

# Post-Employment Benefits Trust Agreement

By and between



**PFM Asset Management LLC**

as Trust Administrator

and



as Trustee

Effective July 1, 2015

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## **POST-EMPLOYMENT BENEFITS TRUST AGREEMENT**

This Post-Employment Benefits Trust Agreement (“Agreement”) is made effective July 1, 2015, between WELLS FARGO BANK, N.A. (together with any successor trustee hereunder, the “Trustee”) and PFM ASSET MANAGEMENT LLC (together with any successor trust administrator hereunder, the “Trust Administrator”);

WHEREAS, the Trust Administrator wishes to establish a means by which public-agency employers may set aside moneys to fund the employers’ obligations to provide eligible persons (“Beneficiaries”) with (i) pension benefits and (ii) retiree-health benefits and other post-employment benefits other than pension benefits (“OPEB”);

WHEREAS, to accomplish these objectives, the Trustee wishes to establish a multiple-employer trust (“Trust”) for the exclusive purpose of providing amounts to fund participating employers’ obligations to provide OPEB or pension benefits, or both, with the intent that (i) the Trust’s income will be exempt from federal and state income tax (under Internal Revenue Code Section 115 with respect to federal income tax), (ii) contributions and transfers to the Trust will not be taxable to Beneficiaries, (iii) Trust assets are intended to qualify as “plan assets” to the maximum extent permitted under Governmental Accounting Standards Board statements applicable to OPEB and pension benefits, and (iv) all assets of the Trust are and will be irrevocably dedicated to, and will be used for the exclusive purposes of, providing for payments of OPEB and pension obligations as described in this Agreement, and paying the reasonable expenses of administering the Trust, and will not be available to any participating employer’s creditors;

WHEREAS, the Trust Administrator and Trustee are unaffiliated entities;

WHEREAS, the Trustee is willing to accept the Trust;

WHEREAS, the Trust is an entity separate from the participating employers for the exclusive benefit of the Beneficiaries and not of the employers;

WHEREAS, the indicia of ownership of Trust assets will be held by the Trustee at all times and the Trust assets will not be considered participating employers’ funds or assets for any purpose;

WHEREAS, PFM Asset Management LLC is willing to serve as the Trust Administrator of the Trust with the rights and duties of the Trust Administrator provided in this Agreement;

WHEREAS, the Trust Administrator will have exclusive authority and responsibility for the management, administration, and investment of Trust assets in its sole judgment in accordance with this Agreement, without any requirement of consent by any participating employer or, except as expressly provided herein, of notice to any participating employer;

WHEREAS, every Employer is a state, political subdivision of a state, or other entity whose income is excludible from gross income under Section 115 of the Code; and

WHEREAS, the Trustee is a national banking association and a corporate trustee, with all requisite powers and capabilities to act as the Trustee and administer the Trust as set forth in this Agreement.



NOW, THEREFORE, the Trust Administrator and the Trustee agree as follows:

## **ARTICLE 1**

### **DEFINITIONS**

- 1.1 "Account" is defined in Section 4.6.
- 1.2 "Adoption Agreement" means the written instrument by which the Employer adopts and participates in the Trust in accordance with this Agreement, and by which the Employer makes certain elections relating to its participation in the Trust.
- 1.3 "Agreement" means this Post-Employment Benefits Trust Agreement between the Trustee and the Trust Administrator.
- 1.4 "Beneficiary" means a person who is entitled to post-employment benefits under the Employer's OPEB Plan or Pension Plan.
- 1.5 "Code" means the Internal Revenue Code of 1986, as amended.
- 1.6 "Employer" means each public agency that executes the Adoption Agreement, thereby becoming a participating agency in the Trust. Such agency must be a state, a political subdivision of a state, or an entity whose income is excludible from gross income under Section 115 of the Code.
- 1.7 "Investment Policy Statement" means the separate statement of policy for investing the assets of each Employer's Account, a copy of which is attached to the Employer's Adoption Agreement and which is satisfactory to the Employer.
- 1.8 "Omnibus Account" is defined in Section 4.6.
- 1.9 "OPEB" means post-employment health and welfare benefits (other than pensions) provided by the Employer under the OPEB Plan to Beneficiaries, including medical, dental, vision, life insurance, long-term care and other similar benefits.
- 1.10 "OPEB Account" is defined in Section 4.6.
- 1.11 "OPEB Obligation" means the Employer's obligation to provide OPEB under the Employer's OPEB Plan, including the direct costs of the OPEB and the expenses associated with providing the OPEB.
- 1.12 "OPEB Plan" means the policies, collective bargaining agreement, or other arrangements under which a Beneficiary is entitled to receive OPEB, but only if the policy, agreement, or other arrangement is specified by the Employer in the Adoption Agreement.
- 1.13 "Pension Account" is defined in Section 4.6.
- 1.14 "Pension Obligation" means the Employer's obligation to contribute to the qualified trust of the Employer's Pension Plan and to pay the expenses associated with providing



benefits under the Pension Plan. For this purpose, "qualified trust" means a trust that is qualified under Section 401(a) of the Code and that funds retirement benefits provided under the Pension Plan. A qualified trust is separate from this Trust and will not be considered part of this Trust for any purpose.

- 1.15 "Pension Plan" means one or more defined-benefit plans, each of which is (i) qualified under Section 401(a) of the Code, (ii) sponsored by the Employer in order to provide retirement benefits to Beneficiaries, including but not limited to a stand-alone plan maintained solely by the Employer or a multiple-employer or multiemployer plan in which the Employer participates along with one or more other employers, (iii) partly or wholly funded by the Employer's contributions, and (iv) specified by the Employer in the Adoption Agreement.
- 1.16 "Plan Administrator" means the person(s) or entity appointed by the Employer with the plenary authority over the Account. The Plan Administrator may delegate all or any part of its authority to any person(s) or entity. The Employer must, at the time and in the manner specified by the Trustee and the Trust Administrator, certify in writing to the Trustee and the Trust Administrator the names and specimen signatures of the Plan Administrator and its delegates; no appointment or delegation under this Section 1.16 will be effective without that certification. If no person or entity is appointed as Plan Administrator, the Employer will be the Plan Administrator.
- 1.17 "Trust" means the Post-Employment Benefits Trust established by this Agreement.
- 1.18 "Trust Administrative Services Agreement" means the agreement in the form attached to each Adoption Agreement and executed between the Employer and the Trust Administrator which authorizes the Trust Administrator to administer the Employer's Account.
- 1.19 "Trust Administrator" means PFM Asset Management LLC or any successor thereof designated by the Employers under Article 12.
- 1.20 "Trustee" means Wells Fargo Bank, N.A., or any successor trustee designated by the Trust Administrator in accordance with Article 13.

