

**COUNCIL OF THE CITY OF ABERDEEN**  
**Ordinance No. 14-O-18**

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**Introduced By:** Mayor Michael E. Bennett

**Date Introduced:** October 13, 2014

**Amendments Adopted:**

**Date Adopted:** October 27, 2014

**Date Effective:** November 17, 2014

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**ORDINANCE NO. 14-O-18**

1 **AN ORDINANCE** concerning

2  
3 **NON-PENSION POST-EMPLOYMENT BENEFITS TRUST FUND**

4  
5 **FOR** the purpose of authorizing the establishment of a Non-Pension Post-Employment Benefits  
6 Trust Fund for retiree health and life insurance benefits.

7  
8 **WHEREAS**, the City of Aberdeen has adopted a program to provide health and life insurance  
9 benefits to certain eligible retirees and their eligible dependents (the "OPEB Plan"); and

10  
11 **WHEREAS**, the Governmental Accounting Standards Board ("GASB") has adopted GASB  
12 Statement No. 43 (Financial Reporting for Post-Employment Benefit Plans Other than Pension  
13 Plans) ("GASB 43"), which establishes uniform reporting standards for postemployment benefit  
14 plans; and

15  
16 **WHEREAS**, GASB has also adopted GASB Statement No. 45 (Accounting and Financial  
17 Reporting by Employers for Post-Employment Benefits Other Than Pensions) ("GASB 45"),  
18 which requires that an employer who provides post-employment benefits, other than pension  
19 benefits, include certain financial information regarding those benefits in its annual financial  
20 statements; and

21  
22 **WHEREAS**, GASB 43 and GASB 45 provide that the financial information to be reported by a  
23 post-employment benefit plan and the sponsoring employer may be calculated using more  
24 favorable actuarial assumptions if the employer establishes a trust fund for the plan and makes  
25 annual contributions to the trust fund; and

26  
27 **WHEREAS**, the City has determined that it is in the best interest of the City to establish a trust  
28 fund for investment and administration of the City's annual contributions under the OPEB Plan;  
29 and

1 **WHEREAS**, the City wishes to authorize the establishment of the City of Aberdeen Non-  
2 Pension Post-Employment Benefits Trust Fund (the "Trust Fund"), to provide for certain powers,  
3 duties and responsibilities of the Board of Trustees, including the power to invest the assets of  
4 the Trust Fund, and to generally set forth other matters relating to the Trust Fund.

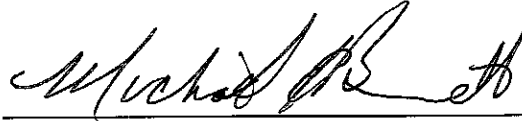
5  
6 **SECTION 1. BE IT ENACTED BY COUNCIL OF THE CITY OF ABERDEEN**,  
7 that the City of Aberdeen Non-Pension Post-Employment Benefits Trust Fund is hereby  
8 authorized to be established under the terms and conditions set forth in the City of Aberdeen  
9 Non-Pension Post-Employment Benefits Trust Agreement (the "Trust Agreement"), substantially  
10 in the form of the Trust Agreement attached hereto as Exhibit A, which will be entered into by  
11 the City and the Trustees as described therein.

12  
13 **SECTION 2. BE IT FURTHER ENACTED BY THE COUNCIL OF THE CITY**  
14 **OF ABERDEEN**, that the Trustees of the Trust Fund shall have the powers, duties, and  
15 responsibilities, including the power to invest the assets of the Trust Fund, all as set forth in the  
16 Trust Agreement.

17  
18 **SECTION 3. BE IT FURTHER ENACTED BY THE COUNCIL OF THE CITY**  
19 **OF ABERDEEN**, that the establishment of the Trust Fund shall not create any obligation to  
20 provide benefits under the OPEB Plan and the City reserves the right, at any time and from time  
21 to time, to (i) decrease or discontinue contributions to the Trust Fund or (ii) decrease or terminate  
22 the benefits under the OPEB Plan.

23  
24 **SECTION 4. BE IT FURTHER ENACTED BY THE COUNCIL OF THE CITY**  
25 **OF ABERDEEN**, that this Ordinance shall become effective at the expiration of twenty (20)  
26 calendar days following adoption.

