

TO: James L. App, City Manager
FROM: Mike Compton, Director of Administrative Service
SUBJECT: Presentation of "Other Post Employment Benefits" Actuarial Study
DATE: June 5, 2007

NEEDS: For the City Council to adopt a resolution establishing an irrevocable trust for the deposit and investment of monies to fund the City's Other Post Employment Benefits (OPEB) liability.

FACTS:

1. GASB Statements 43 & 45 requires public agencies to report in their liability for OPEB. OPEB includes compensation received after employment ends in exchange for employees' current service. City payments made to retired employees for health insurance coverage qualifies as OPEB.
2. GASB Statement 43 & 45 requires agencies to establish uniform financial reporting standards for OPEB Plans and include instructions for calculating expenses, liabilities, and supplementary information schedules (e.g. funding progress).
3. The City is required to implement said accounting changes and uniform financial reporting requirements by fiscal year beginning July 1, 2007.
4. The City's current Two Year Budget/Four Year Financial Plan provided funding for its' OPEB obligation based upon estimates calculated by staff until such time as an actuarial study could be completed.
5. The actuarial study completed by Demsey, Filliger & Associates was presented to the Council at their January 16, 2007 regular meeting.
6. The study identified the City's OPEB liability for current and future retirees as of July 1, 2006 as \$6,953,464. The study identified four different funding options.
7. The proposed Two Year Budget/Four Year Financial Plan contains a three year plan for funding the City's OPEB liability on a "twenty year level pay" basis.
8. The last remaining step in establishing the City's OPEB reporting and funding program is the establishment of the irrevocable trust. Thus, this request.

ANALYSIS &
CONCLUSION:

The new GASB standards require the City to measure and disclose the annual OPEB cost on the accrual basis of accounting. The annual cost is equal to the City's annual required contribution plus an amount to amortize the total (future) unfunded actuarial accrued liability over a period not exceeding 30 years. Actuarial evaluations are required at least every

two years for employers with 200 or more employees or every three years if less than 200 employees.

Depending upon year of retirement, eligible retirees receive a monthly benefit of \$50 to \$500 to offset the cost of health insurance premiums and/or out of pocket costs. This benefit qualifies as OPEB.

The results of the study indicate an actuarial liability for current and future retirees as of July 1, 2006 is \$6,953,464 on a present value basis. This is the amount if deposited into a special fund earning a 6% return annually and all actuarial assumptions were exactly met, the fund would accumulate sufficient resources to pay all expected benefits to current and future retirees.

Through the current budget approval process, the City has made the decision to fund the total unfunded actuarial accrued liability and as noted above, the proposed new budget provides the necessary annual contributions to fund the outstanding OPEB obligation. Fully funding the OPEB liability is consistent with current policy that provides for full funding of the City's PERS retirement liability (on an amortized basis) and set-asides for equipment replacement. Advantages of funding the liability include:

1. Added security that the City will be able to pay its contractual obligation going forward; and
2. Ability to use higher discount rate to value liabilities will result in lower actuarial liability and expense calculations.

Last year, the auditor's disallowed the City's transfer of the budgeted contribution to fund OPEB due to the lack of a formal irrevocable trust. Staff has been analyzing the programs established by Keenan & Associates and ICMA-RC. Due to the City's current relationship with ICMA-RC for employee deferred compensation plans and its simplicity, no "board of authority" requirement, staff is recommending establishing the irrevocable trust with ICMA-RC.

**FISCAL
IMPACT:**

The actuarial study identified the City's OPEB liability at \$6,953,464 on a present value basis. The twenty year level pay option identifies the annual contribution at \$477,400 annually. With the amounts proposed in the new budget, by fiscal year 2010 the City's annual contribution will be \$477,400.

GASB 43 & 45 requires that the actuarial study be updated every two years. There is a likely possibility that future studies will identify increased cost obligations as future budgets authorize increased staffing allocations. However, given the City's funding discipline, the incremental obligation would not pose a financial challenge.

OPTIONS:

- a. That the Council adopt Resolution No. 07-XXX approving the ICMA-RC Integral Part Trust, the Administrative Services Agreement, and authorize the City Treasurer to execute said documents establishing the City's irrevocable trust for its' OPEB liabilities or
- b. Amend, modify or reject above option.

