considered as the responsibility of the trustee.

C. Appointment of Corporate Custodian

The employer, or its delegee, may appoint a corporate custodian to hold and Invest the fund. The corporate custodian shall carry out its responsibilities in accordance with the terms of the custodial agreement and the Investment policy and guidance as the employer shall, from time to time provide. The employer shall review at regular Intervals no less frequently than annually, the performance of such corporate custodian and shall re-evaluate the appointment of such corporate custodian.

D. Appointment of Investment Manager

The employer, or its delegee, may appoint an investment manager who is other than the trustee, which investment manager may be a bank or an investment advisor registered with the Securities and Exchange Commission under the Investment Advisors Act of 1940. Such investment manager, if appointed, shall have sole discretion in the investment of plan assets, subject to the funding policy. The employer shall review at regular intervals no less frequently than annually, the performance of such investment manager and shall re-evaluate the appointment of such investment manager. After the employer has appointed an investment manager and has received a written notice of acceptance of his responsibility, the responsibility with respect to Investment of plan assets shall be considered as the responsibility of the investment manager. <sup>3</sup>

E. Funding Policy

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

F. Valuation of the Fund

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

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<sup>3</sup> National Penn Investors Trust Company appointed Trustee of the Trust (Ordinance No. 07-01, 5/17/07)

## § 539. Actuarial Valuation and Funding

- A. Actuarial Valuation - In compliance with Act 205, the actuarial valuation report shall be prepared and filed under the supervision of the chief administrative officer of the municipality or of the association of municipalities cooperating pursuant to the Intergovernmental Cooperation Act and named as the sponsoring employer of this plan. The actuary shall perform an actuarial valuation at least biennially. Each biennial actuarial valuation report shall be made as of the beginning of such plan year and shall be prepared and certified by an approved actuary. An approved actuary means a person who has at least five years of actuarial experience with public pension plans and who is either enrolled as a member of the American Academy of Actuaries or enrolled as an actuary pursuant to ERISA.

If the employer is applying or has applied for Supplemental State Assistance pursuant to Section 603 of the Act, the actuarial valuation report shall be made annually.

- B. Allowable Administrative Expenses - The expenses attributable to the preparation of any actuarial valuation report or investigation required by Act 205 or any other expense that is permissible under the terms of Act 205 and that are directly associated with administering the plan shall be an allowable administrative expense payable from the assets of the trust.
- C. Benefit Modifications - Prior to the adoption of any benefit plan modification by the employer, the chief administrative officer of the plan shall provide to the employer a cost estimate of the proposed benefit plan modification prepared by an approved actuary. Such estimate shall disclose to the employer the impact of the proposed benefit plan modification on the future financial requirements of the plan and the future minimum obligation of the employer with respect to the plan.

## I. Amendment and Termination of Plan

### § 540 Right to Discontinue and Amend

It is the expectation of the employer that it will continue this plan indefinitely and make the payments of its contributions hereunder, but the continuance of the plan is not assumed as a contractual obligation of the employer and the right is reserved by the employer, at any time, to reduce, suspend, or discontinue its contributions hereunder.

### § 541. Amendments

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

- A. No amendments shall have the effect of vesting in the employer any interest in or control over any contracts issued pursuant hereto or any other property in the fund.
- B. No amendment to the vesting schedule adopted by the employer hereunder shall deprive a participant of his vested portion of his employer-derived accrued benefit to the date of such amendment.

## **§ 542. Protection of Benefits In Case of Plan Merger**

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

## **§ 543. Termination of Plan**

- A. When Plan Terminates - This plan shall terminate upon the legal dissolution of the employer or the termination of the plan by the amendment action of the employer. Subject to the provisions of the Municipal Pension Plan Funding Standard and Recovery Act (P.L. 1005, Act 205 of 1984) governing financially distressed municipalities, the liability of the employer to make contributions to the plan shall automatically terminate upon liquidation or dissolution of the employer, upon Its adjudication as bankrupt, or upon the making of a general assignment for the benefit of its creditors.
- B. Allocation of Assets - Upon termination or partial termination, the accrued benefit of each affected participant who is an active participant or who is not an active participant but has not incurred a one-year break in service shall be 100% vested and nonforfeitable; however, no participant or other individual shall have recourse towards the satisfaction of any benefit accrued under the plan other than from the fund. The amount of the fund assets shall be allocated to participants and beneficiaries subject to provisions for expenses of administration of liquidation. The allocation of assets shall be in accordance with the following (to the extent assets are sufficient).
1. There shall be allocated an amount equal to that portion of each individual's accrued benefit that is derived from the participant's voluntary contributions.
  2. There shall be allocated an amount equal to that portion of each Individual's accrued benefit that is derived from the participant's mandatory contributions.
  3. (a) There shall be allocated amounts sufficient to provide the pension of each participant or beneficiary who was receiving such a benefit three years before the date of termination.  
  
