

## Folsom City Council Staff Report

<b>MEETING DATE:</b>	1/11/2022
<b>AGENDA SECTION:</b>	Consent Calendar
<b>SUBJECT:</b>	Resolution No. 10779 - A Resolution of the City Council of the City of Folsom Rescinding Resolution No. 10167 and Amending Attachment No. 1 to Resolution No. 8187 Relating to Governance of the Retirement Board of Authority
<b>FROM:</b>	City Clerk's Department

### **RECOMMENDATION / CITY COUNCIL ACTION**

Staff recommends that the City Council adopt Resolution No. 10779 - A Resolution of the City Council of the City of Folsom Rescinding Resolution No. 10167 and Amending Attachment No. 1 to Resolution No. 8187 Relating to Governance of the Retirement Board of Authority.

### **BACKGROUND / ISSUE**

On January 8, 2008, the City Council adopted Resolution No. 8187, a resolution authorizing the creation of a Futuris Public Entity Investment Trust and Retirement Board of Authority ("RBOA") and authorizing the Board of Authority to adopt agreements relating to the trust. Resolution No. 8187 provides the Powers of Authority, including membership of the five-member Board. The members of the Board include the Mayor, one Councilmember annually appointed by the Mayor, the City Manager, the Finance Director and the Human Resources Director.

On September 22, 2015, the City Council adopted Resolution No. 9656 and amended Attachment No. 1 to Resolution No. 8187 in order to authorize the appointment of alternate members in the event a member is not available, and also to address the authority of a person serving in an interim capacity acting as a Board member.

On August 28, 2018, the City Council adopted Resolution No. 10167 and amended Attachment No. 1 to Resolution No. 8187 in order to authorize the City Manager to appoint another department head in the event a single person served as both the Finance Director and the Human Resources Director until such time the positions of the Finance Director and the Human Resources Director are no longer occupied by a single person.

In December, 2021, the City Manager appointed a Human Resources Manager to serve as the Human Resources department head. Since this position title is “manager” and not “director”, the formal composition of the Board needs to be updated to authorize the Human Resources Manager to serve on the board and to ensure that the Board will continue to be comprised with, and served by, five individuals.

### **POLICY / RULE**

Resolution No. 8187 authorized the City Council to establish the Retirement Board of Authority, to designate the title and positions of people to serve as members of the board and to establish the powers of authority. The City Council is authorized to amend or modify provisions in Resolutions that it previously has adopted.

### **ANALYSIS**

The Retirement Board of Authority consists of five members and meets several times a year. As designated by Resolution No. 8187, two of the five Board members are the City’s Finance Director and the Human Resources Director. The purpose of this Resolution is to revise Attachment No. 1 to Resolution No. 8187 relating to the Powers of Authority in order to change the representative title from Human Resources Director to Human Resources Manager and to ensure that the Board continues to be comprised with five individuals.

The proposed further changes to Attachment No. 1 (Powers of Authority) to Resolution No. 8187 are shown as follows (addition underlined, deletions in strikethrough):

Attachment No. 1 (Powers of Authority) to Resolution No. 8187, Section 8 - The members of the Retirement Board of Authority shall consist of the Mayor, one Councilmember annually appointed by the Mayor, the City Manager, the Finance Director and the Human Resources Manager ~~Director~~. In the absence of the Mayor, the Vice-Mayor shall serve as a member. The Mayor shall name an alternate City Councilmember for the Councilmember position. In the event the City Council or City Manager has named an Acting or Interim City Manager, Finance Director or Human Resources Manager ~~Director~~, such interim or acting employee shall serve as the member until the permanent person is named or returns to their position. ~~In the event a single person serves as both the Finance Director and the Human Resources Director, the City Manager shall appoint another department head to serve as Board member until such time the positions of~~

~~the Finance Director and the Human Resources Director are no longer occupied by a single person.~~

The RBOA has adopted By-Laws and those By-Laws may be amended by the RBOA. Should the City Council approve the proposed resolution, then the RBOA will amend the By-Laws to make the membership consistent with this action.

### **FINANCIAL IMPACT**

There is no financial impact associated with this resolution.

### **ENVIRONMENTAL REVIEW**

This action by the City Council is exempt from environmental review pursuant to Section 15061(b)(3) (Review for Exemption) of the California Environmental Quality Act.

### **ATTACHMENTS**

1. Resolution No. 10779 - A Resolution of the City Council of the City of Folsom Rescinding Resolution No. 10167 and Amending Attachment No. 1 to Resolution No. 8187 Relating to Governance of the Retirement Board of Authority
2. Resolution No. 10167 - A Resolution of the City Council of the City of Folsom Rescinding Resolution No. 9656 and Amending Attachment No. 1 to Resolution No. 8187 Relating to Governance of the Retirement Board of Authority
3. Resolution No. 8187 - A Resolution Authorizing the Creation of a Futuris Public Entity Investment Trust and a Retirement Board of Authority, and Authorizing the Board of Authority to Adopt Agreements Relating to the Trust (including Attachment No. 1 - Powers of Authority)

Submitted,

Christa Freemantle, CMC  
City Clerk

**Attachment 1**

**Resolution No. 10779 - A Resolution of the City Council of the City of Folsom  
Rescinding Resolution No. 10167**

**and**

**Amending Attachment No. 1 to Resolution No. 8187 Relating to  
Governance of the Retirement Board of Authority**

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**RESOLUTION NO. 10779**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FOLSOM  
RESCINDING RESOLUTION NO. 10167 AND  
AMENDING ATTACHMENT NO. 1 TO RESOLUTION NO. 8187  
RELATING TO  
GOVERNANCE OF THE RETIREMENT BOARD OF AUTHORITY**

**WHEREAS**, Resolution No. 8187, adopted by the City Council on January 8, 2008, authorized the creation of a Futuris Public Entity Investment Trust and a Retirement Board of Authority (RBOA) and authorizing the Board of Authority to adopt agreements relating to the trust; and

**WHEREAS**, Attachment No. 1 to Resolution No. 8187 provides the Powers of Authority, including the membership of the Board. The members of the Board include the Mayor, one Council member annually appointed by the Mayor, the City Manager, the Finance Director and the Human Resources Director; and

**WHEREAS**, Resolution No. 9656, adopted by the City Council on September 22, 2015, amended Resolution No. 8187 by providing: (1) in the absence of the Mayor, the Vice-Mayor shall serve as a member; (2) the Mayor shall name an alternate City Council member for the Council member position; (3) in the event the City Council or City Manager has named an Acting or Interim City Manager, Finance Director or Human Resources Director, such interim or acting employee shall serve as the member until the permanent person is named or returns to his/her position; and

**WHEREAS**, the City Council recommends that the RBOA modify its By-Laws to be consistent with this Resolution.

**NOW, THEREFORE, BE IT RESOLVED** that Resolution No. 10167 is hereby rescinded; and

**BE IT FURTHER RESOLVED** that the City Council of the City of Folsom hereby authorizes the following amendment to Attachment No. 1 to Resolution No. 8187 as follows:

Section 8 – The members of the Retirement Board of Authority shall consist of the Mayor, one Councilmember annually appointed by the Mayor, the City Manager, the Finance Director and the Human Resources Manager. In the absence of the Mayor, the Vice-Mayor shall serve as a member. The Mayor shall name an alternate City Council member for the Councilmember position. In the event the City Council or City Manager has named an Acting or Interim City Manager, Finance Director or Human Resources Manager, such interim or acting employee shall serve as the member until the permanent person is named or returns to their position.

**PASSED AND ADOPTED** on this 11<sup>th</sup> day of January, 2022, by the following roll-call vote:

**AYES:** Councilmembers:

**NOES:** Councilmembers:

**ABSENT:** Councilmembers:

**ABSTAIN:** Councilmembers:

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Kerri M. Howell, MAYOR

ATTEST:

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Christa Freemantle, CITY CLERK

**Attachment 2**

**Resolution No. 10167 - A Resolution of the City Council of the City of Folsom  
Rescinding Resolution No. 9656  
and  
Amending Attachment No. 1 to Resolution No. 8187 Relating to  
Governance of the Retirement Board of Authority**

**RESOLUTION NO. 10167**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FOLSOM  
RESCINDING RESOLUTION NO. 9656 AND AMENDING ATTACHMENT NO. 1 TO  
RESOLUTION NO. 8187 RELATING TO GOVERNANCE OF THE  
RETIREMENT BOARD OF AUTHORITY**

**WHEREAS**, Resolution No. 8187, adopted by the City Council on January 8, 2008, authorized the creation of a Futuris Public Entity Investment Trust and a Retirement Board of Authority (RBOA) and authorizing the Board of Authority to adopt agreements relating to the trust; and

**WHEREAS**, Attachment No. 1 to Resolution No. 8187 provides the Powers of Authority, including the membership of the Board. The members of the Board include the Mayor, one Council member annually appointed by the Mayor, the City Manager, the Finance Director and the Human Resources Director; and

**WHEREAS**, Resolution No. 9656, adopted by the City Council on September 22, 2015, amended Resolution No. 8187 by providing: (1) in the absence of the Mayor, the Vice-Mayor shall serve as a member; (2) the Mayor shall name an alternate City Council member for the Council member position; (3) in the event the City Council or City Manager has named an Acting or Interim City Manager, Finance Director or Human Resources Director, such interim or acting employee shall serve as the member until the permanent person is named or returns to his/her position; and

**WHEREAS**, since the City's current Finance Director also serves as the City's Human Resources Director and Assistant City Manager, in practice the 5-member Board is constituted by 4 persons; and

**WHEREAS**, the RBOA reviewed the By-Laws and the Powers of Authority at its last meeting on July 24, 2018 and recommended that the Powers of Authority be modified to further allow for alternate members in order to comprise the Board with 5 individuals; and

**WHEREAS**, the City Council finds that designating alternate members to the RBOA will help assure a representative board constituted with 5 individuals; and

**WHEREAS**, the City Council recommends that the RBOA modify its By-Laws to be consistent with this Resolution.

**THEREFORE, BE IT RESOLVED** that Resolution No. 9656 is hereby rescinded.

**BE IT FURTHER RESOLVED** that the City Council of the City of Folsom hereby authorizes the following amendment to Attachment No. 1 to Resolution No. 8187 as follows:

Section 8 – The members of the Retirement Board of Authority shall consist of the Mayor, one Council member annually appointed by the Mayor, the City Manager, the Finance Director and the Human Resources Director. In the absence

of the Mayor, the Vice-Mayor shall serve as a member. The Mayor shall name an alternate City Council member for the Council member position. In the event the City Council or City Manager has named an Acting or Interim City Manager, Finance Director or Human Resources Director, such interim or acting employee shall serve as the member until the permanent person is named or returns to his/her position. In the event a single person serves as both the Finance Director and the Human Resources Director, the City Manager shall appoint another department head to serve as a Board member until such time the positions of the Finance Director and the Human Resources Director are no longer occupied by a single person.

