

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA
CIVIL DIVISION

@90430221 (ma)

JOSEPH F. GREENYA,
Plaintiff

CIVIL ACTION - LAW

v.

COLB (m 2)
COLUMBIA BOROUGH,
Defendant

13-06280
NO. _____

ENTERED AND FILED
13 JUN 28 PM 4:00
PROTHONOTARY'S OFFICE
LANCASTER, PA.

COMPLAINT IN MANDAMUS AND FOR DECLARATORY JUDGMENT

AND NOW, comes the Plaintiff, by and through his Attorney, Christopher J. Cook, Esquire, and avers the following in support of his Complaint in Mandamus and Declaratory Judgment:

PARTIES

1. Plaintiff, Joseph F. Greenya (hereinafter "Plaintiff"), is an adult individual and resident of Lancaster County within the Commonwealth of Pennsylvania.
2. Defendant, Columbia Borough (hereinafter "Defendant"), is a municipal corporation and political subdivision of the Commonwealth of Pennsylvania, organized and existing in accordance with the provision of the Borough Code, 53 P.S. § 45101 *et. seq.*, and maintaining a principle place of operation at 308 Locust Street, Columbia, PA 17512.

JURISDICTION

3. Jurisdiction in this matter is properly situated in the Court of Common Pleas pursuant to the provisions of 42 Pa.C.S. § 931.

\$142.25

CHECK NO: 4671

VENUE

4. Venue in this matter is properly placed in the Court of Common Pleas of Lancaster County pursuant to Pa.R.C.P. 1006, as it is in this venue that the cause of action arose and that both parties can be found.

ALLEGATIONS OF FACT

5. Plaintiff was employed as a police officer of the Columbia Borough Police Department from June 1, 1974 until July 1, 2011, having served the final third of that time in the capacity of Chief of Police.
6. Plaintiff's formal date of retirement for pension purposes is July 1, 2011.
7. Defendant is the administrator of the Columbia Borough Police Pension Plan, a municipal pension plan operated for the benefit of sworn police officers employed by Columbia Borough. The assets of the police pension plan are under the exclusive control of the Defendant, subject to the provisions of the ordinances governing the plan. (A copy of the Police Pension Plan Ordinance, as amended, is attached hereto as Exhibit "1").
8. Under the Ordinances governing the police pension plan, a member of the plan who qualifies for a normal retirement pension is entitled to receive benefits calculated at the rate of fifty (50%) percent of the officer's "Average Compensation" for the last thirty-six (36) months of employment prior to retirement. Members are also entitled to an additional benefit, not to exceed \$100 a month, computed according to years of service in excess of twenty-five (25).
9. Prior to May 10, 2004, average compensation was calculated according to "base monthly compensation" which included "salary plus any longevity pay, overtime pay, and holiday pay." Payments for accrued but unused sick and vacation time were historically

considered and calculated under this definition. (A copy of the prior Ordinance is attached hereto as Exhibit "2").

10. Pursuant to a January 1, 2003 "Restatement" of the Police Pension Plan enacted on May 10, 2004, compensation was "re-defined" as:

...the total earning, except as modified in this definition, paid to an Employee by the Employer during any specific period. Earning as used in this definition includes salary, court pay, holiday pay, overtime pay and other remunerations with the following exclusions:

unused sick pay

unused vacation pay

11. Prior to May 10, 2004, the Police Pension Plan Ordinance provided that all members shall pay into the Police Pension Fund, monthly, five (5%) percent of their gross monthly compensation.

12. A member's gross monthly compensation included all forms of compensation, including payments for accrued but unused sick and vacation time.

13. Pursuant to a January 1, 2003 "Restatement" of the Police Pension Plan enacted on May 10, 2004, member contributions would be based upon "compensation" as defined in paragraph 10 herein.

14. Despite the changes noted in Paragraph 10 and 13 herein, the Borough of Columbia continued to take member contributions based upon gross salary calculations. Additionally, the Borough of Columbia continued to calculate average compensation as including those payments for accrued but unused sick and vacation days.

15. Upon his retirement, Plaintiff's pension was calculated according to the compensation definition outlined in Paragraph 10 herein, enforcing the exclusion of accrued but unused sick and vacation days.

16. Plaintiff was notified of this calculation on or about the date of his first pension distribution in August 2011.

COUNT I

ACTION FOR DECLARATORY JUDGMENT
PURSUANT TO 42 Pa.C.S. §§ 7531-7541

17. Paragraphs one (1) through sixteen (16) are incorporated herein by reference as if fully set forth at length.

18. Plaintiff possessed, and possesses, an entitlement to benefits under the terms of the Police Pension Ordinance.

19. Under Article I, Section 17 of the Pennsylvania Constitution, public retirement benefits are viewed as deferred compensation for services provided in the past. Based upon this principle, pension benefits are viewed as contractual in nature and enjoy the protection of Article I, Section 17. *Catania v. State Employees' Retirement Board*, 498 Pa. 684, 450 A.2d 1342 (1982).

20. Once conferred, pension benefits of present members of a retirement system are subject to an absolute constitutional prohibition against diminishment. *Association of State College and University Faculties v. State System of Higher Education*, 505 Pa. 369, 479 A.2d 962 (1984).

21. Even pension benefits, which are in excess of that set forth under enabling legislation, are absolutely protected from diminishment. *City of Wilkes-Barre v. Wilkes-Barre Police Benevolent Association*, 814 A.2d 285 (Pa. Cmwlth. 2002).

22. Plaintiff's entitlement to payment of a pension calculated with the inclusion of payments for accrued but unused vacation and sick time as of his formal date of retirement on July 1, 2011 is direct, substantial and present.

23. Through this Court, Plaintiff seeks a declaration as to his rights, status and legal relations relative to the Defendant and seeks to compel Defendant to affirmative action, which would validate those rights, status and legal relations.

24. Defendant violated Article I, Section 17 of the Pennsylvania Constitution by diminishing Plaintiff's entitlement to pension benefits calculated through the inclusion of payments for accrued but unused vacation and sick time.

25. Other than the action set forth herein, Plaintiff has no remedy at law adequate to enforce his rights under Article I, Section 17 of the Pennsylvania Constitution.

WHEREFORE, Plaintiff seeks Judgment in accordance with the provisions of 42 Pa.C.S. §§7531-7541, declaring that:

(a) He was, and is, entitled to a pension calculated upon the inclusion of payments for accrued but unused vacation and sick time as of his formal date of retirement on July 1, 2011.

(b) In failing to calculate and pay Plaintiff a pension calculated upon the above-noted inclusion, Defendant has violated Plaintiff's rights under Article I, Section 17 of the Pennsylvania Constitution.

WHEREFORE, Plaintiff further seeks injunctive relief in the form of a directive to Defendant to calculate and pay Plaintiff pension benefits based upon the inclusion of payments for accrued but unused vacation and sick time as of his formal date of retirement on July 1, 2011, and to make Plaintiff whole for any losses from that date.

COUNT IIACTION IN MANDAMUS

26. Paragraphs one (1) through twenty-five (25) are incorporated herein by reference as if fully set forth at length.
27. Plaintiff possessed, and possesses, an entitlement to benefits under the terms of the Police Pension Ordinance.
28. Under Article I, Section 17 of the Pennsylvania Constitution, public retirement benefits are viewed as deferred compensation for services provided in the past. Based upon this principle, pension benefits are viewed as contractual in nature and enjoy the protection of Article I, Section 17. *Catania v. State Employees' Retirement Board*, 498 Pa. 684, 450 A.2d 1342 (1982).
29. Once conferred, pension benefits of present members of a retirement system are subject to an absolute constitutional prohibition against diminishment. *Association of State College and University Faculties v. State System of Higher Education*, 505 Pa. 369, 479 A.2d 962 (1984).
30. Even pension benefits, which are in excess of that set forth under enabling legislation, are absolutely protected from diminishment. *City of Wilkes-Barre v. Wilkes-Barre Police Benevolent Association*, 814 A.2d 285 (Pa. Cmwlth. 2002).
31. Plaintiff has a clear right to receive pension benefits calculated with the inclusion of payments for accrued but unused vacation and sick time as of his formal date of retirement on July 1, 2011 that is direct, substantial and present pursuant to Article I, Section 17 of the Pennsylvania Constitution and the practice of the Defendant.

32. Defendant has a mandatory, non-discretionary duty to pay Plaintiff a pension based upon compensation calculated to include payments for accrued but unused vacation and sick time as of his formal date of retirement on July 1, 2011 in accordance with Article I, Section 17 of the Pennsylvania Constitution and the practice of the Defendant.

33. Other than the action set forth herein, Plaintiff has no remedy at law adequate to enforce his rights under Article I, Section 17 of the Pennsylvania Constitution and the practice of the Defendant

WHEREFORE, Plaintiff seeks an Order in Mandamus, directing Defendant to comply with its mandatory duty to calculate and pay Plaintiff pension benefits the inclusion of payments for accrued but unused vacation and sick time as of his formal date of retirement on July 1, 2011, and to make Plaintiff whole for any losses from that date.

Respectfully submitted:

LIGHTMAN WELBY & STOLTENBERG

By:


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Attorney I.D. No. 204362
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Harrisburg, Pennsylvania 17110
(717) 234-0111
(717) 234-8964 (fax)
Attorneys for Joseph Greenya

Date: June 27, 2013

BOROUGH OF COLUMBIA, LANCASTER COUNTY, PENNSYLVANIA

ORDINANCE NO. 732

INTRODUCED BY COUNCIL – May 10, 2004

ADOPTED BY COUNCIL – May 10, 2004

AN ORDINANCE OF THE BOROUGH OF COLUMBIA,
LANCASTER COUNTY, PENNSYLVANIA APPROVING AND ADOPTING
A RESTATED BOROUGH OF COLUMBIA POLICE PENSION PLAN TO
COMPLY WITH ACT 30 AND ACT 64.

NOW, THEREFORE, BE AND IT IS HEREBY ORDAINED AND ENACTED by
the Borough Council of the Borough of Columbia, Lancaster County, Pennsylvania, as
follows:

• SECTION 1. This Ordinance specifically restates and replaces all other
ordinances or parts of ordinances which established the Police Pension Plan with the
Borough of Columbia Police Pension Plan Restated January 1, 2003, attached hereto
and incorporated herein as Exhibit "A."

• SECTION 2. This Ordinance establishes the Borough of Columbia Police
Pension Plan Restated January 1, 2003 for the uniformed employees of Columbia
Borough through the adoption of the Borough of Columbia Police Perision Plan restated
January 1, 2003, attached hereto and incorporated herein as Exhibit "A," effective
January 1, 2003.

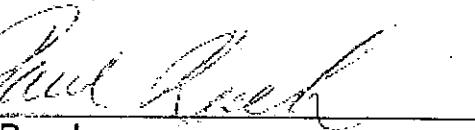
SECTION 3. In the event that any provision, sentence, section, clause or parts of
this Ordinance or the attached Borough of Columbia Police Pension Plan restated
January 1, 2003, be held to be invalid, such invalidity shall not affect or impair any
remaining provision, section, sentence, clause, or part of the retirement plan, it being
the intent of the Borough of Columbia that such remainder shall remain in full force and
effect.

DULY ORDAINED AND ENACTED this 10th day of May, 2004,
by the Borough Council of the Borough of Columbia, Lancaster County, Pennsylvania,
in lawful session duly assembled.

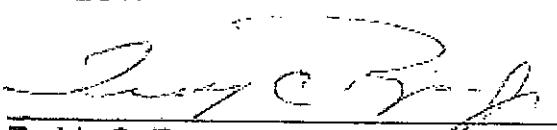
13-06280

BOROUGH OF COLUMBIA, LANCASTER
COUNTY, PENNSYLVANIA

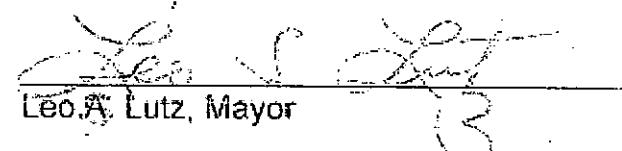
By:


Paul Resch,
President of Borough Council

ATTEST:


Teddy C. Ryan, Jr.,
Secretary of Borough Council

Examined and approved this 10 day of May, 2004.


Leo A. Lutz, Mayor

13-06280

**BOROUGH OF COLUMBIA
POLICE
PENSION PLAN**

Defined Benefit Plan 8.1

Restated January 1, 2003

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PLAN EXECUTION

INTRODUCTION

The Employer previously established a defined benefit retirement plan on October 1, 1947.

The Employer is of the opinion that the retirement plan should be changed. It is believed that the best means to accomplish these changes is to completely restate the plan's terms, provisions and conditions. The restatement, effective January 1, 2003, is set forth in this document and is substituted in lieu of the prior document with the exception of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) good faith compliance amendment and any model amendment. Such amendment(s) shall continue to apply to this restated plan until such provisions are integrated into the plan or such amendment(s) are superseded by another amendment.

The Employer agrees to operate the plan according to the terms, provisions and conditions set forth in this document.

The restated defined benefit retirement plan continues to be for the exclusive benefit of employees of the Employer. All persons covered under the plan on December 31, 2002, shall continue to be covered under the restated plan with no loss of benefits.

It is intended that the retirement plan, as restated, shall continue to meet the requirements for a governmental plan under the Internal Revenue Code of 1986, including any later amendments to the Code. The plan is intended to meet the requirements of Act 600 and any other laws governing police pension plans of Pennsylvania for boroughs, towns and townships.

ARTICLE I

FORMAT AND DEFINITIONS

SECTION 1.01--FORMAT.

Words and phrases defined in the DEFINITIONS SECTION of Article I shall have that defined meaning when used in this Plan, unless the context clearly indicates otherwise.

These words and phrases will have an initial capital letter to aid in identifying them as defined terms.

SECTION 1.02--DEFINITIONS.

