

CITY OF MEMPHIS, TENNESSEE
OTHER POST-EMPLOYMENT BENEFITS (OPEB) INVESTMENT TRUST

THIS TRUST AGREEMENT is made and entered into this 19th day of October, 2007, but effective as of the fiscal year beginning July 1, 2007 (the "Effective Date"), by and between the CITY OF MEMPHIS, TENNESSEE and the TRUSTEE, as defined below.

WHEREAS, City is a municipality created pursuant to the laws of the State of Tennessee and is a political subdivision of the State of Tennessee; and

WHEREAS, City is exempt from federal income taxation under the United States Constitution and Section 115 of the Internal Revenue Code of 1986, as amended (the "Code"); and

WHEREAS, City has duly established, adopted and maintains a medical benefits (health and welfare) plan (the "Plan," as more specifically defined below) for its employees and their dependents, as defined in the Plan, that includes benefits for retired City employees and their eligible dependents, as such terms are defined in the Plan ("Retirees," as more specifically defined below), which Plan provides and governs what post-employment health and welfare benefits are provided Retirees (the "Benefits," or "Benefit" as more specifically defined below) and defines eligible participants and their eligible dependents and the conditions of eligibility and participation in any such Benefit under the Plan; and

WHEREAS, the authority to conduct the general operation and administration of the Plan is vested in City; and

WHEREAS, as one of its essential functions and in the ordinary course of its operation and administration of the Plan, City provides for contributions and accumulation of assets for payment of the Benefits under the Plan, either through self funding of such Benefits and/or insurance for the provision of such Benefits, and directs and administers payment of such Benefits from its general assets, from a fund or trust established for the payment of Benefits under the Plan, and/or from insurance provided under the Plan; and

WHEREAS, effective for fiscal years beginning on and after January 1, 2007 the Governmental Accounting Standards Board ("GASB") provides standards for state and local governments and their political subdivisions to calculate and report their liability for non-pension (health and welfare) benefits for current and future retirees, and also provides standards for adoption and maintenance of a retiree health and welfare benefits trust (an "OPEB Trust") for the exclusive purpose of pre-funding other post-employment benefits ("OPEB Benefits") under a health and welfare benefit plan (the "GASB 43/45 Standards"); and

WHEREAS, City desires to adopt and establish an OPEB Trust for the exclusive purpose of pre-funding and providing for payment of OPEB Benefits under the Plan; and

WHEREAS, City desires to and may make contributions from time to time (but nothing herein shall mandate any such contribution, which shall be solely in the discretion of the City), in such amounts as determined by City from time to time in its sole discretion, to fund this OPEB Trust for the sole and exclusive purpose of funding for Benefits under the Plan which are not otherwise provided for and paid from City's general assets and/or from a fund or trust established for the payment of Benefits under the Plan and/or from insurance provided under the Plan; and

WHEREAS, this OPEB Trust shall be irrevocable, and Trust Funds shall be used solely for the purpose of providing funds for (i) the Benefits pursuant to and in accordance with the Plan, and (ii) the cost of operating and administering this OPEB Trust, including the cost of such financial consultants, auditors, attorneys, actuaries, trustees, custodians, investment advisers, brokers and other consultants, advisers, and agents as necessary to carry out the provisions of this OPEB Trust, all as provided herein; and

WHEREAS, this OPEB Trust is intended to comply with all applicable GASB 43/45 Standards governing an irrevocable trust established for the exclusive purpose of funding OPEB Benefits; and

WHEREAS, the State of Tennessee has adopted Public Acts, 2006, Ch. 771 (2006 Tenn. Pub. Acts 771), which amends Title 8, Chapter 50 of the Tennessee Code Annotated to add a new part known as the "Other Post Employment Benefit Investment Trust Act of 2006" and codified at Tenn. Code Ann. §§8-50-1201 *et seq.* (the "Act"), which Act was adopted in response to the GASB 43/45 Standards to permit a political subdivision of the State of Tennessee to adopt an investment trust for the purpose of pre-funding other post-employment benefits, such as the Benefits, and which further provides that all assets, income and distributions of the investment trust shall not be subject to execution, attachment, garnishment, the operation of bankruptcy, the insolvency laws or other process whatsoever, and shall not be subject to assignment; and

WHEREAS, this OPEB Trust is adopted in accordance with the Act and is intended to be entitled to and shall be entitled to all of the rights and benefits of the Act;

NOW, THEREFORE, by execution hereof City hereby declares and establishes this OPEB Trust as follows:

1. Definitions.

- a. "Act" shall have the meaning set forth above.
- b. "Benefit or Benefits" means the post-employment health or welfare benefits provided Retirees under the Plan.