(b) There shall likewise be allocated amounts sufficient to provide the normal form of pension for each participant who was eligible to retire three years before the date of termination but had not done so.

In both cases, the benefits shall be based upon the plan provisions in effect during the five years before the date of termination under which such benefits would be the least.

4. There shall be allocated amounts sufficient to provide all vested benefits due participants.
5. There shall be allocated amounts sufficient to provide all other benefits of the plan.

If assets are insufficient to provide all benefits within anyone of the above paragraphs 1 through 5, they shall be allocated pro rata among the participants or beneficiaries within that paragraph on the basis of the present value of such benefits.

The allocation of assets, when determined by the actuary, may be implemented through the continuation of the existing fund or through the purchase of Insurance company annuity contracts, or by a combination of these media. If the allocations produce a lump sum actuarial value of less than \$0 for any participant, such participant may be paid, in lieu of a pension, a lump sum in satisfaction of his full interest in the plan.

- C. Remaining Fund Balance - Notwithstanding any provision in this plan to the contrary, upon the termination of the plan, but only after all liabilities to the participants and their respective beneficiaries have been satisfied, the employer shall be entitled to any balance of the net assets of the fund that shall remain by reason of erroneous actuarial computations or overpayments during the life of the plan. However, if any assets of the plan attributable to employee contributions remain after satisfaction of all liabilities described in Section 534B, such remaining assets shall be equitably distributed to the participants who made such contributions or their beneficiaries (Including alternate payees). For this purpose, the portion of the remaining assets that are attributable to employee contributions shall be an amount equal to the product derived by multiplying the market value of the total remaining assets, by a fraction - (i) the numerator of which is the present value of all portions of the accrued benefits with respect to participants that are derived from participants' mandatory contributions, and (ii) the denominator of which is present value of all benefits with respect to which assets are allocated under items (2) through (7) of Section 534B. A participant for this purpose shall include an individual who has received, during the 3-year period ending with the termination date, a distribution from the plan of such individual's entire nonforfeitable benefit in the form of a single sum distribution or in the form of irrevocable commitments purchased by the plan from an insurer to provide such nonforfeitable benefit, if all or part of the nonforfeitable benefit with respect to such person is or was attributable to a participant's mandatory contributions.

## **J. Miscellaneous Provisions**

### **§ 544. Exclusive Benefit - Non-Reversion**

The plan is created for the exclusive benefit of the employees of the employer and shall be interpreted in a manner consistent with its being a qualified plan as defined in IRC section 401 (a). The corpus or income of the trust may not be diverted to or used for other than the exclusive benefit of the participants or their beneficiaries.

Notwithstanding the above, any contribution made by the employer because of a mistake of fact

must be returned to the employer within one year of the contribution. Further, a reversion to the employer is permissible upon plan termination in accordance with Section 534C.

**§ 545. Inalienability of Benefits**

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

**§ 546. Employer-Employee Relationship**

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

**§ 547. Binding Agreement**

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

**§ 548. Inconsistency or Conflict of Prior Ordinances or Resolutions**

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

**§ 549. Severability**

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

**§ 550. Construction**

The plan shall be construed in accordance with the laws of the Commonwealth of Pennsylvania and with the applicable portions of the Internal Revenue Code.

**§ 551. Copies of Plan**

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

**§ 552. Interpretation**

Wherever appropriate, words used In this plan in the singular may include the plural or the plural may be read as singular. and the masculine may include the feminine.