Accrual Service means the total of an Employee's Service. This total is expressed in whole years.

However, Accrual Service is modified as follows:

Service excluded:

Service while an Employee was not an Eligible Employee is excluded.

If a Participant has previously received his Required Contribution Account in a single-sum payment, service before the date of such payment shall be excluded.

Military service included:

Military service with the armed forces of the United States shall be included as Service if the Employee (i) has been a regularly appointed member of the Employer's police force for a period of at least six months when he enters into such military service and (ii) returns to employment as a regularly appointed member of the Employer's police force within six months after his separation from the service. To the extent such military service is also required to be included as Service in accordance with Code Section 414(u), such military service shall not be included more than once.

Military service with the armed forces of the United States shall also be included as Service (not to exceed five years) if the Employee (i) was not employed by the Employer prior to such military service, (ii) makes an election to include such military service and (iii) pays the cost of crediting such military service. Such cost shall be determined by the Employer in accordance with the provisions of 53 P.S. 770 of Act 600.

The military service included as Service under the preceding provisions shall only be included if the Employee is not entitled to receive, now or in the future, 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 retirement pay earned by a combination of active duty and nonactive duty with a reserve or national guard component of the armed forces, which retirement pay is payable only upon reaching a specified age and completion of a period of service under 10 U.S.C. Ch. 67 (relating to retired pay for non-regular service).

Accrued Benefit means on any date, the amount of monthly retirement benefit on the Normal Form accrued by an Active Participant. See the ACCRUED BENEFIT SECTION of Article IV.

Accrued Benefit Adjustment means the adjustment which shall be applied to determine a Participant's benefit. The Accrued Benefit Adjustment on any date shall be equal to the quotient (to four decimal places) of (a) divided by (b):

- (a) The Participant's Accrual Service as of such date.
- (b) The Participant's potential Accrual Service as of his Superannuation Retirement Date, if he remains an Eligible Employee between the date of determination and his Superannuation Retirement Date.

The Accrued Benefit Adjustment shall not exceed 1.00 and shall be 1.00 on his Normal Retirement Date.

Act 205 means the act of December 18, 1984 P.L. 1005 No. 205, as amended, 53 P.S. 895.101, et. seq., known as the Municipal Pension Plan Funding Standard and Recovery Act, governing state aid to municipalities of Pennsylvania to offset employee pension costs.

Act 600 means the act of May 29, 1956 P.L. (1955) 1804 No. 600, as amended, 53 P.S. 767, et. seq., known as the Police Pension Fund Act, requiring the establishment of police pension plans for boroughs, towns, and townships in Pennsylvania with three or more full-time police officers in accordance with such act and permitting those with less than three full-time police officers to establish their plans in accordance with such act.

Active Participant means an Eligible Employee who is actively participating in the Plan according to the provisions in the ACTIVE PARTICIPANT SECTION of Article II.

Annuity Contract means the annuity contract or contracts into which the Employer enters with the Insurer for guaranteed benefits, for the investment of Contributions in separate accounts and for the payment of benefits under this Plan. The term Annuity Contract as it is used in this Plan shall include the plural unless the context clearly indicates the singular is meant.

Annuity Starting Date means, for a Participant, the first day of the first period for which an amount is payable as an annuity or any other form.

The Annuity Starting Date for disability benefits shall be the date such benefits commence if the disability benefit is not an auxiliary benefit. An auxiliary benefit is a disability benefit which does not reduce the benefit payable at Normal Retirement Date.

Average Compensation means, on any given date, the average of an Employee's monthly Compensation for the latest 36 months of employment with the Employer.

Beneficiary means the person or persons named by a Participant to receive any benefits under this Plan upon the Participant's death. See the BENEFICIARY SECTION of Article X.

Code means the Internal Revenue Code of 1986, as amended.

Compensation means the total earnings, except as modified in this definition, paid to an Employee by the Employer during any specified period. Earnings as used in this definition includes salary, court pay, holiday pay, overtime pay and other remuneration with the following exclusions:

unused sick pay
unused vacation pay

For years beginning after December 31, 1988, the annual Compensation of each Participant taken into account for determining all benefits provided under the Plan for any year shall not exceed \$200,000, as adjusted by the Secretary in accordance with Code Section 415(d). For Plan Years beginning on or after January 1, 1996, the annual Compensation taken into account for determining all benefits provided under the Plan for any Plan Year for any individual who first becomes a Participant in the Plan during a Plan Year beginning after the first Yearly Date in 1996, shall not exceed \$150,000.

Provided, however, with respect to an eligible Participant, the reduced dollar limitation in the preceding paragraph does not apply to the extent that the amount of Compensation allowed to be taken into account under the Plan is reduced below the amount that was allowed to be taken into account under the Plan as in effect on July 1, 1993. For this purpose, "eligible Participant" means an individual who first became a Participant in the plan during a Plan Year beginning before the first Yearly Date in 1996.

The \$150,000 limit shall be adjusted by the Commissioner for increases in the cost of living in accordance with Code Section 401(a)(17)(B). The cost of living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which pay is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

If Compensation for any prior period is taken into account in determining a Participant's contributions or benefits for the current period, the Compensation for such prior year is subject to the applicable annual compensation limit in effect for that prior year. For this purpose, for years beginning before January 1, 1990, the applicable annual compensation limit is \$200,000 for an Employee who became a Participant before the first Yearly Date in 1996. For years beginning on and after January 1, 1996, the annual compensation limit is \$150,000 for an Employee who became a Participant on and after the first Yearly Date in 1996.

Contributions means

Employer Contributions
Required Contributions

as set out in Article III, unless the context clearly indicates only specific contributions are meant.

Dependent Child means, as to a Participant, any child of such Participant under age 18, or if attending college, under or attaining age 23. For purposes of this definition, "attending college" means registered at an accredited institution of higher learning and carrying a minimum course load of seven hours per semester.

Direct Rollover means a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

Distributee means an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p), are Distributees with regard to the interest of the spouse or former spouse.

Eligible Employee means any Employee of the Employer who is a member of the Employer's police force and whose employment is for not less than 35 hours per week at a definite salary.

Eligible Retirement Plan means an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a) or a qualified trust described in Code Section 401(a), that accepts the Distributee's Eligible Rollover Distribution.

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.

Eligible Rollover Distribution means any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include: (i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated Beneficiary, or for a specified period of ten years or more; (ii) any distribution to the extent such distribution is required under Code Section 401(a)(9); (iii) the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and (iv) any other distribution(s) that is reasonably expected to total less than \$200 during a year.

Employee means an individual who is employed by the Employer or any other employer required to be aggregated with the Employer under Code Sections 414(b), (c), (m) or (o).

The term Employee shall also include any Leased Employee deemed to be an employee of any employer described in the preceding paragraph as provided in Code Section 414(n) or (o).

Employer means, except for purposes of the BENEFIT LIMITATION SECTION of Article IV, BOROUGH OF COLUMBIA.

Employer Contributions means contributions made by the Employer to fund this Plan. See the EMPLOYER CONTRIBUTIONS SECTION of Article III.

Entry Date means the date an Employee first enters the Plan as an Active Participant. See the ACTIVE PARTICIPANT SECTION of Article II.

Fiscal Year means the Employer's accounting year. The last day of the Fiscal Year is December 31.

Inactive Participant means a former Active Participant who has an Accrued Benefit. See the INACTIVE PARTICIPANT SECTION of Article II.

Insurer means Principal Life Insurance Company and any other insurance company or companies named by the Employer.

Investment Manager means any fiduciary (other than a trustee)

- (a) who has the power to manage, acquire, or dispose of any assets of the Plan;
- (b) who (i) is registered as an investment adviser under the Investment Advisers Act of 1940; (ii) is not registered as an investment adviser under such Act by reason of paragraph (1) of Section 203A(a) of such Act, is registered as an investment adviser under the laws of the state (referred to in such paragraph (1)) in which it maintains its principal office and place of business, and, at the time it last filed the registration form most recently filed it with such state in order to maintain its registration under the laws of such state, also filed a copy of such form with the Secretary of Labor; (iii) is a bank, as defined in that Act; or (iv) is an insurance company qualified to perform services described in subparagraph (a) above under the laws of more than one state; and
- (c) who has acknowledged in writing being a fiduciary with respect to the Plan.

Late Retirement Date means the first day of any month which is after a Participant's Normal Retirement Date and on which retirement benefits begin. If a Participant continues to work for the Employer after his Normal Retirement Date, his Late Retirement Date shall be the earliest first day of the month on or after he ceases to be an Employee.

Monthly Date means each Yearly Date and the same day of each following month during the Plan Year beginning on such Yearly Date.

Normal Form means a straight life annuity.

Normal Retirement Date means the earliest first day of the month on or after the later of the date the Participant reaches his 50th birthday or the date the Participant completes 25 years of Accrual Service. A Participant's retirement benefits shall begin on a Participant's Normal Retirement Date if he has ceased to be an Employee on such date.

Participant means either an Active Participant or an Inactive Participant.

Participant Contributions means Required Contributions as set out in Article III.

Plan means the defined benefit retirement plan of the Employer set forth in this document, including any later amendments to it.

Plan Administrator means the person or persons who administer the Plan.

The Plan Administrator is the Employer.

Plan Year means a period beginning on a Yearly Date and ending on the day before the next Yearly Date.

Reentry Date means the date a former Active Participant reenters the Plan. See the ACTIVE PARTICIPANT SECTION of Article II.

Required Contribution Account means, on any date, the total of a Participant's Required Contributions with interest. Contributions previously paid to the Participant or applied for him, and any interest that would have been credited on those contributions, shall be excluded.

Interest shall be credited in each Plan Year at the rate of two percent per annum compounded annually.

Interest shall be credited on each Required Contribution from the end of the Plan Year for which it was made until the Monthly Date on or before the date of determination.

Required Contributions means nondeductible contributions which may be required from a Participant in order to participate in this Plan. See the REQUIRED CONTRIBUTIONS BY PARTICIPANTS SECTION of Article III.

Retirement Date means the date a retirement benefit will begin and is a Participant's Superannuation, Normal or Late Retirement Date, as the case may be.

Salary means, on any given date, an Employee's monthly Compensation for the latest month of employment with the Employer.

Service means an Employee's period of employment as a full-time police officer of the Employer.

Superannuation Retirement Date means, for a Participant who ceases to be an Eligible Employee before he meets the age and service requirements for Normal Retirement Date, the date that would have been his Normal Retirement Date had he remained an Eligible Employee until such date.

Totally and Permanently Disabled means a Participant is disabled as a result of performing police work, to the extent that he is prevented from engaging in his normal duties as a police officer as determined by a physician chosen by the Employer.

Vesting Percentage means the percentage used to determine that portion of a Participant's Accrued Benefit resulting from Employer Contributions which is nonforfeitable (cannot be lost since it is vested).

A Participant's Vesting Percentage is shown in the following schedule opposite the number of whole years of his Accrual Service.

| ACCRUAL SERVICE (whole years) | VESTING PERCENTAGE |
|----------------------------------|-----------------------|
| Less than 12 | 0 |
| 12 or more | 100 |

Yearly Date means January 1, 1999, and the same day of each following year. Yearly Dates before January 1, 1999, shall be determined under the provisions of the prior document.

ARTICLE II

PARTICIPATION

SECTION 2.01--ACTIVE PARTICIPANT.

- (a) An Employee shall first become an Active Participant (begin active participation in the Plan) on the earliest date on which he is an Eligible Employee. This date is his Entry Date.

Each Employee who was an Active Participant under the Plan on December 31, 2002, shall continue to be an Active Participant if he is still an Eligible Employee on January 1, 2003, and his Entry Date will not change.

- (b) An Inactive Participant shall again become an Active Participant (resume active participation in the Plan) on the date he again becomes an Eligible Employee. This date is his Reentry Date.

Upon again becoming an Active Participant, he shall cease to be an Inactive Participant.

- (c) A former Participant shall again become an Active Participant (resume active participation in the Plan) on the date he again becomes an Eligible Employee. This date is his Reentry Date.

There shall be no duplication of benefits for a Participant under this Plan because of more than one period as an Active Participant.

SECTION 2.02--INACTIVE PARTICIPANT.

An Active Participant shall become an Inactive Participant (stop accruing benefits under the Plan) on the earlier of the following:

- (a) The date on which he ceases to be an Eligible Employee.
(b) The effective date of complete termination of the Plan under Article VIII.

An Employee or former Employee who was an Inactive Participant under the Plan on December 31, 2002, shall continue to be an Inactive Participant on January 1, 2003. Eligibility for any benefits payable to the Participant or on his behalf and the amount of the benefits shall be determined according to the provisions of the prior document, unless otherwise stated in this Plan.

SECTION 2.03--CESSATION OF PARTICIPATION.

A Participant, whether active or inactive, shall cease to be a Participant on the date of his death.

An Inactive Participant shall also cease to be a Participant on the earliest date on which he is not entitled to a deferred monthly income under the VESTED BENEFITS SECTION of Article V.

ARTICLE III

CONTRIBUTIONS

SECTION 3.01--EMPLOYER CONTRIBUTIONS.

The amount of Employer Contributions shall meet or exceed the minimum funding standards of Act 205. The amount and time of Employer Contributions shall be determined based on actuarial valuations and recommendations as to the amounts required to fund benefits under this Plan.

A portion of the Plan assets resulting from Employer Contributions (but not more than the original amount of those Contributions) may be returned if the Employer Contributions are made because of a mistake of fact, unless such Contribution is needed to meet the minimum funding standards of Act 205. The amount involved must be returned to the Employer within one year after the date the Employer Contributions are made by mistake of fact. Except as provided under this paragraph and in Article VIII, the assets of the Plan shall never be used for the benefit of the Employer and are held for the exclusive purpose of providing benefits to Participants and their Beneficiaries and for defraying reasonable expenses of administering the Plan as allowed under Act 205.