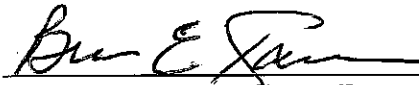
**COUNCIL OF THE CITY OF ABERDEEN**



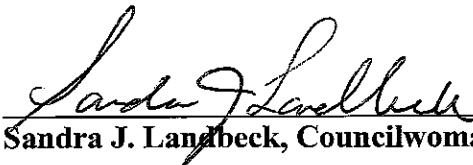
**Michael E. Bennett, Mayor**



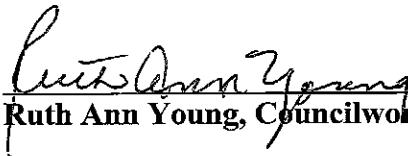
**Ruth E. Elliott, Councilwoman**



**Bruce E. Garner, Councilman**



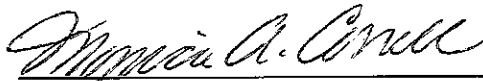
**Sandra J. Landbeck, Councilwoman**



**Ruth Ann Young, Councilwoman**

**ATTEST:**

**SEAL:**



**Monica A. Correll, City Clerk**

**Date** October 27, 2014

**Exhibit A**

**CITY OF ABERDEEN  
NON-PENSION POST EMPLOYMENT BENEFITS TRUST AGREEMENT**

This Trust Agreement (the "Trust Agreement") made and entered into by and among City of Aberdeen ("City") and the party or parties designated by this Trust Agreement as trustees hereunder (together with any successor Trustees hereunder, "Trustees"), effective as of \_\_\_\_\_, 2014.

WITNESSETH:

**WHEREAS**, the City provides various benefits to certain retired employees of the City and their dependents; and

**WHEREAS**, the City is a municipality of the State of Maryland, the income of which is exempt from federal income tax under Internal Revenue Code Section 115; and

**WHEREAS**, the City and the Trustees desire to enter into this Trust Agreement to establish the Trust Fund, to provide for certain matters in connection with the administration of the Trust Fund and to set forth the powers, duties, responsibilities and obligations of the Trustees; and

**WHEREAS**, the City intends that this Trust Agreement be construed in accordance with the requirements of Governmental Accounting Standards Board Statement Nos. 43 and 45, as amended from time to time; and

**NOW, THEREFORE**, in consideration of the premises and other mutual covenants herein contained, the City and the Trustees agree as follows:

**ARTICLE I  
DEFINITIONS AND CONSTRUCTION**

1.01 **Definitions.** For purposes of this Trust Agreement, capitalized terms used herein (including in the Recitals hereto) shall have the meanings set forth as indicated below unless the context clearly requires otherwise:

(a) **"Accounting Year"** shall mean the fiscal year beginning each July 1 and ending each June 30.

(b) **"Beneficiary"** shall mean any dependent of a Participant who is entitled to receive benefits under the terms of the Plan or any other person who has been selected by a Participant, in accordance with the provisions of the Plan, to receive Plan benefits that may be payable to a person other than a Participant.

(c) **"Benefits Administrator"** shall mean the person or persons appointed by the City as the administrator of the Plan from time to time.

(d) **“City”** shall mean the City of Aberdeen and any governmental entity that succeeds the City of Aberdeen as the sponsor of the Plan, whether by operation of law or as a result of a governmental reorganization that causes such successor entity to assume the obligations of the City or by reason of an agreement whereby such successor governmental entity replaces the City as the sponsor of the Plan.

(e) **“Code”** shall mean the Internal Revenue Code of 1986, as amended from time to time and all applicable rules and regulations issued thereunder pertinent to the tax status of the Plan and the tax-exempt status of this Trust.

(f) **“Council”** shall mean the Mayor and City Council, as from time to time constituted.

(g) **“Custodian”** shall mean the bank or trust company designated by the Trustees as custodian for the Trust Fund from time to time in accordance with Section 6.01.

(h) **“Effective Date”** shall mean \_\_\_\_\_, 2014.

(i) **“Employee”** shall mean any person employed by an Employer.

(j) **“Employer”** shall mean the City and such other governmental entities having employees participating in the Plan at any given time.

(k) **“Investment Management Agreement”** means any agreement between the Trustees and an Investment Manager, as in effect from time to time.

(l) **“Investment Manager”** shall mean any Investment Manager as may be designated by the Trustees from time to time in accordance with Section 4.02.

(m) **“Investment Policy Statement”** means the Investment Policy Statement adopted by the Trustees in accordance with Section 4.04.

(n) **“Participant”** shall mean any Employee of an Employer or any other person who becomes a participant under the Plan but only with respect to the specified benefits as to which such person is a participant.

(o) **“Plan”** shall mean the program approved by the City from time to time to provide benefits after termination of an Employee’s employment and qualification for retiree coverage, as evidenced by such resolutions, personnel policies, employee handbooks, agreements and other documents as the City may approve from time to time.

(p) **“Separate Account”** shall mean an account established by the Trustees for the purpose of maintaining separate records with regard to particular contributions that are intended to fund separately identifiable benefits provided under the Plan for a designated Employer or for a designated group of Employees, as well as with regard to the earnings, gains, losses and expenses attributable to such contributions.