- c. "City" means the City of Memphis, Tennessee.
- d. "Code" shall have the meaning set forth above.
- e. "Effective Date" shall have the meaning set forth above.
- f. "Employee" or "employee" or "employees" shall have the meaning provided under the Plan and where the context requires shall include eligible dependents of the employee entitled to Benefits under the Plan.
- g. "Asset Manager" or "Asset Managers" shall have the meaning set forth in Article 5(c) hereinbelow.
- h. "Investment Policy" shall have the meaning set forth in Article 5(b) hereinbelow.
- i. "Mayor" means the Mayor of the City.
- j. "OPEB" means other post-employment benefits.
- k. "Plan" means the City's Medical Benefit Plan (and including any plan or plans, whether or not adopted as a part of the City's Medical Benefit Plan, maintained by the City for Retirees, the liability of the benefits for which GASB requires an accrual on the financial books and records of the City), as amended, supplemented, revised, restated, and otherwise adopted from time to time by the City.
- l. "Plan Administrator" means the Human Resources Division of the City. The Plan Administrator may contract with a third party or third parties to provide administrative services to implement, maintain and administer the Plan.
- m. "Retirees" means the retired employees, as defined under the Plan and eligible for Benefits under the Plan, including the retired employees' eligible dependents as provided under the Plan.
- n. "Retired employees" shall have the meaning provided under the Plan and shall include eligible dependents as provided under the Plan.
- o. "Trust Funds" means all contributions to the Trust, including any deposits, contributions, and payments made pursuant to Article 3(d) hereinbelow, together with the income, gains and all other increments thereon, and all funds held in and administered under this Trust.

- p. "Trustee" means a committee comprised and consisting of those individuals from time to time holding the following City administrative offices: (1) the Director of the City's Division of Finance, (2) two (2) Deputy Directors of City's Division of Finance, (3) the Comptroller, City of Memphis, (4) the Treasurer, City of Memphis, (5) the Investment Manager, Investment Management Department, City's Division of Finance, and (6) the Senior Investment Analyst, City's Division of Finance, which committee, as Trustee, shall monitor the administration and operation of this Trust.

"Trustee" includes the initial Trustee named in this Trust Agreement and any successor Trustee appointed pursuant to Article 7 hereof.

Any term used in this Trust Agreement which is not otherwise defined herein shall have the meaning set forth in the Plan.

2. Construction.

- a. **Governing Law.** This Trust shall be governed by and construed in accordance with the laws of the State of Tennessee.
- b. **Gender and Number.** Words used in the masculine gender shall include the feminine gender, and words used in the singular shall include the plural where appropriate.
- c. **Severability.** If any part of this Trust Agreement shall be determined to be illegal or unenforceable for any reason, such determination shall not affect the remaining provisions of the Trust Agreement. The remaining provisions shall be interpreted to effectuate the purpose of this Trust.

3. Establishment and Acceptance of Trust

- a. **Name.** The name of this Trust shall be the CITY OF MEMPHIS OPEB INVESTMENT TRUST.
- b. **Effective Date.** This Trust shall be effective as of the Effective Date.
- c. **Purpose of Trust.** This Trust is established for the exclusive purpose of receiving any deposits, contributions and payments made to it as Trust Funds, and investing, administering, and using such Trust Funds for funding and providing funds for (i) the Benefits pursuant to and in accordance with the Plan, and (ii) the cost of operating and administering the Trust, including the cost of such financial consultants, auditors, attorneys, actuaries, trustees, custodians, investment advisers, brokers and other consultants, advisers, and

agents as necessary to carry out the provisions of the Trust, all as provided herein.

d. Contributions to the Trust. City, in its sole discretion and at its sole determination, may at any time, and from time to time, make deposits, contributions, and payments of cash or other property to this Trust to be held and administered in accordance with the terms and provisions of this Trust. In addition, City, or the Trustee or custodian of any trust or fund existing to pay Benefits, may, if City in its sole discretion approves such transfer, transfer to the Trust any funds from any other trust or account maintained to pay the Benefits. Any and all deposits, contributions, and payments made to this Trust shall be held in this Trust as a Trust asset and part of the Trust Funds, and shall be separate and apart from any other funds of City. Such deposits, contributions, and payments to this Trust shall be irrevocable, shall be used solely in accordance with the terms and provisions of this Trust and shall be subject to all applicable terms and provisions of this Trust. Nothing herein shall or shall be construed to mandate or require contributions, deposits, or payments to be made to the Trust, all of which contributions, deposits and payments shall be at the sole discretion and determination of the City.

