

Article VI — Trust & Investments

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Article VI – Trust & Investments

§ 17-601 Establishment & Acceptance of Trust.

The Trustees shall receive all property which constituted the trust fund under the Prior Provisions of the Plan, and any contributions paid to them under this Plan in cash or other property approved by the Administrator for acceptance by the Trustees. All property so received, together with income on such property, shall be held, managed, and administered in trust pursuant to the terms of this Plan agreement, and shall constitute the Trust Fund under this Plan. The Trustees shall be responsible only for such sums as shall actually be received by them as Trustees. They shall have no duty to collect any sums from the Employer or the Participants, and shall have no duties and responsibilities other than those set forth in this Plan and Trust or as imposed by applicable law.

[Ord. 415 10-29-2003]

§ 17-602 Trustees.

(a) **Qualification.** A Trustee under this Plan may be any individual or corporation not prohibited from serving as a Trustee under § 17-801.

(b) **Initial Trustees.** The initial Trustees shall be the members of the Borough of Albur-tis Pension Committee as of the Effective Date, *provided* that no person shall be a Trustee unless and until he/she signs a document accepting the Trust and agreeing to perform the duties of a Trustee under this Plan and Trust.

(c) **Joint Trustees.** If at any time there is more than one (1) Trustee, the decision of the majority of the Trustees shall determine the actions of the Trustees. Notwithstanding the foregoing, the Administrator may allocate responsibilities among the Trustees from time to time by written notice to the Trustees. In such case, a Trustee (the “**first Trustee**”) shall not be liable, either individually or as a Trustee, for any breaches of duty or losses to the Plan and Trust arising out of the acts or omissions of a co-Trustee in connection with areas of responsibility allocated to the co-Trustee to the exclusion of the first Trustee **unless**—

(1) the first Trustee participates knowingly in, or knowingly undertakes to conceal, an act or omission of the co-Trustee, including knowing such act or omission is a breach of duty;

(2) by the first Trustee’s failure to comply with the standards set forth in § 17-803 with respect to his own areas of responsibility, the first Trustee enables the co-Trustee to commit a breach of duty; **or**

(3) the first Trustee has knowledge of a breach of duty by the co-Trustee and fails to make reasonable efforts under the circumstances to remedy the breach.

(d) **Resignation.** Any Trustee may resign at any time upon 15 days notice in writing to the Borough Council of the Sponsor and the Administrator.

(e) **Removal.** The Borough Council of the Sponsor may remove one or more of the Trustees at any time upon 15 days notice in writing to the Trustees and the Administrator. In addition, unless otherwise provided by Ordinance or Resolution of Borough Council, a Trustee shall automatically be removed from office upon his resignation or removal from the Borough of Alburdis Pension Committee or upon the expiration of his term of office on the Borough of Alburdis Pension Committee and the appointment of a successor.

(f) **Successor & Additional Trustees.** Upon the removal, resignation, or death of a Trustee, the Borough Council of the Sponsor **may** appoint a successor Trustee *provided* that the Board must act to insure that there will be at least one Trustee. In addition, at any time the Borough Council of the Sponsor may appoint one or more additional Trustees. All Trustees appointed under this subsection shall have the same powers and duties as those conferred upon the initial Trustees under this Plan and Trust. Unless otherwise provided by Ordinance or Resolution of Borough Council, all persons appointed to the Borough of Alburdis Pension Committee shall automatically be appointed as Trustees of this Trust as well, *provided* that no person shall be a Trustee unless and until he/she signs a document accepting the Trust and agreeing to perform the duties of a Trustee under this Plan and Trust.

(g) **Transfer of Assets to New Trustees.** Upon the appointment of a successor or additional Trustee under subsection (f), the former body of Trustees (or their personal representatives) shall assign, transfer, and pay over to the new or reconstituted body of Trustees the funds and properties then constituting the Trust Fund. However, the former body of Trustees are authorized to reserve such sum of money as may seem to them advisable for payment of their fees and expenses in connection with the settlement of their accounts; any balance of such reserve remaining after the payment of such fees and expenses shall be paid over to the new or reconstituted body of Trustees as soon as possible.

[Ord. 415 10-29-2003]

§ 17-603 Investment of the Trust Fund.