Mike Compton

From: Diana Frisby [dfrisby@heritageoaksbank.com]
Sent: Tuesday, May 29, 2007 2:22 PM
To: Mike Compton
Subject: Incoming wire

Hello-

You have an incoming wire from the State of California

\$600,000.00

Thanks-
Diana

RESOLUTION NO. 07-xxx

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES
ADOPTING THE VANTAGECARE ICMA-RC RHS EMPLOYER INVESTMENT
PROGRAM WITH THE ICMA RETIREMENT CORPORATION

WHEREAS, the Governmental Accounting Standards Board (GASB) recently adopted Statements 43 and 45; and

WHEREAS, these Statements establish uniform financial reporting standards for public agencies which provide "Other Post Employment Benefits" (OPEB) Plans; and

WHEREAS, these Statements also require public agencies to report in their comprehensive annual financial report (CAFR) their liability for OPEB; and

WHEREAS, the City recognizes the importance of complying with Governmental Accounting Standards Board Statements 43 and 45 as it provides full disclosure of the City's financial condition and improves long-range financial planning; and

WHEREAS, the City has employees rendering valuable services; and

WHEREAS, the City has determined that the provision of retiree health benefits for such employees serves the interests of the City by enabling it to provide reasonable security regarding such employees' health care needs during retirement, by providing increased flexibility in its personnel management system, and by assisting in the attraction and retention of competent personnel; and

WHEREAS, the City has determined that the establishment of the retiree health savings plan (the Plan) serves the above objectives.

THEREFORE, BE IT HEREBY RESOLVED that the City Council of the City of El Paso de Robles adopts the Plan in the form of the ICMA Retirement Corporation's VantageCare RHS Employer Investment Program; and

BE IT FURTHER RESOLVED by the City Council of the City of El Paso de Robles that the assets of the Plan shall be held in trust and that:

- 1) The City shall serve as trustee of the Plan for the exclusive benefit of Plan participants, and the assets of the Plan shall not be diverted to any other purpose prior to the satisfaction of all liabilities of the Plan; and
- 2) The City Treasurer will execute the Declaration of Trust of the City of Paso Robles Integral Part Trust in the form of the model trust made available by the ICMA Retirement Corporation; and

- 3) The Director of Administrative Services shall be the coordinator and contact for the Plan and shall receive necessary reports and notices, etc.

PASSED AND ADOPTED by the City Council of the City of Paso Robles this 5th day of June 2007 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Frank R. Mecham, Mayor

ATTEST:

Deborah Robinson, Deputy City Clerk

I, Deborah Robinson, Deputy City Clerk of the City of El Paso de Robles certify that the foregoing is a full, true and correct copy of Resolution No. 07-xxx proposed by Councilman _____, seconded by Councilman _____, duly passed and adopted by the City of El Paso de Robles at its regular meeting on June 5, 2007 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Plan number 801754

ADMINISTRATIVE SERVICES AGREEMENT

Type: VantageCare RHS Employer Investment Program

Account Number: 801754

ADMINISTRATIVE SERVICES AGREEMENT

This Agreement, made as of the day of , 20 (herein referred to as the "Inception Date"), between The International City Management Association Retirement Corporation ("ICMA-RC"), a nonprofit corporation organized and existing under the laws of the State of Delaware; and the City of Paso Robles ("Employer") a local governmental instrumentality organized and existing under the laws of the State of California with an office at 100 Spring Street, Paso Robles, California 93446.

RECITALS

Employer acts as a public employer and is seeking to provide retiree health benefits for its eligible employees and retirees;

ICMA-RC makes available the VantageCare Retirement Health Savings Program Employer Investment Program ("RHS EIP" or "Program") to public employers as a means of providing retiree health benefits on behalf of employees and retirees of such employer;

ICMA-RC further makes available the Vantagepoint Funds, a no-load, diversified mutual fund, as an investment vehicle for public employer plan assets, including RHS EIP assets;

Employer desires to fund retiree health benefits by establishing an investment account under the RHS EIP, to be invested in one or more of the Vantagepoint Funds on a pooled basis;

Employer intends that the assets so invested ultimately shall be used to provide retiree health benefits for its eligible employees and retirees under the Program, and may be allocated to individual participant accounts in a plan established under the ICMA-RC VantageCare Retirement Health Savings Program ("RHS Plan").

AGREEMENTS

1. Establishment of Account

Employer hereby establishes an RHS EIP investment account ("Account") for the purpose of investing assets Employer intends to use to fund retiree health benefits under the Program. Account assets will be held in trust, and invested in accordance with the Declaration of Trust of the Integral Part Trust established by Employer.

