

Attachment B

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**ADOPTION AGREEMENT
for the
POST-EMPLOYMENT SECTION 115 TRUST**

A.1.1. Trust agreement with U.S. Bank National Association (the "Bank") (the "Trust Agreement"):

Post-Employment Section 115 Trust. Public Agencies Post-Employment Benefits—Trust Agreement, effective November 5, 2014

A.1.2. OPEB Plan: Public Agencies Post-Employment Health Care Plan

The plan document for the OPEB Plan is the Public Agencies Post-Employment Health Care Plan—Master Plan Document, effective as of November 5, 2014 (the "Plan Document").

A.1.3. Pension Plan: California Public Employees Retirement system

A.1.4. Pension Plan's effective date: March 14, 1997 as amended July, 1999 and August 16, 2003

☐ (Check if applicable) Additional Pension Plans (and their respective effective dates) are listed on an exhibit attached hereto.

A.2.1. Employer:

Name: Fort Ord Reuse Authority

U.S. mail address: 920 2nd Avenue, Suite A, Marina, CA 93933

Phone number: (831) 883-3672

EIN: 77-0381729

Fiscal year end: June 30

A.2.2. Plan Administrator:

Position at Employer: Executive Officer

Incumbent: Michael A. Houlemard, Jr.

U.S. mail address: 920 2nd Avenue, Suite A, Marina, CA 93933

Phone number: (831) 883-3672

Email address: michael@fora.org

A.3.1 **Adoption.** The Employer hereby:

A.3.1.1. Adopts the Trust Agreement as part of the (*Check one or both of the following boxes.*):

☐ OPEB Plan

☒ Pension Plan

(each such plan separately, the “Plan”) and agrees to be bound by the Trust Agreement’s terms, effective as of the Employer’s signature date below and subject to the investment approach selected below.

A.3.1.2. *The following provisions apply if and only if the **OPEB Plan** box above is checked:* (i) Adopts the Plan Document and agrees to be bound by the Plan Document’s terms, effective as of the Employer’s signature date below and (ii) acknowledges that the determination of Eligible Employees and Eligible Beneficiaries is finally and conclusively made by the Employer according to the Employer’s applicable policies and collective bargaining agreements and without reference to the Trust Agreement.

A.3.1.3. Ratifies, affirms, and approves Employer’s appointment of Phase II Systems as Trust Administrator and represents and warrants that attached hereto is a fully-executed original of Employer’s Agreement for Administrative Services with Phase II Systems, d/b/a Public Agency Retirement Services (PARS).

A.3.1.4. Agrees that capitalized terms used herein but not defined herein shall have the same meaning attributed to them as in the Trust Agreement or Plan Document, as the case may be.

A.4.1. The Employer hereby represents and warrants that:

A.4.1.1. **Authorizing Law.** Employer has reviewed with its legal counsel and has determined that Employer is authorized to establish and maintain the Plan and to establish a financial-institution trust (separate and apart from the state) for the Plan, including the authority to adopt the Trust Agreement.

A.4.1.2. **Authorizing Resolution.** Attached hereto is a certified copy of a resolution of the Employer’s governing body authorizing the adoption of the Trust Agreement as part of the Plan and authorizing the appointment of the Plan Administrator designated by position of employment at the Employer to act on the Employer’s behalf in all matters relating to the trust.

A.4.1.3. **Tax Status.** The Plan is a “governmental plan” as defined in Section 414(d) of the Internal Revenue Code of 1986, as amended; is a “Section 401(a)(24) governmental plan” as defined in Revenue Ruling 2011-1; and is not subject to Federal income taxation. The Plan’s governing document expressly provides that it is irrevocably impossible for any part of the corpus or income of the Plan to be used for, or diverted to, purposes other than for the exclusive benefit of the Plan participants and their beneficiaries. The Pension Plan is a qualified plan under Code Section 401(a). (In addition, the Employer hereby acknowledges that the Plan is prohibited from assigning any part of its equity or interest in the trust.)

A.4.2. Investment Approach.

4.2.1. *The following provisions apply if and only if the **OPEB Plan** box above is checked:*
OPEB Account. OPEB Account assets are invested in the discretion of (*check one and only one of the following boxes*):

Discretionary investment approach:

- ☐ The Bank, subject to **Exhibit A (Investment Strategy Selection and Disclosure Form)** hereto.