## **ARTICLE 2**

### **ESTABLISHMENT AND PURPOSE**

The Trust is a multiple-employer trust arrangement established and maintained for the sole purposes of holding the assets used to fund Employers' OPEB Obligations and Pension Obligations, and for paying each Employer's reasonable, allocable expenses of administering the Trust. As such, the Trust is divided into separate Accounts to hold the assets of each participating Employer. Consistent with its purpose, the Trust is intended to qualify as a tax-exempt trust performing an essential governmental function within the meaning of Section 115 of the Code. Each participating Employer retains an interest only in the assets held in that Employer's Account as set forth in Section 4.6.



## ARTICLE 3

### PARTICIPATION

- 3.1 Eligibility. Only public agencies may become participating Employers in the Trust. For this purpose, a public agency means a state, political subdivision of a state, or an entity whose income is excludible from gross income under Section 115 of the Code.
- 3.2 Commencement of Participation. A public agency may become a participating Employer in the Trust by furnishing the Trust Administrator with the following: (i) an executed Adoption Agreement, (ii) an executed Trust Administrative Services Agreement, (iii) a certified copy of a resolution, minutes, or other documentary evidence of the Employer's governing body approving the adoption of the Agreement, and (iv) any other documentation as the Trust Administrator may require. The public agency will become a participating Employer upon the Trust Administrator's written acceptance of the documents described in the preceding sentence.
- 3.3 Termination of Participation.
- (a) An Employer may elect in writing to withdraw from the Trust by filing such election with the Trust Administrator and the Trustee at least 30 days before the effective date of the withdrawal. As soon as administratively practicable after the effective date, the Trustee will segregate the withdrawing Employer's Account and transfer the assets in such Account to a trust established by agreement between the Employer and a successor trustee, but only if the Employer certifies in writing to the Trust Administrator that the trust satisfies the requirements of Section 115 of the Code.
  - (b) In the event the Trust Administrator contemplates an assignment of this Agreement in connection with a change of control or otherwise (collectively, an "assignment"), the Trust Administrator will provide each Employer with written notice at least 60 days before the effective date of such assignment. Upon receipt of such notice, each Employer may elect to terminate participation and withdraw from the Trust at any point prior to the effective date of the assignment as set forth in the notice. If an Employer does not provide notice of its desire to terminate within the 60-day notice period, the Employer's consent to the contemplated assignment will be implied.
  - (c) If the Employer has an Omnibus Account and both its Pension Obligation and OPEB Obligation have terminated, Section 14.3(b) will apply. If the Employer has an OPEB Account and its OPEB Obligation has terminated, Section 14.3(c) will apply. If the Employer has a Pension Account and its Pension Obligation has terminated, Section 14.3(d) will apply. An Employer's Pension Obligation or OPEB Obligation will be deemed terminated for these purposes upon the Trust Administrator's receipt of a certified copy of a resolution, minutes, or other documentary evidence of the Employer's governing body approving of the respective termination.
  - (d) Each Employer agrees to immediately notify the Trust Administrator upon receipt of a determination from the Internal Revenue Service that has the effect of rendering the Employer's Account ineligible for the tax exemption under Section



115 of the Code, such as any determination that the Employer is not a public agency. In such a case, as soon as administratively practicable after the Trust Administrator notifies the Trustee of the Internal Revenue Service's determination, the Trustee will segregate and place the Employer's Omnibus Account, OPEB Account, and Pension Account (as applicable) in a separate trust established for the exclusive purpose of funding the Employer's OPEB and Pension Obligation, OPEB Obligation only, or Pension Obligation only, respectively.

## **ARTICLE 4**

### **GENERAL TRUST PROVISIONS**

- 4.1 Irrevocable Trust. The Trust is irrevocable.
- 4.2 No Diversion. The principal of the Trust, together with any earnings thereon, will be held in trust by the Trustee separate and apart from any assets of the Employer. Except as provided in Sections 14.3 and 14.4, all assets in each Account and all income thereon are irrevocably dedicated to, and will be used for the exclusive purpose of, making payments of OPEB Obligations or Pension Obligations, as applicable, under the OPEB Plan or Pension Plan for which the Account was established and for paying the reasonable expenses of the Employer's participation in the Trust. At no time will the assets in any Employer's Account be used for, or diverted to, any other purposes, including but not limited to payment of any other Employer's OPEB Obligations or Pension Obligations.
- 4.3 Title to Trust Assets. The Trustee has exclusive right, title, and interest in and to the assets of the Trust.
- 4.4 Spendthrift Provision. Assets held in the Trust may not be used to satisfy claims of creditors of any Employer. No Beneficiary will be deemed a third-party beneficiary of this Agreement, nor will any Beneficiary have the right to compel any payment of any amount from the assets of the Trust or to enforce any duties of any party to or other entity referred to in this Agreement. Beneficiaries will not have any preferred claim, lien on, or security interest in, or any beneficial interest in any particular assets of the Trust. Beneficiaries will be entitled to receive payments of assets of the Trust only when, as, and if determined by the Employer in accordance with this Agreement. Except to the extent allowed by law, the Trust is not subject to attachment or garnishment or other legal process by any creditor of any such Beneficiary, nor will any Beneficiary have the right to alienate, anticipate, commute, pledge, encumber, or assign any Trust assets.
- 4.5 Account Assets. Each Employer may at any time make (or cause to be made) contributions or transfers of cash or other assets acceptable to the Trustee to the Trust from any source. Neither the Trustee nor any Beneficiary or any party to or any other entity referred to in this Agreement will have any right to compel such contributions or transfers or any duty to determine whether any such contributions or transfers comply with the Employer's OPEB Plan or Pension Plan, as applicable. In addition, neither the Trustee nor the Trust Administrator is responsible for separately accounting of any contributions or transfers to the Trust or for determining the source of these amounts.