2. Appointment of ICMA-RC

Employer appoints ICMA-RC to act as recordkeeper with respect to the Account to perform all non-discretionary functions necessary to facilitate the investment administration of Account assets. The functions to be performed by ICMA-RC and its agents include:

- (a) allocation in accordance with Employer direction of Account assets to investment funds made available under the Program;
- (b) maintenance of Account records reflecting amounts contributed, income, gain, or loss credited, and amounts as allocated to provide benefits;
- (c) provision of periodic reports to the Employer regarding the status of the Account and Account investments.
- (d) if so elected by the Employer in an RHS Plan addendum, communication to participants of information regarding their rights and elections under the RHS Plan;
- (e) if so elected by the Employer in an RHS Plan addendum, disbursement of benefits as agent for the Employer in accordance with terms of the RHS Plan; and
- (f) if so elected by the Employer in an RHS Plan addendum, performance of tax withholding and reporting in conjunction with the Employer for each RHS Plan account.

3. Establishment of RHS Plan

Employer may make the RHS Plan provided by ICMA-RC available to its employees by executing an RHS Plan addendum to this Agreement. The details of the RHS Plan shall be as mutually agreed between the Employer and ICMA-RC, as reflected in the RHS Plan addendum, and in general shall be as set forth in the RHS Plan materials developed by ICMA-RC and provided to Employer. To the extent the Employer executes an RHS Plan addendum, the RHS Plan materials are hereby incorporated by reference and made a part of this Agreement, except that Employer and ICMA-RC may from time to time mutually agree in writing to terms that vary from the RHS Plan materials. RHS plan materials shall include the *VantageCare RHS Employer Manual*, available electronically through the EZ Link System upon plan adoption.

4. Employer Duty to Furnish Information

Employer agrees to furnish to ICMA-RC on a timely basis such information as is necessary for ICMA-RC to carry out its responsibilities with respect to the Account, including: (a) information needed to allocate Account assets to investment funds; (b) relevant Employer and other identifying information (including tax identification numbers); and to the extent applicable, (c) information needed to allocate individual participant accounts to Funds, and information as to the employment status of participants, and participant ages, addresses, beneficiaries and other identifying information (including tax identification numbers). ICMA-RC shall be entitled to rely upon the accuracy of any information that is furnished to it by a responsible official of the Employer, and ICMA-RC shall not be responsible for any error arising from its reliance

on such information. ICMA-RC will provide Account information in reports, statements or accountings.

5. Certain Representations and Warranties

ICMA-RC represents and warrants to Employer that:

- (a) ICMA-RC is a non-profit corporation with full power and authority to enter into this Agreement and to perform its obligations under this Agreement.
- (b) ICMA-RC is an investment adviser registered as such with the Securities and Exchange Commission under the Investment Advisers Act of 1940, as amended. ICMA-RC Services, LLC (a wholly owned subsidiary of ICMA-RC) is registered as a broker-dealer with the Securities and Exchange Commission (SEC) and is a member in good standing of the National Association of Securities Dealers, Inc.

Employer represents and warrants to ICMA-RC that:

- (c) Employer is organized in the form and manner recited in the opening paragraph of this Agreement with full power and authority to enter into and perform its obligations under this Agreement and to act for the Account and Account beneficiaries in the manner contemplated in this Agreement. Execution, delivery, and performance of this Agreement will not conflict with any law, rule, regulation or contract by which the Employer is bound or to which it is a party.
- (d) Any information required to be retained by the Employer in connection with an RHS Plan shall be set forth in the RHS Plan materials developed by ICMA-RC and provided to the Employer.

6. Compensation and Payment

Employer acknowledges that certain wholly-owned subsidiaries of ICMA-RC receive compensation for advisory and other services furnished to the Vantagepoint Funds. The fees referred to in this subsection are disclosed in the Vantagepoint Funds Prospectus.

7. Custody

Employer understands that amounts contributed to the Account are to be remitted directly to Vantagepoint Transfer Agents in accordance with instructions provided to Employer in the RHS EIP Plan materials and are not to be remitted to VantageTrust or ICMA-RC. In the event that any check or wire transfer is incorrectly labeled or transferred, ICMA-RC will return it to Employer with proper instructions.