(Originally effective January 1, 1989 amended and restated effective January 1, 2001; Ord. No. 00-01, 3/21/2000; Ord. No. 00-09, 9/19/200; Ord. No. 02-02, 3/19/2002; Ord. No. 03-05, 11/18/2003; Ord. No. 07-01, 5/17/2007)

**APPENDIX**  
**ACTUARIAL EQUIVALENCE FACTORS FOR MONTHLY PENSION OPTIONS**

(Normal Form - Life Only)

| Participant Retirement Age (NBD) | 5C&C  | 10 C&C | 15 C&C | J&50%S | J&67%S | J&75%S | J&100%S |
|----------------------------------|-------|--------|--------|--------|--------|--------|---------|
| 70+                              | .9500 | .8750  | .8000  | .9000  | .8667  | .8500  | .8000   |
| 69                               | .9550 | .8850  | .8150  | .9025  | .8700  | .8540  | .8050   |
| 68                               | .9600 | .8950  | .8300  | .9050  | .8733  | .8580  | .8100   |
| 67                               | .9650 | .9050  | .8450  | .9075  | .8767  | .8620  | .8150   |
| 66                               | .9700 | .9150  | .8600  | .9100  | .8800  | .8660  | .8200   |
| 65                               | .9750 | .9250  | .8750  | .9125  | .8833  | .8700  | .8250   |
| 64                               | .9775 | .9300  | .8825  | .9150  | .8867  | .8740  | .8300   |
| 63                               | .9800 | .9350  | .8900  | .9175  | .8900  | .8780  | .8350   |
| 62                               | .9825 | .9400  | .8975  | .9200  | .8933  | .8820  | .8400   |
| 61                               | .9850 | .9450  | .9050  | .9225  | .8967  | .8860  | .8450   |
| 60                               | .9875 | .9500  | .9125  | .9250  | .9000  | .8900  | .8500   |
| 59                               | .9900 | .9550  | .9200  | .9275  | .9033  | .8940  | .8550   |
| 58                               | .9900 | .9600  | .9275  | .9300  | .9067  | .8980  | .8600   |
| 57                               | .9900 | .9650  | .9350  | .9325  | .9100  | .9020  | .8650   |
| 56                               | .9900 | .9700  | .9425  | .9350  | .9133  | .9060  | .8700   |
| 55 or Or younger                 | .9900 | .9750  | .9500  | .9375  | .9167  | .9100  | .8750   |

Adjustment to J&S pension option for age difference between Participant and Survivor

annuitants: .005 .0050 .006 .007  
0 0 0 5

Add for each whole year by which Survivor annuitant is older than Participant annuitant. Subtract for each whole year by which Survivor annuitant is younger-up to a maximum of 30 years. If Survivor is more than 30 years younger, actuarial equivalence shall be determined on the basis of the mortality table and interest rate assumptions as specified in Section 1.2(b).

Maximum Factor .990 .975 .950 .975 .9667 .962 .950  
0 0 0 0 5 0

## PART 6

### AUTHORITIES

#### A. ROBESON TOWNSHIP MUNICIPAL AUTHORITY

##### § 601. Intention and Desire to Organize.

The Board of Supervisors of this Township signifies its intention and desire to organize an Authority under provisions of the Act of Assembly approved May 2, 1945, P.L. 382, as amended and supplemented, known as the “Municipality Authorities Act of 1945” (the “Authorities Act”).

##### § 602. Articles of Incorporation.

The Chairman and the Secretary of the board of Supervisors of this Township are authorized and directed to execute, in behalf of this Township, Articles of Incorporation for such Authority in substantially the following form:

#### ARTICLES OF INCORPORATION

In compliance with requirements of the Act of Assembly approved May 2, 1945, P.L. 382, as amended and supplemented, known as the “Municipality Authorities Act of 1945”, and pursuant to the Ordinance duly enacted by the municipal authorities of the township of Robeson, Berks County, Pennsylvania, expressing the intention and desire of the municipal authorities of said municipality to organize an Authority under provisions of said Act, said municipality certifies:

1. The name of the Authority is “Robeson Township Municipal Authority”.
2. The Authority is formed under provisions of the Act of Assembly approved May 2, 1945, P.L. 382, as amended and supplemented, known as the “Municipality Authorities Act of 1945”.
3. No other Authority has been organized under provisions of the Act of Assembly approved May 2, 1945, P.L. 382, as amended and supplemented, known as the “Municipality Authorities Act of 1945”, or under provisions of the Act of Assembly approved June 28, 1935, P.L. 463, as amended and supplemented, and is in existence in or for the incorporating municipality.
4. The name of said incorporating municipality is: Township of Robeson, Berks County, Pennsylvania.
5. The offices, names and addresses of the municipal authorities of said incorporating municipality are:

| <u>Office</u>  | <u>Name</u>        | <u>Address</u>                           |
|--|--------------------|--|
| Chairman of the Board of Supervisors and Member      | Daniel Casciano    | R.D. #3<br>Birdsboro, Pennsylvania 19508 |
| Vice Chairman of the Board of Supervisors and Member | William B. Meister | R.D. #1<br>Birdsboro, Pennsylvania 19508 |
| Secretary of the Board of Supervisors and Member     | Harvey H. Eshelman | R.D. #3<br>Mohnton, Pennsylvania 19540   |