(q) **“Trust Agreement”** shall mean this instrument, as amended from time to time.

(r) **“Trust”** or **“Trust Fund”** shall mean the Trust Fund established by Section 2.01 of this Trust Agreement and shall include, as of a particular date, all assets of any kind or nature from time to time held by the Trustees pursuant to this Trust Agreement. While such assets may be commingled for investment purposes, they shall be separately accounted for and separately available for use in providing only specified benefits for a designated Employer or for the Employees of designated Employer to the extent required under the Plan and this Trust Agreement.

(s) **“Trustees”** shall mean the Trustees who are a party to this Trust Agreement, or any successors thereto, as may be acting as Trustees hereunder at the time in question.

**1.02 Plurals and Genders.** Where appearing in this Trust Agreement, the masculine gender shall include the feminine and neuter genders, and the singular shall include the plural, and vice versa, unless the context clearly indicates a different meaning.

**1.03 Headings and Subheadings.** The headings and subheadings in this Trust Agreement are inserted for the convenience of reference only and are to be ignored in any construction of the provisions hereof.

## **ARTICLE II ESTABLISHMENT OF THE TRUST FUND**

**2.01 Establishment of the Trust Fund.** Upon the execution of this Trust Agreement, the Trustees shall establish and maintain a Trust Fund with the Custodian. The name of the Trust Fund shall be the “City of Aberdeen Non-Pension Post Employment Benefits Trust Fund”. The Trust Fund shall hold all contributions made pursuant to Section 2.05, together with any income, gains or profits and taking into account any losses. All contributions so made, together with the income therefrom and any other increment thereunder shall be held, managed and administered by the Trustees pursuant to the terms of this Trust Agreement, without distinction between principal and interest. To the extent the Trustees determine it to be necessary or appropriate, the Trustees shall maintain a Separate Account for designated contributions and shall keep records permitting a determination at any given time which specific assets or which portion of a pool of collectively invested assets shall be treated as attributable to each Separate Account. Absent such determination by the Trustees, the Trustees may commingle all contributions and other assets for all purposes, including, without limitation, investment, accounting and distributions to Participants and Beneficiaries.

**2.02 Exclusive Benefit of the Participants.** No part of the Trust Fund shall be used for, or diverted to purposes other than for the exclusive benefit of the Participants and Beneficiaries, except as is provided in Sections 2.04 and 7.03 below.

**2.03 No Reversion to the Employer.** Except as provided in Sections 2.04 and 7.03 below, no part of the Trust Fund, other than such part as is required to pay taxes and administrative expenses, may be returned to, or revert to, the Employer, be recoverable by the

Employer, or be used for, or diverted to, purposes other than for the exclusive benefit of the Participants and the Beneficiaries.

**2.04 Reversion if Internal Revenue Service Issues an Unfavorable Tax Determination.** All contributions to the Plan and the Trust are hereby expressly conditioned on the tax-exempt status of the Plan. If the Internal Revenue Service determines that the Plan or Trust are not tax-exempt, then all contributions, together with all earnings thereon, shall be returned to the City within one year following such determination by the Internal Revenue Service, unless Separate Accounts have been established by the Trustees, in which case such amounts shall be returned to the appropriate entities.

**2.05 Contributions.** The City shall contribute and pay over to the Trustees annually, or more often as the City shall decide, such amounts as shall be determined by the Council to be contributed to the Trust Fund from time to time. The Trustees shall receive all such contributions made by the City. However, the Trustees may elect to have all such contributions paid directly to the Custodian. The Trustees shall not be responsible in any way for the administration of the Plan and shall be under no duty to determine whether the amount of any contribution is in accordance with the Plan or to collect or enforce payment of any contribution. The Trustees shall not be responsible for the collection or calculation of contributions under or required by the Plan but will be responsible only for contributions and any other property received by the Trustees pursuant to this Trust Agreement.

The City does not assume any contractual obligation to continue contributions to the Trust Fund. The City reserves the right at any time and for any reason to discontinue the Plan and/or to discontinue contributions to the Trust Fund. Failure by the City to continue the Plan or to make contributions to the Trust Fund shall not give rise to any liability on its part whatsoever.

**2.06 Distributions.** The Trustees shall, from time to time, on the written direction of the Benefits Administrator, make distributions out of the Trust Fund to or for the benefit of Participants or Beneficiaries in such manner, at such times, in such amounts and for such purposes, as may be specified in the directions of the Benefits Administrator. To the extent specified by the Benefits Administrator, such distributions shall be made from a Separate Account. The Trustees shall not be liable for any distributions made by it pursuant to written directions of the Benefits Administrator as herein provided, and the Trustees shall be under no duty to make inquiries as to whether any distribution directed by the Benefits Administrator is made pursuant to the provisions of the Plan or this Trust Agreement. For this purpose, written directions from a person, including without limitation, an insurance company or other contract administrator of claims for benefits who has been authorized in writing to act as an agent for the Benefits Administrator, shall be treated as directions by the Benefits Administrator. The Trustees shall not be responsible for the adequacy of the Trust Fund to meet and discharge any and all liabilities under the Plan.

