

# *City of Brisbane*

## *Agenda Report*

To: City Council via City Manager

From: Stuart Schillinger, Administrative Services Director

Subject: Adopt Resolution No. 2015-04 Designating the PARS Public Agencies Post-Retirement Health Care Plan Trust

Date: February 5, 2015

### **Purpose:**

To ensure the City's maintains long-term financial viability while maintaining a capable and motivated workforce.

### **Recommendation:**

Adopt Resoluton No. 2015-04 which adopts the PARS public Agencies Post-Retirement Health Care Plan Trust, appoints the Administrative Services Director as the City's Plan Administrator, and authorizes the Plan Administrator to execute all of the necessary legal and administrative documents.

### **Background:**

On December 18, 2014 staff provided a staff report concerning the City's Other Post Employment Benefit liabilities and potential methods to fund them. City Council directed staff to work with Public Agency Retirement System (PARS) to set up a Trust where our obligations could be prefunded. The staff report recommended that the City contribute \$500,000 from General Fund reserves into the trust to offset a portion of the \$6,000,000 unfunded liability. The City use the Moderate portfolio which has an expected rate of return of 7.23% but fund it using the rate of return anticipated by the Moderately Conservative portofolio which is 6.26%. The difference between the the funding rate and the expected rate of return should allow the City to experience less volatility of funding over the life of the Trust.

### **Discussion:**

Staff has done additional analysis on funding our OPEB requirements since the last meeting. Staff analyzed the portion of the Unfunded Liability generated by staff in the Utility Fund and the Marina Fund. The amount is based on current retirees and expected cost of their Retiree Health and Stipend amounts. Staff also developed a funding formula for paying down the unfunded liability over time. Based on this the Utility Fund and the Marina Fund should also pay assist paying for the unfunded liability. The portion of unfunded liability related to already retired employees is about \$3.6 million dollars. The Utility Fund portion is 6.7% the Marina portion is 11.5% and the General Fund portion is 81.8%. If the City would like to contribute \$500,000 to reduce the amount of the unfunded liability due to currently retired employees the Utility Fund should pay \$33,500 and the Marina should pay \$57,500 and the General Fund should pay \$409,000. All three funds have the available reserves to pay these amounts.

On an on-going basis the City should pay the current amount generated by existing employees (Normal Cost) and should pay for the current liability of retired employees. As additional funds are available from reserves the City should make additional payments to reduce the unfunded liability.

The on-going cost of paying for the Normal Cost and the current portion of the retirees is \$480,000 for FY 2015/16. This amount will be included in the 2015/16 budget.

**Fiscal Impact:**

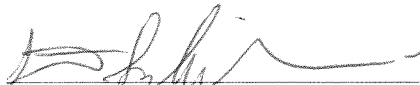
There will be additional costs allocated to the Utility Fund, Marina Fund and General Fund than was set aside for this purpose in previous years. This additional funding will reduce the City's unfunded liability and in the long-term reduce the amount of money needed to pay for this benefit as interest earnings will offset a portion of the cost of the benefit.

**Measure of Success**

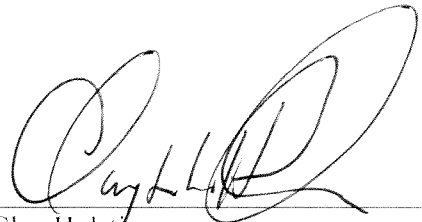
The City's OPEB Trust becomes fully funded over the next 20 – 30 years.

**Attachments:**

Resolution 2015-04



Stuart Schillinger  
Administrative Services Director



Clay Holstine  
City Manager

RESOLUTION NO. 2015-04

City of Brisbane  
San Mateo County, California

WHEREAS it is determined to be in the best interest of the City of Brisbane (the "City") to participate in the PARS Public Agencies Post-Retirement Health Care Plan Trust (the "Program") to fund post-employment benefits for its employees as specified in the City's policies and/or applicable collective bargaining agreements; and

WHEREAS the City is eligible to participate in the Program, a tax-exempt trust and plan performing an essential governmental function within the meaning of Section 115 of the Internal Revenue Code, as amended, and the Regulations issued thereunder, and is a tax-exempt trust under the relevant statutory provisions of the State of California; and

WHEREAS the City's adoption and operation of the Program has no effect on any current or former employee's entitlement to post-employment benefits; and

WHEREAS the terms and conditions of post-employment benefit entitlement, if any, are governed by contracts separate from and independent of the Program; and

WHEREAS the City's funding of the Program does not, and is not intended to, create any new vested right to any benefit nor strengthen any existing vested right; and

WHEREAS the City reserves the right to make contributions, if any, to the Program.

NOW THEREFORE, BE IT RESOLVED THAT:

1. The Council hereby adopts the PARS Public Agencies Post-Retirement Health Care Plan Trust, including the PARS Public Agencies Post-Retirement Health Care Plan, effective February 6, 2015; and
2. The Council hereby appoints the Administrative Services Director, or his/her successor or his/her designee as the City's Plan Administrator for the Program; and
3. The City's Plan Administrator is hereby authorized to execute the PARS legal and administrative documents on behalf of the City and to take whatever additional actions are necessary to maintain the City's participation in the Program and to maintain compliance of any relevant regulation issued or as may be issued; therefore, authorizing him/her to take whatever additional actions are required to administer the City's Program.

AYES:

NOES:

ABSENT:

ABSTAIN:

STATE OF CALIFORNIA  
COUNTY OF SAN MATEO

\_\_\_\_\_, the Clerk of the City Council of the City of Brisbane, of San Mateo County, California, hereby certifies that the above foregoing resolution was duly and regularly adopted by said City at a regular meeting thereof held on the \_\_\_\_\_, and passed by a \_\_\_\_\_ vote of said Council.

IN WITNESS WHEREOF I have hereunto set my hand and seal this \_\_\_\_\_, 2015.

\_\_\_\_\_  
City Clerk

**PUBLIC AGENCIES  
POST-RETIREMENT HEALTH CARE PLAN  
TRUST AGREEMENT**

**(amended and restated as of May 16, 2007)**

**ACCOUNT IS ENTERED INTO BY CLIENT  
AND U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE**

This document is entered into by U.S. Bank National Association ("U.S. Bank"), as trustee. U.S. Bank succeeded Union Bank, N.A. as the trustee on February 1, 2012. All references in this document and all account related documents to Union Bank of California, N.A. and/or Union Bank, N.A. ("Union Bank"), are replaced with U.S. Bank.