4.6 Separate Accounts.

- (a) Upon the effective date of an Employer's participation in the Trust under Article 3, the Trustee will establish a separate Account to which the Trustee will (i) credit all contributions or transfers from the Employer to the Trust and any income and gains attributable to those amounts, and (ii) debit all distributions, transfers from the Trust, and any losses and expenses attributable to those amounts. The Employer will have an interest only in the assets in the Employer's Account, and those assets will be available only to pay the Employer's OPEB Obligations and Pension Obligations and will not be available to pay any other Employer's obligations.
- (b) At the direction of the Trust Administrator, the Trustee may pool or commingle for investment purposes assets in the Employer's Account with other assets of the Trust and may invest all or a portion of those assets in any separate fund or account (including common investment pools or trusts) established under this Agreement or other investments permitted under this Agreement as set forth in Article 7. If any of the Employer's Account assets are pooled or commingled for investment purposes with other assets of the Trust or invested with other assets of the Trust in a separate fund or account, the Employer's Account will have an undivided beneficial interest in the Trust itself or in the particular investment funds, as the case may be, and these ownership interests will be represented by units or shares that the Trustee will hold in the Employer's Account.
- (c) Each Employer's Account contains up to three types of subaccounts (each of which may contain one or more subaccounts): an "Omnibus Account," "Pension Account," and "OPEB Account". Assets under the Omnibus Account are available to fund the Employer's Pension Obligations or OPEB Obligations and allocable expenses of participating in the Trust. Assets under the Employer's Pension Account are available only to fund the Employer's Pension Obligation and allocable expenses of participating in the Trust. Assets under the Employer's OPEB Account are available only to fund the Employer's OPEB Obligation and allocable expenses of participating in the Trust. Contributions or transfers to an Employer's Account will be allocated to the subaccounts as follows:
  - (1) Contributions and transfers received by the Trust on the Employer's behalf will be allocated to the Omnibus Account, Pension Account or OPEB Account, or any combination of these subaccounts, as directed by the Plan Administrator.
  - (2) Any contributions or transfers for which the Plan Administrator does not provide allocation directions will be held in the Omnibus Account. The Plan Administrator may at any time direct the allocation of amounts in the Omnibus Account to either the Pension Account or the OPEB Account.
  - (3) Once allocated to the Pension Account or the OPEB Account, amounts under the Trust may not subsequently be transferred to any other subaccount. Notwithstanding the preceding sentence, at the Plan Administrator's direction, the Trustee will reverse any allocation to the Pension Account or OPEB Account and deposit the funds (together with allocable earnings and losses) in one or both of the other two



subaccounts, but only if the Plan Administrator notifies the Trustee in writing within 30 days after the allocation that the allocation was due to mistake of fact and provides any other documentation required by the Trustee in its sole discretion.

## **ARTICLE 5**

### **TRUST ADMINISTRATOR**

- 5.1 Powers and Duties of the Trust Administrator. The Trust Administrator has sole discretion and authority to do any of the following:
- (a) At the direction of the Plan Administrator, instruct the Trustee to make distributions from the Employer's Account, including from any subaccount under the Account;
  - (b) Direct the Trustee to pay the fees of the Trust Administrator;
  - (c) Direct the Trustee as to the investment and management of Trust assets; and
  - (d) Such other acts as may be agreed to by the Employer and the Trust Administrator in the Trust Administrative Services Agreement or are necessary or appropriate to effect the intent of this Agreement.
- 5.2 Reliance. In the performance of its duties hereunder, the Trust Administrator is entitled to rely on, and is under no obligation to investigate instructions or data received from the Plan Administrator, including whether the amount of contributions or transfers made to the Trust by the Employer comply with the Employer's OPEB Plan or Pension Plan. Accordingly, the Trust Administrator will not be liable for action or inaction that is caused directly or indirectly by erroneous or late instructions or data furnished by the Plan Administrator.
- 5.3 Annual Audit. The Trust Administrator shall appoint a responsible accounting firm to conduct an annual audit of the Trust at the sole expense of the Employers. The results of such audit will be provided to the Trust Administrator, the Trustee, and each of the Employers. The Employer will be solely responsible for any expenses associated with any separate audit of the Employer's Account or the Employer's participation in the Trust, and no Trust assets outside the Employer's Account may be used to pay any part of those expenses.
- 5.4 Trust Administrator not Custodian of Trust Assets. The Trustee shall have sole custody of cash, securities and other assets of the Trust. The Trust Administrator is authorized to give instructions to the Trustee as to deliveries of securities and payments of cash for the account of the Trust. The Trust Administrator shall not take possession of or act as custodian for the cash, securities or other assets of the Trust and shall have no responsibility in connection therewith.
- 5.5 Furnishing of Administrative Services, Office Space, Equipment and Personnel. The Trust Administrator shall furnish at its own expense all necessary administrative services, office space, equipment, clerical personnel, telephone and other



communication facilities, and executive and supervisory personnel required to perform its duties under this Agreement.