e. Acceptance of Trust. The Trust Funds shall be held, managed, and administered in trust pursuant to the terms of this Trust Agreement. The Trustee accepts the Trust created by this Trust Agreement and agrees to perform the duties, responsibilities, and obligations as Trustee under this Trust Agreement.

4. Determination of Benefits. The Plan shall govern the Benefits. Nothing in this Trust shall nor shall be construed to supplant or substitute for City's authority to conduct the general operation and administration of the Plan or to amend, supplement, restate, or otherwise operate and determine the operation, provisions, and administration of the Plan. Nothing in this Trust shall abrogate or affect the right of City to change the Plan, to adopt new medical and welfare benefit plans, including any post-employment benefit plan or make any changes in the terms of any medical and welfare benefit plans, including any post-employment benefit plan, which include but are not limited to the amount of premiums for applicable benefits, coverage, deductibles, co-pays, out-of-pocket expenses, healthcare provider networks and related changes. Nothing herein shall require City to provide or maintain a medical, welfare, or post-employment benefit plan.

5. Investment of Trust Funds.

a. Investment of Trust Funds. The Trustee shall have the duty and responsibility to invest or direct the investment of the Trust Funds, and

shall have such other duties and responsibilities as designated by City. The Trustee shall have the authority to invest or direct the investment of the Trust Funds in each and every kind of property, whether real, personal or mixed, tangible or intangible, whether income or non-income producing or wherever situated as authorized in the Investment Policy and the Act. Except as set forth in the immediately following sentence or such investments as precluded by applicable law, nothing herein shall limit the Investment Policy from expanding or contracting the list of investments set forth herein and authorizing the Trustee to invest assets in such investments in accordance with such Investment Policy. Notwithstanding the foregoing, investment in real estate shall be limited to interests in open-end or closed-end commingled funds, portfolios of real estate investment trusts or similar companies, whether publicly traded or privately held, that have assets of not less than Two Hundred Million and no/100ths Dollars (\$200,000,000.00) at the time the investment is made and are managed by professional real estate investment advisers that manage not less than Five Hundred Million and no/100ths Dollars (\$500,000,000.00) in total real estate assets.

The Trustee shall have the power to register investments in the name of the Trust or in the name of a nominee, or to hold any investment in bearer form or through or by a central clearing corporation maintained by institutions active in the national securities markets, or keep such investments unregistered; provided, the books and records of the Trustee shall at all times show that all of the investments are part of the Trust.

Notwithstanding anything herein to the contrary, Trust Funds shall be invested solely in the best interest of the Retirees and for their exclusive benefit in accordance with the terms and provisions of this Trust Agreement. Investment decisions shall not be guided or influenced by the interest of any third person or group of persons, and in investing Trust Funds the Trustee shall not subordinate the interest of Retirees herein to any unrelated objectives, including, without limitation, social, political, humanitarian, or economically targeted objectives.

- b. **Investment Policy.** The Trustee shall adopt, in writing, an investment policy (the "Investment Policy") authorizing how assets of the Trust may be invested. The Trustee may amend the Investment Policy, in writing, from time to time.
- c. **Appointment of Investment Advisers and Asset Managers.** The Trustee may appoint one or more investment advisers and/or asset managers (an "Asset Manager" or "Asset Managers") to supervise and

direct the investment and reinvestment of a portion or all of the Trust Funds and may confer discretionary authority upon such Asset Managers. If no Asset Manager is appointed, then the Trustee shall act as Asset Manager.

