

**AGREEMENT ESTABLISHING
OTHER POST-EMPLOYMENT BENEFITS TRUST**

This **Trust Agreement** is entered into as of the 6th day of November, 2019 , by and between the Town of Apex, North Carolina (hereinafter the “**Employer**”) and the Town Manager, Human Resources Director, and Finance Officer (the “**Trustees**”);

RECITALS :

WHEREAS, the governing body of the Employer adopted a resolution dated May 21, 2019 adopting an Agreement Establishing “Local Government Other Post-Employment Benefits Trust” (“**OPEB Trust Agreement**”); and

WHEREAS, subsequent to the adoption of the OPEB Trust Agreement, the Employer Identification Number assigned by the Internal Revenue Service was issued in the name of “Town of Apex Local Government OPEB Trust”; and

WHEREAS, the Employer and Trustees desire to replace and supersede the OPEB Trust Agreement with this Trust Agreement for the purposes of accurately reflecting the name of the trust to “Town of Apex Local Government OPEB Trust” as reflected by the Internal Revenue Service Employer Identification Number assignment; and

WHEREAS, the governing body of the Employer adopted a resolution dated November 6, 2019 adopting this Trust Agreement; and

WHEREAS, the Employer wishes to amend the trust established as “Local Government Other Post-Employment Benefits Trust” pursuant to Section 159-30.1 of the North Carolina General Statutes, to be known as the “Town of Apex Local Government OPEB Trust” (hereinafter the “**Trust**”), for the purpose of funding its obligation to provide post-employment benefits other than pension benefits, as required to be reported under GASB 75; and

WHEREAS, this Trust is established by the Employer with the intention that the Trust qualify as an irrevocable tax-exempt trust performing an essential governmental function within the meaning of Section 115 of the Code and the Regulations issued thereunder and as a tax-exempt trust under the provisions of the applicable laws of the State of North Carolina; and

WHEREAS, Employer has appointed the Trustees as trustee of the Trust, and the Trustees have accepted such appointment pursuant to the terms and conditions set forth in this Trust Agreement.

NOW THEREFORE, for good and valuable consideration, the parties hereto agree as follows:

**ARTICLE I
DEFINITIONS**

1.1 “**Assets**” shall mean all contributions and transfers of assets received into the Trust on behalf of the Employer, together with the income and earnings from such contributions and transfers and any increments accruing to them, net of any investment losses, benefits, expenses or other costs.

1.2 “**Code**” shall mean the Internal Revenue Code of 1986, as amended from time to time.

- 1.3** “**Employer’s Agent**” shall mean an individual or entity appointed by the Employer to act in such matters as are specified in the appointment.
- 1.4** “**GASB 75**” shall mean Statement Number 75 issued by the Governmental Accounting Standards Board, regarding the reporting of OPEB Obligations.
- 1.5** “**Investment Advisory Committee**” shall mean a group of qualified private and public sector employees selected by the Employer that will be responsible for establishing and maintaining broad policies and objectives for all aspects of the Trust investments. The committee will review and approve the development or revision of all matters concerning Trust investments. Investment matters addressed by the Investment Advisory Committee shall be communicated to the Employer, and the Employer shall communicate in writing to the Trustees any such investment matters necessary for the Trustees to fulfill its duties hereunder.
- 1.6** “**OPEB**” shall mean “other post-employment benefits,” such as medical, dental, vision, life insurance, long-term care and other similar benefits, provided to retirees, other than pension benefits.
- 1.7** “**OPEB Obligation**” shall mean an Employer’s obligation to provide post-employment health care and welfare benefits to its “eligible employees” as specified in such Employer’s written policies, the Plan and/or applicable collective bargaining agreements.
- 1.8** “**Plan**” shall mean the plan document adopted by the Employer for the purpose of documenting the Employer’s OPEB Obligations and governing the Employer’s satisfaction thereof, a copy of which is attached here as Exhibit A.
- 1.9** “**Plan Administrator**” shall mean the individual designated by position of employment at the Employer to act on its behalf in all matters relating to the Plan and Trust.
- 1.10** “**Qualified Investments**” shall mean all investments authorized under Section 159-30.1(b) of the North Carolina General Statutes, including the following:
- (1) Obligations of the United States or obligations fully guaranteed both as to principal and interest by the United States.
 - (2) Obligations of the Federal Financing Bank, the Federal Farm Credit Bank, the Bank for Cooperatives, the Federal Intermediate Credit Bank, the Federal Land Banks, the Federal Home Loan Banks, the Federal Home Loan Mortgage Corporation, Fannie Mae, the Government National Mortgage Association, the Federal Housing Administration, the Farmers Home Administration, the United States Postal Service.
 - (3) Obligations of the State of North Carolina.
 - (4) Bonds and notes of any North Carolina local government or public authority, to the extent permitted in Section 159.30(c)(4) of the North Carolina General Statutes.
 - (5) Savings certificates issued by any savings and loan association organized under the laws of the State of North Carolina or by any federal savings and loan