**PASSED AND ADOPTED** this 28<sup>th</sup> day of August 2018, by the following roll-call vote:

**AYES:** Council Member(s): Morin, Sheldon, Gaylord, Howell, Miklos

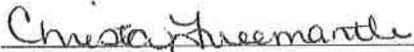
**NOES:** Council Member(s): None

**ABSENT:** Council Member(s): None

**ABSTAIN:** Council Member(s): None

  
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Stephen E. Miklos, MAYOR

ATTEST:

  
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Christa Freemantle, CITY CLERK

**Attachment 3**

**Resolution No. 8187 - A Resolution Authorizing the  
Creation of a Futuris Public Entity Investment Trust and a  
Retirement Board of Authority and  
Authorizing the Board of Authority to Adopt Agreements  
Relating to the Trust (including Attachment No. 1 - Powers of Authority)**

**RESOLUTION NO. 8187**

**A RESOLUTION AUTHORIZING THE CREATION OF A FUTURIS PUBLIC ENTITY INVESTMENT TRUST AND A RETIREMENT BOARD OF AUTHORITY AND AUTHORIZING THE BOARD OF AUTHORITY TO ADOPT AGREEMENTS RELATING TO THE TRUST**

**WHEREAS**, the City Council (the "**COUNCIL**") of City of Folsom ("**Employer**") desires to establish a trust to be used for the purposes of: (i) investment and disbursement of funds irrevocably designated by Employer for the payment of its obligations to eligible employees (and former employees) of Employer and their eligible dependents and beneficiaries for life, sick, hospitalization, major medical, accident, disability, dental and other similar benefits (sometimes referred to as "other post-employment benefits," or "**OPEB**"), in compliance with Governmental Accounting Statement Nos. 43 and 45; and (ii) investment and disbursement of excess funds held by Employer for future use in connection with any lawful purpose of Employer, as further described herein; and

**WHEREAS**, Keenan & Associates ("**Keenan**") has presented the "Futuris Public Entity Investment Trust Program" (the "**Program**") as an alternative for accomplishing the above objectives and the Council desires to engage Keenan and other necessary parties to assist in the process of establishing a trust (the "**Trust**") for these approved objectives; and

**WHEREAS**, the Council has the authority and desire to establish a five member Retirement Board of Authority for the Trust (the "**Board of Authority**"), which shall serve at the pleasure of the Council, to have the authority to engage other necessary providers of services in connection with the Program, including the adoption of the Trust, the appointment of a fiduciary trustee and custodian, as well as to make any and all other decisions in the name of and on behalf of the Employer with regard to the Trust and other applicable agreements; and

**WHEREAS**, the Retirement Board of Authority shall be established and have the authority to make decisions regarding the implementation of the Trust; and

**WHEREAS**, the City Council may designate the title and positions of people to serve on the Retirement Board of Authority; and

**WHEREAS**, the City Council is authorized to establish powers, rights and responsibilities vested in the Board of Authority for purposes of implementing and operating the Trust; and

**WHEREAS**, the Futuris Public Entity Trust is created by a vote of the Board of Authority and execution of an Adoption Agreement; and

**WHEREAS**, Keenan and Associates participated in a Request for Proposal process and was selected by staff based on experience and qualifications to assist with the presentation of options for a trust and to assist the City in administering the Futuris Trust; and

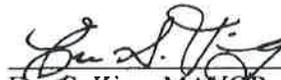
**WHEREAS**, the Futuris Trust requires an initial trustee be designated to perform a number of duties on behalf of the trust, including the maintenance of the trust, investing of funds consistent with the investment policy set by the Board of Authority and other duties as provided by agreement.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Folsom as follows:

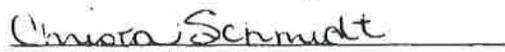
1. The powers, authority and membership of the Board of Authority are attached in Attachment 1 to this Resolution.
2. The Retirement Board of Authority is authorized to approve the Futuris Trust Administrative Services Agreement with Benefit Trust Company in a form substantially similar to that attached as Attachment 2 to this Resolution.
3. The Retirement Board of Authority is authorized to adopt and execute the Futuris Public Entity Investment Trust Adoption Agreement in a form substantially similar to that attached as Attachment 3 to this Resolution
4. A Retirement Board of Authority is hereby created to establish a Futuris Public Entity Investment Trust. The Board of Authority shall be authorized to act and be governed as set forth in Attachment 4 to this Resolution.

PASSED AND ADOPTED on this 8<sup>th</sup> day of January 2008, by the following roll-call vote:

AYES: Council Member(s): Howell, Miklos, Morin, Starsky, King  
NOES: Council Member(s): None  
ABSENT: Council Member(s): None  
ABSTAIN: Council Member(s): None

  
Eric S. King, MAYOR

ATTEST:

  
Christa Schmidt, CITY CLERK

**Retirement Board of Authority**  
**Powers of Authority**

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1. The Retirement Board of Authority shall meet periodically, for regular or special meetings to be held at the time and place which has been designated from time to time by the Retirement Board of Authority. The meetings shall be open to the public, except in those cases where closed sessions are permitted. The meeting shall be publicly noticed and conducted as required by the Brown Act.
2. Decisions of the Retirement Board of Authority shall require an affirmative vote of at least a majority of the members of the Retirement Board of Authority present at the meeting.
3. The members of the Retirement Board of Authority shall receive no compensation for serving as members of the Retirement Board of Authority.
4. The members of the Retirement Board of Authority are authorized to take any and all other actions as they deem necessary and appropriate to carry out the purposes of Resolution No 8187 including the execution of any and all applicable agreements to implement the Trust and to carry out the purposes of the Program as otherwise described therein.
5. The members of the Retirement Board of Authority shall review and approve an Investment Policy Statement developed by the Trustee through consultation with the investment manager selected by the Trustee, which shall provide the guidelines for investment of funds and assets contributed by the Employer to the Trust. The Retirement Board of Authority is further authorized to amend the Investment Policy Statement from time to time as it shall determine appropriate based upon consultation and advice received from the Trustee and the investment manager.
6. The Trustee shall have the authority to cause any or all of the assets of the Trust to be commingled, if the investment and the issuance of such investment thereof would be exempt under the provisions of Sections 2(a)(36), 3(b)(1) or 3(c)(11) of the Investment Company Act of 1940 or Section 3(a)(2) of the Securities Act of 1933, with the assets of trusts created by others, causing such money to be invested as part of a common and/or collective trust fund; and
7. The Retirement Board of Authority shall provide information and copies of investment statements and other similar reports regarding the Trust and its applicable investment performance to the City Council on a not-less-than quarterly basis.
8. The Retirement Board of Authority shall consist of the Mayor, One Council member annually appointed by the Mayor, the City Manager, the Finance Director, and the Human Resource Director.
9. The City Attorney shall serve as legal counsel to the Board of Authority.
10. The City Clerk shall act as the Secretary to the Board of Authority.

## FUTURIS TRUST ADMINISTRATIVE SERVICES AGREEMENT

This Trust Administrative Services Agreement ("Agreement"), dated this 6<sup>th</sup> day of February, 2008, (the "Effective Date") is between Benefit Trust Company ("BTC") and City of Folsom, California ("Employer") with reference to the following:

- A. General Purposes.** The Employer has duly adopted resolutions authorizing the formation of a Board of Authority (the "**Board of Authority**") with responsibility for the execution of an adoption agreement (hereinafter the "**Adoption Agreement**", attached as "Exhibit A"), to establish and maintain a trust, as formally described and entitled on the Adoption Agreement to adopt the Futuris Public Entity Investment Trust (hereinafter the "**Trust**"), attached as "Exhibit B", to be used by governmental and public entity employers for the funding and payment of their obligations under employee benefit plans (the "**Plan**") that provide retiree health and other post-employment benefits (referred to as "**OPEB Liabilities**") to eligible employees and their dependents, and for other purposes determined to be appropriate by the Employers. The Board of Authority is also authorized to appoint BTC, as trustee, and for adequate consideration, BTC otherwise agrees to perform services specified herein.
- B. Services Provided By BTC.** Upon the signing of this Agreement, BTC will have been deemed to have executed the Trust as attached hereto and during the term of this Agreement, BTC further agrees to serve as a discretionary trustee, with fiduciary oversight and authority over the operations and management of the Trust as specified therein and related to the following:

1. **Compliance.** BTC shall administer the Trust document, and any applicable documents and amendments, and contributions received from the Employer in Trust in a manner intended to comply with the requirements of Section 115 of the Internal Revenue Code (the "**Code**"), as amended, and other applicable legal guidelines, including Governmental Accounting Standards Board Statement Nos. 43 and 45 and such other embodying regulations thereunder, as well as applicable provisions of state law that govern the investment of excess funds for approved governmental purposes.
2. **Maintenance of Separate Accounts.** BTC shall establish within the Trust a fund, or funds as applicable: One separate fund, or funds, as applicable (the "**Benefit Fund**"), shall hold funds irrevocably designated for the payment of retiree health and welfare benefits or other similar OPEB Liabilities, including applicable fees and expenses, as reported and impacted by applicable legal requirements, including Governmental Accounting Standards Board Statement Nos. 43 and 45. A separate fund, or funds, (referred to as the "**General Fund**"), may be used for any lawful purpose determined by Employer. The disbursement of any monies from either the Benefit Fund or the General Fund (as defined in the Trust Agreement and referred to collectively herein as "**Accounts**") shall only be made by BTC as provided for and in accordance with the terms of the Trust.

3. **Custodian.** BTC shall serve as the custodian, or shall have the authority to delegate the responsibility for same to a sub-custodian, as applicable, of all assets of the Trusts, to which it shall retain responsibility for the titling and ownership (including registration of assets in nominee name, if required under applicable law) of all contributions, earnings or other assets held in the Trust. In such capacity, BTC shall receive contributions from the Employer and shall further agree to allocate all contributions to one or more Accounts as designated by the Employer, including allocation into one or more Benefit Fund and/or General Fund Accounts within three (3) business day following the later of the date such contributions were received or the date on which the BTC is notified where such funds are to be allocated. In such capacity, BTC shall hold all Trust funds in the designated Accounts and allocate any income earned thereon in the manner set forth by the terms of the Trust. If the Trustee or any sub-custodian receives any contributions or other amounts from the Employer after any applicable trading deadline or receives such contributions without any further designation of the amount or Accounts to which such amounts should be allocated, or the allocation instructions are incorrect, the Trustee shall deposit all such amounts received to the General Fund in a default investment vehicle established by the Trust, until the Employer's investment direction can be properly completed. If, after a period of thirty (30) days the Trustee is unable to obtain revised instructions from the Employer, the Trustee shall return all such previously-deposited amounts to the Employer, including allocated earnings therein.
  
4. **Investment Management and Monitoring.** BTC shall have oversight and authority to:
  - a) Appoint and monitor an investment manager (the "Investment Manager"), who shall be selected by BTC to have discretionary authority and responsibility to manage the Accounts, and shall have full investment authority and discretion, on behalf of the Accounts, to purchase, sell and trade in securities of all types, including cash and cash equivalents, in such amounts, at such prices, and in such manner as it may deem advisable, subject to applicable laws, including applicable provisions of any governing state laws or regulations, as well as this Agreement, the established Investment Policy Statement approved by the Board of Authority, and such other guidelines, policies and restrictions applicable to each Fund Account;
  - b) Assist in the preparation and establishment of a written Trust Investment Policy Statement for Board of Authority approval;
  - c) Maintain authority and access, as well as the ability to delegate the authority of same, to all Accounts and applicable transaction information to monitor the operations of the Trust and investment of the Accounts in accordance with Investment Policy Statement requirements;
  - d) After consultation with the Board of Authority, BTC shall terminate and replace the Investment Manager under circumstances and procedures

outlined in the Trust and separate investment management agreement between BTC and the Investment Manager.