**2.07 Participation in Pooled Trust.** The Trustees may participate in a pooled trust or other arrangement pursuant to which the Trust Fund will be invested with funds of other trusts created by other governmental employers for the purpose of funding the other governmental employers' share of the cost of health and welfare benefits for the current or future

retirees of such other governmental employers. The Trustee shall ensure that the trustees of any such investment pool shall keep such records as are necessary in order to maintain a separation of the Trust Fund from the funds of the other trusts participating in such pooled trust.

### **ARTICLE III TRUSTEES**

3.01 **Trustees.** The operation and administration of the Trust Fund shall be the joint responsibility of the Trustees.

3.02 **Appointment of Trustees.** The Trustees hereunder shall consist of (1) the City Manager of the City, or his or her designee, (2) the Finance Director of the City or his or her designee, and (3) the Human Resources Manager of the City, or his or her designee.

3.03 **Organization of Trustees.** The Trustees shall annually elect one of its members as chairman and another as vice-chairman.

3.04 **Acceptance of Trusteeship.** (a) The initial Trustees shall immediately meet and sign this Trust Agreement which establishes the Trust Fund. The Trustees, by affixing their signature at the end of this Trust Agreement, agree to accept the trusteeship set forth in this Trust Agreement, to administer the affairs of the Trust with care, skill, prudence and diligence and to act in such capacity strictly in accordance with the provisions of the Plan and this Trust Agreement.

(b) Each successor Trustee shall sign a certificate that states that the Trustee accepts the trusteeship set forth in this Trust Agreement and will administer the affairs of the Trust with care, skill, prudence and diligence and act in such capacity strictly in accordance with the provisions of the Plan and this Trust Agreement. Any person duly appointed as a successor Trustee shall immediately upon his acceptance in writing of the terms of this Trust Agreement be vested with all rights, powers and duties of a Trustee. No successor Trustee shall have any obligation or liability with respect to the acts or omissions of his predecessor.

3.05 **Quorum; Actions by the Trustees.** (a) Each Trustee shall be entitled to one vote.

(b) A majority of all Trustees shall constitute a quorum for purposes of transacting any business, executing any power or performing any act or duty.

(c) Any action of the Trustees may be taken by the affirmative vote of a majority of all of the Trustees. Action by the Trustees may also be taken by them without a meeting, by written action, conference call, or electronic or other means; provided, however, that in such cases, there shall be unanimous concurrence by all of the Trustees.

3.06. **Execution of Documents.** The Trustees may authorize in writing one or more Trustees to execute instruments on their behalf, provided that such authorization specifically describes the type of instrument that may be so executed, and the manner of such execution. All persons, partnerships, corporations or associations may rely thereupon that such



notice or instrument has been duly authorized and is binding on the Trust Fund and on the Trustees.

3.07. **Rules and Regulations.** The Trustees may, from time to time, establish rules and regulations for the administration of the Trust Fund and for the transaction of its business.

#### **ARTICLE IV DUTIES AND POWERS OF THE TRUSTEES**

##### **4.01 General Powers of the Trustees.**

(a) The Trustees shall have all powers necessary or desirable to perform properly the duties set forth herein.

(b) In extension and not in limitation of the powers given them by law or by other provisions of this Trust Agreement, the Trustees shall have the following powers with respect to the Trust Fund:

(i) To invest and reinvest the Trust Fund without distinction between principal and income, in such common stocks, preferred stocks, bonds, notes, debentures, mortgages, certificates, or other securities, investments, or real or personal property of any kind, or part interests therein, as they, or any Investment Manager they shall contract with in the manner provided herein, may determine, including purchase and lease-back transactions, and investment in mutual funds (open-end or otherwise);

(ii) To enter into any and all contracts and agreements for carrying out the terms of this Trust Agreement and for the administration of the Trust Fund and to do all the acts as they, in their discretion, may deem necessary and advisable;

(iii) To pay out of the Trust Fund all real and personal property taxes, income taxes and other taxes of any and all kinds levied or assessed under existing or future laws upon or in respect to the Trust Fund or any money, property, or securities forming a part thereof;

(iv) To hold in uninvested cash without any liability for interest thereon such sums as they deem necessary or advisable for the cash requirements of the Trust Fund;

