

**Article IX — Amendment, Termination & Merger**

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## Article IX — Amendment, Termination & Merger

### § 17-901 Amendment.

(a) **In General.** Subject to the provisions of subsection (b) and the procedural requirements of the Municipal Pension Plan Funding Standard and Recovery Act, 53 PA. STAT. ANN. § 895.101 *et seq.* and other applicable laws, the Borough Council of the Sponsor shall have the right at any time, and from time to time, to amend in whole or in part, any or all of the provisions of this Plan and Trust, by Ordinance.

(b) **Prohibited Amendments.** No amendment under this Section shall be effective to the extent that it shall—

(1) **Exclusive Benefit.** Authorize or permit any part of the Trust Fund to revert to or become the property of the Employer or any Related Employer, or to be used or diverted to purposes other than the exclusive benefit of the Participants, Beneficiaries, and Alternate Payees, prior to the satisfaction of all liabilities to such persons, except as permitted under ERISA and the Code for qualified retirement plans which are government plans;

(2) **Accrued Rights.** Cause any reduction in the accrued benefit of any Participant, Alternate Payee, or Beneficiary except as permitted under applicable law;

(3) **Trustees.** Affect the rights, duties, or responsibilities of the Trustees without the written consent of the Trustees.

(4) **Conformance to Applicable State Law.** Not conform to Act 600 of 1955, 53 PA. STAT. ANN. § 767, *et seq.* or any successor legislation authorizing or mandating retirement benefits for Qualified Employees.

(c) **Effect of Amendments on Inactive Participants.** No amendment under this Section shall be construed to increase or accelerate the benefits payable to any person with respect to a Participant who Separates from Service prior to the **later** of the effective date or the adoption date of the amendment, or provide any payments to any person who would not have received any benefits with respect to such a Participant under this Plan as in effect prior to the amendment, unless that Participant becomes an Active Participant again thereafter.

(d) **Retroactive Amendments.** The Borough Council of the Sponsor shall have the right to amend the Plan retroactively if necessary or appropriate to make the Plan conform to the requirements of any law or governmental regulation now or hereafter enacted or promulgated, or to qualify the Plan and Trust as exempt under existing or future federal, state, or local income or estate tax laws and regulations.

## § 17-902 Termination.

(a) **Right to Terminate Plan.** The Sponsor shall have the right to discontinue its contributions to the Plan and Trust and terminate its participation under this Plan by Ordinance at any time such action is permitted under applicable state and federal law.

(b) **Use of Funds Upon Termination; Reversion to Employer.** In case of termination of this Plan, the funds of the Plan and Trust shall be used for the exclusive benefit of Participants, former Participants, and beneficiaries to the extent of their rights under the Plan. However, if the Employer, because of experience gains, investment gains, or other results different from actuarial calculations, or for other reasons, shall have contributed funds in excess of the amount required to satisfy all liabilities of the Plan for benefits, then such excess shall be returned to the Employer.

(c) **Order of Payments in the Event of Shortfall.** In the event this Plan is terminated or the Employer discontinues making contributions to this Plan, the Administrator shall determine the share of the funds of the Plan and Trust allocable to each Participant in the following order, except as may be required by rule, regulation, or direction of the Internal Revenue Service, the Pension Benefit Guaranty Corporation, or the Pennsylvania Auditor General's office:

(1) Any benefits that Participants or beneficiaries have accrued to the date of termination or discontinuance of contributions, to the extent that these benefits are then funded or credited to their individual accounts, shall be non-forfeitable and payable to them. If the funds of the Plan are insufficient to provide for all such benefits in full, each benefit shall be reduced *pro rata*.

(2) To the extent that the accrued benefits are not funded or credited on an individual basis, they shall be payable in the following order:

(A) Each retired Participant or his beneficiary receiving a retirement benefit and each Participant who has not yet retired from employment with the Employer but who is entitled to retire and receive a Normal Retirement Benefit shall be entitled to a benefit equal to the reserve computed to be required to provide his full accrued benefits. If the funds of the Plan and Trust are insufficient to provide in full for all benefits under this subparagraph (A), then all benefits under this subparagraph (A) shall be reduced *pro rata*.

(B) After the benefits under the provisions of subparagraph (A) above have been set aside in full, each other person entitled to a benefit hereunder shall be entitled to a benefit equal to the reserve computed to be required to provide his accrued benefits. If the funds of the Plan and Trust are insufficient to provide in full for all benefits under this subparagraph (B), then all benefits under this subparagraph (B) shall be reduced *pro rata*.

**(d) Termination & Liquidation of the Trust.**

(1) **Termination of Trust.** Following a termination of the Plan, the Sponsor may terminate the Trust if permitted by applicable law. In that event, the Trustees may require that all interests in the Trust be distributed as soon as practicable in a lump sum cash distribution, in immediate annuities, in deferred annuities, or in other periodic payment forms as permitted by the Administrator and elected by the recipient.

(2) **Continuation of Trust.** Following a termination of the Plan, the Sponsor may also elect to continue the Trust if permitted by applicable law. In that event, the Trust shall pay benefits at the times specified in Article III to the extent of the benefits accrued through the date of Plan termination and available under the Trust.

(3) **Termination of Trust Without Termination of Plan.** The Sponsor may also elect to terminate the Trust *without* terminating the Plan so long as the Sponsor directs the Trustees to transfer the assets of the Trust Fund to another funding medium for the Plan consistent with applicable law concerning qualified retirement plans and plans of Pennsylvania boroughs, and § 17-614 (relating to Exclusive Benefit Rule).

(e) **Termination or Spin-Off by Related Employer.** Any Related Employer (or former Related Employer) which has adopted this Plan and Trust may at any time elect to terminate its participation in this Plan and Trust by written notice to the Administrator and the Trustees, to the extent permitted by state and federal law. In such event, the Trustee shall segregate assets attributable to employer and employee contributions (and liabilities allocable to investments thereof) made by or with respect to employees of the Related Employer from the Trust Fund and distribute such assets in accordance with the written directions of the (former) Related Employer (consistent with applicable law concerning qualified retirement plans and § 17-614 (relating to Exclusive Benefit Rule)). Any election by a Related Employer under this subsection (e) shall be deemed an amendment and separation of the Related Employer's plan and trust from the provisions of this Plan and Trust Agreement, and not a termination of the Related Employer's plan, unless the Related Employer specifically terminates its plan.

**§ 17-903 Merger of Plans; Transfer of Assets.**

(a) **Definition.** For purposes of this Section, the term "merger" shall mean any merger or consolidation of this Plan and/or the Trust Fund with any other plan, or any transfer of the assets or liabilities of the Plan and/or the Trust Fund to any other plan.

(b) **Accrued Rights.** The terms of any merger must specify that if this Plan or its successor were to terminate immediately after the merger, each Participant shall receive a benefit which is not less than he would have received in the event this Plan terminated immediately before such merger.