5. **Accounting and Reporting Transactions.** BTC shall maintain accurate records of all financial transactions in accordance with the written terms and conditions of the Trust. Unless circumstances dictate otherwise for which the Board of Authority would be duly notified, account statements will be mailed or delivered to Board of Authority no more than twenty (20) business days after the valuation period ends.
6. **Customer Service.** BTC shall provide customer service support that shall include:
  - a) **Internet Access to Accounts.** BTC shall provide the Board of Authority with secure, online, 24-hour a day, Internet access to Trust account financial information that shall include daily access to all assets held in each Fund Account, contributions received, current asset valuation information and other transactions and expenditures allocated to each fund
  - b) **Telephone Response Team.** BTC shall be available between the hours of 8 a.m. and 5 p.m. (C.S.T.), Monday through Friday, and shall further provide and maintain adequate staff, to receive telephone inquiries and respond to questions from the Board of Authority or any authorized representative of the Employer. BTC representatives will either make every reasonable effort to respond to any questions or inquiries or shall redirect such questions or inquiries to the appropriate party for further response.
  - c) **Meetings and Teleconferences.** BTC shall make itself available, on an as needed and commercially reasonable basis, to meet with or participate in applicable teleconference communication with the Employer, Board of Authority, or other appropriate representatives for informational meetings or other necessary business requirements. Any face-to-face meetings that are deemed necessary between the parties shall be arranged for a mutually agreeable time, with BTC's costs of travel-related expenditures being paid by the Trust, or the Employer as specified by the Employer's Authorized Representative.
7. **BTC Duty of Care.** In exercising its discretionary duties and responsibilities as Trustee as otherwise set forth herein, BTC shall act in accordance with the Uniform Trust Code, as amended, including the obligation to administer the Trust as a prudent person would, by considering the purposes, terms, distribution requirements, and other circumstances of the Trust, and through exercising reasonable care, skill and caution dictated under the then-existing circumstances.

C. **Additional Services.** In addition to the services otherwise provided as referenced above, BTC shall perform other services as agreed to in advance and in writing between the parties

(with such services and applicable fees being determined separately as delineated on the Fee Schedule and any Addendum attached hereto as "Exhibit C"), which may include:

- 1) Administration and processing of benefit claims from the Plan Administrator, as it relates to Benefit Fund assets;
- 2) Preparation of Employer-requested reports, other than those generally provided pursuant to this Agreement;
- 3) Specialized customer service, other than the services to be provided pursuant to this Agreement;
- 4) Maintenance of other specialized Employer records beyond those specified within this Agreement; and
- 5) Such other services agreed to between the parties.

**D. Responsibilities of the Board of Authority.** During the term of this Agreement, the District and/or the Board of Authority as applicable based on binding resolution or other similar authority as communicated to the Trustee by the applicable party, will be responsible for the following Trust administration activities:

1. Execute and adopt the terms of the Trust, through signing of the Adoption Agreement, as well as adopt the Investment Policy Statement, a sample of which is attached as "Exhibit D", and provide copies of such documents to BTC and Investment Manager.
2. Facilitate any efforts and processes necessary to ensure the Plan Administrator ~~executes applicable written agreements providing any required consent to~~ compliance with the terms of the Trust or any other corresponding documentation.
3. Determine the amount of any annual contributions and deliver contributions and allocation instructions to BTC in a timely manner in accordance with Trust provisions and applicable state or federal regulations.
4. Hold periodic meetings of the Board of Authority, for the purpose of reviewing investment performance and compliance with Investment Policy Statement guidelines, as well as engage in annual review and analysis of any applicable modifications to the Investment Policy Statement through meetings and discussions with the Investment Manager and Trustee, as applicable.
5. Provide on a timely basis any necessary Plan participant information to BTC to include personal identification information (including social security numbers), in formats specified by the BTC, as well as all other information as required for BTC or any delegated Investment Manager to perform services under this Agreement.
6. Provide names of individuals authorized to act on behalf of the Trust in writing, including all applicable Plan Administrators and their Authorized

Representatives, as well as notify BTC and the Investment Manager in writing of any changes as soon as a successor is designated.

7. BTC and any delegated Investment Manager shall be entitled to rely upon the accuracy and completeness of all information furnished to them by the Board of Authority or by any person designated to act on behalf of the Board of Authority.

Should BTC or any delegated Investment Manager commence work at the direction of Board of Authority prior to receipt of the signed Adoption Agreement, Board of Authority shall accept and ratify all actions taken by BTC or the Investment Manager to the extent such actions are consistent with the direction of the Board of Authority or the District, as applicable. Any errors or noncompliance that arise therefrom shall be corrected as otherwise set forth in this Agreement.

**E. Fees for Trust Administration Services.** Board of Authority will pay BTC (including applicable fees to be paid to Investment Manager by BTC) the fees and other allowable expenses set forth in the Administrative Fee Schedule Addendum attached to this Agreement as "Exhibit C". Subject to the mutual agreement between the parties, BTC and the Investment Manager retain the right to change fees for service from time to time upon 30 days written notice to Board of Authority. In the event the Board of Authority rejects a fee change by sending written notice to the Trustee prior to the date such fee change is to become effective, either the Trustee or the District may immediately terminate this Agreement without penalty.

**F. Responsibility for Errors: Indemnification**

1. Board of Authority will promptly notify BTC of any errors or omissions in information supplied by Employer, its agent or other representatives. In such event, BTC's sole obligation, to the exclusion of any other obligation or remedy for damage or loss, including special or consequential damages, shall be to use its reasonable efforts to correct any resulting errors in any information, records or in any reports it has prepared for Board of Authority (including filing amended returns, if required), or any other errors that have been identified by the Employer or its representatives.
2. BTC and its officers, directors, employees and other representatives (collectively referred to as a "BTC Indemnified Person") shall be fully protected and indemnified, defended and held harmless by Employer, in relying upon information, direction or instructions received from an Authorized Representative as provided in the Trust, which instructions or directions BTC reasonably believes to be authentic and issued by an Authorized Representative. Should it become necessary to perform some act hereunder and there is neither direction in the Trust nor information or instructions from the Board of Authority, the Employer on file with BTC relating thereto, and if no such information or instructions can be obtained after reasonable inquiry, BTC shall have full power and authority to act in BTC's discretion, consistent with the purposes of the Trust and its role as trustee. This indemnification will protect a BTC Indemnified Person from all

losses, claims, damages, liabilities and expenses incurred (including reasonable attorneys fees and applicable court expenditures resulting from BTC's actions as described in this Section F(2)), with such costs being paid by the Employer. In so acting or in following any instructions from an Authorized Representative, BTC or any other BTC Indemnified Person shall not be liable except to the extent that the actions of BTC or any BTC Indemnified Person constitute fraud, bad faith, willful misconduct or gross negligence.

3. BTC, as the case may be, will indemnify defend and hold harmless the Employer, the Board of Authority and their officers, directors, employees and other representatives (anyone of which is hereafter referred to as an "Employer Indemnified Party") to the full extent lawful to protect an Employer Indemnified Party from all losses, claims, damages, liabilities and expenses incurred by an Employer Indemnified Party (including reasonable fees and disbursements of counsel including applicable court expenditures) which are the result of either BTC's fraud, bad faith, willful misconduct or gross negligence.
4. BTC will correct at its own expense any errors in the records and reports prepared and attributable to their errors, but BTC shall not otherwise be responsible for special or consequential damages, nor shall it correct any such errors for which the Board of Authority has knowledge but fails to properly and timely notify BTC in compliance with applicable law.
5. In accordance with applicable legal requirements, Board of Authority will promptly notify Investment Manager after the settlement date of any errors made or allegedly made in any requested trade of which Board of Authority has knowledge. The trade will be assumed to have been effected in accordance with the original request if notification is not given within required timeframes. If a loss occurs as a result of a trade for which the Board of Authority has knowledge but fails to properly and timely notify the Investment Manager of the error, Board of Authority will indemnify Investment Manager with respect to any loss resulting from such trade.
6. Neither BTC nor Investment Manager will be liable for any loss to the Board of Authority, any Plan Administrator or its Plan participants for failure or refusal of any transfer agent or investment sponsor to act upon investment instructions, or for any loss incurred due to the inaccuracy, incompleteness, or lack of timeliness of information received from the transfer agent or investment sponsor, unless such losses are caused by the instructions provided by BTC or Investment Manager as applicable.

**G. Term**

1. The "Term" of this Agreement shall commence on the Effective Date and shall continue until the date that is thirty-six (36) months from the Initial Funding Date. The "Initial Funding Date" is the first day of the month in which Employer shall

have funded the Trust.

2. On each anniversary date of the Initial Funding Date, the Term of this Agreement shall automatically be extended for an additional twelve (12) months, unless either party has given the other party at least ninety (90) days prior written notice of its desire to not extend the Term, in which case the Term of this Agreement shall expire as of the date set at the Initial Funding Date or the most recent anniversary date thereof.
3. Either party may terminate this Agreement during the Term of this Agreement upon the occurrence of any of the following events:
  - (a) The material breach of this Agreement by either party if the breach is not cured within 30 days (or such longer period as may reasonably be required to cure the breach, but not to exceed 90 days) of receiving notice of the breach from the non-breaching party;
  - (b) The Initial Funding Date does not occur with twenty-four (24) months of the Effective Date;
  - (c) The dissolution or insolvency of either party;
  - (d) The filing of a bankruptcy petition by or against either party (if the petition is not dismissed within 60 days in the case of an involuntary bankruptcy petition); or
  - (e) If either party reasonably interprets the application of any applicable law, rule, regulation, or court or administrative decision to prohibit the continuation of this Agreement or cause a penalty to either party if the Agreement is continued.
4. Upon the termination of this Agreement and payment of any outstanding fees and after establishment of any necessary reserve requirements as otherwise set forth in the Trust, BTC will relinquish its trustee and custodial relationship as provided for in the Trust, as well as provide Board of Authority with copies of trust accounting records, if so requested in writing by Board of Authority, at any time within seven (7) years of the date of termination of this Agreement. Forms, procedures, software, worksheets, checklists and other processes developed by BTC to perform the services required under this Agreement are the property of BTC and are not considered the records of the Board of Authority. A fee will be charged based on time and cost to perform any work necessary for the new trustee to take over the work performed at the request of the Board of Authority, such fee to be mutually agreed upon by the parties in advance of such work being performed.
5. The above notwithstanding, if the termination of this Agreement is the result of a dispute over fees paid, or to be paid, to the Trustee as set forth under this

Agreement, in addition to the duties and responsibilities for trustee and custodial transfer as set forth above, BTC shall provide copies of all reports, records or account statements otherwise to the Board of Authority, as requested, as well as shall retain a copy of such records, reports and other information pending the resolution of any ongoing dispute regarding the fees paid, or to be paid hereunder.

**H. Maintenance and Confidentiality of Records**

1. **Books, Records and Employer Information.** BTC agrees to the following with respect to all Trust information, books and records and information provided by the Board of Authority to BTC:
  - a) **Retention and Security of Documents and Employer Data.** BTC shall maintain copies of all executed Trust related documents, including the Adoption Agreement, written directions of the Employer or Board of Authority with respect to Accounts, Plan Administrator designations authorized signatory information, and the Employer's approved Investment Policy Statement, as well as shall use commercially accepted standards in retaining, backing up, storing and recovery of any and all Employer data and other electronic documentation in a secure environment.
  - b) **Safekeeping of Books and Records.** BTC agrees to maintain facilities and procedures for the safekeeping of all documents, records, books, files and other materials relative to the Trust and transactions facilitated on behalf of the Employers that participate in the Trust (collectively, the "Books and Records"). BTC agrees to maintain such Books and Records for the duration of this Agreement and not to destroy such Books and Records without Employer's prior written consent. Employer and any applicable regulatory body shall have reasonable access during normal business hours to such Books and Records. BTC shall provide all necessary assistance in conjunction with any inspection or audit by any applicable regulatory body for no additional fees, but the reasonable out of pocket expenses incurred in connection with such inspection or audit shall be payable at the expense of the Trust at the time such expenses are incurred in accordance with the terms of this Agreement and the Trust thereunder.
  - c) **Confidentiality of Employer Data.** All data and information submitted by Employer to BTC in connection with this Agreement or the Trust ("Employer Data") is and shall remain the exclusive proprietary information and property of the Employer and shall be considered confidential information. Employer Data shall not be (1) used by BTC other than pursuant to this Agreement or the Trust, (2) disclosed, sold, assigned, leased or otherwise provided to third parties by BTC except in connection with the provision of services to an Employer pursuant to this

Agreement, unless Employer or the Board of Authority specifically authorize the release or disclosure of such information; or (3) commercially exploited by or on behalf of BTC, its employees or agents. BTC shall take such steps as shall under the circumstances be reasonable, prudent and appropriate to protect and keep confidential the Employer Data and shall inform its employees of the confidential nature of the Employer Data. BTC agrees to cause each person or entity directly or indirectly controlled by BTC and the officers, employees and agents of BTC and each such controlled person or entity to comply with the confidentiality provisions of this Agreement.