8. Responsibility

- (a) ICMA-RC shall not be responsible for any acts or omissions of any person other than ICMA-RC in connection with the administration or operation of the Account.
- (b) The Employer understands that, as a general matter, the Internal Revenue Service (“IRS”) may decline to rule on certain design features or provisions that the Employer may request to have added to the RHS Plan materials it adopts. The Employer agrees to hold ICMA-RC harmless in connection with the addition and administration of any RHS Plan feature or provision requested by the Employer for which the IRS will not provide express interpretive guidance.
- (c) Employer is responsible for determining that there are no state or local laws that would prohibit it from establishing the Program. Employer is also responsible for determining that the investments selected for the Program fall within state/local requirements.

9. Term

This Agreement shall be in effect for an initial term beginning on the Inception Date and ending 5 years after the Inception Date. This Agreement will be renewed automatically for each succeeding year unless written notice of termination is provided by either party to the other no less than 60 days before the end of such Agreement year.

10. Amendments and Adjustments

- (a) This Agreement may not be amended except by written instrument signed by the parties.
- (b) The parties agree that compensation for services under this Agreement and administrative and operational arrangements may be adjusted as follows:

ICMA-RC may propose an adjustment by written notice to the Employer given at least 60 days before the effective date of the adjustment and the notice may appear in disclosure documents such as Employer Bulletins. Such adjustment shall become effective unless, within the 60 day period before the effective date the Employer notifies ICMA-RC in writing that it does not accept such adjustment, in which event the parties will negotiate with respect to the adjustment.

- (c) No failure to exercise and no delay in exercising any right, remedy, power or privilege hereunder shall operate as a waiver of such right, remedy, power or privilege.

11. Notices

All notices required to be delivered under Section 10 of this Agreement shall be delivered personally or by registered or certified mail, postage prepaid, return receipt requested, to

(i) Legal Department, ICMA Retirement Corporation, 777 North Capitol Street, N.E., Suite 600, Washington, D.C, 20002-4240; (ii) Employer at the office set forth in the first paragraph hereof, or to any other address designated by the party to receive the same by written notice similarly given.

12. Complete Agreement

This Agreement shall constitute the sole agreement between ICMA-RC and Employer relating to the object of this Agreement and correctly sets forth the complete rights, duties and obligations of each party to the other as of its date. Any prior agreements, promises, negotiations or representations, verbal or otherwise, not expressly set forth in this Agreement are of no force and effect.

13. Governing Law

This agreement shall be governed by and construed in accordance with the laws of the State of California, applicable to contracts made in that jurisdiction without reference to its conflicts of laws provisions.

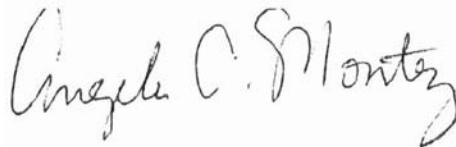
In Witness Whereof, the parties hereto have executed this Agreement as of the Inception Date first above written.

CITY OF PASO ROBLES

By _____ Date _____
Signature

Name and Title (Please Print)

INTERNATIONAL CITY/COUNTY MANAGEMENT ASSOCIATION RETIREMENT CORPORATION



By _____
Angela Montez
Assistant Corporate Secretary

VantageCare RHS Employer Investment Program

DECLARATION OF TRUST OF THE

[Insert name of Employer]

INTEGRAL PART TRUST



DECLARATION OF TRUST OF THE

[Insert name of Employer]

INTEGRAL PART TRUST

Declaration of Trust made as of the _____ day of _____, 200____, by _____
(hereinafter alternatively referred to as the "Employer" or the "Trustee"). [Insert name of Employer]

RECITALS

WHEREAS, the Employer is a governmental entity exempt from federal income tax under the Internal Revenue Code of 1986; and

WHEREAS, the Employer seeks to provide for the security and welfare of its Employees, their Spouses, Dependents and Beneficiaries by funding one or more post-retirement welfare benefit plans, programs or arrangements to provide for life, sickness, medical, disability, severance and other similar benefits through insurance and self-funded reimbursement plans (collectively a "Plan"); and

WHEREAS, it is an essential function and integral part of the exempt activities of the Employer to assist Employees, their Spouses, Dependents and Beneficiaries by making contributions to and accumulating assets in the trust, a segregated fund, for post-retirement welfare benefits under such a Plan; and

WHEREAS, the authority to provide for the investment and general administration of assets to be used to fund such a Plan is vested in the Employer or its designee, who has the authority and shall be subject to the duties with respect to the trust specified in this Declaration of Trust; and

WHEREAS, the Employer wishes to establish this trust to hold assets and income to be used for the exclusive purpose of funding post-retirement welfare benefits under a Plan for its Employees, their Spouses, Dependents and Beneficiaries.