Directed investment approach:

- ☐ The Plan Administrator.
- ☐ The following registered investment adviser, bank (other than the Bank), or insurance company (a "Third-Party Manager"): _____ . The Employer hereby represents and warrants that attached hereto is an executed copy of the agreement with the above appointed Third Party Manager.

4.2.2. *The following provisions apply if and only if the **Pension Plan** box above is checked:*
Pension Account. Pension Account assets are invested in the discretion of (*check one and only one of the following boxes*):

Discretionary investment approach:

- ☒ The Bank, subject to **Exhibit A (Investment Strategy Selection and Disclosure Form)** hereto.

Directed investment approach:

- ☐ The Plan Administrator.
- ☐ The following registered investment adviser, bank (other than the Bank), or insurance company (a "Third-Party Manager"): _____ . The Employer hereby represents and warrants that attached hereto is an executed copy of the agreement with the above appointed Third Party Manager.

[signature page follows]

FORT ORD REUSE AUTHORITY

By: _____

Michael A. Houlemard, Jr.

Its: Executive Officer

Date: _____

MAY 16, 2018

Accepted by:

**PHASE II SYSTEMS, DBA PUBLIC AGENCY
RETIREMENT SERVICES (PARS)**

By: _____

~~Daniel Johnson~~ Tod Hammeras

Its: ~~President~~ Chief Financial Officer

Date: _____

6/5/2018

U.S. BANK NATIONAL ASSOCIATION

By: _____

Susan M. Hughes

Its: Vice President and Relationship Manager

Date: _____

4/7/18

**PUBLIC AGENCIES
POST-EMPLOYMENT BENEFITS
TRUST AGREEMENT**

(Effective November 5, 2014)

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 the date first written above, 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 Beneficiary**” shall mean any person who, due to his or her relationship to an Eligible Employee, is entitled to post-employment benefits pursuant to the Employer’s Pension Plan or OPEB Plan, including but not limited to the Eligible Employee’s current or former spouse or domestic partner, child, dependent, or survivor.
- 1.9 “**Eligible Employee**” shall mean any employee of an Employer who is entitled to post-employment benefits pursuant to the Employer’s Pension Plan or OPEB Plan. Unless the context otherwise requires, the term “Eligible Employee” as used herein shall include any Eligible Beneficiaries.
- 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 (and subaccount 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 OPEB to its Eligible Employees in accordance with the Employer’s OPEB Plan.
- 1.15 **“OPEB Plan”** shall mean the Public Agencies Post-Employment Health Care Plan, as adopted by the Employer under the Adoption Agreement.
- 1.16 **“Pension Obligation”** shall mean an Employer’s obligation to contribute to the Pension Plan’s Qualified Trust and shall not, for example, mean an Employer’s Obligation to provide retirement benefits under the Pension Plan to the Employer’s Eligible Employees.
- 1.17 **“Pension Plan”** shall mean an Employer’s defined-benefit pension plan or plans, each of which is (i) qualified under Section 401(a) of the Code, (ii) sponsored by the Employer in order to provide retirement benefits to its Eligible Employees, and (iii) partly or wholly funded by the Employer’s contributions to a Qualified Trust.
- 1.18 **“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.
- 1.19 **“Qualified Trust”** shall mean a trust which (i) is separate and apart from the Trust, (ii) constitutes a qualified trust under Code Section 401(a), and (iii) funds retirement benefits provided under an Employer’s Pension Plan to the Employer’s Eligible Employees.
- 1.20 **“Trust”** shall mean the Public Agencies Post-Employment Benefits trust arrangement.
- 1.21 **“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.

- 1.22 **“Trust Agreement”** shall mean this Public Agencies Post-Employment Benefits trust document adopted by each Employer upon execution of an Adoption Agreement, as amended from time to time.
- 1.23 **“Trustee”** shall mean U.S. Bank National Association, 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 the agency’s OPEB Obligation or Pension Obligation or both. 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 the Employer’s OPEB Obligation or Pension Obligation or both. 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.

The Employer hereby represents and warrants that the assets held hereunder (including the Assets) are not assets of any qualified plan under Code Section 401(a), regardless of the character of such assets once distributed. The Employer hereby acknowledges that the Trust does not constitute a qualified trust under Code Section 401(a).