6. The names, addresses and terms of office of first members of the Board of the Authority, each of whom is a citizen of said incorporating municipality, are as follows:

| <u>Name</u>        | <u>Address</u>                                   | <u>Term of Office</u> |
|--------------------|--|-----------------------|
| Theodore B. Bitler | 8 Browns Lane<br>Birdsboro, Pennsylvania 19508   | 1 year                |
| John J. Breton     | R.D. #3<br>Birdsboro, Pennsylvania 19508         | 2 years               |
| Nevin W. Brown     | R.D. #3<br>Birdsboro, Pennsylvania 19508         | 3 years               |
| David R. Henry     | R.D. #3<br>Birdsboro, Pennsylvania 19508         | 4 years               |
| Jack L. Peiffer    | R.D. #3, Box 10<br>Birdsboro, Pennsylvania 19508 | 5 years               |

**§ 603. Notice to be Published.**

The Chairman and the Secretary of the Board of Supervisors of this Township are authorized and directed to cause Notice of the substance of this Ordinance, including the substance of the foregoing Articles of Incorporation, and of the proposed filing of such Articles of Incorporation, to be published as required by the Authorities Act.

**§ 604. Filing of Articles of Incorporation.**

The Chairman and the Secretary of the Board of Supervisors of this Township are authorized and directed to file such Articles of Incorporation and the necessary proofs of publication with the Secretary of the Commonwealth of Pennsylvania and to do all other things necessary to effect the incorporation of such Authority, including payment of required filing fees.



**§ 605. Members of the Board.**

The following named persons are appointed the first members of the board of the Authority for the following terms of offices:

| <u>Name</u>        | <u>Address</u>                                   | <u>Term of Office</u> |
|--------------------|--|-----------------------|
| Theodore B. Bitler | 8 Browns Lane<br>Birdsboro, Pennsylvania 19508   | 1 year                |
| John J. Breton     | R.D. #3<br>Birdsboro, Pennsylvania 19508         | 2 years               |
| Nevin W. Brown     | R.D. #3<br>Birdsboro, Pennsylvania 19508         | 3 years               |
| David R. Henry     | R.D. #3<br>Birdsboro, Pennsylvania 19508         | 4 years               |
| Jack L. Pieffer    | R.D. #3, Box 10<br>Birdsboro, Pennsylvania 19508 | 5 years               |

(Ordinance No. 85-01, 3/12/85)

## PART 7

### TRANSFER OF FIRE INSURANCE PROCEEDS

#### § 701. Certificate Verifying No Delinquent Taxes, Assessments, Penalties, User Charges, etc.

No insurance company, association or exchange doing business in this Commonwealth shall pay a claim of a named insured for fire damage to a structure located within the Township where the amount recoverable for the fire loss to the structure under all policies exceeds \$7,500, unless the insurance company, association or exchange is furnished with a certificate from the Township pursuant to Section 702 and unless there is compliance with Section 703 procedures.

#### § 702. Certificate of Insurance.

- A. The Township's Treasurer shall, upon the written request of the named insured specifying the tax description of the property, name and address of the insurance company, association or exchange and the date agreed upon by the insurance company, association or exchange and the named insured as the date of the receipt of a loss report of the claim, furnish the insurance company, association or exchange either of the following within 14 days of the request:
1. A certificate or, at the Township's Treasurer's discretion, a verbal notification which shall be confirmed in writing by the insurer to the effect that, as of the date specified in the request, there are no delinquent taxes, assessments, penalties or user charges against the property and that, as of the date of the Treasurer's certificate or verbal notification, the Township has not certified any amount as total costs incurred by it for the removal, repair or securing of a building or other structure on the property.
  2. A certificate and bill showing the amount of delinquent taxes, assessments, penalties and user charges against the property as of the date specified in the request that have not been paid as of the date of the certificate and also showing, as of this date, the amount of the total costs, if any, certified to the Township's Treasurer that have been incurred by the Township for the removal, repair or securing of a building or other structure on the property. For this purpose, the Township shall certify to the Treasurer the total amount, if any, of these costs, including engineering, legal and administrative costs. A tax assessment, penalty or user charge shall become delinquent at the time and on the date a lien could otherwise have been filed against the property by the Township under applicable law.
- B. Upon the receipt of a certificate, pursuant to Section 602(A)(1), the insurance company, association or exchange shall pay the claim of the named insured in accordance with the policy terms, unless the loss agreed to between the named insured and the company, association or exchange equals or exceeds 60% of the aggregate limits of liability on all fire policies covering the building or other structure. For this type of loss, the insurance