## ARTICLE I

### DEFINITIONS

- 1.1 “**Adoption Agreement**” shall have the meaning given to such term in Section 2.3.
- 1.2 “**Agency Account**” shall have the meaning given to such term in Section 2.4.
- 1.3 “**Agreement for Administrative Services**” shall mean the agreement executed between the Employer and the Trust Administrator which authorizes the Trust Administrator to perform specific duties of administering the Agency Account of the Employer.
- 1.4 “**Assets**” shall have the meaning given to such term in Section 2.5.
- 1.5 “**Code**” shall mean the Internal Revenue Code of 1986 as amended from time to time.
- 1.6 “**Delegatee**” shall mean an individual or entity, appointed by the Plan Administrator or Employer to act in such matters as are specified in the appointment.
- 1.7 “**Effective Date**” shall mean November 1, 2005, the date the Trust was established, and with respect to each Employer, the Effective Date shall be the date on which the Employer executes the Adoption Agreement.
- 1.8 “**Eligible Dependent**” shall mean any dependent of an Eligible Employee who is entitled to health care and welfare benefits after the termination of such Eligible Employee’s employment with the Employer pursuant to the Employer’s policies and/or applicable collective bargaining agreements.
- 1.9 “**Eligible Employee**” shall mean any employee of the Employer who is entitled to post-employment health care and welfare benefits pursuant to such Employer’s policies and/or applicable collective bargaining agreements. Unless the context otherwise requires, the term “Eligible Employee” as used herein shall include any Eligible Dependents.
- 1.10 “**Employer**” shall mean a public agency that executes the Adoption Agreement, thereby adopting the provisions of this Trust Agreement, provided that such agency is a state, a political subdivision of a state, or an entity the income of which is excludible from gross income under Section 115 of the Code.
- 1.11 “**GASB**” shall mean the Governmental Accounting Standards Board.
- 1.12 “**Omnibus Account**” shall mean an account, established for record keeping purposes only, to aggregate the balances of the Assets credited to the Agency Accounts. The Trust Administrator shall maintain and reconcile, at the Agency Account level, the investments of the Agency Accounts and will provide reports

to the Plan Administrator with respect to such investments. The Trustee will maintain a record of the aggregate balance (principal and earnings) for all Agency Accounts. The Trust Administrator will in the ordinary course of business maintain a record of the name, address, taxpayer identification number, account number and amount of funds, including earnings, of each Employer. On periodic valuation dates (no less frequently than monthly) to be established by the Trust Administrator, the Trustee and Trust Administrator will reconcile the aggregate balance information maintained by the Trustee with the Agency Account level records maintained by the Trust Administrator pursuant to this Trust Agreement.

- 1.13 “**OPEB**” shall mean “other post-employment benefits,” such as medical, dental, vision, life insurance, long-term care and other similar benefits provided to retirees, other than pension benefits.
- 1.14 “**OPEB Obligation**” shall mean an Employer’s obligation to provide post-employment health care and welfare benefits to its Eligible Employees as specified in such Employer’s policies and/or applicable collective bargaining agreements.
- 1.15 “**Plan**” shall mean the Public Agencies Post-Retirement Health Care Plan, adopted by each Employer as a separate Plan for that Employer upon the execution of an Adoption Agreement and the satisfaction of certain other requirements contained herein.
- 1.16 “**Plan Administrator**” shall mean the individual designated by position of employment at the Employer to act on its behalf in all matters relating to the Employer's participation in the Trust.
- 1.17 “**Trust**” shall mean the Public Agencies Post-Retirement Health Care Plan trust arrangement.
- 1.18 “**Trust Administrator**” shall mean Public Agency Retirement Services or any successor trust administrator appointed by the Employers as provided herein. The Trust Administrator shall serve as trust administrator to the Trust established pursuant to this Trust Agreement until such Trust Administrator resigns or is removed as provided in Article III.
- 1.19 “**Trust Agreement**” shall mean this Public Agencies Post-Retirement Health Care Plan trust document adopted by each Employer upon execution of an Adoption Agreement, as amended from time to time.
- 1.20 “**Trustee**” shall mean Union Bank of California, N.A., or any successor trustee appointed by the Employers as provided herein. The Trustee shall serve as trustee of the Trust established pursuant to the provisions of this Trust Agreement until such Trustee resigns or is removed as provided in Article III.

## ARTICLE II

### THE TRUST

#### 2.1 Multiple Employer Trust

The Trust is a multiple employer trust arrangement established to provide economies of scale and efficiency of administration to public agencies that adopt it to hold the assets used to fund its OPEB Obligation. The Trust is divided into Agency Accounts to hold the Assets of each Employer as described in Section 2.4.

#### 2.2 Purpose

The Trust is established with the intention that it qualify as a tax-exempt trust performing an essential governmental function within the meaning of Section 115 of the Code and any regulations issued thereunder and as a tax-exempt trust under the provisions of the relevant state's statutory provisions of each Employer. This Trust Agreement shall be construed and the Trust shall be administered in a manner consistent with such intention. The fundamental purpose of the Trust is to fund post-employment benefits (other than pension benefits), such as medical, dental, vision, life insurance, long-term care and similar benefits, offered by the Employer to its employees as specified in each Employer's policies and/or applicable collective bargaining agreements. It is intended that adopting Employers retain an interest in the underlying securities held in the Trust on their behalf, rather than in the Trust itself.

#### 2.3 Employers

Any public agency may, by action of its governing body in writing accepted by the Trustee, adopt the provisions of the Trust Agreement. Executing an adoption instrument for the Trust ("**Adoption Agreement**"), in the form attached hereto as Exhibit "A" (or such other form as may be approved by the Trustee), shall constitute such adoption, unless the Trustee requires additional evidence of adoption. In order for such adoption to be effective, the public agency must also execute an Agreement for Administrative Services with Public Agency Retirement Services, the Trust Administrator, pursuant to section 3.6 of this Trust Agreement. Such adopting Employer shall then become an Employer of the Trust.

Each such Employer shall, at a minimum, furnish the Trust Administrator with the following documents to support its adoption of the Trust:

- (a) a certified copy of the resolution(s) of the governing body of the Employer authorizing the adoption of the Trust Agreement and the appointment of the Plan Administrator for such Employer;

- (b) an original of the Adoption Agreement executed by the Plan Administrator or other duly authorized Employer employee;
- (c) an original of the Agreement for Administrative Services with Public Agency Retirement Services executed by the Plan Administrator or other duly authorized Employer employee and Public Agency Retirement Services;
- (d) an address notice; and
- (e) such other documents as the Trustee may reasonable request.
- (f) Any action taken by the Plan Administrator for an Employer shall be deemed to have been taken by such Employer. Any notice given to or delivered by the Plan Administrator for an Employer shall be deemed to have been given to or delivered by such Employer.