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 reasonably 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

- (a) 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.
- (b) An Employer's Agency Account comprises three subaccounts: a "**Pension Account**", an "**OPEB Account**", and a "**Suspense Account**". The Assets of the Trust that are held in the Employer's Pension Account will be available only to fund the Employer's Pension Obligation and defray the reasonable expenses associated with the same. The Assets of the Trust that are held in the Employer's OPEB Account will be available only to fund the Employer's OPEB Obligation and defray the reasonable expenses associated with the same.
- (c) The Assets of the Trust that are held in an Employer's Agency Account shall not be available to pay any obligations incurred by any other Employer as provided in Section 2.8.

(d) All contributions and transfers received by the Trust on behalf of the Employer will be held in the Employer's Agency Account and will be allocated to the subaccounts under the Agency Account as follows:

(1) If the Employer maintains a Pension Account or OPEB Account (and not both a Pension Account and an OPEB Account), all contributions and transfers received by the Trust on the Employer's behalf will be allocated to that subaccount.

(2) If the Employer maintains both a Pension Account and an OPEB Account, contributions and transfers received by the Trust on the Employer's behalf will be allocated to either the Pension Account or OPEB Account, as directed by the Plan Administrator. To the extent the Plan Administrator does not provide such direction, the Employer hereby directs the Trustee to allocate such contributions and transfers to the Suspense Account and to use the assets of the Suspense Account to purchase a position in the sweep vehicle identified on an **exhibit** hereto or, if none is identified, to hold such assets un-invested. The Plan Administrator may at any time direct the reallocation of cash from the Suspense Account to either the Pension Account or the OPEB Account.

(3) Once allocated to the Pension Account or the OPEB Account, amounts under the Trust may not subsequently be transferred to the other subaccount.

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 the Agency Account, 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 Agency Account level accounting (including subaccount-level accounting within each Agency Account) 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 accounting and subaccounting 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 Employer's Agency Account shall be held in trust for the exclusive purpose of funding the Employer's OPEB Obligation or Pension Obligation or both and defraying the reasonable expenses associated with the same. 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 Pension Obligation or 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 amounts 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 thirty (30) 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 one or more trusts maintained by the Employer, provided that (i) for Assets transferred from the OPEB Account, any such trust shall satisfy the requirements of Section 115 of the Code, (ii) for Assets

transferred from the Pension Account, any such trust shall satisfy the requirements of either Section 115 or 401(a) of the Code, and (iii) all assets held by any such trust and previously held in the Employer's Pension Account or OPEB Account shall qualify as "plan assets" within the meaning of GASB Statement No. 68 (Accounting and Financial Reporting for Pensions—An Amendment of GASB Statement No. 27) or GASB Statement No. 45 (Accounting and Financial Reporting by Employers for Postemployment Benefits Other Than Pensions), respectively, 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 such Employer's separate trust and, upon the trustee's acceptance of that appointment, the trustee will be vested with title to the transferred Assets.

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 (including subaccount-level accounting within each Agency Account) and reconciling such Agency Account balances with the Trust/Omnibus Account;
- (b) Directing the Trustee to make distributions from the appropriate subaccount under an Agency Account in accordance with Section 5.9.
- (c) Allocating contributions, earnings and expenses to each Agency Account and the underlying subaccounts;
- (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, any 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 Pension Obligation or OPEB Obligation as may be determined under any applicable GASB pronouncement; or determine or inquire whether contributions made to the Trust are in compliance with the Employer's OPEB Plan or Pension Plan. 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 funding the Employer's OPEB Obligation or Pension Obligation or both 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;

(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

For the Pension Account and the OPEB Account under the Agency Account, the Employer shall elect either a discretionary or directed investment approach. The Employer may elect the same or different investment approaches for those two subaccounts. The Employer hereby elects a directed approach for the Suspense Account. If the Employer elects a discretionary investment approach for a subaccount, 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 subaccount under the Employer's Agency Account. If the Employer elects a directed investment approach for a subaccount, the Trustee shall direct the investment of the Assets of such subaccount under the 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 Pension Plan or OPEB Plan; 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 Pension Obligation or OPEB Obligation. 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, Delegate'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 Delegate, 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 funding the Employer's OPEB Obligation or Pension Obligation or both and defraying the reasonable expenses associated with the same 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 satisfaction of any other Employer's Pension Obligation or OPEB Obligation or any other Employer's expenses.

5.8 Delegation of Duties

The Plan Administrator, Delegate, 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, Delegate 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

(a) The Trustee shall, from time to time, upon the written direction of the Plan Administrator or Delegate, make distributions from the Assets of the Trust under the OPEB Account to the insurers, third party administrators, service providers or other entities providing benefits or services under the OPEB Plan, or to Eligible Employees and Eligible Beneficiaries for reimbursement of OPEB Plan premiums (or other payments for OPEB Plan benefits) paid by the Eligible Employee or Eligible Beneficiary, or to the Employer for reimbursement of OPEB 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.