company, association, exchange, insured property owner and the Township shall follow the procedures set forth in Section 703.

- C. Upon the receipt of a certificate and bill pursuant to Section 702(B) the insurance company, association or exchange shall return the bill to the Treasurer and transfer to the Treasurer an amount from the insurance proceeds necessary to pay the taxes, assessments, penalties, charges and costs as shown on the bill. The Township shall receive the amount and apply or credit it to the payment of the items shown in the bill.

**§ 703. Transfer of Proceeds and Escrow.**

- A. When the loss agreed to between the named insured and the company, association or exchange equals or exceeds 60% of the aggregate limits of liability on all fire policies covering the building or other structure, the insurance company, association or exchange shall transfer from the insurance proceeds to the Township's Treasurer in the aggregate \$2,000 for each \$15,000 and each fraction of that amount of a claim, or, if at the time of a loss report the named insured has submitted a contractor's signed estimate of the costs of removing, repairing or securing the building or other structure in an amount less than the amount calculated under the foregoing transfer formula, the insurance company, association or exchange shall transfer from the insurance proceeds the amount specified in the estimate. The transfer of proceeds shall be on a pro rata basis by all companies, associations or exchanges insuring the building or other structure. Policy proceeds remaining after the transfer to the Township shall be disbursed in accordance with the policy terms. The named insured may submit a contractor's signed estimate of the costs of removing, repairing or securing the building or other structure after the transfer and the Township's Treasurer shall return the amount of the fund in excess of the estimate to the named insured if the Township has not commenced to remove, repair or secure the building or other structure.
- B. Upon receipt of proceeds by the Township, the Treasurer shall place the proceeds in a separate escrow fund to be used solely as security against the total cost of removing, repairing or securing incurred by the Township. When transferring the funds as required in this Section, an insurance company, association or exchange shall provide the Township with the name and address of the named insured, whereupon the Township shall contact the named insured, certify that the proceeds have been received by it and notify the named insured that the procedures under this Section shall be followed.

**§ 704. Release of Escrow.**

The fund shall be returned to the named insured, less any interest earned by the Township, when repairs, removal or securing of the building or other structure have been completed and the required proof received by the Treasurer if the Township has not incurred any costs for repairs, removal or securing, including engineering, legal and administrative costs. If the Township has incurred costs for repairs, removal or securing of the building or other structure, the costs shall be paid from the fund, and, if excess funds remain, the Township shall transfer the remaining funds, less any earned interest, to the named insured. Nothing shall be construed to limit the Township's ability to recover any deficiency.

Further, nothing shall be construed to prohibit the Township and the named insured from entering into an agreement that permits the transfer of funds to the named insured if some other reasonable disposition of the damaged property has been negotiated.

**§ 705. Proof of Payment.**

Proof of payment by the insurance company, association or exchange of proceeds under a policy in accordance with Section 703 is conclusive evidence of the discharge of its obligation to the insured under the policy to the extent of the payment and of compliance by the company, association or exchange.

**§ 706. Excess Proceeds Liability.**

Nothing shall be construed to make an insurance company, association or exchange liable for any amount in excess of proceeds payable under its insurance policy or for any other act performed pursuant to this Section or to make the Township or a public official an insured under a policy of insurance or to create an obligation to pay delinquent property taxes or unpaid removal liens or expenses than as provided.

**§ 707. Benefit of Payment.**

An insurance company, association or exchange making payments of policy proceeds under this Ordinance for delinquent taxes or structure removal liens or removal expenses incurred by the Township shall have the full benefit of this payment, including all rights of subrogation and of assignment.

