

WASHINGTON TOWNSHIP

ORDINANCE NO. 177

AN ORDINANCE OF WASHINGTON TOWNSHIP RELATIVE TO THE ESTABLISHMENT AND MAINTENANCE OF POLICE EMPLOYEES PENSION, ANNUITY, INSURANCE AND BENEFIT FUND OR FUNDS, TO AMEND CERTAIN PROVISIONS OF THE PENSION PLAN OR PROGRAM APPLICABLE TO THE POLICE EMPLOYEES OF SAID TOWNSHIP:

WHEREAS, Washington Township (the "Township") has previously enacted Ordinance 117 establishing the Washington Township Police Pension Plan (the "Plan"); and

WHEREAS, the Township retains the right to amend the Plan; and

WHEREAS, the Township now desires to amend and restate the Plan currently to amend the Plan in accordance with Act 30 of 2002; and

NOW, THEREFORE, be it ORDAINED and ENACTED by the Township Supervisors and it is hereby ORDAINED and ENACTED by authority of the same:

That effective for Participants who terminate Employment on or after January 1, 2004, the Plan now known as the "Washington Township Police Pension Plan" is hereby amended and restated in its entirety by substituting the attached amendment and restatement of the Washington Township Police Pension Plan in its place.

DULY ENACTED AND ORDAINED, this 19th day of July 2004, by the Board of Supervisors of Washington Township, Franklin County, Pennsylvania, in lawful session duly assembled.

ATTEST:

**BOARD OF SUPERVISORS
WASHINGTON TOWNSHIP**

Karen S. Hargrave, Secretary

By: _____
C. Stewart McCleaf, Vice Chairman

Date: July 19, 2004

**WASHINGTON TOWNSHIP
POLICE PENSION PLAN**

**WASHINGTON TOWNSHIP
13013 Welty Road
Waynesboro, PA 17268**

**Amended and Restated
Effective as of: January 1, 2004**

Drafted by Randall R. Rhoades, Esquire
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**AMENDMENT AND RESTATEMENT OF
THE WASHINGTON TOWNSHIP
POLICE PENSION PLAN**

INTRODUCTION AND PURPOSE

The Township has maintained a pension plan for the benefit of full-time police officers known as the Washington Township Police Pension Plan (the "Prior Plan").

Effective January 1, 2004, except to the extent a different date is indicated in the text herein, the Township desires to amend and restate the Prior Plan, in its entirety, the terms of which are hereinafter set forth. This document shall continue to be known as the Washington Township Police Pension Plan (hereinafter referred to as the "Plan").

The purpose of this Plan continues to be to provide retirement income for the benefit of its eligible employees and their beneficiaries, but limited to those who qualify in accordance with the terms and conditions of the Plan as set forth herein.

The Township intends that this Plan, together with any related trust agreement, shall meet all the pertinent requirements for qualification under the Internal Revenue Code of 1986, as amended, (as such apply to governmental plans) and the Plan and trust agreement shall be interpreted, wherever possible, to comply with the terms of said Code and all formal regulations and rulings pertinent to the Plan and trust agreement issued thereunder.

Each retired Member or Beneficiary who was receiving monthly benefits or eligible to receive benefits on December 31, 2003 under the Prior Plan shall receive payments on or after January 1, 2004 in accordance with the terms of Prior Plan.

Each terminated Member who terminated employment prior to January 1, 2004 with a vested interest in his accrued benefit under the Prior Plan and who had not commenced receiving his retirement benefit on such date will be eligible to receive Retirement Benefit on such benefit commencement date as set forth in the Prior Plan.

The provisions of this Plan shall apply only to any Member who terminates employment on and after January 1, 2004.

TABLE OF CONTENTS

ARTICLE I.	Definitions Relative to the Determination of Benefits	2
ARTICLE II.	Retirement Benefit	5
ARTICLE III.	Disability Benefit	8
ARTICLE IV.	Death Benefit	10
ARTICLE V.	Member Contributions and Their Disbursement	11
ARTICLE VI.	Definitions Relative to Administrative Matters	13
ARTICLE VII.	Administration	15
ARTICLE VIII.	Provisions Relative to Funding Under Act 205	18
ARTICLE IX.	Applicable Provisions of the Internal Revenue Code	20
ARTICLE X.	Amendment and Termination of Pension Plan	29
ARTICLE XI.	The Trust Fund.....	31
ARTICLE XII.	Miscellaneous Provisions.....	38
	SIGNATURE PAGE	39

**AMENDMENT AND RESTATEMENT OF
THE WASHINGTON TOWNSHIP
POLICE PENSION PLAN**

WHEREAS, Washington Township (hereinafter referred to as "Employer" or "Township") has established the Washington Township Police Pension Plan (hereinafter referred to as the "Plan").

WHEREAS, the provisions of the Plan have been amended and restated several times thereafter by Ordinances of the Employer and Bargaining Agreements pursuant to the provisions of Pub. Law 1804, 53 Pa. Con. Stat. Ann. 767 et seq. (sometimes referred to as Act 600); and

WHEREAS, the Employer now desires to restate the Plan and to make certain additional changes to the Plan's provisions;

NOW, THEREFORE, the Plan now known as "Washington Township Police Pension Plan" is hereby amended and restated in its entirety effective for Participants who terminate Employment on or after January 1, 2004 as provided in this Plan document and to that extent this document supersedes and repeals all prior plan documents. The benefits of any former Participant who left Employment prior to January 1, 2004 shall be determined by the applicable pension documentation in place prior to this Plan document.

Ordinance No. 152 is hereby replaced by Ordinance No. 177.

ARTICLE I

DEFINITIONS

RELATIVE TO THE DETERMINATION OF BENEFITS

- 1.01 "Accrued Benefit Percentage" shall mean a fraction, the numerator of which represents the Participant's total cumulative calendar months of Service earned to the date of determination, and the denominator of which represents the total possible calendar months of Service he could earn from his date of hire to his Normal Retirement Date. For purposes of the current definition only, Service at any time during a calendar month shall constitute one whole month. In addition and notwithstanding the foregoing, a Participant's Accrued Benefit Percentage may never exceed the number one. "Accrued Benefit" shall mean the Accrued Benefit Percentage times 50% of Final Average Monthly Compensation.
- 1.02 "Beneficiary" shall mean the person specified by each Member on becoming a Participant by way of written notice which designates his beneficiary or beneficiaries to the Plan Administrator. The Member's election of any such beneficiary or beneficiaries may be rescinded or changed without the consent of the beneficiary or beneficiaries, at any time provided the Member provides the Plan Administrator with written notice of the changed designation.
- 1.03 "Board" shall mean the elected Board of Supervisors of the Washington Township.
- 1.04 "Compensation" shall mean the amount of a Participant's earnings, received or receivable during the Participant's employment with the Township as an Eligible Employee, that shall be considered under the Plan for purposes of calculating benefits and contributions, and, unless otherwise provided, in applying any applicable limitations to such benefits or contributions. For the foregoing purposes, Compensation shall be total gross wages during a plan year including base pay, longevity, night differential, court pay, holiday pay, and overtime.
- 1.05 "Dependent Child" shall mean any natural-born child, any legally-adopted child, any stepchild, or any foster child of a Participant, which child is unmarried, has not yet attained age 18, and, in the case of a foster child, resides in such Participant's household.
- 1.06 "Disabled" or "Disability" shall mean a permanent condition of physical or mental impairment due to which a police officer is unable to perform the usual and customary duties of a police officer, which condition continues for six months and which in the opinion of a physician acceptable to the Plan Administrator is reasonably expected to continue to be permanent for the remainder of the police officer's lifetime. A condition shall not be a total and

permanent disability for purposes of this Plan unless such condition is a direct result of and occurs in the line of duty of the police officer's employment as a police officer for the Township. A Member whose physical or mental impairment does not occur in the line of employment is not entitled to receive disability benefits under the Plan. The Plan Administrator shall determine whether a Participant is Disabled, and a Participant must submit satisfactory evidence and other proof of such Disability as required by the Administrator.