NOW, THEREFORE, the Employer does hereby establish this trust, to be known as the Declaration of Trust of the _____
_____ Integral Part Trust (hereinafter referred to as the "Trust"), and agree that
[Insert name of Employer]

the following constitute the Declaration of Trust (hereinafter referred to as the "Declaration"):

ARTICLE I DEFINITIONS

1.1 Definitions. For the purposes of this Declaration, the following terms shall have the respective meanings set forth below unless otherwise expressly provided.

- (a) "Account" means the investment recordkeeping account established to fund post-retirement welfare benefits on behalf of Employer's Employees, their Spouses, Dependents and Beneficiaries.
- (b) "Administrator" means the Employer. The Employer may contract for such administrative services as are necessary to implement a Plan.
- (c) "Beneficiary" means the Spouse and Dependents or the person or persons designated by a Participant pursuant to the terms of a Plan, who will receive any benefits payable under a Plan in the event of the Employee's death. In the case where there is no designated Beneficiary, any amount of contributions, plus accrued earnings thereon, remaining in a Participant Account must, under the terms of a Plan, be returned to the Trust.
- (d) "Code" means the Internal Revenue Code of 1986, as amended from time to time.
- (e) "Dependent" means an individual who is a person described in Code Section 152(a).
- (f) "Employee" means an individual who performs services for the Employer, and who has been designated as eligible to participate in, and receive benefits under a Plan.

- (g) "Investment Fund" means any separate investment option or vehicle selected by the Employer in which all or a portion of the Trust assets may be invested as herein provided. The Trustee shall not be required to select any Investment Fund.
- (h) "Nonforfeitable Interest" means the interest of a Participant or the Participant's Spouse, Dependent or Beneficiary (whichever is applicable) in the percentage of Employer Contributions that has vested pursuant to the vesting schedule in a Plan sponsored by the Employer. A Participant shall, at all times, have a one hundred percent (100%) Nonforfeitable Interest in the Participant's own contributions, if Participant contributions are permitted pursuant to the terms of the Plan.
- (i) "Participant" means an Employee of the Employer who satisfies the requirements for participation in a Plan sponsored by the Employer.
- (j) "Participant Account" means an individual recordkeeping account maintained under a Plan to record the interest of a Participant in the Plan in accordance with Section 7.4.
- (k) "Spouse" means the Participant's lawful spouse as determined under the laws of the state in which the Participant has his primary place of residence.
- (l) "Trust" means the trust established by this Declaration.
- (m) "Trustee" means the Employer or its designee.

ARTICLE II ESTABLISHMENT OF TRUST

- 2.1 The Trust is hereby established as of the date set forth above for the exclusive purpose of providing a funding mechanism for post-retirement welfare benefits for the Employer's Employees, their Spouses, Dependents and Beneficiaries.

ARTICLE III CONSTRUCTION

- 3.1 This Trust and its validity, construction and effect shall be governed by the laws of the State of _____
[Insert State of Employer]
- 3.2 Pronouns and other similar words used herein in the masculine gender shall be read as the feminine gender where appropriate, and the singular form of words shall be read as the plural where appropriate.
- 3.3 If any provision of this Trust shall be held illegal or invalid for any reason, such determination shall not affect the remaining provisions, and such provisions shall be construed to effectuate the purpose of this Trust.

ARTICLE IV BENEFITS

- 4.1 Benefits. This Trust may be used to fund benefits on behalf of a Participant, the Participant's Spouse and Dependents pursuant to the terms of a Plan.
- 4.2 Form of Benefits. Assets held in this Trust may be used to reimburse a Participant, his Spouse or Dependents for insurance premiums or other payments expended for permissible benefits described under a Plan. This Trust may reimburse the Employer, or the Administrator for insurance premiums or other payments pursuant to the Plan.

ARTICLE V GENERAL DUTIES

- 5.1 It shall be the duty of the Trustee to hold title to assets held in respect of the Account and Plan or Plans in the Trustee's name, as directed by the Employer or its designees in writing. The Trustee shall not be under any duty to compute the amount of contributions to be paid by the Employer or to take any steps to collect such amounts as may be due to be held in trust under the terms of a Plan. The Trustee shall not be responsible for the custody, investment, safekeeping or disposition of any assets comprising the Trust, to the extent such functions are performed by the Employer or the Administrator, or both.

- 5.2 It shall be the duty of the Employer, subject to the provisions of a Plan, to pay over to the Administrator or other person designated hereunder from time to time the Employer's contributions, and to keep accurate books and records, or cause its designee to keep accurate books and records with respect to the Account and a Plan.

