

**TOWN OF LITTLETON
OTHER POST-EMPLOYMENT BENEFITS (“OPEB”) TRUST
AGREEMENT**

TRUST AGREEMENT made this 12th day of December, 2016 by and between the Town of Littleton, acting through its Board of Selectmen (the “Town”) and the duly serving Trustee.

W I T N E S S E T H:

WHEREAS, the Town has established certain other post employment benefits (“OPEB”), other than pensions, for eligible former employees of the Town; and

WHEREAS, the Town has accepted the provisions of G.L. c. 32B, §20, as amended by Section 15 of Chapter 218 of the acts of 2016; and

WHEREAS, the Town wishes to establish an irrevocable trust (hereinafter the “Trust”) for the purpose of funding OPEB obligations as required to be reported under General Accounting Standards Board (“GASB”) Statements 43 and 45; and

WHEREAS, the Trust is established by the Town with the intention that it qualify as a tax-exempt trust performing an essential governmental function within the meaning of Section 115 of the Code and Regulations issued thereunder and as a trust for OPEB under G.L. c.32B, §20.

NOW, THEREFORE, in consideration of the foregoing promises and the mutual covenants hereinafter set forth, Town and the Trustee hereby agree as follows.

**ARTICLE I
DEFINITIONS**

As used herein, the following terms shall have the following meanings:

- 1.1. “Code” means the Internal Revenue Code of 1986, as amended from time to time.
- 1.2. “ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time and any successor statute.
- 1.3. “GASB 43 and 45,” shall mean Government Accounting Standards Board, Statement No. 43 and Statement No. 45, Accounting and Financial Reporting by Employers for Post-Employment Benefits Other Than Pensions.
- 1.4. “Other post-employment benefits” or “OPEB,” shall mean post-employment benefits other than pensions as that term is defined in GASB 43 and 45 including post-employment healthcare benefits, regardless of the type of plan that provides them, and all post-employment benefits provided separately from a pension plan, excluding benefits defined as termination offers and benefits.

- 1.5. "Retired Employee" means those persons who have retired from employment with the Town and who are qualified to receive retirement benefits pursuant to G.L. c.32 or as otherwise provided by law.
- 1.6. "Trust" means the Town of Littleton OPEB Trust as hereby established.
- 1.7. "Trustee" means the duly serving Trustee, and any successor Trustee appointed as provided pursuant to Article 5.
- 1.8. "Trust Fund" means all the money and property, of every kind and character, including principal and income, held by the Trustee under this Trust.
- 1.9. "SRBTF" means the State Retiree Benefits Trust Fund established pursuant to G.L. c.32A, §24.

ARTICLE 2 PURPOSE

- 2.1. The Trust is created for the sole purpose of providing funding for OPEB, as determined by the Town, or as may be required by collective bargaining agreement, or by any general or special law providing for such benefits, for the exclusive benefit of the Town's Retired Employees and their eligible dependents and for defraying the reasonable administrative, legal, actuarial and other expenses of the Trust. The assets held in the Trust shall not be used for or diverted to any other purpose, except as expressly provided herein.
- 2.2. It is intended that the Trust shall constitute a so called "Qualified OPEB Trust" according to the standards set forth in GASB 43 and 45 and that it further qualify as an Integral Part Trust for all purposes under Article 115(c) of the Code or under any comparable provision of future legislation that amends, alters, or supersedes the Code.

ARTICLE 3 ESTABLISHMENT OF TRUST

- 3.1. In order to implement and carry out the provisions of G.L. c.32B, §20, the Town hereby establishes this Trust which shall be known as the "Town of Littleton OPEB Trust."
- 3.2. The Trust shall be irrevocable, and no Trust funds shall revert to the Town until all OPEB owed to retired Town employees have been satisfied or defeased.
- 3.3. The principal location of the Trust shall be the Town of Littleton Town Office Building, 37 Shattuck Street Room 202, 2nd Floor, Massachusetts 01460.
- 3.4. The Trustee hereby accepts the trusts imposed upon the Trustee by this Trust Agreement and agrees to perform said trusts as a fiduciary duty in accordance with the terms and conditions of this Trust Agreement.
- 3.5. The Trustee shall hold legal title to all property of the Trust and neither the Town, nor any employee, official, or agent of the Town, nor any individual, shall have any right title or interest to the Trust.

