



Date of Council Meeting: June 14, 2016

**TOWN OF LEESBURG
TOWN COUNCIL MEETING**

Subject: Creation of Town of Leesburg Other Post-Employment Benefits Trust

Staff Contact: Clark Case, Director of Finance and Administrative Services
Lisa Haley, Deputy Director of Finance and Administrative Services/Treasurer

Council Action Requested: Authorization to create an independent Town trust for Other Post-Employment Benefits, and to transfer the Town's current assets for this purpose from VML/VACo/Finance pooled trust.

Staff Recommendation: Staff recommends authorization to create an independent Other Post-Employment Benefits trust and to transfer the Town's current assets for this purpose from the VML/VACo Finance pooled trust. This recommendation is also supported by the Town's financial advisor.

Commission Recommendation: Not Applicable.

Fiscal Impact: No impact on the Fiscal Year 2016 operating budget. However, the establishment of the Town's independent trust over the long-term should reduce the Town's required contributions for Other Post-Employment Benefits (OPEB) due to improved investment returns and lower investment management fees. The Town's current assets in the VML/VACo pooled trust is \$8,625,252.02 that can be legally used only for the payment of retiree health insurance benefits, which is a sufficient amount to efficiently support an independent OPEB trust.

Work Plan Impact: No material impact. This is a replacement of an outsourced service provider.

Executive Summary: Other Post-Employment Benefits (OPEB) refers to the provision of health insurance to the Town's retirees. The Town has contracted with VML/VACo Finance to manage its OPEB trust since its inception. When the Town had only small amounts accumulated, this allowed the Town to get lower pooled trust and investment management fees while being able to invest in higher return securities than the Town could do on its own. The Town has accumulated \$8,625,252.02 in the irrevocable OPEB trust account that legally can only be used for the payment of retiree health insurance benefits. This is a sufficient amount to efficiently support an independent OPEB Trust.

The governing board of the VML/VACo Pooled OPEB Trust (VML Trust) is largely controlled by the largest Virginia counties, and there is no longer VML member representation on the board. The Pooled OPEB Trust has hired Asset Consulting Group from St. Louis to manage the investment pool's assets, but the fund has had below benchmark returns over the last several years.

The Town conducted a Request For Proposal (RFP) to see if better results could be obtained through the establishment of our own OPEB trust fund. PFM Asset Management LLC ("PFMAM") was selected to be the Investment Advisor to manage the trust's assets based upon its low-cost proposal, and higher historical investment returns for comparable portfolios. US Bank was the low cost provider selected to serve as the custodian and fiduciary trustee, and regularly partners with PFMAM.

The Investment Advisor must report quarterly to a Finance Board that governs the trust. State statute governs the minimum requirements of the Finance Board. The Town Finance Board for the OPEB trust is established in the attached resolution and is recommended to be composed of the Town Manager, Director of Finance and Administrative Services, Deputy Director of Finance and Administrative Services/Treasurer, a non-voting ex officio representative of the Investment Advisor, and a representative or employee from the Town’s financial advisor (currently Davenport, Inc.) who must have investment expertise and may not transact business with the trust. The Finance Board reviews OPEB investment performance, and provides direction and approval of asset allocation or investment management changes recommended by the Investment Advisor, and is empowered to hire or terminate the Investment Advisor.

The attached resolution empowers the creation of the Finance Board; authorizes the creation of the Town OPEB Trust under contract with US Bank and under the provisions of Internal Revenue Code (IRC) Section 115; authorizes the contracting with PFMAM as the initial Investment Advisor; and authorizes the Town staff to do all measures necessary to make the required changes. The attached resolution also authorizes the OPEB Investment Policy which will guide and restrict the Town OPEB Trust’s investments.

Background: Other Post-Employment Benefits (OPEB) refers to the provision of health insurance to the Town’s retirees. The Town contracted with VML/VACo Finance to manage its OPEB trust and the investments in the trust when the Town first started setting aside funding in order to comply with best practices set forth by the Governmental Accounting Standards Board and the ratings agencies. While not legally required, the setting aside of the funding is a de facto requirement in order to maintain the Town’s bond ratings.

The Town has contracted with VML/VACo Finance to manage its (OPEB) trust since its inception. When the Town had only small amounts accumulated, this allowed the Town to get lower pooled trust and investment management fees, and be able to invest in higher return securities than the Town could do on its own. The Town has since accumulated \$8,625,252.02 in the irrevocable OPEB trust account that legally can only be used for the payment of retiree health insurance benefits.

The governing board of the VML/VACo Pooled OPEB Trust (VML Trust) has hired Asset Consulting Group to be the Investment Advisor for the Pooled OPEB Trust. The fund’s performance has been below benchmark returns over the last 3 years, 5 years, and since inception in 2008.

VML/VACo Pooled OPEB Trust Fund Investment Performance through 3/31/2016:

	<u>Portfolio</u>	<u>Benchmark</u>	<u>Variance</u>
1 year	-1.88%	-2.46%	+0.58%
3 years	3.81%	4.57%	-.076%
5 years	4.33%	5.42%	-1.85%
Since June 2008 inception	4.06%	4.54%	-0.48%

The Town’s actuarially assumed investment return is 7.0%.

PFM Asset Management LLC (“PFMAM”) Multi Asset Class 70% equity/30% Fixed Income Composite is the most comparable investment strategy to the Town’s expected portfolio and has had returns of:

	<u>Portfolio</u>	<u>Benchmark</u>	<u>Variance</u>
1 year	-1.19%	-1.60%	+1.41%
3 years	6.71%	6.04%	+6.67%
5 years	6.94%	6.44%	+0.50%

Since the Town has no representation on the VML Trust board, and thus no say on the selection of these investments, Town staff decided to explore creating its own independent trust and conducted a Request for Proposal (RFP) process. Five major providers of OPEB trust services responded, and PFMAM was selected to be the Investment Advisor to manage the trust's assets based upon its low-cost proposal and the proposal's alignment to the services being requested. US Bank was the low cost provider selected to serve as the custodian and fiduciary trustee of the trust's assets. In order for the trust to qualify under Internal Revenue Service and Governmental Accounting Standards Board rules, the trust must be an irrevocable Internal Revenue Code (IRC) Section 115 trust. The VML/VACo pooled OPEB Trust could not transfer assets to the Town's independent trust if it was not an irrevocable Section 115 trust since that is required under the provisions of the original OPEB trust agreement. The fiduciary trustee holds the assets in custody for safekeeping and ensures that the assets are drawn solely for the purposes of paying retiree health insurance benefits and associated trust operating expenditures.

The Investment Advisor manages the investments by selecting mutual funds, index funds, or exchange-traded funds to invest the assets. The Investment Advisor may select either passive or active investment strategies and is ultimately responsible for the investment performance of the trust. The Investment Advisor is restricted by the attached OPEB investment policy to be approved by Town Council.

The Investment Advisor must report quarterly to a Finance Board that governs the trust on a quarterly basis. State statute governs the minimum requirements of the Finance Board. The Finance Board provides direction and approval of asset allocation or investment management changes recommended by the Investment Advisor, and is empowered to hire or terminate the Investment Advisor.

The attached resolution creates the Finance Board, authorizes the creation of the Town OPEB Trust under contract with US Bank and under the provisions of IRC Section 115, authorizes contracting with PFMAM as the initial Investment Advisor and authorizes the Town staff to do all measures necessary to create the Town OPEB Trust and transfer the assets to the Town's trust. The attached resolution also authorizes the OPEB Investment Policy which will guide and restrict the Town OPEB Trust's investments. The OPEB Investment Policy restricts the investment of the Trust's assets to equities, bonds and alternative investments that are not speculative, derivative or leveraged investments.

PFMAM has a large number of OPEB trust clients including the following Virginia local governments who already have independent trusts: City of Chesapeake, Prince William County, Hampton Roads Sanitation District, and Hanover County.

- Attachments:** (1) Trust Agreement with US Bank establishing IRC Section 115 Town of Leesburg OPEB Trust
 (2) Town of Leesburg OPEB Investment Policy
 (3) Town Leesburg Resolution Establishing the OPEB Trust and approving the US Bank OPEB Trust Agreement, approving the Town of Leesburg OPEB Investment Policy, approving the transfer of the VML/VACo Finance Pooled OPEB Trust funds to the Town of Leesburg OPEB Trust, approving PFMAM Agreement, and approving all

administrative actions by Town staff necessary to create and implement the Town of Leesburg OPEB Investment Trust.

(4) PFMAM Agreement

(5) OPEB Trust Presentation slides

THIS DOCUMENT IS A STANDARD AGREEMENT FOR USE WITH AN **OTHER POST-EMPLOYMENT BENEFITS PLAN**.

SECTION 115 TRUST AGREEMENT

This Section 115 Trust Agreement (the “Agreement”) is between THE TOWN OF LEESBURG, VIRGINIA, a body corporate and political subdivision organized under the laws of the Commonwealth of Virginia (the “Customer”), and U.S. Bank National Association, a national banking association organized under the laws of the United States with offices in Minneapolis, Minnesota (the “Bank”); and

WHEREAS, the Customer is the sponsor of the Plan (as defined below) and wishes to appoint the Bank as the trustee of certain assets of the Plan, and the Bank wishes to accept the appointment;

WHEREAS, Section 15.2-1545 of the Code of Virginia authorizes the governing body of any county, city or town in Virginia to establish a trust, trusts or equivalent arrangements for the purpose of accumulating and investing assets to fund post-employment benefits other than pensions (“Other Post-Employment Benefits”) for the benefit of retired officers and employees of such county, city or town and their beneficiaries in accordance with the terms of the plans or programs providing Other Post-Employment Benefits;

NOW, THEREFORE, the parties hereto do hereby agree as follows:

**SECTION 1
DEFINITIONS**

- 1.1. “**Account**” means (i) the trust maintained under this Agreement for the Assets (as defined below), which trust is known as the Town of Leesburg OPEB Trust (name of trust) and (ii) where the context requires, one or more Sub-accounts (as defined below).
- 1.2. “**Advisers Act**” means the Investment Advisers Act of 1940, as amended.
- 1.3. “**Assets**” means the securities, cash, and other property the Customer deposits, or causes to be deposited, from time to time under this Agreement, including contributions made under the Plan and amounts the Customer causes to be transferred to the Account from another funding medium maintained for the Plan; investments and reinvestments thereof; and income thereon, as provided herein.
- 1.4. “**Beneficiaries**” means beneficiaries of Participants (as defined below).
- 1.5. “**Code**” means the Internal Revenue Code of 1986, as amended.
- 1.6. “**Depository**” means any registered clearing agency (such as the Depository Trust Company) or any Federal Reserve Bank.
- 1.7. “**Employer Securities**” means securities issued by an employer of employees covered by the Plan or issued by an affiliate of such employer.
- 1.8. “**Funding Policy**” means a periodic written analysis of the Plan’s cash-flow history, short-term financial needs, long-term financial needs, sources of money for plan-administration expenses, expected

levels and timing of contributions, expected levels and timing of distributions, liquidity needs (including but not limited to the anticipated liquidity required to make benefit distributions), sponsor's ability to provide future funding, and other significant information which could affect cash-flow or the exercise of discretion to manage the Assets.

1.9. **"GASB"** means the Governmental Accounting Standards Board.

1.10. **"Guidelines"** means the written investment objectives, policies, and restrictions for the Account (or for any Sub-accounts therein), including but not limited to proxy-voting guidelines, as amended from time to time.

1.11. **"Harm"** means claims, costs, damages, delayed payment or non-payment on Assets sold, expenses (including attorneys' and other professional fees), fines, interest, liabilities, losses, penalties, stockholders' assessments (asserted on account of asset registration), and taxes.

