

CHAPTER 1

ADMINISTRATION AND GOVERNMENT

Part 1  
General Government

- §101. Levying & Collecting of Annual Tax
- §102. Office of Secretary/Treasurer
- §103. Compensation for Certain Officials
- §104. Appropriations Schedule
- §105. Remaining Appropriations
- §106. Emergency Expenditures
- §107. Auditors

Part 2  
Boards and Commissions

A. Planning Commission

- §201. Planning Commission Established

B. Recreation Board

C. Cultural and Arts Commission

- §221. Creation
- §222. Purpose of Commission
- §223. Powers
- §224. Composition; Terms of Office
- §225. Compensation
- §226. Records to be Kept; Annual Report
- §227. Funds for Expenses Incurred
- §228. Programs of Assistance
- §229. Effect on Existing Agencies
- §230. Severability
- §231. Repealer
- §232. Effective Date

Part 3  
Municipal Authority

- §301. Intention to Organize
- §302. Articles of Incorporation
- §303. Purpose of Authority
- §304. Implementation

Part 4  
Police Department

- §401. Police Department
- §402. Classifications in Police Department
- §403. Special Policemen

Part 5  
Volunteer Firemen's Relief Association

- §501. Recognition of Volunteer Firemen's Relief Association
- §502. Certification to Auditor General
- §503. Annual Appropriation

Part 6  
Pension Plans

A. Non-Uniformed Employees

- §601. Amendment of Money Purchase Plan to Profit Sharing Plan
- §602. Administration
- §603. Eligibility
- §604. Contributions
- §605. Allocation of Contributions
- §606. Payments of Benefits
- §607. Merger or Consolidation
- §608. Amendment
- §609. Termination of Contributions
- §610. Termination of Plan
- §611. Assignment and Levy
- §612. Limitations
- §613. Definitions
- §614. Governing Law
- §615. Trustee
- §616. Powers of Trustee
- §617. Indemnification of Trustee
- §618. Successor Trustee
- §619. Continuation of Plan on Merger or Consolidation
- §620. Validity

B. Police Pension Plan

- §651. Definitions
- §652. Participation
- §653. Retirement Benefits
- §654. Death Benefits
- §655. Termination of Employment Benefits
- §656. Contributions
- §657. Additional Qualification Rules
- §658. Administration of the Plan
- §659. Amendment and Termination of Plan
- §660. Miscellaneous Provisions
- §661. Employment of Actuary; Present Liability; Unfunded Liability; Members' Payments; Application  
Borough Payments
- §662. Participants' Rights to Benefits Once Entitled Thereto
- §663. Refunds
- §664. Pension Payments Not Subject to Legal Process, Assignment or Transfer
- §665. Administrative Expenses
- §666. Joint Pension Committee
- §667. Early Retirement
- §668. Conditions for Amendment or Repeal

Part 7  
Fee Resolution

Schedule of Fees for Applications, Permits and Licenses.

CHAPTER 1

ADMINISTRATION AND GOVERNMENT

PART 1

General Government

§101. Levying & Collecting of Annual Tax. That an annual Tax for the current year, Two Thousand Nineteen, upon all real property within the limits of the Borough of Nazareth, made taxable by the laws of the Commonwealth of Pennsylvania for County rates and levies, by levied and collected on each Dollar of the valuation assessed for County purposes, within the limits of the Borough of Nazareth, to be used for general Borough purposes, as follows, to wit: a Tax for the current or fiscal year of 2019 of sixteen (16) mills on each Dollar of assessed valuation of real property. (Ord.685, 12/02/2002; as amended by Ord. 692, 12/1/2003; by Ord. 703, 12/6/2004; by Ord. 717, 12/5/2005; by Ord. 729, 12/4/2006; by Ord. 740, 12/6/2007; by Ord. 748, 12/8/2008, by Ord. 755, 12/7/09; by Ord. 767, 12/6/2010; by Ord. 777, 12/5/2011; by Ord. 783, 12/3/12; by Ord. 793, 12/2/2013; by Ord. 801, 12/1/2014, by Ord. 813, 12/7/15; by Ord. 822, 12/5/2016; by Ord. 832, 12/4/17; and by Ord. 838, 12/3/18)

§102. Office of Secretary/ Treasurer. The Borough Council of the Borough of Nazareth hereby authorizes that the offices of Secretary and of Treasurer may be held by the same person. (Ord. 595, 10/7/1991)

A. Landlords to Register Rental Residence.

1. Every person owning real property within the Borough of Nazareth on which is erected residential dwellings which are rented, leased or occupied by persons other than the owner shall, within fifteen (15) days after becoming an owner of such property, register with the Secretary/Treasurer their name, address and such other information as the Secretary/Treasurer may require. Every owner having a dwelling occupied by persons other than the owner or his family shall provide to the Secretary/Treasurer the names and addresses of all such persons occupying the said dwellings within thirty (30) days after their occupancy first began. Owners shall provide to the Secretary/Treasurer a current list of all tenants not less than annually on or before December 31 of each year.

2. For the purpose of this Part, the fact that the owner of real estate rents or leases any property for minimal or no rent to another person shall not exclude said owner from filing the certified list required in Subsec. (a) above.

3. Any person who fails or neglects, or refuses to register the names and addresses and such other information as may be required by this Part shall be sentenced to pay a fine of not more than Five Hundred (\$500.00) Dollars for each offense and costs. (Ord. 746, 11/3/2008)

§103. Compensation for Certain Officials. That for the faithful performance of their respective duties and subject to conditions and requirements fixed by law or ordinance or imposed or agreed upon at the time of appointment, the following annual compensation, payable semi-monthly, except as otherwise herein provided, is hereby fixed: Mayor, Five Thousand (\$5,000.00) Dollars, payable monthly; Borough Council President, Three Thousand (\$3,000.00) Dollars, payable monthly; Councilmen, Two Thousand Five Hundred (\$2,500.00) Dollars, payable monthly; Borough Secretary/Treasurer, Fifty-three Thousand Five Hundred (\$53,500.00) Dollars, payable bi-weekly; Superintendent of Highways, Seventy-seven Thousand (\$77,000.00) Dollars; Chief of Police, Eighty-six Thousand Six Hundred Twenty-five (\$86,625.00) Dollars; Corporals, One

Hundred Forty-two Thousand Three Hundred Ninety-five (\$142,395.00) Dollars; Regular Patrolmen with at least six (6) years of service, Seventy-two Thousand Six Hundred Six (\$72,606.00) Dollars; Regular Patrolmen with at least four (4) years of service, Sixty-eight Thousand One Hundred Twenty-eight (\$68,128.00) Dollars; Regular Patrolmen with at least two (2) years of service, Sixty-five Thousand Two Hundred Eighty-nine (\$65,289.00) Dollars; Regular Patrolmen with at least one (1) year of service, Sixty Thousand Eleven (\$60,011.00) Dollars; Patrolmen, hiring rate, Fifty-Six Thousand Seven Hundred Eighty-two (\$56,782.00) Dollars; Assistant Secretary/Treasurer, Forty-two Thousand Five Hundred (\$42,500.00) Dollars; Departing Assistant Secretary/Treasurer, Twenty-one Thousand Four Hundred Thirty (\$21,430.00) Dollars; Police Administrative Clerk, Thirty-six Thousand Four Hundred (\$36,400.00) Dollars; Parking Enforcement Personnel, Twelve (\$12.00) Dollars per hour; Highway, Class No. 1 (Foreman), Fifty-two Thousand Six Hundred Seventy-four (\$52,674.00) Dollars; Highway, Class No. 1, Fifty Thousand Five Hundred Ninety-four (\$50,594.00) Dollars; Highway, Class No. 2, Forty-eight Thousand Seven Hundred Twenty-nine (\$48,729.00) Dollars; Highway, Hiring Rate, Forty Thousand Ninety-three (\$40,093.00) Dollars; Part-time Police, Twenty Four (24.00) Dollars per hour; School Crossing Guards, Eleven (\$11.00) Dollars per shift; Tax Collector, Nine Thousand Five Hundred (\$9,500.00) Dollars for collection of real estate taxes; one and one-half (1½%) percent of the amount collected on the Local Services Tax and the Borough Earned Income tax; Recorder or Deeds, two (2%) percent of the amount collected of the Borough Real Estate Transfer Tax; Fire Chief, Four Thousand Five Hundred (\$4,500.00) Dollars, payable monthly; First Assistant Fire Chief, Three Thousand (\$3,000.00) Dollars, payable monthly; Second Assistant Fire Chief, Three Thousand (\$3,000.00) Dollars, payable monthly; Emergency Management Director, One Thousand Two Hundred (\$1,200.00) Dollars, payable monthly; Engineer, One Hundred Eight and fifty one-hundredths (\$108.50) Dollars per hour of service; Borough Solicitor, One Hundred Five (\$105.00) Dollars per hour of service. (Ord. 685, 12/2/2002; as amended by Ord. 692, 12/1/2003; by Ord. 703, 12/6/2004; by Ord. 717, 12/5/2005; by Ord. 729, 12/4/2006; by Ord. 740, 12/6/2007; by Ord. 748, 12/8/2008, by Ord. 755, 12/7/09; by Ord. 767, 12/6/2010; by Ord. 777, 12/5/2011; by Ord. 783, 12/3/12; by Ord. 793, 12/2/2013; by Ord. 801, 12/1/2014; by Ord. 813, 12/7/15; by Ord. 822, 12/5/2016; by Ord 831, 12/4/17, and as amended by Ord. 838, 12/3/2018.)