(v) To sell, exchange, convey, transfer, lease for any period, pledge, mortgage, grant options, contract with respect to, or otherwise encumber or dispose thereof, at public or private sale, for cash or upon credit, or partly for both, any property of the Trust Fund and no person dealing with the Trustees shall be bound to see to the application of the purchase money or to inquire into the validity of any such sale or other disposition, except as otherwise provided by law;

(vi) To give general or specific proxies or powers of attorney with or without power of substitution;

(vii) To vote in person or by proxy on any stocks, bonds, or other securities, or otherwise consent to or request any action on the part of the issuer;

(viii) To exercise any options pertinent to any stocks, bonds, or other securities for the conversion thereof into other stocks, bonds, or securities, or to deposit them in any voting trust or with any protective or like committee, or with a trustee or depositaries designated thereby, or to exercise any rights to subscribe for additional stocks, bonds, or other securities or to make any and all necessary payments therefor, and to join and participate in, or to dissent from and oppose, any reorganization, recapitalization, consolidation, liquidation, sale or merger of corporations or properties in which they may be interested as trustees, upon such terms and conditions as they may deem wise;

(ix) To register any securities or other property in the name of the Trustees or in the name of its nominee, with or without the addition of the words indicating that such securities are held in fiduciary capacity, but the books and records of the Trustees shall at all times show that all such investments are part of the Trust Fund;

(x) To retain, manage, operate, repair, improve, partition, dedicate or otherwise deal with any real estate held by them;

(xi) To form a corporation or corporations under the laws of any jurisdiction or participate in the forming of any such corporation or corporations or acquire an interest in or otherwise make use of any corporation or corporations already formed, for the purpose of investing in and holding title to any property; and

(xii) To make, execute, acknowledge and deliver any and all deeds, leases, mortgages, assignments, documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted.

**4.02 Investments.** (a) The Trustees may enter into a contract or contracts with one or more Investment Managers with respect to investment of the Trust Fund. Any such contract may delegate to such Investment Manager the full investment powers and duties of the Trustees with respect to all or a specified portion of the Trust Fund, the assets of which shall be separately identified in such contract. Any such contract may give such Investment Manager full and complete discretion with respect to investment of the assets of the Trust Fund specified therein, without prior approval by, or notification to, the Trustees, or such lesser discretion as may be specified in such contract. Any such contract may provide for the investment of a specified portion of the Trust Fund in a certain type of property only, such as (but without limitation) common stocks, bonds, or real estate, with the specific investments to be in the sole discretion of the Investment Manager, without the prior approval of, or notification to, the Trustees, or such lesser discretion as may be specified in such contract. Where any such contract is with respect to only a portion of the assets of the Trust Fund and specifies the type of property to be invested in, the Investment Manager shall only be responsible for selecting proper individual investments within the specified category of property, and shall not be responsible for diversification of investments of the Trust Fund as a whole, nor for anything but its failure to

properly invest the Trust Fund within the scope of the discretion provided for in the contract. Any such contract may delegate to the Investment Manager any of the powers or discretion conferred on the Trustees under this Trust Agreement, and may provide that the Investment Manager shall have custody and control of the assets of the Trust Fund subject to investment management pursuant to such contract.

(b) In their discretion and to the extent they deem it wise, beneficial or necessary, the Trustees may appoint one or more banks or trust companies to be designated as "Corporate Trustee", and to enter into and execute a trust agreement or trust agreements with such banks or trust companies, to provide for the investment and reinvestment of assets of the Trust Fund, with such other provisions incorporated therein as may be deemed desirable in the Trustees' sole discretion for the property management of the Trust Fund, and upon execution to convey and transfer to such Corporate Trustee any assets of the Trust Fund and without limit with respect to the powers which the Trustees may grant to such Corporate Trustee, in agreement, to the extent permitted by law. The Trustees shall be forever released and discharged from any responsibility or liability with respect to any assets which they may convey to such Corporate Trustee.

(c) Notwithstanding any other provision of this Trust, the Trustees may invest assets of the Trust Fund in any common, collective or commingled investment fund or funds, including common and group trust funds presently in existence or hereafter established which are maintained by a bank or trust company supervised by a state or federal agency, notwithstanding that the bank or trust company is an Investment Manager or is otherwise a party-in-interest of the Plan. The assets so invested shall be subject to all the provisions of the instruments establishing such funds, as amended from time to time. Such instruments of group trusts, as amended from time to time, are hereby incorporated and made a part of this Trust as if fully set forth herein. The combining of money and other assets of this Trust with money and other assets of other trusts and accounts in such fund or funds is specifically authorized. During such period of time as an investment through any such medium shall exist the Declaration of Trust of such fund shall constitute a part of this Trust Agreement and of the Investment Manager contract.