(b) In addition, 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 under the Pension Account directly to (i) the Qualified Trust as employer contributions, (ii) any insurers, third party administrators, service providers or other entities providing services in connection with determining the Employer's Pension Obligation, or (iii) the Employer as reimbursement for the Employer's payment of amounts described in this Section 5.9(b)(i) and (ii).

(c) In no event shall the Trustee have any responsibility respecting the application of distributions from the Assets of the Trust, or for determining or inquiring into whether such distributions are in accordance with the Employer's OPEB Plan, Pension Plan, policies, 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 funding the Employer's OPEB Obligation or Pension Obligation or both and defraying the reasonable expenses associated with the same; 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 Section 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 Section 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 Contractual Obligation

An Employer's participation in the Trust does not create, and is not intended to create, any contractual obligation to Eligible Employees. Therefore, no Employer is contractually obligated to Eligible Employees solely due to its participation in

the Trust to continue providing benefits under its Pension Plan or OPEB Plan or to make contributions to the Trust.

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 purpose of funding the Employer's OPEB Obligation or Pension Obligation or both and defraying the reasonable expenses associated with the same.
- (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 Pension Benefits or OPEB

A termination of the Employer's obligation to provide benefits under the Employer's Pension Plan or OPEB Plan 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 benefits under its Pension Plan or OPEB Plan, the Assets of the Employer's Pension Account or OPEB Account, as applicable, will 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 all Assets under the Employer's Agency Account, 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. Any Assets remaining in the Pension Account or OPEB Account will be used first to satisfy any remaining Pension Obligation or OPEB Obligation, respectively, pursuant to the Employer's Pension Plan or OPEB Plan (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 Employer's Pension Account or OPEB Account (as applicable) after giving effect to the preceding sentence will 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 purpose of funding the Employer's OPEB Obligation or Pension Obligation or both and defraying the reasonable expenses associated with the same. 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

(a) The Trust and this Trust Agreement may be terminated by the unanimous agreement of all Employers, which action must be in writing and delivered to the Trustee and Trust Administrator. Upon termination of the Trust under this Section 7.5(a), the Assets of each Employer's Pension Account or OPEB Account, as applicable, will be distributed by the Trustee when directed by the Plan Administrator in accordance with this Section 7.5(a). From and after the date of such termination and until final distribution of all Assets under each Employer's Agency Account, 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. Any Assets remaining in the Pension Account or OPEB Account will be used first to satisfy any remaining Pension Obligation or OPEB Obligation, respectively, pursuant to the Employer's Pension Plan and OPEB Plan (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 Employer's Pension Account or OPEB Account (as applicable) after giving effect to the preceding sentence will be paid to the Employer to the extent permitted by law and consistent with the requirements of Section 115 of the Code.

(b) Contributions to the Trust are conditioned on initial qualification of the Trust under Section 115 of the Code. If the Trust receives an adverse determination with respect to its initial qualification, then the Trust and this Trust Agreement will automatically terminate without any action by any Employer or other parties. After such termination, the Assets of each Employer's Pension Account or OPEB Account, as applicable, will be returned by the Trustee to the Employer as directed by the Plan Administrator in accordance with this Section 7.5(b) to the extent permitted by law and consistent with the requirements of Section 115 of the Code. This Section 7.5(b) will cease to apply upon the Trust's receipt of a favorable determination with respect to its initial qualification.

(c) The Trust and this Trust Agreement may be terminated only as described in this Section 7.5. 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.

IN WITNESS WHEREOF, the Plan Administrator (by executing the Adoption Agreement), the Trustee and the Trust Administrator have executed this Trust Agreement by their duly authorized agents on the Effective Date.

U.S. BANK NATIONAL ASSOCIATION

"Trustee"

By: 
Signature

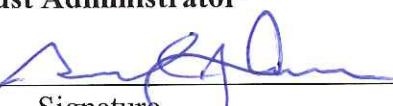
Susan M. Hughes

Typed or printed name

Its: Vice President & Relationship Manager

**PUBLIC AGENCY
RETIREMENT SERVICES**

"Trust Administrator"

By: 
Signature

Daniel Johnson

Typed or printed name

Its: President