2. **Required Disclosure.** In the event that BTC becomes legally compelled to disclose any Employer Data, BTC will provide Employer with prompt written notice thereof in order for Employer to seek a protective order or other restriction on disclosure. If BTC is required to disclose information after Employer has sought such protective order or other restriction on disclosure, BTC will furnish only that portion of the Employer Data that it is legally compelled to disclose and no other. BTC agrees to regard and preserve as confidential all records and other information relative to the Trust and will not, without written authority from Board of Authority, disclose to others during the term of this Agreement or thereafter any such records or other information except as required by applicable law. However, should a court of law, governmental agency, participant/employee whether current or former (or attorney there of) request information that is otherwise legally available, BTC shall be held harmless for inadvertently and ~~without malice disclosing such information requested.~~ Likewise, BTC shall not be responsible for and equally held harmless for any other disclosure for which it is legally compelled to provide based on the action or inaction of the Employer, the Board of Authority or any of its representatives.
3. **Records Inspection.** BTC agrees, during the term of this Agreement, all records maintained for the Trust shall be open to inspection and audit by Board of Authority at reasonable times, and that such records shall be preserved and retained for the greater of three years after the related filing date or such other period as may be required by applicable governing regulations as in effect from time to time. On a periodic basis, or if otherwise required in accordance with any legal requirement, BTC, shall engage an independent certified public accountant whose identity and fees are approved by the Board of Authority with such approval to not be unreasonably withheld, to audit records and information related to the Trust, with the reasonable cost of such audit to be paid for by the Trust. A copy of the report of such audit shall be furnished to the Employer, the Board of Authority and to any other parties authorized to receive such information.

I. **Other Provisions**

1. **Entire Agreement, Amendment.** This Agreement, as well as the attached Exhibits, including the Adoption Agreement, Trust, Administrative Fee Schedule and any Addendum, as well as other applicable schedules and exhibits, if any, constitute the entire agreement between the parties with respect to the administration of the Trust and supercedes all prior and contemporaneous agreements, representations and understandings of the parties. This Agreement may be amended and any provision hereof waived, but only in writing signed by the party against whom such amendment or waiver is sought to be enforced. The waiver by either party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any other subsequent breach. To the extent there is any conflict between the terms of this Agreement and the terms and conditions of the Trust, the Trust shall control any dispute arising therefrom.
  
2. **Responsibilities of Parties.** In carrying out their responsibilities under this Agreement, BTC and Board of Authority shall at all times be subject to the following requirements:
  - a) BTC and Board of Authority shall act in accordance with applicable laws and shall also act in compliance with the documents and instruments governing the Trust, insofar as such documents and instruments are consistent with the provisions of applicable state law and any regulations promulgated thereunder. ~~The Board of Authority further agrees that it~~ shall ensure it has all necessary authorities to contribute any applicable funds to the Trust and shall have all necessary authorizations to act on behalf of the Employer or the Plans to the extent necessary and in compliance with Section 7.5 of the Trust.
  
  - b) To the extent applicable as it relates to Benefit Fund, BTC, the Investment Manager, as delegated, and Board of Authority shall act solely in the interest of the participants and their beneficiaries and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the Trust.
  
  - c) To the extent of all Trust assets held within the Accounts, BTC, the Investment Manager, as delegated, and Board of Authority shall act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, but shall also strictly adhere to other applicable state law requirements related to the investment of excess fund assets.
  
  - d) Board of Authority shall have the responsibility for selecting the investment asset allocation mixes to include in the Trust, after receiving

assistance from BTC and/or Investment Manager accordingly. The Board of Authority further acknowledges that past performance is no guarantee of future performance of any investments.

3. **Force Majeure.** No party to this Agreement will be deemed to be in default for any performance, or delay, or failure to perform under this Agreement resulting, directly or indirectly, from: (a) any governmental action or inaction, labor disputes, mechanical or electrical breakdown, any failure of communication lines, telephone or other interconnect problems or unauthorized access, provided such failure (i) is not the fault of such party; or (ii) could not be reasonably controlled by such party; or (b) any natural disaster; or (c) other events beyond the reasonable control of the parties; provided, further, that such events shall not be excused to the extent they can be obviated by the implementation of BTC's Business Recovery Plan.
1. **Dispute Resolution.** This Agreement contains a pre-dispute arbitration clause. By signing an arbitration agreement the parties agree as follows:
  - a) All parties to this Agreement are giving up the right to sue each other in court, including the right to a trial by jury, except as provided by the rules of the arbitration forum in which a claim is filed.
  - b) Arbitration awards are generally final and binding; a party's ability to have a court reverse or modify an arbitration award is very limited.
  - c) The ability of the parties to obtain documents, witness statements and ~~other discovery is generally more limited in arbitration than in court proceedings.~~
  - d) The arbitrators do not have to explain the reason(s) for their award.
  - e) The panel of arbitrators will typically include a minority of arbitrators who were or are affiliated with the securities industry.
  - f) The rules of some arbitration forums may impose time limits for bringing a claim in arbitration. In some cases, a claim that is ineligible for arbitration may be brought in court.
  - g) The rules of the arbitration forum in which the claim is filed, and any amendments thereto, shall be incorporated into this Agreement.

No person shall bring a putative or certified class action to arbitration, nor seek to enforce any pre-dispute arbitration agreement against any person who has initiated in court a putative class action; or who is a member of a putative class action who has not opted out of the class with respect to any claims encompassed by the putative class action until: (i) the class certification is denied; or (ii) the class is decertified; or (iii) the customer is excluded from the class by the court. Such forbearance to enforce an agreement to arbitrate shall not constitute a waiver of any rights under this Agreement except to the extent stated herein.

With respect to controversies or disputes which may arise between you and us (including our affiliates, as well as the Investment Manager, as a third party

beneficiary of this Agreement, having the right to enforce any of the parties' obligations herein) under this Agreement concerning matters involving alleged violations of the Advisers Act or applicable state investment advisory laws, it is understood that the Securities and Exchange Commission and various state securities regulatory agencies believe that an agreement to submit disputes to arbitration does not constitute a waiver of any rights provided under the Investment Advisers Act or applicable state investment advisory laws, including the right to choose a forum, whether by arbitration or adjudication, in which to seek the resolution of disputes.

**Arbitration Provision:**

Notwithstanding the preceding paragraph, you agree that any and all disputes that may arise between you and us (including our affiliates, as well as the Investment Manager, as a third-party beneficiary of this Agreement with rights to enforce any of the parties' obligations herein) concerning any transaction or the construction, performance or breach of this Agreement or any other agreement between us, whether entered into prior to, on, or subsequent to the date of this Agreement, shall first be addressed by good faith negotiations between you and us. In the event either party determines that they are not able to resolve the dispute through negotiation, then the dispute shall be determined by arbitration conducted before, and only before, an arbitration panel set up by the American Arbitration Association ("AAA") in accordance with their arbitration procedures. The parties shall ~~attempt to agree upon one arbitrator to hear the matter. If the parties are~~ unable to so agree, each party shall appoint one arbitrator and the two arbitrators so appointed shall in turn choose a third arbitrator. If the arbitrators chosen by the parties cannot agree on the choice of a third arbitrator within a period of 30 days after their nomination, then the third arbitrator shall be appointed by the President of the AAA. Either you or we may initiate arbitration by filing a written claim with the AAA. Any arbitration under this Agreement shall be conducted pursuant to the Federal Arbitration Act and the Laws of the State of California.

Any arbitration brought under this section shall be before a single arbitrator in Sacramento County, California.

5. **Notice.** Any notice under this Agreement shall be given in writing by certified mail, return receipt requested, to the address listed below.

6. **Commencement Date.** This Trust Administrative Services Agreement shall commence as of the date first written above.

**Employer:** City of Folsom  
**Address of Notice:** 50 Natoma Street  
Folsom, CA 95630

**By:** \_\_\_\_\_

**By:** \_\_\_\_\_

**By:** \_\_\_\_\_

**By:** \_\_\_\_\_

**By:** \_\_\_\_\_

~~**BTC:** Benefit Trust Company~~  
**Address of Notice:** 5901 College Boulevard, Suite 100  
Overland Park, KS 66211

**By:** \_\_\_\_\_  
Scott W. Rankin, Senior Vice President

**FUTURIS  
PUBLIC ENTITY INVESTMENT TRUST  
ADOPTION AGREEMENT**

City of Folsom, California ("Employer"), through its authorized Board of Authority hereby elects to adopt the terms of the Futuris Public Entity Investment Trust, which shall be formally known as the Futuris Public Entity Investment Trust (hereinafter referred to as the "Trust"), attached hereto and incorporated by reference, as of February 6, 2008 (the "Effective Date"). The fiscal year of the Trust shall be the 12-month period beginning July 1 and ending June 30.

Unless provided otherwise in writing by the Employer in any Board Resolution or other similar written designation, the Board of Authority agrees and shall be considered as "Authorized Representatives" to act on behalf of the Employer in compliance with Section 7.5 of the Trust.

The Board of Authority further agrees to establish its applicable Investment Policy Statement, a sample of which has been provided, which shall be adhered to and administered by the Trustee in accordance with the terms of the Trust. Related to the Investment Policy Statement, the Trustee shall have the authority to cause any or all of the assets of the Trust to be commingled, if the investment and the issuance of such investment thereof would be exempt under the provisions of Sections 2(a)(36), 3(b)(1) or 3(c)(11) of the Investment Company Act of 1940 or Section 3(a)(2) of the Securities Act of 1933, with the assets of trusts created by others, causing such money to be invested as part of a common and/or collective trust fund.

IN WITNESS WHEREOF, the Board of Authority, on behalf of the Employer, each person signing this agreement represents and warrants that he or she had the authority to bind such parties and hereby adopts the Trust on the 6th day of February, 2008.

**BOARD OF AUTHORITY**

By: \_\_\_\_\_  
By: \_\_\_\_\_  
By: \_\_\_\_\_  
By: \_\_\_\_\_

**Attachment 3 to Resolution No. 8187  
Futuris Public Entity Investment Trust Adoption  
Agreement (Draft)**

**By:** \_\_\_\_\_

**FUTURIS PUBLIC ENTITY INVESTMENT TRUST  
TRUST AGREEMENT**

THIS AGREEMENT, also referred to as the “Futuris Public Entity Investment Trust” (hereinafter the “Trust” or “Agreement”) is made and hereby executed by and between the organization specified on the Adoption Agreement attached hereto, a governmental or public entity employer (hereinafter “Employer”), and **Benefit Trust Company**, a Kansas Corporation as trustee and asset custodian (“Trustee”). This Agreement shall be effective as of the Effective Date set forth below.