§104. Appropriations Schedule. That having complied with the legal requirements relating thereto, the following Appropriations Schedule is adopted for the fiscal year of 2019:

	<u>OPERATION &amp; MAINTENANCE</u>	<u>CAPITAL OUTLAY</u>	<u>TOTAL</u>
General Government:			
Administration.....	\$ 392,650		\$ 392,650
Tax collector.....	24,300		24,300
Municipal Buildings.....	121,500	\$ 150,000	271,500
	<u>\$ 538,450</u>	<u>\$ 150,000</u>	<u>\$ 688,450</u>
Protection to Persons & Property:			
Police.....	\$1,034,951	\$	\$1,034,951
Fire.....	159,834		159,834
Building Regulation & Zoning.	55,000		55,000
	<u>\$1,249,785</u>	<u>\$</u>	<u>\$1,249,785</u>
Health, Sanitation & Ecology:			
Garbage Collection & Recycling.....	\$ 746,000	\$ 74,000	\$ 820,000

Highways:			
Snow & Ice Control.....	\$ 28,500		\$ 28,500
Streets & Bridges.....	223,000	\$ 46,686	269,686
Street Lighting.....	70,000		70,000
	<u>\$ 321,500</u>	<u>\$ 46,686</u>	<u>\$ 368,186</u>
Recreation:			
Parks & Playgrounds.....	\$ 152,544	\$	\$ 152,544
Swimming Pool & Other Facilities.....	111,267		111,267
	<u>\$ 263,811</u>	<u>\$</u>	<u>\$ 263,811</u>
Library:			
Library.....	\$ 88,388		\$ 88,388
Miscellaneous:			
Social Security Taxes.....	\$ 115,947		\$ 115,947
All Other + Insurances.....	1,727,379		1,727,379
	<u>\$1,843,326</u>	<u>0</u>	<u>\$1,843,326</u>
TOTAL OPERATION, MAINTENANCE AND CAPITAL OUTLAY:	\$5,051,260	\$ 270,686	\$5,321,946
TOTAL BUDGET FOR 2019			\$5,321,946

(Ord. 685, 12/02/2002; as amended by Ord.692, 12/1/2003; by Ord. 703, 12/6/2004; by Ord. 717, 12/5/2005; by Ord. 729, 12/4/2006; by Ord. 740, 12/6/2007; by Ord. 748, 12/8/2008, by Ord. 755, 12/7/09; by Ord. 767, 12/6/2010; by Ord. 777, 12/5/2011; by Ord. 783, 12/3/12; by Ord. 793, 12/2/2013; by Ord. 801, 12/2/2014; by Ord. 813, 12/7/2015; by Ord. 822, 12/5/2016; by Ord 831, 12/4/17; and as amended by Ord. 838, 12/3/2018)

§105. Remaining Appropriations. That the several appropriations above made are for so much thereof as may be necessary for the specific purposes mentioned, and the unexpended balance, if any, remaining at the end of the fiscal year of any such appropriations, shall revert to and be retained in the Treasury of the Borough of Nazareth unless otherwise appropriated as provided by law.

§106. Emergency Expenditures. Nothing contained in this Ordinance shall prevent or preclude Borough Council from borrowing or expending money in any lawful way or for any lawful purposes, upon compliance with legal requirements; nor shall prevent Council from transferring from one fund to another fund, or from any fund for an emergency or unusual use, by a majority vote of a quorum of Council.

(Ord. 673, 12/04/2000; as amended by Ord. 681, 12/03/2001; by Ord. 685, 12/02/02; by Ord.692, 12/1/2003; by Ord. 703, 12/6/2004; by Ord. 717, 12/5/2005; by Ord. 729, 12/4/2006; by Ord. 740, 12/6/2007; by Ord. 748, 12/8/2008, by Ord. 755, 12/7/09; by Ord. 767, 12/6/2010; by Ord. 777, 12/5/2011;and by Ord. 783, 12/3/12; and by Ord. 793, 12/2/2013)

§107. Auditors.

A. Appointment. Council of the Borough of Nazareth shall, by resolution adopted annually before the commencement of a fiscal year, appoint an independent auditor who shall be a certified public accountant, registered in Pennsylvania, a firm of certified public accountants so registered or a competent public accountant or a competent firm of public accountants to audit, for such fiscal year, the accounts, records and

all other evidences of financial transactions of the Borough of Nazareth and file a report thereof with the Council of the Borough of Nazareth. The independent auditor shall perform all other duties and exercise such powers as required of, or conferred upon him by law.

B. Office Abolished. Upon appointment of an independent auditor as provided for in Section A of this Ordinance, the office of elected auditor is hereby abolished; however, the elected auditors now in office shall continue to hold such office for the term for which elected, and shall perform the duties of their office, except that they shall not audit, settle or adjust accounts audited by such independent auditor.

C. Compensation. The resolution appointing an independent auditor shall state the compensation, if any, to be paid from Borough funds for said services.

D. Right to Abolish Office Reserved. Council of the Borough of Nazareth hereby reserves the right at any time to repeal this ordinance, thereupon abolishing the office of appointed auditor, and to reestablish the office of elected auditor.

(Ord. 792, 11/04/2013)

PART 2  
Boards and Commissions

A. Planning Commission.

§201. Planning Commission Established. A Planning commission, to be composed of five (5) members, appointed as provided by law, is hereby created in and for the Borough of Nazareth. The said Planning Commission shall perform all duties and may exercise all the powers conferred by law upon municipal planning agencies. Provided; the Planning Commission previously created in and for the said Borough shall constitute the Planning Commission hereby created, and nothing herein shall affect the tenure of any of the members thereof, but any and all vacancies in the said Commission hereafter occurring, shall be filled in the manner and for the term provided in the law governing municipal planning agencies in effect at the time of the happening of the said vacancy. (Ord. 459, 11/6/1978, Chapter I, §51)



B. Recreation Board

C. Cultural and Arts Commission.

§221. Creation. There is hereby created and established a Borough of Nazareth Culture and Arts Commission (hereinafter referred to as the "Commission"), pursuant to the authority granted by Borough Code Section 1202-67.

§222. Purpose of Commission. The Commission shall:

- A. Promote the Arts as an integral part of community life;
- B. Promote and preserve cultural diversity;
- C. Enhance and enrich the quality of life for the Borough's residents through the promotion of the Arts;
- D. Encourage tourism through the Arts;
- E. Encourage a creative environment that reflects the Borough's interest in the Arts; and
- F. Promote community education in the Arts.

The Commission shall advise Borough Council and the Planning Commission, at the request thereof, other officials, employees, boards, councils, or other entities of the Borough of Nazareth on matters dealing with culture and arts located within the territorial limits of the Borough of Nazareth.

§223. Powers. The Commission shall recommend plans and programs to the appropriate Borough of Nazareth agencies for the promotion of culture and arts programs within the Borough of Nazareth; and to advise the appropriate Borough of Nazareth agencies with respect to the acquisition of property, both real and personal, by gift, purchase, grant, bequest, easement, devise or lease, in matters dealing with culture and the arts.

§224. Composition; Terms of Office. The Commission shall be composed of not less than five (5) and not more than nine (9) persons who shall be appointed by Borough Council. Any vacancy occurring on the Commission shall be filled by appointment by Borough Council. Duly appointed Commission members shall serve for a term of three (3) years, except that initial appointments shall be so staggered that the terms of approximately one-third ( $\frac{1}{3}$ ) of the membership of the Commission shall expire each year, the terms of their successors to be of three (3) years each. Borough Council of the Borough of Nazareth shall designate the Chairman of the Commission. (Ord. 720, 8/7/2006)

§225. Compensation. Members shall receive no compensation for their services, but shall be reimbursed for the expenses actually and necessarily incurred by them in the performance of their duties.

§226. Records to be Kept; Annual Report. The Commission shall keep records of its meetings and activities and shall make an annual report which shall be printed in the annual municipal report, if any, or, if there shall be no annual municipal report, the Commission shall otherwise make its written annual report to Borough Council and generally make the report known and available.

§227. Funds for Expenses Incurred. Funds for the expenses incurred by the Commission shall, at the discretion of Borough Council, be appropriated to the Commission. The Commission may expend monies for such administrative, clerical printing and legal services as may from time to time be required, but its expenditures shall be limited to the amount of funds appropriated to it by Borough Council. The whole or any

part of any funds so appropriated in any year may be placed in a conservation fund, allowed to accumulate from year to year, or be expended in any year. The Commission shall submit a detailed written itemized budget proposal to Borough Council at least thirty (30) days prior to adoption of the Borough's preliminary budget.

§228. Programs of Assistance. The Commission shall endeavor to take advantage of such programs of assistance to culture and arts, including educational services, exchange of information, assignment of technical personnel for culture and arts planning assistance and coordination of state and local culture and arts activities, as may be established by the State Culture and Arts Commission as may seem to the Commission and Borough Council to be advantageous.

§229. Effect on Existing Agencies. Nothing herein contained shall be construed as abolishing or limiting any existing municipal agency, board, authority, or commission even though such agency, board, authority or commission may have a responsibility related to the responsibilities delegated to the Commission hereunder.

§230. Severability. If any sentence, clause, section or part of this ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this ordinance. It is hereby declared as the intent of Borough Council that this obligation would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

§231. Repealer. All ordinances or parts of ordinances which are inconsistent herewith are hereby repealed.

§232. Effective Date. This Ordinance shall become effective on \_\_\_\_\_ .  
(Ord. 718, 5/1/2006)

PART 3  
Municipal Authority

§301 Intention to Organize. Under the provisions of an Act of Assembly, May 2, 1945, P.L. 382, as amended, known as the Municipality Authorities Act of 1945, it is the intention of the Borough of Nazareth to organize such an Authority. (Ord. 411, 1/3/1972, §1)

§302. Articles of Incorporation. The proposed Articles of Incorporation of the said Authority are as follows:

A. The name of the said Authority is "Nazareth Borough Municipal Authority."

B. The Authority is formed under the provisions of the Act of General Assembly of the Commonwealth, which was approved by the second day of May 1945, P.L. 382, known as the "Municipality Authorities Act of 1945," as amended and supplemented.

C. No other Authority organized under the said Act or under the Act approved the twenty-eighth day of June 1935; P.L. 463 is in existence in or for the said incorporating municipality.

D. The name of the incorporating municipality is the Borough of Nazareth, Northampton County, Pennsylvania.

E. The Board of the Authority shall consist of six (6) members. Five (5) of the members of the Board of the Authority shall be residents, property owners, or taxpayers in the Borough of Nazareth, and one (1) member of the Authority shall be a resident, property owner or taxpayer of the Township of Upper Nazareth. [Ord. 557]

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

[Here followed the names and addresses of the first Board members]

G. The term of existence of the Authority shall be for fifty (50) years from the date of approval of these articles of amendment to the Articles of Incorporation. [Ord. 557]

(Ord. 411, 1/3/1972, §2; as amended by Ord. 557, 1/4/1988, §1)

§303. Purpose of Authority. The purposes or projects to be undertaken by said Authority shall be those permitted and authorized by the Laws of the Commonwealth of Pennsylvania as the Borough of Nazareth may from time to time by resolution or ordinance specify. (Ord. 411, 1/3/1972, §3)

§304. Implementation. The several officers of the said Borough are hereby authorized and directed to do and perform every lawful, requisite and convenient thing for the organization of the said Authority, which is provided and authorized by the said Act of 1945. (Ord. 411, 1/3/1972, §4)

PART 4  
Police Department

§401. Police Department; Chief of Police. A Police Department is hereby established in and for the Borough of Nazareth. The Police Commissioner shall be the chief executive of the Police Department. He shall, under the direction of the Mayor, be in charge of the Police Department and have supervision over the Chief and the members in the exercise of their powers, duties and authority. The existing police force of the Borough is hereby established and confirmed as the Police Department established by this Part. (Ord. 366, 7/3/1967, §1; and as amended by Ord. 814, 1/4/2016)

§402. Classifications in Police Department. Subordinate to the Police Commissioner and the Police Department, the classifications of Chief of Police, Deputy Chief, Sergeant and Patrolman are hereby established. The priority of authority among such subordinate classifications shall be in the order above listed. The number of persons to serve in each of such subordinate classifications on a full-time and/or part-time basis and the compensation of each shall be as determined by the Borough Council from time to time. (Ord. 366, 7/3/1967, §2; as amended by Ord. 459, 11/6/1978; Ord. 461, 11/6/1978, §1; Ord. 747, 11/3/2008; and as amended by Ord. 814, 1/4/2016)

§403. Special Policemen. Nothing in this Part shall affect the authority of the Mayor to appoint special policemen during emergencies. (Ord. 366, 7/3/1967, §3)

PART 5  
Volunteer Firemen's Relief Association

§501. Recognition of Volunteer Firemen's Relief Association.