SECTION 3.01A--REQUIRED CONTRIBUTIONS BY PARTICIPANTS.

If determined by the Employer, each Active Participant shall make Required Contributions. These Contributions shall be made for each month in which he is an Active Participant.

The amount of each Contribution will be equal to 5% of his Compensation for the month.

A Participant shall not make Required Contributions during the period he is receiving disability payments under the DISABILITY BENEFITS SECTION of Article V.

The Participant's Required Contribution Account is fully (100%) vested and nonforfeitable at all times.

The Employer may, on an annual basis, by resolution, reduce or eliminate Required Contributions.

SECTION 3.02--INVESTMENT OF CONTRIBUTIONS.

The handling of Contributions which are directed to the Annuity Contract is governed by the provisions of the Annuity Contract.

The Plan Administrator may delegate to the Investment Manager investment discretion for Plan assets.

All Contributions are forwarded by the Employer to the Insurer to be deposited under the Annuity Contract.

SECTION 3.03--FUNDING OF EMPLOYER CONTRIBUTIONS.

Employer Contributions will be funded by annual appropriations made by the Employer, by payments made by the State Treasurer to the municipal treasurer from the money received from taxes paid upon premiums by foreign casualty insurance companies for purposes of pension retirement for policemen, and by gifts, grants, devises or bequests granted to the Plan pursuant to P.S. 768 of Act 600. Payments made by the State Treasurer shall be used as follows:

- (a) to reduce the unfunded liability, or after such liability has been funded,
- (b) to apply against the annual obligation of the Employer for future service cost, or to the extent that the payment may be in excess of such obligations,
- (c) to reduce Required Contributions.

ARTICLE IV

RETIREMENT BENEFITS

SECTION 4.01--ACCRUED BENEFIT.

An Active Participant's monthly Accrued Benefit as of any date, subject to the modifications below, will be equal to the product of (a) and (b) plus (c) below:

- (a) An amount equal to 50% of his Average Compensation.
- (b) His Accrued Benefit Adjustment.
- (c) An amount equal to \$20.00 multiplied by his complete years of Accrual Service in excess of 25 on such date, not to exceed \$100.00.

SECTION 4.02--BENEFIT LIMITATION.

- (a) Definitions. For purposes of determining the benefit limitation set forth in this section, the following terms are defined:

Annual Additions means the sum of the following amounts credited to a Participant's account for the Limitation Year:

- (1) employer contributions;
- (2) employee contributions;
- (3) forfeitures; and
- (4) allocations under a simplified employee pension.

Annual Benefit means a retirement benefit under the plan which is payable annually in the form of a Straight Life Annuity. Except as provided below, a benefit payable in a form other than a Straight Life Annuity must be adjusted to an actuarially equivalent Straight Life Annuity before applying the limitations of this section. Effective 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 is equal to the greater of the annuity benefit computed using the interest rate and mortality table (or other tabular factor) specified in the Plan for adjusting benefits in the same form, and the annuity benefit computed using a 6 percent interest rate assumption and the Applicable Mortality Table.

No actuarial adjustment to the benefit is required for (i) the value of a qualified joint and survivor annuity, (ii) 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 (iii) the value of post-retirement cost-of-living increases made in accordance with Code Section

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415(d) and section 1.415-3(c)(2)(iii) of the Income Tax Regulations. The Annual Benefit does not include any benefits attributable to employee contributions or rollover contributions, or assets transferred from a qualified plan that was not maintained by the Employer.

Applicable Mortality Table means, on any date, the table according to the method set forth in Code Section 417(e).

Defined Benefit Dollar Limitation means \$90,000, automatically adjusted, effective January 1 of each year, under Code Section 415(d) in such manner as the Secretary shall prescribe, and payable in the form of a Straight Life Annuity. The new limitation shall apply to Limitation Years ending with or within the calendar year of the date of the adjustment.

Employer means the employer that adopts this Plan, and all members of a controlled group of corporations (as defined in Code Section 414(b), as modified by Code Section 415(h)), all commonly controlled trades or businesses (as defined in Code Section 414(c), as modified by Code Section 415(h)), or affiliated service groups (as defined in Code Section 414(m)) of which the adopting employer is a part, and any other entity required to be aggregated with the employer under Code Section 414(o).

Limitation Year means the 12-consecutive month period ending on the last day of each Plan Year, including corresponding 12-consecutive month periods before October 1, 1947. If the Limitation Year is other than a calendar year, execution of this Plan (or any amendment to this Plan changing the Limitation Year) constitutes the Employer's adoption of a written resolution electing the Limitation Year. If the Limitation Year is amended to a different 12-consecutive month period, the new Limitation Year must begin on a date within the Limitation Year in which the amendment is made.

Maximum Permissible Benefit means the Defined Benefit Dollar Limitation (adjusted where required, as provided below).

(1) If the Participant has less than ten Years of Participation in the Plan, the Defined Benefit Dollar Limitation shall be multiplied by a fraction the numerator of which is the number of Years of Participation (or part thereof) in the Plan, and the denominator of which is ten.

For Limitation Years beginning on or after January 1, 1995, the adjustments of this (1) shall not apply to survivor and disability benefits as provided in Code Section 415(b)(2)(B).

(2) If the Annual Benefit of the Participant commences prior to age 62, the Defined Benefit Dollar Limitation applicable to the Participant at such earlier age is an Annual Benefit payable in the form of a Straight Life Annuity that is the actuarial equivalent of the Defined Benefit Dollar Limitation (as reduced in (1) above, if necessary) reduced for each month by which the benefits commence before the month in which the Participant attains age 62. Effective for Limitation Years beginning on or after January 1, 1995, the Defined Benefit Dollar Limitation applicable at an age prior to age 62 is determined as the lesser of the actuarial equivalent of the Defined Benefit Dollar Limitation (as reduced in (1) above, if necessary) computed using the interest rate and mortality table (or other tabular factor) specified in the Plan for purposes of determining actuarial equivalence for early retirement benefits, and the actuarial equivalent of the Defined Benefit Dollar Limitation (as reduced in

(1) above, if necessary) computed using a 5 percent interest rate and the Applicable Mortality Table. To the extent that the Plan does not specify an interest rate and mortality table (or other tabular factor) or for ages for which no tabular factor is specified, a 5 percent interest rate and the Applicable Mortality Table shall be used to determine actuarial equivalence.

The reduction under this (2) shall not reduce the Defined Benefit Dollar Limitation below \$75,000 if the benefit commences at or after age 55. The reduction under this (2) shall not reduce the Defined Benefit Dollar Limitation below the actuarial equivalent of the \$75,000 limitation for age 55 if the benefit commences before age 55. Effective for Limitation Years beginning on or after January 1, 1995, the minimum Defined Benefit Dollar Limitation applicable at an age prior to age 55 is determined as the lesser of the actuarial equivalent of the \$75,000 limitation at age 55 computed using the interest rate and mortality table (or other tabular factor) specified in the Plan for purposes of determining actuarial equivalence for early retirement benefits, and the actuarial equivalent of the \$75,000 limitation at age 55 computed using a 5 percent interest rate and the Applicable Mortality Table. To the extent that the Plan does not specify an interest rate and mortality table (or other tabular factor) or for ages for which no tabular factor is specified, a 5 percent interest rate and the Applicable Mortality Table shall be used to determine actuarial equivalence.

Any decrease in the Defined Benefit Dollar Limitation determined in accordance with this (2) shall not reflect a mortality decrement if the benefits are not forfeited upon the death of the Participant. If any benefits are forfeited upon death, the full mortality decrement is taken into account.

For Limitation Years beginning on or after January 1, 1997, the adjustments in this (2) do not apply in the case of a Participant who is a qualified participant (as defined in Code Section 415(b)(2)(H)). For Limitation Years beginning on or after January 1, 1995, the adjustments in this (2) do not apply to survivor and disability benefits as provided in Code Section 415(b)(2)(H).

- (3) If the Annual Benefit of the Participant commences after age 65, the Defined Benefit Dollar Limitation applicable to the Participant at the later age is the Annual Benefit payable in the form of a Straight Life Annuity commencing at the later age that is actuarially equivalent to the Defined Benefit Dollar Limitation applicable to the Participant (adjusted under (1) above, if necessary) at age 65. Effective for Limitation Years beginning on or after January 1, 1995, the actuarial equivalent of the Defined Benefit Dollar Limitation at age 65 is determined as the lesser of the actuarial equivalent of the Defined Benefit Dollar Limitation at age 65 computed using the interest rate and mortality table (or other tabular factor) specified in the Plan for purposes of determining actuarial equivalence for delayed retirement benefits, and the actuarial equivalent of the Defined Benefit Dollar Limitation at age 65 computed using a 5 percent interest rate assumption and the Applicable Mortality Table. For these purposes, mortality between age 65 and the age at which benefits commence must be ignored.

- (4) Minimum benefits permitted: Notwithstanding anything else in this definition to the contrary, the benefit otherwise accrued or payable to a Participant under this Plan shall be deemed not to exceed the Maximum Permissible Benefit if:
- (i) the retirement benefits payable for a Plan Year under any form of benefit with respect to such Participant under this Plan and under all other defined benefit plans (regardless of whether terminated) ever maintained by the Employer do not exceed \$1,000 multiplied by the Participant's number of Years of Service or parts thereof (not to exceed ten); and
 - (ii) the Employer has not at any time maintained a defined contribution plan (for these purposes, employee contributions, whether voluntary or involuntary, under a defined benefit plan are not treated as a separate defined contribution plan).

For Limitation Years beginning on or after January 1, 1995, the amount in (i) above shall be equal to \$10,000 when determining the minimum benefit permitted for survivor and disability benefits as provided in Code Section 415(b)(2)(B).

Projected Annual Benefit means the Annual Benefit to which the Participant would be entitled under the terms of the Plan assuming:

- (1) the Participant will continue employment until normal retirement age under the Plan (current age, if later), and
- (2) all relevant factors used to determine benefits under the Plan will remain constant for all future Limitation Years.

Straight Life Annuity means an annuity payable in equal installments for the life of the Participant that terminates upon the Participant's death.

Year of Participation means one year (computed to fractional parts of a year) for each Plan Year for which the following conditions are met:

- (1) The Participant is credited with Service for benefit accrual purposes, and
- (2) the Participant is included as a Participant under the eligibility provisions of the Plan for at least one day of the Plan Year.

If these two conditions are met, the portion of a Year of Participation credited to the Participant shall equal the amount of Accrual Service credited to the Participant for such Plan Year. A Participant who is totally and permanently disabled within the meaning of Code Section 415(c)(3)(C)(i) for a Plan Year 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 a Plan Year, the Plan must be established no later than the last day of such Plan Year. In no event will more than one Year of Participation be credited for any 12-month period.

- (b) This (b) applies regardless of whether any Participant is or has ever been a participant in another qualified plan maintained by the adopting Employer.

- (1) The Annual Benefit otherwise payable to a Participant at any time will not exceed the Maximum Permissible Benefit. If the benefits the Participant would otherwise accrue in a Limitation Year would produce an Annual Benefit in excess of the Maximum Permissible Benefit, the benefit must be limited (or the rate of accrual reduced) to a benefit that does not exceed the Maximum Permissible Benefit.
- (2) If a Participant has made voluntary employee contributions, or mandatory employee contributions as defined in Code Section 411(c)(2)(C), under the terms of this Plan, the amount of such contributions is treated as an Annual Addition to a qualified defined contribution plan for purposes of (b)(1) of this section. Such amounts shall be limited to meet the requirements of Code Section 415(e)(1).
- (c) This (c) applies 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. 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 benefit shall be limited (or the rate of accrual reduced) in the plan most recently established to the extent necessary so that the sum of the Participant's Annual Benefits from all such plan(s) does not exceed the Maximum Permissible Benefit.

Benefit increases resulting from the repeal of Code Section 415(e) will be provided to all Employees participating in the Plan (with benefits limited by Code Section 415(e)) who have an Accrued Benefit under the Plan immediately before the first day of the first Limitation Year beginning in 2000 and have one hour-of-service with the Employer after such date.

SECTION 4.03--AMOUNT OF BENEFIT AT RETIREMENT.

The amount of retirement benefit to be provided on the Normal Form for an Active Participant on his Retirement Date shall be determined according to the provisions of this section.

Normal Retirement Date. An Active Participant's retirement benefit on his Normal Retirement Date shall be equal to his Accrued Benefit on such date.

Late Retirement Date. An Active Participant's retirement benefit on his Late Retirement Date shall be equal to his Accrued Benefit on his Late Retirement Date.

The Participant's retirement benefits shall be distributed to the Participant according to the distribution of benefits provisions of Article VI.

ARTICLE IVA

2002 SPECIAL AD HOC ADJUSTMENT

SECTION 4A.01--IMPORTANT TERMS.

For purposes of determining the special ad hoc adjustment set forth in this article, the following terms are defined:

Base Adjustment means, for a Participant, the product of \$.15 multiplied by his Years of Service multiplied by his Years on Retirement.

Longevity Adjustment means, for a Participant, the product of his Base Adjustment multiplied by his Longevity Factor.

Longevity Factor means, for a Participant, the sum of (i) the product of .025 multiplied by his Years on Retirement and (ii) the product of .05 multiplied by his Years on Retirement in excess of 25, if any.

Years of Service means, for a Participant, the number of whole years of active, full-time employment as a police officer credited under the Plan.

Years on Retirement means, for a Participant, the number of whole years that he has been retired as of January 1, 2001.

2002 Special Ad Hoc Adjustment means, for a Participant, the sum of his Base Adjustment and his Longevity Adjustment.

SECTION 4A.02--ELIGIBILITY.

An additional amount of monthly retirement benefit will be payable to a retired Participant who began receiving a retirement benefit before January 1, 1996, has terminated active employment with the Employer as a police officer, and is receiving such retirement benefit based on active employment as a police officer.