- 5.6 Registered Investment Advisor. The Trust Administrator hereby represents that it is a registered investment advisor under the Investment Advisers Act of 1940. The Trust Administrator shall immediately notify every Employer and the Trustee if at any time during the term of this Agreement it is not so registered or if its registration is suspended. The Trust Administrator agrees to perform its duties and responsibilities under this Agreement with reasonable care as provided by law. The federal securities laws impose liabilities under certain circumstances on persons who are required to act in good faith. Nothing in this Agreement shall in any way constitute a waiver or limitation of any rights which the Employers, the Trust Administrator, or the Trustee may have under any federal securities laws.
- 5.7 Investment Advice to Other Clients. The Employers and the Trustee understand that the Trust Administrator performs investment advisory services for various other clients which may include investment companies, commingled trust funds and individual portfolios. The Employers and the Trustee agree that the Trust Administrator may give advice or take action with respect to any of its other clients which may differ from advice given or the timing or nature of action taken with respect to the Trust, so long as it is the policy and practice of the Trust Administrator, to the extent practical, to allocate investment opportunities to the Trust over a period of time on a fair and equitable basis relative to other clients. The Trust Administrator will not have any obligation to purchase, sell or exchange any security for the Trust solely by reason of the fact that the Trust Administrator, its principals, affiliates, or employees may purchase, sell or exchange such security for the account of any other client or for themselves.
- 5.8 Notice of Regulatory Action. The Trust Administrator shall promptly give notice to each Employer and the Trustee if the Trust Administrator has received written notice of the filing against it or any professional of the Trust Administrator who has performed any service with respect to the Trust in the 24 preceding months, of any complaints or disciplinary actions by the Securities and Exchange Commission or any other regulatory agency or department of the United States, any registered securities exchange, the FINRA, any Attorney General, or any regulatory agency or authority of any State.
- 5.9 Trust Administrator Separate from Employer and Trustee. The Trust Administrator, its employees, officers and representatives, shall not be deemed to be employees, agents, partners, servants, and/or joint ventures of any of the Employers or the Trustee by virtue of this Agreement or any actions or services rendered under this Agreement.
- 5.10 Recordkeeping. The Trust Administrator shall maintain appropriate records of all its activities hereunder.
- 5.11 Disclosure Statement. The Trust Administrator warrants that at least five business days before the execution of this Agreement, it has delivered to the Trustee the Trust Administrator's current Securities and Exchange Commission Form ADV, Part II. The Trustee hereby acknowledges receipt of the disclosure statement at least five business days before the execution of this Agreement.



- 5.12 Survival of Agreement and Assignment. The provisions of this Agreement will be binding on the Trust Administrator and its successors and assigns. The Trust Administrator may not, however, assign this Agreement without the consent of the Employers, which consent will be obtained through the process described in Section 3.3(b).

## **ARTICLE 6**

### **TRUSTEE**

- 6.1 Powers and Duties of the Trustee. To the extent directed by the Trust Administrator, the Trustee is authorized and empowered to do the following:
- (a) Invest and reinvest Trust assets, together with the income therefrom.
  - (b) Establish and maintain Accounts to which the Trustee will (i) credit all contributions or transfers from the Employer to the Trust and any income and gains attributable to those amounts, and (ii) debit all distributions, transfers from the Trust, and any losses and expenses attributable to those amounts.
  - (c) Maintain accounts with, execute transactions through, and lend stocks, bonds or other securities on an adequately secured basis to, any brokerage firm.
  - (d) Perform accounting and maintain records of each Employer's Account and reconciling such Account with the Trust.
  - (e) Vote upon or tender any stocks, bonds or other securities and to give general or special proxies or powers of attorney with or without power of substitution; to exercise any conversion privileges, subscription rights or other options of which the Trustee receives actual notice, and to make any payments incidental thereto; to consent to or otherwise participate in corporate reorganizations or other changes affecting corporate securities and to delegate discretionary powers and to pay any assessments or charges in connection therewith; and generally to exercise any of the powers of an owner with respect to stocks, bonds, securities or other property held in Trust.
  - (f) Deposit or invest all or any part of the assets of the Trust in savings accounts or certificates of deposit or other deposits in a bank or savings and loan association or other depository institution, including the Trustee or any of its affiliates; provided that, with respect to such deposits with the Trustee or an affiliate, the deposits bear a reasonable rate of interest.
  - (g) Invest and reinvest any Trust assets in one or more collective investment funds.
  - (h) Hold, manage, improve, repair and control all investment property, real or personal, forming part of the Trust; to sell, convey, transfer, exchange, partition, pledge, encumber, lease for any term, even extending beyond the duration of this Trust, and otherwise dispose of the same from time to time.
  - (i) Take such actions as may be necessary or desirable to protect the Trust from loss due to the default on mortgages held in the Trust including the appointment



of agents or trustees in such other jurisdictions as may seem desirable, to transfer property to such agents or trustees, to grant to such agents such powers as are necessary or desirable to protect the Trust, to direct such agent or trustee, or to delegate such power to direct, and to remove such agent or trustee.

- (j) Settle, compromise or abandon all claims and demands in favor of or against the Trust.
- (k) Borrow money from any source and to execute promissory notes, mortgages, or other obligations and to pledge or mortgage any Trust assets as security.
- (l) Designate and engage the services of such agents, representatives, advisers, counsel and accountants, any of whom may be an affiliate of the Trustee or a person who renders services to such an affiliate and, as part of its expenses under this Agreement, to pay their reasonable expenses and compensation.
- (m) Hold in cash, without liability for interest, such portion of the Trust assets as is pending investment, or payment of expenses, or distribution.
- (n) Make, execute and deliver, as the Trustee, any and all deeds, leases, mortgages, conveyances, waivers, releases or other instruments in writing necessary or appropriate for the accomplishment of any powers listed in this Agreement.
- (o) Register securities, or any other property, in its name or in the name of any nominee, including the name of any affiliate or the nominee name designated by any affiliate, with or without indication of the capacity in which property shall be held, or to hold securities in bearer form and to deposit any securities or other property in a depository or clearing corporation.
- (p) Pay or cause to be paid from the Trust any and all real or personal property taxes, income taxes or other taxes with respect to the Trust.
- (q) Enter into interest rate, currency, cash-flow, indexed (including indexed to equities) and other types of swaps and hedges designed to hedge payment, interest rate, currency, duration, spread or similar exposure related to any investment or program of investments of Trust assets or to manage asset/liability matching between investments and OPEB Obligations or Pension Obligations, or both, to be paid therefrom.
- (r) Exercise all of the further rights, powers, options and privileges granted, provided for, or vested in trustees generally under applicable state law so that the powers conferred upon the Trustee herein shall not be in limitation of any authority conferred by law or under this Agreement, but shall be in addition thereto; provided that such powers satisfy applicable state law requirements (if any).
- (s) Any other acts which the Trustee deems necessary or appropriate for the protection of the Trust.