#### **2.4 Agency Accounts**

Upon an Employer's adopting the Trust Agreement, as provided in Section 2.3, a separate "**Agency Account**" shall be established under the Trust for that Employer, and all Assets of the Trust attributable to that Employer shall be held in that Employer's Agency Account. The Assets of the Trust that are held in an Employer's Agency Account shall be available only to pay post-employment health care and welfare benefits of Eligible Employees of that Employer (including reimbursement of the Employer for payments to health care providers with respect to such benefits) and shall not be available to pay any obligations incurred by any other Employer as provided in Section 2.8.

#### **2.5 Assets of Agency Account**

The assets held in an Agency Account shall consist of all contributions and transfers received by the Trust on behalf of the Employer, together with the income and earnings from such contributions and transfers, and any increments accruing to them, net of any investment losses, benefits, expenses or other costs ("**Assets**"). All contributions or transfers shall be received by the Trustee in cash or in other property acceptable to the Trustee. The Trustee shall manage and administer the Assets held in Agency Accounts without distinction between principal and income. The Trustee and the Trust Administrator shall have no duty to compute any amount to be transferred or paid to the Agency Account by the Employer, and the Trustee and the Trust Administrator shall not be responsible for the collection of any contributions or transfers to the Agency Account.

#### **2.6 Aggregate Balance for Investment and Administration**

The balances of the Assets of more than one Agency Account may be aggregated by the Trustee in one or more Omnibus Accounts for investment and administrative purposes, to provide economies of scale and efficiency of administration to the Agency Accounts. The responsibility for Plan and Agency



Account level accounting within this Omnibus Account(s) shall be that of the Trust Administrator.

**2.7 Trustee Accounting**

The Trustee shall be responsible only for maintaining records and maintaining accounts for the aggregate assets of the Trust. The responsibility for Plan level accounting for each Agency Account, based upon the Omnibus Account(s), shall be that of the Trust Administrator.

**2.8 No Diversion of Assets**

The Assets in each Agency Account shall be held in trust for the exclusive purpose of providing post-employment health care and welfare benefits to the Eligible Employees of the Employer for which such Agency Account was established and defraying the reasonable administrative and actuarial expenses of such Employer's participation in the Trust. The Assets in each Agency Account shall not be used for or diverted to, any other purpose, including, but not limited to, the satisfaction of any other Employer's OPEB Obligation.

**2.9 Type and Nature of Trust**

Neither the full faith and credit nor the taxing power of each Employer is pledged to the distribution of benefits hereunder. Except for contributions and other amounts hereunder, no other amounts are pledged to the distribution of benefits hereunder. Distributions of benefits are neither general nor special obligations of any Employer, but are payable solely from the Assets held in such Employer's Agency Account, as more fully described herein. No employee of any Employer or beneficiary may compel the exercise of the taxing power by any Employer.

Distributions of Assets from any Agency Account are not debts of any Employer within the meaning of any constitutional or statutory limitation or restriction. Such distributions are not legal or equitable pledges, charges, liens or encumbrances, upon any of an Employer's property, or upon any of its income, receipts, or revenues, except amounts in the accounts which are, under the terms of each Plan and the Trust set aside for distributions. Neither the members of the governing body of any Employer nor its officers, employees, agents or volunteers are liable hereunder.

**2.10 Loss of Tax-Exempt Status as to Any Employer**

If any Employer participating in the Trust receives notice from the Internal Revenue Service that the Trust as to such Employer fails to satisfy the requirements of Section 115 of the Code, or if any Employer consents to the Internal Revenue Service's determination that the Trust fails to meet such requirements, Assets having a value equal to the funds then held in such Employer's Agency Account shall be segregated and placed in a separate trust by the Trustee for the exclusive benefit of such Employer's Eligible Employees

within a reasonable time after the Trust Administrator notifies the Trustee of the Internal Revenue Service's determination. Each Employer participating in the Trust agrees to immediately notify the Trust Administrator upon receiving such notice or giving such consent. The separate trust provided for in this Section 2.10 shall thereafter be considered as a separate trust containing all of the provisions of this Trust Agreement until terminated as provided in this Trust Agreement.

## **ARTICLE III**

### **ADMINISTRATIVE MATTERS**

#### **3.1 Appointment of Trustee**

The Employers may, with the approval of two-thirds (2/3) or more of the Employers then participating in the Trust, act to appoint a bank, trust company, retirement board, insurer, committee or such other entity as permitted by law, to serve as the trustee of this Trust. Such action must be in writing. Upon the written acceptance of such entity it shall become the Trustee of the Trust. If the Trustee is removed or resigns pursuant to Section 3.2, the Employers shall appoint a successor Trustee in accordance with the voting requirements set forth in this Section 3.1.

#### **3.2 Resignation or Removal of Trustee**

The Employers may act to remove the Trustee, provided that such action must satisfy the voting requirements set forth in Section 3.1 and notice of such action must be promptly delivered to the Trust Administrator, the Trustee and each Plan Administrator. The Trustee may also resign at any time by giving at least ninety (90) days prior written notice to the Trust Administrator and to the Plan Administrator of each Employer that has adopted the Trust Agreement and not terminated its participation in the Trust; provided, however, that the Trustee may resign immediately upon the earlier of the approval date or the effective date of any amendment of the Trust Agreement by the Employers that would change or modify the duties, powers or liabilities of the Trustee hereunder without the Trustee's consent. The Trustee shall, upon the appointment and acceptance of a successor trustee, transfer and deliver the Assets and all records relating to the Trust to the successor, after reserving such reasonable amount as it shall deem necessary to provide for its fees and expenses and any sums chargeable against the Trust for which it may be liable. The Trustee shall do all acts necessary to vest title of record in the successor trustee.

#### **3.3 Withdrawal of Employer**

An Employer may elect to withdraw from the Trust by giving at least ninety (90) days prior written notice to the Trustee and the Trust Administrator. If an Employer so elects to withdraw, Assets having a value equal to the funds held in

such Employer's Agency Account shall be segregated by the Trustee and, as soon as practicable, shall be transferred to a trust established by the Employer, provided that (i) such trust shall satisfy the requirements of Section 115 of the Code, and (ii) all assets held by such trust shall qualify as "plan assets" within the meaning of GASB Statement No. 45, in each case as reasonably determined by the Employer and certified in writing by the Employer to the Trust Administrator. The Employer shall appoint a trustee for the such Employer's separate trust, and such appointment shall vest the successor trustee with title to the transferred Assets upon the successor trustee's acceptance of such appointment.