1. The following association is hereby recognized as actively engaged in providing fire protection and/or emergency services in the Borough of Nazareth:

Vigilance Hose Company Number 1

The above named association has been formed for the benefit of its members and their families in case of death, sickness, temporary or permanent disability or accident suffered in the line of duty.

2. The above named Association of the Borough is designated the proper association to receive such funds as are due and payable to the Borough Treasurer by the Treasurer of the State of Pennsylvania from the tax on premiums from foreign fire insurance companies.  
(Ord. 595, 10/7/1991)

§502. Certification to Auditor General. The Borough Council shall annually certify to the Auditor General of the Commonwealth, the name(s) of the active associations and the percentage of service they contribute to the protection of the Borough. Such certification shall be on forms prescribed by the Auditor General. (Ord. 595, 10/7/1991)

§503. Annual Appropriation. There is annually appropriated from the Borough Treasury all such sums of money that may hereafter be paid into the Borough Treasury by the Treasurer of the State of Pennsylvania on account of taxes paid on premiums of foreign fire insurance companies in pursuance of the Act of December 18, 1984, No. 205, §701 et seq., as hereafter amended, supplemented, modified or reenacted by the General Assembly of Pennsylvania. Such monies received by the Borough Treasurer from the State Treasurer shall be distributed to the duly recognized association(s) within sixty (60) days of receipt. The funds shall be distributed on the basis of the percentage of service established in the certification to the Auditor General and with other provisions of the Act. (Ord. 595, 10/7/1991)

PART 6  
Pension Plans

A. Non-Uniformed Employees.

§601. Amendment of Money Purchase Plan to Profit Sharing Plan.

1. The Borough of Nazareth hereby establishes a money purchase plan (sometimes herein called "the plan") and trust effective the first day of January 1974, in accordance with the provisions of this Part 1A. (Ord. 432, 12/28/1973)

2. Effective January 1, 1998 the money purchase plan maintained by the Borough of Nazareth is amended to be a profit sharing plan for purposes of §401 (a) of the Internal Revenue Code of 1986, as amended (the "Code"), and related provisions (the "Plan"). Nonetheless, the employer may make contributions to the plan as a profit sharing plan without regard to the fact it is a tax-exempt organization and without regard to the fact that it has no current or accumulated earnings and profits since it is a tax-exempt organization, all as provided in code §401 (a) (27). (Ord. 652, 12/07/1998)

§602. Administration.

1. Assignment of Administrative Authority. The employer shall appoint a Chief Administrative Officer by resolution at its annual reorganization meeting, who shall be primarily responsible for the execution of the administrative affairs of the plan. He shall submit to Council, on or before the last business day in September, a report containing the financial requirements of the pension plan and the Borough's minimum obligation to the pension plan. He shall also provide to Council a cost estimate of any benefit modification prior to its adoption.

2. Assignment of Plan Administrator. The employer shall appoint a committee to be known as the "Pension Committee," hereinafter referred to as the "Committee" to implement the plan. This Committee shall consist of individuals who shall serve at the pleasure of the employer. Any member may resign by delivering his written resignation to the employer and to the Committee. Vacancies in the Committee arising by resignation, death, removal or otherwise, shall be filled by the employer.

3. Powers and Duties. The Committee shall implement the plan in accordance with its terms and shall have all powers necessary to carry out the provisions of the plan, including the right to direct or delegate investment of the trust fund. Provided, however, that the administrative authority required under Act 205 is reserved to the Chief Administrative Officer appointed in §602(1) above, the Committee shall interpret the plan and shall determine all questions arising in the implementation, interpretation and application of the plan. Any such determination by the Committee shall be conclusive and binding on all persons.

4. Discrimination. The Committee, in the exercise of any discretionary powers given in this agreement, shall not exercise that discretion so as to discriminate in favor of any employees. (Ord. 432, 12/28/1973, Art. 1; as amended by Ord. 556, 1/4/1988)

§603. Eligibility.

1. Conditions of Eligibility. Any full-time employee of the employer shall be eligible to participate hereunder, except policemen who are presently covered by the State of Pennsylvania Pension Plan, and other police-allied employees, such as meter maids. (Ord. 619, 9/6/1994)

2. Definition of "Employee" "Employee" means any person employed by the Borough of Nazareth who is an employee of the Borough and whose customary employment is for more than twenty (20) hours per week and for more than five (5) months per year.

3. Application for Participation. In order to become a participant hereunder, each eligible employee shall make application to the Committee for participation in the plan, to become effective as of the date on which said employee is eligible to participate in said plan. Each eligible employee shall also execute a written statement, on a form or forms to be furnished by the Committee, in which he shall:

A. Designate a beneficiary or beneficiaries to receive the death benefit from any life insurance policy;

B. Agree to execute such application and to take such physical examination and to supply truthfully and completely such information as may be required by the insurer in connection with the issuance of any insurance or annuity policy; and,

C. Consent to be bound by all of the terms of this Part 6A, with all amendments hereto.

4. Definition of "Continuous Service". "Continuous service" means the most recent period of uninterrupted employment for the Borough of Nazareth. In the event that any employee having once qualified to participate in the plan, shall for any reason sever his or her employment with the Borough, but thereafter becomes re-employed, said person shall be considered as a new employee. However, the following situations shall not be considered as severance of employment with the Borough:

A. Absence due to illness or disability not to exceed a period of two (2) years followed by resumption of employment within ninety (90) days of the termination of such illness or disability.

B. Service in the armed forces of the United States followed by resumption of employment within the period after the date of discharge in which his re-employment rights are guaranteed by law.

C. The employer shall treat all employees uniformly in like situations.

5. Determination of Eligibility. The Committee shall determine the eligibility of each employee for participation in the plan. Such determination shall be conclusive and binding upon all persons.

(Ord. 432, 12/28/1973, Art. 2; as amended by Ord. 619, 9/6/1994)

#### § 604. Contributions.

1. Employer's Contributions. The employer hereby agrees to make, for the current plan year (calendar year) of the employer, and for each plan year thereafter, no later than two and one-half months after the end of such plan year or such later date as may be permitted by law, a contribution to the trust fund in such percentage of each participant's compensation for that year as the employer shall in its discretion determine. "Compensation" shall mean total compensation, including salaries and wages and bonuses, paid by employer and reported as such on Form W-2 or similar form filed with the Internal Revenue Service; provided, however, that:

A. The annual compensation of any participant other than an eligible participant for any plan year beginning on or after January 1, 1996, shall not exceed \$150,000, as adjusted by the Commissioner of Internal Revenue for increases in the cost of living in accordance with Code §401 (a) (17) (B); and



B. The annual compensation of any participant who is an eligible participant shall not exceed, for any plan year, the greater of (i) the limit under §604 (1) (A) or (ii) the annual compensation allowed to be taken into account under the plan as in effect on July 1, 1993.

For purposes of §604 (1) (A) and (B), an eligible participant is an individual who first became a participant in the plan during a plan year beginning before January 1, 1996.

Forfeitures and the amount of any credits, dividends or refunds that are received from any insurance company under any annuity or insurance contract may not be applied to increase benefits otherwise provided under this plan, but shall be applied as a credit toward the contributions of the employer.

(Ord.487, 3/2/1981; as amended by Ord. 643, 08/04/1997 and by Ord. 652, 12/07/1998)

2. Voluntary Contributions. Subject to §604 (5), in addition to the employer contributions, participants may contribute up to ten percent (10%) of their normal annual compensation (as defined in, and limited by, §604 (1)) to the plan in each plan year. Employer contributions shall be made to the participant's account regardless of whether or not the participant makes a voluntary contribution under this subsection.

3. Determination of Contribution.

A. The Borough shall determine the amount of any contribution to be made by it to the trust fund under the terms of this plan. The Borough's determination of such contributions shall be binding on all participants and the Borough.

B. The trustee shall have no right or duty to inquire into the amount of the Borough's annual contribution or the method used in determining the amount of the Borough's contribution but shall be accountable only for funds actually received.

4. Time of Payment of Contribution. The Borough shall pay to the trustee its contribution for each plan year no later than two and one-half months after the end of such plan year or such later date as may be permitted by law, or if borough shall operate on a cash basis accounting, before the end of the plan year for which the contribution is made.

(Ord. 432, 12/28/1973, Art. 3; as amended by Ord. 487, 3/2/1981, and by Ord. 652, 12/07/1998)

5. Limitations on Contributions. Effective January 1, 1976, the following provisions shall apply:

A. Notwithstanding any other provision of the plan, the "annual addition" to a participant's account for any limitation year (calendar year) shall in no event exceed the amount permitted under Code §415 (c) (1).

The "annual addition" to a participant's account for any limitation year shall be the sum, for such year, of:

- (i) Employer contributions
- (ii) Employee contributions
- (iii) Forfeitures: and
- (iv) Amounts described in Code §415 (1) (1) and §419A (d) (2).

B. If a participant in this plan is, or was at any time, also a participant in a defined benefit plan qualified under Code §401 (a) maintained by the employer, the annual addition of such participant shall

be reduced to the extent necessary to satisfy the combined plan limitation of §415 (e) with respect to any limitation year beginning before January 1, 2000.

C. For purposes of applying the limitations of this §604 (5) applicable to a participant for a particular limitation year:

(i) All tax-qualified defined benefit plans ever maintained by the employer shall be treated as one defined benefit plan, and all tax-qualified defined contribution plans ever maintained by the employer shall be treated as one defined contribution plan; and

(ii) Any tax qualified defined benefit plan or tax-qualified defined contribution plan maintained by any entity required to be aggregated with the employer under Code §414 (b), (c), (m) or (o) shall be deemed to be maintained by the employer.

