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## Article XIX — Amendment, Termination & Merger

### § 18-1901 Amendment.

(a) **In General.** Subject to the provisions of subsection (b), 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, 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.

[Ord. 415 10-29-2003]

### § 18-1902 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 at any time by Ordinance.

**(b) Plan Accounts.** Following a termination of the Plan or complete discontinuance of Employer contributions to the Plan, the amounts in the Forfeiture Account shall be allocated on the day of termination as if they were end-of-Plan-Year Employer contributions under Article V. Any amounts in the Suspense Account shall be returned to the Employer.

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

**(1) In General.** Except as provided in the remaining paragraphs of this subsection (c), following a termination of the Plan, the Sponsor shall terminate the Trust. In that event, the Trustees shall distribute the accounts of all Plan Participants, Alternate Payees, and Beneficiaries to such persons as quickly as possible under the provisions of Articles XII, XIII, and XIV as if the Plan and Trust termination were an event described in § 18-1201.

**(2) Distributions In The Event Any Required Consents Are Not Filed.** In the event the Trust is terminated under paragraph (1), if any recipients do not file a consent required under § 18-1203(c), the Plan and Trust may distribute non-transferable deferred commercial annuities which provide all of the optional forms of benefit and benefit commencement features that would have been available under this Plan if it had not been terminated, and which in all other respects comply with the provisions of Articles XII, XIII, and XIV.

Alternatively, the Sponsor may transfer their accounts to another qualified plan of the Employer (*provided* that all optional forms of benefits are preserved in the transferee plan, *or* the Participant, Beneficiary or Alternate Payee consents to the transfer), *or* the Sponsor may elect to terminate the Plan and trust conditioned on the receipt of adequate consents, and in the absence of adequate consents, choose to freeze the Plan and continue the Trust rather than terminate the Plan and Trust. In the latter case, the frozen Plan shall make distributions to Participants, Beneficiaries, and Alternate Payees at the times and in the manners specified in Articles XII, XIII, and XIV, and the Sponsor shall be obligated to make such amendments to the Plan and Trust as are necessary, from time to time, to retain its qualified status.

**(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 § 18-1613 (relating to Exclusive Benefit Rule).

**(d) 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 § 18-1613 (relating to Exclusive Benefit Rule)). Any election by a Related Employer under this subsection (d) 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.

**§ 18-1903 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.

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