6. Trustee Duties and Responsibilities.

- a. **Title to Trust Funds.** Title to the Trust Funds shall be vested in the Trustee, or its duly designated nominees, for the purposes of this Trust. Neither City, City Division of Finance (except solely and exclusively in its fiduciary capacity if at any time it serves as Trustee for the Trust), the Plan Administrator, nor any Retiree shall have any right, title or interest in the Trust Funds, except to the extent of Benefits and expenses payable out of the Trust Funds as provided herein.
- b. **Management of the Trust.** Except as otherwise provided herein, the Trustee shall have exclusive authority and responsibility with respect to management of the Trust. The Trustee is authorized to and shall delegate custodial responsibilities of the Trust Funds to one or more qualified financial institutions with experience in providing custodial services to institutional investors and contracted to provide custodial services for the Trust Funds. Such custodian shall hold the Trust Funds as directed in writing by the Trustee consistent with the terms and provisions of this Trust Agreement, and such custodian shall be subject to the investment guidelines and provisions with respect to investment of the Trust Funds, including the Investment Policy, as provided herein.
- c. **Disbursements of Trust Funds.**
 - i. **Payment of Benefits.** As directed by the City's Division of Finance, from the Trust Funds the Trustee may make or provide for the making of payment of Benefits under the Plan. As directed by the City Division of Finance, the Trustee may pay Benefits either direct to the Plan Administrator for payment or reimbursement of Benefits under the Plan or direct to separate funds established for the benefit of Retirees for the payment of Benefits.

The City Division of Finance shall provide (or cause to be provided) the Trustee from time to time with a schedule of Benefits to be paid from the Trust Funds, which schedule shall include the person or entity to whom such payment shall be made and the amount of such payment, in a form acceptable to the Trustee for determining the amount of such payment and the time for such payment. The phrase "Benefits to be paid

from the Trust Funds” shall include payments to the City Division of Finance or Plan Administrator to pay or reimburse City Division of Finance or Plan Administrator for the payment of Benefits or payments to a separate fund which provides payment of Benefits directly or through insurance. In any event that the Trust Funds are not sufficient to make the payment designated, the Trustee shall promptly notify the City Division of Finance that the Trust Funds are not sufficient to make the payment designated.

- ii. **Payment of Administrative Expenses.** The Trustee may incur reasonable expenses for administration of the Trust. As directed by the City Division of Finance, from the Trust Funds the Trustee may make or provide for the making of payment of the cost of operating and administering the Trust and the payment of Benefits hereunder, including the cost of such financial consultants, auditors, attorneys, actuaries, trustees, custodians, investment advisers, brokers and other consultants, advisers and agents as necessary to carry out the provisions of the Trust, all as provided herein, including without limitation expenses for services of Asset Managers, services of one or more duly qualified banks or trust companies for the safe custody of the investments and banking services, and any other service that the Trustee deems reasonable and necessary in connection with the investments and administration of the Trust Fund.

The Trustee shall cause records to be maintained with respect to any and all expenses incurred payable from the Trust.

- iii. **No Reversion.** All disbursements of Trust Funds shall be made for the sole and exclusive benefit of providing for payment of the Benefits and costs of operating and administering the Trust in accordance with the Plan and the terms and provisions of this Trust. No Trust Funds, either during the existence of or upon discontinuance of the Plan, shall be used for any purposes other than the payment or provision for payment of Benefits and expenses as provided in the Plan and this Trust.
- iv. **Plan Termination.** The assets of the Trust may be used solely and exclusively for the purposes specified in this Trust. In the event the Plan is terminated or substantially modified so that at the time of termination of the Plan there remain no liabilities or Benefits for payment of such assets of this Trust (or portion of the assets of this Trust), the Employees or former Employees,

including Retirees (and their eligible dependents entitled to Benefits under the Plan in existence immediately preceding Plan termination) (hereinafter the such Employees, former Employees, Retirees, and such eligible dependents of such Employees, former Employees, and Retirees referred to collectively as "Eligible Participants") who have met all the conditions (other than with respect to Employees, the condition of retirement) for other post-employment benefits as set out in the Plan in existence immediately preceding Plan termination shall be vested in their proportionate share of the remaining assets based on the present value of the Benefits under the Plan in existence immediately preceding Plan termination as determined by the independent consulting actuary providing services to the Plan at such time (the "Termination Benefit"), such Termination Benefit to be transferred to the City's Pension Plan to fund the benefits under said Pension Plan for the Eligible Participants.

Actuarial valuations contemplated by this subparagraph (iv) shall be performed by the Plan's independent consulting actuary in accordance with actuarial methods recognized by the Governmental Accounting Standards Board.