### **3.4 The Plan Administrator**

The governing body of each Employer shall have plenary authority for the administration and investment of such Employer's Agency Account pursuant to any applicable state laws and applicable federal laws and regulations. Each Employer shall by resolution designate a Plan Administrator. Unless otherwise specified in the instrument the Plan Administrator shall be deemed to have authority to act on behalf of the Employer in all matters pertaining to the Employer's participation in the Trust and in regard to the Agency Account of the Employer. Such appointment of a Plan Administrator shall be effective upon receipt and acknowledgment by the Trustee and the Trust Administrator and shall be effective until the Trustee and the Trust Administrator are furnished with a resolution of the Employer that the appointment has been modified or terminated.

### **3.5 Failure to Appoint Plan Administrator**

If a Plan Administrator is not appointed, or such appointment lapses, the Employer shall be deemed to be the Plan Administrator. As used in this document the term "Plan Administrator" shall be deemed to mean "Employer" when a Plan Administrator has not been appointed for such Employer.

### **3.6 Delegatee**

The Plan Administrator, acting on behalf of the Employer, may delegate certain authority, powers and duties to a Delegatee to act in those matters specified in the delegation. Any such delegation must be in a writing that names and identifies the Delegatee, states the effective date of the delegation, specifies the authority and duties delegated, is executed by the Plan Administrator, is acknowledged in writing by the Delegatee, and is certified as required in Section 3.7 to the Trust Administrator. Such delegation shall be effective until the Trustee and the Trust Administrator are directed in writing by the Plan Administrator that the delegation has been rescinded or modified.

### **3.7 Certification to Trustee**

The governing body of each Employer, or other duly authorized official, shall certify in writing to the Trustee and the Trust Administrator the names and specimen signatures of the Plan Administrator and Delegatee, if any, and all

others authorized to act on behalf of the Employer whose names and specimen signatures shall be kept accurate by the Employer acting through a duly authorized officer or governing body of the Employer. The Trustee and the Trust Administrator shall have no liability if they act upon the direction of a Plan Administrator or Delegatee that has been duly authorized, as provided in Section 3.6, if that Plan Administrator or Delegatee is no longer authorized to act, unless the Employer has informed the Trustee and the Trust Administrator of such change.

### **3.8 Directions to Trustee**

All directions to the Trustee from the Plan Administrator or Delegatee must be in writing and must be signed by the Plan Administrator or Delegatee, as the case may be. For all purposes of this Trust Agreement, direction shall include any certification, notice, authorization, application or instruction of the Plan Administrator, Delegatee or Trustee appropriately communicated. The above notwithstanding direction may be implied if the Plan Administrator or Delegatee has knowledge of the Trustee's intentions and fails to file written objection.

The Trustee shall have the power and duty to comply promptly with all proper directions of the Plan Administrator or Delegatee, appointed in accordance with the provisions of this Trust Agreement. In the case of any direction deemed by the Trustee to be unclear or ambiguous the Trustee may seek written instructions from the Plan Administrator, the Employer or the Delegatee on such matter and await their written instructions without incurring any liability. If at any time the Plan Administrator or the Delegatee should fail to give directions to the Trustee, the Trustee may act in the manner that in its discretion seems advisable under the circumstances for carrying out the purposes of the Trust and/or the applicable Agency Account which may include not taking any action. The Trustee may request directions or clarification of directions received and may delay acting until clarification is received. In the absence of timely direction or clarification, or if the Trustee considers any direction to be a violation of the Trust Agreement or any applicable law, the Trustee shall in its sole discretion take appropriate action, or refuse to act upon a direction.

### **3.9 Appointment of Trust Administrator**

The Employers may, with the approval of two-thirds (2/3) or more of the Employers then participating in the Trust, act to appoint a bank, trust company, retirement board, insurer, committee or such other entity as permitted by law, to serve as Trust Administrator of the Trust. Such action must be in writing. Upon the written acceptance of such entity it shall become the Trust Administrator of the Trust. If the Trust Administrator is removed or resigns pursuant to Section 3.13, the Employers shall appoint a successor Trust Administrator in accordance with the voting requirements set forth in this Section 3.9.

### **3.10 Trust Administrator**

The Trust Administrator's duties involve the performance of the following services pursuant to the provisions of this Trust Agreement and the Agreement for Administrative Services:

- (a) Performing periodic accounting of each Agency Account and reconciling such Agency Account balances with the Trust/Omnibus Account;
- (b) Directing the Trustee to make distributions from the applicable Agency Account to health care providers (or to the Employer for reimbursement of payments made to health care providers) for post-employment health care and welfare benefits;
- (c) Allocating contributions, earnings and expenses to each Agency Account;
- (d) Directing the Trustee to pay the fees of the Trust Administrator and to do such other acts as shall be appropriate to carry out the intent of the Trust;
- (e) Such other services as the Employer and the Trust Administrator may agree in the Agreement for Administrative Services pursuant to Section 2.3.

The Trust Administrator shall be entitled to rely on, and shall be under no duty to question, direction and/or data received from the Plan Administrator, or other duly authorized entity, in order to perform its authorized duties under this trust agreement. The Trust Administrator shall not have any duty to compute contributions made to the Trust, determine or inquire whether contributions made to the Trust by the Plan Administrator or other duly authorized entity are adequate to meet an Employer's OPEB Obligation as may be determined under GASB Statement Nos. 43 and 45 and any future GASB pronouncements; or determine or inquire whether contributions made to the Trust are in compliance with the Employer's policies and/or applicable collective bargaining agreements. The Trust Administrator shall not be liable for nonperformance of duties if such nonperformance is directly caused by erroneous, and/or late delivery of, directions or data from the Plan Administrator, or other duly authorized entity.

### **3.11 Additional Trust Administrator Services**

The Plan Administrator may at any time retain the Trust Administrator as its agent to perform any act, keep any records or accounts and make any computations which are required of the Employer or the Plan Administrator by this Trust Agreement or by the Employer's policies and/or applicable collective bargaining agreements. The Trust Administrator shall be separately compensated for such service and such services shall not be deemed to be contrary to the Trust Agreement.

### **3.12 Trust Administrator's Compensation**

As may be agreed upon from time to time by the Employer and Trust Administrator, the Trust Administrator will be paid reasonable compensation for services rendered or reimbursed for expenses properly and actually incurred in the performance of duties with respect to such Employer's Agency Account and to the Trust.

### **3.13 Resignation or Removal of Trust Administrator**

The Employers may act to remove the Trust Administrator, provided that such action must satisfy the voting requirements set forth in Section 3.9 and notice of such action must be promptly delivered to the Trust Administrator, the Trustee and each Plan Administrator. The Trust Administrator may also resign at any time by giving at least one hundred and twenty (120) days prior written notice to the Trustee and to the Plan Administrator of each Employer that has adopted the Trust Agreement and not terminated its participation in the Trust; provided, however, that the Trust Administrator may resign immediately upon the earlier of the approval date or the effective date of any amendment of the Trust Agreement by the Employers that would change or modify the duties, powers or liabilities of the Trust Administrator hereunder without the Trust Administrator's consent. The Trust Administrator shall, upon the appointment and acceptance of a successor trust administrator, transfer all records relating to the Trust to the successor.