- 1.07 "Eligible Employee" shall mean a regularly scheduled, full-time police officer of the Township. Any police officer employed as a temporary, special, part-time, or permanent part-time officer of the Township shall not be considered an Eligible Employee for purposes of this Plan.
- 1.08 "Eligible Spouse" shall mean the spouse to whom a Participant is married in accordance with Pennsylvania law.
- 1.09 "Extra Service Benefit" shall be an additional monthly benefit of 2% of the retirement benefit otherwise payable for each Year of Service in excess of 25, not to exceed \$100 a month.
- 1.10 "Final Average Monthly Compensation" shall mean the Compensation of a Participant averaged over the Participant's final 36 months of Service.
- 1.11 "Former Participant" shall mean a person who had become a Participant, but who subsequently ceased to be an Eligible Employee on account of death, retirement or other termination of employment with the Township.
- 1.12 "Member(s)" shall mean Former Participant(s) who are entitled to current or future benefits from the Plan and Participant(s).
- 1.13 "Normal Retirement Date" other than incurring a Disability shall mean the date on which a Participant attains age 50 or completes 25 Years of Service, whichever is later.
- 1.14 "Participant" shall mean an Eligible Employee, effective as of the date on which such Eligible Employee first commences or recommences Service with the Township and who has not for any reason ceased to be a Participant hereunder.
- 1.15 "Pension Fund" or "Fund" shall mean the police pension fund administered under the terms of this Plan and which shall include all money, property, investments, policies and contracts standing in the name of the Plan.
- 1.16 "Service" shall mean any specified period for which an Eligible Employee is directly or indirectly compensated or entitled to compensation by the Township

for the performance of duties as a full-time police officer or receives, or is entitled to receive, payment for:

- (a) the time actually worked for the Township as an Eligible Employee;
- (b) absence due to vacation, holidays, or sickness; and
- (c) an authorized leave of absence.

"Service" shall also include:

(d) any period of voluntary or involuntary military service with the armed forces of the United States of America, provided that the Participant has been employed as a regular full-time member of the Township's police force for a period of at least six months immediately prior to the period of military service, and the Participant returns as an Eligible Employee within six months following discharge from military service or within such longer period during which employment rights are guaranteed by applicable law or under the terms of the collective bargaining agreement with the Township and provided that the Member is not entitled to receive, eligible to receive now or in the future or has received retirement benefits for such Service under a retirement system administered and wholly or partially paid for by any other governmental agency with the exception of a Member eligible to receive or receiving military retirement pay earned by a combination of active duty and nonactive duty with a reserve or national guard component of the armed forces which retirement pay is payable only upon the attainment of a specified age and a period of service under 10 U.S.C. Ch. 67 (relating to retired pay for nonregular service).

(e) Any period during which a Member is entitled to disability benefits under this Plan, provided that the Member returns to Employment within three months of the date on which it is determined that he is no longer totally and permanently disabled if such determination occurs prior to the date a Member attains Normal Retirement Date; and

1.17 "Township" shall mean the Washington Township, located in Franklin County, Pennsylvania.

1.18 "Year of Service" shall mean 12 calendar months of Service, whether or not such months are consecutive, where Service at any time during a calendar month constitutes one whole month.

ARTICLE II

RETIREMENT BENEFIT

2.01 Entitlement. A Member must satisfy at least one of the following requirements to become entitled to the retirement benefit described in Section 2.02 below:

- (a) have reached Normal Retirement Date on or before the date on which he became a Former Participant; or
- (b) have completed at least twelve (12) Years of Service on or before the date on which he became a Former Participant and have filed a written notice of his intention to "vest" with the Administrator within ninety (90) days of such date (see Section 2.04 below). Note that the failure to file an election to vest will result in a payment of Member Contributions and associated earnings pursuant to Section 5.03 of the Plan.

2.02 Retirement Benefit. A Former Participant who satisfies the conditions for entitlement described in the foregoing Section shall be entitled to a monthly amount payable for his life, which amount (referred to hereinafter as the "Retirement Benefit" or "Normal Retirement Benefit") is derived from the following formula:

$$(a \times b) + c$$

where, with respect to said Former Participant,

a = 50% of Final Average Monthly Compensation.

b = the Accrued Benefit Percentage.

c = the Extra Service Benefit.

Provided, however, that payment of benefits upon retirement shall be conditioned upon a Former Participant's being subject to service from time to time as a police reserve in cases of riot, tumult or preservation of the public peace until unfitted for such service, at which time such Former Participant shall be finally discharged by reason of age or Disability upon written notice from Board.

- 2.03 Commencement. The Retirement Benefit of a Former Participant shall become payable on the first day of the calendar month coincident with or next following the later of: (1) the date the Former Participant would reach his Normal Retirement Date if he continued to be an Eligible Employee until such date; or, (2) the date on which his employment terminated with the Township and, thereafter, the first day of each month during the Former Participant's lifetime. Notwithstanding anything contained herein to the contrary, no Retirement Benefit payments nor any other payments shall be due or payable on or before thirty (30) days after the date the Administrator receives the application for benefits.
- 2.04 Deferred Vested Benefit. A Participant who has completed at least twelve (12) Years of Service shall be entitled to elect to receive a Deferred Vested Benefit in lieu of a withdrawal of member contributions and associated interest pursuant to Section 5.03 hereof. Such a Deferred Vested Benefit shall be in an amount equal to the Accrued Benefit as of the date employment terminates as a police officer of Washington Township and shall commence as of the first day of the month coincident with or next following the attainment of Normal Retirement Date or the date it would have been attained if the Participant continued in Service until such date. The Participant shall be entitled to such a vested benefit by filing with the Administrator within ninety (90) days of the date he ceases to be employed as a full-time police officer for the Washington Township, a written notice of his intention to vest.
- 2.05 Cost-of-Living Adjustment. Each Former Participant who should retire and receive a retirement benefit determined pursuant to Section 2.02 hereunder shall be entitled to receive a cost-of-living adjustment to the amount of benefit payable to such Former Participant under Section 2.02 and [not to the amount of Extra Service Benefit payable to such Former Participant under Section 2.02] effective as of each annual anniversary date of the original commencement of the Former Participant's retirement benefit payments hereunder. Such cost-of-living adjustment shall be an amount equal to the percentage change in the Consumer Price Index during the last year times the retirement benefit payable under Section 2.02 but shall not exceed the following limits: (1) the percentage increase in the Consumer Price Index from the year in which the Former Participant was last employed as a police officer of the Township; (2) the total retirement benefits payable under this Plan shall not exceed seventy-five percent (75%) of the Former Participant's Final Monthly Average Compensation; (3) the total cost-of-living increase shall not exceed thirty percent (30%); and (4) the cost-of-living adjustment shall not impair the actuarial soundness of the Pension Fund.

Effective with the first monthly pension benefit paid after June 30, 2002, the Plan shall provide for a one-time post retirement adjustment to the eligible

retired members of the Plan, the eligibility, amount and timing of such adjustment to be provided in accordance with Act 64 of 2002.

ARTICLE III

DISABILITY BENEFIT

3.01 Disability Benefit.

- (a) A Disabled Participant shall be entitled to receive a monthly benefit equal to one-half (½) of the monthly average salary of such member during the last thirty-six (36) months of employment, which benefit shall be known hereinafter as the "Disability Benefit". The Disability Benefit shall commence on the first day of the calendar month coincident with or next following the date on which the Member has satisfied the Plan's definition of Disability and shall continue, except as noted below, until the earliest of his death or recovery from Disability.
- (b) Notwithstanding subsection (a), for disabilities incurred on or after April 17, 2002, the disability benefit payable to a Participant who suffers a Disability is the greater of: (i) the benefit under subsection (a), or (ii) a monthly benefit calculated at 50% of the Participant's salary (within the meaning of Act 30 of 2002) at the time the Disability was incurred, provided that any Participant who receives benefits for the same injuries under the Social Security Act (42 U.S.C. §§301 et. seq.) shall have his Disability benefits offset or reduced by the amount of such benefits. Notwithstanding anything to the contrary in this Plan, anyone receiving benefits under this subsection shall receive no other disability or retirement benefits under this Plan, and no one shall be entitled to any benefits under clause (ii) greater than those required under Act 30 of 2002.