1.12. **"Indemnified Person"** means the Bank and its affiliates and their directors, officers, employees, successors, and assigns.

1.13. **"Investment Manager"** means any person or firm *other than the Bank* which (i) has the power to manage, acquire, or dispose of any asset of a plan; (ii) is registered as an investment adviser under the Advisers Act or is a bank as defined in the Advisers Act or is an insurance company qualified to manage, acquire, or dispose of any asset of a plan under the laws of more than one state; (iii) has acknowledged in writing that it is a fiduciary with respect to the Plan; and (iv) has been appointed to manage Assets as provided under this Agreement.

1.14. **"Investment Powers"** means the powers set forth in Section 4.1 hereof.

1.15. **"Participants"** means Plan participants.

1.16. **"Plan"** means the plan listed in **Exhibit A (Covered Plan)** hereto.

1.17. **"Plan Administrator"** means the plan administrator listed in **Exhibit A (Covered Plan)** hereto.

1.18. **"Plan Type"** means the plan type listed in **Exhibit A (Covered Plan)** hereto.

1.19. **"State"** means the state first written above.

1.20. **"Statement Recipient"** means the Plan Administrator, each Investment Manager, and anyone else the Plan Administrator so designates.

1.21. **"Sub-account"** means a separate portion of the Account.

1.22. **"Trustee Type"** means the trustee type listed in **Exhibit A (Covered Plan)** hereto.

SECTION 2 ABOUT THE PLAN

2.1. **Generally.** The Customer hereby represents and warrants that the Plan is a Plan Type, *the Customer is the sponsor of the Plan*, and *the Plan Administrator is the administrator (and not the third-party administrator) of the Plan*.

2.2. **Tax Status.** The Customer hereby represents and warrants that it has obtained IRS approval, or an opinion from a lawyer licensed in the State, which approval or opinion states as follows:

2.2.1. **The Account.** The Account satisfies all the requirements of Code Section 115; is tax-exempt under State law; is exempt from federal, State, and local income tax; and is not required to file any federal, State, or local tax returns or information returns. No contribution to, or benefit distribution from, the Account is includible in the gross income of any Participant or Beneficiary under Code Section 61, state law, or local law or is wages for Federal Insurance Contributions Act (FICA), Federal Unemployment Tax Act (FUTA), or income-tax withholding purposes.

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

2.3. **Fiduciary Status.**

2.3.1. The Customer hereby represents and warrants as follows:

2.3.1.1. **Employee Retirement Income Security Act of 1974, as amended (“ERISA”).** The Plan is (i) a “governmental plan” within the meaning of ERISA Section 3(32) and (ii) pursuant to ERISA Section 4(b)(1), not subject to ERISA.

2.3.1.2. **Authorizing Law.** The sections of State or local statute, rule, ordinance, or by-law listed in **Exhibit A (Covered Plan)** hereto authorize the Customer to establish the Plan and to establish a financial-institution trust (separate and apart from the State) for the Plan, including the authority to adopt this Agreement.

2.4. **GASB Status.** The Customer hereby represents and warrants that the Account is a “qualifying trust” or “equivalent arrangement” as those terms are defined in GASB Statement No. 45.

2.5. **Full Faith and Credit; Taxing Power; Debts**

2.5.1. Neither the full faith and credit nor the taxing power of the Customer is pledged to the distribution of benefits under this Agreement. Except for contributions and other amounts under this Agreement, no other amounts are pledged to the distribution of benefits under this Agreement. Distributions of benefits are neither general nor special obligations of any Customer, but are payable solely from the Assets of the Account, as more fully described herein. No employee of any Customer or beneficiary may compel the exercise of the taxing power by any Customer.

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

2.6. **Securities-law Status.** *The following provisions apply if and only if the Trustee Type includes discretionary:* The Customer hereby represents and warrants that (i) its officer signing below is knowledgeable regarding the nature of “municipal securities” as defined in 15 U.S.C. Section 78c(a)(29); the nature of “municipal escrow investments” as defined in 17 C.F.R. Section 240.15Ba1-1(h)(1); and the nature of the securities, cash, and other property deposited under this Agreement; and (ii) none of the securities, cash, or other property deposited under this Agreement constitutes “proceeds of municipal securities” as defined in 17 C.F.R. Section 240.15Ba1-1(m)(1) or “municipal escrow investments” as defined above for purposes of 17 C.F.R. Section 240.15Ba1-1 or Section 15B of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o-4) or otherwise. Furthermore, the Customer hereby (y) agrees that such representations and warranties are deemed to be renewed each time securities, cash, or other property is deposited under this Agreement and (z) covenants that, if any of such representations and warranties becomes inaccurate or incomplete, the Customer will promptly notify the Bank thereof and of any fact, omission, event, or change of circumstance related thereto.

SECTION 3 APPOINTMENT AND ACCEPTANCE

3.1. **Appointment; Acceptance.** The Customer hereby represents and warrants that applicable law provides that the Customer may appoint a trustee of any assets of the Plan. Pursuant to that power of appointment, *the Customer hereby appoints the Bank as trustee of the Assets, and the Bank hereby accepts such appointment*, subject to the terms of this Agreement.

3.2. **Establishment of Account.**

3.2.1. **Assets Held in Account.** The Customer hereby deposits Assets, or causes Assets to be deposited, with the Bank. The Customer hereby represents and warrants that all Assets are Plan assets. *The Bank holds Assets in trust.* As directed by the Plan Administrator, the Bank will establish one (1) or more Sub-accounts and allocate Assets among Sub-accounts.

3.2.2. **Separate and Apart; Exclusive Benefit.** The principal and income of the Account will be held separate and apart from the assets of the Customer and, except as permitted by law, will never inure to the benefit of the Customer and will be held for the exclusive purposes of providing benefits to Participants and Beneficiaries and defraying reasonable expenses of administering the Plan. It will be impossible, whether by amending this Agreement or otherwise, at any time before the satisfaction of all liabilities to Participants and Beneficiaries for any part of the principal or income of the Account to be used for, or diverted to, other purposes. The Bank will keep the Assets (other than deposits, such as cash or own-bank CDs) separate and apart from the assets of the Bank, pursuant to paragraph (b) (Separation of fiduciary assets) of 12 Code of Federal Regulations Section 9.13 and paragraph (c) (Segregation of fiduciary and general assets) of 12 United States Code Section 92a.

3.2.3. **Disposition of Certain Contributions.**

3.2.3.1. **Mistake of Fact.** If a Customer contribution to the Account was made by a mistake of fact, the Customer may direct the Bank to return the contribution to the Customer within one (1) year of such contribution. In such a case, the Customer will direct the return of no more than the excess of the amount contributed over the amount that would have been contributed had no mistake occurred, adjusted for the excess’s pro rata share of any net loss (but not any net gain) experienced by the Account while the excess was held in the Account.

3.2.3.2. **Not Qualified.** Customer contributions to the Account are conditioned upon the

Trust's initial qualification under Code Section 115. If the Trust receives an adverse determination with respect to its initial qualification, the Customer may direct the Bank to return Customer contributions to the Customer within one (1) year of such determination, provided such return is consistent with Code Section 115.

3.3. **Direction.** The Bank is subject to the directions of the Customer, the Plan Administrator, and any Investment Manager as set forth herein.

3.4. **Allocation of Duty to Manage the Assets.**

3.4.1. **Plan Administrator.**

3.4.1.1. **Guidelines; Funding Policy.** The Customer hereby reserves to the Plan Administrator sole discretion to determine the Guidelines; to establish and carry out a Funding Policy consistent with the objectives of the Plan and the requirements of applicable law; and to deliver the Guidelines, the Funding Policy, and this Agreement to each person that has discretion to manage Plan assets. The Customer hereby represents and warrants that (i) the Guidelines, the Funding Policy, and the permissible investments set forth herein are the only investment restrictions imposed upon the Account by the Customer and (ii) following such restrictions will not cause a violation of any applicable law.

3.4.1.2. **Power to Manage, Appoint.** The Customer hereby reserves to the Plan Administrator discretion to manage the Assets (subject to the Guidelines, the Funding Policy, and the permissible investments set forth herein) and to appoint an investment manager or managers to manage (including the power to acquire and dispose of) the Assets.

3.4.2. **Investment Manager.** The Customer hereby represents and warrants that:

3.4.2.1. Any investment manager so appointed (i) is an Investment Manager, and (ii) unless the Customer notifies the Bank to the contrary, has sole discretion to manage the Assets (subject to the Guidelines, the Funding Policy, and the permissible investments set forth herein).

3.4.2.2. The Plan Administrator will promptly give notice of any such appointment by providing the Bank with a fully-executed copy of the investment-management agreement with the Investment Manager.

3.4.3. **Plan Participants.** The Customer hereby represents and warrants that the Plan gives Participants discretion to manage their respective Participant-level investment accounts under the Plan, including the voting of proxies with respect to any Employer Securities (but not with respect to other assets) in such accounts, except to the extent Participants fail to timely direct the investment of such accounts. The Customer hereby acknowledges that (i) the Bank holds Assets on an omnibus basis; (ii) the Bank neither maintains Participant-level investment records nor knows whether and how Assets are allocated among Participant-level investment accounts; (iii) the Bank's duties with respect to investing assets ultimately held in a Participant-level investment account are limited to implementing investment directions received on an omnibus basis from the Plan Administrator; and (iv) the Plan Administrator is responsible for establishing and maintaining Participant-level investment accounts, for reconciling the aggregate balances thereof with the Asset holdings reflected in Account statements, for selecting any default investment fund or forfeiture fund for the Plan, and for disclosing any required investment-related or fee-related information to Participants.

3.4.4. **Bank.**

3.4.4.1. With respect to Assets that are subject to an Investment Manager's discretion to manage, the Bank has no discretion to manage, and the Bank exercises the Investment Powers only as directed by the Investment Manager.

3.4.4.2. With respect to Assets that are not subject to an Investment Manager's discretion to manage,

*The following provisions apply if and only if the Trustee Type includes **directed**:* the Bank has no discretion to manage, and the Bank exercises the Investment Powers only as directed by the Plan Administrator.

*The following provisions apply if and only if the Trustee Type includes **discretionary**:* the Bank has no discretion to manage to the extent the Bank has exercised the Investment Powers as directed by the Plan Administrator. Otherwise, the Bank has sole discretion to manage (subject to the Guidelines, the Funding Policy, and the permissible investments set forth herein) and to exercise the Investment Powers. Notwithstanding the foregoing, the Bank will not vote proxies with respect to any security in which it may have a direct or indirect interest but will instead forward such proxies to the Plan Administrator. The Customer hereby represents and warrants that a copy of the Guidelines as in effect on the date of this Agreement is attached as an **exhibit** hereto.

3.4.4.3. To the extent the Bank has no discretion and has received no such direction as to cash Assets upon their deposit under this Agreement, the Bank will use such Assets to purchase a position in the sweep vehicle identified in an **exhibit** hereto or, if none is identified, will hold such Assets uninvested.