## ARTICLE 7

### INVESTMENTS

- 7.1 Trustee. The Trustee shall hold and administer Trust assets without distinction between principal and income.
- 7.2 Trust Administrator. The Trust Administrator has exclusive authority and responsibility for the management and investment of Trust assets, and the Trustee is authorized and directed to comply with the written directions of the Trust Administrator concerning Trust assets. The Trust Administrator may, from time to time and in its sole discretion, allocate some or all of the cash in an Account at the end of each business day into a sweep investment fund managed by the Trust Administrator. Any amounts held in a sweep investment fund would typically be reallocated on the next business day. The Trust Administrator may not issue any such direction in violation of the terms of the Trust. The Trustee has no duty or authority to (i) review, question, approve or make inquiries as to any investment directions given pursuant to this Agreement, or (ii) determine whether investments directed by the Trust Administrator are in compliance with any applicable State laws.
- 7.3 Combining of Assets for Investment. As instructed by the Trust Administrator, the Trustee may commingle, for investment or administration purposes, the assets (or a portion of the assets) of the Trust in any group trust within the meaning of Section 401(a)(24) of the Code, but only if the commingled trust qualifies as tax exempt under Revenue Ruling 2011-1 and any subsequent relevant guidance from the Internal Revenue Service. In addition, at the Trust Administrator's direction, the Trustee may aggregate the balances of one or more Accounts within the Trust for investment or administrative purposes, in which case the Trustee will credit and debit each Account in accordance with Section 4.6.
- 7.4 Investment Direction. The Trust Administrator will direct the Trustee to invest the assets of each Employer's Account in accordance with the principles set forth in the Investment Policy Statement in any investments permitted under this Agreement.
- 7.5 Broker Executed Investments. Transactions in investments that require execution through a broker will be executed through such broker or brokers as the Trust Administrator will select. The indicia of ownership of Trust assets will be held by the Trustee at all times, and the Trustee shall serve as sole custodian of Trust assets.
- 7.6 Affiliated Broker/Dealers. Neither the Trustee nor any affiliate of the Trustee will act as broker dealer to execute transactions, including the purchase of securities directly distributed, underwritten or issued by an affiliate of the Trustee, or otherwise provide investment services with respect to the Trust; provided, however, that the Trustee (or its affiliate) may provide ancillary non-advisory investment services with respect to the Trust, including investment of Trust assets in money market or stable value funds distributed, underwritten or issued by the Trustee (or its affiliate) to the extent these investments are permitted under this Agreement. The Trustee and the Trust Administrator will disclose any services or relationships to each Employer before the Employer's commencement of participation in the Trust and at least annually thereafter, and any such services will be provided at standard commission rates, mark-ups or concessions.





- 7.7 Quarterly Reports. The Trust Administrator will provide to each Employer a quarterly analysis of the performance of the investments of each Account and statement of any changes in investments made in such quarter. The asset information for such analysis will be supplied to Trust Administrator by the Trustee. The report required by this Section 7.7 is separate from the reports required by Section 10.3.

## **ARTICLE 8**

### **PAYMENTS FROM TRUST**

- 8.1 Plan Administrator.
- (a) Each Employer's Plan Administrator has the exclusive authority and responsibility to determine the extent to which amounts will be paid from the Employer's Account. Neither the Trust Administrator nor the Trustee will make or authorize disbursements or transfers from any Employer's Account without the explicit written direction from the Employer's Plan Administrator.
  - (b) From time to time, the Plan Administrator will direct the Trustee in writing to disburse amounts from the Employer's Omnibus Account for any purpose permitted under Section 8.1(c) or (d).
  - (c) From time to time, the Plan Administrator will direct the Trustee in writing to disburse amounts from the Employer's OPEB Account for OPEB Obligations to (i) the Plan Administrator for subsequent distribution to or for the benefit of the Employer's Beneficiaries, (ii) any party providing services for the Employer's OPEB Plan, including but not limited to any insurer, third-party administrator, or other service provider, (iii) the Employer's Beneficiaries themselves directly, or (iii) the Employer as reimbursement for any OPEB Obligation amount paid or incurred by the Employer.
  - (d) From time to time, the Plan Administrator will direct the Trustee in writing to disburse amounts from the Employer's Pension Account to (i) the Pension Plan as contributions to the plan's qualified trust, (ii) the Plan Administrator, for subsequent payment of the Employer's Pension Obligation, (iii) any party providing services for the Employer's Pension Plan, including but not limited to any insurer, third-party administrator, or other service provider, or (iv) the Employer as reimbursement for any Pension Obligation amount paid or incurred by the Employer.
- 8.2 Trustee Reliance. Except as otherwise provided by law, the Trustee will be fully protected in making payments out of any Employer's Account at the direction of the Employer's Plan Administrator. The Trustee's sole obligation as to those disbursements shall be to observe the instructions of the Plan Administrator to the extent that the Account has assets to make disbursements as instructed by the Plan Administrator. Nothing in the Trust or any Plan shall constitute a guarantee that Trust assets will be sufficient to pay the Employer's OPEB Obligations or Pension Obligations.
- 8.3 Payments. The Trustee is authorized to disburse amounts from the Trust to pay the fees and expenses of administering the Trust as expressly authorized by this Agreement, or as instructed in writing by the Trust Administrator.