3.6. The Trust shall consist of such sums of money as shall from time to time be paid or delivered to the Trustee by the Town, which together with all earnings, profits, increments and accruals thereon, without distinction between principal and income, shall constitute the Trust hereby created and established. Nothing in this Agreement requires the Town to make contributions to the Trust to fund OPEB. Any obligation of the Town to pay or fund benefits shall be determined in accordance with applicable law and any agreement to provide OPEB.

ARTICLE 4
TRUST FUNDING

4.1. The Trust Fund shall be credited with all amounts appropriated or otherwise made available by the Town and employees of the Town as a contribution to the Trust for the purposes of meeting the current and future OPEB costs payable by the Town, or any other funds donated or granted specifically to the Town for the Trust, or to the Trust directly.

4.2. The Trustee shall be accountable for all delivered contributions but shall have no duty to determine that the amounts received are adequate to provide the OPEB Benefits determined by the Town.

4.3. The Trustee shall have no duty, expressed or implied, to compel any contribution to be made by the Town, but shall be responsible only for property received by the Trustee under this Trust Agreement.

4.4. The Town shall have no obligation to make contributions to the Trust to fund OPEB, and the size of the Trust may not be sufficient at any one time to meet the Town's OPEB liabilities. This Trust Agreement shall not constitute a pledge of the Town's full faith and credit or taxing power for the purpose of paying OPEB, and no retiree or beneficiary may compel the exercise of taxing power by the Town for such purposes. The obligation of the Town to pay or fund OPEB obligations, if any, shall be determined by the Town or applicable law. Distributions of assets in the Trust are not debts of the Town within the meaning of any constitutional or statutory limitation or restriction.

4.5. Earnings or interest accruing from investment of the Trust shall be credited to the Trust. Amounts in the Trust Fund, including earnings or interest, shall be held for the exclusive purpose of, and shall be expended only for, the payment of the costs payable by the Town for OPEB obligations to Retired Employees and their dependents, and defraying the reasonable expenses of administering any plan providing OPEB Benefits as provided for in this Trust Agreement.

4.6. Amounts in the Trust Fund shall in no event be subject to the claims of the Town's general creditors. The Trust Fund shall not in any way be liable to attachment, garnishment, assignment or other process, or be seized, taken, appropriated or applied by any legal or equitable process, to pay any debt or liability of the Town, or of retirees or dependents who are entitled to OPEB.

ARTICLE 5
TRUSTEE

- 5.1. The Trust shall be administered by a Trustee, who shall be the Town Treasurer. Upon expiration of the term or sooner resignation or removal of the Town Treasurer, the position of Trustee shall be deemed vacant.
- 5.2. In the event that the position of Trustee is vacant or the Trustee is otherwise unable to serve, the Board of Selectmen shall appoint a temporary Trustee until the position of Town Treasurer is filled or the Trustee is able to serve.
- 5.3. Whenever a change occurs in the Trustee, the legal title to property held by this Trust shall automatically pass to the duly appointed successor Trustee.
- 5.4. Each future Trustee shall accept the office of Trustee and the terms and conditions of this Trust Agreement in writing.
- 5.5. Upon leaving office, a Trustee shall promptly and without unreasonable delay, deliver to the Trust's principal office any and all records, documents, or other documents in his possession or under his control belonging to the Trust.
- 5.6. The Trustee shall be subject to G.L. c.268A and shall be subject to the restrictions and prohibitions set forth therein.