association having its principal office in North Carolina; provided, that any principal amount of such certificate in excess of the amount insured by the federal government or any agency thereof, or by a mutual deposit guaranty association authorized by the Commissioner of Banks of the Department of Commerce of the State of North Carolina, be fully collateralized.

- (6) Prime quality commercial paper bearing the highest rating of at least one nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates of particular obligation.
- (7) Bills of exchange or time drafts drawn on and accepted by a commercial bank and eligible for use as collateral by member banks in borrowing from a federal reserve bank, provided that the accepting bank or its holding company is either (i) incorporated in the State of North Carolina or (ii) has outstanding publicly held obligations bearing the highest rating of at least one nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates the particular obligations.
- (8) Participating shares in a mutual fund for local government investment; provided, that the investments of the fund are limited to Qualified Investments hereunder, and the fund is certified by the Local Government Commission. The Local Government Commission shall have the authority to issue rules and regulations concerning the establishment and qualifications of any mutual fund for local government investment.
- (9) A commingled investment pool established and administered by the State Treasurer pursuant to Section 147-69.3 of the North Carolina General Statutes.
- (10) A commingled investment pool established by interlocal agreement by two or more units of local government pursuant to Sections 160A-460 through 160A-464 of the General Statutes of North Carolina, if the investments of the pool are limited to those qualifying for investment under Section 159.30(c)(4) of the North Carolina General Statutes.
- (11) Evidences of ownership of, or fractional undivided interests in, future interest and principal payments on either direct obligations of the United States government or obligations the principal of and the interest on which are guaranteed by the United States, which obligations are held by a bank or trust company organized and existing under the laws of the United States or any state in the capacity of custodian.
- (12) Repurchase agreements with respect to either direct obligations of the United States or obligations the principal of and the interest on which are guaranteed by the United States if entered into with a broker or dealer, as defined by the Securities Exchange Act of 1934, which is a dealer recognized as a primary dealer by a Federal Reserve Bank, or any commercial bank, trust company or national banking association, the deposits of which are insured by the Federal Deposit Insurance Corporation or any successor thereof if:
 - (a) Such obligations that are subject to such repurchase agreement are delivered (in physical or in book entry form) to the local government or

public authority, or any financial institution serving either as trustee for the local government or public authority or as fiscal agent for the local government or public authority or are supported by a safekeeping receipt issued by a depository satisfactory to the local government or public authority, provided that such repurchase agreement must provide that the value of the underlying obligations shall be maintained at a current market value, calculated at least daily, of not less than one hundred percent (100%) of the repurchase price, and, provided further, that the financial institution serving either as trustee or as fiscal agent for the local government or public authority holding the obligations subject to the repurchase agreement hereunder or the depository issuing the safekeeping receipt shall not be the provider of the repurchase agreement;

- (b) A valid and perfected first security interest in the obligations which are the subject of such repurchase agreement has been granted to the local government or public authority or its assignee or book entry procedures, conforming, to the extent practicable, with federal regulations and satisfactory to the local government or public authority have been established for the benefit of the local government or public authority or its assignee;
 - (c) Such securities are free and clear of any adverse third party claims; and
 - (d) Such repurchase agreement is in a form satisfactory to the local government or public authority.
- (13) In connection with funds subject to the arbitrage and rebate provisions of the Code, participating shares in tax-exempt mutual funds, to the extent such participation, in whole or in part, is not subject to such rebate provisions, and taxable mutual funds, to the extent such fund provides services in connection with the calculation of arbitrage rebate requirements under federal income tax law; provided, the investments of any such fund are limited to those bearing one of the two highest ratings of at least one nationally recognized rating service and not bearing a rating below one of the two highest ratings by any nationally recognized rating service which rates the particular fund.
- (14) Investments of the State Treasurer authorized pursuant to Section 147-69.2(b4) of the North Carolina General Statutes.