D. If, as a result of a reasonable error in estimating a participant's annual compensation or other limited facts and circumstances that the Commissioner of Internal Revenue finds justify the availability of the rules set forth in this section, the annual additions under the terms of the plan for a particular participant would cause the limitations of this §604 (5) applicable to that participant for the limitation year to be exceeded, the excess amounts shall not be deemed to be annual additions in that limitation year, provided that excess amounts in the participant's accounts shall be used to reduce the contributions required to be made by the employer to the plan on behalf of the participant for the next limitation year, if necessary. If the participant is not covered by the plan at the end of the limitation year, any remaining excess amount shall be unallocated in a suspense account for the limitation year and shall be applied to reduce future contributions required to be made by the employer to the plan for all remaining participants in the next limitation year and each succeeding limitation year, if necessary. (Ord. 652, 12/07/1998)

#### §605. Allocation of Contributions.

1. Participant's Accounts. The Committee shall establish and maintain an account in the name of each participant to which the Committee shall credit the Borough's contributions pursuant to the provisions of §605(2), and all amounts allocated to each such participant pursuant to the provisions of §605(3). The trustee shall maintain separate records of each employee participating in the fund. The Committee shall from time to time supply the trustee with the record of each employee participating in the plan and of his proportionate interest in the fund. Trustee shall be fully protected in relying upon such information and shall not be required to question or verify the same at any time.

2. Allocation of Annual Borough Contributions. The Committee, as of the last day of each plan year for which the Borough shall make a contribution, shall allocate such contribution to the account of each participant in accordance with the contribution for each participant as established in §604(1) of this Part.

3. Valuation of the Trust Fund and Accounts. The trustee, as of the last day of each plan year (and at such other time or times as the Committee shall direct), shall determine the net worth of the assets of the trust fund and report such value to the Committee in writing. In determining such net worth, the trustee shall evaluate the assets of the trust fund at their fair market value as of such valuation date and shall deduct all expenses for which the trustee has not yet obtained reimbursement from the Borough or from the fund. Such valuation shall not include any contribution made by the Borough as of such valuation date. The Committee shall adjust all participants' accounts, upward or downward, pro rata, so that the total of said accounts will equal the net worth of the trust fund as of the day of such adjustment. (Ord. 432, 12/28/1973, Art. 4)

§606. Payments of Benefits.

1. Distribution Upon Retirement.

A. The normal retirement date shall be the first day of the month after the sixty-fifth (65) birthday of the participant. Early retirement is permissible provided the participant has attained age fifty-five (55) and completed twenty (20) years of service. If the employment of the participant continues beyond his normal retirement date, no payment shall be made to such participant so long as such participant continues in the employment of the Borough, so that a participant continuing in the employment of the Borough, after reaching retirement age, shall receive distribution from the fund only after his actual retirement from the employment of the Borough.

B. Upon retirement of the participant, the entire amount then credited to such participant's account shall immediately become vested and his participation hereunder shall cease. The Committee, in accordance with the provisions of §606(6), shall direct the trustees to distribute to such participant the then value of such account.

2. Distribution Upon Death.

A. Upon the death of any participant, the amounts due under any contracts purchased for his benefit and the amount credited to the participant's account shall be paid to any person or persons whom the participant has designated as direct or contingent beneficiary.

B. Any portion of the amounts payable under this subsection, which are not disposed of because of the participant's, or former participant's, failure to designate a beneficiary or because all or some of the designated beneficiaries have predeceased him shall be paid to his spouse, if living; if not living, to his surviving issue, per stirpes, in equal shares; if not any surviving issue, to his surviving parent or parents; if no surviving parent, to his surviving brothers and sisters, and if none of these survive, to his estate. Payment shall be made in accordance with the provisions of §606(6).

C. If the Committee determines that any person entitled to payments under this §606(2) is a minor or incompetent by reason of physical or mental disability, the Committee may make all such payments to any other person for the use or benefit of the minor or incompetent without responsibility to follow the application of the amounts so paid. Payments made pursuant to this Section shall completely discharge the Committee and the Borough.

D. Each participant may file with the Committee a written designation of his beneficiary with the right thereafter to change same by writing signed by him and lodged with the Committee. The Committee may require such proper proof of death and such evidence of the right of any person to receive payment of the vested account of a deceased participant or former participant, as the Committee may deem desirable. The Committee's determination of death and of the right of any person to receive payment shall be conclusive.

3. Distribution in Event of Disability. In the event of total and permanent disability occurring before normal retirement age, a participant's account shall be one hundred percent (100%) vested. "Disability" shall mean total and permanent incapacity of any employee to perform the usual duties of his employment with the Borough as evidenced by the receipt by the member of a total and permanent disability benefit under the Federal Social Security Act. In determining the eligibility of the participants for such benefits, the Committee shall act uniformly in like situations. Such disabled participant shall be entitled to receive the entire amount credited to the participant's account and the Committee, in accordance with the provisions of §606(6), shall direct the trustee to distribute to such participant the then value of such account in full satisfaction of all rights under this plan.

4. Vesting and Distribution upon Termination of Employment.

A. Upon termination of a participant's employment for any reason other than retirement, death, or total and permanent disability, the Committee, in accordance with the provisions of §606(6), shall direct the trustee to distribute to such participant the then vested value of his account as of the last valuation date preceding the time of the termination of participant's employment. That portion of the account, which has not vested, shall be applied in accordance with §604(1) of this Part.

B. Each participant's interest in his voluntary participant's contribution account shall be one hundred (100%) percent vested at all times. The interest of each participant shall vest according to the following schedule:

<u>Completed Years of Participation</u>	<u>Percentage of Amounts Vested</u>
Less than 2	0%
2	25%
3	50%
4	75%
5	100%

(Ord. 601, 6/1/1992)

C. If an individual ceases to be a participant through his own dishonesty or through any willful act in the course of his employment to the injury of his employer or his fellow workers, then, regardless of how near he may be to his retirement date, he shall forfeit all benefits under the terms of this trust attributable to Borough contributions. The Committee shall make any determination that the provisions of this Section are operative within twenty (20) days after a person ceases to be a participant and shall notify him by registered mail addressed to his last known address. He shall be given a period of twenty (20) days following the mailing of such notice in which to appeal and if he does not appeal within such period, in writing addressed and delivered to the Committee, the judgment of the Committee shall be final.

D. If he files notice of appeal within twenty (20) days after the mailing of the notice by the Committee, he shall simultaneously with filing notice of appeal, name an arbitrator from among the employees of the Borough, regardless of whether the person so designated is a participant under this trust. The Committee shall name a second arbitrator and both such arbitrators shall select a third arbitrator. In spite of such notice of appeal, the Committee shall proceed as if the Committee's judgment were final, but if their judgment shall be appealed, they shall hold in escrow any funds received by them for final disposition in accordance with the judgment of the board of arbitrators. The decision of a majority of the arbitrators shall be binding upon such former participant, the Committee, the trustee, the Borough and all other interested persons and shall be enforceable in any court of competent jurisdiction.

E. Notwithstanding the foregoing, no person shall be entitled to receive any benefit (other than a return of voluntary participant contributions without interest but less any voluntary participant contributions previously paid to the participant pursuant to the terms of the plan) under the plan, if it is determined that such person has been convicted of, or has pleaded guilty or no contest to, any crime related to public office or public employment, all as provided in the Pennsylvania Public Employees Pension Forfeiture Act, 43 PA Cons. Stat. §1311, et seq.

F. All forfeitures under this §606(4) shall be used to reduce future employer contributions to the plan.

5. Method and Medium of Payment. The distribution provided hereunder shall be made in such one (1) or more of the following methods as the participant may elect:

A. The purchase of or conversion of any policy to, or exercise of any policy option equivalent to, an annuity, or a variable annuity contract, providing level payments, or later payments less than initial payments, commencing with the participant's normal retirement date and extending no longer than the joint lifetimes of the participant and his spouse.

B. Payments in level monthly, quarterly, semi-annual or annual installments, over a period not exceeding ten (10) years, after first having segregated the aggregate amount thereof in a special account.

C. Payments in lump sum of the entire balance. (Ord. 619)

Payments and distributions shall be made, at the election of the participant, either immediately, on normal retirement date, on actual retirement, or on any intervening date. In the event that benefits payable hereunder are unclaimed for three (3) years and the whereabouts of the participant is unknown to the Committee, such benefits will be forfeited and applied under §604(1) of this Part. (Ord. 563)

6. Special Account. The term "special account" as utilized in this plan in §606(5)(B) shall mean an account separate and segregated from all other funds and assets held by the trustee hereunder. Such an account shall be an interest-bearing or invested account, and the accumulations, appreciation or depreciation shall be added to or subtracted from such account. A systematic withdrawal mutual fund investment account may be used. The amount held in such special account and forfeited under §606(4) shall be applied under §604(1) of this Part.

(Ord. 432, 12/28/1973, Art. 5; as amended by Ord. 467, 12/3/1979, §1; by Ord. 563, 8/1/1988; by Ord. 601, 6/1/1992; and by Ord. 619, 9/6/1994)

7. Required Distributions. Effective January 1, 1987, notwithstanding any other provision of this plan, all benefit distributions under this §606 shall be subject to the following requirements:

A. The distribution of benefits to each participant who is entitled to a benefit under the plan shall commence not later than April 1 of the calendar year following the later of the calendar year in which he attains age 70 ½ or the calendar year in which he terminates employment with the employer.

B. The distribution of benefit payments to each participant shall be made at least as rapidly as would be required by the following methods:

(i) in accordance with regulations prescribed by the Secretary of the Treasury, over the life of the participant, or over the lives of the participant and his designated beneficiary; or

(ii) in accordance with such regulations, over a period not extending beyond the life expectancy of the participant or the life expectancy of the participant and his designated beneficiary, provided that life expectancies shall not be redetermined.

C. If a participant dies after distribution of his benefit has commenced in accordance with a method of distribution under §606 (7) (B), the remaining portion of such benefit shall be distributed at least as rapidly as such benefit would have been distributed under such method as of the date of the participant's death.

D. If a participant dies before distribution of his benefit has commenced, and if any portion of the participant's interest is payable to (or for the benefit of) his designated beneficiary, distribution may be made, in accordance with regulations prescribed by the Secretary of the Treasury, over the life of such designated beneficiary or over a period not extending beyond the life expectancy of such designated beneficiary: provided that such distribution shall commence not later than the later of:

(i) the end of the calendar year following the calendar year in which the participant dies: or

(ii) if the participant's designated beneficiary is his surviving spouse, the end of the calendar year in which the participant would have attained age 70 ½; provided that if the spouse dies before benefit payments begin, this §606 (7) (D) shall be applied as if the spouse were the participant

In any other case, the entire benefit of the participant shall be distributed by the end of the fifth calendar year following the date of his death.

E. All benefit distributions under the plan shall be made in accordance with the regulations under Code §401 (a) (9), including the minimum distribution incidental benefit requirements of Code §401 (a) (G) and proposed Treas. Reg. §1.401 (a)-2, or any successor regulations.

8. Direct Rollovers. The following provisions shall apply to distributions made on or after January 1, 1993.

A. Notwithstanding any other provision of the plan to the contrary that would otherwise limit a distributee's election under this §606 (8), a distributed may elect, at the time and in the manner prescribed by the Committee, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributed in a direct rollover.