ARTICLE 6
POWERS OF THE TRUSTEE

- 6.1. The Trustee shall have the power to control and manage the Trust and the Trust Fund and to perform such acts, enter into such contracts, engage in such proceedings, and generally to exercise any and all rights and privileges, although not specifically mentioned herein, as the Trustee may deem necessary or advisable to administer the Trust and the Trust Fund or to carry out the purposes of this Trust. In addition to the powers set forth elsewhere in this Agreement, the powers of the Trustee, in connection with their managing and controlling the Trust and its General Fund, shall include, but shall not be limited to, the following:
 - 6.1.1 To enter into an administrative services contract or other contracts with one or more insurance companies, nonprofit hospital, medical or dental service corporations, or with one or more health care organizations or health maintenance organizations, or with one or more third-party administrators or other entities to organize, arrange, or provide for the delivery or payment of health care coverage or services (including dental services), whereby the funds for the payment of claims of eligible persons, including appropriate service charges of the insurance carrier, third party administrator or other intermediary, shall be furnished by the Trustee from the Trust Fund for the payment by such intermediary to the health care vendors or persons entitled to such payments in accordance with the terms and provisions of said contract.
 - 6.1.2 To purchase contracts of insurance or reinsurance through such broker or brokers as the Trustee may choose and to pay premiums on such policies.

- 6.1.3 To receive, hold, manage, invest and reinvest all monies which at any time form part of the Trust, whether principal or income, provided however that there shall be no investment directly in mortgages or in collateral loans and further provided that the Trustee shall comply with the provisions of Article 7 of this Trust Agreement, applicable law and any investment policy adopted by the Trustee concerning the investment and management of Trust assets.
- 6.1.4 To hold cash, uninvested, for such length of time as the Trustee may determine without liability for interest thereon.
- 6.1.5 To employ suitable agents, advisors and counsel as the Trustee may deem necessary and advisable for the efficient operation and administration of the Trust, to delegate duties and powers hereunder to such agents, advisors and counsel, and to charge the expense thereof to the Trust. The Trustee is entitled to rely upon and may act upon the opinion or advice of any attorney consulted by the Trustee in the exercise of reasonable care. The Trustee shall not be responsible for any loss or damage resulting from any action or non-action made in good faith reliance upon such opinion or advice. All delegated authority shall be specifically defined in any by-laws adopted by the Trustee.
- 6.1.6 To hire employees or independent contractors as the Trustee may deem necessary or advisable to render the services required and permitted for the proper operation of the Trust, and to charge the expense thereof to the Trust.
- 6.1.7 To continue to have and to exercise, after the termination of the Trust and until final distribution, all of the title, powers, discretions, rights and duties conferred or imposed upon the Trustee hereunder, by any by-laws adopted by the Trustee or by law.
- 6.1.8 To construe and interpret this Trust Agreement and other documents related to the purposes of the Trust.
- 6.1.9 To maintain bank accounts for the administration of the Trust and the Trustee Fund and to authorize appropriate persons to make payments from any appropriate account for purposes of the Trust.
- 6.1.10 To receive and review reports of the financial condition and of the receipts and disbursements of the Trust and the Trust Fund.
- 6.1.11 To adopt by-laws, rules, regulations, formulas, actuarial tables, forms, and procedures by resolution from time to time as the Trustee deems advisable and appropriate for the proper administration of the Trust, including participation criteria, provided the same are consistent with the terms of this Trust Agreement.
- 6.1.12 To purchase as a general administrative expense of the Trust so-called director's liability insurance and other insurance for the benefit of the Trust and/or the protection of the Trustee, Trust officers, employees, or agents against any losses by reason of errors or omissions or breach of fiduciary duty or negligence.