3.02 Termination of the Disability Benefit. The Disability Benefit described above shall be terminated:

- (a) if the Township shall determine, on the basis of a medical examination by a physician acceptable to the Township that the Member, prior to his Normal Retirement Date, has sufficiently recovered to return to employment as a police officer for the Township.
- (b) if the Member refuses to undergo a medical examination, which may be ordered by the Township or the Administrator; provided that the Member may not be required to undergo a medical examination more often than once every 12 months;

- (c) if the Member is employed in any capacity as a full-time or part-time police officer after qualifying for the Disability Benefit;
- (d) if the Disabled Member recovers from his Disability and does not return to Service under the Plan within three (3) months of cessation of Disability prior to attainment of Normal Retirement Date and if his total pension payments under the Plan are less than his Member Contribution Account, the difference shall be paid to him as a termination benefit and neither he nor his spouse or Beneficiary shall be entitled to any other benefits under the Plan.
- (e) from time to time, the Township shall adopt uniform provisions for Disabled Members who recover from Disability and return to Service.

3.03 Requirement of Notification. A Member who is receiving benefits from the Plan on account of Disability shall be required to notify the Administrator of any change which may cause a cessation of entitlement to receipt of such benefits. To the extent a Member fails to provide immediate notice to the Administrator of any such change in status and who continues to receive benefits to which he is not entitled from the Plan on account of Disability, the Administrator may take any action necessary to recover any amount improperly paid, including legal action or the offsetting of such amounts against future payments on account of retirement or death under the Plan, including the costs of such actions.

ARTICLE IV

DEATH BENEFIT

- 4.01 Pre-retirement Death Benefits. In the event a Participant who has not attained entitlement to retirement or disability benefits dies from any cause while an Eligible Employee, the Beneficiary of the Participant shall be entitled to receive a refund of the Participant's Member Contribution Account as defined in Article V. In the absence of a designation, the Beneficiary of a Participant shall be his spouse, if surviving, or, if spouse predeceases, his children under the age of 18, or effective as of April 17, 2002, if attending college under age 23, if any, and if none, his estate.
- 4.02 Surviving Spouse Benefit. Effective April 17, 2002, if a Participant “retires on pension” (within the meaning of Act 30 of 2002) and dies, a benefit shall be paid to the surviving spouse or if no spouse survives, or if he or she survives and subsequently dies, then the child or children under the age of 18 years or if attending college, under or attaining the age of 23 years in the case of a child or children, in the amount of 50% of the pension the Participant was receiving or would have been receiving had he been retired at the time of his death. For purposes of this section, a Participant who has attained Normal Retirement Age and dies prior to retiring shall be treated as if he had retired on the day before his death. Notwithstanding anything to the contrary in this Plan, if anyone receives benefits under this section, no one shall receive any other benefits under this Plan on account of the death or retirement of the Participant.

The phrase “attending college” means that the eligible children are registered at an accredited institution of higher learning and are carrying a minimum course load of seven credit hours per semester.

To the extent required by Act 30 of 2002, this section applies to the surviving spouse of a Participant who died on or before April 17, 2002 and who was not remarried as of April 17, 2002.

- 4.03 Killed In Service Benefit. The pension for the family of a Participant who is killed in service on or after April 17, 2002 shall be payable immediately and the amount shall be equal to 100% of the Participant's salary (within the meaning of Act 30 of 2002) at the time of death. Notwithstanding anything to the contrary in this Plan, if anyone receives benefits under this subsection, no one shall receive any other benefit under this Plan on account of the death or retirement of the Participant, and benefits under this subsection shall be limited to those required by Act 30 of 2002.

ARTICLE V

MEMBER CONTRIBUTIONS AND THEIR DISBURSEMENT

- 5.01 Member Contributions, Defined. The term "Member Contribution" shall mean any amount deposited into the Plan by a Participant.
- 5.02 Participant Contributions. Each Participant shall as a requirement of participation pay regular contributions to the Pension Fund in an amount equal to five percent (5%) of the Participant's Compensation (subject to reduction pursuant to section 5.03 hereof). Each Participant shall complete the necessary forms to authorize the payment of Participant contributions by way of payroll deduction.
- 5.03 Reductions of Participant Contributions. Notwithstanding the preceding section 5.02, if an actuarial study performed by the Plan Actuary shows that the condition of the Pension Fund is such that payments into the Pension Fund by Participants may be reduced below the minimum percentages prescribed in section 5.02, or may be eliminated, and that if such payments are reduced or eliminated, contributions by the Employer will not be required to keep the Pension Fund actuarially sound, the Employer may, on an annual basis, by ordinance or resolution, reduce or eliminate payments into the Pension Fund by Participants.
- 5.04 Crediting of Interest. Interest shall accrue to Member Contributions at the rate of five percent (5%) per annum. Such interest shall be credited from the mid-point of the year (or part of the year) when made through the date of Participant's termination of Eligible Employment.
- 5.05 Withdrawal.
- (a) Member Contributions, in addition to the interest accrued thereon, (hereinafter referred to collectively as the "Member Contribution Account") may be withdrawn from the Plan by or on behalf of a Member only under the following circumstances:
 - (1) where the Member fails to complete Service until Normal Retirement Date;
 - (2) where the Member fails to elect to vest in a Retirement Benefit to which he has become entitled, pursuant to Section 2.01(b);

- (3) where the Member dies without satisfying the requirements of entitlement to a Death Benefit, as detailed in Section 4.02 hereof; and
 - (4) where the Retirement or Disability Benefit of such Member has not yet commenced.
- (b) Where the above conditions for the withdrawal of the Member Contribution Account have been satisfied, payment of the Member Contribution Account shall be made to the Member, or in the event of the Member's death, to the Member's Beneficiary. In the absence of a designation, the Beneficiary of a Participant shall be his spouse, if surviving, or, if spouse predeceases, his children under the age of 18, or effective as of April 17, 2002, if attending college under age 23, if any, and if none, his estate. Such payment shall commence on or after the first day of the calendar month coincident with or next following the date on which the Member (1) became a Former Participant or (2) failed to elect vesting in a retirement benefit to which he had become entitled, whichever is later.
- (c) Upon the distribution of the Member Contribution Account, the entitlement of the Member, his spouse or his Beneficiary to any future Retirement Benefit, Deferred Vested Benefit, Disability Benefit, or Death Benefit shall cease. If the Member again becomes an Eligible Employee, he shall pay to the Fund the Member Contribution Account under the terms and conditions and with such earnings as may be determined by the Township.

ARTICLE VI

DEFINITIONS

RELATIVE TO ADMINISTRATIVE MATTERS

- 6.01 "Act 205" shall mean the Municipal Pension Plan Funding Standard and Recovery Act, act of December 18, 1984, P.L. 1005 no. 205, as amended, 53 P.S. Sec. 895.101, et seq.
- 6.02 "Act 600" shall mean the Police Pension Fund Act, act of May 29, 1956, P.L. (1955) 1804 no. 600, as amended, 53 P.S. 767, et seq.
- 6.03 "Actuary" shall mean a person who has at least five (5) 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 the Federal Employee Retirement Income Security Act of 1974.
- 6.04 "Administrator" or "Plan Administrator" shall mean the Chief Administrative Officer. The Plan Administrator may delegate authority to act on its behalf to any persons or entities it deems appropriate.
- 6.05 "Board" shall mean the Board of Supervisors Washington Township in whom rests the responsibility for appointing the Chief Administrative Officer and for deciding and approving any matter of finance that affects, or could affect, the Plan, its Members, or Beneficiaries. All powers relative to the operation and administration of the Plan shall specifically reside with Board of Supervisors unless delegated pursuant to this Plan document.
- 6.06 "Chief Administrative Officer" shall mean the individual, designated by Board, who shall have the power and authority to perform all acts and to execute, acknowledge, and deliver all instruments necessary to implement and effectuate the purpose of the Plan. Where Board fails to designate a Chief Administrative Officer, the Chief Administrative Officer shall be the Manager of the Township.
- 6.07 "Code" shall mean the Internal Revenue Code of 1986, as amended or replaced from time to time.
- 6.08 "Committee" shall mean a Police Pension Advisory Committee or "Committee" that shall be established. This Committee, if appointed by the Board, shall be advisory to the Board.
- 6.09 "Fund" shall mean the fund administered and established under the terms of the Plan, which fund shall include all money, property, investments, policies, and contracts standing in the name of the Plan.