(d) All expenses in connection with the investment of the Trust Fund (including brokerage costs, Federal and State transfer taxes, shipping expenses and charges of correspondent banks) and any income or other taxes of any kind whatsoever which may be levied or assessed upon or in respect of the Trust Fund shall be paid out of the Trust Fund.

**4.03 Engagement of Professionals.** The Trustees may employ and determine the compensation and other terms of engagement of such counsel, accountants, brokers, actuaries and other agents and provide for such legal, clerical, accounting, actuarial and other services as the Trustees may deem advisable to perform their duties under this Trust Agreement. The Trustees may terminate any such service provider in accordance with the terms of such service provider contract. All compensation and expenses of such professionals shall be paid from the Trust Fund.

**4.04 Investment Policy Statement.** The Trustees shall approve and continuously maintain an Investment Policy Statement for use in the investment of Trust assets.

Within the scope of the Investment Policy Statement, the Trustees may make reasonable restrictions relating to the investment or reinvestment of Plan assets.

**4.05 Settlement of Claims.** The Trustees shall have the power and authority to settle, compromise or submit to arbitration, any claim, debts or damages due or owing to or from the Trust Fund; to commence or defend suits or legal or administrative proceedings whenever, in its judgment, any interest of the Trust Fund so requires, and to represent the Trust Fund in all suits or legal or administrative proceedings in any court of law or equity or before any other body or tribunal. The Trustees shall inform the City as soon as possible about any such claims, debt or damages, and shall fully cooperate with the City with respect to any suits or legal or administrative proceedings that result from or arise out of such claims, debts or damages.

#### **4.06 Accounting.**

(a) The Trustees shall keep appropriate and accurate accounts of, and records reflecting all transactions concerning the Trust Fund, including but not limited to, contributions, gains, losses, expenses, and distributions of benefits. However, if the Trustees elect to have all contributions paid directly to the Custodian, then the Trustees shall be entitled to rely on the record of accounts provided to it by the Custodian, with respect to contributions, gains, losses, expenses, distributions of benefits and all other transactions involving the Trust Fund. The Trustees shall be entitled to be reimbursed for their actual and reasonable expenses incurred in preparing any accounting from the Trust Fund.

(b) The Trustees shall furnish the Council annually, not later than 180 days following the end of each Accounting Year, with a written account of the financial status and performance of the Trust Fund. The Trustees shall determine on the format of such report. At any time, the Trustees may (but are not required to) engage an independent certified public accountant to examine the Trust Fund's financial statements or internal control procedures. If the Trustees engage an independent accountant, the Trustees shall require that such engagement provide that the examination be made according to generally accepted auditing standards (or upon other agreed-upon-procedures that the Trustees approve in writing), and that the Trustees are entitled to rely upon the accountant's examination and opinion and all reports relating to the examination.

(c) Except as otherwise ordered by a court having jurisdiction, no person or entity other than the Council may require an accounting by the Trustees.

(d) Notwithstanding anything in this Trust Agreement to the contrary, the Trustees (and an individual Trustee shall have the right upon termination of his or her service for any reason) shall have the right at any time to petition any appropriate court for a settlement of the Trust Fund's accounts or for the court's instructions in executing the Trustees' obligations under the Trust Fund created by this Trust Agreement.

**4.07 Compensation.** No compensation shall be paid to the Trustees for services provided under this Trust Agreement. The Trustees shall be paid such expenses that are agreed to, from time to time, by the Trustees and the City.

**4.08 Fiduciary Standards.** The Trustees (and any person or entity to which the Trustees shall delegate any duties), including the Investment Manager, shall discharge their duties under this Trust Agreement solely in the interest of the Participants and Beneficiaries of the Plan and in accordance with governing State and federal law and the terms of the Plan and this Trust Agreement. Such duties shall be discharged for the exclusive purpose of providing benefits to the Participants and Beneficiaries and paying expenses of the Plan. In addition, the Trustees shall discharge their duties in accordance with the fiduciary standards established by Sections 21-201 through 21-210, inclusive, of the State Personnel and Pensions Article of the Maryland Annotated Code, or successor provisions.

**4.09 Allocation of Responsibilities.** The Trustees may, by resolution, allocate fiduciary and Trustee responsibilities and various administrative duties and may delegate, in their sole discretion and consistent with applicable law, such responsibilities and duties to any City officer or employee, or any board or committee established by the City whom they deem appropriate. The Trustees will not be deemed responsible for any errors or omissions of individuals to whom such responsibilities or duties have been properly allocated or delegated.

**4.10 Limitation on Liability.** (a) A Trustee:

(i) shall not be responsible for any act or omission, unless such act or omission of the Trustee is a breach of the fiduciary standards set forth in Section 4.08;

(ii) shall not be responsible for any act or omission of any accountant, counsel, or agent that is selected and monitored in accordance with the Trustee's fiduciary duty pursuant to Section 4.08; and

(iii) shall not be responsible for any selection, decision, or instruction made by the Employer.