- 6.1.13 To enter into any and all contracts and agreements for carrying out the terms of this Trust Agreement and for the administration and operation of the Trust and to do all acts as they, in their discretion, may deem necessary or advisable. All such contracts and agreements, or other legal documents herein authorized, shall be executed by the Trustee.
- 6.1.14 To receive contributions or payments from any source whatsoever but such contributions or payments may not be utilized for any purpose unrelated to the provision of OPEB as herein provided or properly authorized expenses.
- 6.1.15 To pay taxes, assessments, and other expenses incurred in the collection, care, administration, and protection of the Trust.
- 6.1.16 To do all acts, whether or not expressly authorized herein, which the Trustee may deem necessary or proper in connection with the administration of the Trust, although the power to do such acts is not specifically set forth herein.
- 6.1.17 To compromise, settle or arbitrate any claim, debt, or obligation of or against the Trust or Trust Fund; to enforce or abstain from enforcing any right, claim, debt or obligation, and to abandon any shares of stock, bonds, or other securities, or interests determined by it to be worthless; to prosecute, compromise and defend lawsuits, but without the obligation to do so, all at the risk and expense of the Trust.
- 6.1.18 To hire one or more consultants, actuaries, accountants, attorneys or other professionals to assist with the administration of the Trust Fund and to pay such amounts that the Trustee deems to be reasonable, including, without limiting the generality of the foregoing, third party firms to provide legal, tax, accounting and audit services to the Trust.
- 6.1.19 To comply with all requirements imposed by applicable provisions of law.
- 6.1.20 If so authorized in accordance with G.L. c. 32A, §24 and G.L. c.32B, §20, to take all steps necessary to invest the funds in the SRBTF.
- 6.1.21 If so authorized in accordance with G.L. c. 32B, §20, to take all steps necessary to permit participation in the Trust fund by another governmental unit.

ARTICLE 7

LIMITATION OF TRUSTEE'S POWERS, DUTIES AND RESPONSIBILITIES

- 7.1. Nothing contained in the Trust Agreement, either expressly or by implication, shall be deemed to impose any powers, duties or responsibilities on the Trustee other than those set forth in this Trust Agreement.
- 7.2. The Trustee shall have such rights, powers and duties as are provided to a named fiduciary for the investment of assets under ERISA. The Trustee shall not be liable for the making, retention or sale of any investment or reinvestment made by the Trustee as herein provided or for any loss to or diminution of the Trust Fund or for anything done or admitted to be done

by the Trustee with respect to the Trust Agreement or the Trust Fund except as and only to the extent that such action constitutes a violation of the law or gross negligence.

- 7.3. The Trustee, in the Trustee's discretion, may purchase as an expense of the Trust Fund such liability insurance for themselves or any other fiduciary selected by the Trustee as may be reasonable. The Town, in its discretion, may also purchase liability insurance for the Trustee, and as the Town may select, for any person or persons who serve in a fiduciary capacity with respect to the Trust.
- 7.4. The Town shall not assume any obligation or responsibility to any person for any act or failure to act of the Trustee, any insurance company, or any beneficiary of the Trust Fund. The Trustee shall have no obligation or responsibility with respect to any action required by this Trust Agreement to be taken by the Town, any insurance company, or any other person, or for the result or the failure of any of the above to act or make any payment or contribution, or to otherwise provide any benefit contemplated by this Trust Agreement.
- 7.5. Neither the Trustee nor the Town shall be obliged to inquire into or be responsible for any action or failure to act on the part of the other. No insurance company shall be a party to this Trust Agreement, for any purpose, or be responsible for the validity of this Trust Agreement, it being intended that such insurance company shall be liable only for the obligations set forth in the policy or contract issued by it.

ARTICLE 8 LIABILITY OF THE TRUSTEE

- 8.1. A Trustee shall not be liable for any mistake of judgment or other action made, taken or omitted by the Trustee in good faith, nor for any action taken or omitted by any other Trustee or any agent or employee selected with reasonable care, and the duties and obligations of the Trustee hereunder shall be expressly limited to those imposed upon them by this Trust Agreement.
- 8.2. No successor Trustee shall be held responsible for an act or failure of a predecessor Trustee.
- 8.3. The Trustee is a public employee for purposes of G.L. c.258, and shall be indemnified by the Town against any civil claim, action, award, compromise, settlement or judgment by reason of an intentional tort to the same extent and under the same condition as other public employees of the Town.
- 8.4. The Trustee shall not be indemnified for violation of the civil rights of any person if he acted in a grossly negligent, willful or malicious manner, or in connection with any matter where it is shown to be a breach of fiduciary duty, an act of willful dishonesty or an intentional violation of law by the Trustee.