B. The following definitions shall apply for purposes of this §606 (8):

(i) "Eligible rollover distribution" shall mean any distribution of all or any portion of the balance to the credit of the distributees, except that an eligible rollover distribution shall not include;

(a) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributed or the joint lives (or joint life expectancies) of the distributed and the distributee's designated beneficiary, of for a specified period of ten years or more,

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

(c) the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).

(ii) "Eligible retirement plan" shall mean an individual retirement account described in Code §408 (a), an individual retirement annuity described in Code §408 (b), an annuity plan described in Code §403 (a), or a qualified trust described in Code §401 (a), that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan shall be an individual retirement account or individual retirement annuity.

(iii) "Distributee" shall include 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 alternate payee under a qualified domestic relations order (as defined in Code §414 (p)) shall be distributees with regard to the interest of the spouse or former spouse.

(iv) "Direct rollover" shall mean a payment by the plan to the eligible retirement plan specified by the distributees.

(Amended by Ord.652, 12/07/1998)

§607. Merger or Consolidation. If this Borough be merged or consolidated with any other governmental body, or if any other governmental body acquires substantially all the assets of this Borough, such surviving or purchasing entity may elect to continue this plan, in which event those employees who accept a position with such surviving or purchasing entity shall continue as participants of this plan without break in participation or employment. (Ord. 432, 12/28/1973, Art. 6)

§608. Amendment. The Borough reserves the right to amend or terminate this plan at any time provided, however, that no amendment or termination shall deprive any participant of his vested equity nor revert in the Borough any assets of the trust, except as provided in §610 of this Part. Notwithstanding the preceding sentence, the Borough reserves the right to make any amendment whatsoever, including amendments adjusting participants' accounts, prior to securing, or in order to secure, the approval of this plan by the Internal Revenue Service as a qualified tax-exempt profit sharing plan under the Internal Revenue Code. (Ord. 432, 12/28/1973, Art. 7)

§609. Termination of Contributions. If the Borough, by ordinance, makes no further contribution under this plan, the full amount in each participant's account shall immediately vest and shall be retained by the trustee until such time as the participant shall become entitled to such amount under the provisions of §606 hereof and the Borough shall not be entitled to any of the assets of the trust. Upon complete discontinuance of the Borough's contribution hereunder, the right of each employee to the amount credited to his account at such time will become nonforfeitable. (Ord. 432, 12/28/1973, Art. 8)

§610. Termination of Plan. If the employer, by ordinance, terminates this plan, the full amount in each participants account shall immediately vest and be paid to him forthwith by whichever of the methods described in §606(5), as the Committee shall designate, and the Borough shall not be entitled to any of the assets of the trust. (Ord. 432, 12/28/1973, Art. 9, as amended by Ord. 652, 12/7/1998)

§611. Assignment and Levy. The plan herein established is for the benefit and protection of the participants and beneficiaries herein named and the rights, privileges and benefits herein conferred shall not be pledged, sold, assigned or transferred, or in any manner anticipated or encumbered and neither shall the same be subject to the claims of creditors of such participants or beneficiaries, nor shall the same be subject to levy, attachment, garnishment or other legal process but shall be held and administered as herein provided for the use and benefit of said participants and beneficiaries. (Ord. 432, 12/28/1973, Art. 10)

§612. Limitations. Nothing in this plan or any amendment hereto shall give any participant, beneficiary, employee or any other person any right unless such right is specifically provided herein or in such amendment or accorded by the Borough or the Committee pursuant thereto. The fact that amounts have been allocated or credited to a participant's account shall not vest any right, title or interest in the assets in such participant except as provided in §606(1). Furthermore, nothing in this plan or any amendment hereto shall be construed as giving any participant, employee or other person the right to be retained in the service or employ of the Borough, but all such persons shall remain subject to discharge at any time to the same extent as if this plan had not been adopted. (Ord.432, 12/28/1973, 11)

§613. Definitions. For the purposes of the plan, terms in the masculine shall be deemed to include the feminine, and terms in the singular shall be deemed to include the plural and vice versa wherever the context so admits or requires. (Ord. 432, 12/28/1973, Art. 12)

§614 Governing Law. Construction of this plan shall be governed by the law of Pennsylvania. However, it is the intent of the Borough that this plan is a qualified money purchase pension plan under the provisions of the Internal Revenue Code and any ambiguities in construction shall be interpreted in order to effectuate such intent. (Ord. 432, 12/28/1973, Art. 13)

§615. Trustee. The trustee shall receive and invest such sums as are paid to it by the Borough, and pursuant to the investment instructions of the Committee. The trustee shall be under no duty to compute the amount to be paid to it by the Borough or to collect such amount or to compute the amount which participants are entitled to pay to it. The trustee hereby accepts the trust created hereunder and agrees to perform the duties under this plan on its part to be performed. (Ord. 432, 12/28/1973, Art. 14)

§616. Powers of Trustee. The trustee shall have the following powers with respect to the trust hereunder to be exercised at the direction of the Committee or if the Committee vests full investment in the trustee, then to be exercised by the trustee in its discretion, as it determines to be in the best interests of the participants in the plan:

1. The trustee may invest the trust fund, or any part ~hereof, in a contract or contracts issued by an insurer.

2. Ordinary life insurance may be purchased on the lives of participants who are insurable. Annuity contracts may be purchased on the lives of participants who are uninsurable. The face amount of contracts purchased shall be in even multiples of One Hundred Dollars (\$100.00) and no contract shall be purchased when the amount available for premium will not provide a face amount of at least One Thousand Dollars (\$1,000.00).

3. The following rules shall be applicable to the acquisition, handling, and disposition of such contracts:

A. All contracts shall be in form and content as nearly uniform as regards basic options, cash surrender values and other material features as may be from time to time obtainable;

B. Annual premiums falling due upon such contracts shall be paid from the fund and charged to the accounts of the participants for whose benefit they are held; and

C. Any dividends, refunds, reimbursements or proceeds of any other nature received under any such contract, shall be paid into the fund and credited to the account of the participant for whose benefit the contract is held.

4. All contracts shall be purchased by the trustee from such legal reserve life insurance company as may be approved by the trustee. Application therefore shall be signed by the trustee and the trustee shall be the owner thereof. The trustee shall use less than one-half ( $\frac{1}{2}$ ) of the aggregate contributions allocated to a participant in the purchase of ordinary life insurance contracts.

5. The trustee shall also convert the entire value of any life insurance contract at or before retirement so that no portion of such value may be used to continue life insurance beyond retirement.



6. In the event that the Committee grants investment authority to the trustee, the trustee shall invest and reinvest the same in accordance with sound investment and business practices, but shall not be limited to what are known as "legal investments" for trustee under the laws of the Commonwealth of Pennsylvania. In the administration of the trust fund, the trustee shall have authority, in addition to, and not in limitation of, any authority given to it by law, to exercise the following powers:

- A. To purchase, own, and hold any property, real or personal, and to lease the same.
- B. With any cash at any time held by the trustee, to purchase or subscribe for any authorized investment, and to retain such investment in trust.
- C. To sell for cash or on credit, convert, redeem, exchange for another investment, or otherwise dispose of, any investment at any time held by the trustee.
- D. To retain uninvested and unproductive income of all or any part of the fund.
- E. To join in or dissent from any plan or lease, merger or consolidation, exchange, reorganization or foreclosure of any corporation in which the trustee may hold stocks or bonds, or other securities under any such plan.
- F. To exercise an option, to accept in exchange, or to subscribe for additional stocks or bonds or certificates or other instruments in the nature thereof which may be given to the trustee as the holder of stocks or bonds or other instruments belonging to the fund, and to make any and all necessary payments therefore.
- G. To vote, or not to vote, with respect to all securities and property in person or by proxy and generally to exercise all rights of ownership and disposition over all the fund.
- H. To compromise and settle any debt or obligations to or from the fund and to reduce the rate of interest on, extend or otherwise modify, foreclose upon default or otherwise enforce or refrain from the enforcement of any such debt or obligation, to abandon any property which the trustee may deem advisable, and generally to do all acts and things which the trustee may consider for the best interest of the fund.
- I. To apply for, purchase, hold or transfer any life insurance retirement income, endowment or annuity contracts by which any benefit contemplated by the plan may be provided.
- J. Generally to have full power and authority to otherwise deal with and dispose of this trust, without any liability or duty except to exercise the judgment and care under the circumstances then prevailing which 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, considering the probable income, as well as the probable safety of their capital.
- K. To employ investment counsel, advisors or agents to act in behalf of the trustee and to delegate to such investment counsel, advisors or agents discretionary powers.

7. If, on any occasion, the trustee purchases a life insurance retirement income, endowment or annuity contract from any insurance company, no such insurance company will be deemed a party to this agreement. A certification in writing by the trustee as to the occurrence of any event contemplated in and by this agreement, shall constitute conclusive evidence of such occurrence, and any insurance company shall be fully protected in accepting and relying upon certification and shall incur no liability or responsibility for so doing.

8. With respect to any action under any contract, the insurance company may deal with the trustee as the sole owner of such contract and shall not be responsible to see that any action of the trustee is authorized by the terms of this agreement. Any change made or action taken by any insurance company upon the written direction of the trustee shall fully discharge such insurance company from all liability with respect thereto, and no insurance company shall be obligated to see to the distribution or further application of any moneys paid by it to the trustee, or paid in accordance with the written direction of the trustee.

9. Trustee shall keep accurate and detailed accounts of all investments, receipts and disbursements and other transactions hereunder and such other specific records as shall be agreed upon in writing by the Committee and trustee. All accounts, books and records shall be open to inspection and audit by any person or persons designated by Committee at all reasonable times. Following the close of each fiscal year, trustee shall file with Committee a written report for the fund setting forth all investments, receipts and disbursements for the period covered by the report, and the cash securities and other property held at the end of such period.

10. In addition to the foregoing powers, the trustee shall also have all the powers, rights and privileges conferred upon the trustee by the law of Pennsylvania, and the trustee shall have all other powers, rights and privileges necessary for the performance of their duties hereunder.

11. The plan and trust hereby created are purely voluntary on the part of the Borough. Neither the establishment of the trust nor any modification thereof, nor the creation of any fund or account, nor the payment of any benefits, shall be construed as giving any participant or any other person any legal or equitable right against the Borough or the trustee, unless the same shall be specifically provided for in this trust, or as giving any participant the right to be retained in the service of the Borough. All participants shall remain subject to discharge from employment to the same extent as if the trust had never been established. It is an express condition of the trust that it shall be impossible for any part of the corpus or income of the trust to be used for or diverted to, purposes other than for the exclusive benefit of the eligible participants or their beneficiaries. Each eligible participant, by joining in the execution of a form to be provided by the trustee, thereby, for himself, his heirs, executors and administrators, approves and agrees to be bound by each and every provision hereof, and releases the Borough from any and all liability for any loss or damage whatever in connection with trust except willful misconduct.