1.11 “Registered Investment Advisor” shall mean shall mean any Registered Investment Advisor as defined by Securities and Exchange Commission regulations appointed by the Employer or Plan Administrator who has entered into a consulting or management agreement with the Employer for investing the Assets of the Trust.

ARTICLE II THE TRUST

2.1 Purpose

The purpose of the Trust is to hold assets from which to satisfy the Employer’s commitment to provide post-employment benefits (other than pension benefits), as offered by the

Employer to its employees in accordance with the Employer's policies and/or applicable collective bargaining agreements.

2.2 Trustees Accounting

The Trustees shall be responsible only for maintaining records and maintaining accounts for the Assets of the Trust. The Employer shall be responsible for Plan-level accounting for OPEB.

2.3 No Diversion of Assets

The Assets in the Trust shall be held in trust for the exclusive purpose of providing OPEB to eligible employees of the Employer and defraying the reasonable administrative and actuarial expenses of the Trust. The Assets in the Trust shall not be used for or diverted to any other purpose, except as expressly provided herein.

2.4 Type and Nature of Trust

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

Distributions of Assets under the Trust are not debts of any Employer 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 Employer'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 Trust set aside for distributions. Neither the members of the governing body of the Employer nor its officers, employees, agents or volunteers are liable hereunder.

ARTICLE III ADMINISTRATIVE MATTERS

3.1 Certification to Trustees

The governing body of the Employer, or other duly authorized official, shall certify in writing to the Trustees the names and specimen signatures of the Plan Administrator and Employer's Agent, if any, and all others authorized to act on behalf of the Employer whose names and specimen signatures shall be kept accurate by the Employer acting through a duly authorized official or governing body of the Employer. The Trustees shall have no liability if it acts upon the direction of a Plan Administrator or the Employer's Agent that has been duly authorized hereunder even if that the Plan Administrator or the Employer's Agent is no longer authorized to act, unless the Employer has informed the Trustees of such change in writing.

3.2 Removal of Trustees

The Employer may remove the Trustees. Such action must be in writing and delivered to the Trustees by giving at least ninety (90) days' prior written notice to the Trustees.

3.3 Resignation of Trustee

The Trustee may resign as trustee of the Trust at any time by giving at least ninety (90) days' prior written notice to the Employer and the Plan Administrator. The Employer's appointment of a successor trustee to the Trust will vest the successor trustee with title to the Assets of its Trust upon the successor trustee's acceptance of such appointment.

3.4 Multiple Trustees

Multiple trustees ("cotrustees") may exercise the rights, powers, and privileges granted herein by majority decision. If a vacancy occurs in a trustee, the remaining cotrustees may act for the Trust.

3.5 Plan Administrator

The governing body of the Employer shall have plenary authority for the administration and investment of the Trust pursuant to applicable state law and applicable federal laws and regulations. The Employer shall by resolution designate a Plan Administrator. Unless otherwise specified in the instrument the Plan Administrator shall be deemed to have authority to act on behalf of the Employer in all matters pertaining to the Trust. Such appointment of a Plan Administrator shall be effective upon receipt and acknowledgment by the Trustees and shall be effective until the Trustees are furnished with a resolution of the Employer that the appointment has been modified or terminated.

3.6 Failure to Appoint Plan Administrator

If the Employer does not appoint a Plan Administrator, or if such appointment lapses, the Employer shall be deemed to be the Plan Administrator.

3.7 Employer's Agent

The Plan Administrator, acting on behalf of the Employer, may delegate certain authority, powers and duties to Employer's Agent to act in those matters specified in the delegation. Any such delegation must be in writing that names and identifies the Employer's Agent, states the effective date of the delegation, specifies the authority and duties delegated, is executed by the Plan Administrator and is acknowledged in writing by the Employer's Agent and certified as required in Section 3.1.