ARTICLE 9
TAXES, EXPENSES, AND COMPENSATION

- 9.1. It is intended that the Trust will be a Code Article 115 trust. As such, it is expected that there will be no income taxes owed by the Trust. To the extent that any taxes are imposed on the Trust, the Trustee shall use the assets of the Trust Fund to pay for any taxes owed.
- 9.2. All reasonable costs and expenses of managing and administering the Trust and the Trust Fund, including such compensation for the Trustee as may be approved by Town Meeting from time to time, and reimbursement for reasonable fees incurred through the use of third party vendors or agents, shall be paid from the Trust unless the Town chooses to pay the expenses directly.

ARTICLE 10
ACCOUNTS

- 10.1. The Trustee shall keep complete and accurate accounts of all of the Trust's receipts, investments and disbursements under this Trust Agreement. Such records, as well as all other Trust records, shall be retained and made available for public inspection and or copying in accordance with the requirements of the Public Records Law, G.L. c.66, §10 and G.L. c.4, §7, Cl. 26th and their implementing regulations. The person or persons designated by the Town shall be entitled to inspect such records upon request at any reasonable time.
- 10.2. The books and records of the Trust shall be audited annually by an independent auditor in accordance with accepted accounting practices. The results of the audit shall be provided to the Town at the same time as it is presented to the Trustee.
- 10.3. The Trust Fund shall be subject to the Commonwealth of Massachusetts Public Employee Retirement Administration Commission's triennial audit.

ARTICLE 11
ANNUAL REPORTS

- 11.1. The Trustee shall furnish to the Town annually, or more frequently if the Town so requests, a statement of account showing the condition of the Trust Funds and all investments, sales, income, disbursements and expenses of the Trust and the Trust Fund. The Trustee shall comply with all reporting and certification requirements as set forth in G.L. c. 32B, §20.

ARTICLE 12
INVESTMENT OF TRUST FUNDS

- 12.1. Pursuant to the vote taken under Article 15 of the November 2, 2016, Special Town Meeting, the Town Treasurer is authorized to invest and reinvest the amounts in the Trust Fund not needed for current disbursement, consistent with the prudent investor rule established by G.L. c.203C, and as provided in the Investment Policy which is attached to this instrument and hereby incorporated.
- 12.2. In no event shall the funds be invested directly in mortgages or in collateral loans.

ARTICLE 13
CUSTODY OF THE TRUST FUNDS

- 13.1. Pursuant to G.L. c. 32B, §20, the Town Treasurer is the custodian of the Trust Fund. All funds in the Trust Fund shall be accounted for separately from all other funds of the Town.
- 13.2. The Town Treasurer may establish one or more checking accounts, which may be interest bearing or non-interest bearing accounts. Such checking account or accounts shall be funded solely from the Trust Funds, and the Town Treasurer may draw on such checking accounts for the payment of OPEB and for the administrative expenses of the Trust.

ARTICLE 14
TERMINATION OF TRUST

- 14.1. The Trust shall continue unless and until terminated pursuant to law or by an instrument in writing signed by the Trustee, provided, however, that continuance of the Trust shall not be deemed to be a contractual obligation of the Town.
- 14.2. Upon termination of the Trust, subject to the payment of or making provision for the payment of all obligations and liabilities of the Trust and the Trustee, the net assets of the Trust shall be transferred to the Town and held by the Town Treasurer to be used exclusively for providing OPEB to Retired Employees and their eligible dependents and for no other purpose.
- 14.3. The powers of the Trustee shall continue until the affairs of the Trust are concluded.