## **ARTICLE IV**

### **THE TRUSTEE**

#### **4.1 Powers and Duties of the Trustee**

Except as otherwise provided in Article V and subject to Article VI, the Trustee shall have full power and authority with respect to property held in the Trust to do all such acts, take all proceedings, and exercise all such rights and privileges, whether specifically referred to or not in this document, as could be done, taken or exercised by the absolute owner, including, without limitation, the following:

(a) To invest and reinvest the Assets or any part hereof in any one or more kind, type, class, item or parcel of property, real, personal or mixed, tangible or intangible; or in any one or more kind, type, class, item or issue of investment or security; or in any one or more kind, type, class or item of obligation, secured or unsecured; or in any combination of them (including those issued by the Trustee of any of its affiliates, to the extent permitted by applicable law), and to retain the property for the period of time that the Trustee deems appropriate;

(b) To acquire and sell options to buy securities ("call" options) and to acquire and sell options to sell securities ("put" options);

- (c) To buy, sell, assign, transfer, acquire, loan, lease (for any purpose, including mineral leases), exchange and in any other manner to acquire, manage, deal with and dispose of all or any part of the Trust property, for cash or credit and upon any reasonable terms and conditions;
- (d) To make deposits, with any bank or savings and loan institution, including any such facility of the Trustee or an affiliate thereof provided that the deposit bears a reasonable rate of interest;
- (e) To invest and reinvest the Assets, or any part thereof in any one or more collective investment trust funds, including common and group trust funds that consist exclusively of assets of exempt pension and profit sharing trusts and individual retirement accounts qualified and tax exempt under the Code, that are maintained by the Trustee or an affiliate thereof. The declaration of trust or plan of operations for any such common or collective fund is hereby incorporated herein and adopted into this Trust Agreement by this reference. The combining of money and other assets of the Trust with money and other assets of other non-qualified trusts in such fund or funds is specifically authorized. Notwithstanding anything to the contrary in this Trust Agreement, the Trustee shall have full investment responsibility over assets of the trust invested in such commingled funds. If the plan and trust for any reason lose their tax exempt status, and the Assets have been commingled with assets of other tax exempt trusts in Trustee's collective investment funds, the Trustee shall within 30 days of notice of such loss of tax exempt status, liquidate the Trust's units of the collective investment fund(s) and invest the proceeds in a money market fund pending investment or other instructions from the Plan Administrator. The Trustee shall not be liable for any loss or gain or taxes, if any, resulting from said liquidation;
- (f) To place uninvested cash and cash awaiting distribution in one or more mutual funds and/or commingled investment funds maintained by or made available by the Trustee or any of its affiliates, and to receive compensation from the sponsor of such fund(s) for services rendered, separate and apart from any Trustee's fees hereunder. The Trustee or its affiliate may also be compensated for providing investment advisory services to any mutual fund or commingled investment funds;
- (g) To borrow money for the purposes of the Trust from any source with or without giving security; to pay interest; to issue promissory notes and to secure the repayment thereof by pledging all or any part of the Assets;
- (h) To take all of the following actions: to vote proxies of any stocks, bonds or other securities; to give general or special proxies or powers of attorney with or without power of substitution; to exercise any conversion privileges, subscription rights or other options, and to make any payments incidental thereto; 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; and generally to exercise any of the powers of an owner with respect to stocks, bonds, securities or other property held in the Trust;

(i) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(j) To raze or move existing buildings; to make ordinary or extraordinary repairs, alterations or additions in and to buildings; to construct buildings and other structures and to install fixtures and equipment therein;

(k) To pay or cause to be paid from the Trust any and all real or personal property taxes, income taxes or other taxes or assessments of any or all kinds levied or assessed upon or with respect to the Trust;

(l) To exercise all the further rights, powers, options and privileges granted, provided for, or vested in trustees generally under applicable federal or state laws, as amended from time to time, it being intended that, except as herein otherwise provided, the powers conferred upon the Trustee herein shall not be construed as being in limitation of any authority conferred by law, but shall be construed as consistent or in addition thereto.

#### **4.2 Additional Trustee Powers**

In addition to the other powers enumerated above, the Trustee in any and all events is authorized and empowered:

(a) To invest funds pending required directions in any type of interest-bearing account, including, without limitation, time certificates of deposit or interest-bearing accounts issued by the Trustee, or any mutual fund or short term investment fund (“**Fund**”), whether sponsored or advised by the Trustee or any affiliate thereof); the Trustee or its affiliates may be compensated for providing such investment advice and providing other service to such Fund, in addition to any Trustee’s fees received pursuant to this Trust Agreement;

(b) To cause all or any part of the Trust to be held in the name of the Trustee (which in such instance need not disclose its fiduciary capacity) or, as permitted by law, in the name of any nominee, and to acquire for the Trust any investment in bearer form, but the books and records of the Trust shall at all times show that all such investments are a part of the Trust and the Trustee shall hold evidences of title to all such investments;

(c) To serve as custodian with respect to the Trust Assets;



(d) To employ such custodians, agents and counsel as may be reasonably necessary in managing and protecting the Assets and to pay them reasonable compensation from the Trust; to employ any broker-dealer or other agent, including any broker-dealer or other agent affiliated with the Trustee, and pay to such broker-dealer or other agent, at the expense of the Trust, its standard commissions or compensation; to settle, compromise or abandon all claims and demands in favor of or against the Trust; and to charge any premium on bonds purchased at par value to the principal of the Trust without amortization from the Trust, regardless of any law relating thereto;

(e) In addition to the powers listed herein, to do all other acts necessary or desirable for the proper administration of the Trust, as though the absolute owner thereof;

(f) To prosecute, compromise and defend lawsuits, but without obligation to do so, all at the risk and expense of the Trust; and to tender its defense to the Employer in any legal proceeding where the interests of the Trustee and the Employer are not adverse;

(g) To exercise and perform any and all of the other powers and duties specified in this Trust Agreement or the Plan;

(h) To permit such inspections of documents at the principal office of the Trustee as are required by law, subpoena or demand by a United States agency;

(i) To comply with all requirements imposed by applicable provisions of law;

(j) To seek written instructions from the Plan Administrator or other fiduciary on any matter and await their written instructions without incurring any liability. If at any time the Plan Administrator or the fiduciary should fail to give directions to the Trustee, the Trustee may act in the manner that in its discretion seems advisable under the circumstances for carrying out the purposes of the Trust;

(k) To compensate such executive, consultant, actuarial, accounting, investment, appraisal, administrative, clerical, secretarial, medical, custodial, depository and legal firms, personnel and other employees or assistants as are engaged by the Plan Administrator in connection with the administration of the Plan and to pay from the Trust the necessary expenses of such firms, personnel and assistants, to the extent not paid by the Plan Administrator;

(l) To act upon proper written directions of the Plan Administrator or Delegatee, including directions given by photostatic transmissions using facsimile signature, and such other forms of directions as the parties shall agree;

(m) To pay from the Trust the expenses reasonably incurred in the administration of the Trust as provided in the Plan;

(n) To maintain insurance for such purposes, in such amounts and with such companies as the Plan Administrator shall elect, including insurance to cover liability or losses occurring by reason of the acts or omissions of fiduciaries but only if such insurance permits recourse by the insurer against the fiduciary in the case of a breach of a fiduciary obligation by such fiduciary.