3.8 Notice

Effective notice hereunder shall be delivered via United States Mail or other reliable means of delivery, including via telecopy, electronic mail or overnight delivery service, to the following:

EMPLOYER:

The Town of Apex
PO Box 250
Apex, North Carolina 27502
Attention: Town Manager

PLAN ADMINISTRATOR:

The Town of Apex
PO Box 250
Apex, North Carolina 27502
Attention: Town Manager

TRUSTEE:

Town Manager, Town of Apex
Human Resources Director, Town of Apex
Finance Officer, Town of Apex
Town of Apex
PO Box 250
Apex, North Carolina 27502

**ARTICLE IV
THE TRUSTEE**

4.1 Powers and Duties of the Trustees

Except as otherwise provided in Article V, and subject to the provisions of Article VI, the Trustees shall have full power and authority with respect to property held in the Trust to perform all acts, take all proceedings, and exercise all rights and privileges, whether specifically referred to or not in this document, as could be done, taken or exercised by the absolute owner, including, without limitation, the following:

- (a) To invest and reinvest the Assets or any part hereof in Qualified Investments pursuant to this Trust and applicable state law.
- (b) To place uninvested cash and cash awaiting distribution in any type of interest-bearing account including, without limitation, time certificates of deposit or interest-bearing accounts issued by a commercial bank or savings and loan association organized under the laws of the State of North Carolina or having its principal office in North Carolina;
- (c) To borrow money for the purposes of the Trust from any source with or without giving security; to pay interest; to issue promissory notes and to secure the repayment thereof by pledging all or any part of the Assets;

(d) To take all of the following actions: to vote proxies of any stocks, bonds or other securities; to give general or special proxies or powers of attorney with or without power of substitution; to exercise any conversion privileges, subscription rights or other options, and to make any payments incidental thereto; to consent to or otherwise participate in corporate reorganizations or other changes affecting corporate securities and to delegate discretionary powers and to pay any assessments or charges in connection therewith; and generally to exercise any of the powers of an owner with respect to stocks, bonds, securities or other property held in the Trust;

(e) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(h) To exercise all the further rights, powers, options and privileges granted, provided for, or vested in trustees generally under applicable federal or state laws as amended from time to time, it being intended that, except as herein otherwise provided, the powers conferred upon the Trustees herein shall not be construed as being in limitation of any authority conferred by law, but shall be construed as consistent or in addition thereto.

4.2 Additional Trustees Powers

In addition to the other powers enumerated above, the Trustees in any and all events are authorized and empowered:

(a) To pay administrative fees as directed by the Plan Administrator;

(b) To invest funds pending required directions in a designated account as directed by the Investment Advisory Committee, if any, or if there is no designated account, any type of interest-bearing account including without limitation, time certificates of deposit or interest-bearing accounts issued by a commercial bank or savings and loan association organized under the laws of the State of North Carolina or having its principal office in North Carolina [Trustee or any affiliate thereof][LH1][PN2];

(c) To cause all or any part of the Trust to be held in the name of the Trustees (which in such instance need not disclose its fiduciary capacity) or, as permitted by law, in the name of any nominee, and to acquire for the Trust any investment in bearer form, but the books and records of the Trust shall at all times show that all such investments are a part of the Trust and the Trustees shall hold evidences of title to all such investments;

(d) To appoint a custodian with respect to the Trust Assets;

(e) To employ such agents and counsel as may be reasonably necessary in managing and protecting the Assets and to pay them reasonable compensation from the Trust; to employ any broker-dealer, including a broker-dealer affiliated with the Trustees, and pay to such broker-dealer at the expense of the Trust, its standard commissions; to settle, compromise or abandon all claims and demands in favor of or against the Trust; and to charge any premium on bonds purchased at par value to the principal of the Trust without amortization from the Trust, regardless of any law relating thereto;