ARTICLE 15
AMENDMENTS

- 15.1. The Trust may only be amended as set forth herein. The Town may amend the Trust at any time as may be necessary to comply with the requirements for tax exemption under Section 115 of the Code, to conform the Trust to the laws of the Commonwealth of Massachusetts and to meet the standards set forth in GASB 43 and GASB 45 to be treated as funded through a qualifying trust or equivalent arrangement.
- 15.2. This Trust Agreement may be amended, but not revoked, from time to time by the Town, subject to the following limitations:
 - 15.2.1. The assets of the Trust may not be used for or diverted to any other purposes prior to satisfaction of the Town's OPEB obligations, and reasonable expenses of administering the Trust.
 - 15.2.2. The duties and liabilities of the Trustee shall not be substantially changed without the Trustee's written consent.
- 15.3. Any amendment to this Trust shall be executed in writing.

ARTICLE 16
MERGER

16.1. The Town may provide for the merger of the Trust with one or more other trusts established by the Town or other government entities for similar purposes as may be provided by law.

ARTICLE 17
SEVERABILITY OF INVALID PROVISIONS

17.1. If any provision of this Trust Agreement is determined invalid, illegal, or unenforceable for any reason, then the provision shall be severed from the remaining provisions of the Trust Agreement for any reason, and the remaining parts of the Agreement shall be construed to give the maximum practical effect to the purposes stated herein, as if the invalid, illegal, or unenforceable provision was never a part.

ARTICLE 18
MISCELLANEOUS

18.1. This Trust Agreement shall be interpreted, construed and enforced, and the Trust hereby created shall be administered in accordance with and governed by the laws of the United States and of the Commonwealth of Massachusetts.

18.2. The titles to Articles of this Trust Agreement are placed herein for convenience of reference only, and the Trust Agreement is not to be construed by reference thereto.

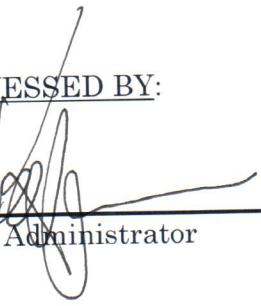
18.3. No person shall be obliged to see to the application of any money paid or property delivered to the Trustee, or as to whether or not the Trustee has acted pursuant to any authorization herein required, or as to the terms of this Trust Agreement. In general, each person dealing with the Trustee may act upon any advice, request or representation in writing by the Trustee, or by the Trustee's duly authorized agent, and shall not be liable to any person in so doing. The certification of the Trustee that the Trustee is acting in accordance with this Trust Agreement shall be conclusive in favor of any person relying thereon.

18.4. This Trust Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which together shall constitute but one instrument, which may be sufficiently evidenced by any counterpart.

18.5. Until advised to the contrary, the Trustee may assume this Trust is entitled to exemption from taxation under Section 115 of the Internal Revenue Code of 1986 or under any comparable section or sections of future legislation that amend, supplement or supersede one or both of those sections of the Internal Revenue Code.

IN WITNESS WHEREOF, the parties hereto have caused this Trust Agreement to be executed in their respective names by their duly authorized officers as of the day and year first above written.

WITNESSED BY:



Town Administrator

Date

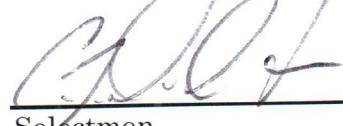
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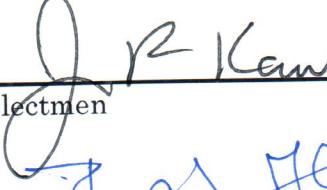
BOARD OF SELECTMEN:



Chairman of Board of Selectmen



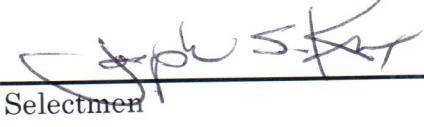
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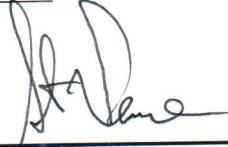


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TRUSTEE:



(Town Treasurer)