## **ARTICLE V**

### **INVESTMENTS**

#### **5.1 Discretionary Versus Directed Investment**

The Employer shall elect either a discretionary or directed investment approach. If the Employer elects a discretionary investment approach, the Employer shall further elect between the various investment strategies offered and the Trustee, in accordance with Article IV, shall have absolute discretion over the investment of the Assets held in such Employer's Agency Account. If the Employer elects a directed investment approach, the Trustee shall direct the investment of the Assets of such Employer's Agency Account in accordance with the direction provided by such Employer.

#### **5.2 Trustee Fees**

As may be agreed upon, in writing, between the Plan Administrator and Trustee, the Trustee will be paid reasonable compensation for services rendered or reimbursed for expenses properly and actually incurred in the performance of duties with respect to the applicable Agency Account or the Trust.

#### **5.3 Contributions**

Eligible Employees are not permitted to make contributions to the Trust. The Plan Administrator shall, on behalf of the Employer, make all contributions to the Trustee. Such contributions shall be in cash unless the Trustee agrees to accept a contribution that is not in cash. All contributions shall be paid to the Trustee for investment and reinvestment pursuant to the terms of this Trust Agreement. The Trustee shall not have any duty to determine or inquire whether any contributions to the Trust made to the Trustee by any Plan Administrator are in compliance with the Employer's policies and/or collective bargaining agreements; nor shall the Trustee have any duty or authority to compute any amount to be paid to the Trustee by any Plan Administrator; nor shall the Trustee be responsible for the collection or adequacy of the contributions to meet an Employer's OPEB Obligation, as may be determined under GASB Statement No. 45. The contributions received by the Trustee from each Employer shall be held and administered pursuant to the terms hereof without distinction between income and principal.

#### **5.4 Records**

(a) The Trustee shall maintain accurate records and detailed accounts of all investments, receipts, disbursements and other transactions hereunder at the Trust level. Such records shall be available at all reasonable times for inspection by the Trust Administrator. The Trustee shall, at the direction of the Trust Administrator, submit such valuations, reports or other information as the Trust Administrator may reasonably require.

(b) The Assets of the Trust shall be valued at their fair market value on the date of valuation, as determined by the Trustee based upon such sources of information as it may deem reliable; provided, however, that the Plan Administrator shall instruct the Trustee as to valuation of assets which are not readily determinable on an established market. The Trustee may rely conclusively on such valuations provided by the Plan Administrator and shall be indemnified and held harmless by the Employer with respect to such reliance. If the Plan Administrator fails to provide such values, the Trustee may take whatever action it deems reasonable, including employment of attorneys, appraisers or other professionals, the expense of which will be an expense of administration of the Trust. Transactions in the account involving such hard to value assets may be postponed until appropriate valuations have been received and Trustee shall have no liability therefore.

#### **5.5 Statements**

(a) Periodically as specified, and within sixty days after December 31, or the end of the Trust's fiscal year if different, Trustee shall render to the Trust Administrator as directed, a written account showing in reasonable summary the investments, receipts, disbursements and other transactions engaged in by the Trustee during the preceding fiscal year or period with respect to the Trust. Such account shall set forth the assets and liabilities of the Trust valued as of the end of the accounting period.

(b) The Trust Administrator may approve such statements either by written notice or by failure to express objections to such statements by written notice delivered to the Trustee within 90 days from the date the statement is delivered to the Trust Administrator. Upon approval, the Trustee shall be released and discharged as to all matters and items set forth in such statement as if such account had been settled and allowed by a decree from a court of competent jurisdiction.

#### **5.6 Wire Transfers**

The Trustee shall follow the Plan Administrator's, Delegatee's, or Trust Administrator's wire transfer instructions in compliance with the written security procedures provided by the party providing the wire transfers. The Trustee shall perform a telephonic verification to the Plan Administrator, Trust Administrator,

or Delegatee, or such other security procedure as selected by the party providing wire transfer directions, prior to wiring funds or following facsimile directions as Trustee may require. The Plan Administrator assumes the risk of delay of transfer if Trustee is unable to reach the Plan Administrator, or in the event of delay as a result of attempts to comply with any other security procedure selected by the directing party.

#### **5.7 Exclusive Benefit**

The Assets of an Employer's Agency Account shall be held in trust for the exclusive purpose of providing post-employment health care and welfare benefits to the Eligible Employees of the Employer pursuant to the Employer's policies and/or applicable collective bargaining agreements, and defraying the reasonable expenses associated with the providing of such benefits, and shall not be used for or diverted to any other purpose. No party shall have authority to use or divert the Assets of an Agency Account of an Employer for the payment of post-employment health care and welfare benefits or expenses of any other Employer.

#### **5.8 Delegation of Duties**

The Plan Administrator, Delegatee, or Trust Administrator, may at any time retain the Trustee as its agent to perform any act, keep any records or accounts and make any computations that are required of the Plan Administrator, Delegatee or Trust Administrator by this Trust Agreement or by the Plan. The Trustee may be compensated for such retention and such retention shall not be deemed to be contrary to this Trust Agreement.

#### **5.9 Distributions**

The Trustee shall, from time to time, upon the written direction of the Plan Administrator or Delegatee, make distributions from the Assets of the Trust to the insurers, third party administrators, health care and welfare providers or other entities providing Plan benefits or services, or to the Employer for reimbursement of Plan benefits and expenses paid by the Employer in such manner in such form(s), in such amounts and for such purposes as may be specified in such directions.

In no event shall the Trustee have any responsibility respecting the application of such distributions, nor for determining or inquiring into whether such distributions are in accordance with the Employer's policies and/or applicable collective bargaining agreements.

## ARTICLE VI

### FIDUCIARY RESPONSIBILITIES

#### 6.1 More Than One Fiduciary Capacity

Any one or more of the fiduciaries with respect to the Trust Agreement or the Trust may, to the extent required thereby or as directed by the Plan Administrator pursuant to this Trust Agreement, serve in more than one fiduciary capacity with respect to the Trust Agreement and the Trust.