ARTICLE VI INVESTMENTS

- 6.1 The Employer may appoint one or more investment managers to manage and control all or part of the assets of the Trust and the Employer shall notify the Trustee in writing of any such appointment.
- 6.2 The Trustee shall not have any discretion or authority with regard to the investment of the Trust and shall act solely as a directed Trustee of the assets of which it holds title. To the extent directed by the Employer (or Participants, their Spouses, Dependents or Beneficiaries, to the extent provided herein), the Trustee is authorized and empowered with the following powers, rights and duties, each of which the Trustee shall exercise in a nondiscretionary manner:
- (a) To cause stocks, bonds, securities, or other investments to be registered in its name as Trustee or in the name of a nominee, or to take and keep the same unregistered;
 - (b) To employ such agents and legal counsel as it deems advisable or proper in connection with its duties and to pay such agents and legal counsel a reasonable fee. The Trustee shall not be liable for the acts of such agents and counsel or for the acts done in good faith and in reliance upon the advice of such agents and legal counsel, provided it has used reasonable care in selecting such agents and legal counsel;
 - (c) To exercise where applicable and appropriate any rights of ownership in any contracts of insurance in which any part of the Trust may be invested and to pay the premiums thereon; and
 - (d) At the direction of the Employer (or Participants, their Spouses, Dependents or Beneficiaries or the investment manager, as the case may be) to sell, write options on, convey or transfer, invest and reinvest any part thereof in each and every kind of property, whether real, personal or mixed, tangible or intangible, whether income or non-income producing and wherever situated, including but not limited to, time deposits (including time deposits in the Trustee or its affiliates, or any successor thereto, if the deposits bear a reasonable rate of interest), shares of common and preferred stock, mortgages, bonds, leases, notes, debentures, equipment or collateral trust certificates, rights, warrants, convertible or exchangeable securities and other corporate, individual or government securities or obligations, annuity, retirement or other insurance contracts, mutual funds (including funds for which the Trustee or its affiliates serve as investment advisor, custodian or in a similar or related capacity), or in units of any other common, collective or commingled trust fund.
- 6.3 Notwithstanding anything to the contrary herein, the assets of the Account shall be held by the Trustee as title holder only. Persons holding custody or possession of assets titled to the Trust shall include the Employer, the Administrator, the investment manager, and any agents and subagents, but not the Trustee. The Trustee shall not be responsible or liable for any loss or expense which may arise from or result from compliance with any direction from the Employer, Administrator, the investment manager, or such agents to take title to any assets nor shall the Trustee be responsible or liable for any loss or expense which may result from the Trustee's refusal or failure to comply with any direction to hold title, except if the same shall involve or result from the Trustee's negligence or intentional misconduct. The Trustee may refuse to comply with any direction from the Employer, the Administrator, the investment manager, or such agents in the event that the Trustee, in its sole and absolute discretion, deems such direction illegal.
- 6.4 The Employer hereby indemnifies and holds the Trustee harmless from any and all actions, claims, demands, liabilities, losses, damages or reasonable expenses of whatsoever kind and nature in connection with or arising out of (i) any action taken or omitted in good faith by the Trustee in accordance with the directions of the Employer or its agents and subagents hereunder, or (ii) any disbursements of any part of the Trust made by the Trustee in accordance with the directions of the Employer, or (iii) any action taken by or omitted in good faith by the Trustee with respect to an investment managed by an investment manager in accordance with any direction of the investment manager or any inaction with respect to any such investment in the absence of directions from the investment manager. Notwithstanding anything to the contrary herein, the Employer shall have no responsibility to the Trustee under the foregoing indemnification if the Trustee fails negligently, intentionally or recklessly to perform any of the duties undertaken by it under the provisions of this Trust.

- 6.5 Notwithstanding anything to the contrary herein, the Employer or, if so designated by the Employer, the Administrator and the investment manager or another agent of the Employer, will be responsible for valuing all assets so acquired for all purposes of the Trust and of holding, investing, trading and disposing of the same. The Employer will indemnify and hold the Trustee harmless against any and all claims, actions, demands, liabilities, losses, damages, or expenses of whatsoever kind and nature, which arise from or are related to any use of such valuation by the Trustee or holding, trading, or disposition of such assets.
- 6.6 The Trustee shall and hereby does indemnify and hold harmless the Employer from any and all actions, claims, demands, liabilities, losses, damages and reasonable expenses of whatsoever kind and nature in connection with or arising out of (a) the Trustee's failure to follow the directions of the Employer, the Administrator, the investment manager, or agents thereof, except as permitted by the last sentence of Section 6.3 above; (b) any disbursements made without the direction of the Employer, the Administrator, the investment manager or agents thereof; and (c) the Trustee's negligence, willful misconduct, or recklessness with respect to the Trustee's duties under this Declaration.