WHEREAS, Employer desires to establish a trust to be used for the purposes of: (i) investment and disbursement of funds irrevocably designated by Employer for the payment of its obligations to eligible employees (and former employees) of Employer and their eligible dependents and beneficiaries for life, sick, hospitalization, major medical, accident, disability, dental and other similar benefits (sometimes referred to as “other post-employment benefits,” or “OPEB”), in compliance with Governmental Accounting Statement Nos. 43 and 45; and (ii) investment and disbursement of excess funds held by Employer for future use in connection with any lawful purpose of Employer, as further described herein; and

WHEREAS, Employer is a public entity, and hereby wishes to establish this Trust as an integral part of Employer’s governmental purposes, pursuant to a trust arrangement that is tax exempt under applicable guidance and procedures under Section 115 of the Code;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein, Employer and the Trustee agree as follows:

**ARTICLE I  
DEFINITIONS**

- 1.1 Adoption Agreement.** “Adoption Agreement” shall mean the Adoption Agreement entered into by the Board of Authority, who has been authorized by the Employer to adopt this Trust for the purposes specified herein.
- 1.2 Benefit Fund.** “Benefit Fund” shall mean the portion of trust fund assets that are irrevocably designated by Employer for the purpose of funding designated OPEB obligations, and any applicable fees and expenses of Employer under one or more Plans adopted by Employer.
- 1.3 Board of Authority.** “Board of Authority” shall mean the Board of Authority created by resolution of the governing body of Employer, consisting of one or more voting members appointed by Employer and serving at the will of Employer, having the power and authority to make all decisions required to be made for the Trust on behalf of Employer, as described in this Trust, except for any decisions of the Employer as required under this Agreement. The members of the Board of Authority may be appointed, terminated and replaced by Employer using such

procedures as Employer shall specify by resolution of its governing body, with the initial Board of Authority being designated by the Employer through board resolution or other similar means.

**1.4 Code.** "Code" shall mean the Internal Revenue Code of 1986, as amended.

**1.5 Effective Date.** "Effective Date" shall mean the Effective Date specified in the Adoption Agreement executed by Employer.

**1.6 General Fund.** "General Fund" shall mean that portion of trust fund assets that have been deposited into the Trust for investment of excess funds held by Employer for future use in connection with any lawful governmental purpose of Employer.

**1.7 Investment Manager.** "Investment Manager" shall mean the independent registered investment adviser appointed by the Trustee pursuant to the authority provided to the Trustee in Section 5.1 of this Agreement.

**1.8 Investment Policy Statement.** "Investment Policy Statement" shall mean the investment guidelines for the General Fund and the Benefit Fund, as approved by the Board of Authority, and as such Investment Policy Statement may be amended from time to time. The Investment Policy Statement shall establish the investment guidelines and authority related to the investment of Trust assets by the Investment Manager, subject to the terms of the Trust.

**1.9 Participant.** "Participant" shall mean any employee or former employee of Employer, or any dependent or beneficiary of such an employee or former employee, who is or shall be entitled to OPEB liabilities thereunder.

**1.10 Plan.** "Plan" or "Plans" shall mean each plan adopted by Employer that includes or provides for the payment of OPEB liabilities to Participants in accordance with the terms of the Plan. Each Plan shall be limited to providing life, sick, hospitalization, major medical, accident, disability, dental and/or other similar benefits to Participants.

**1.11 Plan Administrator.** "Plan Administrator" shall be the person or entity designated to administer each Plan that pays benefits funded by contributions made to the Benefit Fund, as set forth in each such Plan. The Plan Administrator shall have the sole authority to provide directions for withdrawal or other disbursement of funds held in the Benefit Fund.

**1.12 Trust.** "Trust" shall mean the trust established by this Agreement.

**1.13 Trustee.** "Trustee" shall mean the person or entity appointed and acting as Trustee of the Trust in accordance with the terms of this Agreement. The initial Trustee of the Trust is Benefit Trust Company.

## ARTICLE II

### PURPOSE AND ESTABLISHMENT OF TRUST

**2.1 Establishment of Trust.** Employer hereby deposits with Trustee, in Trust, a sum of money or other similar consideration, which shall become the principal of the Trust, to be held, administered and disposed of by the Trustee as provided in this Trust Agreement. The principal of the Trust and any earnings thereon shall be held separate and apart from other funds of Employer and shall be used exclusively for the uses and purposes herein set forth.

**2.2 Purposes of the Trust.** The Trust shall be for the purpose of receiving, holding, investing, reinvesting and disbursing, for the benefit of the Participants in connection with assets held in the Benefit Fund, and for the benefit of Employer with respect to the assets held in the General Fund, the monies or property contributed to or otherwise received by the Trustee, in accordance with the provisions of this Agreement. As set forth in Section 5.1 of this Trust, the Benefit Fund and the General Fund shall be established and maintained at all times as two separate and distinct investment funds. The Trust shall consist of all reserves or monies comprising assets that may include any insurance policy assigned by Employer to the Trust, as well as any and all contributions further described under Article III below, and all cash, securities, property, and assets of whatever kind and nature, owned, held or otherwise acquired by the Trustee pursuant to the Trust, and all earnings thereon. To the extent of any assets held within the Benefit Fund, no part of the principal or income of the Trust held within the Benefit Fund shall be paid, or revert, to Employer, or be used in any manner other than for the exclusive benefit of the Participants in connection with the payment of OPEB obligations, including applicable fees and expenses, of Employer under the terms of the Plan, as determined by the Plan Administrator or unless provided for under Article X below. Accordingly, the Trust holds only bare legal title to the Benefit Fund, and neither the Trust nor Employer own or hold any equitable interest in the Benefit Fund.

### ARTICLE III CONTRIBUTIONS

**3.1 Contributions.** Employer may from time to time make contributions to the Trust, in such amounts as Employer shall determine are appropriate. Employer shall designate in writing to the Trustee at the time of each contribution whether the amounts so contributed shall be deposited into the Benefit Fund or the General Fund, and the Trustee shall ensure that each contribution is deposited into the fund designated by Employer. To the extent that any Plan permits contributions to be made by Participants to fund OPEB obligations, including the cost of applicable fees and expenses, of Employer, all such contributions shall be designated solely for the Benefit Fund, and such contributions, along with all earnings on such Participant contributions shall be reflected as Participant contributions in all books and records maintained by the Trustee. All contributions shall be made in cash or in the form of such other property as the Trustee may from time to time deem acceptable and which shall have been delivered to the Trustee. The contributions so received, together with the income therefrom and any other increment thereon shall be held, invested, reinvested and administered by the Trustee pursuant to the terms of this Agreement. The Trustee shall not be responsible for or have any obligation related to, the timing or collection of any contribution, the allocation of any contributed amount, or any applicable earnings thereof, between the Benefit Fund or General Fund unless designated by Employer and provided for herein, or the calculation or payment of any benefits under any Plan. For any contributions received after any trading deadline, or if the Employer fails to provide proper instructions for the allocation of any amounts to be contributed to either the Benefit Fund or the General Fund, or such instructions are incomplete or incorrect in a manner that prevents the contributed amounts from being invested in the desired manner, the Trustee, or its designated sub-custodian, if applicable, shall deposit such amounts in the General Fund, to be held in a Short-Term Investment Fund (the "Default Fund"), or such other similar account

comprised of cash, bank notes, corporate notes, government bills and other various short-term debt instruments that are deemed appropriate by the Trustee and/or the Investment Manager until such time as the Employer's investment direction can be properly completed. If, after a period of thirty (30) days the Trustee is unable to obtain revised instructions from the Employer, the Trustee shall return all such previously-deposited amounts to the Employer, including allocated earnings therein.

**3.2 Compliance with Laws.** The Trust is established and maintained solely by Employer as an integral part of its governmental purposes. The Trust is therefore intended to satisfy all requirements of the United States Department of Treasury pursuant to Section 115 of the Code. Except to the extent of withdrawals permitted from the General Fund as provided in Article IV below, and corrections made with respect to contributions made in error as permitted in accordance with Article X below, all contributions made to the Trust and the earnings thereon shall be retained in the Trust until the same shall have been fully paid out in accordance with the terms of this Agreement. Under no circumstances shall any amounts held in the Benefit Fund be used for any purpose other than the payment of OPEB obligations of Employer pursuant to the terms of such Plans designated by Employer. Under no circumstances shall any amounts held in the General Fund be used for any purpose other than a lawful governmental purpose as determined by Employer in accordance with applicable law.

#### **ARTICLE IV**

#### **WITHDRAWALS**

**4.1 Withdrawals from Benefit Fund.** The Plan Administrator, or its Authorized Representative, as further described in Section 7.5 hereof, of each Plan designated by Employer for funding through the Benefit Fund is the sole party authorized to withdraw or otherwise direct the Trustee to make disbursement of amounts from the Benefit Fund and such amounts shall not be withdrawn except for the purpose of paying OPEB-related liabilities for eligible Plan participants, contributions made by error or mistake in accordance with Article X below, or because the applicable OPEB liability has been fully funded or resolved; any excess Benefit Fund assets that remain shall be returned to the underlying Plan(s) as directed by the Plan Administrator. Under no circumstances shall any Benefit Fund amount be paid to or in any way revert to the Employer directly unless the amounts contributed to the Benefit Fund by the Employer were made by mistake. To the extent that there are separate accounts maintained for each Plan within the Benefit Fund, each Plan Administrator is authorized only to withdraw amounts designated within the Benefit Fund for funding of the Plan administered by that Plan Administrator. The Plan Administrator shall, from time to time and subject to the liquidity requirements and restrictions set forth within the Investment Policy Statement, direct the Trustee to make payments out of the Benefit Fund to the persons or entities to whom such payments are authorized to be made in accordance with the terms of the Plan, in such amounts and for such purposes as are authorized under the terms of the Plan. The Trustee shall not be responsible for determining whether withdrawals made by the authorized Plan Administrator are authorized under the Plan, and shall be entitled to rely upon the determination of the authorized Plan Administrator that such withdrawals are in compliance with the terms of the Plan.

**4.2 Withdrawals from General Fund.** Employer is the sole party authorized to withdraw or otherwise direct the Trustee to make disbursement of amounts from the General Fund. Employer shall be authorized, based on the direction of any Authorized Representative, as further described in Section 7.5, to make withdrawals or other disbursements from the General Fund for any lawful governmental purpose, in such amounts as Employer shall determine. Employer may make withdrawals of any amount held in the General Fund at any time upon seven (7) business day's written notice to the Trustee, or such other period as reasonably practicable under the existing circumstances and subject to the liquidity requirements and restrictions set forth within the Investment Policy Statement. The Trustee shall not be responsible for determining whether withdrawals made by Employer are authorized by Employer, and shall be entitled to rely upon the determination of Employer's Authorized Representative such withdrawals or other disbursements are in compliance with applicable law.

**4.3 Transfer of Assets from the General Fund to the Benefit Fund.** Employer may, within its discretion, authorize the transfer of trust fund assets from the General Fund to the Benefit Fund at any time. Upon receipt of written direction from Employer for the transfer of trust fund assets from the General Fund to the Benefit Fund, the Trustee shall as soon as reasonably practicable, undertake a valuation of the assets contained within the General Fund and, to the extent sufficient assets are contained within the General Fund to execute the request for transfer of funds from the General Fund to the Benefit Fund, assign or otherwise transfer the requested amounts from the General Fund to the Benefit Fund, including the allocation of any amounts to any particular sub-account as directed by the Employer. The Trustee shall not be responsible for determining whether withdrawals made by Employer are authorized by Employer, and shall be entitled to rely upon the determination of Employer's Authorized Representative such withdrawals or other disbursements are in compliance with applicable law. ~~Asset transfers from the General Fund to the Benefit Fund will generally be made in kind, unless the Trustee or delegated Investment Manager determines that assets should be liquidated prior to the transfer. Under no circumstances may assets of the Benefit Fund be transferred to the General Fund.~~

## ARTICLE V

### INVESTMENT OF TRUST FUNDS

**5.1 Separate Investment Funds.** The Trust shall consist of two separate and distinct investment fund programs to be known as the Benefit Fund and the General Fund. Each of these Funds shall be separately held, managed, administered, valued, invested, reinvested, distributed, accounted for and otherwise dealt with, in accordance with the provisions in this Agreement. References to the Trust assets shall generally be deemed to refer to both the Benefit Fund and the General Fund.