(b) The Trustees shall not be liable for the making, retention, or sale of any investment or reinvestment made by them, or originally received by them, as herein provided, nor for any expense or liability hereunder, nor for any loss to or diminution of the Trust Fund, unless due to or arising from their own willful or intentional malfeasance or misfeasance.

(c) The Trustees shall not be liable as a result of the exercise or non-exercise of any power or discretion given to them in this Trust Agreement and delegated by them in writing to any Investment Manager with which they may contract for the investment of any portion of the Trust Fund. The Trustees shall not be liable as a result of any specific investment of the property of the Trust Fund made by any such Investment Manager, but they shall be responsible for making a periodic review, at least as often as annually, of the investment performance of such Investment Manager, to determine whether such performance has been prudent and whether to continue such contract or to make other provisions for investment of the Trust Fund. If the Trustees contract with a single Investment Manager for the investment of the entire Trust Fund on a completely discretionary basis, both as to types or categories of investment and selection of specific investments, the Trustees shall be responsible only for making a periodic review as described in the last preceding sentence.

(d) The Trustees shall have no responsibility for the accuracy of any information furnished them by the City or the Benefits Administrator.

**4.11 Indemnification.** The City shall indemnify the Trustees for any claim against the Trustees or any individual Trustee for any action made in good faith and without gross negligence. The City or the Trustees may purchase fiduciary insurance to protect the Trustees, but the City's obligation to indemnify the Trustees shall not be limited by such insurance policy. For any Trustee who is an employee of the City, the Trustee's duties under this Trust Agreement shall be treated as official duties, and the Trustee shall be entitled to relief from liability and defense, to the same extent as provided for any government officer or employee in the conduct of his or her official duties.

**4.12 No Bond or Security Required.** The Trustees shall not be required to give any bond or other security for the faithful performance of their duties hereunder, unless otherwise required by law.

**4.13 Conflicts of Interest.**

(a) Except as otherwise provided in this Section, the Trustees must not:

- (i) be a party to any transaction involving the assets of the Trust Fund;
- (ii) use the gains or profits of the Trust Fund for any purpose except to make investments or payments that are authorized by the Plan;
- (iii) deal with the assets of the Trust Fund for their own interest or account; or
- (iv) act in any transaction involving the Trust Fund on behalf of a party whose interests are adverse to the interests of the Trust Fund, the Participants or Beneficiaries.

(b) This Section does not prohibit a Trustee from being a Participant or receiving a benefit from the Plan as a Participant or Beneficiary.

(c) The Trustees shall keep all information regarding Participants and Beneficiaries confidential except to the extent necessary to fulfill their duties and obligations under this Trust Agreement or as otherwise required by law.

## **ARTICLE V REPLACEMENT OF TRUSTEES**

**5.01 Replacement of Trustees.** The City may remove and replace any Trustee at any time and from time to time with a written notice to such Trustee of removal and replacement. Except where necessary to protect the rights and benefits of the Plan Participants and Beneficiaries, the City shall give 30 days written notice of removal and replacement to any Trustee.

**5.02 Transfer of Trust Fund.** In the event that all of the Trustees are replaced at one time, the Trustees shall take all necessary and appropriate steps to transfer to their successor Trustees the entire Trust Fund as soon as possible. The Trustees may undertake a reasonable accounting of the Trust Fund prior to such transfer but such accounting shall not cause unreasonable delay in any transfer of the Trust Fund.

**5.03 Survival of Trust Fund.** The replacement of the any or all of the Trustees shall not result in the termination of this Trust Agreement. A successor Trustee shall have the same powers and duties as those herein conferred upon the Trustees.

**5.04 Resignation of the Trustees.** The Trustees may resign at any time by giving 30 days advance written notice to the City.

## **ARTICLE VI**

### **CUSTODIAN**

**6.01 Custodian.** The Trustees shall appoint a Custodian for the Trust Fund. The Custodian shall have custody of all cash, assets and securities of the Trust Fund. The Investment Manager is authorized to give instructions to the Custodian as to deliveries of securities and payments of cash for the payment of securities and as otherwise provided in the Investment Management Agreement. The Investment Manager shall not take possession of or act as custodian for the cash, securities or other assets of the Trust Fund and shall have no responsibility in connection therewith. The Trustees may terminate the Custodian Agreement, and the Custodian may resign (in either case in accordance with the Custodian Agreement) and the Trustees may enter into a new agreement with a new custodian.