- 6.10 "Plan" shall mean the current instrument, including all amendments hereto.
- 6.11 "Plan Year" shall mean the 12-month period beginning on January 1 and ending on December 31 of each year.
- 6.12 "Policy" or "Contract" shall mean a retirement annuity or a retirement income endowment policy (or a combination of both), or any other form of insurance contract or policy which shall be deemed appropriate with accordance with the provisions of the Act and P.L. 1804, as amended (53 P.S. 767).
- 6.13 "Township" shall mean Washington Township and any successor which shall maintain this Plan; and any predecessor which has maintained this Plan. The Township is situated in Franklin County in the Commonwealth of Pennsylvania.
- 6.14 "Trust Agreement" shall mean the legal agreement entered into between the Township and any fiduciary that shall provide specifically for all objectives, powers, and responsibilities concerning the management of the Fund's assets.

ARTICLE VII

ADMINISTRATION

7.01 Authority and Duties of the Administrator. The Administrator shall have full power and authority to do whatever, in its judgment, shall be reasonably necessary to effectuate the proper administration and operation of the Plan. The interpretation or construction placed upon any term or provision of the Plan by the Administrator, or any action of the Administrator taken in good faith, shall be final and conclusive upon all parties hereto, except with regard to the power of Board of Supervisors provided in Section 6.09 hereof. The authority of the Administrator shall include, but shall not be limited to:

- (a) construction of the Plan;
- (b) determination of all questions affecting the eligibility of any employee of the Township to participate herein;
- (c) computation of the amount and the source of any benefit payable hereunder to any Member or Beneficiary, as applicable;
- (d) authorization of any and all disbursements of benefits;
- (e) prescription of any procedure to be followed by any Participant or other person, as applicable, in filing any application or election hereunder;
- (f) preparation and distribution of information explaining the Plan as may be required by law or as the Administrator deems appropriate;
- (g) requisition of information necessary from the Township or any Member for the proper administration of the Plan; and
- (h) appointment and retention of any individual to assist in the administration of the Plan, including such legal, clerical, accounting, and actuarial services as may be required by any applicable law or laws.

The Administrator shall have no authority to add to, subtract from, or modify the terms of the Plan or to change or add to any benefits provided by the Plan, or to waive or fail to apply any requirements of eligibility for benefits under the Plan. Further, the Administrator shall have no power to adopt, amend, or terminate the Plan, to select or appoint any actuary; and/or to select or appoint any insurance company to hold any Contracts, or to determine or require any

contributions to the Plan, said powers being exclusively reserved to Board of Supervisors.

7.02 Hold Harmless. To the full extent permitted by law, no member of Board of Supervisors, the Chief Administrative Officer, the Administrator, nor any other person involved in the administration of the Plan shall be liable to any person on account of any act or failure to act which is taken or omitted to be taken in good faith in performing their respective duties under the terms of this Plan. To the extent permitted by law, the Township shall, and hereby does agree to, indemnify and hold harmless the Administrator and each successor and each individual's heirs, executors and administrators, and the Administrator's delegates and appointees (other than any person or entity independent of the Township who renders services to the Plan for a fee) from any and all liability and expenses, including counsel fees, reasonably incurred in any action, suit, or proceeding to which he is or may be made a party by reason of being or having been the Administrator or a delegate or appointee of the Administrator, except in matters involving criminal liability, or intentional or willful misconduct. If the Township purchases insurance to cover claims of a nature described above, then no right of indemnification shall exist except to the extent of any deductible amount under the insurance coverage or to the extent of the amount the claims exceed the insured amount.

7.03 Appeal Procedure. Any person whose application for benefits is denied, who questions the amount or timing of any benefit paid, or who has some other claim arising under the Plan (the "Claimant"), shall first seek a resolution of such claim under the procedure hereinafter set forth.

(a) The Claimant shall first file a notice of claim with the Administrator which notice shall fully describe the nature of the claim. The Administrator shall review the claim and make an initial determination approving or denying the claim and shall mail notice of the determination within ninety (90) days (or such other period as may be established by applicable law) from the time the application is received. Such ninety (90) day period may be extended by the Administrator, if special circumstances so require, for up to ninety (90) additional days by the Administrator's delivering notice of such extension to the Claimant within the first ninety (90) day period. Any notice hereunder shall, if it is a notice of denial, set forth:

(i) the specific provisions of the Plan on which the denial is based;

- (ii) an explanation of additional material or information, if any becomes necessary to perfect such claim, and a statement of why such material or information is necessary; and
 - (iii) an explanation of the review procedure.
- (b) Upon receipt of notice denying the claim, the Claimant shall have the right to request a full and fair review by Board of the initial determination. Such request for review must be made by written notice to Board within sixty (60) days of mailing of the notice of denial. During such review, the Claimant or a duly authorized representative shall have the right to review any pertinent documents and to submit any issues or comments in writing. Board shall, within sixty (60) days after receipt of the notice requesting such review, (or in special circumstances, such as where Board in its sole discretion holds a hearing, within one hundred and twenty (120) days of receipt of such notice), submit its decision in writing to the person or persons whose claim has been denied. The decision shall be written in a manner calculated to be understood by the Claimant and shall contain specific references to the pertinent Plan provisions upon which the decision is based. The Claimant shall have the right to appeal the decision of Board pursuant to the Local Agency Law, 2 Pa. C.S.A. § 101. If not so appealed, the decision shall be final, conclusive and binding on all parties.
- (c) Any notice of claim questioning the amount of a benefit in pay status shall be filed by the Claimant with the Administrator within ninety (90) days following the date of the first payment which would be adjusted if the claim is granted, unless the Administrator allows a later filing for good cause shown.
- (d) A Claimant who does not submit a notice of a claim or a notice requesting a review of a denial of a claim within the time limitations specified above shall be deemed to have waived such claim or right to review.

ARTICLE VIII

PROVISIONS RELATIVE TO FUNDING UNDER ACT 205

8.01 Actuarial Valuations. The Actuary to the Plan shall perform an actuarial valuation at least biennially (unless the Township is applying or has applied for supplemental state assistance pursuant to Act 205, for purposes of this Article, whereupon actuarial valuation reports must be made annually.)

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

Such actuarial valuation shall be prepared and certified by an approved Actuary, as such term is defined in Act 205.

The expenses attributable to the preparation of any actuarial valuation report or investigation required by Act 205 or any other expense which is permissible under the terms of Act 205 and which are directly associated with administering the Plan shall be an allowable administrative expense payable from the assets of the Fund. Such allowable expenses shall include, but shall not be limited to, the following:

- (a) investment costs associated with obtaining authorized investments and investment management fees;
- (b) accounting expenses;
- (c) premiums for insurance coverage on Fund assets;
- (d) reasonable and necessary counsel fees incurred for advice or to defend the Fund; and
- (e) legitimate travel and education expenses for officials of the Plan.

Board, in its fiduciary role, shall monitor the services provided to the Plan to ensure that the expenses are necessary, reasonable and benefit the Plan; and further provided, that the Administrator shall document all such expenses item by item, and where necessary, hour by hour.

8.02 Duties of the Chief Administrative Officer. The actuarial reports described above shall be prepared and filed under the supervision of the Chief Administrative Officer. The Chief Administrative Officer of the Plan shall determine the financial requirements of the Plan on the basis of the most recent actuarial report and shall determine the minimum obligation of the Township

with respect to funding the Plan for a given Plan Year. The Chief Administrative Officer shall submit the financial requirements of the Plan and the minimum obligation of the Township to Board annually and shall certify the accuracy of such calculations and their conformance with Act 205.

- 8.03 Modification of Benefits. Prior to the adoption of any provision that modifies a benefit provided hereunder the Chief Administrative Officer shall provide to Board a cost estimate of the proposed modification. Such estimate shall be prepared by an approved Actuary, which estimate shall disclose to Board the impact of the proposed modification on the future financial requirements of the Plan and the future minimum obligation of the Township with respect to the Plan.
- 8.04 Utilization of State Aid. Payments of general municipal state aid, or any other amount of state aid received pursuant to Act 205 from the Commonwealth of Pennsylvania which are received by the Township and deposited into the Fund shall be used as follows:
- (a) to reduce the amortization of the unfunded liability, or after such liability has been funded,
 - (b) to apply against the annual obligation of the Township for future service costs, or to the extent that the payments may be in excess of such obligation,
 - (c) to reduce Member Contributions hereunder.
- 8.05 Member Contributions. See Article V.
- 8.06 Township Contributions. The remainder of the annual contributions required under provisions of Act 205, as determined by the Actuary to the Plan in accordance with Act 205, shall become the obligation of the Township and shall be paid into the Fund by annual appropriations.