ARTICLE VII CONTRIBUTIONS

- 7.1 *Employer Contributions.* The Employer shall contribute to the Trust such amounts as specified in a Plan or by resolution.
- 7.2 *Participant Contributions.* If specified in a Plan, each Participant may make voluntary after-tax contributions. Under no circumstances shall Participant Contributions exceed an insubstantial amount. These contributions shall be collected by the Employer and remitted to the Trust for deposit at such time or times as required under the terms of the Plan.
- 7.3 *Accrued Leave.* Contributions up to an amount equal to the value of accrued sick leave, vacation leave, or other type of accrued leave, as permitted under a Plan. The Employer's Plan must provide a formula for determining the value of the Participant's contribution of accrued leave. The Employer's Plan must contain a forfeiture provision that will prevent Participants from receiving the accrued leave in cash in lieu of a contribution to the Trust.
- 7.4 *Accounts.* Employer contributions, and if provided under the terms of a Plan, Participant contributions and contributions of accrued leave, and all investment income and realized and unrealized gains and losses, and forfeitures allocable thereto will be deposited into one or more Accounts in the name of the Employer for the exclusive purpose of funding benefits on behalf of Participants, their Spouses, Dependents and Beneficiaries under a Plan. The assets in each Account may be invested in Investment Funds as directed by the Employer from among the Investment Funds selected by the Employer.

To the extent provided for under a Plan, amounts deposited in the Account(s) may be allocated to individual Participant Accounts for the exclusive benefit of each Participant, his Spouse, Dependents and Beneficiaries. If permitted under the terms of the Plan, the assets in each Participant Account may be invested in Investment Funds as directed by the Participant (or after the death of the Participant, his Spouse, Dependents and Beneficiaries) from among the Investment Funds selected by the Employer.

- 7.5 *Receipt of Contributions.* The Employer or, if so designated by the Employer, the Administrator or investment manager or another agent of the Employer, shall receive all contributions paid or delivered to it hereunder and shall hold, invest, reinvest and administer such contributions pursuant to this Declaration, without distinction between principal and income. The Trustee shall not be responsible for the calculation or collection of any contribution under the Plan, but shall hold title to property received in respect of the Plan in the Trustee's name as directed by the Employer or its designee pursuant to this Declaration.
- 7.6 No amount in any Account or Participant Account maintained under this Trust shall be subject to transfer, assignment, or alienation, whether voluntary or involuntary, in favor of any creditor, transferee, or assignee of the Employer, the Trustee, any Participant, his Spouse, Dependent, or Beneficiaries.
- 7.7 Upon the satisfaction of all liabilities under a Plan to provide benefits to Employees, their Spouses, Dependents or Beneficiaries, any amount of Employer contributions, plus accrued earnings thereon, remaining in the Accounts or Participant Accounts shall be returned to the Employer.

**ARTICLE VIII
MULTIPLE PLANS**

8.1 If the Employer hereafter adopts one or more other Plans and designates the Trust hereby created as part of such other Plan, the Employer or, if so designated by the Employer, the Administrator or an investment manager or another agent of the Employer shall, subject to the terms of this Declaration, accept and hold hereunder contributions to such other Plans. In that event (a) the Employer or, if so designated by the Employer, the Administrator or an investment manager or another agent of the Employer, may commingle for investment purposes the contributions received under such Plan or Plans with the contributions previously received by the Trust, but the books and records of the Employer or, if so designated by the Employer, the Administrator or an investment manager or another agent of the Employer, shall at all times show the portion of the Trust Fund allocable to each Plan; (b) the term "Plan" as used herein shall be deemed to refer separately to each other Plan; and (c) the term "Employer" as used herein shall be deemed to refer to the person or group of persons which have been designated by the terms of such other Plans as having the authority to control and manage the operation and administration of such other Plan.