SECTION 4A.03--2002 SPECIAL AD HOC ADJUSTMENT.

The monthly retirement benefit of a Participant who has met the requirements in the ELIGIBILITY SECTION of this article shall be increased by the amount of his 2002 Special Ad Hoc Adjustment as of July 1, 2002, subject to the following provisions:

- (a) If the retired Participant is entitled to be paid his 2002 Special Ad Hoc Adjustment by more than one municipal retirement plan, his 2002 Special Ad Hoc Adjustment under this Plan shall be reduced so that the total of all these adjustments paid to the retiree does not exceed his 2002 Special Ad Hoc Adjustment.

- (b) The amount of the 2002 Special Ad Hoc Adjustment shall be reduced annually by 65% of the total amount of any postretirement adjustments provided to the retiree under this Plan after December 31, 1988, and before January 1, 2002, and paid in the immediately preceding year.
- (c) To the extent that the 2002 Special Ad Hoc Adjustment causes the calculation of total benefits to be paid to exceed the limitations under Act 600, such limitations may be exceeded to pay the adjustment to the retired Participant.

ARTICLE V

OTHER BENEFITS

SECTION 5.01--DEATH BENEFITS.

If a Participant dies, death benefits, if any, shall be determined under subsections (a) and (b) below:

(a) Survivor annuity death benefit:

A survivor annuity shall be payable if the following requirements are met:

- (1) The Participant is survived by a spouse on the date he dies or he has a Dependent Child on the date he dies who will still be a Dependent Child on the date the survivor annuity begins.
- (2) The Participant is a member of the Employer's police force and dies in the line of duty or the Participant's Vesting Percentage is 100%.

The survivor annuity shall be paid to the Participant's spouse until the date of the spouse's death. If the Participant is not survived by a spouse or the spouse dies and there is still a surviving Dependent Child, payments will be paid to the person who has assumed the principal support of any Dependent Child for as long as there is a Dependent Child. Each Dependent Child shall share equally in the survivor annuity. Upon the death of a Dependent Child any survivors shall share equally. When a Dependent Child ceases to be a Dependent Child, any children who continue to be a Dependent Child shall share equally.

If the Participant dies in the line of duty, the survivor annuity shall begin on the first day of the month on or after the date of the Participant's death. The survivor annuity shall be equal to 100% of the Participant's Salary as of the date of his death.

If the Participant does not die in the line of duty and the Participant dies on or after his Annuity Starting Date, the survivor annuity shall begin on the first day of the month after the date of the Participant's death. The survivor annuity shall be equal to 50% of the amount that was payable to the Participant.

If the Participant does not die in the line of duty and the Participant dies before his Annuity Starting Date, the survivor annuity shall begin on his Superannuation Retirement Date. The survivor annuity shall be equal to 50% of the amount that would have been payable to the Participant on his Superannuation Retirement Date. If he had not ceased to be an Employee prior to the date of his death, such amount shall be determined as if he had ceased to be an Employee on the date of his death and survived to retire.

(b) Single sum death benefit:

If the requirements of subsection (a) above have not been met on the date a Participant dies, and he dies before his Annuity Starting Date, a single sum death benefit equal to his Required

Contribution Account on the date of his death shall be payable to his Beneficiary. If the Participant has not designated a Beneficiary, such amount shall be paid to his surviving spouse, if any, and if there is no surviving spouse, equally to any Dependent Children.

If the requirements in subsection (a) above have been met on the date a Participant dies and payments to his surviving spouse or Dependent Children do not begin until his Superannuation Retirement Date, the single sum death benefit shall be paid on the earliest date it is determined that the survivor annuity death benefit will not be paid. Such amount shall be paid on the date his surviving spouse dies if it is determined that there will be no Dependent Children on his Superannuation Retirement Date. The single sum death benefit shall be determined as of the date of the surviving spouse's death and shall be paid to the spouse's Beneficiary. Otherwise, such payment shall be made on the date it is first determined that there will be no Dependent Children on his Superannuation Retirement Date. Such amount shall be determined as of such date and paid equally to the children who were Dependent Children on the date of the Participant's death. If such child has died, his share shall be paid to his Beneficiary.

SECTION 5.02--VESTED BENEFITS.

A Participant who became an Inactive Participant before retirement or death (and, if applicable, before the date a disability payment begins under the DISABILITY BENEFITS SECTION of this article) will be entitled to a deferred monthly retirement benefit on the Normal Form to begin on his Superannuation Retirement Date. The deferred retirement benefit will be equal to the product of (a) and (b):

- (a) The Participant's Accrued Benefit on the day before he became an Inactive Participant.
- (b) The Participant's Vesting Percentage on the date he ceases to be an Eligible Employee.

This vested benefit will only be provided for a Participant who files written notification with the governing body of the Employer of his intention to vest within 90 days of the date he ceases to be an Eligible Employee.

The deferred monthly retirement benefit shall be distributed to the Participant according to the distribution of benefit provisions of Article VI.

If a Participant has ceased to be an Employee and his Vesting Percentage is zero or he failed to file the written notification provided above, the Participant will receive his Required Contribution Account in a single-sum payment. Such Participant will no longer be entitled to a deferred monthly retirement benefit under this section and such payment will be in full settlement of any and all benefits provided under this Plan.

SECTION 5.03--DISABILITY BENEFITS.

If an Active Participant becomes Totally and Permanently Disabled before his Retirement Date (Normal Retirement Date, if earlier), a disability benefit shall be payable to him.

The disability benefit payable to a Participant who meets the requirements above is an immediate monthly benefit equal to 50% of the Participant's Salary as of the date of his disability reduced by any disability benefits he receives for the same injuries under the Social Security Act.

Monthly disability benefit payments shall begin on the earliest first day of the month on or after the date the Participant meets the requirements under this section. Such payments shall continue through the first day of the month before his Superannuation Retirement Date, the date of his death or the day following the date he is no longer Totally and Permanently Disabled.

If the payments continue through the first day of the month before the Participant's Superannuation Retirement Date retirement benefits shall be provided for him on his Superannuation Retirement Date under the provisions of Article IV as if he were an Active Participant. His Accrued Benefit shall be equal to his Accrued Benefit as of the day before the disability benefit began. However, such Accrued Benefit shall not be less than the amount of monthly disability payment paid to him under this section. If, before the Participant's Superannuation Retirement Date, he recovers and returns to active work for the Employer within one month of his recovery, the payments shall stop and he shall again become an Active Participant under the ACTIVE PARTICIPANT SECTION of Article II. If, before the Participant's Superannuation Retirement Date, he recovers and does not return to active work for the Employer within one month of his recovery, the payments shall stop and his benefits shall be redetermined, on the date he ceased to be an Employee, under the VESTED BENEFITS SECTION of this article.

ARTICLE VI

WHEN BENEFITS START AND DISTRIBUTION OF BENEFITS

SECTION 6.01--WHEN BENEFITS START.

Benefits under the Plan begin when a Participant retires, dies, or ceases to be an Employee or becomes Totally and Permanently Disabled, whichever applies, as provided in Article IV and Article V.

Benefits shall begin by the Participant's Required Beginning Date, as defined in the DEFINITIONS SECTION of Article VII.

SECTION 6.02-- FORM OF DISTRIBUTION.

The form of benefit payable to or on behalf of a Participant is determined as follows:

- (a) Retirement Benefits. The form of retirement benefit for a Participant shall be the Normal Form.
- (b) Death Benefits. The form of death benefit for a Participant is determined according to the provisions of the DEATH BENEFITS SECTION of Article V.

ARTICLE VII

DISTRIBUTION REQUIREMENTS

SECTION 7.01--APPLICATION.

The timing of any distribution must meet the requirements of this article.

SECTION 7.02--DEFINITIONS.

For purposes of this article, the following term is defined:

Required Beginning Date means, for a Participant, the April 1 of the calendar year following the later of the calendar year in which he attains age 70 1/2 or the calendar year in which he retires.

SECTION 7.03--DISTRIBUTION REQUIREMENTS.

The entire interest of a Participant must be distributed or begin to be distributed no later than the Participant's Required Beginning Date.

ARTICLE VIII

TERMINATION OF PLAN

The Employer expects to continue the Plan indefinitely but by resolution of its governing body reserves the right to terminate the Plan in whole or in part at any time upon giving written notice to all parties concerned.

An Employee who is included in the group of Employees deemed to be affected by complete or partial termination of the Plan shall be fully (100%) vested in his Accrued Benefit as of the date of such complete or partial termination. Upon complete termination of the Plan, no further Employees shall become Participants, and no further Contributions shall be made except as required by any governmental agency to which the Plan's termination is subject.

A Participant's recourse towards satisfaction of his right to his nonforfeitable Accrued Benefit will be limited to the Plan assets.

The assets of the Plan that are available to provide benefits shall be allocated and applied as of the effective date of termination of the Plan according to any equitable method as determined by the Plan Administrator and agreed upon by the Insurer.

No part of the Plan assets shall be paid to the Employer at any time, except that, after the satisfaction of all liabilities under the Plan, any assets remaining shall be paid to the Employer. No payment shall be made to the Employer if it would contravene any provision of law.

ARTICLE IX

ADMINISTRATION OF PLAN

SECTION 9.01--ADMINISTRATION.

Subject to the provisions of this article, the Plan Administrator has complete control of the administration of the Plan. The Plan Administrator has all the powers necessary for it to properly carry out its administrative duties. Not in limitation, but in amplification of the foregoing, the Plan Administrator has the power to construe the Plan, including ambiguous provisions, and to determine all questions that may arise under the Plan, including all questions relating to the eligibility of Employees to participate in the Plan and the amount of benefit to which any Participant, Beneficiary, spouse or Contingent Annuitant may become entitled. The Plan Administrator's decisions upon all matters within the scope of its authority shall be final.

Unless otherwise set out in the Plan or Annuity Contract, the Plan Administrator may delegate recordkeeping and other duties which are necessary for the administration of the Plan to any person or firm which agrees to accept such duties. The Plan Administrator shall be entitled to rely upon all tables, valuations, certificates and reports furnished by the consultant or actuary appointed by the Plan Administrator and upon all opinions given by any counsel selected or approved by the Plan Administrator.

The Plan Administrator shall receive all claims for benefits by Participants, former Participants, Beneficiaries, and spouses. The Plan Administrator shall determine all facts necessary to establish the right of any claimant to benefits and the amount of those benefits under the provisions of the Plan. The Plan Administrator may establish rules and procedures to be followed by claimants in filing claims for benefits, in furnishing and verifying proofs necessary to determine age, and in any other matters required to administer the Plan.

SECTION 9.02--EXPENSES.

Expenses of the Plan may be paid out of the assets of the Plan provided such payment is consistent with Act 205. Such expenses include, but are not limited to, expenses for recordkeeping and other administrative services; fees and expenses of the Annuity Contract; and direct costs that the Employer incurs with respect to the Plan.

SECTION 9.03--RECORDS.

All acts and determinations of the Plan Administrator shall be duly recorded. All these records, together with other documents necessary for the administration of the Plan, shall be preserved in the Plan Administrator's custody.

Writing (handwriting, typing, printing), photostating, photographing, microfilming, magnetic impulse, mechanical or electrical recording or other forms of data compilation shall be acceptable means of keeping records.

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SECTION 9.04--INFORMATION AVAILABLE.

Any Participant in the Plan or any Beneficiary may examine copies of the Plan description, latest annual report, any bargaining agreement, this Plan, the Annuity Contract or any other instrument under which the Plan was established or is operated. The Plan Administrator shall maintain all of the items listed in this section in its office, or in such other place or places as it may designate in order to comply with governmental regulations. These items may be examined during reasonable business hours. Upon the written request of a Participant or Beneficiary receiving benefits under the Plan, the Plan Administrator will furnish him with a copy of any of these items. The Plan Administrator may make a reasonable charge to the requesting person for the copy.

SECTION 9.05--DELEGATION OF AUTHORITY.

All or any part of the administrative duties and responsibilities under this article may be delegated by the Plan Administrator to a retirement committee. The duties and responsibilities of the retirement committee shall be set out in a separate written agreement.

SECTION 9.06--EXERCISE OF DISCRETIONARY AUTHORITY.

The Employer, Plan Administrator and any other person or entity who has authority with respect to the management, administration or investment of the Plan may exercise that authority in its full discretion, subject only to the duties imposed under the applicable laws of the state of Pennsylvania. This discretionary authority includes, but is not limited to, the authority to make any and all factual determinations and interpret all terms and provisions of the Plan documents relevant to the issue under consideration. The exercise of authority will be binding upon all persons; will be given deference in all courts of law to the greatest extent allowed under law; and will not be overturned or set aside by any court of law unless found to be arbitrary and capricious or made in bad faith.

ARTICLE X

GENERAL PROVISIONS

SECTION 10.01--AMENDMENTS.

The Employer may amend this Plan at any time, including any remedial retroactive changes (within the time specified by Internal Revenue Service regulations) to comply with any law or regulation issued by any governmental agency to which the Plan is subject. An amendment (including a change in the actuarial basis for determining optional or early retirement benefits) may not diminish or adversely affect any accrued interest or benefit of Participants or their Beneficiaries nor allow reversion or diversion of Plan assets to the Employer at any time, except as may be required to comply with any law or regulation issued by any governmental agency to which the Plan is subject.

SECTION 10.02--DIRECT ROLLOVERS.

Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this section, a Distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an Eligible Rollover Distribution paid in a Direct Rollover directly to an Eligible Retirement Plan specified by the Distributee.

SECTION 10.03--PROVISIONS RELATING TO THE INSURER.

The obligations of an Insurer shall be governed solely by the provisions of the Annuity Contract. The Insurer shall not be required to perform any act not provided in or contrary to the provisions of the Annuity Contract. Each Annuity Contract when purchased shall comply with the Plan. See the CONSTRUCTION SECTION of this article.