ARTICLE IX

APPLICABLE PROVISIONS OF THE INTERNAL REVENUE CODE

- 9.01 Explanation. In recognition of the fact that the Plan must comply in form, content, and operation with certain provisions of the Code, and in spite of the limited applicability of such provisions to the normal operation of the Plan, the following Sections of this Article detail the limitations and parameters applicable to maintaining favorable tax treatment of funds contributed to the Plan under federal law. Spousal status shall be determined in accordance with federal law.
- 9.02 Definitions. The following words and phrases are hereby introduced and defined for purposes of this Article only:
- (a) "Accrued Benefit" shall mean a Participant's Retirement Benefit exclusive of Vesting.
 - (b) "Actuarial Equivalent" shall mean a form of benefit differing in time, period, or manner of payment from a specific benefit provided under the Plan, but having the same value when computed using the "Applicable Interest Rate" and "Applicable Mortality Table" as defined in Code Section 417(e). The "Applicable Interest Rate" shall be determined as of the second month prior to the first month of the Limitation Year. The "Applicable Mortality Table" and "Applicable Interest Rate" shall be adjusted automatically when necessary to maintain the qualified status of this Plan. The Applicable Mortality Table was found in Revenue Ruling 95-6, 1995-1 C. B. 80, and effective as of December 31, 2002 is found in Revenue Ruling 2001-62.
 - (c) "Annual Additions" shall mean the sum credited to a Participant's Account for any Limitation Year of (1) Township contributions, (2) Employee contributions, (3) forfeitures, (4) amounts allocated after March 31, 1984, to an individual medical account, as defined in Code Section 415(l)(2) which is part of a pension or annuity plan maintained by the Township, and (5) amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after such date, which are attributable to post-retirement medical benefits allocated to the separate account of a key employee (as defined in Code Section 419A(d)(3)) under a welfare benefit plan (as defined under Code Section 419(e)) maintained by the Township.
 - (d) "Annual Benefit" shall mean the benefit payable under the terms of the Plan (exclusive of any benefit not required to be considered for purposes of applying the limitations of Code Section 415 to the Plan) payable in the

form of a straight life annuity with no ancillary benefits. If the benefit under the Plan is payable in any other form, the Annual Benefit shall be adjusted to the equivalent of a straight life annuity using the greater of the interest rate assumption specified in the definition of Actuarial Equivalent or five percent (5%). Effective as of January 1, 1998, if a Participant makes a purchase of permissive service credit (within the meaning of Code Section 415(n)) under the Plan, the benefit derived from the contributions made to purchase the service credit shall be treated as part of the benefit subject to the limitations under Sections 9.03 through 9.06. Compulsory Employee Contributions are Annual Additions, unless such contributions are "picked-up" in accordance with Code Section 414(h). Any benefit attributable to such contributions (determined using the definition of Actuarial Equivalence in Subsection 9.02(b)) is not part of the Annual Benefit subject to the limits of Sections 9.03 through 9.06.

- (e) "Employee" shall mean any person who is employed by the Township, but excludes any person who is an independent contractor. Employee shall not include Leased Employees within the meaning of Code Sections 414(n)(2) and 414(o)(2).
- (f) "Leased Employee" shall mean any person (other than an Employee of the recipient) who pursuant to an agreement between the recipient and any other person ("leasing organization") has performed services for the recipient (or for the recipient and related persons determined in accordance with Code Section 414(n)(6)) on a substantially full time basis for a period of at least one year, and such services are under primary direction and control of recipient. Contributions or benefits provided a Leased Employee by the leasing organization which are attributable to services performed for the recipient employer shall be treated as provided by the recipient employer. A Leased Employee shall not be considered an Employee of the recipient.
- (g) "Limitation Year" shall mean the Plan Year, for purposes of applying the limitations under the current Article.
- (h) "Participant's Account" shall mean the account established and maintained by the Administrator for each Participant with respect to his total interest in a defined contribution plan maintained by the Township resulting from Annual Additions.
- (i) "Plan Year" shall mean the twelve-month period beginning on January 1 and ending on December 31 of each year.

- (j) "Regulation" shall mean the Income Tax Regulations, as amended from time to time, as promulgated by the Secretary of the Treasury or his delegate.

9.03 Maximum Annual Benefit.

- (a) Subject to the exceptions below, the maximum Annual Benefit payable to a Participant under this Plan in any Limitation Year shall equal \$160,000.
- (b) Notwithstanding anything in this Article to the contrary, to the extent the Plan was in existence on May 6, 1986 and had complied at all times with the requirements of Code Section 415, (including any pertinent elections) the maximum Annual Benefit for any individual who was a Participant as of the first day of the Limitation Year beginning after December 31, 1986 shall not be less than the "current accrued benefit". "Current accrued benefit" shall mean 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 Code Section 415(b)(2). In determining the amount of a Participant's "current accrued benefit", the following shall be disregarded: (1) any change in the terms and conditions of the Plan after May 5, 1986; and (2) any adjustment for cost of living occurring after May 5, 1986.
- (c) The dollar limitation under Code Section 415(b)(1)(A) stated in subsection (a) above became effective for the first Limitation Year ending after Dec. 31, 2001 and is automatically adjusted periodically, without formal amendment, in accordance with changes in the law or cost of living adjustments applicable to Code Section 415(b)(1)(A).
- (d) For the purpose of this Article, all qualified defined benefit plans (whether terminated or not) ever maintained by the Township shall be treated as one defined benefit plan, and all qualified defined contribution plans (whether terminated or not) ever maintained by the Township shall be treated as one defined contribution plan.
- (e) For the purpose of this Article, if this Plan is a Code Section 413(c) plan, all employers of a Participant who maintain this Plan will be considered to be a single employer, namely the Township.

9.04 Adjustments to Annual Benefit and Limitations.

- (a) Pre-62 Retirement. If the Annual Benefit begins before age 62, then the \$160,000 limitation shall be reduced so that it is the Actuarial Equivalent of the \$160,000 limitation(on a single life annuity) beginning at age 62 ; provided, that Actuarial Equivalence shall be determined using an interest rate of five (5%) percent compounded annually for the period prior to age sixty-two (62). This paragraph does not apply to the benefit of any Participant who has fifteen (15) or more Years of Service with the Township's Police Department or who qualifies for a Disability Benefit under Article III.
- (b) Delayed Retirement. If the Annual Benefit begins after age 65, the \$160,000 limitation shall be increased so that it is the Actuarial Equivalent of the \$160,000 limitation at age 65.
- (c) For purposes of adjusting the \$160,000 limitation applicable after age 65, the adjustment shall be made using the parameters specified in the definition of Actuarial Equivalent, except that the interest rate assumption shall be the lesser of five percent (5%) or the rate specified in said definition, and the mortality decrement shall be ignored to the extent that a forfeiture does not occur at death.
- (d) For purposes of the Annual Benefit and paragraphs (a) and (b) above, no adjustments under Code Section 415(d) shall be taken into account before the Limitation Year for which such adjustment first takes effect.
- (e) For purposes of the Annual Benefit, no adjustment is required for qualified joint and survivor annuity benefits, pre-retirement death benefits, and post-retirement medical benefits.
- (f) To the extent applicable, the above provisions and limitations shall be governed by Code Section 415(b)(2)(F) and Code Section 415(b)(2)(G).

9.05 Annual Benefit not in excess of \$10,000. Subject to the provisions of any applicable state law, this Plan may pay an Annual Benefit to any Participant in excess of his or her maximum Annual Benefit if the Annual Benefit under this Plan and all other defined benefit plans maintained by the Township does not in the aggregate exceed \$10,000 for the Limitation Year or for any prior Limitation Year, and the Township has not at any time maintained a defined

contribution plan in which the Participant participated. For purposes of this paragraph, if this Plan provides for voluntary or mandatory Employee contributions, such contributions will not be considered a separate defined contribution plan maintained by the Township.