(Ord. 432, 12/28/1973, Art. 15; as amended by Ord. 619, 9/6/1994 and Ord. 652, 12/07/1998)

§617. Indemnification of Trustee. The Borough shall indemnify the trustee against any liability to a participant or beneficiary for any action taken or omitted by the trustee pursuant to any written direction to the trustee signed by a majority of the Committee. (Ord. 432, 12/28/1973, Art. 16)

§618. Successor Trustee. Any trustee may be removed by the Borough at any time upon thirty (30) days notice in writing to such trustee. Any trustee may resign at any time upon sixty (60) days notice in writing to the Borough. In the event of any such resignation or removal, the parties thereto may by written instrument waive such notice of resignation or removal as may be provided hereunder. In the event of a vacancy in the office of trustee arising by death, removal, resignation, refusal to act, or inability to act of any trustee, the Borough may appoint a successor trustee who, upon acceptance of such appointment, shall have the same powers and duties as those conferred upon the original trustee under the provisions of this Part 6A; and the title to all of the funds and properties constituting the trust fund shall vest jointly in those who shall from time to time be the trustee hereunder. (Ord. 432, 12/28/1973, Art. 17)

§619. Continuation of Plan on Merger or Consolidation.

1. If, pursuant to §607 of this Part, a governmental body with which the Borough is merged or consolidated, or any other governmental body which acquires substantially all of the assets of the Borough,

elects to continue this plan, such surviving or purchasing entity may notify the trustee, in writing, and thereafter, every reference to the Borough herein shall be treated as a reference to such surviving or purchasing entity.

2. If the Borough is liquidated or merged or consolidated with another governmental body and this plan is not continued, then the Committee shall succeed to the functions of the Borough of Nazareth under the plan and trust, including the function of naming new Committee members.

Ord. 432, 12/28/1973, Art. 18)

§620. Validity. The validity, construction and effect of this Part 6A and of the trust created hereunder and its enforcement shall be determined by the laws of the Commonwealth of Pennsylvania. However, it is the intent of the parties that this trust be a tax-exempt trust under the provisions of the Internal Revenue Code and any ambiguities in construction shall be interpreted in order to effectuate such intent. (Ord. 432, 12/28/1973, Art. 19; as amended by Ord. 652, 12/07/1998)

B. Police Pension Plan.

§651. Definitions

A. References

(1) 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.

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

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

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

B. Actuarial Equivalent

(1) 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.

(2) 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.

(3) 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 §657(A)(5)(m))

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 IRC section 415 for limitation years beginning on or after December 31, 2002, the reference in this §651(B)(3) to the mortality table prescribed in Revenue Ruling 2001-62 for all purposes under the plan.

C. Compensation/Average Monthly Compensation

(1)(a) 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 the employee's election to:

- A cafeteria plan (excludable under IRC §125 and as provided in §7.1(e)(3));
- A tax sheltered annuity (excludable under IRC §403(b)); or
- A deferred compensation plan (excludable under IRC §4571).

Any reference in this plan to compensation shall be a reference to the definition in this §651(C), 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.

(b) Exclusions From Compensation – Notwithstanding the provisions of §651(C)(1)(a), 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

(2) 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.

(3) 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 §651(C)(2).

#### D. Dates/Years

- (1) Accounting Date means the last day of the plan year.
- (2) The Effective Date of the plan is December 9, 1957.

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 IRA '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.

- (3) Plan Entry Date means the participation date(s) specified in §653.
- (4) Plan Year means the 12-consecutive-month period beginning on January 1 and ending on December 31.
- (5) Limitation Year means the plan year.

#### E. Employee

(1) 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 §651(E)(2).

(2) 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 §651(E)(2), 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.

#### F. Employer

Employer means Borough of Nazareth, 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.

#### G. Fiduciaries

(1) Chief Administrative Officer means the person appointed by the employer or the pension board as described in §658(B) who has primary responsibility for the execution of the administrative affairs of the plan

(2) Plan Administrator means the Chief Administrative Officer.

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

#### H. Participant/Beneficiary

(1) Participant means an eligible employee of the employer who becomes a member of the plan pursuant to the provisions of §652, or a former employee who has an accrued benefit under the plan.

(2) 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.

#### I. Plan

Plan means Borough of Nazareth Police Pension Plan as set forth herein and as it may be amended from time to time.

#### J. Service

(1) 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.

(2) Hour of Service means each hour for which an employee is paid or entitled to payment for performance of duties for the employer.

(3) Break in Service means any period of severance.

(4) 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.

(5) 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.

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).

No service shall be credited under this §651(J)(5) 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).

(6) 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).

(7)(a) 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 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.

(b) 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.

(c) 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).



#### K. Trust

(1) Trust means the qualified trust created under the employer's plan. The trust shall be known as the Borough of Nazareth Police Pension Fund.

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

#### §652. Participation

##### A. Plan Participation

(1) 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 §656(B).

(2) 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.

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

##### B. 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.

##### C. Re-Participation

(1) 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.

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

#### §653. Retirement Benefits

##### A. Service Rules

(1)(a) 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 or a year will be expressed in terms of days. One year of vesting service shall be credited for each 365-day period.

(b) Break in Service Rules

(i) 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.

(ii) 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 §655(C).

(2) 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 reparticipation 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 §655(C), Cashout Distributions and Restoration, shall be disregarded for this purpose.

B. Normal Retirement

(1) Normal Retirement Date – The normal retirement date of each participant shall be the day on which he satisfied both of the following requirements:

(a) he attains age 50; and

(b) he completes 25 years of vesting service.

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.

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

(2)(a) 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 and any offset as of the participant's Social Security retirement age for the participant's Social Security old-age insurance benefit.

(b) 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.

(3) Pension Benefit Formula – Each eligible participant shall receive a monthly benefit payable at his normal retirement date equal to 50% of average monthly compensation.

(4) Service Increment Benefit – Each eligible participant shall receive \$100 per year (\$8.33 per month) for each completed year of benefit service in excess of 25. The total service increment benefit shall not exceed \$100 per month. This benefit shall be payable in addition to the monthly benefit payable under the pension benefit formula, provided the participant is eligible.

(5) IRC Section 415 Limitations and Conditions– Notwithstanding the benefits set forth in this Section, 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 §657(A) (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 IRS 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.

(6) Adjustments for Former Employees – Accruals under the current benefit formula shall be increased by the following cost-of-living adjustment. The benefit adjustment shall occur (1) initially as of the first accounting date of the plan that is at least twelve months after the later of the termination of the participant's employment or his retirement date, and (2) thereafter as of each subsequent accounting date. The annual adjustment shall not cause the benefit payable to exceed the maximum permissible defined benefit dollar limit as described in §657(A) for the calendar year. No cost of living increase shall be granted which would impair the actuarial soundness of the police pension fund.

The adjusted retirement benefit payable each month for a plan year shall equal monthly retirement benefit multiplied by a fraction:

(a) the numerator of which is the monthly Consumer Price Index (All Urban Consumers) issued by the U. S. Bureau of Labor Statistics for the December 31 coincident with the plan accounting date on which the adjustment is effective; and

(b) the denominator of which is the index for the immediately prior December 31.

Notwithstanding the above, the total cost-of-living adjustment shall not exceed the percentage increase in the Consumer Price Index from the plan year in which the former participant last performed service as a full-time employee. No adjustment shall result in a total retirement benefit in excess of 75% of the former participant's average monthly compensation. Further, the total cost-of-living adjustment to a participant shall not exceed 30%.

### C. Accrued Benefit

A participant's accrued benefit at any time equals: (a) the product of the normal retirement benefit determined in accordance with §653(C)(3) 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 §653(D) if benefits commence after his normal retirement date and in accordance with §653(E) if benefits commence before his normal retirement date.

### D. Late Retirement

(1) 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.

(2) 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 benefit increment 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.

### E. Early Retirement

An early retirement benefit shall be provided to a member of the police force with twenty (20) or more years of vesting service who terminates employment prior to the completion of normal retirement age and service requirements and who files a written application for an early retirement benefit with the Borough Secretary. The early retirement benefit shall become effective as of the date the application is filed with the Borough Secretary or the date designated on the application, whichever is later, and shall be the actuarial equivalent of the accrued benefit calculated as follows:

(1) The accrued benefit shall be determined under §653(C).

(2) The actuarial equivalent of the accrued benefit shall be determined by actuarially reducing the accrued benefit to reflect that it will commence on the effective date of the early retirement rather than on the date on which the member would have completed normal retirement age and service requirements. The actuarial reduction shall be calculated using the actuarial assumptions reported in the last actuarial valuation report filed with the Public Employee Retirement Commission under Act 205.

### F. 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 (50%) percent of the participant's monthly salary at the time the disability was incurred.

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's benefit (if any) described in §654(B)(2), 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 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 for a period of six (6) weeks, and 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 twelve (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.

#### G. Benefit Distribution

(1) 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.

(2) Form of Payment — A participant shall receive distribution of his accrued benefit as a monthly pension payable as long as the participant lives.

(3) General Payment Provisions.

(a) 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.

(b) 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.

(c) 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.

#### H. 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.

#### I. 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.

### §654. Death Benefits

#### A. Death Benefit With Respect to Employee Contributions

(1) Benefit Payable – Effective April 17, 2002, if no death benefit is payable under §654(B), an amount equal to the participant's accumulated contributions as determined under §656(B) shall be payable to the participant's named beneficiary designated under §654(A)(2) 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 or, if attending college, who is under or attaining the age of twenty-three. 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.

(2) 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 §654(A)(1). 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 §654(A)(1), "beneficiary" shall mean the estate of the participant. However, in the event that no letters have been taken out on the estate within six months after death and the death benefit payable is less than \$100, the death benefit shall be paid to the undertaker or any person or municipality that paid the claim of the undertaker.

#### B. Service-Connected Death Benefit and Survivor Benefit

(1) Service-Connected Death Benefit—Effective with respect to deaths occurring on or after October 9, 2009, the service-connected death benefit shall no longer be payable under this plan or by the employer.

(2) Survivor Benefit—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 and as further described in §4.1(a)) shall receive a benefit equal to fifty (50%) percent of the retirement benefit that the participant was receiving or would have been receiving if the participant had been retired on the date of death. (Ord. 779, 4/2/2012)

(3) 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.

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 or, if attending college, who is under or attaining the age of twenty-three. For this purpose, attending college shall mean being registered at an accredited institution of higher learning and carrying a minimum course load of seven 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 (or the attainment of age twenty-three if attending college). Child shall include adopted child of the participant.

The participant's spouse cannot waive receipt of this benefit. 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 4.2 as the death benefit payable hereunder is only payable with respect to a surviving spouse or an eligible child.