SECTION 4 POWERS OF THE BANK

4.1. **Investment Powers.** Subject to Section 3.4 hereof, the Bank has the power to:

4.1.1. **Purchase, Hold, and Sell Assets.** Purchase with, and hold as, Assets without distinction between principal and income any securities or property, without limitation by any rule of law limiting the investment of trust assets in or to certain kinds of investments or prescribing the portion of a trust which may be invested in any kind of investment, including, but not limited to, any securities or property administered, advised, custodied, held, issued, offered, sponsored, supported by the credit of, underwritten, or otherwise serviced by the Bank or by the Bank's affiliate, and to sell the same. Without limiting the generality of the foregoing:

4.1.1.1. **Examples of Permissible Investments.** The Bank may so invest and reinvest in any real or personal property; preferred or common stocks of any kind or class of any corporation, including but not limited to investment and small business investment companies of all types; voting trust certificates; interests in investment trusts; shares of registered investment companies (whether open-end or closed-end); interests in any limited liability company or limited or general partnership or other business enterprise, however organized and for whatever purpose; interests in common or collective trust funds maintained by a bank or similar institution; bonds, notes, obligations, securities, and debentures, secured or unsecured; mortgages, leases, or other interests in real or personal property; deposits of a bank or similar financial institution (including but not limited to a deposit account or a certificate of deposit), provided such deposits bear a reasonable rate of interest; conditional sales contracts; insurance contracts and policies; and Employer Securities.

4.1.1.2. **81-100 Group Trusts.** The Bank may deposit and hold Assets in, pool Assets with other participating trusts in, and withdraw Assets from, a group trust which is exempt from taxation under Code Section 501(a) pursuant to the principles of Revenue Ruling 81-100, as amended, subject to the group-trust instrument. The group-trust instruments listed on an **exhibit** hereto are hereby incorporated herein by reference and prevail over contrary provisions of this Agreement, and the subject group trusts are hereby adopted as part of the Plan.

4.1.2. **Process Corporate Actions.**

4.1.2.1. Respond to voluntary corporate actions (such as proxies, redemptions, or tender offers) and mandatory corporate actions (such as class actions, mergers, stock dividends, or stock splits) affecting shareholders of an Asset, after providing notice of any such action to any person authorized under this Agreement to direct the exercise of the Investment Powers with respect to the Asset.

4.1.2.2. Notwithstanding anything herein to the contrary, the Bank will, without providing notice, (i) cause Assets to participate in any mandatory exchange transaction that neither requires nor permits approval by the owner of the Assets and (ii) file any proof of claim received by the Bank regarding class-action litigation over a security held in the Account during the class-action period, regardless of any waiver, release, discharge, satisfaction, or other condition that might result from such filing.

4.1.3. **Lend Securities.** Engage in securities-lending transactions with Assets, to the extent the Customer and the Bank have entered into a separate securities-lending agreement with respect to Assets.

4.1.4. **Hire Service Providers.** Hire service providers (including, but not limited to, investment managers, investment advisers, and brokers) to assist the Bank in exercising the foregoing powers, including any service provider that is affiliated with the Bank.

4.1.5. **Do Other Things.** Perform other acts necessary to the proper discharge of its duties under this Agreement.

4.2. **Administrative Powers.** The Bank has the power to:

4.2.1. **Safe-keep Assets.** Safe-keep Assets as set forth herein.

4.2.2. **Exchange Foreign Currency.** Exchange foreign currency into and out of United States dollars through customary channels, including the Bank's foreign-exchange department.

4.2.3. **Borrow Money.** As directed by the Plan Administrator, borrow funds on an interest-free basis to the extent expressly permitted under applicable law.

4.2.4. **Settle Purchases and Sales.** Settle purchases and sales as set forth herein.

4.2.5. **Register Assets.** Register any Asset in the name of the Account, the Bank (with or without trust designation), or the Bank's nominee or to hold any Asset in unregistered or bearer form or in such form as will pass title by delivery, provided that the Bank's records at all times show that all such assets are part of the Account.

4.2.6. **Maintain Assets at a Depository.** Maintain Assets at any Depository; to permit such Assets to be registered in the name of the Account, the Bank (with or without trust designation), the

Bank's nominee, the Depository, or the Depository's nominee; and, in connection with transactions involving foreign securities, to employ securities depositories, clearing agencies, clearance systems, sub-custodians, or agents located outside the United States.

4.2.7. **Collect Income.** Collect income as set forth herein.

4.2.8. **Provide Overdraft Protection.** Provide overdraft protection in settling securities transactions and other financial-market transactions under this Agreement.

4.2.9. **Sign Documents.** Make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any or all other instruments that may be necessary or appropriate to the proper discharge of its duties under this Agreement.

4.2.10. **Distribute Assets.** As directed by the Plan Administrator, distribute Assets, including benefit distributions to or for the benefit of Participants and Beneficiaries (or to a guardian, conservator, or other legal representative on behalf of a Participant or Beneficiary that the Plan Administrator has determined to be incompetent) and distributions in payment of Plan expenses.

4.2.11. **Retain Disputed Funds.** Withhold delivery or distribution of Assets that are the subject of a dispute pending final adjudication of the dispute by a court of competent jurisdiction.

4.2.12. **Hold Assets Un-invested.** Hold Assets un-invested pending investment, distribution, resolution of a dispute, or for other operational reasons and to deposit the same, in an interest-bearing or noninterest-bearing deposit account of the Bank.

4.2.13. **Litigate.** Bring or defend lawsuits involving the Account at the sole expense of the Account and to settle the same.

4.2.14. **Provide Statements.** Provide statements as set forth herein.

4.2.15. **Perform Tax Duties.** Perform tax duties, if and to the extent set forth herein.

4.2.16. **Provide Ancillary Services.** Provide ancillary services to the Account for no more than reasonable compensation.

4.2.17. **Hire Service Providers.** Hire service providers (including, but not limited to, attorneys, depositories, and sub-custodians) to assist the Bank in exercising the foregoing powers, including any service provider that is affiliated with the Bank.

4.2.18. **Do Other Things.** Perform other acts necessary to the proper discharge of its duties under this Agreement.

SECTION 5 SAFE-KEEP ASSETS

5.1. **Safe-keeping.** As directed by the Customer, the Bank will from time to time receive Assets. The Bank will safe-keep the Assets.

SECTION 6 SETTLE PURCHASES AND SALES

6.1. The Bank will settle purchases made with Assets and sales of Assets, according to the Bank's instruction-deadline schedule, provided that the Bank has all the information and the Account has all the assets necessary for the purchase or sale.

6.2. The Customer hereby represents and warrants that neither the Customer nor the Plan Administrator will (i) notify any third party that, despite the fact that the Account has insufficient assets for the transaction, the Bank will settle the purchase of an asset nor (ii) direct anyone else to provide such notice.

SECTION 7 COLLECT INCOME

7.1. The Bank will collect all income, principal, and other distributions due and payable on Assets.

7.2. If an Asset is in default, or if payment is refused after due demand, and the Bank receives notice of such default or refusal from the Asset's issuer or transfer agent, the Bank will so advise the Customer.

SECTION 8 PROVIDE STATEMENTS

8.1. **Accounting.** The Bank will maintain proper books of account and complete records of Assets and transactions in the Account, including increases or decreases in the value of the Account due to contributions to the Account, distributions from the Account, investment experience on Assets, and expenses and fees charged to the Account.

8.2. **Statements.**

8.2.1. **Account Statements.** The Bank will furnish each Statement Recipient with (i) an Account statement with the frequency designated below (or as subsequently agreed upon by the Bank and the Customer) within thirty (30) calendar days after the end of the reporting period and (ii) a final Account statement within thirty (30) calendar days after the Bank's resignation or removal under this Agreement. Such Account statements will reflect Asset transactions during the reporting period and ending Asset holdings. To the extent the Plan Administrator has established an account in the Bank's on-line portal and granted access thereunder to Statement Recipients, the Bank will furnish such Account statements by way of such system. If no frequency is so designated or agreed upon, the Customer will be deemed to have designated "Monthly".

(Check at least one):

- Monthly
- Quarterly
- Semi-annually
- Annually

8.2.2. **Client-Controlled Assets.** For any assets that are neither registered in the name of the Account, the Bank (with or without trust designation), or the Bank's nominee nor maintained by the Bank at a Depository or with a sub-custodian nor in the physical possession of the Bank nor otherwise in a place or form in which the Bank can manipulate, access, or control them, the Bank will exclude such assets from the Account statements. The Customer hereby acknowledges that such assets are not held in

the Account and that the Bank is not trustee of such assets and not responsible for performing any duties under this Agreement with respect to such assets.

8.2.3. *The following provisions apply if and only if the Trustee Type includes **discretionary: Proxy-voting Reports.*** The Bank will furnish each Statement Recipient with reports of how the Bank voted proxies with respect to the Assets, in the form and frequency as the Customer and the Bank may agree from time to time. To the extent the Plan Administrator has established an account in the Bank's on-line portal and granted access thereunder to Statement Recipients, the Bank will furnish such reports by way of such system.

8.3. **Confirmations; Notification by Agreement.** Except to the extent the Assets are subject to the Bank's discretion to manage, the Account statements described above (including their timing and form) serve as the sole written notification of any securities transactions effected by the Bank for the Account. Even so, the Customer has the right to demand that the Bank provide written notification of such transactions pursuant to 12 Code of Federal Regulations Sections 12.4(a) or (b) at no additional cost to the Customer.

8.4. **Valuation.** For purposes of reporting the value of an Asset on an Account statement:

8.4.1. **Pricing, If Available.** The Bank will report a value that is (i) provided to the Bank by a third-party pricing vendor or (ii) readily determinable on an established market, if such value is available to the Bank when preparing the statement.

8.4.2. **Pricing, If Unavailable.** If such value is unavailable, the Customer will, upon the Bank's request, direct the Bank as to the value; the Bank will then report such value. Absent such a direction, the Bank will report the most recent value that the Bank received from the Asset's broker, fund accountant, general partner, issuer, manager, transfer agent, or other service provider (commonly known as a pass-through price).

8.4.2.1. To the extent the value of an Asset is so reported, the Customer hereby represents and warrants as follows: (i) The Customer has received, read, and understood any prospectus, summary description, declaration of trust, subscription agreement, offering memorandum, and fact sheet for the Asset; understands the Asset's fees and expenses, transfer and withdrawal limitations, type, category, issuer, objectives, principal strategies and risks, and current underlying investments; and understands the identity of the Asset's administrator, investment advisor, auditor, and other service providers (and any affiliations among them) and the services they provide, respectively, to the Asset. (ii) Such value reflects such disclosures, investment-related information, and service-provider information.

8.4.2.2. To the extent an Asset is (i) an Employer Security the value of which is not readily determinable on an established market or (ii) real estate, the Customer hereby covenants as follows: The Customer will obtain a written valuation of such property from an independent third-party appraiser whenever required by applicable law and, regardless of whether required by applicable law, at least annually. Each appraiser will be independent of all parties other than the Plan and will have the facilities and expertise to do the valuation. Each valuation will state the appraiser's qualifications, the property's value (and the methods used to determine it), a description of the property, the factors considered in making the valuation, the purpose of the valuation, the significance of the valuation methods, the effective date of the valuation, the economic and industry outlook, the property's book value, and the property's marketability. If the property is an Employer Security, each valuation will also state the issuer's nature, history, financial condition, earning capacity, dividend-paying capacity, goodwill, and intangible value, as well as the actively-traded market-price of similar issuers' stock. Before relying on the valuation, the Customer will read and understand the valuation, verify the accuracy

of the underlying information, make sure the appraiser's assumptions and methods are reasonable, discuss the appraisal with the appraiser, determine that reliance on the appraiser's advice is reasonably justified, and determine that the Customer need not hire a second independent third-party appraiser to review the valuation or to prepare another valuation.

8.4.3. **Limitations.** The Customer hereby acknowledges that the reported value:

8.4.3.1. **Fair Market Value; Fair Value.** Might be neither fair market value nor fair value (under GASB rules or applicable law) as of Plan year end.