9.06 Participation or Service Reductions. If a Participant (not receiving a disability retirement benefit under Article III) has less than 10 years of participation in the Plan at the time he begins to receive benefits thereunder, the limitations in Sections 9.03 (a) and 9.04 shall be reduced by multiplying such limitations by a fraction, the numerator of which is the number of years of participation (or part thereof) in the Plan, and the denominator of which is 10, provided, however, that said fraction shall in no event be less than 1/10th. The limitation of Section 9.05 shall be reduced in the same manner, except the preceding sentence shall be applied with respect to Years of Service rather than years of participation in the Plan.

9.07 Incorporation of Code Section 415 by Reference. Notwithstanding anything contained in this Article to the contrary, the limitations, adjustments, and other requirements prescribed in this Article shall at all times comply with the provisions of Code Section 415 (as such apply to governmental plans) and the Regulations thereunder, the terms of which are specifically incorporated herein by reference.

9.08 Required Distributions. Notwithstanding any provision in this Plan to the contrary, the distribution of a Participant's (or Beneficiary's) benefits shall be made in accordance with the requirements and conditions of and shall otherwise comply with Code Section 401(a)(9). For purposes of complying with Code Section 401(a)(9), life expectancies shall be determined in accordance with the 1987 proposed regulations prior to January 1, 2003 and with the final regulations (§1.401(a)(9)-1 through §1.401(a)(9)-9) on or after January 1, 2003.

(a) Effective as of January 1, 1997 distribution of a Participant's benefits shall begin not later than April 1st of the calendar year following the later of:

(1) the calendar year in which the Participant attains age seventy and one-half (70½), or

(2) the calendar year in which the Participant retires.

Distributions must be made over a period not exceeding the life of the Participant or the joint lives a Participant and his Beneficiary.

(b) Distributions to a Participant and his Beneficiaries shall only be made in accordance with the incidental death benefit requirements of Code Section 401(a)(9)(G) and the regulations thereunder.

- (c) This section does not authorize the payment of any benefit in any form not permitted under another provision of the Plan.

9.09 Qualified Domestic Relations Order Distribution. All rights and benefits, including elections, provided to a Participant in this Plan shall be subject to the rights afforded to any "alternate payee" under what is recognized pursuant to State law support provisions or as a "qualified domestic relations order". For purposes of this Section, "alternate payee" and "qualified domestic relations order" shall be determined by the Plan Administrator who may use as guidance Code Section 414(p).

9.10 Direct Rollover.

- (a) This Section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

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

- (1) An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities). Effective as of January 1, 2002, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be paid only to an individual retirement account or annuity described in Code Section 408(a) or (b) or to a qualified defined contribution plan described in Code Section 401(a) or 403(b) that agrees to separately account for amounts so transferred, including separately accounting for the

portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

- (2) An eligible retirement plan is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), or a qualified trust described in Code Section 401(a), that accepts the distributee's eligible rollover distribution. Effective as of January 1, 2002, an eligible retirement plan shall also mean an annuity contract described in Code Section 403(b) or an eligible plan under Code 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. Prior to January 1, 2002, in the case of an eligible rollover distribution to a surviving spouse or former spouse who was an alternate payee, an eligible retirement plan was an individual retirement account or individual retirement annuity.
 - (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 Code Section 414(p), are distributees with regard to the interest of the spouse or former spouse.
 - (4) A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.
- (c) Effective as of January 1, 2002, an Employee may, in accordance with Code Section 457(e)(17), make a trustee-to trustee transfer from an eligible deferred compensation plan (as defined in Code Section 457(b)) to this Plan for the purpose of purchasing service credit (to the extent that such purchases are permitted under the terms of the Plan) or repaying a cash-out of contributions refunded under the Plan.

9.11 Credit for Qualified Military Service. Effective as of December 12, 1994, 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 Section 414(u) of the Code.

9.12 Limit on Annual Additions and Multiple Plan Reduction.

- (a) Limit on Annual Additions - Effective as of January 1, 2002, the Annual Additions allocated to the account of a Participant, including any

contributions “picked-up” by the Township in accordance with Code Section 414(h), and any annual additions under any defined contribution plan of the Township shall not exceed the lesser of:

- (i) Forty thousand (\$40,000) dollars; or
- (ii) One hundred (100%) percent of the Participant's 415 Compensation for the Limitation Year.

The percentage limitation in clause (ii) shall not apply to any Annual Addition which is: (1) a contribution for medical benefits (within the meaning of Code Section 419A(f)(2)) after separation from service, or (2) any amount treated as an Annual Addition under Code Section 415(l)(1). The dollar amount in clause (i) is for the Limitation Year beginning in 2002 and is automatically adjusted periodically, without formal amendment, in accordance with Code Sections 415(c) and (d).

“415 Compensation” with respect to any Participant shall mean such Participant’s wages as defined in Code Section 3401(a) and all other payments of compensation by the Township (in the course of the Township’s business) for a Plan Year for which the Township is required to furnish the Participant with a written statement under Code Sections 6041(d), 6051(a)(3) and 6052. “415 Compensation” must be determined without regard to any rules under Code Section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code Section 3401 (a)(2)). Effective as of January 1, 1998, 415 Compensation includes amounts not includible in income by reason of Code Section 125, 132(f)(4), 401(k), 402(g)(3), 403(b), or 457(a).

- (b) Multiple Plan Reduction. For Limitation Years beginning before January 1, 2000, benefits under this Plan were subject to the limitations of Code Section 415(e).

9.13 Limit on Compensation. This section applies to the definition of Compensation, not 415 Compensation. With respect only to an Employee who becomes a Participant in the Plan on or after January 1, 1996, Compensation is subject to the limitation under Code Section 401(a)(17), which was \$170,000 for the Plan Year beginning in 2001 and \$200,000 for the Plan Years beginning in 2002 and 2003. The limit is automatically adjusted periodically, without formal amendment, for changes in the law and cost-of-living adjustments under Code Section 401(a)(17).

9.14 Vesting Upon Plan Termination. Upon the termination of this Plan, or complete

discontinuance of contributions (within the meaning of pre-ERISA Code Section 401(a)(7)) to this Plan, each Employee as of the date of such termination or discontinuance shall become vested to the extent that the Plan is funded.

ARTICLE X

AMENDMENT AND TERMINATION OF PENSION PLAN

- 10.01 Amendment. Except to the extent required by law, the Township acknowledges that, so long as the non-managerial police officers of the Township are represented by a union, the Township does not have a unilateral right to modify the benefit structure of its police Act 600 pension plan. The Township also acknowledges its obligation to amend the Police Pension Plan Ordinance and Plan document, from time to time, as required by the results of collective bargaining and/or Act 111 arbitration, so that these conform to the collective bargaining agreement. If, in amending either the pension ordinance or the Plan document, an error is made which causes the benefit structure described in either the Ordinance or the Plan to differ from the benefit structure produced through the course of collective bargaining/Act 111 arbitration, the benefit structure reflected in the latter document(s) shall prevail. Amendments to the Plan may be made by Ordinance or Resolution.
- 10.02 Termination of the Plan. Subject to any collective bargaining or state law limitations, the Employer shall have the power to terminate this Plan in its entirety at any time by an instrument in writing executed in the name of the Employer.
- 10.03 Automatic Termination of Contributions. Subject to the provisions of Act 205 governing financially distressed municipalities, the liability of the Employer to make contributions to the Plan shall automatically terminate upon liquidation or dissolution of the Employer, upon its adjudication as a bankrupt or upon the making of a general assignment for the benefit of its creditors.
- 10.04 Distribution Upon Termination. All assets attributable to the terminated Plan shall be distributed and disposed of in accordance with the provisions of applicable law and the terms of any instrument adopted by the Employer which effects such termination.
- 10.05 Residual Assets. If all liabilities to vested Participants and any others entitled to receive a benefit under the terms of the Plan have been satisfied and there remain any residual assets in the Plan, such residual assets remaining shall be returned to the Employer insofar as such return does not contravene any provision of law, and any remaining balance, in excess of Employer contributions, shall be returned to the Commonwealth.
- 10.06 Exclusive Benefit Rule. In the event of the discontinuance and termination of the Plan as provided herein, the Employer shall dispose of the Plan assets in accordance with the terms of the Plan and applicable law; at no time prior to the

satisfaction of all liabilities under the Plan shall any part of the corpus or income of the Plan, after deducting any administrative or other expenses properly chargeable to the Plan, be used for or diverted to purposes other than for the exclusive benefit of the Participants in the Plan, their Beneficiaries or their estates.