- d. **Administration of the Trust.** In addition to the powers, rights, and duties above, but subject to Article 6(h)(vii) hereof, the Trustee may:
- i. Act upon any instrument, written communication or paper it reasonably believes to be genuine and to be signed or presented by the proper person or persons.
 - ii. Do such acts and exercise all such rights and privileges, although not specifically mentioned herein, as the Trustee reasonably deems necessary to invest and administer the Trust Funds in accordance with this Trust Agreement and to carry out the purposes of this Trust.
 - iii. Delegate to one or more of its members the right to sign documents for and on behalf of the Trust.
 - iv. Continue to have and to exercise after any termination of the Plan and until final distribution of the Trust Funds as provided herein all of the title, powers, discretions, rights, duties and responsibilities conferred or imposed upon the Trustee hereunder, or by applicable law.

- v. In the event any question or dispute shall arise concerning the proper disbursement from the Trust Funds, withhold such disbursement until an adjudication of such question or dispute, satisfactory to the Trustee, shall have been made, or the Trustee shall have been adequately indemnified to the extent permitted by applicable law against loss to the Trustee's satisfaction. The Trustee shall also have the right to file an interpleader with any court of competent jurisdiction with respect to any disputed disbursement from the Trust Funds, and upon deposit of the disbursement pursuant to the interpleader action, to be held harmless with respect to such disbursement.
- e. **Limitations on Powers of Trustee.** Notwithstanding anything to the contrary in this Trust Agreement, the Trustee shall have no power:
 - i. To divert any part of the Trust to any purposes other than the exclusive benefit of Retirees and the purposes designated in this Trust Agreement;
 - ii. To make any part of the Trust available on a preferential basis or to engage in any other transaction which results in a diversion of any part of the Trust to City (other than for payment of or reimbursement of payment of Benefits and costs of operating and administering the Trust as provided herein) or to any person or entity with whom or which such a transaction is prohibited by the Act or applicable GASB 43/45 Standards, as such provisions may be amended from time to time;
 - iii. To take any action that would cause the Trust not to comply with applicable provisions of the GASB 43/45 Standards or the Act, as such provisions may be amended from time to time.
- f. **Recordkeeping.** The Trustee shall direct and cause the City Division of Finance to maintain or caused to be maintained accurate records of the deposits, contributions, transfers, and payments to the Trust and of the distributions and payments from the Trust Funds. The Trustee shall cause accounts of all investment, receipts, disbursements and all other transactions affecting all or any portion of the Trust to be maintained. Within forty-five (45) days after the close of the fiscal year of the Trust, the Trustee shall render to the City Division of Finance an accounting of the Trustee's acts and transactions hereunder. If any part of the Trust Funds shall be invested through the medium of any common, collective or commingled trust funds, the most recent annual report of such trust funds shall be submitted with and incorporated in the accounting.

The Trustee acknowledges and understands that all books and financial records of the Trust may be subject to audit by the Comptroller of the Treasury of the State of Tennessee, or in lieu thereof (but with the approval of such Comptroller if such approval is required by the Act) by a licensed independent public accountant, all as provided by the Act. The Trustee agrees to cooperate with City, City Division of Finance, and the Plan Administrator with respect to any such audit and to provide all books and financial records under its supervision and control to City's Division of Finance, or at its designation to the Comptroller of the Treasury of the State of Tennessee, or to the licensed independent public accountant designated by City's Division of Finance, so that City, City Division of Finance, and the Plan Administrator can perform its obligations under the Act.

City shall, at all reasonable times during the term of this Trust Agreement, and for three (3) years after the termination of this Trust Agreement, or for such longer period as provided by the Act or other applicable law, have the right to examine, audit, inspect, review, extract information from, and copy all books, records, accounts and other documents of the Trustee relating to this Trust Agreement, the Trust Funds, and the Trustee's performance of its duties.

g. **Actions of Co-Trustees.** If there shall be more than one Trustee under this Trust Agreement, the Trustees shall act by a majority of their number, but City may authorize any one or more of the individual members of Trustee to sign papers and instruments on behalf of the Trust and the Trustee.

h. **Other Provisions Concerning the Trustee.**

i. **Reliance on City, City Division of Finance, or Plan Administrator.** The Trustee may rely on any certificate, notice or direction signed on behalf of City and/or its Division of Finance, or the Plan Administrator that the Trustee reasonably believes to be signed by a duly authorized official of City, City's Division of Finance, or the Plan Administrator.

ii. **Reliance on Advice of Counsel.** The Trustee may consult with legal counsel engaged by it with respect to the construction of this Trust and the rights, duties, and obligations of the Trustee hereunder and may act in good faith based on such advice of legal counsel.

iii. **Trustee's Refusal to Accept Directions.** The Trustee may refuse to comply with any direction from City, City's Division

of Finance, or the Plan Administrator in the event the Trustee, in its sole and absolute discretion, deems such direction improper by virtue of applicable law; provided, however, that in any such event the Trustee shall give prompt written notice to the entity making such direction of the Trustee's refusal to accept such directions and the Trustee's legal basis for such refusal.