## **ARTICLE 9**

### **TAXES, EXPENSES AND COMPENSATION OF THE TRUSTEE AND TRUST**

#### **ADMINISTRATOR**

- 9.1 Payment of Fees. Subject to Section 4.2, each Employer's Account will be charged for allocable Trustee Fees, Trust Administration Fees, and any other fees specified in the Trust Administrative Service Agreement. To the extent permitted in the Trust Administrative Service Agreement and Adoption Agreement, the Employer may elect in the Adoption Agreement to instead pay such fees from the Employer's assets.
- 9.2 Trust Administration Fees. "Trust Administration Fees" means the fees of the applicable investment funds and the fees for all services of the Trust Administrator specified in the Trust Administrative Services Agreement. The Trust Administrator is authorized to instruct the Trustee to disburse funds from the Account for the payment of the Trust Administration Fees to the Trust Administrator to the extent not paid by the Employer or deducted from the gross earnings of the investment funds. If and to the extent that the Trustee requests that the Trust Administrator render services to the Trust other than those to be rendered by the Trust Administrator hereunder, such additional services will be compensated separately on terms to be agreed upon between the Trust Administrator and the Trustee.
- 9.3 Trustee Fees. "Trustee Fees" means the Trustee's fees for services provided by it under this Agreement. These fees will be separately disclosed to the Employer prior to the commencement of the Employer's participation in the Trust. The Trustee is authorized to disburse funds from the Trust to itself for the payment of these fees to the extent not paid by the Employers. The Trustee will notify the Trust Administrator in writing of any change in the Trustee Fees at least 90 days before the effective date of the change.
- 9.4 Reimbursement of Expenses. Except as expressly provided otherwise herein, the Trustee is authorized to disburse funds from the Trust to pay all reasonable expenses of administering the Trust, including, without limitation, any taxes payable by the Trust, fees and expenses of legal counsel to the Trust, insurance premiums, and expenses associated with performing the annual audit provided for in Section 5.3.

## **ARTICLE 10**

### **RECORDKEEPING AND VALUATION**

- 10.1 Trust Records. The Trustee will keep accurate and detailed records of all investments, receipts, disbursements, and all other transactions, including such specific records as may be agreed upon in writing between the Trust Administrator and the Trustee with respect to the Trust.
- 10.2 Separate Account Records. The Trustee will keep accurate and detailed records of all investments, receipts, disbursement, and all other transactions with respect to each separate Employer Account.
- 10.3 Quarterly Reports. Within 45 days after the last day of each calendar quarter (and within 60 days after removal or resignation of the Trustee), the Trustee will deliver to the Trust



Administrator and each Employer a written account of the Employer's Account during such calendar quarter (or during the period from the close of the last preceding calendar quarter to the date of such removal or resignation), setting forth all deposits, investments, receipts, disbursements and other transactions effected by it with respect to the Account, including a description of transfers made and income received by the Account, all securities and investments purchased and sold with the cost or net proceeds of such purchases or sales (accrued interest paid or receivable being shown separately), all disbursements for the payment of OPEB Obligations and Pension Obligations, administrative expenses (any amounts paid to the Trustee shown separately) of the Trust paid from the Account, and showing all cash, securities and other property held in the Account at the end of such calendar quarter or as of the date of such removal or resignation, as the case may be.

- 10.4 Valuation. All securities will be valued at fair market value as of the date of valuation, as determined by the Trustee on the basis of all available information that the Trustee deems reasonable.

## **ARTICLE 11**

### **STANDARD OF CARE AND INDEMNIFICATION**

- 11.1 Exclusive Purpose. Except as provided in Sections 14.3 and 14.4, all Trust assets and all income thereon will be used for the exclusive purpose of providing for the payments of OPEB Obligations and Pension Obligations and for paying the reasonable expenses of administering the Trust.
- 11.2 Standard of Care. The Trustee and the Trust Administrator, when making, selling or otherwise managing investments of the funds, will discharge their duties with respect to the investment of the funds (i) solely in the interest of, and for the exclusive purposes of funding OPEB Obligations and Pension Obligations, maximizing the amount available for such funding, and paying reasonable expenses of administering the Trust, and (ii) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims. The Trust Administrator will invest assets in each Employer's Account accordance with the applicable Investment Policy Statement, but only to the extent that doing so does not conflict with the duties described in the preceding sentence.
- 11.3 Trustee Indemnification of Trust Administrator. The Trustee, solely from its assets and not from the Trust assets, will indemnify the Trust Administrator and each of its affiliates against, and will hold them harmless from, any and all damages imposed upon or incurred by any of them by reason of, or in connection with the Trustee's or affiliate's performance (or non-performance) of its duties under this Agreement in a manner that constitutes willful misconduct or willful breach of the standard of care articulated in Section 11.2, except to the extent that such damages resulted from the Trust Administrator's or affiliate's performance (or non-performance) of its duties under this Agreement in a manner that constitutes willful misconduct or willful breach of the standard of care articulated in Section 11.2.
- 11.4 Trust Administrator Indemnification of Trustee. The Trust Administrator, solely from its assets and not from the Trust assets, will indemnify the Trustee and each of its affiliates



against, and will hold them harmless from, any and all damages imposed upon or incurred by any of them by reason of, or in connection with the Trustee's and each of its affiliates' services under this Agreement, except to the extent that such damages resulted from the Trustee's or affiliate's performance (or non-performance) of its duties under this Agreement in a manner that constitutes willful misconduct or willful breach of the standard of care articulated in Section 11.2. The foregoing shall in no way limit or otherwise restrict any rights to indemnification which the Trust Administrator may have under any Adoption Agreement executed and delivered by the Trust Administrator and an Employer.

- 11.5 Survival of Indemnifications. The indemnification obligations provided for in this Agreement will survive the termination of this Agreement.