ARTICLE XI
THE TRUST FUND

11.01 Establishment and Acceptance of Trust.

The Trust will consist of all funds held by the Trustee under the Plan, including contributions made pursuant to the provisions hereof and the investments, reinvestment and proceeds thereof. The Trust shall be held, managed, and administered pursuant to the terms of the Plan. The Trustee hereby accepts the Trust created hereunder and agrees to perform the duties under the Plan on its part to be performed. Except as otherwise expressly provided for in the Plan, the Trustee has exclusive authority and discretion to manage and control the Trust assets. The duties, powers and responsibilities reserved to the trustee may be allocated among the Trustees (if there be more than one) so long as such allocation is pursuant to action taken by the Employer, or by written agreement executed by the Trustee and approved by the Employer, in which case no Trustee shall have any liability, with respect to any duties, powers or responsibilities not allocated to him, for the acts or omissions of any other Trustee.

If all Plan assets are held in one or more custodial accounts or contracts issued by an insurance company licensed to do business in Pennsylvania, then the Township does not need to appoint a Trustee, and Plan assets shall be administered in accordance with the other provisions of this Plan and the terms of the agreement with the insurance company. If there is a separate trust document, then the terms of that document shall supersede the provisions of this Article. If the Township fails to name a Trustee, the Township shall be the Trustee.

11.02 Powers and Duties of Trustee. With respect to the Trust, the Trustee shall have the following powers, rights and duties, in addition to those vested in it elsewhere in the Plan or by law, unless such duties are delegated.

- (a) To retain in cash so much of the Trust as it deems advisable and to deposit any cash so retained in any bank or similar financial institution (including any such institution which may be a Trustee hereunder), and shall include the right to hold funds on a temporary basis in accounts or investments that do not bear interest.
- (b) To invest and reinvest the principal and income of the fund and keep said fund invested, without distinction between principal and income, in securities which are at the time legal investments for fiduciaries under the Pennsylvania Fiduciaries Investment Act, or as the same may be subsequently modified or amended.

- (c) To sell property held in the fund at either public or private sale for cash or on credit at such times as it may deem appropriate; to exchange such property; to grant options for the purchase or exchange thereof.
- (d) To consent to and participate in any plan of reorganization, consolidation, merger, extension or other similar plan affecting property held in the fund; to consent to any contract, lease, mortgage, purchase, sale or other action by any corporation pursuant to any such plan.
- (e) To exercise all conversion and subscription rights pertaining to property held in the fund.
- (f) To exercise all voting rights with respect to property held in the fund and in connection therewith to grant proxies, discretionary or otherwise.
- (g) To cause any securities or other property held as part of the Trust to be registered in its own name or in the name of one or more of its nominees, without designating the same as Trust property, and to hold any investments in bearer form, but the books and records of the Trustee shall at all times show that all such investments are part of the Trust.
- (h) Generally, to do all such acts, execute all such instruments, take all such proceedings and exercise all such rights and privileges with relation to property constituting the Trust as if the Trustee were the absolute owner thereof.
- (i) If bonds, preferred stocks or other securities shall be purchased at a premium, it shall not be necessary for the Trustee to set aside a sinking fund from the earnings to retire or absorb the premium.
- (j) To place money at any time in a deposit bank deemed by the Trustee to be appropriate for the purposes of this Plan no matter where situated, including in those cases where a bank has been appointed to serve as trustee hereunder, the savings department of its own commercial bank.
- (k) In addition to the foregoing powers, the Trustee shall also have all of the powers, rights, and privileges conferred upon Trustees by the Pennsylvania Fiduciaries Act of 1949, 20 P.S. §320, or as the same may be subsequently modified or amended, and the power to do all acts, take all proceedings and execute all rights and privileges, although not specifically mentioned herein, as the Trustee may deem necessary to administer the Trust and to carry out the purposes of this trust.

- (l) To invest the assets of the Trust in any collective commingled trust fund maintained by a bank or trust company, including any bank or trust company which may act as a trustee hereunder or to invest in an insurance contract or other funding arrangement. In this connection, the commingling of the assets of this Plan with assets of other eligible, participating plans through such a medium is hereby specifically authorized. Any assets of the Plan which may be so added to such collective trusts shall be subject to all of the provisions of the applicable declaration of trust, as amended from time to time, which declaration, if required by its terms or by applicable law, is hereby adopted as part of the Plan, to the extent of the participation in such collective or commingled trust fund by the Plan.
- (m) To make any payment or distribution required or advisable to carry out the provisions of the Plan, provided that a trustee shall make such distribution only at the direction of the Employer.
- (n) To compromise, contest, arbitrate, enforce or abandon claims and demands with respect to the Plan.
- (o) To retain any funds or property subject to any dispute without liability for the payment of interest thereon, and to decline to make payment or delivery thereof until final adjudication is made by a court of competent jurisdiction.
- (p) After advance notice to the Employer to pay, and to deduct from and charge against the Trust, any taxes which may be imposed thereon, whether with respect to the income, property or transfer thereof, or upon or with respect to the interest of any person therein, which the Trust is required to pay; to contest, in its discretion, the validity or amount of any tax, assessment, claim or demand which may be levied or made against or in respect of the Trust, the income, property or transfer thereof, or in any matter or thing connected therewith.
- (q) To appoint any persons or firms (including but not limited to accountants, investment advisors, counsel, actuaries, physicians, appraisers, consultants, professional plan administrators and other specialists), or otherwise act to secure specialized advice or assistance, as it deems necessary or desirable in connection with the management of the Trust, to the extent not prohibited by applicable law, the Trustee shall be entitled to rely conclusively upon and shall be fully protected in any action or omission taken by it in good faith reliance upon, the advice or opinion of such persons or firms, provided such persons or firms were prudently chosen by the Trustee, taking into account the interests of the Participants

and Beneficiaries and with due regard to the ability of the persons or firms to perform their assigned functions.

- (r) To retain the services of one or more persons or firms for the management of (including the power to acquire and dispose of) all or any part of the Plan assets, provided that each of such persons or firms is registered as an investment advisor under the Investment Advisors Act of 1940, is a bank (as defined in that act), or is an insurance company qualified to manage, acquire or dispose of pension trust assets under the laws of more than one state; in such event, the Trustee shall follow the directions of such Investment Manager or Managers with respect to the acquisition and disposition of fund assets, but shall not be liable for the acts nor omissions of such Investment Manager or Managers, nor shall it be under any obligation to review or otherwise manage any assets which are subject to the management of such Investment Manager or Managers.

The trustee shall not be permitted to retain such an Investment Manager except with the express written consent of the Employer.

11.03 Management Authority. Except as otherwise provided, authority granted to the Trustee shall be exercised in the discretion of the Trustee; however, the Employer may at any time affirmatively direct the Trustee with regard to the investment of the Trust, or direct the Trustee to obtain the Employer's approval before exercising any of the powers granted the Trustee. Any such direction may be of a continuing nature or otherwise, may be revoked at any time, and shall be complied with as promptly as possible by the Trustee. The Trustee shall not be liable for any loss or depreciation in value of the Trust, or any adverse effect upon the exempt status of the Trust under the Code, resulting from actions taken in accordance with the Employer's affirmative direction or from the failure or refusal of the Employer to give any required approval, nor shall the Trustee be obliged to review the assets of the trust acquired on the direction of the Employer.

11.04 Successor Trustee. Pending the appointment of any successor Trustee and the acceptance of such appointment, the existing Trustee or Trustees shall have full power to take any action hereunder. Each successor or additional Trustee shall have all rights and powers, as well as duties and liabilities, vested in the original Trustee without the signing or filing of any further instrument, but any resigning or removed Trustee shall execute all documents and do all acts necessary to vest title of record to any assets of the Trust in any successor Trustee, or in the remaining Trustee or Trustees. With the approval of the Employer, a successor Trustee may accept the account rendered and the property delivered to it by a predecessor Trustee as a full and complete discharge of the predecessor Trustee, without incurring any liability or responsibility for so doing.