- (a) The assets belonging to each of the Benefit Fund and the General Fund shall be charged with the liabilities in respect of that Fund and all expenses, costs, charges and reserves to that Fund. Any general liabilities, expenses, costs, charges or reserves of the Trust Fund which are not readily identifiable as pertaining to any particular Fund shall be allocated and charged by the Trustee to and among each of the Funds in such manner and on such basis as the Trustee in its discretion deems fair and equitable, including the proviso that unless the Investment Policy

Statement specifically provides otherwise, allocable expenses of the Benefit Fund may be paid from assets contained within the General Fund if otherwise prudent and allowable under existing authority. Each allocation of liabilities, expenses, costs, charges and reserves by the Trustee shall be conclusive and binding for all purposes.

- (b) Employer may establish a separate Benefit Fund for the obligations of Employer under each Plan, or may provide a single Benefit Fund for all obligations of Employer under all Plans adopted by Employer. Employer may, by written direction from time to time to the Trustee, add additional separate Benefit Funds or combine two or more separate Benefit Funds, provided that the Plan Administrator for each Plan funded by the Benefit Fund(s) shall provide its written consent to any such direction provided by Employer, with applicable liabilities, expenses, costs, charges or other reserves being allocated in the manner set forth in subsection (a) above.
- (c) A Default Fund shall be established within the General Fund under conditions set forth under Article III above and based on investment guidelines established within the Investment Policy Statement.

**5.2 Appointment of Investment Manager.** The Trustee shall, in the exercise of its discretion over the investment of Trust funds, appoint a primary Investment Manager, who shall have the authority to invest, reinvest, sell and hold, through a qualified custodian as required by applicable law, all assets of the Benefit Fund and the General Fund in accordance with the guidelines established herein. Specifically, the Investment Manager shall be responsible for assisting the Trustee in developing the Investment Policy Statement for review and approval by the Board of Authority, selecting the investments and/or portfolio managers to be used to implement the investment strategies authorized by the Investment Policy Statement, as well as assisting the Board of Authority in selecting asset allocation models for the Benefit Fund and the General Fund and reporting on the performance of investments held in the Trust. The duties of the Investment Manager shall be further specified in a written agreement to be entered into between the Trustee and the Investment Manager.

**5.3 Review and Approval of Investment Policy Statement.** The Trustee shall assist in developing an Investment Policy Statement for Employer that is consistent with applicable law, which is primarily to safeguard the principal of the funds held in the Trust, then secondarily to meet the Trust's liquidity needs and thirdly, to achieve a return on the funds held in the Trust. The Investment Policy Statement shall be reviewed and approved by the Board of Authority prior to investment of any contributions received from Employer to fund the Trust, other than temporary investments in short-term obligations of the United States government. The Investment Policy Statement shall remain in effect until amended or superseded in writing by the Board of Authority. The Investment Policy Statement shall provide for the investment of assets of the Benefit Fund in a manner appropriate to satisfy the expected OPEB liabilities and liquidity requirements of each Plan funded by the Benefit Fund, and shall provide for investment of assets of the General Fund in a manner appropriate for the assets held in the General Fund and in compliance with the investment requirements of applicable law.

**5.4 Monitoring of Investment Manager.** The Trustee, or its designated agents or other representatives, shall be responsible for monitoring the performance of the Investment Manager to assure that investment decisions are made by the Investment Manager, and that the services provided by the Investment Manager, are in compliance with the terms of the Investment Policy Statement, the investment advisory agreement between the Trustee and the Investment Manager and applicable law. The Trustee shall further be responsible for reviewing the overall performance of the Investment Manager relative to performance goals and objectives specified in the Investment Policy Statement. The Trustee shall promptly notify Employer of any actions taken by the Investment Manager that the Trustee determines to be inconsistent with the Investment Policy Statement, the investment advisory agreement between the Investment Manager and the Trustee, or applicable law, and shall take such actions as are commercially reasonable to correct or recover from such actions as are prudent on behalf of the Trust.

**5.5 Termination and Replacement of Investment Manager.** In the event that the Trustee determines that the Investment Manager is not performing its duties in accordance with the Investment Policy Statement, the investment advisory agreement with the Trustee or applicable law, or that the Investment Manager is not satisfactorily meeting its performance goals and objectives, the Trustee shall have full discretion to terminate and replace the Investment Manager. Throughout any corresponding transition period prior to or commensurate with the selection and delegation of investment management responsibilities to a successor Investment Manager, the Trustee shall ensure that the assets of the Trust continue to be invested in the manner the Trustee deems prudent and most appropriate under the circumstances then-prevailing, as long as in compliance with the general terms and conditions of the Investment Policy Statement and applicable law.

**5.6 General Fiduciary Duties of Trustee.** In the performance of its investment related functions under this Agreement, the Trustee acknowledges that, to the extent of its role and responsibilities set forth herein, it is a fiduciary to the Trust and to Employer. The Trustee agrees that it shall act in accordance with the Uniform Trust Code, as amended, and shall act with the care, skill, prudence, and diligence under the circumstances then prevailing, including, but not limited to, the general economic conditions and the anticipated needs of the Trust and Employer, to the extent known by the Trustee, that a prudent person acting in a like capacity and familiarity with those matters would administer the Trust and use and exercise reasonable care, skill and caution, in the administration of the Trust and performance of investment related functions with respect to funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the Trust and Employer. The Board of Authority shall be entitled to rely upon the actions and decisions of the in the performance of its duties under this Agreement. Subject to the foregoing duty of the Trustee, the Trustee shall not be liable for any investment losses suffered by the Trust.

## ARTICLE VI

### GENERAL POWERS OF TRUSTEE

In addition to the specific powers and duties of the Trustee set forth in Articles III, IV and V, the Trustee shall have the following powers:

- (a) to hold assets on behalf of the Trust in the name of Trustee for the benefit of the Trust;

- (b) to direct the Investment Manager or any delegated custodian, as applicable, to sell assets of the Trust to the extent necessary to allow an authorized Plan Administrator to make a withdrawal from the Benefit Fund or to allow Employer to make a withdrawal from the General Fund;
- (c) to arbitrate, defend, enforce, release or settle any claim of or against the Trust;
- (d) to the extent that the duty to vote proxies for securities held by the Trust is not delegated to the Investment Manager, to vote, in person or by proxy, upon all securities held by the Trust;
- (e) to the extent advised by the Investment Manager consistent with the Investment Policy Statement, to exercise, buy or sell subscription and conversion rights and participate on behalf of securities held by the Trust in reorganizations, recapitalizations, consolidations, mergers, exchanges, foreclosures, liquidations and creditors' and bondholders' agreements;
- (f) to do all such acts, take all such proceedings, and exercise all such rights and privileges, although not specifically mentioned herein, as the Trustee may deem necessary to administer the Trust, provided that such actions or proceedings are not inconsistent with the terms of this Trust;
- (g) to employ and pay from the assets of the Trust reasonable compensation to agents, investment counsel and attorneys, accountants, or other similar parties, including any person, partnership, corporation or other entity with which the Trustee may be associated, for purposes that the Trustee determines to be necessary for the administration of the Trust, as well as any other parties the Employer or Board of Authority has engaged to provide related services pursuant to a written agreement;
- (h) to withdraw from the Trust compensation and expenses payable to the Trustee in such amounts as are agreed to between Employer and the Trustee under any written administrative service agreement or other similar arrangement; and
- (i) to execute and deliver all documents and instruments necessary for the administration of the Trust on behalf of the Trust.
- (j) the Trustee may cause any or all of the assets of the Trust to be commingled, to the extent such investment and the issuance thereof would be exempt under the provisions of Sections 2(a)(36), 3(b)(1) or 3(c)(11) of the Investment Company Act of 1940 or Section 3(a)(2) of the Securities Act of 1933, with the assets of trusts created by others, causing such money to be invested as part of a common and/or collective trust fund.

**ARTICLE VII**  
**GENERAL DUTIES OF TRUSTEE**

In addition to the specific powers and duties of the Trustee set forth in Articles III, IV, V and VI, the Trustee shall have the following duties:

**7.1 General.** The Trustee shall, in the performance of all of its duties on behalf of the Trust, act solely in the manner directed herein and discharge its duties hereunder with the care, skill, prudence and diligence under the circumstances that a prudent man acting in a like capacity and familiar with such matters would use in such circumstances.

**7.2 Records.** The Trustee shall keep accurate and detailed accounts and records of all investments, receipts, disbursements, and other transactions, including all separate accounts and assets contained within the Benefit Fund and General Fund accounts. For purposes of accounting and administration, the records of the Trust shall be maintained on a cash basis method. The Employer and/or the Board of Authority shall have the right to review and inspect all such accounts and other records relating thereto at all reasonable times, as well as to request an audit of all Trust fund activities.

**7.3 Trustee Reports.** The Trustee shall furnish to the Board of Authority quarterly reports, as well as an annual statement of account, to be delivered within thirty (30) days after the end of each quarter and within sixty (60) days after the end of each calendar year, setting forth all contributions made to the Trust, including an account of the specific Fund to which such contributions were made, all withdrawals from each Fund and all transfers from the General Fund to the Benefit Fund. For these purposes, unless otherwise stated on the Employer's Adoption Agreement, the Employer's fiscal year shall be considered as the 12-month period beginning every July 1 to June 30 of the following year.

**7.4 Audits.** Trustee shall assist Employer with the engagement of an independent certified public accountant to audit the Trust under such time frames and parameters specified by the Employer, with the cost of such audit to be paid for by the Trust or by Employer as determined by the Employer. A copy of the report of such audit shall be furnished to Employer, Trustee and such other persons as Employer or Employer's Authorized Representative shall designate.

**7.5 Authorized Representatives.** Employer and the Plan Administrator shall inform the Trustee immediately in writing of the appointment of any Authorized Representative to whom Employer or the Plan Administrator has given authorization to direct the Trustee with respect to the Trust, or any other change in circumstances that could affect the Trustee's administration or management of the Trust. Generally, the Plan Administrator shall authorize two or more authorized signatories who may request withdrawals on behalf of the Plan Administrator and Employer shall authorize two or more authorized signatories who may request withdrawals on behalf of Employer. Subject to any requirement of proof required by the Trustee in verifying the identity of any Authorized Representatives, the Trustee may rely on such designations and follow any instructions of such Authorized Representatives, whether verbal, by facsimile or in writing as though they were Employer's, or the Plan Administrator's instructions, as applicable, and the Trustee's business record entry of any directions by any of them shall be conclusive

proof of the giving of such directions. Unless the Employer or Plan Administrator specifically directs otherwise, in the absence of any formal notification of any other individuals who shall be authorized to act on behalf of the Employer or Plan Administrator, the Trustee may accept direction from any duly appointed member of the Board of Authority. Any transactions initiated by the Trustee before receiving actual notice of any change with respect to (a) such Authorized Representative(s) or their authority, or (b) the termination of the Trust, shall be valid and binding on Employer, the Plan Administrator, or their successors and assigns, and the Trust.