## **ARTICLE VII**

### **AMENDMENTS TO THIS TRUST AGREEMENT AND TERMINATION OF THE TRUST**

**7.01 Terms of the Trust Agreement.** Except as provided in Section 7.03, this Trust Agreement shall continue as long as the Plan is in full force and effect. If the Plan ceases to be in full force and effect, this Trust Agreement shall thereupon terminate unless expressly extended by the City.

#### **7.02 Amendment of the Trust Agreement.**

(a) Any and all amendments to this Trust Agreement which may be required or suggested by the Internal Revenue Service for the purpose of the approval of the Trust as tax exempt under the Code may be made retroactively to the extent permitted by law.

(b) This Trust Agreement may otherwise be amended by the City or the Trustees. If the Trust Agreement is amended in any way that increases the duties of the Trustees, any Trustee may resign effective immediately by giving written notice to the City.

**7.03 Termination of the Trust Fund.** The City reserves the right to terminate the Trust Fund at any time for any reason. Upon termination of the Trust Fund, after all benefits

owed under the Plan have been paid and all Plan and Trust expenses have been paid, any assets remaining in the Trust Fund (or a successor trust fund) shall revert to the City or, with the approval of the Council, be transferred to another entity or person that meets the requirements for tax exemption from tax under Section 115 of the Code.

## **ARTICLE VIII MISCELLANEOUS**

**8.01 Reliance.** The parties hereto shall be protected in acting upon any notice, resolution, request, consent, order, certificate, report, opinion, statement or other document which they reasonably believed to be genuine and to have been signed by the proper party or parties or by a person or persons authorized to act on its behalf.

**8.02 Person Dealing with the Trustees.** No person dealing with the Trustees shall be under any obligation to inquire into the validity, expediency or propriety of any action by the Trustees or of any exercise by it of any of the powers conferred upon it by this Trust Agreement. The execution by the Trustees of any instrument, document or paper in connection with the exercise of any of the powers enumerated herein shall, of itself, be conclusive evidence to all persons of the authority of the Trustees to execute the same and to exercise the powers incident thereto.

**8.03 Advice of Counsel.** If at any time or times a Trustee is in reasonable doubt as to the course which it should follow in any matter relating to the administration of this Trust Agreement, it may request legal counsel to advise it with respect thereto, and (as long as the Trustee has acted in accordance with Section 4.08) it shall be protected in relying upon the advice or direction which may be given it by legal counsel in response to such request.

**8.04 Anti-Alienation.** No right to claim to, or interest in, any part of the Plan or Trust Fund's assets, or any payment from the Plan or Trust Fund shall be subject to anticipation, alienation, sale, transfer, assignment, mortgage, pledge, encumbrance, hypothecation, commutation, garnishment, charge, or any other process of any court except as specifically permitted under the Plan or this Trust Agreement or required by law. No benefit payable from the Plan or Trust Fund to any person shall in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements, or torts of any such person, nor shall it be subject to attachment or legal process for or against such person, except to such extent required by law. Any attempt to anticipate, alienate, sell, transfer, assign, mortgage, pledge, garnish, encumber, charge or levy against any benefit under the Plan or Trust Fund shall be void, except as required by law. No portion of the benefits under the Plan or Trust Fund shall be subject to the bankruptcy estate of any Participant or Beneficiary in the Plan, except as required by law.

**8.05 Notices.** All orders, requests, directions and instructions of the Benefits Administrator to the Trustees shall be in writing, signed by a person authorized to act on its behalf. Unless the Trustees know or have reason to know (through the exercise of their fiduciary duties or otherwise) that the direction constitutes a breach of the Benefits Administrator's duties or responsibilities under the Plan, the Trustees shall act and shall be fully protected in acting in accordance with such orders, requests, directions and instructions. In the absence of knowledge of, or reason to know, that the direction constitutes such a breach, the Trustees shall be entitled to



rely conclusively on such direction, and shall have no further duty to make any investigation or inquiry before acting upon any such direction of the Benefits Administrator.

**8.06 Governing Law.** This Trust Agreement is made in the State of Maryland, and shall be construed in accordance with the laws thereof and applicable federal and local law.

**8.07 Invalidity.** In the event any provision of this Trust Agreement shall be held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining provisions hereof, and this Trust Agreement shall thereafter be construed and enforced as if said illegal or invalid provisions have never been included therein.

[remainder of page intentionally left blank]

**IN WITNESS WHEREOF**, the City has caused this Trust Agreement to be executed by its Mayor and its seal to be impressed hereon and attested by its City Clerk, and the Trustees have caused this Trust Agreement to be duly executed, all as of the day and year first above written.

[SEAL]

ATTEST:

**CITY OF ABERDEEN**

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

\_\_\_\_\_  
Mayor

**TRUSTEES:**

\_\_\_\_\_  
Trustee

\_\_\_\_\_  
Trustee

\_\_\_\_\_  
Trustee