## **ARTICLE 12**

### **RESIGNATION AND REMOVAL OF TRUST ADMINISTRATOR**

- 12.1 Resignation or Removal of Trust Administrator. The Trust Administrator may resign at any time upon 90 days' prior written notice to each of the Employers, which notice may be waived in writing by the Employers. With the approval of at least two-thirds of the participating Employers, the Employers may remove the Trust Administrator upon 90 days' prior written notice to the Trust Administrator and the Trustee, which notice may be waived by the Trust Administrator.
- 12.2 Designation of Successor Trust Administrator. Upon notice of the Trust Administrator's resignation, the Employers will promptly designate a successor Trust Administrator qualified to act as the Trust Administrator of the Trust under applicable state law, such resignation to be effective upon acceptance of appointment by such successor Trust Administrator. The Employers will not remove the Trust Administrator unless Employers have designated such a successor Trust Administrator who shall have agreed with Employers and the Trustee to act as the Trust Administrator under an agreement substantially similar to this Agreement.
- 12.3 Compensation Pending Appointment of Successor. Until a successor Trust Administrator is appointed and assumes its duties as the Trust Administrator under this Agreement, the Trust Administrator shall be entitled to compensation for its services in accordance with Article 9.
- 12.4 Merger, Conversion, Consolidation or Sale of Trust Administrator. Any company into which the Trust Administrator may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Trust Administrator may sell or transfer all or substantially all of its investment advisory business, shall be, with the prior consent of Employers in the manner set forth in Section 3.3(b), the successor to such Trust Administrator.
- 12.5 Successor Trust Administrator - No Duty to Investigate. A successor Trust Administrator shall have no duty to audit or otherwise inquire into the acts or transactions of its predecessor.

## **ARTICLE 13**

### **RESIGNATION AND REMOVAL OF TRUSTEE**

- 13.1 Resignation of Trustee. The Trustee may resign at any time upon 90 days prior written notice to the Trust Administrator, which notice may be waived by the Trust Administrator.
- 13.2 Removal of Trustee. With approval of at least two-thirds of the participating Employers, the Employers may instruct the Trust Administrator in writing to remove the Trustee (or any successor trustee) upon 90 days prior written notice to the Trustee, which notice may be waived in writing by the Trustee, and to replace the Trustee with a corporate Trustee satisfactory to the Trust Administrator in its sole judgment.
- 13.3 Designation of Successor Trustee. Upon notice of the Trustee's resignation or removal, the Trust Administrator shall promptly designate a successor corporate Trustee qualified to act as the Trustee of the Trust under applicable state law, such resignation or removal to be effective upon acceptance of appointment by such successor corporate Trustee.
- 13.4 Application to Court to Designate Successor. If the Trust Administrator does not designate a successor corporate Trustee, or if a successor corporate Trustee designated by the Trust Administrator has not accepted its appointment within 90 days after the Trustee gives notice of its resignation or receives notice of removal, the Trustee may, at the expense of the Trust, apply to a court of competent jurisdiction to appoint a successor corporate Trustee.
- 13.5 Trustee Compensation Pending Appointment of Successor. Until a successor corporate Trustee is appointed and assumes its duties, the Trustee shall be entitled to compensation for its services according to its fee schedule then in effect for acting as the Trustee in accordance with the Trust.
- 13.6 Merger, Conversion, Consolidation or Sale of Trustee. Any company into which the Trustee may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, shall be, with the prior written consent of the Trust Administrator, the successor to such Trustee.
- 13.7 Transfer of Assets and Records. A resigning Trustee shall transfer the Trust assets and shall deliver the books, accounts and records of the Trust to the successor corporate Trustee as soon as practicable.
- 13.8 Payment of Expenses. A resigning Trustee is authorized to reserve such amount as may be necessary for the payment of its fees and expenses incurred prior to its resignation or removal, and the Trust assets shall remain liable to reimburse the resigning or removed Trustee for any costs or fees payable to the Trustee under the terms of this Agreement.
- 13.9 Successor Trust Administrator - No Duty to Investigate. A successor corporate Trustee shall have no duty to audit or otherwise inquire into the acts or transactions of its predecessor.

## **ARTICLE 14**

### **AMENDMENT, TERMINATION, MERGER, TRANSFER**

- 14.1 Amendment. With the approval of at least two-thirds of the Employers then participating in the Trust, the Trust Administrator and the Trustee may amend the Trust; provided, however, that no amendment may:
- (a) cause any assets held in any Employer's Account to be used for or diverted to any purpose other than for the exclusive purposes of funding the Employer's OPEB Obligations or Pension Obligations, as applicable, or defraying the reasonable expenses of administering the Account; or
  - (b) eliminate the requirement that none of the assets held in any Employer's Account revert to the Employer prior to the satisfaction of all OPEB Obligations or Pension Obligations (as applicable) under the OPEB Plan or Pension Plan for which the Account was established.
- 14.2 Termination of Trust.
- (a) The Trust may be terminated by the unanimous agreement of all Employers, which action must be in writing and delivered to the Trustee and Trust Administrator. Upon termination of the Trust, the Trust will continue to exist and the Trust Administrator and the Trustee will continue to have all powers provided in this Agreement as are necessary or desirable for the orderly liquidation and distribution of Trust assets in accordance with the provisions hereof until all Trust assets have been distributed. The Trustee will distribute assets remaining in each Employer's Account at the direction of the Trust Administrator in the following order of priority: (1) payment of reasonable administrative expenses (including taxes and termination costs) of the Trust, (2) payment of the OPEB Obligations and Pension Obligations currently payable under the Employer's OPEB Plan and Pension Plan, as applicable, and (3) payment to a trust that satisfies the requirements of Section 115 of the Code and any other applicable law.
  - (b) Contributions and transfers to the Trust are conditioned on initial qualification of the Trust under Section 115 of the Code. If the Trust receives an adverse determination with respect to its initial qualification, then the Trust and this Trust Agreement will automatically terminate without any action by any Employer or other parties. After such termination, the assets of each Employer's Omnibus Account, Pension Account, or OPEB Account, as applicable, will be returned by the Trustee to the Employer as directed by the Plan Administrator in accordance with this Section 14.2(b) to the extent permitted by law and consistent with the requirements of Section 115 of the Code. This Section 14.2(b) will cease to apply upon the Trust's receipt of a favorable determination with respect to its initial qualification.