- iv. **Plan Administration.** The Plan Administrator shall operate and administer the Plan and the Trustee, in its capacity as Trustee, shall have no responsibility in any respect with respect to operating and administering the Plan nor shall the Trustee be responsible for the adequacy of the contributions to the Trust to meet or discharge any payments or liabilities under the Plan. With respect to the Plan, the Trustee shall be entitled conclusively to rely upon any notice, instruction, direction or other communication of the Plan Administrator or the City's Division of Finance as provided herein.
- v. **Individual Trustees.** Each and every individual trustee shall have all rights and immunities with respect to its actions as an individual trustee provided by applicable law, including without limitation any applicable immunity provided under Tennessee law to members of boards, commissions, agencies, authorities, and other governing bodies of any governmental entity.
- vi. **Bond.** No Trustee 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 rights and powers hereunder.
- vii. **Contracts.** Notwithstanding anything in this Trust Agreement to the contrary, this Trust Agreement, any and all amendments thereto, and all contracts entered into with respect to the Trust shall be signed by the Mayor.

7. Successor Trustees.

- a. **Individual Trustees.** The Trustee is comprised of individuals from time to time holding the respective City administrative offices as set forth in Article 1(p) hereof. In the event any individual holding such designated City administrative office is replaced by another individual for any reason whatsoever succeeding to that City administrative office, the individual succeeding to that office shall immediately assume the position as trustee by virtue of holding that City administrative office without the performance of any further act of

appointment as trustee. All of the provisions set forth herein with respect to an original individual trustee shall relate to each successor with the same force and effect as if such successor had been originally named as an individual trustee.

- b. **Appointment of a Corporate Trustee.** The City Division of Finance, with the approval of the Mayor, and subject to Article 6(h)(vii), may appoint in lieu of the committee comprising the original Trustee, a corporate trustee to serve as successor trustee for the Trust. Such appointment shall be upon such terms and provisions as mutually agreed in writing by the corporate trustee and the City.
 - i. **Mergers and Consolidations Involving a Corporate Trustee.** In the case of a corporate Trustee, any corporation into which any such Trustee may be merged or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which any Trustee may be a party, or any corporation to which all or substantially all the trust business of any Trustee may be transferred, shall be the successor of such Trustee without the performance of any further act. All of the provisions set forth herein with respect to the Trustee shall relate to each successor with the same force and effect as if such successor had been originally named as Trustee hereunder.
 - ii. **Resignation.** Any corporate trustee may resign at any time by filing with City its written resignation. Unless otherwise provided below, or unless an earlier date is agreed upon by the corporate trustee and City, such resignation shall take effect thirty (30) days from the date of such filing; provided, however, that any corporate trustee so resigning shall continue its duties and responsibilities as Trustee until the earlier of (i) the appointment of a successor Trustee as provided in Article 7(b)(iv) hereof, or (ii) ninety (90) days from the effective date of resignation.
 - iii. **Removal.** City Division of Finance may remove a corporate trustee at any time by delivering to such corporate trustee a written notice of its removal and an appointment of a successor pursuant to Article 7(b)(iv) hereof.
 - iv. **Successor Trustee.** In the event of removal or resignation of the corporate trustee, City Division of Finance may designate a successor corporate trustee (or successor city offices who shall comprise a committee to serve as Trustee, as the case may be) who shall succeed to all the rights, duties, and responsibilities

of the former corporate trustee under this Trust Agreement. The appointment of a successor Trustee shall take effect upon the delivery to the successor Trustee of (i) an instrument in writing executed by City appointing such successor, and exonerating such successor from liability for the acts and omission of its predecessor, and (ii) an acceptance in writing, executed by such successor. All of the provisions set forth herein with respect to the Trustee shall relate to each successor with the same force and effect as if such successor had been originally named as Trustee hereunder. If a successor is not appointed within ninety (90) days of the effective date of the Trustee's removal or resignation, the Trustee may apply to any court of competent jurisdiction for appointment of a successor.