- (f) To abandon, compromise, contest, arbitrate or settle claims or demands; to prosecute, compromise and defend lawsuits, but without obligation to do so, all at the risk and expense of the Trust;
- (g) To exercise and perform any and all of the other powers and duties specified in this Trust Agreement or the Plan;
- (h) To permit such inspections of documents at the principal office of the Trustees as are required by law, subpoena or demand by a United States agency;
- (i) To comply with all requirements imposed by applicable provisions of law;
- (j) To seek written instructions from the Plan Administrator or other fiduciary on any matter and await their written instructions without incurring any liability. If at any time the Plan Administrator or the fiduciary should fail to give directions to the Trustees, the Trustees may act in the manner that in their discretion seems advisable under the circumstances for carrying out the purposes of the Trust;
- (k) To compensate such executive, consultant, actuarial, accounting, investment, appraisal, administrative, clerical, secretarial, medical, custodial, depository and legal firms, personnel and other employees or assistants as are engaged by the Plan Administrator in connection with the administration of the Plan and to pay from the Trust the necessary expenses of such firms, personnel and assistants, to the extent not paid by the Plan Administrator;
- (l) To act upon proper written directions of the Employer, Plan Administrator or Employer's Agent;
- (m) To pay from the Trust the expenses reasonably incurred in the administration thereof, as provided in the Plan;
- (n) To hold uninvested reasonable amounts of cash whenever it is deemed advisable to do so to facilitate disbursements or for other operational reasons,
- (o) To have and to exercise such other additional powers as may be advisable for the effective and economical administration of the Trust.

ARTICLE V INVESTMENTS

5.1 Trust Investments

The Employer and the Investment Advisory Committee, if any, shall have responsibility to select Qualified Investments for the Trust Assets. The Employer and the Investment Advisory Committee, if any, may appoint a Registered Investment Advisor to the Trust by executing a written consulting or management agreement with said Registered Investment Advisor.

5.2 Trustees Fees

As may be agreed upon, in writing, between the Employer and Trustees, the Trustees will be paid reasonable compensation for services rendered or reimbursed for expenses properly and actually incurred in the performance of duties with respect to the Trust. The Trustees shall be entitled to receive their fees and expenses when due directly from the Trust. Notwithstanding the foregoing, any Trustees who are an employee of the Employer shall receive no fee for service as a Trustees hereunder.

5.3 Contributions

Eligible employees may be permitted to make contributions to the Trust, subject to approval of the Plan Administrator. The Plan Administrator shall, on behalf of the Employer, make all contributions to the Trustees. Such contributions shall be in cash, unless the Trustees agree to accept a contribution that is not in cash. All contributions shall be paid to the Trustees for investment and reinvestment pursuant to the terms of this Trust Agreement. The Trustees shall not have any duty to determine or inquire whether any contributions to the Trust made to the Trustees by the Plan Administrator are in compliance with the Employer's policies and/or collective bargaining agreements and/or applicable state law, nor shall the Trustees have any duty or authority to compute any amount to be paid to the Trustees by the Plan Administrator; nor shall the Trustees be responsible for the collection or adequacy of the contributions to meet the Employer's OPEB Obligation, as may be determined under GASB 75. The contributions received by the Trustees from the Employer shall be held and administered pursuant to the terms hereof without distinction between income and principal.

5.4 Records

(a) The Trustees shall maintain accurate records and detailed accounts of all investments, receipts, disbursements and other transactions hereunder. Such records shall be available at all reasonable times for inspection by the Employer and Plan Administrator. The Trustees shall, at the direction of the Plan Administrator, submit such valuations, reports or other information as the Plan Administrator may reasonably require.

(b) The Assets of the Trust shall be valued at their fair market value on the date of valuation, as determined by the Trustees based upon such sources of information as it may deem reliable; provided, however, that the Plan Administrator shall instruct the Trustees as to valuation of assets which are not readily determinable on an established market. The Trustees may rely conclusively on such valuations provided by the Plan Administrator and shall be indemnified and held harmless by the Employer with respect to such reliance. If the Plan Administrator fails to provide such values, the Trustees may take whatever action it deems reasonable, including employment of attorneys, appraisers or other professionals, the expense of which will be an expense of administration of the Trust. Transactions in the account involving such hard to value assets may be postponed until appropriate valuations have been received and Trustees shall have no liability therefore.