**§ 708. Penalties and Remedies for Violations.**

1. Any person, firm or corporation violating these provisions shall pay a fine of up to \$1,000 and costs, to be recovered in the Township's name before a district justice. In default of payment, the person shall be imprisoned for a period of not more than 30 days.
2. The Township may revoke any permit issued to any person, firm or corporation violating these provisions.
3. The imposition of penalties shall not preclude the Township from instituting an appropriate action or proceeding to prevent the performance of work or acts violating these provisions, or to restrain, correct, abate a violation or seek relief by a complaint in equity.

**§ 709. Notice.**

The Township Secretary shall give notice of this Ordinance with an executed exact copy to the Department of Community Affairs, also known as the Department of Community and Economic Development, along with the name, position and phone number of the municipal official responsible for Ordinance compliance.

(Ordinance No. 2011-03, 5/19/11)

## **PART 8**

### **RECOVERY OF ATTORNEYS' FEES**

#### **§ 801. Schedule of Attorney's Fees**

The following fees shall be charged by the Township Solicitor for the services indicated, and liened against properties and paid by delinquent account holders in connection with delinquent and overdue accounts owed to the Township for municipal services, including, but not limited to, sewer and solid waste disposal service charge:

- A. Open file, review the account, and prepare and file a municipal lien - \$150.00;
- B. Prepare, file and serve a Writ of Scire Facias - \$250.00;
- A. Prepare and file a Default Judgment - \$100.00;
- B. Prepare and file a Writ of Execution and attend Sheriff's Sale - \$500.00;
- C. Other services not covered above, including without limitation, preparation of alternative service pleadings; miscellaneous letters and telephone calls to mortgage holders, title companies and others regarding payoff figures; checking records to obtain mortgage information; settlement letters and documents necessary to remove liens; preparation of proofs of claim for bankruptcy – these services will be billed at the regular hourly rates charged by the Township Solicitor for other legal services provided to the Township.

#### **§ 802. Assessment of Attorney's Fee**

All costs and expenses incurred by the Township Solicitor in connection with the above services shall also be liened against the properties and paid by delinquent account holders.

(Ordinance No. 00-13, 12/19/00)

**PART 9**  
**SPECIAL COLLECTIONS**

**§ 901. Title.**

This Ordinance shall be known and may be cited as the Robeson Township Special Collection Ordinance.

**§ 902. Purpose.**

The Board of Supervisors finds it to be in the best interest of the residents of the Township of Robeson to provide for certain protections and safeguards in order to address properties the owners of which have not paid sewer charges, permit fees, review fees, and other municipal charges, in violation of State Law and/or Municipal Codes. Such protections and safeguards include denial of permits and actions at law and in equity to address collection of charges owed with respect to properties, the withholding of which payments to the Township impacts upon prosecution of crime, quality of life of our residences and requires expenditure of public funds to correct and/or abate violations and delinquent municipal service accounts.

**§ 903. Definitions.**

The following words and phrases when used in this Ordinance shall have the meanings given to them in this Section unless the context clearly indicates otherwise:

**Authority.** The Robeson Township Municipal Authority , a municipal authority incorporated pursuant to provisions of the Municipality Authorities Act of 1945, approved May 2, 1945, P.L. 382, as amended and supplemented, of the Commonwealth;

**Board.** Any body granted jurisdiction to render decisions in accordance with the Pennsylvania Municipalities Planning Code, the Pennsylvania Second Class Township Code, the Ordinances of the Township of Robeson, or any board authorized to act in a similar manner by law.

**Code.** A building, housing, property maintenance, fire, health or other public safety, sewer connection, sewer charge, subdivision and land development or zoning ordinance enacted by the Township.

**Court.** The appropriate Court of Common Pleas or magisterial district judge court.

**Municipal Permits.** Privileges relating to any real property granted by the Township including, but not limited to, building permits, variances or special exceptions to zoning ordinances, conditional use approval by the Township, sewer connection, zoning and occupancy permits. The term includes approvals pursuant to land use ordinances other than decisions on the substantive validity of a zoning ordinance or map or the acceptance of a curative amendment.

**Owner.** A holder of the title to residential, commercial or industrial real estate, other than Mortgage Lender, who possesses and controls the real estate. The term includes, but is not limited to, heirs, assigns, beneficiaries and lessees, provided this ownership interest is a matter of public record. This term includes but is not limited to, persons who have a right of long term occupancy subject to a long term agreement of sale or other form of lease or purchase or a triple net commercial lease.