8.4.3.2. **Not Investment Advice.** Is not a recommendation as to the advisability of buying, holding, or selling the Asset and not a substitute for investigating the Asset's value in connection with a decision to buy, hold, or sell (or for obtaining and ensuring the reliability of an independent third-party appraisal with respect to such a decision).

8.4.4. **Pricing Sources; Methodology.** Upon the Customer's request, the Bank will provide the Customer (or the certified public accountant engaged by the Plan Administrator to opine on the Plan's financial statements) with information about the Bank's pricing sources and methodologies.

8.5. **Statement Review.** The Plan Administrator will review the Account statements promptly upon delivery.

SECTION 9 LIMITATIONS ON DUTIES; INDEMNIFICATION

9.1. **Limitations on Duties.** The duties of the Bank will be strictly limited to those set forth in this Agreement. Without limiting the generality of the foregoing, the Bank has no duty to:

9.1.1. Request or obtain a ruling or other guidance from the Internal Revenue Service or any other governmental authority as to (or otherwise determine, monitor, or question) the tax character or consequences of the form and operation of the Account, provided that the Plan Administrator may direct the Bank to sign a request for such guidance where the Plan trustee's signature is required by law (such as certain applications for recognition of exemption from income tax).

9.1.2. Act as the administrator of the Plan, including, but not limited to, construing the terms of the Plan, determining eligibility for Plan benefits (including, but not limited to, eligibility for participation, vesting, or distribution, as well as the timing, amount, or form thereof), resolving benefit claims or claim appeals, maintaining or reconciling to participant-level records, disclosing investment-related or fee-related information to Participants or Beneficiaries, receiving investment directions from Participants or Beneficiaries, or prescribing forms (including, but not limited to, forms for electing participation, distribution, or withdrawal or for providing notices to Participants or Beneficiaries).

9.1.3. Act as trustee of any Plan assets other than the Assets.

9.1.4. Act as investment manager of, or take notice of the management of, any Plan assets other than Assets that are subject to the Bank's discretion to manage (if any).

9.1.5. Render investment advice with respect to the Assets.

9.1.6. Act as record-keeper or broker that makes the Plan's designated investment alternatives

available to Participants or Beneficiaries (such as on a record-keeping platform or similar mechanism).

9.1.7. Question the Guidelines, the Funding Policy, or the permissible investments set forth herein.

9.1.8. Determine, monitor, or collect Plan contributions; rather, the Bank will be subject to the Plan Administrator's direction regarding such matters; or monitor compliance with any applicable funding requirements.

9.1.9. Collect any income, principal, or other distribution due and payable on an Asset if the Asset is in default or if payment is refused after due demand or, except as expressly provided herein, to notify the Customer in the event of such default or refusal.

9.1.10. Provide notice of, or forward, mini-tenders (which are tender offers for less than 5% of an outstanding equity or debt issue) for any equity issue or, if any of the following is true, for any debt issue: The debt issue is not registered with the United States Securities and Exchange Commission. The debt issue has a "first received, first buy" basis with no withdrawal privilege and includes a guarantee of delivery clause. Or, the tender offer includes the statement that "the purchase price includes all accrued interest on the note and has been determined in the sole discretion of the buyer and may be more than or less than the fair market value of the notes" or similar language.

9.1.11. Question whether any direction received under this Agreement is prudent; to solicit directions; or to question whether any direction received under this Agreement by email, or entered into the Customer's or Plan Administrator's account in the Bank's on-line portal, is unreliable or has been compromised, such as by identity-theft, except to the extent that would be required by due diligence under the current certificate of incumbency.

9.1.12. Calculate, withhold, disclose, report, or remit to the appropriate taxing authorities, Participants, or Beneficiaries any federal, state, or local taxes that may be required to be calculated, withheld, disclosed, reported, or remitted with respect to the Plan (such as paying Plan benefits) or Account, except as may be expressly set forth herein.

9.1.13. Monitor service providers hired by the Customer or by the Plan Administrator.

9.1.14. Maintain or defend any legal proceeding in the absence of indemnification, to the Bank's satisfaction, against all expenses and liabilities which it may sustain by reason thereof.

9.1.15. Make a benefit distribution or otherwise follow a direction under this Agreement to the extent the Assets are insufficient to cover the same (including attendant expenses).

9.2. **Indemnification.**

9.2.1. The Customer hereby indemnifies and releases each Indemnified Person, and holds each Indemnified Person harmless from and against, and an Indemnified Person will incur no liability to any person for, any Harm that may be imposed on, incurred by, or asserted against an Indemnified Person by reason of the Indemnified Person's action or omission in connection with this Agreement or the Account (including, but not limited to, an action or omission that is consistent with directions provided under this Agreement), except to the extent that a court of competent jurisdiction has made a final judgment that the Harm resulted directly from the Indemnified Person's willful misconduct, negligence, bad faith, or breach of fiduciary duty. The Bank hereby indemnifies and releases Customer and its employees from any liability or Harm that may be imposed on, incurred by, or asserted against the Customer or its employees

by reason of the Bank's action or omission in connection with this Agreement or the Account (including, but not limited to, an action or omission that is consistent with directions provided under this Agreement), except to the extent that a court of competent jurisdiction has made a final judgment that the Harm resulted directly from the Customer's willful misconduct, negligence, bad faith, or breach of fiduciary duty.

9.2.2. The foregoing provisions will survive the Indemnified Person's termination as such and the termination of this Agreement.

9.3. **Force Majeure.** The Bank is not responsible for any delay or failure in performing its obligations under this Agreement caused by circumstances beyond the Bank's reasonable control.

9.4. **Damages.** The Bank is not liable for any indirect, incidental, special, punitive, or consequential damages arising out of or in any way related to this Agreement or the Bank's provision of services under this Agreement. This limitation applies even if the Bank has been advised of, or is aware of, the possibility of such damages.

9.5. **Statements.** The Bank is not liable with respect to the propriety of the Bank's actions or omissions reflected in a statement provided under this Agreement, except to the extent (i) a Statement Recipient objects to the Bank within ninety (90) calendar days after delivery of such statement or (ii) such acts or omissions could not be discovered through reasonable examination of such statement.

SECTION 10 FEES AND EXPENSES

10.1. **Fees.** The Bank is entitled to receive compensation for providing services under this Agreement. A schedule of that compensation is attached as **Exhibit B (Fee Schedule for Plans)** hereto.

10.2. **Expenses.** Reasonable expenses, fees, costs, and other charges incurred by the Bank in providing services under this Agreement (including, but not limited to, compensation, expenses, fees, costs, and other charges payable to service providers hired under this Agreement) are expenses of the Account, and the same will not be offset from the Bank's compensation unless required by applicable law.

10.3. **Overdrafts.** To the extent of any overdraft in the Account, the Customer hereby grants the Bank a lien in and right of set-off against the Assets. The Bank may execute that lien and exercise that right at any time.

SECTION 11 TERMINATION

11.1. **Termination of Agreement.** This Agreement terminates upon Account termination or, if earlier, the effective date of the Bank's resignation or removal under this Agreement.

11.2. **Account Termination.** The Customer may terminate the Account at any time, by written action of the Customer. In connection with such a termination, the Plan Administrator will give the Bank a copy of the written action and direct the Bank as to the distribution of all Assets.

11.3. **Resignation; Removal.**

11.3.1. The Bank may resign under this Agreement by notice to the Customer. The Customer may remove the Bank under this Agreement by notice to the Bank. Within thirty (30) calendar days after delivery of the notice, the Customer will appoint a successor trustee and provide the Bank with the successor's signed, written acceptance of trusteeship. If the Customer fails to do so, the Bank will have the right to petition a court at Account expense for appointment of a successor trustee.

11.3.2. Upon accepting trusteeship or upon judicial declaration of trusteeship, the successor trustee will become vested with full title and right to possession of all Assets and Account records. The Bank will thereupon hold the same only as custodian (pursuant to the custodial provisions of this Agreement) and promptly account for and deliver all Assets and Account records to the successor trustee. The Bank may withhold from such delivery an amount of Assets equal to any outstanding fees, expenses, and overdrafts under this Agreement.

11.4. **Reversion.** Upon Plan termination, the Plan Administrator may direct the Bank to return Assets to the Customer, provided (i) Assets were sufficient to satisfy all Plan benefits; (ii) Assets were first distributed to satisfy all such benefits; and (iii) such return is consistent with Code Section 115. The Customer hereby represents and warrants that the Plan Administrator will not give such a direction unless all applicable conditions under law for reversion have already been satisfied. Upon Plan termination, the Plan Administrator may direct the Bank to return Assets to the Customer, provided the Plan termination is the result of federal or state legislative or regulatory action that results in the payment of benefits under the Plan to be illegal or unnecessary or impractical and provided all Plan benefit obligations prior to such federal or state action have been satisfied.

SECTION 12 MISCELLANEOUS

12.1. **Freedom to Deal with Third Parties.** The Bank is free to render services to others similar to those services rendered under this Agreement or of a different nature, except to the extent that such services conflict with the services to be rendered or the duties to be performed under this Agreement.

12.2. **Binding Obligations.** The Customer and the Bank each hereby represent and warrant that this Agreement constitutes its legal, valid, and binding obligation enforceable according to the terms hereof.

12.3. **Complete Agreement; Amendment; Prevalence.**

12.3.1. **Complete Agreement.** This Agreement contains a complete statement of all the arrangements between the parties with respect to its subject matter and supersedes any existing agreements between them concerning the subject.

12.3.2. **Amendment.** This Agreement may be amended at any time, in whole or in part, by a written instrument signed by the Customer and the Bank. Notwithstanding the foregoing, the terms of **Exhibit B (Fee Schedule for Plans)** hereto alone govern amendments thereto.

12.3.3. **Prevalence of This Agreement.** The Customer hereby represents and warrants that (i) it has delivered the Plan document as in effect on the date of this Agreement to the Bank and will provide the Bank with any subsequent amendment thereof; and (ii) the Plan document, as amended from time to time, is not inconsistent with this Agreement (including, but not limited to, with regard to the identity of any fiduciary). In the event of such an inconsistency, this Agreement prevails with respect to the powers, rights, and duties of the Bank.

12.4. **Governing Law.** This Agreement will be governed, enforced, and interpreted according to the laws of the State without regard to conflicts of laws, except where pre-empted by federal law.

12.5. **Successors and Assigns.**

12.5.1. This Agreement binds, and inures to the benefit of, the Customer, the Bank, and their respective successors and assigns.

12.5.2. No party may assign any of its rights under this Agreement without the consent of the other, which consent shall not be unreasonably withheld. The Customer hereby acknowledges that the Bank will withhold consent unless and until the Bank verifies an assignee's identity according to the Bank's Customer Identification Program and, to that end, the Customer hereby agrees to notify the Bank of such assignment and provide the Bank with the assignee's name, physical address, EIN, organizational documents, certificate of good standing, and license to do business, as well as other information that the Bank may request. No consent is required if a party merges with, consolidates with, or sells substantially all of its assets to another entity, provided that such other entity assumes without delay, qualification, or limitation all obligations of that party under this Agreement by operation of law or by contract.

12.6. **Severability.** The provisions of this Agreement are severable. The invalidity of a provision herein will not affect the validity of any other provision.

12.7. **No Vested Benefits.** Neither the creation nor the operation of the Account causes the vesting of any Participant's or Beneficiary's right to Plan benefits.