**7.6 Fiduciary Bonds.** Trustee shall provide to Employer evidence of a bond, surety or security, as maintained by the Trustee, for any employee of the Trustee who works with or on behalf of Trustee in carrying out its duties and responsibilities related to the Trust.

**7.7 Compliance with Laws.** The Trustee shall administer the Trust and all assets invested hereunder at all times in conformity with all applicable provisions of state and federal law, including specific application of the California Government Code.

## **ARTICLE VIII**

### **LIABILITIES AND IMMUNITIES**

**8.1 Immunity of Employer, Trustee or Other Fiduciaries.** Except as otherwise provided by controlling law, neither the establishment of the Trust created hereunder nor any modification hereof nor the creation of any fund or account or the payment of any benefits shall be construed as giving to any employee of Employer or any beneficiary hereunder any legal or equitable right against Employer, any officer, director, employee or agent of Employer, or against the Trustee or any fiduciary, except as provided in this Agreement.

**8.2 Indemnification of Trustee.** The Trustee shall be fully protected and indemnified by Employer and the Plan Administrator, in reliance upon information, direction or instructions received from an authorized party as provided in this Trust, which instructions or directions the Trustee reasonably believes to be authentic and issued by an authorized party. Should it become necessary to perform some act hereunder and there is neither direction in this Trust Agreement nor information nor instructions from Employer or Plan Administrator on file with the Trustee relating thereto, and if no such information or instructions can be obtained after reasonable inquiry, the Trustee shall have full power and authority to act in the Trustee' discretion, consistent with the purposes of this Trust. In so acting or in following any instructions from an authorized party, the Trustee shall not be liable except to the extent that the actions of the Trustee constitute fraud, bad faith, willful misconduct or gross negligence.

## **ARTICLE IX**

### **RESIGNATION, REMOVAL AND SUCCESSION OF TRUSTEE**

The Board of Authority may remove the Trustee, and the Trustee may resign as Trustee of the Trust, with proper notice and under time frames and criteria established through a separate administrative service agreement, or other similar agreement, between the Board of Authority and the Trustee, or absent the signing of such an agreement, at any time in the Board of

Authority's discretion with or without cause, upon sixty (60) days' prior written notice to the other party. Upon the resignation or removal of the Trustee, the Board of Authority shall appoint a successor Trustee who shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon acceptance of such appointment by the successor Trustee, the Trustee shall assign, transfer, and pay over to such successor Trustee the funds and properties then constituting the assets of the Trust. No successor Trustee shall be subject to any liability or responsibility with respect to any act or omission of any prior Trustee.

## **ARTICLE X**

### **CORRECTION OF ERRORS**

**10.1 Mistake.** Any mistake in any payment or in any direction, certificate, notice or other document furnished or issued by Employer or by the Trustee in connection herewith may be corrected when the mistake becomes known, and Employer may direct any adjustment or action that it deems practicable under the circumstances to remedy the mistake. The above notwithstanding, the Trustee must be properly notified of any mistakes or other correction requests within prescribed periods and time limitations as prescribed under applicable law.

**10.2 Refund of Contribution Made to the Benefit Fund.** No contribution made to the Benefit Fund may be refunded to Employer unless a contribution was made:

- (a) Because of a mistake of fact; or
- (b) Conditioned upon a continued favorable Internal Revenue Service ruling and such favorable ruling is revoked or not obtained.

Any refund or other return of contributions under subsection 10.2(a) must be made within one (1) year from the date the contribution was made and, any refund or return of contributions under subsections 10.2(b) must be made within one (1) year from the date of disallowance of tax qualification.

## **ARTICLE XI**

### **AMENDMENT AND TERMINATION**

**11.1 Trust Amendments.** This Agreement may be amended at any time, in whole or in part, by the Employer, or other designated agent(s) as set forth by the Employer in writing. No such amendment shall have the effect of diverting any portion of the Benefit Fund for purposes other than the funding of OPEB liabilities for which the amounts held in the Benefit Fund has been irrevocably designated for the exclusive benefit of the Participants. Furthermore, no amendment shall be made or approved by the Employer that adds to or increases the Trustee's duties or responsibilities without its prior written approval or consent.

**11.2 Termination of Trust.** This Agreement may be terminated at any time by the Employer, or other designated agent(s) as set forth by the Employer in writing, and subject to applicable termination provisions of the administrative service agreement with the Trustee or as otherwise required under applicable law. Upon such termination, the assets of the Benefit Fund shall

continue to be held in the Trust until the authorized Plan Administrator directs the Trustee to pay such amounts in accordance with Section 4.1 of the Trust, less any applicable reserving requirements as specified below. The assets of the General Fund shall continue to be held in the Trust until Employer directs the Trustee to pay such amounts in accordance with Section 4.2 of the Trust, less any applicable reserving requirements as specified below. In making such payments, the Trustee may reserve from the assets in the Trust such amount as it shall reasonably deem necessary to provide for any sums chargeable against the Trust for which the Trustee may be liable, or for payment of expenses in connection with the settlement of its accounts and the termination of this Agreement as may be mutually agreed in writing by the parties.

**ARTICLE XII**  
**MISCELLANEOUS**

**12.1 Protection Against Creditors.** No amounts held in the Benefit Fund shall be subject in any way to alienation, sale, transfer, assignment, pledge, attachment, garnishment, execution or encumbrance of any kind on account of creditors of Employer, and any attempt to accomplish the same shall be void. All assets held in the Benefit Fund are held in trust irrevocably for the sole benefit of the eligible beneficiaries of each Plan funded by the Benefit Fund, and neither this Trust nor Employer has any equitable or reversionary interest in the Benefit Fund or the assets held in the Benefit Fund. Employer is not a beneficiary of the portion of the Trust which relates to the Benefit Fund. None of the benefits, payments, proceeds or claims of any eligible beneficiary of a Plan shall be subject to any creditors and, in particular, the same shall not be subject to attachment or garnishment or other legal process by any creditor, nor shall any such beneficiary have the right to alienate, anticipate, commute, pledge, encumber or assign any of the benefits or payments or proceeds which such beneficiary may expect to receive, contingently or otherwise, under this Trust or as otherwise required under applicable law.

**12.2 Employment Not Affected.** The terms of employment of any employee of Employer shall not be affected in any way by the Trust nor shall this Trust be construed in any way so as to guarantee or extend the employment of any employee of Employer.

**12.3 Construction of Trust.** This Trust shall be construed and enforced according to the laws of the state of California, including applicable provisions of the California Government Code, and in accordance with applicable provisions of the Code. To the extent the terms of the Trust are in conflict with the provisions of any other agreement between the parties, the terms of the Trust shall control.

**12.4 Internal Revenue Service Determination.** The Trustee may submit this Agreement to the Internal Revenue Service for a determination of its status as a tax exempt trust under Section 115 of the Code.

**12.5 Severable Provisions.** If any provision of this Trust shall be held illegal or invalid for any reason, such determination shall not affect the remaining provisions of the Trust.

**12.6 Headings.** The headings of this Trust are for convenience only and are not substantive terms of the Trust.

**12.7 Singular and Plural.** Whenever the singular of any term is used in this Agreement, it shall refer to the plural of such as appropriate under the circumstances.

**12.8 Notices.** Notices to any party under this Agreement shall be provided to such persons and at such addresses as are specified in the Administrative Services Agreement between Employer and the Trustee.

**12.9 Arbitration of Disputes.** This Agreement contains a pre-dispute arbitration clause and the parties agree as follows:

- a) All parties to this Agreement are giving up the right to sue each other in court, including the right to a trial by jury, except as provided by the rules of the arbitration forum in which a claim is filed.
- b) Arbitration awards are generally final and binding; a party's ability to have a court reverse or modify an arbitration award is very limited.
- c) The ability of the parties to obtain documents, witness statements and other discovery is generally more limited in arbitration than in court proceedings.
- d) The arbitrators do not have to explain the reason(s) for their award.
- e) The panel of arbitrators will typically include a minority of arbitrators who were or are affiliated with the securities industry.
- f) The rules of some arbitration forums may impose time limits for bringing a claim in arbitration. In some cases, a claim that is ineligible for arbitration may be brought in court.
- g) The rules of the arbitration forum in which the claim is filed, and any amendments thereto, shall be incorporated into this Agreement.

No person shall bring a putative or certified class action to arbitration, nor seek to enforce any pre-dispute arbitration agreement against any person who has initiated in court a putative class action; or who is a member of a putative class action who has not opted out of the class with respect to any claims encompassed by the putative class action until: (i) the class certification is denied; or (ii) the class is decertified; or (iii) the customer is excluded from the class by the court. Such forbearance to enforce an agreement to arbitrate shall not constitute a waiver of any rights under this Agreement except to the extent stated herein.

With respect to controversies or disputes which may arise between each party (including any affiliates, as well as the Investment Manager, as a third party beneficiary of this Agreement, having the right to enforce any of the parties' obligations herein) under this Agreement concerning matters involving alleged violations of the Advisers Act or applicable state investment advisory laws, it is understood that the Securities and Exchange Commission and various state securities regulatory agencies believe that an agreement to submit disputes to arbitration does not constitute a waiver of any rights provided under the Investment Advisers Act or applicable state investment advisory laws, including the right to choose a forum, whether by arbitration or adjudication, in which to seek the resolution of disputes.

**Arbitration Provision:**

Notwithstanding the preceding paragraph, all parties agree that any and all disputes that may arise between each party (including any affiliates, as well as the Investment Manager, as a third-party beneficiary of this Agreement with rights to enforce any of the parties' obligations herein) concerning any transaction or the construction, performance or breach of this Agreement or any other agreement between the parties, whether entered into prior to, on, or subsequent to the date of this Agreement, shall first be addressed by good faith negotiations between each party. In the event either party determines that they are not able to resolve the dispute through negotiation, then the dispute shall be determined by arbitration conducted before, and only before, an arbitration panel set up by the American Arbitration Association ("AAA") in accordance with their arbitration procedures. The parties shall attempt to agree upon one arbitrator to hear the matter. If the parties are unable to so agree, each party shall appoint one arbitrator and the two arbitrators so appointed shall in turn choose a third arbitrator. If the arbitrators chosen by the parties cannot agree on the choice of a third arbitrator within a period of 30 days after their nomination, then the third arbitrator shall be appointed by the President of the AAA. Either party may initiate arbitration by filing a written claim with the AAA. Any arbitration under this Agreement shall be conducted pursuant to the Federal Arbitration Act and the Laws of the State of California.

Any arbitration brought under this section shall be before a single arbitrator in Sacramento County, California.

**12.10 Binding Effect of Adoption Agreement.** This Agreement shall be binding upon Trustee, Employer and the Plan Administrator, as applicable, upon execution and delivery by the Board of Authority to Trustee of a duly signed Adoption Agreement, together with copies of authorizing resolutions of Employer and its governing authority thereof.

## INVESTMENT POLICY STATEMENT

The purpose of this Investment Policy Statement is to establish a comprehensive strategy for the acceptance and accumulation of invested assets under the **Futuris Public Entity Investment Trust** (the "Trust"), which has been adopted for use by \_\_\_\_\_ (the "Employer") for, among other things, to assist the Employer in meeting applicable funding requirements for the payment of future retiree health and welfare obligations and other post-employment benefit obligations (generally referred to as "OPEB Liability"), but may also be used to fund other purposes related to excess funds of the Employer as allowable under applicable law.

This Investment Policy Statement shall be consistent with the governing law, including the Internal Revenue Code of 1986 as amended from time to time (the "Code"), applicable provisions of Governmental Accounting Standards Board Statement Nos. 43 and 45, California laws, including applicable provisions of the California Government Code.