(a) **In General.** Except as provided in this Section and §§ 17-605 (relating to Investment Managers), and 17-609 (relating to limiting directions from the Administrator), the Trustees shall have the power to invest and re-invest at any time all money or other property of any description held by them and constituting part of the Trust Fund. They may make such investments in any manner they deem advisable (subject to the duty of care required under § 17-803 and the other fiduciary requirements of Article VIII) and will not be limited to investments which are lawful for Trustees, so long as such investments are permitted under Pennsylvania law for municipal retirement plans and do not disqualify this Plan for general municipal pension system state aid. For example, without limiting the generality of the foregoing, the Trustees may invest in bonds, notes, mortgages, property, oil, gas, and mineral rights, royalties, or interests, life insurance, annuity contracts, other contracts, choses in action, and shares or certificates of participation issued by investment companies or investment trusts. However, in making investments, the Trustees shall keep in mind the need for a certain degree of liquidity in order to provide benefits under this Plan.

(b) **Location.** The Trustees may not maintain the indicia of ownership of any assets of the Plan and Trust outside the jurisdiction of the United States District Courts.

[Ords. 415 10-29-2003, 432 12-29-2004]

§ 17-604 Life Insurance Policies and Annuity Contracts.

(a) **Restrictions on Purchase.** The Trustees may only invest in insurance policies on the lives of Participants to the extent approved by the Department of the Auditor General for inclusion in Act 600 municipal police pension plans eligible for general municipal pension system state aid, and may only invest in annuity contracts on the lives of Participants which are retirement annuity policies, retirement income endowment policies, disability income policies, a combination of such policies, or other annuity contracts permitted under Pennsylvania law and approved by the Department of the Auditor General for inclusion in municipal pension plans eligible for general municipal pension system state aid.

(b) **Requirements for Permitted Contracts.** The Trustee may apply for permitted insurance or annuity contracts on any day of any month, and may continue to hold contracts on the lives of Inactive Participants which were purchased earlier. Each contract shall provide that the Trustees shall be the owner of such contract while it is held under this Trust, and that it may be cash surrendered or exchanged for another policy before the insured or annuitant attains the Normal Retirement Age (at least). All rights, options, and privileges which are available by the terms of such contracts shall be vested *exclusively* in or exercised *solely* by the Trustees. Benefits under such contracts shall be paid to the Trustees. The benefits of a Participant or Beneficiary under this Plan shall not be effected in any way by whether this Plan elected to invest in insurance or annuity contracts or the amount of payments received by the Trustees under such contracts; such contracts are merely investments of the Plan for the purpose of funding the Plan's benefit obligations under Article III (as are any other investments) and do not constitute independent and/or additional benefits to any Participant or Beneficiary. In the event of any conflict between the terms of this Plan and the terms of any insurance or annuity contract purchased hereunder, the Plan provisions shall control.

[Ords. 415 10-29-2003, 432 12-29-2004]

§ 17-605 Investment by Investment Managers.

(a) **In General.** The Administrator may appoint one or more persons qualified under subsection (b) to be Investment Managers under this Plan, with powers to manage, acquire, and/or dispose of specified assets in the Trust. Each such appointment shall specify the powers granted to the Investment Manager, the assets involved, and the duties and responsibilities, if any, of the Trustees with respect to the assets subject to investment by the Investment Manager. The Administrator shall have the authority and responsibility for establishing operational and administrative procedures to coordinate the activities of the Trustees and any Investment Manager. The Trustees shall have no obligation to take any action with respect to those assets of the Trust subject to the direction of an Investment Manager without receipt of written directions acceptable to the Trustees from the Investment Manager, and the Trustees shall be under no duty to

review such directions. The Administrator may revoke an appointment under this Section or change its terms at any time. Upon receipt of a written notice from the Administrator of the resignation or removal of an Investment Manager, the Trustees shall assume management responsibility for the assets previously appointed to the direction of the Investment Manager .

(b) Qualification. An Investment Manager must be **either**—

(1) registered as an investment adviser under the Investment Advisers Act of 1940;

(2) a bank (as defined in the Investment Advisers Act of 1940); **or**

(3) an insurance company qualified to perform the duties of an Investment Manager under the laws of more than one State.

(c) Acceptance & Communication. A person appointed under subsection (a) shall not exercise the powers of an Investment Manager **until** he has acknowledged in writing that he is a Fiduciary under this Plan **and** until the appointment and acknowledgment have been transmitted to the Administrator and the Trustees.