12.8. **Solvency.** The Customer hereby represents and warrants that the Customer is neither insolvent nor subject to any pending bankruptcy proceeding. The Customer will promptly notify the Bank of any such insolvency or proceeding. The Bank hereby represents and warrants that the Bank is neither insolvent nor subject to any pending bankruptcy proceeding. The Bank will promptly notify the Customer of any such insolvency or proceeding.

12.9. **Tax-Lot Selection-Method.** The Customer hereby directs the Bank to use the following tax-lot selection-method for the Account, except to the extent the Customer directs the Bank to the contrary: Average Federal Tax Cost (in which shares are sold across all tax lots using the average cost) and, to the extent such method is not permitted for Account investments, First In First Out (in which shares are sold from tax lots having the earliest federal tax acquisition date).

12.10. **Shareholder Communications Act Election.** Under the Shareholder Communications Act of 1985, as amended, the Bank must try to permit direct communications between a company that issues a security held in the Account (the "Securities-Issuer") and any person who has or shares the power to vote, or the power to direct the voting of, that security (the "Voter"). Unless the Voter registers its objection with the Bank, the Bank must disclose the Voter's name, address, and securities positions held in the Account to the Securities-Issuer upon the Securities-Issuer's request ("Disclosure"). To the extent that the Customer is the Voter, the Customer hereby (i) acknowledges that failing to check one and only one box below will cause the Customer to be deemed to have consented to Disclosure and (ii) registers its (*check only one*):

- Consent to Disclosure .
- Objection to Disclosure.

12.11. **Authorized Persons.**

12.11.1.The Customer will identify:

12.11.1.1. Each employee of the Customer who is authorized to act on the Customer's behalf under this Agreement, by giving the Bank (i) a certificate of incumbency signed by the Customer's corporate secretary (or officer exercising similar authority) naming the employees who have such authority and (ii) the specimen signatures and email addresses of such employees.

12.11.1.2. Each third-party agent that is authorized to act on the Customer's behalf under this Agreement, by giving the Bank an authorization letter setting forth the name of such agent; any limits on such agent's authority to act on the Customer's behalf under this Agreement; and the names, specimen signatures, and email addresses of each employee of such agent who is authorized to act on such agent's behalf under this Agreement. Absent any such limits to the contrary, any such agent is authorized to exercise any right and fulfill any duty of the Customer under this Agreement, including, but not limited to, any of the Customer's authority under this Agreement to direct the Bank. However, in no event is such agent authorized to amend the Agreement or to terminate the Agreement.

12.11.1.3. Each employee of the Plan Administrator who is authorized to act on the Plan Administrator's behalf under this Agreement, by giving the Bank (i) a certificate of incumbency signed by the Plan Administrator's corporate secretary (or officer exercising similar authority) naming the employees who have such authority and (ii) the specimen signatures and email addresses of such employees.

12.11.1.4. Each third-party agent that is authorized to act on the Plan Administrator's behalf under this Agreement, by giving the Bank an authorization letter setting forth the name of such agent; any limits on such agent's authority to act on the Plan Administrator's behalf under this Agreement; and the names, specimen signatures, and email addresses of each employee of such agent who is authorized to act on such agent's behalf under this Agreement. Absent any such limits to the contrary, any such agent is authorized to exercise any right and fulfill any duty of the Plan Administrator under this Agreement, including, but not limited to, any of the Plan Administrator's authority under this Agreement to direct the Bank. However, in no event is such agent authorized to withdraw Assets from the Account (unless (i) the recipient of the withdrawn Assets is a destination pre-approved by the Plan Administrator or (ii) the Plan Administrator has provided affirmative written authorization to the Bank to accept directions from such agent to withdraw Assets from the Account); to amend the Agreement; or to terminate the Agreement.

12.11.2.The Bank may assume that any such employee or agent continues to be so authorized, until the Bank receives notice from the Customer to the contrary.

12.11.3.The Customer hereby represents and warrants that any such employee or agent was duly appointed pursuant to a procedure specified in the Plan and is appropriately monitored and covenants that the Customer (or the Plan Administrator, as the case may be) will furnish such employee or agent with a copy of this Agreement, as amended from time to time, and with a copy of any communications given under this Agreement to the Customer (or to the Plan Administrator, as the case may be). The Customer hereby acknowledges that (i) such employee's or agent's actions or omissions are binding under this Agreement upon the Customer (or upon the Plan Administrator, as the case may be) as if the Customer (or the Plan Administrator, as the case may be) had taken such actions or made such omissions itself and (ii) the Bank is indemnified, released, and held harmless under this Agreement accordingly.

12.12. Delivery of Directions.

12.12.1. Any direction, notice, or other communication provided for in this Agreement will be given in writing and (i) unless the recipient has timely delivered a superseding address under this Agreement, addressed as provided under this Agreement, or (ii) entered into the Customer's or Plan Administrator's account, as the case may be, in the Bank's on-line portal.

If to the Bank:

Authorized Officer: c/o _____,
Vice President and Relationship Manager

U.S. Mailing Address: _____

Phone Number: _____

Email Address: _____

If to the Customer:

Authorized Officer: c/o Director of Finance and Administrative Services

U.S. Mailing Address: 25 West Market Street

Leesburg, VA 20176

Phone Number: 703-771-2720

Email Address: ccase@leesburgva.gov

If to the Plan Administrator:

See Exhibit A (Covered Plan) hereto.

12.12.2. Any direction received under this Agreement by email, or entered into the Customer's or Plan Administrator's account in the Bank's on-line portal, is deemed to be given in a writing signed by the sender. The Customer hereby represents and warrants that the Customer and the Plan Administrator maintain commercially reasonable security measures for preventing unauthorized access to their respective portal accounts and the email accounts of their employees, agents, and agents' employees, and the Customer hereby assumes all risk to the Account of such unauthorized access unless such unauthorized access is due to negligence by the Bank. The Customer hereby acknowledges that the Customer is fully informed of the protections and risks associated with the various methods of transmitting directions to the Bank and that there may be more secure methods of transmitting directions than the methods selected by the Customer, the Plan Administrator, and their agents.

12.13. **Plan Expenses.** The Plan Administrator may direct the Bank from time to time to charge an expense, or type of expense, against the Account. The Customer hereby represents and warrants that any expense, or type of expense, so directed to be charged is a permissible Plan expense (and is not a settlor expense).

12.14. **Co-fiduciary Responsibility.** Except as may be required by applicable law, no fiduciary with respect to the Plan (i) is responsible for the actions or omissions under this Agreement of any other

fiduciary with respect to the Plan or (ii) has a duty to question whether any other fiduciary with respect to the Plan is fulfilling its own responsibilities under this Agreement.

12.15. **Spendthrift.** Except as expressly permitted by the terms of the Plan and applicable law, (i) no Participant or Beneficiary has the power to assign or alienate a beneficial interest in the Account; (ii) neither the Bank, the Customer, nor the Plan Administrator will recognize an assignment or alienation of a beneficial interest in the Account; and (iii) no beneficial interest in the Account is subject to attachment, garnishment, execution following judgment, or other legal process.

12.16. *The following provisions apply if and only if the Trustee Type includes discretionary:* **Exempt from Registration.** The Bank hereby represents and warrants that it is a “bank” as that term is defined in Section 202(a)(2) of the Advisers Act, as amended, and therefore exempt, under Section 202(a)(11)(A) of the Advisers Act, from registering with the U.S. Securities and Exchange Commission as an investment adviser.

12.17. **Legal Advice.** The Customer hereby acknowledges that it (i) did not receive legal advice from the Bank concerning this Agreement, (ii) had an adequate opportunity to consult a licensed attorney of its choice before executing this Agreement, and (iii) executed this Agreement upon its own judgment and, if sought, the advice of such attorney.

12.18. **Waiver of Jury Trial.** Each party hereby irrevocably waives all right to a trial by jury in any action, proceeding, claim, or counterclaim (whether based on contract, tort, or otherwise) directly or indirectly arising out of or relating to this Agreement.

12.19. **Counterparts and Duplicates.** This Agreement may be executed in any number of counterparts, each of which, without production of the others, will be deemed to be an original, but all of which together will constitute the same instrument. This Agreement, and any direction, notice, or other communication given under this Agreement, may be proved either by an executed original or by a reproduced copy thereof (including, but not limited to, an electronic file copy thereof).

12.20. **Effective Date.** This Agreement will become effective when all parties have signed it. The date of this Agreement will be the date this Agreement is signed by the last party to sign it (as indicated by the date associated with that party’s signature).

IN WITNESS WHEREOF, an authorized officer of each party hereby executes this Agreement on the date stated beneath that party’s signature.

THE CUSTOMER

By: _____

Its: Town Manager

Dated: _____

U.S. BANK NATIONAL ASSOCIATION

By: _____

Its: Vice President and Relationship Manager

Dated: _____

DRAFT

SECTION 115 TRUST AGREEMENT

Exhibit A

Covered Plan

Trustee Type

(Check only one):

- Directed trustee Discretionary trustee

Plan:

Town of Leesburg Other Post-Employment Benefits Trust

Plan Type

Other post-employment benefits

Plan Type

Governmental;
§§ _____

Plan Administrator

(Check only one):

- The Plan Administrator is the Customer.
 The Plan Administrator is not the Customer; see below instead.

Plan Administrator: Town of Leesburg, VA
(Do not enter the name of any third-party administrator.)

Authorized Officer: c/o Clark G. Case, Director of Finance and Administrative Services

U.S. Mailing Address: 25 West Market Street
Leesburg, VA 20176

Phone Number: 703-771-2720

Email Address: ccase@leesburgva.gov

Effective Date. This Exhibit will become effective when all parties have signed it. The date of this Exhibit will be the date this Exhibit is signed by the last party to sign it (as indicated by the date associated with that party's signature).

IN WITNESS WHEREOF, an authorized officer of each party hereby executes this Exhibit on the date stated beneath that party's signature.

THE CUSTOMER

By: _____

Its: Lee Ann Green, Clerk of Council

Dated: _____

U.S. BANK NATIONAL ASSOCIATION

By: _____

Its: Vice President and Relationship Manager

Dated: _____

DRAFT

SECTION 115 TRUST AGREEMENT

Exhibit B

Fee Schedule for Plans

DRAFT

INVESTMENT POLICY

FOR

TOWN OF LEESBURG, VIRGINIA
OTHER POST-EMPLOYMENT BENEFITS TRUST

TABLE OF CONTENTS

<u>SECTION</u>	<u>PAGE</u>
Purpose	3
Investment Authority	3
Statement of Investment Objectives	4
Investment Guidelines	5
Time Horizon	
Liquidity and Diversification	
Asset Allocation	
Rebalancing Philosophy	
Risk Tolerance	
Performance Expectations	
Selection of Investment Managers.....	7
Guidelines for Portfolio Holdings	7
Direct Investments by Advisor	
Limitations on Managers' Portfolios	
Portfolio Risk Hedging	
Prohibited Portfolio Investments	
Safekeeping	
Control Procedures	10
Review of Investment Objectives	
Review of Investment Performance	
Voting of Proxies	
Adoption of Investment Policy Statement.....	11

The Town of Leesburg, Virginia (the “Town”) has established the Town of Leesburg Other Post-Employment Benefits Trust (the “Trust”). This Trust is intended to provide funding of non-pension other post-employment benefits (“OPEB”) for those employees who meet the age and service requirements outlined in the plan document. The Town Council of the Town of Leesburg and the Trustees of the Trust hereby adopt this Investment Policy (“Investment Policy”) for the following purposes.

Purpose

The main investment objective of the Trust is to achieve long-term growth of Trust assets by maximizing long-term rate of return on investments and minimizing risk of loss to fulfill the Town’s current and long-term OPEB obligations.