**Violation.** A violation of a State Law or statute of the Commonwealth of Pennsylvania, Commonwealth or Municipal Code or Ordinance that requires the payment of sewer charges, fine, penalty, permit fees, review fees, and other municipal charges.

**State Law.** A statute of the Commonwealth or a regulation of an agency charged with the administration and enforcement of Commonwealth law.

**Substantial Step.** An affirmative action as determined by a municipal official or officer of the Court on the part of a property Owner or managing agent to remedy a Violation of a State Law or Municipal Code, including but not limited to, acceptance by the Owner or managing agent of a payment plan, which affirmative action is subject to appeal in accordance with applicable law.

**Tax Delinquent Property.** Tax delinquent real property as defined under the Act of July 7, 1947 (P.L. 1368, No. 542) known as the Real Estate Tax Sale law; the Act of May 16, 1923 (P.L. 207, No. 153) referred to as the Municipal Claim and Tax Lien Law located in the Township.

**Township.** The Township of Robeson, County of Berks, Commonwealth of Pennsylvania.

#### **§ 904. Municipal Permit Denials.**

- A. The Township or a Board may deny issuing an applicant a Municipal Permit for any property located in the Township if the applicant owns real property in the Township, whether the same property as the Municipal Permit is applied for, or a different property, for which there exists on the real property:
1. A final and unappealable tax, water, sewer, refuse collection or other municipal services delinquency on account of the actions of the Owner; or
  2. The Township or Board shall not deny a Municipal Permit to an applicant if the Municipal Permit is necessary to correct a violation of State Law or Code.
- B. The Municipal Permit denial shall not apply to an applicant's delinquency or taxes, water, sewer or refuse collection charges that are under appeal or otherwise contested through a Court or administrative process.

- C. In issuing a denial of a Municipal Permit based on an applicant's delinquency in real property taxes or municipal charges the Township or Board shall indicate the street address, where the property is located and the Court and docket number for each parcel cited as a basis for the denial. The denial shall also state that the applicant may request a letter of compliance from the Township or Authority in a form specified by such entity as provided in this Section.
- D. All Municipal Permits denied in accordance with this Subsection may be withheld until an applicant obtains a letter from the Township or Authority indicating the property in question has no final and unappealable tax, water, sewer or refuse delinquencies.
- E. In the event that the delinquencies have actually been paid, and the Township or Authority fails to issue a letter indicating tax, water, sewer, refuse have been paid within forty-five (45) days of the request, the property in question shall be deemed to be in compliance for the purpose of this Section. The Township or Authority shall specify the form in which the request for a compliance letter shall be made.
- F. Letters required under this Section shall be verified by the appropriate municipal officials before issuing to the applicant a Municipal Permit.
- G.
  1. Boards, including the Township Zoning Hearing Board, may deny approval of Municipal Permits – which include special exception approval and variance relief – if warranted as set forth above to the extent that approval of such a Municipal Permit is within the jurisdiction of the Board.
  2. In any proceeding before a Board other than the governing body of the Township, the Township may appear to present evidence that the applicant is subject to a denial by the board in accordance with this Section.
  3. For the purposes of this Subsection, a Municipal Permit may only be denied to an applicant other than an Owner if the applicant is acting under the direction or with the permission of an Owner; and the Owner owns real property that is subject to denial as set forth above.
- H. A denial of a Municipal Permit shall be subject to the provisions of Local Agency Law, 2 Pa. C.S. Chs. 5 Sub.ch. B (relating to practice and procedure of local agencies) and 7 Sub.ch. B (relating to judicial review of local agency action) or the Pennsylvania Municipalities Planning Code, 53 P.S. §10101 et seq., for denials subject to the act.



**§ 905. Conflict with Other Law.**

In the event of a conflict between the requirements of this Ordinance and federal requirements applicable to demolition, disposition or redevelopment of buildings, structures or land owned by or held in trust for the Government of the United States and regulated pursuant to the United States Housing Act of 1937 (50 Stat. 888, 42 U.S.C. §1437 et seq.) or other applicable Commonwealth or Federal Statute and the regulations promulgated thereunder, the Federal requirements shall prevail.

**§ 906. Relief for Inherited Property.**

Where property is inherited by will or intestacy, the devisee or heir shall be given the opportunity to make payments on reasonable terms with the Township to avoid subjecting the devisee's or heir's other properties to denials of permits and approvals on other properties owned by the devisee or heir.