The Insurer is not a party to the Plan, nor bound in any way by the Plan provisions. It shall not be required to look to the terms of this Plan, nor to determine whether the Employer or the Plan Administrator have the authority to act in any particular manner or to make any contract or agreement.

Until notice of any amendment or termination of this Plan has been received by the Insurer at its home office, the Insurer is and shall be fully protected in assuming that the Plan has not been amended or terminated according to the latest information which it has received at its home office.

SECTION 10.04--EMPLOYMENT STATUS.

Nothing contained in this Plan gives an Employee the right to be retained in the Employer's employ or to interfere with the Employer's right to discharge any Employee.

SECTION 10.05--RIGHTS TO PLAN ASSETS.

An Employee shall not have any right to or interest in any assets of the Plan upon termination of his employment or otherwise except as specifically provided under this Plan, and then only to the extent of the benefits payable to such Employee according to the Plan provisions.

Any final payment or distribution to a Participant or his legal representative or to any Beneficiaries or spouse of such Participant under the Plan provisions shall be in full satisfaction of all claims against the Plan, the Plan Administrator, the Insurer, and the Employer arising under or by virtue of the Plan.

SECTION 10.06--BENEFICIARY.

Each Participant may name a Beneficiary to receive any death benefit that may arise out of his participation in the Plan. He may change his Beneficiary from time to time. It is the responsibility of the Participant to give written notice to the Insurer of the name of the Beneficiary on a form furnished for that purpose.

With the Employer's consent, the Plan Administrator may maintain records of Beneficiary designations for Participants before their Retirement Dates. In that event, the written designations made by Participants shall be filed with the Plan Administrator. If a Participant dies before his Retirement Date, the Plan Administrator shall certify to the Insurer the Beneficiary designation on its records for the Participant.

If there is no Beneficiary named or surviving when a Participant dies, the Participant's Beneficiary shall be the Participant's surviving spouse or where there is no surviving spouse, the executor or administrator of the Participant's estate.

SECTION 10.07--NONALIENATION OF BENEFITS.

Benefits payable under the Plan are not subject to the claims of any creditor of any Participant, Beneficiary or spouse. A Participant, Beneficiary or spouse does not have any rights to alienate, anticipate, commute, pledge, encumber or assign any of such benefits. The Plan Administrator may comply with a court order requiring deduction from the benefits of a Participant in pay status for attorney or support payments.

SECTION 10.08--CONSTRUCTION.

The validity of the Plan or any of its provisions is determined under and construed according to Federal law and, to the extent permissible, according to the laws of the state of Pennsylvania. In case any provision of this Plan is held illegal or invalid for any reason, such determination shall not affect the remaining provisions of this Plan, and the Plan shall be construed and enforced as if the illegal or invalid provision had never been included.

In the event of any conflict between the provisions of the Plan and the terms of any contract or policy issued hereunder, the provisions of the Plan control the operation and administration of the Plan. However, in the event of any conflict between the provisions of the Plan and any ordinance, resolution, or police contract, the provisions of such ordinance, resolution, and contract shall control the operation and administration of the Plan.

SECTION 10.09--LEGAL ACTIONS.

No person employed by the Employer; no Participant, former Participant nor their Beneficiaries; nor any other person having or claiming to have an interest in the Plan is entitled to any notice of process. A final judgment entered in any such action or proceeding shall be binding and conclusive on all persons having or claiming to have an interest in the Plan.

SECTION 10.10--WORD USAGE.

The masculine gender, where used in this Plan, shall include the feminine gender and the singular words, as used in this Plan, may include the plural, unless the context indicates otherwise.

The words "in writing" and "written," where used in this Plan, shall include any other forms, such as voice response or other electronic system, as permitted by any governmental agency to which the Plan is subject.

SECTION 10.11--MILITARY SERVICE.

Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Code Section 414(u).

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By executing this Plan, the Employer acknowledges having counseled to the extent necessary with selected legal and tax advisors regarding the Plan's legal and tax implications.

Executed this _____ day of _____, _____

BOROUGH OF COLUMBIA

By: _____

Title

Defined Benefit Plan 8.1

BOROUGH OF COLUMBIA
POLICE PENSION FUND

BE IT ENACTED AND ORDAINED BY THE Council of the Borough of Columbia, Lancaster County, Pennsylvania, and it is hereby enacted and ordained by the authority of the same:

Article 1. Creation.

Purpose: There is hereby created a Pension Fund of the Borough of Columbia, Lancaster County, Pennsylvania, to be known as the "Columbia Borough Police Pension Fund," hereinafter referred to as the "Fund". Said Fund is established for and shall exist for the purposes contained in the Act of the General Assembly of the Commonwealth of Pennsylvania of May 29, 1956, as amended (Act No. 600 of 1956; 53 P.S. Section 767 et seq.).

Definitions: The following words, terms and phrases shall have ascribed to them the meanings herein set forth, unless the use of such word, term or phrase in context clearly indicates a different meaning.

Beneficiary - Any person who receives or is entitled to receive any benefit or value pursuant to the provisions of this Ordinance.

Benefit - The value received or to be received by any person pursuant to the provisions of this Ordinance.

Board - The Columbia Police Pension Board as established by this Ordinance.

Borough - The Borough of Columbia, Lancaster County, Pennsylvania.

Council - The duly elected members of the Council of the Borough of Columbia, Lancaster County, Pennsylvania.

Disability - The state of being permanently and totally disabled as a result of an injury or illness incurred in the course of employment, which renders a member unable to perform all of his regular duties as a police officer, notwithstanding the fact that he may otherwise be gainfully employed.

Fund - The Columbia Borough Police Pension Fund.

Future Service Cost - The amount of money required to be contributed annually into the Fund on account of benefits payable under this Ordinance to members of the Police Force for service subsequent to the date of the establishment of the Fund.

General Fund - The monies of the Borough derived from its taxing authority under the laws of the Commonwealth of Pennsylvania.

Member - A duly appointed full-time police officer of the Columbia Borough Police Force.

Monthly Average Salary - A member's average base monthly compensation for the period of the last thirty-six (36) months prior to the date he becomes entitled to any benefit under this Ordinance; provided, however, that if a member becomes entitled to a benefit before he has been employed as a police officer for a period of thirty-six (36) months, then "monthly average salary" shall be the average base monthly compensation for all of the months he has been so employed. Base monthly compensation shall include salary plus any longevity pay and holiday pay.

Police Force - The body of duly appointed full-time police officers of the Borough of Columbia.

Unfunded Liability - The present value of the liability of the Fund less assets of the Fund, as determined by the Fund actuary, utilizing the criteria set forth in Act 205 of 1984, as amended.

Article 2. Assets Transferred.

All assets of the Police Pension Fund created and established by Ordinance No. 326, as amended, of the Borough of Columbia, shall be transferred to the Fund established by this Ordinance.

Article 3. Liabilities Transferred.

All liabilities existing under the Fund established by the aforesaid Ordinance No. 326, as amended, are hereby transferred to the Fund established by this Ordinance.

Article 4. Bond.

The assets of said Fund shall be kept separate and apart from other funds of the Borough, and the Treasurer thereof shall furnish a corporate surety bond in such sum as the Columbia Police Pension Board may from time to time fix and require.

Article 5. Police Pension Board Created.

Section 1. Board Composition, Powers and Authority.

There is hereby created a Columbia Police Pension Board, hereinafter referred to as the "Board", which shall have charge of the

regulation, care, management, investment, disposal, administration and distribution of the Fund. The Board shall consist of five (5) official members and two (2) ex-officio members. The official members shall be as follows: the Mayor and Chief of Police of the Borough, whose membership shall be concurrent with their respective tenure of office; one (1) full-time member of the Borough Police Department, other than the Chief of Police, who shall be selected by a majority vote of the full-time police officers of the Borough, and who shall serve for a term of two (2) years; one (1) member of the Borough Council, who shall serve for a term of two (2) years from his appointment and during his tenure of office, and one (1) citizen of the Borough to serve for a term of two (2) years, who shall be jointly selected by the Borough and the police bargaining unit representative. In the event that the Borough Council and the police bargaining unit representative cannot jointly agree on such citizen member, both parties shall submit three (3) names of citizens, from which one (1) name shall be drawn by lot. The ex-officio members of the Board shall be the Borough Solicitor and the Solicitor for the police bargaining unit.

Section 2. Powers and Duties of the Pension Board.

The Board shall have the following powers and duties:

- (a) To administer the Borough of Columbia Police Pension Fund in accordance with an agreement of trust entered into by the Borough Council of the Borough of Columbia and a corporate fiduciary, which agreement of trust shall permit the fiduciary to manage and operate the Fund and to receive, hold, invest, and disburse any sum or sums as may be necessary to carry out the

Plan, and all other applicable statutes, ordinances and regulations.

(b) To provide guidance to the Trustee of the Borough of Columbia Police Pension Fund for the investment of all monies deposited in such Fund.

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

(d) To employ, upon approval of the Borough Council, and compensate actuaries, accountants, and attorneys as it may deem necessary to carry out its duties hereunder. The expenses of the administration of the Fund shall be paid from the assets of the Fund.

(e) To make all decisions pertinent to the award of any pension to any applicant or participant or for the return of any individual contributions to any person who may be entitled to the same under the Pension Fund.

(f) The Board shall have the authority to retain, upon approval of the Borough Council, any trustee for the management of the Pension Fund, and it shall have the authority to designate the depository of the Pension Fund.

Section 3. Determination of Benefits.

The Board shall have full power and authority to make all decisions in accordance with the terms of this Ordinance including, but not limited to, the following:

(a) To determine all questions relating to the eligibility of officers to become participants in the Plan.

(b) To compute and certify to the corporate fiduciary appointed by the Borough Council, the amount and kind of benefits payable to participants.

(c) To make and publish such rules and regulations for the administration of the Pension Fund as are not inconsistent with the terms of this Ordinance.

The Borough Council shall supply full and timely information to the Board on all matters relating to the pay of all members of the police force, their retirement, death or other cause for termination of employment and such other pertinent data as the Board may require to carry out its duties and responsibilities hereunder. The Board shall be responsible to transmit to the corporate fiduciary of the Pension Fund such information as it requires to carry out its responsibilities under its agreement with the Borough.

Section 4. Rights of Participants.

Any member of the Police Pension Fund shall have the right to:

(a) Inquire of the Board as to his or her status or condition in the Pension Fund, including prospective benefits to which such member may be entitled in the future.

(b) To examine records of the Board pertaining to his or her pension records.

(c) To appear personally before the Board with or without counsel and to be heard on any matter pertaining to his or her rights under the Plan.

Article 6. Election of Officers; Meetings; Records.

The Board shall annually elect a Chairman and a Secretary from among its official members. The Treasurer of the Borough of Columbia

shall serve as Treasurer of the Fund. Three (3) members of the Board shall constitute a quorum for all purposes. The Treasurer and the aforesaid Solicitors, shall not, for any purpose, be deemed to be an official member of the Board, nor shall they be entitled to vote at any meetings of the Board, but they shall be entitled to attend all such meetings and to participate in any discussions therein. The Board shall meet at least semi-annually, or more often if necessary, and shall keep minutes and records of its proceedings, decisions, and findings; and shall annually, or when requested by the Mayor or the Council of the Borough, make a complete and detailed financial statement to the Council. Both the official and ex-officio members of the Board shall receive written notification of date, time and location of each Board meeting from the Board Secretary, at least seven (7) days in advance of such meeting date. All books and records of the Board shall be open to inspection by any Board member, member of Borough Council, other Borough official, any Borough citizen or the agent or representative of any such person, at all reasonable times. The accounts of the Board shall be annually audited by the auditors of the Borough, or in such other manner as the Board and the Council may determine.

Article 7. Membership Compulsory.

All full-time police officers of the Borough of Columbia shall be included in the Police Pension Plan hereby established. Membership in said Plan is and shall be compulsory for all full-time members of the said police force. All rights and privileges vested in any full-time member of the police force by virtue of Ordinance No. 326 of this Borough shall continue in force and effect and shall be deemed hereby

to be transferred to the Police Pension Plan hereby created and to the Fund hereby created.

Article 8. Maintenance of the Fund.

The Fund hereby established shall be maintained by monies or other assets received from the following sources:

- (a) By such amount, as determined by the Borough Council, of payments received from the Treasurer of the Commonwealth of Pennsylvania from the monies received from taxes paid upon premiums by foreign casualty and foreign fire insurance companies for purposes of pension retirement benefits for members of municipal plans;
- (b) By contributions from each member of the police force;
- (c) By appropriations made by the Borough Council from the General Fund of the Borough;
- (d) By gift, grant, devise or bequest of money or property, real, personal or mixed, to or in trust for the use of the Fund.

Article 9. Members' Contributions.

All full-time police officers shall pay into the Columbia Police Pension Fund monthly, five percent (5%) of their gross monthly salary. Said payments shall be made by each full-time member of the police department during such periods of time as required by Borough Council.

Article 10. Application of Certain Receipts.

- (a) The amount of the payments made by the State Treasurer from the monies received from taxes paid upon premiums by foreign casualty

and foreign fire insurance companies which are determined by the Borough Council to be deposited in the Fund shall be used and applied as follows:

- (1) To reduce any unfunded liability, defined as the present value of the liability of the Fund on account of retirement benefits payable under this Ordinance to members of the police force for service prior to the date upon which they first made contributions to the Plan, offset by the value of any assets transferred to the Plan from a previous pension fund; or after such liability has been funded,
- (2) To apply against the annual obligation of the Borough for future service cost, defined as the amount of money required to be contributed annually into the Plan on account of benefits payable under this Ordinance to members of the police force for service subsequent to the date of the establishment of the Plan; or to the extent that the payment made be in excess of such obligation,
- (3) To reduce member contributions. Any other monies paid into the Fund shall be applied equally against the member and Borough obligations for future service cost.