The purpose of this Investment Policy is to achieve the following:

1. Document investment objectives, performance expectations and investment guidelines for Trust assets.
2. Establish an appropriate investment strategy for managing all Trust assets, including an investment time horizon, statement of disallowed investments, risk tolerance ranges and asset allocation to provide sufficient diversification and overall return over the long-term time horizon of the Trust.
3. Establish investment guidelines to control overall risk and liquidity.
4. Establish periodic performance reporting requirements to monitor investment results and confirm that the investment policy is being followed.
5. Comply with fiduciary, prudence, due diligence and legal requirements for Trust assets.

Investment Authority

The Town of Leesburg has appointed a Finance Board pursuant to the Code of Virginia Section 15.2-1547 to oversee certain policies and procedures related to the operation and administration of the Trust. The Finance Board will have authority to implement the investment policy and guidelines in the best interest of the Trust to best satisfy the purposes of the Trust. To operate in accordance with Code of Virginia Section 15.2-1547, the board shall have a minimum of three (3) members. The Town’s Finance Board shall have five (5) total members as follows: the Town Manager or designee, Director of Finance and Administrative Services, Deputy Director/Treasurer of Finance and Administrative Services, an ex-officio member who is a representative or employee of the investment Advisor and a representative or employee of the Town’s financial advisory firm. The financial advisory firm member shall be a resident of the Commonwealth of Virginia with financial/investing background. In implementing this Policy Statement, the Finance Board believes it may delegate certain functions to:

An Investment Advisor (“Advisor”) to assist the Finance Board in the investment process and to maintain compliance with this Investment Policy. The Advisor may assist the Finance Board in

establishing investment policy objectives and guidelines. The Advisor will adjust asset allocation for the Trust subject to the guidelines and limitations set forth in this Investment Policy. The Advisor will select investment managers (“Managers”) and strategies consistent with its role as a fiduciary for the Trust. The Finance Board will have the authority to oversee the Advisor’s investment decisions and, if any investments are inconsistent with the Trust’s objectives, the Finance Board will have the authority to require that the Advisor adjust the portfolio strategy in a way that best benefits the interests of the Trust.

1. The investment vehicles allowed may include mutual funds, commingled trusts, separate accounts, limited partnerships and other investment vehicles deemed to be appropriate by the Advisor and the Finance Board. The Advisor is also responsible for monitoring and reviewing investment managers; measuring and evaluating performance; and other tasks as deemed appropriate in its role as Advisor for Trust assets. The Advisor may also select investments with discretion to purchase, sell, or hold specific securities, such as Exchange Traded Funds, that will be used to meet the Trust’s investment objectives. The Advisor shall never take possession of securities, cash or other assets of the Trust, all of which shall be held by the custodian. The Advisor must be a Registered Municipal Advisor registered with the Securities and Exchange Commission.
2. A custodian selected by the Trust to maintain possession of physical securities and records of street name securities owned by the Trust, collect dividend and interest payments, redeem maturing securities, and effect receipt and delivery following purchases and sales. The custodian may also perform regular accounting of all assets owned, purchased, or sold, as well as movement of assets into and out of the Trust. The custodian may also serve as the trustee of the Trust if mutually agreed under contract between the custodian and the Trust as approved by the Finance Board.
3. A trustee appointed by the Trust, such as a bank trust department, if the Trust does not have its own Trustees to assume fiduciary responsibility for the administration of Trust assets; provided, however, that if the Finance Board shall have appointed an investment advisor, then any trustee appointed under this paragraph shall have no authority with respect to selection of investments.
4. Specialists such as attorneys, auditors, actuaries and, retirement plan consultants to assist the Finance Board in meeting its responsibilities and obligations to administer Trust assets prudently. The cost of the Investment Advisor, Investment Manager(s), and all other service providers pursuant to this section are to be paid from the liquid assets of the Trust.

Statement of Investment Objectives

The investment objectives of the Trust are as follows:

1. To invest assets of the Trust in a manner consistent with the following fiduciary standards:
(a) all transactions undertaken must be for the sole interest of Trust beneficiaries, and (b) assets are to be diversified in order to minimize the impact of large losses from individual investments.
2. To provide for funding and anticipated withdrawals on a continuing basis for payment of benefits and reasonable expenses of operation of the Trust.

3. To enhance the value of Trust assets in real terms over the long-term through asset appreciation and income generation, while maintaining a reasonable investment risk profile.
4. Subject to performance expectations over the long-term, to minimize principal fluctuations over the Time Horizon (as defined below).
5. To achieve a long-term level of return commensurate with contemporary economic conditions and equal to or exceeding the investment objective set forth in this Policy Statement under the section labeled "Performance Expectations".

Investment Guidelines

Within this section of the Investment Policy, several terms will be used to articulate various investment concepts. The descriptions are meant to be general and may share investments otherwise considered to be in the same asset class. They are:

"Growth Assets" - a collection of investments and/or asset classes whose primary risk and return characteristics are focused on capital appreciation. Investments within the Growth Assets category can include income and risk mitigating characteristics, so long as the predominant investment risk and return characteristic is capital appreciation. Examples of such investments or asset classes are: domestic and international equities or equity funds and certain real estate investments.

"Income Assets" - a collection of investments and/or asset classes whose primary risk and return characteristics are focused on income generation. Investments within the Income Assets category can include capital appreciation and risk mitigating characteristics, so long as the primary investment risk and return characteristic is income generation. Examples of such investments or asset classes are: fixed income securities, guaranteed investment contracts, and certain other investments specifically approved by the Finance Board.

"Real Return Assets" - a collection of investments and/or asset classes whose primary risk and return characteristics are focused on real returns after inflation. Investments within the Real Return category can include inflation protected securities, and certain real estate investment trusts.

Time Horizon

The Trust's investment objectives are based on a long-term investment horizon ("Time Horizon") of five year to twenty years. Interim fluctuations should be viewed with appropriate perspective. The Finance Board has adopted a long-term investment horizon such that the risks and duration of investment losses are carefully weighed against the long-term potential for appreciation of assets.

Liquidity and Diversification

In general, the Trust may hold some cash, cash equivalent, and/or money market funds for near-term Trust benefits and expenses (the "Trust Distributions"). Remaining assets will be invested in longer-

term investments and shall be diversified with the intent to minimize the risk of long-term investment losses. Consequently, the total portfolio will be constructed and maintained to provide diversification with regard to the concentration of holdings in individual issues, issuers, countries, governments or industries.

Asset Allocation

The Finance Board believes that to achieve the greatest likelihood of meeting the Trust's investment objectives and the best balance between risk and return for optimal diversification, assets will be invested in accordance with the asset allocation strategy limits as set by Finance Board, to be adhered by the Investment Advisor. Asset Classes will include growth assets, income assets, real return assets, and cash equivalents.

The Advisor and each Manager will be evaluated against their peers on the performance of the total funds under their direct management. Investment performance may be shown gross of fees, but must be shown net of fees.

Rebalancing Philosophy

The asset allocation range established by this Policy Statement represents a long-term perspective. As such, rapid unanticipated market shifts or changes in economic conditions may cause the asset mix to fall outside Investment Policy ranges. When allocations breach the specified ranges, the Advisor will rebalance the assets within the specified ranges within a reasonable time, taking into account market considerations. The Advisor may also rebalance based on market conditions.

Risk Tolerance

Subject to investment objectives and performance expectations, the Trust will be managed in a style that seeks to minimize principal fluctuations over the established Time Horizon.

Performance Expectations

Over the long-term, five years or longer, the performance objective for the Trust will be to achieve an average total annual rate of return that is equal to or greater than the Trust's actuarial discount rate of 7.00%. Additionally, it is expected that the annual rate of return on Trust assets will be commensurate with the then prevailing investment environment. Measurement of this return expectation will be judged by reviewing returns on a net of fees basis in the context of industry standard benchmarks, peer universe comparisons for individual Trust investments and blended benchmark comparisons for the Trust in its entirety.

Selection of Investment Managers

The Advisor shall prudently select appropriate Managers to invest the assets of the Trust. Managers must meet the following criteria:

- The Manager must provide historical quarterly performance data compliant with Global Investment Performance Standards (GIPS[®]), Securities & Exchange Commission (“SEC”), Financial Industry Regulatory Agency (“FINRA”) or industry recognized standards, as appropriate.
- The Manager must provide detailed information on the history of the firm, key personnel, support personnel, key clients, and fee schedule (including most-favored-nation clauses). This information can be a copy of a recent Request for Proposal (“RFP”) completed by the Manager or regulatory disclosure.
- The Manager must clearly articulate the investment strategy that will be followed and document that the strategy has been successfully adhered to over time.
- The investment professionals making the investment decisions must have a minimum of three (3) years of experience managing similar strategies either at their current firm or at previous firms.
- Where other than common funds such as mutual funds or commingled trusts are utilized, the Manager must confirm receipt, understanding and adherence to this Investment Policy and any investment specific policies by signing a consent form provided to the Manager prior to investment of Trust assets.

Guidelines for Portfolio Holdings

Direct Investments by Advisor

Every effort shall be made, to the extent practical, prudent and appropriate, to select investments that have investment objectives and policies that are consistent with this Policy Statement (as outlined in the following sub-sections of the “Guidelines for Portfolio Holdings”). However, given the nature of the investments, it is recognized that there may be immaterial deviations between this Policy Statement and the objectives of these investments.

Limitations on Managers’ Portfolios

EQUITIES

No more than the greater of 5% or weighting in the relevant index (Russell 3000 Index for U.S. issues and MSCI ACWI ex-U.S. for non-U.S. issues) of the total equity portfolio valued at market may be invested in the common equity of any one corporation; ownership of the shares of one company shall not exceed 5% of those outstanding; and not more than 40% of equity valued at market may be held in any one sector, as defined by the Global Industry Classification Standard (GICS).

Domestic Equities. Other than the above constraints, there are no quantitative guidelines as to issues, industry or individual security diversification. However, prudent diversification standards should be developed and maintained by the Manager. The Investment Advisor will review the portfolio to ensure that the 5% limits are not exceeded across the entire portfolio including all managers.

International Equities. The overall non-U.S. equity allocation should include a diverse global mix that is comprised of the equity of companies from multiple countries, regions and sectors.

FIXED INCOME

Fixed income securities of any one issuer shall not exceed 5% of the total bond portfolio at time of purchase. The 5% limitation does not apply to issues of the U.S. Treasury or other Federal Agencies. The overall rating of the fixed income assets as calculated by the Advisor shall be investment grade, based on the rating of one Nationally Recognized Statistical Rating Organization (“NRSRO”). The Trust will not invest in Managers whose primary focus is adding value through the use of high yield bonds. This does not exclude investment grade fixed-income funds which may contain a small component of high yield securities. No more than 3% of the Trust’s total portfolio may be invested in below investment grade securities.

OTHER ASSETS (ALTERNATIVES)

Alternatives may consist of non-traditional asset classes such as real estate investment trusts or limited partnerships, when deemed appropriate. The total allocation to this category may not exceed 20% of the overall portfolio.

Real Estate: Consists of publicly traded Real Estate Investment Trust (“REIT”) securities and shall be diversified across a broad array of property types and geographic locations. Investments of this type are designed to provide a stable level of income combined with potential for price appreciation, particularly in periods of unexpected inflation. For purposes of asset allocation targets and limitations, publicly traded REITs will be categorized as “Other” under the Growth Assets category.

Inflation Hedge: Shall consist of pooled vehicles holding among other assets: Treasury Inflation Protected Securities (“TIPS”), certain real estate or real property funds and the equity of companies in businesses thought to hedge inflation. Inflation hedge assets will be reported in the Real Return Assets category. Hedged investments may not be leveraged.