(d) Security Transactions. If an Investment Manager appointed pursuant to this Section elects to place security transactions directly with a broker or dealer, the Trustees shall not recognize such transactions unless and until the Trustees have received instructions or confirmations from the Investment Manager in such manner of communication customary to the Trustees. Should the Investment Manager direct the Trustees to utilize the services of any person with regard to the assets under its management or control, such instructions shall specifically set forth the actions to be taken by the Trustees as to such services. In the event that an Investment Manager places security transactions directly or directs the utilization of services, the Investment Manager shall be solely responsible for the acts of the persons utilized. The sole duty of the Trustees as to such transactions shall be incident to the Trustees' practices as a custodian.

(e) Release and Indemnification of Trustee. To the extent that the Trust is subject to the direction of an Investment Manager—

(1) the Trustees shall not be responsible nor have any liability for acting pursuant to any direction of the Investment Manager or failing to act in the absence of any direction from the Investment Manager (except as may otherwise be imposed by applicable law), and shall not be required to consult with or advise the Administrator or the Employer regarding the investment quality of any investments; **and**

(2) the Employer shall indemnify and hold the Trustees harmless from any and all losses or claims which arise with respect to the Trust,

unless the Trustees—

(A) knowingly participate in or knowingly conceals an act or omission of the Investment Manager, knowing such act to be a breach of fiduciary duty;

(B) have enabled the Investment Manager to commit a breach by failing to discharge the Trustees' duties in accordance with the fiduciary requirements of Article VIII and applicable law; **or**

(C) has knowledge of a breach of fiduciary responsibility by the Investment Manager and fails to make reasonable efforts under the circumstances to remedy the breach.

[Ord. 415 10-29-2003]

§ 17-606 Other Powers of the Trustees.

Subject to the other provisions of this Article and the provisions of Article VIII (relating to Fiduciaries), the Trustees shall be entitled to exercise, in their own discretion, the following powers regarding the administration of the Trust Fund:

(a) **Purchase of Property.** To purchase, or subscribe for, any securities or other property and to retain the same in trust, regardless of whether such property is specifically authorized as a legal investment for trust funds under applicable law;

(b) **Disposition of Property.** To sell, exchange, convey, transfer, mortgage, pledge, lease, grant options with respect to, or otherwise dispose of any securities or other property held by the Trustees, by private contract or at public auction. No person dealing with the Trustees shall be bound to see to the application of the purchase money or to inquire into the validity, expediency, or propriety or any such sale or other disposition;

(c) **Exercise of Ownership Rights.** To vote any stock, bonds, or other securities; to give general or special proxies or powers of attorney, with or without powers of substitution; to exercise any conversion privileges, subscriptions rights, or other options, and to make any payment incidental thereto; to oppose, or to consent to, or otherwise participate in, corporate reorganizations or other changes affecting corporate securities, and to delegate discretionary powers, and to pay any assessments or charges in connection therewith; to manage, operate, improve, develop, repair, and preserve any real property or any oil, gas, or mineral properties, royalties, or interests; and generally to exercise any of the powers of an owner with respect to stock, bonds, securities, or other property held as part of the Trust Fund;

(d) **Registration of & Title to Investments.** To cause any securities or other property held as part of the Trust Fund to be registered in the name(s) of the Trustees or in the name(s) of one or more nominees of the Trustees, or to hold any investments in bearer form, **so long as** the books and records of the Trustees shall at all times show that all such investments are part of the Trust Fund;

(e) **Borrowing.** To borrow or raise money for the purposes of the Trust in such amount and upon such terms and conditions as the Trustees shall deem advisable. For any sum so borrowed, the Trustees may issue a promissory note as Trustees and secure repayment by pledging all, or any part, of the Trust Fund. No person lending money to the Trustees shall be bound to see to the application of the money lent or to inquire into the validity, expediency, or propriety of any such borrowing;

(f) **Collection.** To collect and receive any and all money and other property of whatsoever kind or nature due or owing or belonging to the Trust Fund and to give full discharge and acquittance therefor; and to extend the time of payment of any obligation at any time owing to the Trust Fund, as long as such extension is for a reasonable period, and continues reasonable interest;

(g) **Retention of Cash.** To keep such portion of the Trust Fund in cash or cash balance as the Trustees may from time to time deem to be in the best interests of the Trust, without liability for interest thereon;

(h) **Retention of Property Acquired.** To accept and retain for such time as the Trustees may deem advisable any securities or other property received or acquired as Trustees under this Plan, whether or not such securities or other property would normally be purchased as investments under this Plan;