#### 6.2 Fiduciary Discharge of Duties

Except as otherwise provided by applicable law, each fiduciary shall discharge such fiduciary's duties with respect to the Trust Agreement and the Trust:

(a) solely in the interest of the Eligible Employees and for the exclusive purpose of providing post-employment health care and welfare benefits to Eligible Employees, and defraying reasonable administrative and actuarial expenses associated with providing such benefits; and

(b) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims.

#### 6.3 Limitations on Fiduciary Responsibility

To the extent allowed by the laws of the state of each Employer:

No fiduciary shall be liable with respect to a breach of fiduciary duty by any other fiduciary if such breach was committed before such party became a fiduciary or after such party ceased to be a fiduciary.

No fiduciary shall be liable for a breach by another fiduciary except as provided by law.

No fiduciary shall be liable for carrying out a proper direction from another fiduciary, including refraining from taking an action in the absence of a proper direction from the other fiduciary possessing the authority and responsibility to make such a direction, which direction the fiduciary in good faith believes to be authorized and appropriate.

#### 6.4 Indemnification of Trustee by Employer

The Trustee shall not be liable for, and Employer shall (to the extent allowed by the laws of the state of each Employer) indemnify, defend (as set out in 6.8 of this Trust Agreement), and hold the Trustee (including its officers, agents, employees

and attorneys) and other Employers harmless from and against any claims, demands, loss, costs, expense or liability imposed on the indemnified party, including reasonable attorneys' fees and costs incurred by the indemnified party, arising as a result of Employer's active or passive negligent act or omission or willful misconduct in the execution or performance of its duties under this Trust Agreement.

**6.5 Indemnification of Employer by Trustee**

The Employer shall not be liable for, and Trustee shall (to the extent allowed by the laws of the state of each Employer) indemnify, defend (as set out in 6.8 of this Trust Agreement), and hold the Employer (including its officers, agents, employees and attorneys) and other Employers harmless from and against any claims, demands, loss, costs, expense or liability imposed on the indemnified party, including reasonable attorneys' fees and costs incurred by the indemnified party, arising as a result of Trustee's active or passive negligent act or omission or willful misconduct in the execution or performance of its duties under this Trust Agreement.

**6.6 Indemnification of Trustee by Trust Administrator**

The Trustee shall not be liable for, and Trust Administrator shall (to the extent allowed by the laws of the state of each Employer) indemnify and hold the Trustee (including its officers, agents, employees and attorneys) harmless from and against any claims, demands, loss, costs, expense or liability imposed on the indemnified party, including reasonable attorneys' fees and costs incurred by the indemnified party, arising as a result of Trust Administrator's active or passive negligent act or omission or willful misconduct in the execution or performance of its duties under this Trust Agreement.

**6.7 Indemnification of Trust Administrator by Trustee**

The Trust Administrator shall not be liable for, and Trustee shall (to the extent allowed by the laws of the state of each Employer) indemnify and hold the Trust Administrator (including its officers, agents, employees and attorneys) harmless from and against any claims, demands, loss, costs, expense or liability imposed on the indemnified party, including reasonable attorneys' fees and costs incurred by the indemnified party, arising as a result of Trustee's active or passive negligent act or omission or willful misconduct in the execution or performance of its duties under this Trust Agreement.

**6.8 Indemnification Procedures**

Promptly after receipt by an indemnified party of notice or receipt of a claim or the commencement of any action for which indemnification may be sought, the indemnified party will notify the indemnifying party in writing of the receipt or commencement thereof. When the indemnifying party has agreed to provide a defense as set out above that party shall assume the defense of such action

(including the employment of counsel, who shall be counsel reasonably satisfactory to such indemnitee) and the payment of expenses, insofar as such action shall relate to any alleged liability in respect of which indemnity may be sought against the indemnifying party. Any indemnified party shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall not be at the expense of the indemnifying party unless (i) the employment of such counsel has been specifically authorized by the indemnifying party or (ii) the named parties to any such action (including any impleaded parties) include both the indemnifying party and the indemnified party and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interest between them. The indemnifying party shall not be liable to indemnify any person for any settlement of any such action effected without the indemnifying party's consent. The indemnification procedures of this Trust Agreement shall survive the termination of the Trust, any Employer's participation in the Trust and/or this Trust Agreement.

#### **6.9 No Joint and Several Liability**

This document is not intended to and does not create any joint powers agreement or any joint and several liability. No Employer shall be responsible for any contributions, costs or distributions of any other Employer.

### **ARTICLE VII**

#### **AMENDMENT, TERMINATION AND MERGER**

#### **7.1 No Obligation to Continue Trust**

Participation in the Trust and continuation of the Employer's policies and/or applicable collective bargaining agreements that provide post-employment health care and welfare benefits are not assumed as a contractual obligation of the Employer.

#### **7.2 Amendment of Trust**

(a) The Trust Agreement may be amended only by the approval of two-thirds (2/3) or more of the Employers then participating in the Trust. Any such amendment by the Employers shall be set forth in an instrument in writing and shall be delivered to the Trustee, the Trust Administrator and all Plan Administrators not less than one hundred and eighty (180) days before the effective date of such amendment; provided, however, that any party may waive in writing such 180-day requirement with respect to any amendment (and such waiver shall not constitute a waiver with respect to any other amendment); and provided, further, that a waiver in writing of such 180-day requirement by two-thirds (2/3) or more of the Plan Administrators of the Employers participating in the Trust as of the date the amendment is adopted shall constitute a waiver of such

180-day requirement by all of the Employers then participating in the Trust. In addition, the Trust Administrator or the Trustee shall have the right to amend this Trust Agreement from time to time (without the requirement of a vote of Employers) solely for the purpose of keeping the Trust Agreement in compliance with the Code and applicable state law. Any such amendment by the Trust Administrator or the Trustee shall be set forth in an instrument in writing and shall be delivered to the Trustee, the Trust Administrator and all Plan Administrators promptly as each is made.

(b) Any amendment of the Trust Agreement may be current, retroactive or prospective, provided, however, that no amendment shall:

(1) Cause the Assets of any Agency Account to be used for or diverted to purposes other than for the exclusive benefit of Eligible Employees of the applicable Employer or for the purpose of defraying the reasonable expenses of administering such Agency Account.

(2) Permit the Assets of any Agency Account to be used for the benefit of any other Employer.