## TRUST FUNDING STATEMENT

The purpose of the Trust is to provide a uniform method of investing contributions and earnings of all contributed amounts between funds deposited within the **Benefit Fund** or the **General Fund**, as those terms are defined within the Trust. The Trust shall be funded primarily by contributions made by the Employer, but may also include other contributions made by any Participant as determined necessary and appropriate under applicable circumstances and in compliance with underlying legal requirements. These contributions shall be remitted to the Trust on a discretionary basis, as determined by and through the direction of the Employer, or such delegated Trust.

## BOARD OF AUTHORITY

The Board of Authority (the "BOA") is directly responsible for the implementation and oversight of this Investment Policy Statement. This responsibility includes the selection and ongoing evaluation of investments and/or investment managers in accordance with applicable laws and regulations. However, these investment responsibilities may be delegated to an authorized third-party trustee. In this case, the BOA has appointed **Benefit Trust Company ("BTC")** as **Discretionary Trustee** and **Trust asset custodian**, who may further designate and delegate any corresponding **Investment Manager** responsibilities as set forth below. On behalf of the Trust, and as approved by the BOA, BTC shall administer the assets of the Trust in such a manner that the investments are:

- Prudent; in consideration of the stated purpose of the Trust, any underlying Plan and in accordance with California Government Code Sections 53600.3 and 53622, as applicable;
- Diversified; among a broad range of investment alternatives;
- Permitted; in accordance with the terms of the Trust, any applicable Plan document and in accordance with California Government Code Section 53601 and other applicable requirements;
- Selected; for the exclusive benefit of the Plan participants as it relates to the Benefit Fund, or as otherwise deemed appropriate for the purposes set forth by the Trust.

The above notwithstanding, the BOA retains the responsibility to oversee the management of the Trust, including BTC's, or any successor trustee's, requirement that investments and assets held within the Trust continually adhere to the requirements of California Government Code Section 53600.5, that specifies that trustee's primary role is to preserve capital, then maintain secondary responsibilities for investment liquidity and thirdly, to investment yield.

#### **DELEGATION OF INVESTMENT ADVISORY REQUIREMENTS AND INVESTMENT MANAGER SELECTION CRITERIA**

In compliance with applicable provisions of the Trust, the Trustee may delegate its responsibilities over the investment of Trust fund assets to a primary investment manager, who shall have the authority to invest, reinvest, sell and hold, through BTC or a qualified custodian as required by California Government Code Section 53608, all assets of the Benefit Fund and the General Fund in accordance with the guidelines established herein. In general, subject to further specification herein, the Investment Manager is given full discretion consistent with the investment objective of this portfolio. The asset allocation of the portfolio between fixed income and cash equivalents will vary according to the Investment Manager's recommendations.

The selection of an Investment Manager, as that term is described in the Trust, as well as any other investment managers it shall further select, shall be based on the following criteria:

- clearly defined investment management style;
- disciplined approach to investment selection and adherence to any stated sell discipline;
- long-term performance;
- risk-adjusted performance relative to managers with similar style;
- analysis of investment management expenses with an emphasis on investments with no-loads, no redemption charges, and no transactions fees; and
- ability to provide quality communication material, including periodic performance, investment holdings, and description of investment selection process.

The Investment Manager, or any delegated investment managers, may be terminated and replaced under the procedures established under Section 5.5 of the Trust.

## INVESTMENT OBJECTIVES

The Trust authorizes the use of a broad range of investment choices that have distinctly different risk and return characteristics, with the proviso that all investments must continue to adhere to the underlying requirements of California Government Code Section 53600.5 and, in particular, its emphasis on preservation of capital. More specifically, preservation and protection of the Trust's capital is the guiding requirement of the Investment Manager, or managers that will manage each portfolio to meet the guidelines stated in the California Government Code 53600 and 53601, but that may also have application of Section 53622 as it pertains to the investment of Benefit Fund assets.

To that end, the primary investment objective for all Trust investments is:

### Safety of Principal

The safety and risk associated with an investment refers to the potential loss of principal, interest, or a combination of these amounts. The Trust only operates in those investments that are considered very safe.

### Preservation of Purchasing Power

Asset growth, exclusive of contributions and withdrawals, should exceed the rate of inflation in order to preserve the purchasing power of the Trust's assets.

The secondary, but also important investment objective is:

### Growth of Capital

- A. Asset growth, exclusive of contributions and withdrawals, should also exceed the return of the Local Agency Investment Fund (LAIF) plus fees on a consistent basis. If the investment policies of LAIF should change, this objective will be re-evaluated.
- B. Asset growth, exclusive of contributions and withdrawals, should provide a rate of return competitive with that of an index comprised of the Lehman 1-3 Year Government/Corporate Index and 90 Day Treasury Bills, while incurring similar or less risk than such index. Growth of capital shall be expected to be somewhat less than that of a more aggressively structured discretionary fixed income portfolio over time.
- C. Cash flow and asset/liability matching information will be made readily available to the Investment Manager. Adequate liquid cash should be maintained by the Trust so that a forced sale of longer-term securities at a loss is unnecessary to cover short-term cash needs. The overall program shall be designed and managed with a degree of professionalism worthy of the public trust. Losses are acceptable on a sale before maturity and should be taken only if the reinvested proceeds will earn a total return greater than would have been by the old investment considering any capital loss or foregone interest on the original investment. While active management of the account will be utilized to attain the highest returns with the least amount of risk the Investment

Manager should only buy securities that could be held to maturity without loss to the Trust.

This having been said, the types and alternatives on investments that may be emphasized for asset allocation purposes related to investment of Trust assets may be different, depending on whether the assets are invested in the Benefit Fund (which contains contributed assets that are irrevocably committed for the funding and payment of OPEB Liability to eligible participants of any underlying health plan) or whether they are held the General Fund (which contains contributed assets that have been deposited into the Trust for investment purposes to be used by the Employer for any lawful governmental purpose of the Employer).

In general, assets held in the Benefit Fund will be for the primary purpose of meeting present and future OPEB Liability obligations and may be invested in accordance with California Government Code Sections 53600 through 53622 that subject to applicable legal requirements may provide greater latitude to increase purchasing power and capital growth potential if deemed prudent to do so.

However, with respect to the General Fund, specific adherence must be given to California Government Code Section 53601, and any other provision of the California Government Code and/or the California Education Code which restrict the manner in which such funds shall be invested. In accordance with these investment objectives, assets in the General Fund portfolio will be managed in a more conservative manner.

The above objectives are expected to be achieved over a minimum time horizon of 3-5 Years. Given the cyclical nature of the financial markets, the success of the portfolio manager in achieving these goals should generally not be judged in any shorter time period.

Through the delegated responsibilities of the Investment Manager and, to the extent necessary, the Trustee, the BOA determines the target return that is applicable for this Trust as it relates to those assets held in the Benefit Fund versus those held in the General Fund. The target return may be modified from time to time by amending the Appendix. Related to the investments and the holding of investments themselves, the Trustee may cause any or all of the assets of the Trust to be commingled, to the extent such investment and the issuance thereof would be exempt under the provisions of Sections 2(a)(36), 3(b)(1) or 3(c)(11) of the Investment Company Act of 1940 or Section 3(a)(2) of the Securities Act of 1933, with the assets of trusts created by others, causing such money to be invested as part of a common and/or collective trust fund.

Moreover, for any investments received after any trading deadline, or to the extent the Employer fails to provide proper instructions for the allocation of any amounts to be contributed to either the Benefit Fund or the General Fund, or such instructions are incomplete or incorrect in a manner that prevents the contributed amounts from being invested in the desired manner, the Trustee, or its designated sub-custodian, if applicable, shall deposit such amounts in the General Fund, to be held in a Short-Term Investment Fund (the "Default Fund"), or such other similar account comprised of cash, bank notes, corporate notes, government bills and other various short-term debt instruments as dictated herein or that are deemed appropriate by the Trustee and/or the Investment Manager until such time as the Employer's investment direction can be properly completed. If, after a period of thirty (30) days and after reasonable attempts are made

by the Trustee to ascertain from the Employer the correct Accounts to receive such contributions, the Trustee shall return all such previously-deposited amounts to the Employer, including allocated earnings therein.

**PERIODIC ANALYSIS AND EVALUATION**

The BOA and/or its designees shall periodically review investment performance reports that analyze the performance of the managers selected in each market sector that take into consideration:

- adherence to applicable legal constraints on capital preservation and investment prudence;
- consistency and adherence to stated investment management style and discipline;
- risk adjusted performance relative to managers with similar style;
- long-term investment performance relative to appropriate benchmarks; and
- changes in investment personnel managing the portfolio

**ETHICS AND CONFLICT OF INTEREST**

Officers, employees, and agents involved in the investment process shall refrain from personal business activities that could conflict with proper execution of the investment program, or which could impair their ability to make impartial decisions. Officers, employees, and agents involved in the investment process shall abide by the California Government Code Section 1090 et seq. and the California Political Reform Act (California Government Code Section 81000 et seq.)

**AMENDMENT**

The BOA shall have the right to amend this Policy, in whole or in part, at any time and from time to time.

**ADOPTION**

The BOA hereby adopts the provisions of this Investment Policy Statement as of this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
(Representative of the Board of Authority)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Representative of the Board of Authority)

\_\_\_\_\_  
(Date)

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(Representative of the Board of Authority)

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(Date)

**APPENDIX A: Target Return**

In accordance with the Investment Policy Statement for the **Futuris Public Entity Investment Trust** (the "Trust"), the Benefit Fund shall seek to achieve a long-range target net return of \_\_\_\_\_%.

As stated in the Investment Policy Statement, the investment options will be established to meet the diverse needs of the Trust and its applicable purposes. Applicable provisions and requirements of, in particular, the California Government Code (specifically provisions under Sections 53600 through 53622, as applicable) shall be examined before selecting the investment options.

The Board of Authority may, from time to time, discuss with BTC the need to change investment options as conditions or characteristics of the Trust, or applicable Fund requirements change. In the event a change is made, a new Appendix will be executed to reflect the change.

**Fee Schedule and Service Addendum**

Trustee, Custodial and Communication Services – Benefit Trust Company shall be compensated for assumption of fiduciary responsibility, custodial services and for performing communication and other non-investment related services, as specified in the Service Agreement, as follows:

Base Annual Fee	\$750
Asset Based Trustee Fee	0.20% (20 basis points) per annum on the value of the assets held in trust. Asset based fees will be assessed monthly. At the discretion of the Board of Authority, fees will be billed or collected from the Trust.
Relationship Based Discount	Based upon the value of the accounts held in the Trust, a reduction in the asset based fee will be available to reduce the trustee fee and applied as follows (with such fee assessments to beginning in the immediately following month in which such asset volumes are accumulated):

<u>Total Assets in Trust</u>	<u>Asset Based Fee</u>
>\$10,000,000	0.18% (18 basis points)
>\$25,000,000	0.16% (16 basis points)
>\$50,000,000	0.12% (12 basis points)
>\$75,000,000	As negotiated, but in no event greater than 0.12%

Additional trustee and/or custodial services may be provided as further specified below:

<u>Services</u>	<u>Applicable Fee</u>
N/A	

<u>Investment Management Fee:</u>	0.175% (17.5 basis points) per annum on the value of the assets held in trust. Asset based fees will be assessed monthly. At the discretion of the Board of Authority, fees will be billed or collected from the trust.
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Common and/or Collective Funds:

0.03% (3 basis points) per annum on the value of the assets held in trust to cover the costs of unitizing and administering the funds, plus a variable accounting fee not expected to exceed 0.01% (1 basis point) per annum on the value of the assets held in trust.

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