(i) **Execution of Instruments.** To make, execute, acknowledge, and deliver any and all documents or transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers granted under this Plan;

(j) **Settlement of Claims & Debts.** To settle, compromise, or submit to arbitration any claims, debts, or damages due or owing to or from the Trust Fund; to commence or defend suits or legal or administrative proceedings; and to represent the Trust Fund in all suits and legal and administrative proceedings;

(k) **Employment of Agents & Counsel.** Subject to the prohibitions of § 17-801, to employ suitable agents, counsel, consultants, specialists, and accountants, any one of whom may also be so engaged by the Employer; to pay their reasonable expenses and compensation in the event the Employer has not so paid them; and to rely exclusively upon, and be fully protected in any action taken in good faith in relying upon, any opinions or reports which shall be furnished by any such accountant, counsel, specialist, or other consultant.

(l) **Incorporation.** To organize and incorporate under the laws of any state (or participate in the organization or incorporation of) a corporation for the purpose of acquiring and holding title to any property which the Trustees are authorized to acquire for the Trust Fund and to exercise with respect thereto any of the powers, rights, and duties they have with respect to other assets of the Trust Fund;

(m) **Pooling of Assets.** To transfer any of the assets of this Trust to any pooled investment fund or group trust (including those which have one or more trustees who are Trustees under this Trust) which has been ruled by the Internal Revenue Service to be, and which is, a qualified trust exempt from tax under the Code and which has been established for the purpose of permitting separate qualified pension and profit sharing trusts to pool some or all of their funds for investment purposes and as to which it has been ruled by the Internal Revenue Service that the pooling of funds by the separate trusts will not adversely affect the qualified status of the separate trusts. Any such common trust fund shall constitute an integral part of this Plan and Trust. The commingling of assets of this Trust with assets of other qualified participating trusts in such pooled funds is specifically authorized;

(n) **Legal Actions.** To prosecute, defend against, or participate in any legal actions involving the Trust or any Trustee in the manner and to the extent the Trustees deem advisable. The Trustees need not participate in any litigation concerning the Trust or the Trustees' management of the Trust unless first indemnified against expense by the Employer in a form satisfactory to the Trustee, unless the litigation is occasioned by the negligence or fault of the Trustee and the Trustee is found to be negligent or at fault pursuant to such litigation; **and**

(o) **Necessary Acts.** To do all such acts, take all such proceedings, and exercise all such rights and privileges as the Trustees may deem necessary to administer the Trust Fund and carry out the purposes of this Plan and Trust, even though not specifically mentioned in this document.

[Ord. 415 10-29-200]

§ 17-607 Rollovers.

No person may roll over any property to the Trust Fund which was received from other qualified plans, Code § 403(b) annuities, Code § 457 qualified deferred compensation plans, or similar programs (whether received directly or indirectly through an Individual Retirement Account, and whether as a “Direct Rollover” under Code § 401(a)(31) or a rollover via the Participant).

[Ords. 415 10-29-2003, 432 12-29-2004]

§ 17-608 Plan-to-Plan Transfers.

The Trustees may not accept transfers of assets from other qualified plans, Code § 403(b) annuities, Code § 457 qualified deferred compensation plans, or similar programs, to this Plan.

[Ords. 415 10-29-2003, 432 12-29-2004]

§ 17-609 Limiting Directions from the Administrator.

The Trustees shall comply with any directions given by the Administrator under § 17-703 (relating to limiting directions from the Administrator) as promptly as possible. The Trustees shall not be responsible for any loss which may result from compliance with the directions of the Administrator or the failure or refusal of the Administrator to approve any actions which require the Administrator’s approval, and the Employer shall indemnify and hold the Trustees harmless for any such loss.

[Ord. 415 10-29-2003]

§ 17-610 Distributions from the Trust Fund.

From time to time, the Trustees shall make payments out of the Trust Fund to such persons, in such manner, for such purposes, and in such amounts as may be specified in written directions by the Administrator. Such directions must be accompanied by a certificate executed by the Administrator or its designate that the payment is in accordance with this Plan. Once made, the amount of any such payment shall no longer constitute a part of the Trust Fund. The Trustees shall not be responsible in any way for the application of such payments or for the adequacy of the Trust Fund to meet and discharge any and all liabilities under the Plan.

[Ord. 415 10-29-2003]

§ 17-611 Administrative Payments.