### **7.3 Termination of Employer's Obligation to Provide OPEB**

A termination of the Employer's obligation to provide OPEB pursuant to its policies and/or applicable collective bargaining agreements for which the Employer's Agency Account was established shall not, in itself, effect a termination of the Agency Account. Upon a termination of the Employer's obligation to provide OPEB pursuant to its policies and/or applicable collective bargaining agreements, the Assets of the Agency Account shall be distributed by the Trustee when directed by the Plan Administrator in accordance with this Section 7.3. From and after the date of such termination and until final distribution of the Assets, the Trustee shall continue to have all the powers provided herein as are necessary or expedient for the orderly liquidation and distribution of such Assets, and the Agency Account shall continue until the Assets have been completely distributed. Such Assets shall be used first to satisfy any remaining obligations of the Employer to provide OPEBs pursuant to its policies and/or applicable collective bargaining agreements (to the extent that such distribution constitutes the exercise of an "essential governmental function" within the meaning of Section 115 of the Code) and to satisfy any of such Employer's obligations under this Trust Agreement. Any Assets remaining in the Agency Account after giving effect to the foregoing sentence shall be paid to the Employer to the extent permitted by law and consistent with the requirements of Section 115 of the Code.

### **7.4 Fund Recovery Based on Mistake of Fact**

Except as hereinafter provided or in accordance with Section 7.3, the Assets of the Trust shall never inure to the benefit of the Employer. The Assets shall be



held for the exclusive purposes of providing post-employment health care and welfare benefits to Eligible Employees and defraying reasonable expenses of administering the Trust. However, in the case of a contribution which is made by an Employer because of a mistake of fact, that portion of the contribution relating to the mistake of fact (exclusive of any earnings or losses attributable thereto) may be returned to the Employer, provided such return occurs within two (2) years after discovery by the Employer of the mistake. If any repayment is payable to the Employer, then, as a condition to such repayment, and only if requested by Trustee, the Employer shall execute, acknowledge and deliver to the Trustee its written undertaking, in a form satisfactory to the Trustee, to indemnify, defend and hold the Trustee harmless from all claims, actions, demands or liabilities arising in connection with such repayment.

## **7.5 Termination of Trust**

The Trust and this Trust Agreement may be terminated only by the unanimous agreement of all Employers. Such action must be in writing and delivered to the Trustee and Trust Administrator. Upon a termination of the Trust, the Assets of each Agency Account under the Trust shall be distributed by the Trustee when directed by the Plan Administrator for that Agency Account in accordance with this Section 7.5. From and after the date of such termination and until final distribution of the Assets, the Trustee shall continue to have all the powers provided herein with respect to each Agency Account as are necessary or expedient for the orderly liquidation and distribution of the Assets of such Agency Account, and the Agency Account shall continue until the Assets have been completely distributed. The Assets of each Agency Account shall be used first to satisfy any remaining obligations of the applicable Employer to provide OPEBs pursuant to its policies and/or applicable collective bargaining agreements (to the extent that such distribution constitutes the exercise of an “essential governmental function” within the meaning of Section 115 of the Code) and to satisfy any of such Employer’s obligations under this Trust Agreement. Any Assets remaining in such Agency Account after giving effect to the foregoing sentence shall be paid to the Employer to the extent permitted by law and consistent with the requirements of Section 115 of the Code. In no case will the assets of the Trust be distributed on termination to an entity that is not a state, a political subdivision of a state or an entity the income of which is excluded from gross income under Section 115 of the Code.

## ARTICLE VIII

### MISCELLANEOUS PROVISIONS

#### 8.1 Nonalienation

Eligible Employees do not have an interest in the Trust. Accordingly, the Trust shall not in any way be liable to attachment, garnishment, assignment or other process, or be seized, taken, appropriated or applied by any legal or equitable process, to pay any debt or liability of an Eligible Employee or any other party. Trust Assets shall not be subject to the claims of any Employer or the claims of its creditors.

#### 8.2 Saving Clause

In the event any provision of this Trust Agreement is held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining parts of the Trust Agreement, but this instrument shall be construed and enforced as if said provision had never been included.

#### 8.3 Applicable Law

This Trust Agreement and the Trust shall be construed, administered and governed under the Code and the law of the State of California. To the extent any of the provisions of this Trust Agreement are inconsistent with the Code or applicable state law, the provisions of the Code or state law shall control. In the event, however, that any provision is susceptible to more than one interpretation, such interpretation shall be given thereto as is consistent with the Trust Agreement being a tax-exempt trust within the meaning of the Code.

#### 8.4 Joinder of Parties

In any action or other judicial proceedings affecting this Trust Agreement, it shall be necessary to join as parties only the Trustee, the Plan Administrator or Delegatee. No participant or other persons having an interest in the Trust or any Agency Account shall be entitled to any notice or service of process unless otherwise required by law. Any judgment entered in such a proceeding or action shall be binding on all persons claiming under this Trust Agreement; provided, however, that nothing in this Trust Agreement shall be construed as to deprive a participant of such participant's right to seek adjudication of such participant's rights under applicable law.

#### 8.5 Employment of Counsel

The Trustee may consult with legal counsel (who may be counsel for the Trustee, the Trust Administrator or any Employer) with respect to the interpretation of this Agreement or the Trustee's duties hereunder or with respect to any legal

proceedings or any questions of law and shall be entitled to take action or not to take action in good faith reliance on the advice of such counsel and charge the Trust and, as applicable, one or more Agency Accounts.

**8.6 Gender and Number**

Words used in the masculine, feminine or neuter gender shall each be deemed to refer to the other whenever the context so requires; and words used in the singular or plural number shall each be deemed to refer to the other whenever the context so requires.

**8.7 Headings**

Headings used in this Trust Agreement are inserted for convenience of reference only and any conflict between such headings and the text shall be resolved in favor of the text.

**8.8 Counterparts**

This Trust Agreement may be executed in an original and any number of counterparts by the Plan Administrator (executing an Adoption Agreement), the Trust Administrator and the Trustee, each of which shall be deemed to be an original of the one and the same instrument.

\*\*\*\*\* Signature Page Follows \*\*\*\*\*

IN WITNESS WHEREOF, the Plan Administrator (by executing the Adoption Agreement), the Trustee and the Trust Administrator have executed this restated Trust Agreement by their duly authorized agents on the dates set forth below their names, to be effective on May 16, 2007.

**UNION BANK OF CALIFORNIA**

“Trustee”

By: John Fulton  
Signature

John Fulton  
Typed or printed name

Its: Vice President

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or printed name

Its: \_\_\_\_\_

Date: 6/26/2007

**PUBLIC AGENCY  
RETIREMENT SERVICES**

“Trust Administrator”

By: [Signature]  
Signature

Daniel Johnson  
Typed or printed name

Its: President

Date: 6/25/2007

**UNION BANK OF CALIFORNIA  
BUSINESS TRUST  
COMPLIANCE APPROVAL**

BY [Signature]

DATE 6/26/2007