14.3 Termination of Employer's Account.

- (a) An Employer's Account will automatically terminate upon the termination of the Employer's participation in the Trust and the transfer of the assets in the Employer's Account under Section 3.3.
- (b) If an Employer has an Omnibus Account and maintains an OPEB Plan or Pension Plan, but not both, Section 14.3(b) or (c) (as applicable) will apply to the assets in the Omnibus Account. If the Employer maintains both an OPEB Plan and Pension Plan, the Trustee will continue to maintain, and will have all of the powers and duties under this Agreement with respect to, the Employer's Omnibus Account until the Employer's OPEB Obligation under its OPEB Plan and Pension Obligation under its Pension Plan are fully satisfied. Any assets remaining in the Employer's Omnibus Account after both such obligations are fully satisfied will be paid to the Employer to the extent permitted by law and consistent with the requirements of Section 115 of the Code.
- (c) If an Employer's OPEB Plan terminates, the Trustee will continue to maintain, and will have all of the powers and duties under this Agreement with respect to, the Employer's OPEB Account until the Employer's OPEB Obligation under its OPEB Plan is fully satisfied. Any assets remaining in the Employer's OPEB Account after its OPEB Obligation is fully satisfied will be paid to the Employer to the extent permitted by law and consistent with the requirements of Section 115 of the Code.
- (d) If an Employer's Pension Plan terminates, the Trustee will continue to maintain, and will have all of the powers and duties under this Agreement with respect to, the Employer's Pension Account until the Employer's Pension Obligation under its Pension Plan is fully satisfied. Any assets remaining in the Employer's Pension Account after its Pension Obligation is fully satisfied will be paid to the Employer to the extent permitted by law and consistent with the requirements of Section 115 of the Code.

14.4 Mistake of Fact. At the written direction of an Employer and after receipt of any indemnification that the Trustee may require from the Employer, the Trustee will return any contribution or transfer made to the Trust by the Employer due a mistake of fact, excluding any earnings but reduced by any losses, to the Employer within one year after the Employer discovers the mistake.

14.5 Merger or Transfer. At any time that there is in existence any trust created by Employer which satisfies the requirements in Articles 2 and 4, at the direction of Employer, the Trust may be merged with such trust, or all or part of its assets (net of any amount as may be reasonably necessary to pay the fees and expenses of the Trust Administrator, the Trustee and other expenses of the Trust) transferred to such trust; provided, however, that no such merger or transfer may increase the Trustee's obligations under this Agreement without the Trustee's written approval, no such merger or transfer may render the Trust "revocable" or otherwise adversely affect the status of the Trust as described in Articles 2 and 4.

14.6 Reversion. Neither the Trust Administrator nor the Employers nor any entity related to any of them will have any beneficial interest in the Trust or receive any amounts upon



termination of the Trust or at any other time, except as provided in Sections 14.3 and 14.4.

## **ARTICLE 15**

### **MISCELLANEOUS**

- 15.1 Choice of Law. The Trust is governed by, and will be interpreted in a manner consistent with, the laws of the Commonwealth of Pennsylvania and, to the extent applicable, the Internal Revenue Code.
- 15.2 No Joint Powers Agreement. This Agreement is not a joint exercise of powers agreement, does not create a joint powers or joint action authority, and the obligations of Employer, the Trustee, and the Trust Administrator are several and not joint. Neither the Trustee nor the Trust Administrator is responsible for any contributions, costs, benefits, distributions, acts or omissions of the Employers or the Plan Administrators.
- 15.3 Authorized Signatories. Each party to this Agreement represents and warrants that the person or persons signing this Agreement on behalf of such party are authorized and empowered to sign and deliver this Agreement for such party.
- 15.4 List of Persons Authorize to Act for Employer. Each of the Employers will certify to the Trust Administrator and the Trustee in writing of the person or persons, by office or other position of employment, who are authorized to act on behalf of the Employer in all matters relating to the Trust.
- 15.5 List of Persons Authorized to Act for Trust Administrator. The Trust Administrator shall notify the Trustee and each of the Employers in a separate writing of all those who are authorized to act on behalf of the Trust Administrator in all matters relating to the Trust.
- 15.6 Agreement Controls. If there is any conflict between any Pension Plan or OPEB Plan and this Agreement, this Agreement will control.
- 15.7 Severability. In the event any provision of this Agreement is held to be invalid for any reason, such invalidity will not affect any other provisions of this Agreement and this Agreement will be construed and enforced as if the invalid provision had never been included.
- 15.8 Counterparts. This Agreement may be executed in any number of counterparts, each of which will be considered as an original.
- 15.9 Delivery of Communications. All communications under this Agreement must be in writing and will be deemed to have been duly given (1) on the date of receipt if served personally or by confirmed facsimile or other similar communication; (2) on the first business day after sending if sent for guaranteed next day delivery by a next-day courier service; or (3) on the fourth business day after mailing if mailed to the party or parties to whom notice is to be given by registered or certified mail, return receipt requested, postage prepaid, and properly addressed as follows:



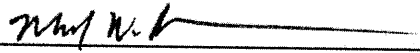
**If to an Employer:** At the address listed for such purpose on the Employer's Adoption Agreement

**If to Trust Administrator:** PFM Asset Management LLC  
Two Logan Square, Suite 1600  
18<sup>th</sup> and Arch Streets  
Philadelphia, PA 19103  
Attention: Leo Karwejna


**If to Trustee:** Wells Fargo Bank, N.A.  
1751 Pinnacle Drive, 3rd Floor  
McLean, VA 22102  
Attention: Timothy S. Rueling

**IN WITNESS WHEREOF**, and as evidence of establishment of the Trust created hereunder, the parties have caused this Agreement to be executed as of the date set forth below:

**PFM ASSET MANAGEMENT LLC,  
As Trust Administrator**

By:   
Name: Michael W. Harris  
Title: Managing Director  
Date: 7/8/2015

**WELLS FARGO BANK, N.A.  
As Trustee**

By:   
Name: Timothy Rueling  
Title: Vice President  
Date: 7/13/15