5.5 Statements

(a) Periodically as specified, and within sixty (60) days after December 31, or the end of the Trust's fiscal year if different, Trustees shall render to the Plan Administrator as directed, a written account showing in reasonable summary the investments, receipts, disbursements and other transactions engaged in by the Trustees during the preceding fiscal year or period with respect to the Trust. Such account shall set forth the assets and liabilities of the Trust valued as of the end of the accounting period.

(b) The Plan Administrator may approve such statements either by written notice or by failure to express objections to such statements by written notice delivered to the Trustees within ninety (90) days from the date the statement is delivered to the Plan Administrator. Upon approval, the Trustees shall be released and discharged as to all matters and items set forth in such statement as if such account had been settled and allowed by a decree from a court of competent jurisdiction.

5.6 Exclusive Benefit

The Assets of the Trust shall be held in trust for the exclusive purpose of providing OPEB to the eligible employees of the Employer pursuant to the Employer's policies and/or applicable collective bargaining agreements, and defraying the reasonable expenses associated with the providing of such benefits, and shall not be used for or diverted to any other purpose.

ARTICLE VI FIDUCIARY RESPONSIBILITIES

6.1 More Than One Fiduciary Capacity

Any one or more of the fiduciaries with respect to the Trust Agreement or the Trust may, to the extent required thereby or as directed by the Plan Administrator pursuant to this Trust Agreement, serve in more than one fiduciary capacity with respect to the Trust Agreement and the Trust.

6.2 Fiduciary Discharge of Duties

Except as otherwise provided by applicable law, each fiduciary shall discharge such fiduciary's duties with respect to the Trust Agreement and the Trust:

(a) Solely in the interest of the eligible employees and for the exclusive purpose of providing OPEB to eligible employees, and defraying reasonable administrative and actuarial expenses associated with providing such benefits; and

(b) With the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims.

6.3 Limitations on Fiduciary Responsibility

To the extent allowed by the state law applicable to this Trust Agreement:

- (a) No fiduciary shall be liable with respect to a breach of fiduciary duty by any other fiduciary if such breach was committed before such party became a fiduciary or after such party ceased to be a fiduciary;
- (b) No fiduciary shall be liable for a breach by another fiduciary except as provided by law; and
- (c) No fiduciary shall be liable for carrying out a proper direction from another fiduciary, including refraining from taking an action in the absence of a proper direction from the other fiduciary possessing the authority and responsibility to make such a direction, which direction the fiduciary in good faith believes to be authorized and appropriate.

6.4 Indemnification

The Trustees shall not be liable for, and the Employer shall indemnify, defend and hold the Trustees harmless from and against any claims, demands, loss, costs, expense or liability in connection with this Trust Agreement, including reasonable attorneys' fees and costs incurred by the Trustees, arising as a result of Employer's active or passive negligent act or omission or willful misconduct in the execution or performance of the Employer's duties under this Trust Agreement.

In addition, the Trustees shall not be liable for, and Employer shall indemnify and hold the Trustees harmless from and against any claims, demands, loss, costs, expense or liability arising out of or in connection with this Trust Agreement, including reasonable attorneys' fees and costs incurred by the Trustees, in the event that the Trust loses or fails to qualify for tax exempt status under Section 115 of the Code and the Regulations issued or as a tax-exempt trust under the provisions of North Carolina law, unless such results directly or indirectly from the active or passive negligent act or omission of the Trustees or an employee or agent thereof.

This section shall survive the termination of this Trust Agreement.

ARTICLE VII AMENDMENT, TERMINATION AND MERGER

7.1 No Obligation to Continue Trust

Continuance of the Trust and continuation of the Employer's policies and/or applicable collective bargaining agreements that provide OPEB are not assumed as contractual obligations of the Employer.

7.2 Amendments

(a) The Trust Agreement may only be amended or terminated as provided herein. The Employer shall have the right to amend this Trust Agreement from time to time, and to similarly amend or cancel any amendments. A copy of all amendments shall be delivered to the Trustees and Plan Administrators promptly as each is made.