Article 11. Adjustment of Member Contributions.

If an actuarial study shows that the condition of the Fund is such that payments into the Fund by members may be reduced below the percentages prescribed in Article 9 hereof, or eliminated, and that if such payments are reduced or eliminated, contributions from the General Fund of the Borough will not be required to keep the Fund

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actuarially sound, the Board may recommend to the Council that such contributions be reduced or eliminated, whereupon the Borough Council may, by resolution, on an annual basis, reduce or eliminate payments into the Fund by members.

Article 12. Payments from the Fund.

Payments from the Fund shall only be made by direction of the Board. All checks on said Fund shall be signed by the Treasurer of the Borough and countersigned by the Chairman of the Board.

Article 13. Retirement, Eligibility and Benefits.

Section 1. Minimum Service and Age Requirements.

(a) A member of the police force may retire from active duty after a minimum period of twenty-five (25) years total service with the Borough and having attained a minimum age of fifty (50) years.

(b) Notwithstanding the provisions of Paragraph (a) of this Section, a member of the police force employed on or before October 21, 1965, for whom a pension fund had theretofore been established and who attains the age of sixty (60) years, may retire after a period of total service with the Borough of twenty (20) years.

(c) A member of the police force meeting the minimum age and service requirements of this Section may be retired from the police force upon thirty (30) days written notice to the Borough by the member with payments to begin as soon as administratively feasible.

Section 2. Retirement Benefits.

(a) Upon retirement, a member of the police force shall receive a monthly pension equal to one-half (½) of his monthly average salary during the last thirty-six (36) months of his employment as a police officer for the Borough of Columbia.

(b) In addition, any member whose total service shall exceed twenty-five (25) years, shall also receive a monthly service increment equal to twenty (\$20.00) dollars for each year of service beyond twenty-five (25) years, to a maximum of one hundred (\$100.00) dollars per month additional payment.

Section 3. Adjustment of Benefits.

Upon recommendation by the Board, the Council may, in its sole discretion, by ordinance or resolution, provide for the payment from the Fund in addition to the benefits provided in Section 2 of this Article the following:

(a) A cost of living increase, provided, however, that:

(1) Such cost of living increase shall not exceed the percentage increase in the Consumer Price Index from the year in which the member last worked;

(2) In no case shall the member's total benefit exceed seventy-five percent (75%) of the salary for computing retirement benefits described in Section 2 hereof;

(3) The total cost of living increases shall not exceed thirty percent (30%) of the retirement benefit provided in Section 2 hereof; and

(4) The cost of living increase shall not impair the actuarial soundness of the Fund.

Section 4. Vesting.

(a) Should a member of the police force, before meeting the minimum service and age requirements of Section 1 of this Article, but after having completed twelve (12) years of total service with the Borough, for any reason cease to be employed as a full-time police officer of the Borough, such member shall be entitled to vest his retirement benefits by filing with the Council within ninety (90) days of the date he ceases to be a full-time police officer, a written notice of this intention to vest.

(b) A member vesting his retirement benefits, upon reaching the date he would have qualified to receive such benefits if he had continued to be employed as a full-time police officer of the Borough, shall be paid a partial retirement benefit determined as follows: the percentage which such member's actual years of service bears to the years of service he would have rendered had he continued to work until reaching the minimum service and age requirements of Section 1 of this Article shall be applied to an amount equal to one-half ($\frac{1}{2}$) of such member's monthly average salary during the last thirty-six (36) months of his employment with the Borough as a full-time police officer, and the amount so determined shall be such member's retirement benefit.

Section 5. Reserve Status.

Persons so retired shall be subject to service from time to time as police reserve, in case of riot, tumult or preservation of the public peace, until such time as they become unfitted for such service when they may be finally discharged by reason of age or disability.

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While on duty as police reserves, retired officers shall be paid as wages, in addition to their regular pension, the same hourly rate of pay as is paid at such time to full-time active members of the Police Department, with like years of service.

Article 14. Disability and Survivors Benefits.

Section 1. Disability Eligibility.

In the event that a member of the police force shall incur a disability as a result of injury or illness incurred in the course of his employment as a police officer, such disabled member shall be retired and be entitled to receive the benefits provided in Section 2 of this Article, regardless of age or length of service.

Section 2. Disability Benefits.

In the event that a member is determined by the Board to have suffered a permanent and total service connected disability, said member shall be entitled to receive a monthly disability benefit, for so long as the disability continues, equal to fifty percent (50%) of his monthly salary averaged over the thirty-six (36) months immediately preceding the date of disability.

For the purpose of this Section, "service connected disability" shall be defined as meaning total and permanent disability of a member resulting from a condition arising out of and incurred in the course of his employment, and which is compensable under the applicable provisions of Act of June 2, 1915 (P.L. 736, No. 338), known as "The Pennsylvania Workmen's Compensation Act", or the Act of June 21, 1939 (P.L. 556, No. 284), known as "The Pennsylvania Occupational Disease Act". In determining whether the injury is

permanent, the Board may rely upon a certification to the Board by a physician designated by the Board, after a medical examination of the member made at his place of residence or a place mutually agreed upon, that said member is unable physically or mentally to perform his duties and is physically or mentally unable to engage in employment as a police officer.

Once every year the Board may require any member receiving disability benefits to undergo medical examination by a physician designated by the Board, and such examination shall be made at the place of residence of the member or other place mutually agreed upon. Should the physician report and certify to the Board that such disabled member is no longer physically or mentally incapacitated for the performance of duty and is able to engage in employment as a police officer, then his disability benefits shall be discontinued.

Should a member receiving disability benefits refuse to submit to at least one medical examination in the year by a physician designated by the Board, his disability benefits shall be discontinued until withdrawal of such refusal and should such refusal continue for one year, then all his right in and to any disability benefits shall be forfeited.

Section 3. Survivors' Eligibility.

In the event that an active member of the police force shall be killed or die of injury or illness incurred in the course of his employment as a police officer, or a retired member dies after becoming entitled to benefits under this Ordinance, and such member is survived by a spouse, or, if no spouse survives, is survived by a child or children not having attained the age of eighteen (18) years,

such spouse, or child or children shall be entitled to receive the benefits described in Section 4 of this Article.

Section 4. Survivors' Benefits.

(a) Spouse:

(1) The surviving spouse shall receive a monthly benefit equal to fifty percent (50%) of the amount a deceased active member would have been entitled to receive had he been eligible for retirement as of the date of his death, or was receiving, if retired.

(2) The benefit being received by a surviving spouse shall cease in the event of remarriage or upon death.

(b) Children:

(1) The child or children of a deceased member not survived by a spouse, or upon the remarriage or death of a spouse, shall receive a monthly benefit equal to fifty percent (50%) of the amount a deceased active member would have been entitled to receive had he been eligible for retirement as of the date of his death, or was receiving, if retired.

(2) The benefit being received by a child or children shall cease upon the youngest child attaining the age of eighteen (18) years. There shall be no reduction in the total benefit payable under this paragraph to the remaining child or children of a class upon one or more of them attaining the age of eighteen (18) years.

(3) It is the intent of this Section that should there be more than one child of a deceased member not survived by

a spouse, or upon remarriage or death of a spouse, the monthly benefit shall be shared equally by such children.

Article 15. Computation of Service; Military Credits.

In computing the aggregate of twenty-five (25) years' service, any member of the police force employed by the Borough who has been a regularly appointed employee of the Borough as a policeman for a period of at least six (6) months and who thereafter shall enter into the military service of the United States, shall have credited to his employment record for pension or retirement benefits all of the time spent by him in such military service, if such person returns or has heretofore returned to his employment within six (6) months after his separation from the military service.

Article 16. Proceeds from Retirement Income and Retirement Annuity Policies.

All monies received from the surrender of Retirement Income policies and Retirement Annuity policies owned by the Fund shall be deposited to the Fund established by this Ordinance.

Article 17. Assets may be Invested.

Assets of the Fund hereby created may be invested by the Board in "legal investments" or "authorized investments" as defined in the Fiduciaries Investment Act of May 26, 1949, P.L. 1828, as presently amended and supplemented, or as hereafter amended or supplemented, and shall not be invested in any other manner.

Article 18. Participants Entitled to Benefits.

No person participating in the Police Pension Fund established by this Ordinance who becomes entitled to receive a benefit therefrom shall be deprived of his right to an equal proportionate share in the said Fund upon the basis upon which he first became entitled thereto.

Article 19. Refund.

Any member of the police department of the Borough who, for any reason whatsoever, shall be ineligible to receive a pension from the Fund or who shall cease to be a member of the police department for any reason or in any manner other than pursuant to retirement from active service in accordance with the terms and provisions of this Ordinance and the aforesaid Acts of the General Assembly, shall be entitled to a refund of one hundred percent (100%) of the total amount of monies paid by him to the Fund, with interest calculated at the rate of two percent (2%) per annum, immediately upon discontinuance of his employment with the police department or immediately upon determination of his ineligibility to receive a pension. If discontinuance of employment with the police department of ineligibility to receive pension is due to death, refund of such monies shall be paid to the beneficiary designated by such member of the police department or, in the absence of designation of a beneficiary, to the estate of such deceased member of the police department. In the event of the death of a member of the police department retired from active duty before he shall have received as monthly pension benefits an amount of money equivalent to the amount of his contributions or payments into said Fund, with interest, the

difference between the amount he has received as monthly pension benefits and one hundred percent (100%) of his payments or contributions into the Fund, with interest, shall be paid to his designated beneficiary, or in the absence of designation of a beneficiary, to his estate.

Article 20. Payments not Subject to Attachment, Garnishment, or Other Legal Process.

Any 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 retired member of the police department or to the designated beneficiary of a member or the estate of a member or to the widow or minor children of a member killed in the service of the Borough, as hereinabove provided, and shall not be subject to assignment or transfer.

Article 21. Pension Provisions Conform to State Law.

The provisions of this Ordinance shall be deemed to be subject to change, alteration, modification, or repeal to comply with any future provisions of any Act or Acts of the General Assembly of the Commonwealth of Pennsylvania in relation to pension benefits for members of a police force of a Pennsylvania Borough consisting of the number of members employed by the Borough of Columbia. This Ordinance shall be deemed to be made and enacted pursuant to and in conformity with the hereinabove recited Acts of the General Assembly of the Commonwealth of Pennsylvania of May 29, 1956 and July 10, 1957, or of any amendments of said Acts hereinafter enacted.

Article 22. Pension Board Subject to the Council.

The Columbia Police Pension Board shall be deemed to exist subject to the power and authority of the Council of the Borough of Columbia and any decisions or determinations of said Board may be reviewed by said Council with the right hereby reserved by the Council to overrule, amend, modify, alter, or change any decisions or determinations of said Board in such a manner and to such extent as may be deemed proper by the Council.

Article 23. Validity.

If any section, provision, sentence, clause, or part of this Ordinance or the application thereof to any person or circumstance is held unconstitutional, illegal, or invalid, such unconstitutionality, illegality, or invalidity shall not affect or impair any of the remaining sections, provisions, sentences, clauses, or parts of this Ordinance and the application thereof to other persons or circumstances. It is hereby expressly declared by the Council and the Mayor of the Borough of Columbia that this Ordinance would have been adopted and approved had such unconstitutional, illegal, or invalid section, provision, sentence, clause, or part not been included herein.

Article 24. Repealer.

All terms and conditions of prior Ordinances, Resolutions or Motions of the Borough Council are hereby repealed and are of no force and effect, except that any benefits that have accrued under such

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Ordinances, Resolutions and Motions shall continue, as long as the same are not inconsistent herewith or with Act 600, as amended.

Article 25. Effective Date.

The terms and conditions of this Ordinance shall become effective as of January 1, 1989.

RESOLVED AND ENACTED, this 13TH day of NOVEMBER, 1989.

ATTEST:

Margaret L. Meyers
Borough Secretary

Sylvester F. Devine
President of Borough Council

Ross J. Nicholas
Mayor, Borough of Columbia

BOROUGH OF COLUMBIAPOLICE PENSION FUND

BE IT ENACTED AND ORDAINED BY THE Council of the Borough of Columbia, Lancaster County, Pennsylvania, and it is hereby enacted and ordained by the authority of the same:

Article 1. Creation.

Purpose: There is hereby created a Pension Fund of the Borough of Columbia, Lancaster County, Pennsylvania, to be known as the "Columbia Borough Police Pension Fund," hereinafter referred to as the "Fund". Said Fund is established for and shall exist for the purposes contained in the Act of the General Assembly of the Commonwealth of Pennsylvania of May 29, 1956, as amended (Act No. 600 of 1956; 53 P.S. Section 767 et seq.).

Definitions: The following words, terms and phrases shall have ascribed to them the meanings herein set forth, unless the use of such word, term or phrase in context clearly indicates a different meaning.

Beneficiary - Any person who receives or is entitled to receive any benefit or value pursuant to the provisions of this Ordinance.

Benefit - The value received or to be received by any person pursuant to the provisions of this Ordinance.

Board - The Columbia Police Pension Board as established by this Ordinance.

Borough - The Borough of Columbia, Lancaster County, Pennsylvania.

Council - The duly elected members of the Council of the Borough of Columbia, Lancaster County, Pennsylvania.

Disability - The state of being permanently and totally disabled as a result of an injury or illness incurred in the course of employment, which renders a member unable to perform all of his regular duties as a police officer, notwithstanding the fact that he may otherwise be gainfully employed.

Fund - The Columbia Borough Police Pension Fund.

Future Service Cost - The amount of money required to be contributed annually into the Fund on account of benefits payable under this Ordinance to members of the Police Force for service subsequent to the date of the establishment of the Fund.

General Fund - The monies of the Borough derived from its taxing authority under the laws of the Commonwealth of Pennsylvania.

Member - A duly appointed full-time police officer of the Columbia Borough Police Force.