CASH EQUIVALENTS

Cash equivalents shall be held in funds complying with Rule 2(a)-7 of the Investment Company Act of 1940.

Portfolio Risk Hedging

Portfolio investments designed to hedge various risks including volatility risk, interest rate risk, etc. are allowed to the extent that the investments are not used for the sole purpose of leveraging Trust assets. One example of a hedge vehicle is an exchange traded fund (“ETF”) which takes short positions.

Prohibited Investments

Except for purchase within authorized investments, securities having the following characteristics are not authorized and shall not be purchased: letter stock and other unregistered securities, direct commodities or commodity contracts or private placements (with the exception of Rule 144A securities). Further, derivatives, options, or futures for direct portfolio leveraging are prohibited, except as explicitly provided for elsewhere in this policy. Direct ownership of real estate, natural resource properties such as oil, gas or timber and the purchase of collectibles is prohibited. The purchase of precious metals, precious stones or coins is prohibited. The purchase of mortgage-backed

securities (MBS) residential or commercial, collateralized mortgage obligations (CMOs), and other structured fixed income products such as real estate mortgage investment conduits and collateralized debt obligations (CDOs) are prohibited. Any fixed income product that is a derivative, leveraged or structured in tranches is prohibited. Credit default swaps or any kind of fixed income swaps are prohibited. Any investment not provided for within this policy that a prudent investor would regard as speculative is prohibited.

Safekeeping

All assets of the Trust shall be held by a custodian approved by the Finance Board for safekeeping of Trust assets. The custodian shall produce statements on a monthly basis, listing the name and value of all assets held, and the dates and nature of all transactions in accordance with the terms in the Trust Agreement. Investments of the Trust not held as liquidity or investment reserves shall, at all times, be invested in interest-bearing accounts. Investments and portfolio securities may not be loaned.

Control Procedures

Review of Investment Objectives

The Advisor shall review annually and report to the Finance Board the appropriateness of this Policy Statement for achieving the Trust's stated objectives. It is not expected that this Policy Statement will change frequently. Changes to this Investment Policy require Finance Board and Town Council approval. In particular, short-term changes in the financial markets should not require an adjustment in this Policy Statement.

Review of Investment Performance

The Advisor shall report on a quarterly basis to the Finance Board to review the investment performance of the Trust. In addition, the Advisor will be responsible for keeping the Finance Board advised of any material change in investment strategy, Managers, and other pertinent information potentially affecting performance of the Trust.

The Advisor shall compare the investment results gross and net of fees on a quarterly basis to appropriate peer universe benchmarks, as well as market indices in both equity and fixed income markets. Examples of benchmarks and indexes that will be used include the Russell 3000 Index for broad U.S. equity strategies; S&P 500 Index for large cap U.S. equities, Russell 2000 Index for small cap U.S. equities, MSCI ACWI ex-U.S. Index for broad based non-U.S. equity strategies; MSCI Europe, Australasia, and Far East (EAFE) Index for developed markets international equities, Barclays Capital Aggregate Bond Index for fixed income securities, and the U.S. 91 Day T-bill for cash equivalents. The Russell 3000 Index will be used to benchmark the U.S. equities portfolio; the MSCI ACWI ex-U.S. Index will be used to benchmark the non-U.S. equities portfolio; the Barclays U.S. Aggregate Bond Index will be used to benchmark the fixed income portfolio. The categories "Other" will be benchmarked against appropriate indices depending on the specific characteristics of the strategies and funds used.

Voting of Proxies

The Finance Board recognizes that proxies are a significant and valuable tool in corporate governance. The voting rights of individual stocks held in separate accounts or collective, common, or pooled funds will be exercised by the investment managers in accordance with their own proxy voting policies. The voting rights of funds will be exercised by the Advisor.

Adoption of Investment Policy Statement

Any changes and exceptions to this Investment Policy will be made in writing and adopted by Town Council. Once adopted, changes and exceptions will be delivered to each Manager, as appropriate, by the Advisor.

Approved by the Town Council:

Name

Date

PRESENTED June 14, 2016

RESOLUTION NO. 2016-_____

ADOPTED _____

A RESOLUTION: AUTHORIZING AND ESTABLISHING AN OTHER POST-EMPLOYMENT BENEFITS (OPEB) TRUST AND AUTHORIZING INVESTMENT MANAGEMENT, CUSTODY AND TRUST AGREEMENTS, AND CREATION OF A FINANCE BOARD TO OVERSEE THE OPEB TRUST

WHEREAS, in 2008, Town Council authorized participation in the VML/VACo Pooled Other Post-Employment Benefits Trust (VML Trust), and has annually contributed significant assets to the VML Trust which totaled \$8,625,252 as of March 31, 2016; and

WHEREAS, the Town's returns in the VML Trust have significantly under-performed their benchmarks for 3-years, 5-years, and inception to-date and are not meeting the Town's actuarially assumed rate of 7.0% over the long-term; and

WHEREAS, Town staff has no input or control over the investments chosen in the VML Trust and the Town has no representation on VML Trust's Finance Board; and

WHEREAS, Town staff has determined that the formation of an Other Post-Employment Benefits Trust (OPEB Trust) to be organized and operated by the Town with the assistance of a private bank and investment firm will yield more positive returns; and

WHEREAS, as a result, Town staff has conducted a procurement process and reviewed five (5) proposals offering comparable investment plans and has determined that competitive venues exist at a lower cost for similar investment trust arrangements and where the Town can control risk and expect better returns; and

WHEREAS, Town staff has compared the proposals to each other and to the VML Trust and has selected PFM Asset Management LLC ("PFMAM") because it has the lowest overall long-term cost and best fits the Town's operational needs for an OPEB Trust; and

WHEREAS, under Virginia law, the Town's OPEB investments must be placed into an

irrevocable trust compliant with Internal Revenue Code (IRC) Section 115 in order to be transferred from the VML Trust to the OPEB Trust and in order to meet the requirements of the Governmental Accounting Standards Board statements; and

WHEREAS, an independent fiduciary trustee is necessary to meet the requirements of IRC Section 1115 requirements and to ensure that assets within the OPEB Trust are not subject to liens, garnishment or other legal processes and to meet the requirement that assets may not be withdrawn from the OPEB Trust for any purpose other than the payment of OPEB benefits to retired Leesburg employees as provided for under the Town's OPEB Benefits Plan and necessary operating expenses; and

WHEREAS, the Town's financial policy requires that the assets of the OPEB Trust be kept safe under an independent custodian who is solely responsible for safekeeping of the assets of the OPEB Trust and who has no authority to make decisions about the investment of the assets except as directed by the Town's duly authorized Investment Advisor or agents in the employ of the Investment Advisor; and

WHEREAS, PFAMAM's proposal included and recommended the use of U.S. Bank National Association (US Bank) as the fiduciary trustee and custodian for the Town's OPEB Trust assets and US Bank's proposed fees are competitive, reasonable, usual and customary; and

WHEREAS, the Code of Virginia Section 15.2-1547 requires the Town Council establish a Finance Board to oversee the investments of a OPEB Trust ; and

WHEREAS, the investment of Town OPEB Trust funds must be governed by an Investment Policy appropriate to long-term investment of fiduciary funds that are more risk tolerant and that generate higher returns than the investment of temporarily idle tax funds or bond

proceeds; and

WHEREAS, in order for the OPEB Trust to operate, the Town Manager must be authorized to enter into contracts and agreements and take certain actions in order to establish the required trust, move funds, establish procedures, make investment decisions and direct service providers.

THEREFORE, RESOLVED, by the Council of the Town of Leesburg in Virginia that:

1. An independent OPEB Trust to be known as the “Town of Leesburg OPEB Trust” is hereby created, approved, and authorized; and

2. Contracts with US Bank and PFMAM or any successor firm or successor trustee appointed and approved by the Finance Board are hereby approved; and

3. Funds from the VML Trust shall be irrevocably placed into the OPEB Trust and that all OPEB Trust assets, investments and returns are not subject to liens, garnishment or other legal processes and that assets may be removed from the OPEB Trust solely for the payment of OPEB benefits to retired Leesburg employees as provided for under the Town’s OPEB Benefits Plan and the necessary operating expenses of investment management and operation of the OPEB Trust and;

4. Should changes in federal and or state law eliminate the need for or make illegal the payment of OPEB benefits to retired Town employees as provided for under the Town OPEB Benefits Plan, that after the payment of all outstanding benefits obligations to providers of health care benefits to retired Town employees and the payment of all operational and termination expenses of the OPEB Trust, and that only in such circumstances, residual assets shall revert to the Town of Leesburg’s General Fund; and

5. The Town Manager, the Director of Finance and Administrative Services and the Finance Board are hereby authorized to enter into agreements with U.S. Bank, PFMAM and other service providers as needed for the efficient and effective investment of OPEB Trust assets and the operation of the OPEB Trust; and

6. The attached Town OPEB Trust Investment Policy is approved and shall govern the investment of assets within the OPEB Trust as written or as may be amended or revised from time to time by the Town Council; and

7. That a Finance Board under the provisions of Code of Virginia Section 15.2-1547 is hereby created and authorized to oversee the operations and investments of the OPEB Trust and to act on all matters relating to the OPEB Trust, and that the Finance Board shall consist of five (5) members as follows:

1. The Town Manager or designee;
2. The Director of Finance and Administrative Services (who will serve as Chair);
3. The Deputy Director/Treasurer of Finance and Administrative Services;
4. An ex-officio member who is a representative or employee of the Investment Advisor, and;
5. A person appointed by the Town's financial advisor (currently Davenport, Inc.) who is also a resident of the Commonwealth of Virginia and has a financial/investment background, expertise and/or training and who has no business interests or dealings related to the Town OPEB Trust.

PASSED this _____ day of _____, 2016.

David S. Butler, Mayor
Town of Leesburg

ATTEST:

Clerk of Council

CONTRACT NO.
100161-FY16-11

TITLE: Investment Management Services for Other Post Employment Benefits (OPEB) Trust Funds

This CONTRACT (the "CONTRACT") is made this 14 day of June, 2016, by and between the TOWN OF LEESBURG, VIRGINIA (the "TOWN"), a municipal corporation, and PFM ASSET MANAGEMENT LLC having a usual place of business at 4350 N Fairfax Drive, Suite 580, Arlington, VA 22203 (the "CONTRACTOR").

The Contractor and the Town, in consideration of the mutual covenants, promises, and agreements herein contained, agree as follows:

1. Provision of Services. The Contractor hereby agrees to provide the following services to the Town:
2. Contract Documents. The Contract Documents consist of this Contract, RFQ No. 100161-FY16-11, Bid dated October 1, 2016 where the terms of this Contract and the Contractor's proposal are at variance, the provisions of this Contract shall prevail.
3. Contract Term. The term of this Contract shall be twelve months beginning on June 14, 2016. Upon mutual agreement of both parties, this contract can be extended for up to four additional consecutive one-year terms.
4. Contract Amount. In return for the services identified above, the Town certifies that sufficient funds are budgeted and appropriated and shall compensate the Contractor in accordance with paragraph numbered 5 of this Contract The Town agrees to pay the Contractor at the unit prices established on Bid Pricing Form attached hereto as Exhibit A. The estimated annual total of this Contract is \$40,500.
5. Method of Payment. Payment will be made within thirty (30) days after the end of each quarter by the deduction of fees from the portfolio cash balance on hand. All fees will be clearly disclosed in monthly or quarterly reports. The invoice must detail the hours worked and services performed. The invoice must be mailed to the address specified below and must reference the purchase order number.