(b) Such amendments shall be set forth in an instrument in writing executed by the Employer and the Trustees. Any amendment may be current, retroactive or prospective;

provided, however, that no amendment shall:

- (1) Cause the Assets of any Trust to be used for or diverted to purposes other than for the exclusive benefit of eligible employees of the Employer or for the purpose of defraying the reasonable expenses of administering such Trust;
- (2) Have any retroactive effect so as to reduce the benefits of any eligible employees as of the date the amendment is adopted, except that such changes may be made as may be required to permit this Trust Agreement to meet the requirements of applicable law; or
- (3) Change or modify the duties, powers or liabilities of the Trustees hereunder without its consent.

7.3 Termination of the Plan

A termination of the Employer's obligation to provide OPEB pursuant to the Employer's policies and/or applicable collective bargaining agreements for which the Trust was established shall not, in itself, effect a termination of the Trust. Upon any termination of the Employer's obligation to provide OPEB pursuant to the Employer's policies and/or applicable collective bargaining agreements, the Assets of the Trust shall be distributed by the Trustees when directed by the Plan Administrator. From and after the date of such termination and until final distribution of the Assets the Trustees shall continue to have all the powers provided herein as are necessary or expedient for the orderly liquidation and distribution of such assets and the Trust shall continue until the Assets have been completely distributed in accordance with the Employer's policies and/or applicable collective bargaining agreements.

7.4 Fund Recovery Based on Mistake of Fact

Except as hereinafter provided, the Assets of the Trust shall never inure to the benefit of the Employer. The Assets shall be held for the exclusive purposes of providing post-employment health care and welfare benefits to eligible employees and defraying reasonable expenses of administering the Trust. However, in the case of a contribution which is made by an Employer because of a mistake of fact, that portion of the contribution relating to the mistake of fact (exclusive of any earnings or losses attributable thereto) may be returned to the Employer, provided such return occurs within two (2) years after discovery by the Employer of the mistake. If any repayment is payable to the Employer, then, as a condition precedent to such repayment, the Employer shall execute, acknowledge and deliver to the Trustees its written undertaking, in a form satisfactory to the Trustees, to indemnify, defend and hold the Trustees harmless from all claims, actions, demands or liabilities arising in connection with such repayment.

7.5 Termination

The Trust may be terminated only by the Employer. Such action must be in writing and delivered to the Trustees in accordance with the terms of this Trust Agreement.

**ARTICLE VIII
MISCELLANEOUS PROVISIONS**

8.1 Nonalienation

Eligible employees do not have an interest in the Trust. Accordingly, the Trust 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 an eligible employee or any other party. Trust Assets shall not be subject to the claims of the Employer or the claims of its creditors.

8.2 Saving Clause

In the event any provision of this Trust Agreement and each Trust are held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining parts of the Trust Agreement and/or Trust, but this instrument shall be construed and enforced as if said provision had never been included.

8.3 Applicable Law

This Trust Agreement shall be construed, administered and governed under the Code and the law of the State of North Carolina. To the extent any of the provisions of this Trust Agreement are inconsistent with the Code or applicable state law, the provisions of the Code or state law shall control. In the event, however, that any provision is susceptible to more than one interpretation, such interpretation shall be given thereto as is consistent with the Trust Agreement being a tax-exempt trust within the meaning of the Code.

8.4 Employment of Counsel

The Trustees may consult with legal counsel (who may be counsel for the Trustees or the Employer) and charge the Trust. The Trustees shall be fully protected in relying on advice of such counsel.

8.5 Gender and Number

Words used in the masculine, feminine or neuter gender shall each be deemed to refer to the other whenever the context so requires; and words used in the singular or plural number shall each be deemed to refer to the other whenever the context so requires.

8.6 Headings

Headings used in this Trust Agreement are inserted for convenience of reference only and any conflict between such headings and the text shall be resolved in favor of the text.

8.7 Counterparts

This Trust Agreement may be executed in an original and any number of counterparts by the Employer and Trustees, each of which shall be deemed to be an original of the one and the same instrument.

AGREED TO AND ACCEPTED this 6th day of November, 2019 .

TRUSTEES

Drew Havens, Town Manager

Mary Beth Manville, Human Resources
Director

Vance Holloman, Finance Officer

EMPLOYER

TOWN OF APEX, NORTH CAROLINA

By: _____

Title: _____

EXHIBIT A