(a) **Compensation of Trustees and Investment Managers.** Trustees who are also officers or employees of the Employer shall receive no compensation for their services as Trustees under this Plan. All other Trustees may be paid such reasonable compensation as shall from time to time be agreed upon in writing by the Borough Council of the Sponsor and the Trustees. Investment Managers shall be paid such fees as shall from time to time be agreed upon in writing by the Investment Manager and the Administrator. Trustee and Investment Manager fees may be paid by the Employer, but unless or until so paid they shall constitute a charge upon the Trust Fund.

(b) **Expenses.** The Trustees shall be reimbursed for any reasonable expenses, including reasonable counsel fees, incurred by them in the administration of the Trust. Such reimbursement may be made by the Employer, but unless or until so paid it shall constitute a charge upon the Trust Fund.

(c) **Taxes.** All taxes of any and all kinds whatsoever that may be levied or assessed (under existing or future laws) upon or with respect to the Trust Fund or the income of the Trust Fund shall be paid from the Trust Fund.

[Ord. 415 10-29-2003]

§ 17-612 Accounting.

(a) **Record Keeping.** The Trustees shall keep accurate and detailed accounts of all investments, receipts, disbursements, and other transactions under this Trust. All accounts, books, and records relating to such transactions shall be open to inspection and audit at all reasonable times by any person designated by the Administrator.

(b) **Reports to Administrator.** Within 60 days following the close of each fiscal year of the Trust, within 60 days following the effective date of the termination of the Plan or Trust, and within 60 days after the removal or resignation of a Trustee, the Trustees shall file with the Administrator a written account of all investments, receipts, disbursements, and other transactions affected by them during such fiscal year (or during the period from the close of the last fiscal year to the date on which the Trustee resigned or was removed, or the effective date of the termination of the Plan or Trust). Such account shall also set forth the current value of the Trust Fund and its assets. Neither the Administrator nor any other person shall be entitled to any further accounting by the Trustees, except as provided by law.

(c) **Discharge from Liability.** Thirty-one (31) days after an accounting has been filed under subsection (b), the Trustees shall be forever released and discharged from all liability and accountability to anyone with respect to the propriety of their actions and transactions shown in the accounting, **except** with respect to any actions or transactions as to which the Administrator has objected in a writing filed with the Trustees before such time. If such an objection is filed, the Trustees shall, unless the matter is compromised with the Administrator, file its account in any court of competent jurisdiction for audit and adjudication.

[Ord. 415 10-29-2003]

§ 17-613 Immunity.

(a) **Persons to whom Responsible.** No person other than the Employer or the Administrator may require an accounting or bring an action against the Trustees with respect to the Trust created under this Plan or their actions as Trustees.

(b) **Ordinary Negligence.**

The Trustees shall not be liable for the making, retention, or sale of any investment or re-investment made by them as provided under this Plan, nor for any loss to, or diminution of, the Trust Fund **unless** caused by their own gross negligence, willful misconduct, or lack of good faith.

(c) **Permitted Reliance.** The Trustees shall be fully protected in relying upon—

(1) **Action by the Administrator.** A certification by the Administrator or by any person designated by the Administrator (under § 17-702(b)) with respect to any instruction or direction of the Administrator. The Trustees may rely upon any such designation until they have received a revocation of same;

(2) **Other Writings.** Any instrument, certificate, or paper believed by them to be genuine and be signed or presented by the proper person or persons; the Trustees shall be under no duty to make any investigation or inquiry as to any statement contained in any such writing, but may accept the writing as conclusive evidence of the truth and accuracy of such statements.

[Ord. 415 10-29-2003]

§ 17-614 Purpose: Exclusive Benefit Rule.

Except as provided in § 17-402(d) (relating to return of contributions made on the basis of a mistake of fact), no assets of the Trust Fund, including investment income, shall be used for or diverted to any purpose other than the exclusive benefit of Participants, Alternate Payees, and Beneficiaries, or be used for any purpose other than to pay benefits to such persons or to pay administrative expenses of the Plan and Trust Fund to the extent not paid by the Employer, prior to the satisfaction of all liabilities under this Plan with respect to such persons.

[Ord. 415 10-29-2003]

§ 17-615 Standard of Care.

The Trustees, all agents, counsel, consultants, specialists, and accountants retained by them under § 17-606(k), and all Investment Managers under § 17-605 shall be subject to the fiduciary requirements detailed in Article VIII.

[Ord. 415 10-29-2003]