Town of Leesburg, Attn: Director of Finance and Administrative Services, 25 W. Market St,
Leesburg, VA 20176

Invoices will be reviewed and approved by the Director of Finance and Administrative Services or his designee and forwarded to the Trustee for payment out of the liquid assets of the OPEB Trust, provided that invoices are correct or, if returned to Contractor for correction, a corrected invoice has been received.

6. Applicable Law and Courts. This contract resulting from this solicitation shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the Circuit Court of Loudoun County. The Contractor shall comply with applicable federal, state and local laws and regulations.

7. Assignment of Contract. This Contract shall not be assignable by the Contractor in whole or in part without the prior written consent of the Town.
8. Audit. The Contractor shall retain all books, records, and other documents relative to this Contract for five (5) years after final payment, or until audited by the Town, whichever is sooner. The agency, its authorized agents, and/or State auditors shall have full access to and the right to examine any of said materials during said period.
9. Indemnification. Contractor agrees to indemnify, defend and hold harmless the Town, its officers, agents, and employees from any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by any wrongful performance of services, whether negligent or intentional, of any kind or nature furnished by the Contractor, provided that such liability is not attributable to the sole negligence of the Town.
10. The following persons shall be contact persons for the parties, and notice given them, by certified return receipt requested mail to the addresses shown, shall constitute valid notice under the requirements of this agreement:

For TOWN: Director of Finance and Administrative Services
25 W. Market St
Leesburg, VA 20176

For CONTRACTOR: PFM Asset Management LLC
Nelson L. Bush
Managing Director
4350 N Fairfax Drive, Suite 580
Arlington, VA 22203

With a copy to:
PFM Asset Management LLC
1735 Market Street, 43rd Floor
Philadelphia, PA 19103
Attn: Controller

The parties may amend such addresses by written notice to the opposite party at the given address.

11. Termination by Town without Cause. The Town may terminate this Contract for any reason upon thirty (30) days written notice and upon payment of any and all sums already earned under the terms of Paragraphs numbered 4 and 5 of this Contract and reasonable expenses incurred in reliance upon the Contract. The Contractor may terminate this Contract after one year upon thirty (30) days' written notice to the Town.
12. Integration Clause. This contract shall constitute the whole agreement between the parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Contract shall supersede all previous communications, representations or agreements, written or verbal, between the parties hereto related to the

subject of this Contract.

13. Investment Advisor Provisions

(a) Services of Contractor. The Town hereby engages the Contractor to serve as investment advisor with respect to the Town's Other Post Employment Benefits fund (the "Fund") under the terms of this Contract, and the Contractor accepts such engagement. The Contractor will determine the asset allocation of investments for the Fund (the "Investment Strategy" of the Fund) on the basis of information provided by the Town or other service providers, including the anticipated amounts of cash required by the Fund for distributions and other expenses, and the appropriate risk tolerance for the Fund based upon the cash needs of the Fund and the Town's resources. The Contractor will then execute the Investment Strategy of the Fund by buying and selling shares of the investment funds. Initially the Fund shall be invested in investment funds in specified proportions as set forth in a separate schedule delivered to the Town by the Contractor at or prior to the time the Fund is initially funded (as the same may be revised by the Contractor from time to time, the "Schedule").

The Contractor will reassess and may alter the Investment Strategy asset allocation at least annually and "rebalance" the investment funds as reflected in the Schedule at least annually to maintain the ratios of the Investment Strategy, and will consult with the Town at least annually to determine whether there are reasons to revise the Investment Strategy. The Contractor will not invest assets directly or indirectly with an independent investment fund where the assets will be invested in holdings that violate the Town's Investment Policy in force at the time of the investment. A reasonable time will be allowed for orderly sale of assets that become in violation of the Investment Policy as the result of the Town's changing its Investment Policy or an investment fund changing its investment process, but any such divestment must proceed in an expeditious manner. The Town agrees that it will promptly send to the Contractor any amendment to or other modification of its Investment Policy. The Contractor will conduct a review at least annually of the performance of the investment funds held by the Fund and, in its judgment, will add to or reduce allocations to each investment fund and will add or delete investment funds (within the parameters of the Investment Strategy). The Contractor will promptly advise the Town in writing of any revision of the Fund's Investment Strategy and any additions to or deletions from the investment funds held by the Fund. In addition, the Contractor will provide to the Town a quarterly analysis of the performance of the investment funds in which the Fund is invested together with notice of any reallocation of assets among investment funds; the asset balances and market values for such analysis shall be as supplied to the Contractor by the Custodian (as hereinafter defined). In connection with all of the foregoing, the Contractor will promptly give the Town written notice of any changes to the Schedule.

The Town agrees to legally appoint a custodian (the "Custodian") to take and have custody of cash, assets and securities of the Fund. The Custodian shall not be the Contractor and shall be independent of the Contractor. The Town agrees to enter, or that it has entered, into a custodian agreement with the Custodian. The Contractor is authorized to give instructions to the Custodian with respect to the Fund as to deliveries of securities and payments of cash for the payment of securities and as otherwise provided in Section 5

of this Contract. The Contractor shall not take possession of or act as custodian for the cash, securities or other assets of the Fund and shall have no responsibility in connection therewith. The Contractor agrees to recommend and to monitor the Custodian so that the Town's custodial and transaction costs are appropriate for the level and nature of services rendered by the Custodian to the Fund, the Town and the Contractor.

Authorized investments shall include only those investments which are permissible under applicable statutes and regulations and the Fund's written investment policy, if any, as provided by the Town to the Contractor. The Custodian or an affiliate of the Custodian may be an investment manager of investment funds selected by the Contractor.

(b) Pool Compensation. Assets invested by the Contractor under the terms of this Contract may from time to time be invested in (i) a money market mutual fund managed by the Contractor or (ii) a local government investment pool managed by the Contractor (either, a "Pool") or in individual securities. Average daily net assets subject to the fees described in this Contract shall not take into account any funds invested in the Pool. Expenses of the Pool, including compensation for the Contractor and the Pool custodian, are described in the relevant prospectus or information statement and are paid from the Pool.

(c) Other Compensation. If and to the extent that the Town shall request the Contractor to render services other than those to be rendered by the Contractor under this Contract, such additional services shall be compensated separately on terms to be agreed upon between the Contractor and the Town.

(d) Expenses. The Contractor shall furnish at its own expense all necessary administrative services, office space, equipment, clerical personnel, telephone and other communication facilities, investment advisory facilities, and executive and supervisory personnel for managing the Managed Funds. Except as expressly provided otherwise herein, the Town shall pay all of its own expenses including, without limitation, taxes, commissions, fees and expenses of the Town's independent auditors and legal counsel, if any, brokerage and other expenses connected with the execution of portfolio security transactions, insurance premiums, and fees and expenses of the Custodian.

(e) Registered Advisor; Duty of Care. The Contractor hereby represents it is a registered investment advisor under the Investment Advisers Act of 1940. The Contractor shall immediately notify the Town if at any time during the term of this Contract it is not so registered or if its registration is suspended. The Contractor agrees to perform its duties and responsibilities under this Contract with reasonable care. The federal securities laws impose liabilities under certain circumstances on persons who act in good faith. Nothing herein shall in any way constitute a waiver or limitation of any rights which the Town or the Fund may have under any federal securities laws. The Town hereby authorizes the Contractor to sign I.R.S. Form W-9 on behalf of the Town and to deliver such form to broker-dealers or others from time to time as required in connection with securities transactions pursuant to this Contract. In all respects the Contractor must act in a fiduciary capacity to protect the Town's interests in Contractor's management of the Town's investments.

(f) Contractor's Other Clients. The Town understands that the Contractor performs investment advisory services for various other clients which may include investment companies, commingled trust funds and/or individual portfolios. The Town agrees that the Contractor, in the exercise of its professional judgment, may give advice or take action with respect to any of its other clients which may differ from advice given or the timing or nature of action taken with respect to the Managed Funds. The Contractor shall not have any obligation to purchase, sell or exchange any security for the Managed Funds solely by reason of the fact that the Contractor, its principals, affiliates, or employees may purchase, sell or exchange such security for the account of any other client or for itself or its own accounts.

(g) Force Majeure. The Contractor shall have no liability for any losses arising out of the delays in performing or inability to perform the services which it renders under this Contract which result from events beyond its control, including interruption of the business activities of the Contractor or other financial institutions due to acts of God, acts of governmental authority, acts of war, terrorism, civil insurrection, riots, labor difficulties, or any action or inaction of any carrier or utility, or mechanical or other malfunction.

(h) Disciplinary Actions. The Contractor shall promptly give notice to the Town if the Contractor shall have been found to have violated any state or federal securities law or regulation in any final and unappealable judgment in any criminal action or civil suit in any state or federal court or in any disciplinary proceeding before the Securities and Exchange Commission ("SEC") or any other agency or department of the United States, any registered securities exchange, FINRA, or any regulatory authority of any State based upon the performance of services as an investment advisor.

(i) Independent Contractor. The Contractor, its employees, officers and representatives, shall not be deemed to be employees, agents (except as to the purchases or sale of securities described in subparagraph (a) above), partners, servants, and/or joint ventures of the Town by virtue of this Contract or any actions or services rendered under this Contract.

(j) Books. The Advisor shall maintain records of all transactions in the Fund. The Advisor shall use its best efforts to cause the Custodian to provide the Client with a statement, no less frequently than quarterly, showing deposits, withdrawals, purchases and sales (or maturities) of investments, earnings received, and the value of assets held on the last business day of the month all as provided for in the Custodian agreement between the Client and the Custodian.

(k) Brochure and Brochure Supplement. The Contractor warrants that it has delivered to the Town prior to the execution of this Contract the Contractor's current SEC Form ADV, Part 2A (brochure) and Part 2B (brochure supplement). The Town acknowledges receipt of such brochure and brochure supplement prior to the execution of this Contract.

(l) Execution. Each party to this Contract represents and warrants that the person or persons signing this Contract on behalf of such party is authorized and empowered to sign and deliver this Contract for such party.

In witness whereof, the parties below execute this Contract as of the date first above written.

TOWN OF LEESBURG

OFFEROR

Signature



Name

Nelson L. Bush

Title

Managing Director

Date

May 26, 2016

Other Post-Employment Benefits Trust (OPEB)

Retiree Health Insurance Funding

June 14, 2016



the hometown of the 21st century

Overview

- The Town has \$8,625,252 in the VML/VACo Finance Pooled OPEB trust as required by Governmental Accounting Standards Board Statement 45 accounting rules.
- The pooled investment trust is managed by Asset Consulting Group out of St. Louis and has under-performed its benchmarks over the long-term.



the hometown of the 21st century

Town conducted RFP

- Town received 5 proposals from nationally prominent firms and compared them to existing providers
- PFM Asset Management LLC (“PFMAM”) was selected as Investment Advisor:
 - Lower fees and significantly better performance history
- US Bank selected as Trustee and Custodian
- Davenport supports Town staff recommendations

Town conducted RFP

- Other VA local governments using PFMAM independent OPEB trusts:
 - City of Chesapeake
 - Prince William County
 - Hampton Roads Sanitation District
 - Hanover County

Summary

- Recommendations for Council Approval:
 - Create Finance Board to govern OPEB Trust as required by state statute: Town Manager, Director of Finance and Administrative Services, Deputy Director of Finance and Administrative Services/Treasurer, and a representative from Town's financial advisor (Davenport).
 - Approve PFMAM as Investment Consultant
 - Approve US Bank as Trustee and Custodian
 - Approve/create OPEB Investment Policy