Monthly Average Salary - A member's average base monthly compensation for the period of the last thirty-six (36) months prior to the date he becomes entitled to any benefit under this Ordinance; provided, however, that if a member becomes entitled to a benefit before he has been employed as a police officer for a period of thirty-six (36) months, then "monthly average salary" shall be the average base monthly compensation for all of the months he has been so employed. Base monthly compensation shall include salary plus any longevity pay and holiday pay.

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Police Force - The body of duly appointed full-time police officers of the Borough of Columbia.

Unfunded Liability - The present value of the liability of the Fund less assets of the Fund, as determined by the Fund actuary, utilizing the criteria set forth in Act 205 of 1984, as amended.

Article 2. Assets Transferred.

All assets of the Police Pension Fund created and established by Ordinance No. 326, as amended, of the Borough of Columbia, shall be transferred to the Fund established by this Ordinance.

Article 3. Liabilities Transferred.

All liabilities existing under the Fund established by the aforesaid Ordinance No. 326, as amended, are hereby transferred to the Fund established by this Ordinance.

Article 4. Bond.

The assets of said Fund shall be kept separate and apart from other funds of the Borough, and the Treasurer thereof shall furnish a corporate surety bond in such sum as the Columbia Police Pension Board may from time to time fix and require.

Article 5. Police Pension Board Created.

Section 1. Board Composition, Powers and Authority.

There is hereby created a Columbia Police Pension Board, hereinafter referred to as the "Board", which shall have charge of the

regulation, care, management, investment, disposal, administration and distribution of the Fund. The Board shall consist of five (5) official members and two (2) ex-officio members. The official members shall be as follows: the Mayor and Chief of Police of the Borough, whose membership shall be concurrent with their respective tenure of office; one (1) full-time member of the Borough Police Department, other than the Chief of Police, who shall be selected by a majority vote of the full-time police officers of the Borough, and who shall serve for a term of two (2) years; one (1) member of the Borough Council, who shall serve for a term of two (2) years from his appointment and during his tenure of office, and one (1) citizen of the Borough to serve for a term of two (2) years, who shall be jointly selected by the Borough and the police bargaining unit representative. In the event that the Borough Council and the police bargaining unit representative cannot jointly agree on such citizen member, both parties shall submit three (3) names of citizens, from which one (1) name shall be drawn by lot. The ex-officio members of the Board shall be the Borough Solicitor and the Solicitor for the police bargaining unit.

Section 2. Powers and Duties of the Pension Board.

The Board shall have the following powers and duties:

- (a) To administer the Borough of Columbia Police Pension Fund in accordance with an agreement of trust entered into by the Borough Council of the Borough of Columbia and a corporate fiduciary, which agreement of trust shall permit the fiduciary to manage and operate the Fund and to receive, hold, invest, and disburse any sum or sums as may be necessary to carry out the

Plan, and all other applicable statutes, ordinances and regulations.

(b) To provide guidance to the Trustee of the Borough of Columbia Police Pension Fund for the investment of all monies deposited in such Fund.

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

(d) To employ, upon approval of the Borough Council, and compensate actuaries, accountants, and attorneys as it may deem necessary to carry out its duties hereunder. The expenses of the administration of the Fund shall be paid from the assets of the Fund.

(e) To make all decisions pertinent to the award of any pension to any applicant or participant or for the return of any individual contributions to any person who may be entitled to the same under the Pension Fund.

(f) The Board shall have the authority to retain, upon approval of the Borough Council, any trustee for the management of the Pension Fund, and it shall have the authority to designate the depository of the Pension Fund.

Section 3. Determination of Benefits.

The Board shall have full power and authority to make all decisions in accordance with the terms of this Ordinance including, but not limited to, the following:

(a) To determine all questions relating to the eligibility of officers to become participants in the Plan.

(b) To compute and certify to the corporate fiduciary appointed by the Borough Council, the amount and kind of benefits payable to participants.

(c) To make and publish such rules and regulations for the administration of the Pension Fund as are not inconsistent with the terms of this Ordinance.

The Borough Council shall supply full and timely information to the Board on all matters relating to the pay of all members of the police force, their retirement, death or other cause for termination of employment and such other pertinent data as the Board may require to carry out its duties and responsibilities hereunder. The Board shall be responsible to transmit to the corporate fiduciary of the Pension Fund such information as it requires to carry out its responsibilities under its agreement with the Borough.

Section 4. Rights of Participants.

Any member of the Police Pension Fund shall have the right to:

(a) Inquire of the Board as to his or her status or condition in the Pension Fund, including prospective benefits to which such member may be entitled in the future.

(b) To examine records of the Board pertaining to his or her pension records.

(c) To appear personally before the Board with or without counsel and to be heard on any matter pertaining to his or her rights under the Plan.

Article 6. Election of Officers; Meetings; Records.

The Board shall annually elect a Chairman and a Secretary from among its official members. The Treasurer of the Borough of Columbia

shall serve as Treasurer of the Fund. Three (3) members of the Board shall constitute a quorum for all purposes. The Treasurer and the aforesaid Solicitors, shall not, for any purpose, be deemed to be an official member of the Board, nor shall they be entitled to vote at any meetings of the Board, but they shall be entitled to attend all such meetings and to participate in any discussions therein. The Board shall meet at least semi-annually, or more often if necessary, and shall keep minutes and records of its proceedings, decisions, and findings; and shall annually, or when requested by the Mayor or the Council of the Borough, make a complete and detailed financial statement to the Council. Both the official and ex-officio members of the Board shall receive written notification of date, time and location of each Board meeting from the Board Secretary, at least seven (7) days in advance of such meeting date. All books and records of the Board shall be open to inspection by any Board member, member of Borough Council, other Borough official, any Borough citizen or the agent or representative of any such person, at all reasonable times. The accounts of the Board shall be annually audited by the auditors of the Borough, or in such other manner as the Board and the Council may determine.

Article 7. Membership Compulsory.

All full-time police officers of the Borough of Columbia shall be included in the Police Pension Plan hereby established. Membership in said Plan is and shall be compulsory for all full-time members of the said police force. All rights and privileges vested in any full-time member of the police force by virtue of Ordinance No. 326 of this Borough shall continue in force and effect and shall be deemed hereby

to be transferred to the Police Pension Plan hereby created and to the Fund hereby created.

Article 8. Maintenance of the Fund.

The Fund hereby established shall be maintained by monies or other assets received from the following sources:

- (a) By such amount, as determined by the Borough Council, of payments received from the Treasurer of the Commonwealth of Pennsylvania from the monies received from taxes paid upon premiums by foreign casualty and foreign fire insurance companies for purposes of pension retirement benefits for members of municipal plans;
- (b) By contributions from each member of the police force;
- (c) By appropriations made by the Borough Council from the General Fund of the Borough;
- (d) By gift, grant, devise or bequest of money or property, real, personal or mixed, to or in trust for the use of the Fund.

Article 9. Members' Contributions.

All full-time police officers shall pay into the Columbia Police Pension Fund monthly, five percent (5%) of their gross monthly salary. Said payments shall be made by each full-time member of the police department during such periods of time as required by Borough Council.

Article 10. Application of Certain Receipts.

- (a) The amount of the payments made by the State Treasurer from the monies received from taxes paid upon premiums by foreign casualty

and foreign fire insurance companies which are determined by the Borough Council to be deposited in the Fund shall be used and applied as follows:

- (1) To reduce any unfunded liability, defined as the present value of the liability of the Fund on account of retirement benefits payable under this Ordinance to members of the police force for service prior to the date upon which they first made contributions to the Plan, offset by the value of any assets transferred to the Plan from a previous pension fund; or after such liability has been funded,
- (2) To apply against the annual obligation of the Borough for future service cost, defined as the amount of money required to be contributed annually into the Plan on account of benefits payable under this Ordinance to members of the police force for service subsequent to the date of the establishment of the Plan; or to the extent that the payment made be in excess of such obligation,
- (3) To reduce member contributions. Any other monies paid into the Fund shall be applied equally against the member and Borough obligations for future service cost.

Article 11. Adjustment of Member Contributions.

If an actuarial study shows that the condition of the Fund is such that payments into the Fund by members may be reduced below the percentages prescribed in Article 9 hereof, or eliminated, and that if such payments are reduced or eliminated, contributions from the General Fund of the Borough will not be required to keep the Fund

actuarially sound, the Board may recommend to the Council that such contributions be reduced or eliminated, whereupon the Borough Council may, by resolution, on an annual basis, reduce or eliminate payments into the Fund by members.

Article 12. Payments from the Fund.

Payments from the Fund shall only be made by direction of the Board. All checks on said Fund shall be signed by the Treasurer of the Borough and countersigned by the Chairman of the Board.

Article 13. Retirement, Eligibility and Benefits.

Section 1. Minimum Service and Age Requirements.

(a) A member of the police force may retire from active duty after a minimum period of twenty-five (25) years total service with the Borough and having attained a minimum age of fifty (50) years.

(b) Notwithstanding the provisions of Paragraph (a) of this Section, a member of the police force employed on or before October 21, 1965, for whom a pension fund had theretofore been established and who attains the age of sixty (60) years, may retire after a period of total service with the Borough of twenty (20) years.

(c) A member of the police force meeting the minimum age and service requirements of this Section may be retired from the police force upon thirty (30) days written notice to the Borough by the member with payments to begin as soon as administratively feasible.

Section 2. Retirement Benefits.

(a) Upon retirement, a member of the police force shall receive a monthly pension equal to one-half (½) of his monthly average salary during the last thirty-six (36) months of his employment as a police officer for the Borough of Columbia.

(b) In addition, any member whose total service shall exceed twenty-five (25) years, shall also receive a monthly service increment equal to twenty (\$20.00) dollars for each year of service beyond twenty-five (25) years, to a maximum of one hundred (\$100.00) dollars per month additional payment.

Section 3. Adjustment of Benefits.

Upon recommendation by the Board, the Council may, in its sole discretion, by ordinance or resolution, provide for the payment from the Fund in addition to the benefits provided in Section 2 of this Article the following:

(a) A cost of living increase, provided, however, that:

(1) Such cost of living increase shall not exceed the percentage increase in the Consumer Price Index from the year in which the member last worked;

(2) In no case shall the member's total benefit exceed seventy-five percent (75%) of the salary for computing retirement benefits described in Section 2 hereof;

(3) The total cost of living increases shall not exceed thirty percent (30%) of the retirement benefit provided in Section 2 hereof; and

(4) The cost of living increase shall not impair the actuarial soundness of the Fund.

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Section 4. Vesting.

(a) Should a member of the police force, before meeting the minimum service and age requirements of Section 1 of this Article, but after having completed twelve (12) years of total service with the Borough, for any reason cease to be employed as a full-time police officer of the Borough, such member shall be entitled to vest his retirement benefits by filing with the Council within ninety (90) days of the date he ceases to be a full-time police officer, a written notice of this intention to vest.

(b) A member vesting his retirement benefits, upon reaching the date he would have qualified to receive such benefits if he had continued to be employed as a full-time police officer of the Borough, shall be paid a partial retirement benefit determined as follows: the percentage which such member's actual years of service bears to the years of service he would have rendered had he continued to work until reaching the minimum service and age requirements of Section 1 of this Article shall be applied to an amount equal to one-half ($\frac{1}{2}$) of such member's monthly average salary during the last thirty-six (36) months of his employment with the Borough as a full-time police officer, and the amount so determined shall be such member's retirement benefit.

Section 5. Reserve Status.

Persons so retired shall be subject to service from time to time as police reserve, in case of riot, tumult or preservation of the public peace, until such time as they become unfitted for such service when they may be finally discharged by reason of age or disability.

While on duty as police reserves, retired officers shall be paid as wages, in addition to their regular pension, the same hourly rate of pay as is paid at such time to full-time active members of the Police Department, with like years of service.

Article 14. Disability and Survivors Benefits.

Section 1. Disability Eligibility.

In the event that a member of the police force shall incur a disability as a result of injury or illness incurred in the course of his employment as a police officer, such disabled member shall be retired and be entitled to receive the benefits provided in Section 2 of this Article, regardless of age or length of service.

Section 2. Disability Benefits.

In the event that a member is determined by the Board to have suffered a permanent and total service connected disability, said member shall be entitled to receive a monthly disability benefit, for so long as the disability continues, equal to fifty percent (50%) of his monthly salary averaged over the thirty-six (36) months immediately preceding the date of disability.

For the purpose of this Section, "service connected disability" shall be defined as meaning total and permanent disability of a member resulting from a condition arising out of and incurred in the course of his employment, and which is compensable under the applicable provisions of Act of June 2, 1915 (P.L. 736, No. 338), known as "The Pennsylvania Workmen's Compensation Act", or the Act of June 21, 1939 (P.L. 556, No. 284), known as "The Pennsylvania Occupational Disease Act". In determining whether the injury is

permanent, the Board may rely upon a certification to the Board by a physician designated by the Board, after a medical examination of the member made at his place of residence or a place mutually agreed upon, that said member is unable physically or mentally to perform his duties and is physically or mentally unable to engage in employment as a police officer.

Once every year the Board may require any member receiving disability benefits to undergo medical examination by a physician designated by the Board, and such examination shall be made at the place of residence of the member or other place mutually agreed upon. Should the physician report and certify to the Board that such disabled member is no longer physically or mentally incapacitated for the performance of duty and is able to engage in employment as a police officer, then his disability benefits shall be discontinued.

Should a member receiving disability benefits refuse to submit to at least one medical examination in the year by a physician designated by the Board, his disability benefits shall be discontinued until withdrawal of such refusal and should such refusal continue for one year, then all his right in and to any disability benefits shall be forfeited.

Section 3. Survivors' Eligibility.