## §655. Termination of Employment Benefits

### A. 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 §653(B) 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.

### B. Payment of Benefits

(1) 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 §653(D).

(2) 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 §653(C) 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 §655(A)), he shall receive an amount equal to his accumulated contributions as soon as administratively possible after severance of employment as provided in §656(B).

(3) 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 §654.

### C. Cashout Distributions and Restoration

(1) Cashout Distribution — If an employee receives a distribution of his accumulated contributions under §656(B), 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.

(2) 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 §653(B) 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 §656(B)(3). 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.



§656. Contributions

A. Contributions Other Than Employee Contributions

(1) 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:

(a) To pay expenses incurred for the administration of the fund and the plan.

(b) 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.

(c) 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.

(d) 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.

(2) 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 §658(D)(1)(b) 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.

B. Mandatory Employee Contributions

(1) Mandatory Contribution Amount — As a condition of participation in this plan, each active participant must contribute, on an after-tax basis, a percentage of his compensation as established each year. In general, this mandatory contribution shall be 5.00% 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.

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

(3) Determination of Accumulated Contributions — The participant's accumulated contributions shall be equal to his mandatory employee contributions, with interest credited at the rate of 2.500% 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.

(4) **Withdrawal of Accumulated Contributions**—Upon termination of employment, a participant who is not vested in his benefit accrued under §653(B) 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 72(e)(8)(D).

(a) **Eligible Rollover Distribution** - Effective for distributions made on or after January 1, 1993, a distributee may elect, at any 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.

(i) 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 be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible 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) 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 includible in gross income and the portion of such distribution which is not so includible.

(ii) 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).

(iii) 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.

(b) **Special Rule Relating to Time for Written Explanation**

Effective for distributions made on or after January 1, 1993, for any distribution in excess of \$5,200 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:

(i) 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;

(ii) The participant, after receiving the written notice, affirmatively elects a distribution.

(5) Forfeiture – The death benefit payable under §654 shall not be less than the participant's accumulated contributions.

### C. Rollover/Transfer Contributions

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

### §657. Additional Qualification Rules

#### A. Limitation on Benefits Under IRC Section 415

##### (1) Single Defined Benefit Plan Limitations

(a) This §657(A) 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 post-retirement 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(l)(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 §657(A)(5)(a); §657(A)(3) is also applicable to that participant's benefits.

(b) 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.

##### (2) 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.

(a) 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.

(i) 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.

(ii) 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.

(iii) If there is an excess amount, the mandatory employee contributions shall be reduced.

(b) This §657(A)(2)(b) 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 §657(A)(5)(a), 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.

(c) If, pursuant to §657(A)(2)(a)(ii) 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.

(d) 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.

### (3) Combined Limitations: Other Plans

(a) 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 §657(A)(5)(a).

(b) 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.

(c) 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 §657(A)(2)(a)(iii).

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.

(d) 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 §653(B)(6).

#### (4) 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 §657(A) 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.

#### (5) Definitions (IRC Section 415 Limitations)

(a) 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.

(b) 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 §657(A). 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 §651(B) 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 §651(B)(3) and the annuity benefit computed using a 5% interest rate assumption and the IRC section 417 mortality table defined in §651(B)(3).

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 §651(B)(3) and the equivalent annual benefit computed using a 5% interest rate assumption and the IRC section 417 mortality table as defined in §651(B)(3). 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 pre-retirement survivor annuity, the life of the surviving spouse), or (B) an annuity that decreases during the life of the participant merely because of (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).

(c) 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 §657(A), compensation for a limitation year is the compensation actually paid or includible 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 includible in gross income of the employee by reason of a 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.

(d) 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:

- (i) any change in the terms and conditions of the plan after May 5, 1986; and
- (ii) any cost of living adjustments occurring after May 5, 1986.

(e) 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.

(f) 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.

(g) 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 §657(A)(5)(m) 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 §657(A)(5)(m) 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.

(h) 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 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.

(l) Employer — For purposes of this §657(A), employer shall mean the employer that adopts this plan and any entity required to be aggregated with the employer pursuant to regulations.

(j) Excess Amount — The excess of the participant's annual additions for the limitation year over the maximum permissible amount.

(k) Limitation Year — The 12-consecutive-month period defined in §651(D)(5).

(l) 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:

(i) the defined contribution dollar limitation as defined in §657(A)(5)(f), or

(ii) 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:

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



(m) Maximum Permissible Benefit

(i) 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.

(ii) 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 §657(A)(5)(m)(ii) 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 §657(A)(5)(m)(ii) shall not apply to disability benefit paid in accordance with §653(F) or to benefits payable under §654.

(iii) 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.

(iv) 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: (a) \$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 §651(B)(3).

This §657(A)(5)(m)(iv) shall not apply to disability benefit paid in accordance with §653(F) or to benefits payable under §654.

(v) 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 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 (i) or (ii) 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 §651(B)(3) and the equivalent amount computed using a 5% interest rate assumption and the IRC section 417 mortality table as described in §651(B)(3) .

This §657(A)(5)(m)(v) shall not apply to disability benefit paid in accordance with §653(F) or to benefits payable under §654.

(vi) 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 (i) and (ii) 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 §651(B)(3) and the equivalent amount computed using a 5% interest rate assumption and the IRC section 417 mortality table as described in §651(B)(3).

(vii) Notwithstanding the provisions of this §657(A)(5)(m), 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.

(viii) 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:

a. 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

b. 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).

(n) Projected Annual Benefit – The annual benefit as defined in §657(A)(5)(b), to which the participant would be entitled under the terms of the plan assuming:

(i) the participant will continue employment until his normal retirement date under the plan (or current age, if later), and

(ii) 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.

(o) Year of Participation – For the purpose of this §657(A), 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 credit for any 12-month period.

#### B. Distribution Requirements

(1) Applicability – The Requirements of this §657(B) shall apply to any distribution of a participant's interest. All distributions required under this §657(B) 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 §657(B)(8), 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.

(2) 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.

(3) 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):

- (a) the life of the participant,
- (b) the life of the participant and a designated beneficiary,
- (c) a period certain not extending beyond the life expectancy of the participant, or
- (d) a period certain not extending beyond the joint life and last survivor expectancy of the participant and a designated beneficiary.

#### (4) Determination of Amount to be Distributed Each Year

(a) 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:

- (i) the annuity distribution must be paid in periodic payments made at intervals not longer than one year;

(ii) 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;

(iii) 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;

(iv) 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;

(v) payments must be either be nonincreasing or increase only as follows:

a. with any percentage increase in a specified and generally recognized cost-of-living index;

b. 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 (iii) above dies and the payments continue otherwise in accordance with that section over the life of the participant;

c. to provide cash refunds of employee contributions upon the participant's death; or

d. because of an increase in benefits under the plan.

(vi) 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 §657(B)(5) 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 if 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 §657(B)(5) 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 §657(B)(5) below) occurs, must be distributed on or before December 31 of the calendar year for which the distribution is required.

(b) Annuities purchased after December 31, 1988, are subject to the following additional conditions:

(I) 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.

(ii) 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 using the table set forth in Proposed Treasury Regulation section 1.401(a)(9)-2, Q&A A-5.

(iii) 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.

(c) 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 are made under the plan by the employer with respect to such contract.

(d) If the form of distribution is an annuity made in accordance with this §657(B)(2)(d), 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.

(e) 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.

#### (5) Death Distribution Provisions

(a) 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.

(b) 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 (i) or (ii) below:

(i) 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;

(ii) If the designated beneficiary is the participant's surviving spouse, the date distributions are required to begin in accordance with (i) 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 70½.

If the participant has not made an election pursuant to this §657(B) 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 §657(B)(5)(b), 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.

(c) For purposes of §657(B)(5)(b) above, if the surviving spouse dies after the participant, but before payments to such spouse begin, the provisions of §657(B)(5)(b) with the exception of §657(B)(5)(b)(ii) therein, shall be applied as if the surviving spouse were the participant.

(d) For purposes of this §657(B)(5), 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.

(e) For the purposes of this §657(B)(5), distribution of a participant's interest is considered to begin on the participant's required beginning date (or, if §657(B)(5)(c) above is applicable, the date distribution is required to begin to the surviving spouse pursuant to §657(B)(5)(b)(ii) above). If distribution in the form of an annuity described in §657(B)(4)(a) irrevocably commences to the participant before the required beginning date, the date distribution is considered to begin is the date distribution actually commences.

#### (6) Definitions (IRC Section 401(a)(9) Requirements)

(a) 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.

(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 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 §657(B)(5) above.

(c) 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.

(d) 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 70½ and (ii) the first day of April of the calendar year following the calendar year in which the participant retires.

#### (7) Transitional Rule

(a) Notwithstanding the other requirements of this §657(B), distribution on behalf of any employee may be made in accordance with all of the following requirements (regardless of when such distribution commences).

(i) 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.

(ii) 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.

(iii) Such designation was in writing, was signed by the employee or the beneficiary, and was made before January 1, 1984.

(iv) The employee had accrued a benefit under the plan as of December 31, 1983.

(v) The method of distribution designated by the employee or the beneficiary specifies at 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 employees 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.

(b) 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 satisfied the requirements in this §657(B)(7).

(c) 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 Q&A J-3 shall apply.

(8) Compliance With Final Regulations — The requirements of this §657(B)(8) shall take precedence over any inconsistent provisions of the plan. All distributions required under §657(B) will be determined and made in accordance with the Treasury regulations under IRC section 401(a)(9).

Notwithstanding the other provisions of this §657(B), 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).

(a) Time and Manner of Distribution

(i) 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.

(ii) 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:

a. 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 70½, if later.

b. 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.

c. 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.

d. 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 §(a)(ii), other than §(a)(ii)a., will apply as if the surviving spouse were the participant.

For purposes of this §(a)(ii) and §(d), distributions are considered to begin on the participant's required beginning date (or, if §(a)(ii)d. applies, the date distributions are required to begin to the surviving spouse under §(a)(ii)a.). 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 §(a)(ii)a., the date distributions are considered to begin is the date distributions actually commence.

(iii) 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 §§(b), (c), and (d). 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.

(b) Determination of Amount to be Distributed Each Year

(I) 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:

a. The annuity distributions will be paid in periodic payments made at intervals not longer than one year;

b. The distribution period will be over a life (or lives) or over a period certain not longer than the period described in §§(c) or (d);

c. 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;



d. Payments will either be non-increasing or increase only as follows:

i. 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;

ii. 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 §(c) dies or is no longer the participant's beneficiary pursuant to a qualified domestic relations order within the meaning of IRC section 414(p);

iii. to provide cash refunds of employee contributions upon the participant's death; or

iv. to pay increased benefits that result from a plan amendment.

(ii) 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 §§(a)(I) or (ii)) 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.