Within thirty-five (35) days of the effective date of a Trustee's removal or resignation, the Trustee shall deliver to City a written account of its administration of the Trust, setting forth all investments, receipts, disbursements and other transactions effected by it, including a description of all securities and investments purchased and sold with the cost or net proceeds of such purchases or sales (accrued interest paid or receivable beings separately state), and showing all cash, securities and other property held in the Trust as of the date of the effective date of such removal or resignation, as the case may be.

8. Anti-Alienation. No portion of the Trust Funds shall be subject to the claims of any creditor of City, City Division of Finance, the Plan Administrator, any Retiree, the Trustee, any individual member of Trustee, or any other person whatsoever, and no portion of the Trust Funds shall be subject to execution, attachment, garnishment, anticipation, pledge, encumbrance or charge by any persons, the operation of bankruptcy, the insolvency laws, or other process whatsoever, whether at law or in equity, nor shall any assignment of any portion of the Trust Funds be enforceable in any court.

9. Amendment.

a. **Conforming Amendments.** Without the consent of any person, City Division of Finance shall have the right to amend this Trust, from time to time, for the purposes of:

- i. Conforming the provisions of this Trust with the GASB 43/45 Standards, as they may be amended from time to time.
- ii. Conforming the provisions of this Trust with the Act, as it may be amended from time to time.

- iii. Providing for the effective administration and management of the Trust.
 - iv. Providing for the effective investment of the Trust Funds.
 - v. Clarifying or specifying the rights, duties, and responsibilities of the Trustee, subject to Article 9(b)(v) hereinbelow.
 - vi. Clarifying or specifying the rights, duties, and responsibilities of the Plan Administrator with respect to this Trust.
 - vii. Clarifying or specifying the rights, duties, and responsibilities of the City's Division of Finance with respect to this Trust.
 - viii. Clarifying or specifying the rights, duties, and responsibilities of any individual member of Trustee.
 - ix. Providing for any successor Trustee, or successor individual member of Trustee.
 - x. Effectuating the purpose of the Trust.
- b. **Limitations on Rights of Amendment.** Notwithstanding anything in the foregoing to the contrary, City shall not have the right to amend this Trust:
- i. To provide that the assets of the Trust shall be used for any purposes other than the purpose (i) of funding, providing for, and making payments of the Benefits pursuant to and in accordance with the Plan, (ii) investing Trust assets solely in the best interest of the Retired Employees and for their exclusive benefit, and (iii) of paying the cost of operating and administering the Trust, including the cost of such financial consultants, auditors, attorneys, actuaries, trustees, or other consultants and agents as necessary to carry out the provisions of the Trust, all as provided herein.
 - ii. To cause any portion of the Trust Funds to revert to City (other than for payment of or reimbursement of payment of Benefits and the payment of all costs and expenses as provided herein) or divert to others except in accordance with the terms and provisions of this Trust Agreement, as it may be duly amended from time to time as provided herein, and/or the Act.
 - iii. To conflict with any investment limitations imposed upon the Trust Funds by the Act.

iv. To cause the Trust to be or become revocable.

v. To change the rights and obligations of the Trustee without the prior written consent of the Trustee.

c. **Form for Amendment.** Any amendment to this Trust Agreement shall be made in writing signed by City and, to the extent the consent of the Trustee is required thereto, by the Trustee. Any amendment required to bring this Trust Agreement into conformity with the GASB 43/45 Standards or the Act may be made retroactively unless otherwise prohibited by applicable law.

10. Miscellaneous.

a. **Third Parties.** 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.

b. **Protections.** Neither City, City's Division of Finance, the Plan Administrator, nor the Trustee shall be responsible for the validity of any insurance contract or any action of any insurer or other service provider that offers or provides services pursuant to the Plan or this Trust Agreement.

c. **Limited Effect of Trust.** Neither the establishment of this 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 Plan Administrator, the City Division of Finance, City, or any officer or employee thereof, except as may otherwise be expressly provided in the Plan, this Trust Agreement, or applicable law. The creation of this Trust shall not be deemed to create rights beyond the assets of the Trust.

CITY OF MEMPHIS

By: _____
Mayor

ATTEST:

By: _____
Comptroller

TRUSTEE:

Director, Division of Finance

Deputy Director, Division of Finance

Deputy Director, Division of Finance

Comptroller, City of Memphis

Treasurer, City of Memphis

Investment Manager, City of Memphis

Senior Investment Analyst, Division of Finance

APPROVED AS TO FORM

City Attorney