In the event that an active member of the police force shall be killed or die of injury or illness incurred in the course of his employment as a police officer, or a retired member dies after becoming entitled to benefits under this Ordinance, and such member is survived by a spouse, or, if no spouse survives, is survived by a child or children not having attained the age of eighteen (18) years,

such spouse, or child or children shall be entitled to receive the benefits described in Section 4 of this Article.

Section 4. Survivors' Benefits.

(a) Spouse:

(1) The surviving spouse shall receive a monthly benefit equal to fifty percent (50%) of the amount a deceased active member would have been entitled to receive had he been eligible for retirement as of the date of his death, or was receiving, if retired.

(2) The benefit being received by a surviving spouse shall cease in the event of remarriage or upon death.

(b) Children:

(1) The child or children of a deceased member not survived by a spouse, or upon the remarriage or death of a spouse, shall receive a monthly benefit equal to fifty percent (50%) of the amount a deceased active member would have been entitled to receive had he been eligible for retirement as of the date of his death, or was receiving, if retired.

(2) The benefit being received by a child or children shall cease upon the youngest child attaining the age of eighteen (18) years. There shall be no reduction in the total benefit payable under this paragraph to the remaining child or children of a class upon one or more of them attaining the age of eighteen (18) years.

(3) It is the intent of this Section that should there be more than one child of a deceased member not survived by

a spouse, or upon remarriage or death of a spouse, the monthly benefit shall be shared equally by such children.

Article 15. Computation of Service; Military Credits.

In computing the aggregate of twenty-five (25) years' service, any member of the police force employed by the Borough who has been a regularly appointed employee of the Borough as a policeman for a period of at least six (6) months and who thereafter shall enter into the military service of the United States, shall have credited to his employment record for pension or retirement benefits all of the time spent by him in such military service, if such person returns or has heretofore returned to his employment within six (6) months after his separation from the military service.

Article 16. Proceeds from Retirement Income and Retirement Annuity Policies.

All monies received from the surrender of Retirement Income policies and Retirement Annuity policies owned by the Fund shall be deposited to the Fund established by this Ordinance.

Article 17. Assets may be Invested.

Assets of the Fund hereby created may be invested by the Board in "legal investments" or "authorized investments" as defined in the Fiduciaries Investment Act of May 26, 1949, P.L. 1828, as presently amended and supplemented, or as hereafter amended or supplemented, and shall not be invested in any other manner.

Article 18. Participants Entitled to Benefits.

No person participating in the Police Pension Fund established by this Ordinance who becomes entitled to receive a benefit therefrom shall be deprived of his right to an equal proportionate share in the said Fund upon the basis upon which he first became entitled thereto.

Article 19. Refund.

Any member of the police department of the Borough who, for any reason whatsoever, shall be ineligible to receive a pension from the Fund or who shall cease to be a member of the police department for any reason or in any manner other than pursuant to retirement from active service in accordance with the terms and provisions of this Ordinance and the aforesaid Acts of the General Assembly, shall be entitled to a refund of one hundred percent (100%) of the total amount of monies paid by him to the Fund, with interest calculated at the rate of two percent (2%) per annum, immediately upon discontinuance of his employment with the police department or immediately upon determination of his ineligibility to receive a pension. If discontinuance of employment with the police department of ineligibility to receive pension is due to death, refund of such monies shall be paid to the beneficiary designated by such member of the police department or, in the absence of designation of a beneficiary, to the estate of such deceased member of the police department. In the event of the death of a member of the police department retired from active duty before he shall have received as monthly pension benefits an amount of money equivalent to the amount of his contributions or payments into said Fund, with interest, the

difference between the amount he has received as monthly pension benefits and one hundred percent (100%) of his payments or contributions into the Fund, with interest, shall be paid to his designated beneficiary, or in the absence of designation of a beneficiary, to his estate.

Article 20. Payments not Subject to Attachment, Garnishment, or Other Legal Process.

Any 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 retired member of the police department or to the designated beneficiary of a member or the estate of a member or to the widow or minor children of a member killed in the service of the Borough, as hereinabove provided, and shall not be subject to assignment or transfer.

Article 21. Pension Provisions Conform to State Law.

The provisions of this Ordinance shall be deemed to be subject to change, alteration, modification, or repeal to comply with any future provisions of any Act or Acts of the General Assembly of the Commonwealth of Pennsylvania in relation to pension benefits for members of a police force of a Pennsylvania Borough consisting of the number of members employed by the Borough of Columbia. This Ordinance shall be deemed to be made and enacted pursuant to and in conformity with the hereinabove recited Acts of the General Assembly of the Commonwealth of Pennsylvania of May 29, 1956 and July 10, 1957, or of any amendments of said Acts hereinafter enacted.

Article 22. Pension Board Subject to the Council.

The Columbia Police Pension Board shall be deemed to exist subject to the power and authority of the Council of the Borough of Columbia and any decisions or determinations of said Board may be reviewed by said Council with the right hereby reserved by the Council to overrule, amend, modify, alter, or change any decisions or determinations of said Board in such a manner and to such extent as may be deemed proper by the Council.

Article 23. Validity.

If any section, provision, sentence, clause, or part of this Ordinance or the application thereof to any person or circumstance is held unconstitutional, illegal, or invalid, such unconstitutionality, illegality, or invalidity shall not affect or impair any of the remaining sections, provisions, sentences, clauses, or parts of this Ordinance and the application thereof to other persons or circumstances. It is hereby expressly declared by the Council and the Mayor of the Borough of Columbia that this Ordinance would have been adopted and approved had such unconstitutional, illegal, or invalid section, provision, sentence, clause, or part not been included herein.

Article 24. Repealer.

All terms and conditions of prior Ordinances, Resolutions or Motions of the Borough Council are hereby repealed and are of no force and effect, except that any benefits that have accrued under such

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Ordinances, Resolutions and Motions shall continue, as long as the same are not inconsistent herewith or with Act 600, as amended.

Article 25. Effective Date.

The terms and conditions of this Ordinance shall become effective as of January 1, 1989.

RESOLVED AND ENACTED, this 13TH day of NOVEMBER, 1989.

ATTEST:

Margaret L. Meyers
Borough Secretary

Sylvester F. Devine
President of Borough Council

Ross J. Nichols
Mayor, Borough of Columbia

BEFORE THE BOROUGH COUNCIL OF THE BOROUGH OF COLUMBIA
ORDINANCE NO. 652

Amending Ordinance No. 605 of the Borough of Columbia (Police Pension Fund) to provide for inclusion of overtime earnings in the definition of "monthly average salary".

WHEREAS, the Columbia Borough Police Pension Fund Ordinance presently provides in Article 1, Definitions, "monthly average salary" as follows:

Monthly Average Salary - A member's average base monthly compensation for the period of the last thirty-six (36) months prior to the date he becomes entitled to any benefit under this Ordinance; provided, however, that if a member becomes entitled to a benefit before he has been employed as a police officer for a period of thirty-six (36) months, then "monthly average salary" shall be the average base monthly compensation for all of the months he has been so employed. Base monthly compensation shall include salary plus any longevity pay and holiday pay.

NOW THEREFORE THE SAME IS HEREBY AMENDED AS FOLLOWS:

Monthly Average Salary - A member's average base monthly compensation for the period of the last thirty-six (36) months prior to the date he becomes entitled to any benefit under this Ordinance; provided, however, that if a member becomes entitled to a benefit before he has been employed as a police officer for a period of thirty-six (36) months, then "monthly average salary"

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shall be the average base monthly compensation for all of the months he has been so employed. Base monthly compensation shall include salary plus any longevity pay, overtime pay, and holiday pay.

RESOLVED AND ENACTED this 14TH day of

FEBRUARY, 1994.

ATTEST:

Margaret E. Meyers
Margaret E. Meyers
Borough Secretary

Richard Clark Jr.
Richard W. Clark, Jr.
President of Borough Council

Approved this 14TH day of FEBRUARY,
1994.

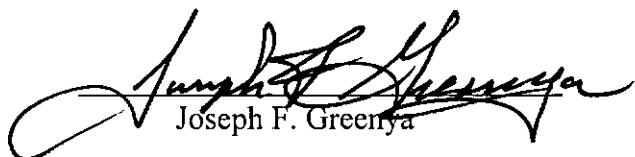
Sylvester F. Devine
Sylvester F. Devine, Mayor

13-06280

VERIFICATION

I, Joseph F. Greenya, verify that the statements made in the foregoing Complaint in Mandamus are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

Dated: June 27, 2013



Joseph F. Greenya

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA

PROTHONOTARY
CIVIL COVER SHEET

PLEASE LIST NAMES AND ADDRESSES OF ADDITIONAL PARTIES ON A SEPARATE SHEET.
PARTY ZIP CODES ARE REQUIRED & PARTY INFORMATION MUST MATCH THE PLEADING

TYPE OF ACTION: Complaint in Mandamus
and for Declaratory Judgment

For Prothonotary use only:

DOCKET No: CI- 13-06280

PARTY INFORMATION

PLAINTIFF'S NAME: Joseph F. Greenya

DEFENDANT'S NAME: Columbia
Borough

ADDRESS: 535 S. 12th Street
Columbia, PA 17512

ADDRESS: 308 Locust Street
Columbia, PA 17512

TELEPHONE #: 717-575-7329

TELEPHONE #: 717-684-2467

ENTERED AND FILED

13 JUN 28 PM 4:00

PROTHONOTARY'S OFFICE
LANCASTER, PA.

FILING ATTORNEY/ FILING PARTY INFORMATION

FIRM: Lightman Welby & Stoltenberg, LLC

FILING ATTORNEY/PARTY: Christopher J. Cook/Plaintiff AOPC (Attorney ID) #: 204362

ADDRESS: 2705 North Front Street

CITY: Harrisburg

STATE: PA ZIP CODE: 17110

TELEPHONE #: 717-234-0111

E-MAIL: cjcook.esq@msn.com

FAX #: 717-234-8964

SIGNATURE: 

PLEASE DO NOT STAPLE THE COVER SHEET TO THE PLEADING. IF AN EVENT NEEDS TO BE
SCHEDULED, A CAO SCHEDULING COVER SHEET MUST ALSO BE ATTACHED.



Supreme Court of Pennsylvania

Court of Common Pleas
Civil Cover Sheet
Lancaster

County

| | |
|-----------------------------------|------------------------|
| <i>For Prothonotary Use Only:</i> | <i>J. M. S. 7-444p</i> |
| Docket No: | 13-06280 |

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

| | | | | | | |
|--|--|--|--|-----------------------------------|--|--|
| Commencement of Action: | | <input checked="" type="checkbox"/> Complaint | <input type="checkbox"/> Writ of Summons | <input type="checkbox"/> Petition | <input type="checkbox"/> Declaration of Taking | 13 JUN 28 PROTHONOTARY OF LANCASTER PA. OFFICE : 00 FILED 2008 |
| Lead Plaintiff's Name: Joseph F. Greenya | | Lead Defendant's Name: Columbia Borough | | | | |
| Are money damages requested? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | | Dollar Amount Requested: (check one) | | | | |
| Is this a <i>Class Action Suit</i> ? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | | Is this an <i>MDJ Appeal</i> ? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | | | | |

Nature of the Case: Place an "X" to the left of the **ONE** case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

| | | |
|--|--|--|
| <p>TORT (do not include Mass Tort)</p> <ul style="list-style-type: none"> <input type="checkbox"/> Intentional <input type="checkbox"/> Malicious Prosecution <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Nuisance <input type="checkbox"/> Premises Liability <input type="checkbox"/> Product Liability (does not include mass tort) <input type="checkbox"/> Slander/Libel/ Defamation <input type="checkbox"/> Other: <hr/> <hr/> | <p>CONTRACT (do not include Judgments)</p> <ul style="list-style-type: none"> <input type="checkbox"/> Buyer Plaintiff <input type="checkbox"/> Debt Collection: Credit Card <input type="checkbox"/> Debt Collection: Other <hr/> <hr/> <ul style="list-style-type: none"> <input type="checkbox"/> Employment Dispute: Discrimination <input type="checkbox"/> Employment Dispute: Other <hr/> <hr/> <ul style="list-style-type: none"> <input type="checkbox"/> Other: <hr/> <hr/> | <p>CIVIL APPEALS</p> <p>Administrative Agencies</p> <ul style="list-style-type: none"> <input type="checkbox"/> Board of Assessment <input type="checkbox"/> Board of Elections <input type="checkbox"/> Dept. of Transportation <input type="checkbox"/> Statutory Appeal: Other <hr/> <hr/> <ul style="list-style-type: none"> <input type="checkbox"/> Zoning Board <input type="checkbox"/> Other: <hr/> <hr/> |
| <p>MASS TORT</p> <ul style="list-style-type: none"> <input type="checkbox"/> Asbestos <input type="checkbox"/> Tobacco <input type="checkbox"/> Toxic Tort - DES <input type="checkbox"/> Toxic Tort - Implant <input type="checkbox"/> Toxic Waste <input type="checkbox"/> Other: <hr/> <hr/> | <p>REAL PROPERTY</p> <ul style="list-style-type: none"> <input type="checkbox"/> Ejectment <input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Ground Rent <input type="checkbox"/> Landlord/Tenant Dispute <input type="checkbox"/> Mortgage Foreclosure: Residential <input type="checkbox"/> Mortgage Foreclosure: Commercial <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Other: <hr/> <hr/> | <p>MISCELLANEOUS</p> <ul style="list-style-type: none"> <input type="checkbox"/> Common Law/Statutory Arbitration <input type="checkbox"/> Declaratory Judgment <input checked="" type="checkbox"/> Mandamus <input type="checkbox"/> Non-Domestic Relations <input type="checkbox"/> Restraining Order <input type="checkbox"/> Quo Warranto <input type="checkbox"/> Replevin <input type="checkbox"/> Other: <hr/> <hr/> |
| <p>PROFESSIONAL LIABILITY</p> <ul style="list-style-type: none"> <input type="checkbox"/> Dental <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional: <hr/> <hr/> | | |