**ARTICLE IX
DISBURSEMENTS AND EXPENSES**

- 9.1 The Employer or its designee shall make such payments from the Trust at such time to such persons and in such amounts as shall be authorized by the provisions of a Plan provided, however, that no payment shall be made, either during the existence of or upon the discontinuance of the Plan (subject to Section 7.7), which would cause any part of the Trust to be used for or diverted to purposes other than the exclusive purpose of funding post-retirement welfare benefits for Employees, their Spouses, Dependents and Beneficiaries pursuant to the provisions of a Plan.
- 9.2 All payments of benefits under the Plan shall be made exclusively from the assets of the Accounts or Participant Accounts of Participants to whom or to whose Spouse, Dependents, or Beneficiaries such payments are to be made, and no person shall be entitled to look to any other source for such payments.
- 9.3 The Employer, Trustee and Administrator may be reimbursed for expenses reasonably incurred by them in the administration of the Trust. All such expenses, including, without limitation, reasonable fees of accountants and legal counsel to the extent not otherwise reimbursed, shall constitute a charge against and shall be paid from the Trust upon the direction of the Employer.

**ARTICLE X
ACCOUNTING**

- 10.1 The Trustee shall not be required to keep accounts of the investments, receipts, disbursements, and other transactions of the Trust, except as necessary to perform its title-holding function hereunder. All accounts, books, and records relating thereto shall be maintained by the Employer or its designee.
- 10.2 As promptly as possible following the close of each year, the Trustee shall file with the Employer a written account setting forth assets titled to the Trust as reported to the Trustee by the Employer or its designee.

**ARTICLE XI
MISCELLANEOUS PROVISIONS**

- 11.1 Neither the Trustee nor any affiliate thereof shall be required to give any bond or to qualify before, be appointed by, or account to any court of law in the exercise of its powers hereunder.
- 11.2 No person transferring title or receiving a transfer of title from the Trustee shall be obligated to look to the propriety of the acts of the Trustee in connection therewith.
- 11.3 The Employer may engage a Trustee as its agent in the performance of any duties required of the Employer under a Plan, but such agency shall not be deemed to increase the responsibility or liability of the Trustee under this Declaration.
- 11.4 The Employer shall have the right at all reasonable times during the term of this Declaration and for three (3) years after the termination of this Declaration to examine, audit, inspect, review, extract information from, and copy all books, records, accounts, and other documents of the Trustee relating to this Declaration and the Trustees' performance hereunder.

**ARTICLE XII
AMENDMENT AND TERMINATION**

- 12.1 The Employer reserves the right to alter, amend, or (subject to Section 9.1) terminate this Declaration at any time for any reason without the consent of the Trustee or any other person, provided that no amendment affecting the rights, duties, or responsibilities of the Trustee shall be adopted without the execution of the Trustee to the amendment. Any such amendment shall become effective as of the date provided in the amendment, if requiring the Trustee's execution, or on delivery of the amendment to the Trustee, if the Trustee's execution is not required.
- 12.2 Upon termination of this Declaration and upon the satisfaction of all liabilities under a Plan to provide such benefits, any amount of Employer contributions, plus accrued earnings thereon, remaining in the Accounts shall be returned to the Employer.

**ARTICLE XIII
SUCCESSOR TRUSTEES**

- 13.1 The Employer reserves the right to discharge the Trustee for any or no reason, at any time by giving ninety (90) days' advance written notice.
- 13.2 The Trustee reserves the right to resign at any time by giving ninety (90) days' advance written notice to the Employer.
- 13.3 In the event of discharge or resignation of the Trustee, the Employer may appoint a successor Trustee who shall succeed to all rights, duties, and responsibilities of the former Trustee under this Declaration, and the terminated Trustee shall be deemed discharged of all duties under this Declaration and responsibilities for the Trust.

**ARTICLE XIV
LIMITED EFFECT OF TRUST**

- 14.1 Neither the establishment of the Trust or any modification thereof, the creation of any fund or account, nor the payment of any benefits, shall be construed as giving to any person any legal or equitable right against the Trustee, the Administrator, the Employer or any officer or employee thereof, except as may otherwise be expressly provided in a Plan or in this Declaration.

**ARTICLE XV
PROTECTIVE CLAUSE**

- 15.1 Neither the Administrator, the Employer, nor the Trustee shall be responsible for the validity of any contract of insurance or other arrangement maintained in connection with a Plan, or for the failure on the part of the insurer or provider to make payments provided by such contract, or for the action of any person which may delay payment or render a contract void or unenforceable in whole or in part.

IN WITNESS WHEREOF, the Employer/Trustee has executed this Declaration by its duly authorized officers, as of the date first hereinabove mentioned.

EMPLOYER/TRUSTEE

By: _____



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