- 11.05 Common Investments. The Employer shall not be required to make separate investments for individual Participants or to maintain separate investments for each Participant's account, but may invest contributions and any profits or gains therefrom in common investments.
- 11.06 Compensation and Expenses of Appointed Trustee. The trustee shall be entitled to such reasonable compensation as shall from time to time be agreed upon by the Employer and the trustee, unless such compensation is prohibited by law. Such compensation, and all expenses reasonably incurred by the trustee in carrying out his functions, shall constitute a charge upon the Employer or the Trust, which may be executed at any time after 30 days written notice to the Employer. The Employer shall be under no obligation to pay such costs and expenses, and, in the event of its failure to do so, the trustee shall be entitled to pay the same, or to reimburse themselves for the payment thereof, from the Trust.
- 11.07 Immunity and Liability of Trustee.
- (a) The Trustee shall not be liable for the making, retention or sale of any investment or reinvestment made by it, as herein provided, nor for any loss to, or diminution of, the Trust, unless due to its own intentional or willful misconduct, lack of good faith or gross negligence.
 - (b) The Trustee shall be fully protected in acting upon any instrument, certificate or paper believed by it to be genuine and to be signed or presented by the proper person or persons, and the Trustee shall be under no duty to make any investigation or any inquiry as to any statement contained in any writing, but may accept the same as conclusive evidence of the truth and accuracy of the statements therein contained.
 - (c) The Trustee shall not be liable for the proper application of any part of the Trust if payments are made in accordance with the directions of the Employer as herein provided, and the Trustee shall not be obliged to inquire as to whether any payee is entitled to any payment or distribution, pursuant to such directions, or as to whether any payment or distribution, pursuant to such directions, is proper or within the terms of the Plan. The Trustee shall not be required to make any investigation to determine the identity or mailing address of any person entitled to benefits under the Plan and shall be entitled to withhold making any payments or deliveries upon instructions from the Employer.
 - (d) The Trustee shall not be responsible for the adequacy of the Trust to meet and discharge any and all payments and liabilities under the Plan.

The Trustee shall be responsible only for such sums as shall actually be received by it as Trustee, hereunder, and it shall not be the duty of the Trustee to collect, or to ascertain the correctness of the amount of, any sum receivable or received from the Employer.

- (e) The Trustee shall discharge its duties with respect to the assets of the Trust solely in the interest of the Participants and Beneficiaries, administering the assets of the Plan with the care and diligence, under the then prevailing circumstances, that a prudent man acting in like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims.

11.08 Financial Records. The Trustee shall maintain records and accounts reflecting all receipts and disbursements made by it under the Plan and showing such other items and information as the Employer from time to time may specify. The Trustee's records and accounts shall be open to the inspection of the Employer at all reasonable times, and may be audited from time to time by such person or persons as the Employer may specify.

11.09 Periodic Accounting. The Trust shall be evaluated annually, or at more frequent intervals, by the trustee and a written accounting rendered as of each fiscal year end of the Trust, and as of the effective date of any removal or resignation of the trustee, and such additional dates as requested by the Employer, showing the condition of the Fund and all receipts, disbursements and other transactions effected by the trustee during the period covered by the accounting, based on fair market values prevailing as of such date. Any such accounting shall be due within 90 days after the date thereof; to the extent permitted by law, upon the expiration of 180 days from the filing of such accounting, the Trustee shall be forever released, remised and discharged from all liability and accountability to anyone with respect to the propriety of its accounts and transactions shown in such accounts except with respect to any such accounts or transactions as to which the Employer shall within such 180 day period file written exceptions. All determinations as to the value of the assets of the Trust, and as to the amount of the liabilities thereof, shall be made by the Trustee, whose decisions shall be final and conclusive and binding on all parties hereto, the Participants and Beneficiaries and their estates. In making any such determination, the Trustee shall be entitled to seek and rely upon the opinion of or any information furnished by brokers, appraisers and other experts, and the Trustee shall also be entitled to rely upon reports as to sales and quotations, both on security exchanges and otherwise as contained in newspapers and in financial publications.

11.10 Rights of Trustee. The rights and interest of any Participant on whose life or in whose name an insurance contract is issued shall not be expanded by such an investment and any and all rights provided under the contract or permitted by

the insurer shall be reserved to the Trustee. Such rights shall include the right to surrender, reduce or split the contract, the right to name and change the payee to receive thereunder on the happening of any contingency specified in the contract, the right to exercise any loan provisions to pay premiums or for any other reason, and such other rights as may be reserved to the owner of the policy.

- 11.11 Actions of Insurer. No insurer, which may issue a policy for the purpose of this Plan, shall be required to take or permit any action contrary to the provisions of said policy nor shall the Insurer be required to look into the terms of this Plan, or question any action as authorized by the Trustee in the application for a policy or changes in an existing Policy.
- 11.12 Insurer Not a Party to Plan. The Insurer shall not be deemed to be a party to this Plan for any purpose nor shall it be responsible for the validity of this Plan.
- 11.13 Authorized Investments. The Trustee shall not, in any case, be required to accept as assets hereunder any contracts or policies which are not permissible investments for retirement plans subject to Act 205; moreover, the Trustee shall have no duty or obligation to inquire into the nature of any such contracts or policies, nor to access the appropriations of such contracts or policies as investments of Plan assets under Act 205.

ARTICLE XII

MISCELLANEOUS PROVISIONS

- 12.01 Plan Not a Contract of Employment. No employee of the Township, nor anyone else, shall have any rights whatsoever against the Township or the Administrator as a result of this Plan, except those rights expressly granted to them hereunder. Nothing herein shall be construed to give any employee the right to remain an employee of the Township.
- 12.02 Gender and Number. For purposes of the Plan and wherever plainly necessitated by the person or context, the masculine shall be read for the feminine, and the singular shall be read for the plural.
- 12.03 Construction. The validity of the Plan or any of its provisions shall be determined and construed pursuant to the laws of the Commonwealth of Pennsylvania, the federal government, and the agencies thereof.
- 12.04 Severability of Provisions. In the event that any provision, section, subsection, paragraph, sentence, clause, or other part of the Plan shall be held to be invalid, such invalidity shall not affect or impair any remaining provisions, sections, subsections, paragraphs, sentences, clauses, or other parts of the Plan.
- 12.05 Headings. The headings and subheadings employed within the current document have been inserted for convenience of reference and are to be ignored in the construction of the provisions hereof.
- 12.06 Incapacity of Participant. If any Participant shall be physically or mentally incapable of receiving or acknowledging receipt of any payment of benefits hereunder, the Administrator, upon the receipt of satisfactory evidence that such Participant is incapacitated to the aforesaid extent and that another person or institution maintains him, may provide for such payment of benefits hereunder to such person or the institution maintaining him, and any such payments so made shall be deemed for every purpose to have been made to such Participant.
- 12.07 Protective Clause Relative to Administration. Subject to the provisions of all laws applicable hereto, and unless otherwise specifically required, no past, present, or future officer of the Township shall be personally liable to any Participant, beneficiary, or other person under any provision of the Plan. The above sentence shall not apply to acts of gross negligence or criminal conduct as determined by a court of competent jurisdiction. After such a court determination, such person shall be subject to all applicable laws.

12.08 Sole Benefit. The income and principal of the Plan are for the sole use and benefit of the Participants covered hereunder and, to the extent permitted by law, shall be free, clear and not in any way liable for debts, contracts or agreements and from all claims and liabilities now or hereafter incurred by any Participant, beneficiary, or alternate payee.

12.09 Assignment. The pension payments herein provided for shall not be subject to attachment, execution, levy, garnishment or other legal process, and shall be payable only to the Former Participant, his survivors or his designated beneficiary, or alternate payee and shall not be subject to assignment or transfer.

DULY ENACTED AND ORDAINED, this 19th day of July 2004, by the Board of Supervisors of Washington Township, Franklin County, Pennsylvania, in lawful session duly assembled.

ATTEST:

**BOARD OF SUPERVISORS
WASHINGTON TOWNSHIP**

Karen S. Hargrave, Secretary

By: _____
C. Stewart McCleaf, Vice Chairman

Certification of Adoption

I, Karen S. Hargrave, Secretary of the Board of Supervisors, Washington Township, Franklin County, Pennsylvania, do certify that the foregoing is true and correct copy of an ordinance adopted at a regular meeting of the Washington Township Supervisors held July 19, 2004, in a regular session duly assemble.

Karen S. Hargrave, Secretary

Date: July 19, 2004