**§ 907 Construction.**

Nothing in this Ordinance shall be construed to abridge or alter the remedies now existing at common law or by statute, but the provisions of this Ordinance are in addition to such remedies.

**§ 908 Enforcement.**

The Township Manager, Code Enforcement Officer and Township Solicitor, and all other persons employed or appointed by the Township, are authorized to take all actions necessary to ensure implementation of and effect the purposes hereof.

## APPENDIX A

### INTERGOVERNMENTAL AGREEMENTS

#### ORDINANCES AUTHORIZING INTERGOVERNMENTAL AGREEMENTS

| Ordinance Number | Date Ordinance Enacted | Municipalities Party to Agreement   | Purpose Intergovernmental Agreement   |
|------------------|------------------------|---|---|
| 00-02            | 3/21/200               | Members PMHIC   | Join Pennsylvania Municipal Health Insurance Cooperative (PMHIC)                        |
| 2001-02          | 7/17/2001              | County (Berks) Wide   | County Wide Mutual Aid Agreement  |
| 04-07            | 11/30/2004             | Members PMHIC   | Join Pennsylvania Municipal Health Insurance Cooperative (PMHIC)                        |
| 06-02            | 7/18/2006              | Borough of Birdsboro, Caernarvon Township, and Union Township   | Implement Multi-Municipal Comprehensive Plan  |
| 06-04            | 12/7/2006              | Township of Brecknock   | Purchase and Utilization of Asphalt Zipper Machine                                      |
| 08-01            | 3/18/2008              | Borough of Shillington, Borough of West Reading, Borough of Wyomissing, Township of Spring, Township of Exeter, Township of Bern, Township of Cumru, Township of Amity, Township of Muhlenberg, Berks-Lehigh Regional Police Dept., Central Berks Regional Police Dept. | Local Emergency Response Team   |
| 08-05            | 5/22/2008              | Robeson Township Municipal Authority and Birdsboro Municipal Authority  | Allow Birdsboro Municipal Authority provide Sewer and Water Serve to Birdsboro Pharmacy |
| 08-06            | 6/17/2008              | Borough of Birdsboro and Township of Union  | Joint Utilization of Municipal Equipment  |

## APPENDIX B

### ORDINANCES AUTHORIZING INDEBTEDNESS

| Ordinance Number | Date Ordinance Enacted | Type                                       | Purpose  | Amount         |
|------------------|------------------------|--|--|----------------|
| 19               | 6/4/1964               | Promissory Note to Peoples Trust City Bank | Capital Expenditures for Equipment   | \$7,000.00     |
| 23               | 10/6/1966              | Promissory Note to Peoples Trust City Bank | Capital Expenditures for Equipment   | \$10,000.00    |
| 86-06            | 4/18/1986              | Lease Revenue Debt                         | Sewer Revenue Bonds  | \$2,305,000.00 |
| 94-02            | 3/24/1994              | Lease Revenue Debt                         | Sewer Revenue Bonds  | \$1,100,000.00 |
| 09-06            |                        | Lease Revenue Debt                         | Sewer Revenue Bonds  | \$1,024,000.00 |
| 12-04            | 8/18/2012              | Promissory Note to County of Berks         | Purchase Emergency Communication Equipment for Friendship Fire Company No. 1 of Geigertown, Gibraltar Fire Company, Robeson Township Police Department, Birdsboro Borough Police Department, Robeson Township EMA, and Southern Berks Regional EMS | \$248,007.46   |

**APPENDIX C**

**ORDINANCES AUTHORIZING CABLE FRANCHISE AGREEMENTS**

| Ordinance Number | Date Ordinance Enacted | Purpose                                       | Term  |
|------------------|------------------------|---|---|
| 95-04            | 10/17/1995             | Authorizing Grant of Non-Exclusive Franchises | 3 Years with Option Renew for 3 Additional Years  |
| 98-01            | 1/20/1998              | Amending Ordinance 95-04                      |   |
| 99-05            | 6/10/1999              | Authorizing Grant of Non-Exclusive Franchises | 5 Years with Automatic Renewal for 2 Successive Terms of 5 Years and Township Option Renew for Additional 5 years |
| 2009-07          | 8/18/2009              | Amending Ordinance 99-05 Service Electric     | 5 Years commencing July 20, 2009 Option to Renew for Additional Terms of 5 Years                                  |