(iii) 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.

(c) 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. §657(B)(4)(a)(vi) shall not apply.

(d) Requirements For Minimum Distributions Where Participant Dies Before Date Distributions Begin

(I) 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 §§(a)(ii)a. or b., over the life of the designated beneficiary or over a period certain not exceeding:

a. 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

b. 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.

(ii) 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.

(iii) Death of Surviving Spouse Before Distributions to 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 sole designated beneficiary, and the surviving spouse dies before distributions to the surviving spouse begin, this Subsection (d) 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 §(a)(ii)b.

(e) Definitions

(i) Designated Beneficiary – The individual who is designated as the beneficiary under §657(B)(6)(a) and is the designated beneficiary under IRC section 401(a)(9) and Regulation section 1.401(a)(9)-1, Q&A-4.

(ii) 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 §(a)(ii).

(iii) Life Expectancy – Life expectancy as computed by use of the Single Life Table in Regulation section 1.401(a)(9)-9.

(iv) Required Beginning Date – The date specified in §657(B)(6)(d).

§658. Administration of the Plan

A. Fiduciary Responsibility

(1) 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.

(2) 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.

(3) Allocation of Responsibility

(a) 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.

(b) 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.

(4) 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.

#### B. Administration by Joint Pension Committee

(1) Establishment of Joint Pension Committee — The governing body of the employer shall establish a committee to be responsible for the administration of the plan. The committee shall be known as the "Joint Pension Committee".

(2) Composition and Term — The Joint Pension Committee shall consist of four members as follows: (1) two duly elected or appointed members of the governing body of the employer serving in such position as selected by the governing body of the employer; and (2) two police officers in the active employment of the employer appointed by the Borough of Nazareth Police Association. The Joint Pension Committee shall choose from its members a chairperson. The term of office for members of the Joint Pension Committee shall be two years.

A member who is a police officer shall cease to be a member on the last day of his employment as a police officer of the employer. A member who is also a member of the governing body of the employer shall cease to be a member on the day he ceases to hold office. Members may be reappointed or reelected. Vacancies shall be filled in the same manner as the departing member was selected.

(3) Secretary for Joint Pension Committee — The duly appointed manager of the employer shall serve as the secretary of the Joint Pension Committee and shall keep minutes of the committee's proceedings and all dates, records, and documents pertaining to the committee's administration of the plan.

#### (4) Appointment of Chief Administrative Officer

The governing body of the employer shall appoint the chief administrative officer and 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. The Joint Pension Committee may delegate such of its duties and powers to the chief administrative officer as it determines to be appropriate.

#### (5) Duties and Powers of Joint Pension Committee

The Joint Pension Committee shall have the following duties and discretionary powers and such other duties and discretionary powers as relate to the administration of the plan:

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

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

(c) To authorize all disbursements from the fund.

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

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

(f) 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.

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

(h) To make rules and regulations for the governance of the affairs of the Joint Pension Committee to better enable it to carry out its powers and duties imposed hereunder.

#### (6) Miscellaneous Provisions

(a) Meetings — The Joint Pension Committee shall meet at least once annually and at other times at the call of the chairperson or the request of the majority of its members.

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

(c) Expenses — The members of the Joint Pension Committee shall serve without compensation for service as such. All reasonable expenses of the Joint Pension Committee shall be paid by the plan.

(d) Bonding — Members of the Joint Pension Committee shall serve without bond.

(e) Examination of Records — The Joint Pension Committee shall make available to any participant for examination during business hours such of the plan records as pertain only to the participant involved.

(f) Information to the Joint Pension Committee — To enable the Joint Pension Committee to perform the administrative functions, the employer shall supply full and timely information to the Joint Pension Committee on all participants as the Joint Pension Committee may require.

### C. Claims Procedure

(1) 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.

(2) 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.

(3) Review — The Joint Pension Committee 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.

(4) Limitation on Time Period for Litigation of a Benefit Claim — Following receipt of the written rendering of the employer's decision under §658(C)(3), 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.

### D. Trust Fund

(1) Creation and Maintenance of the Fund — The trust fund shall be created and maintained in the following manner:

(a) 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.

(b) 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.

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

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

(e) 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.

#### (2) Appointment of Trustee

The employer, or its designee, 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-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.

#### (3) Appointment of Corporate Custodian

The employer, or its designee, 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.

#### (4) Appointment of Investment Manager

The employer, or its designee, 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 unless 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.

#### (5) Funding Policy

The employer, or its designee, 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.

(6) 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.

E. Actuarial Valuation and Funding

(1) 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.

(2) 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.

(3) 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.

§659. Amendment and Termination of Plan

A. 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.

B. 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:

(1) No amendment shall be adopted in violation of Act 600.

(2) 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.

(3) 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.

### C. 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).

### D. Termination of Plan

(1) 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.

(2) 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).

(a) 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.

(b) 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.

(c)(I) 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.

(ii) 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.

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

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

If assets are insufficient to provide all benefits within any one of the above Subsections (a) through (e), 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.

(3) 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.

#### §660. Miscellaneous Provisions

##### A. 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 §659(D)(3).

##### B. 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.

##### C. 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.

##### D. 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.

##### E. 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.

##### F. Separability

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

#### G. 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.

#### H. 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.

#### I. 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.

(Ord. 282, 12/9/1957, §10; as amended by Ord. 361, 7/3/1967, §2; by Ord. 442, 5/5/1975; by Ord. 457, 8/7/1978, §1; by Ord. 497, 8/2/1982; by Ord. 513, 5/7/1984, §1; by Ord. 520, 12/12/1984, §1; by Ord. 610, 7/6/1993, by Ord. 642, 4/7/1997; by Ord. 719, 8/7/2006; and by Ord. 735, 6/4/2007.)

#### §661. Employment of Actuary; Present Liability; Unfunded Liability; Members' Payments; Application of Borough Payments.

1. Borough Council shall employ an actuary and fix his compensation. The actuary shall determine the present liability on account of pensions payable under §660 of this Part to original members for service prior to the date of the establishment of the fund, and shall offset the value of any assets transferred to the fund from a previous pension fund to determine the unfunded liability. The unfunded liability shall be paid entirely by the Borough, provided that it may be funded over a period not exceeding twenty-five (25) years. The actuary shall also determine the amount, which shall be contributed annually to the fund for the service of members subsequent to the establishment of the fund.

2. The payments to the Borough by the Commonwealth of Pennsylvania for purposes of retirement or disability benefits for policemen shall be applied as follows:

- A. To reduce the unfunded liability or, after such liability has been funded;
- B. To apply against the annual obligation of the Borough for future service cost or, to the extent that the payment may be in excess of such obligation;
- C. To reduce member contributions.

3. Unless otherwise specifically provided, any other monies paid into the fund shall be applied equally against the member and the Borough portions of the future service cost.

4. It shall be the duty of Borough Council to apply the payments above enumerated in accordance with the provisions of this Part 6B.

5. Except as modified herein, the provisions of the said police pension fund shall remain in full force and effect.

(Ord. 282, 12/9/1957, §11; as amended by Ord. 442, 5/5/1975; and by Ord. 520, 12/12/1984, §2)

§662. Participants' Rights to Benefits Once Entitled Thereto. No person participating in the fund established pursuant to the provisions of this Part 6B, who becomes entitled to receive a benefit therefrom, shall be deprived of his right to an equal share therein other than upon the basis upon which he first became entitled thereto. (Ord. 282, 12/9/1957, §12; as amended by Ord. 595, 10/7/1991)

§663. Refunds. Any member of the police force of the Borough who for any reason whatsoever shall be unable to receive a pension after having contributed any charge to the fund established pursuant to the provisions of this Part 6B shall be entitled to a refund of all such moneys paid by him into such fund immediately upon discontinuance of his employment as a member of the police force, with interest at two and one-half percent (2-1/2%) compounded annually. If such discontinuance is due to death, such moneys shall be paid to his designated beneficiary or beneficiaries, or, in the absence of such designation, to his personal representative. (Ord. 282, 12/9/1957, §13)

§664. Pension Payments Not Subject to Legal Process, Assignment or Transfer. 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 member or his designated beneficiary or beneficiaries, and shall not be subject to assignment or transfer. (Ord. 282, 12/9/1957, §14)

§665. Administrative Expenses. The expenses of administration of the fund established by this Part 6B, including the compensation of the actuary and the custodian of the fund, exclusive of the payment of retirement or disability benefits, shall be paid by the fund. (Ord. 282, 12/9/1957, §15; as amended by Ord. 555, 1/4/1988)

§666. Joint Pension Committee. The Borough hereby establishes a committee to be known as the "Joint Pension Committee" consisting of two (2) persons who shall be appointed by the Borough Council and two (2) persons who shall be appointed by the Borough of Nazareth Police Association. All members shall be appointed for a term of two (2) years. Any member may resign by delivering his or her written resignation to the Secretary of the Borough Council. Vacancies in the Committee arising by resignation, death, removal or otherwise shall be filled by Borough Council or the Association depending upon which membership is vacant. The Joint Pension Committee shall receive notice of all retirements and disability determinations concerning police officers, all financial reports concerning the Police Pension Fund, including information concerning investments, and the periodic actuarial reports required by law. The Joint Pension Committee may also make such recommendations to Borough Council from time to time concerning the administration of the pension plan, as it may deem appropriate. (Ord. 282, 12/9/1957; as added by Ord. 513, 5/7/1984, §2)

§667. Early Retirement. An early retirement benefit shall be provided to a member of the police force with twenty (20) or more years of vesting service who terminates employment prior to the completion of normal retirement age and service requirements and who files a written application for an early retirement benefit with the Borough Secretary. The early retirement benefit shall become effective as of the date the application is filed with the Borough Secretary or the date designated on the application, whichever is later, and shall be the actuarial equivalent of the accrued benefit calculated as follows:

A. The accrued benefit shall be determined under §660(1)(A).

B. The actuarial equivalent of the accrued benefit shall be determined by actuarially reducing the accrued benefit to reflect that it will commence on the effective date of the early retirement rather than on

the date on which the member would have completed normal retirement age and service requirements. The actuarial reduction shall be calculated using the actuarial assumptions reported in the last actuarial valuation report filed with the Public Employee Retirement Commission under Act 205. (Ord. 714, 10/5/2005)

§668. Conditions for Amendment or Repeal. Insofar as the provisions of this Part 6B are the same as statutory provisions, they shall be subject to change or repeal to comply with any future statutory provisions, and the provisions of this Part may be amended or repealed if statutory authority be granted therefore or if statutory restrictions or mandates are eliminated and discretion vested in the Borough. (Ord. 282, 12/9/1957 §16; as amended by Ord. 513, 5/7/1984, §2; and as amended by Ord 714, 10/5/2005)

PART 7  
Fee Resolution

Schedule of Fees for Applications, Permits and Licenses