

IMPORTANT TOWN BULLETIN



OTHER POST-EMPLOYMENT BENEFITS (“OPEB”) DECLARATION OF TRUST AND AGREEMENT

Pursuant to M.G.L. C. 32B Sec 20(d), I hereby attest that on March 9, 2021, the Other Post-Employment Benefits (“OPEB”) Declaration of Trust and Agreement was filed with the Chief Executive Officer and Clerk of the Governing Body of the Town of Essex.

This Declaration will take effect 90 days from March 9, 2021 unless the governing body votes to disprove the declaration within the 90 day period.

A copy of the Other Post-Employment Benefits (“OPEB”) Declaration of Trust and Agreement is on file in the Town Clerk’s office and can be viewed upon request.

Pamela B. Thorne, Town Clerk
Town Hall, 30 Martin Street, Essex, MA 01929
o: 978-768-7111 | f: 978-768-2505 | e: pthorne@essexma.org

I hereby attest I posted attested copies of this Notice: one at the Post Office, one at the Town Hall and on the Town of Essex website.

Attest: *Pamela B. Thorne*
Town Clerk

Date: March 9, 2021
March 9, 2021

**TOWN OF ESSEX
OTHER POST- EMPLOYMENT BENEFITS (“OPEB”)
DECLARATION OF TRUST AND AGREEMENT**

DECLARATION OF TRUST AND AGREEMENT made this 8th day of March 2021 between the Town of Essex, acting through its Board of Selectmen, (the “Municipality”) and the duly serving Trustee of the Town’s Other Post-Employment Benefits Fund.

WITNESSETH:

WHEREAS, the Municipality provides certain Other Post-Employment Benefits (“OPEB”), other than pensions, for eligible Retired Employees (defined below) of the Municipality and their Dependents (defined below) and/or beneficiaries; and

WHEREAS, the Municipality has accepted the provisions of Massachusetts General Law, Chapter 32B, Section 20, as amended by Chapter 218 (Section 15) of the Acts of 2016; and

WHEREAS, the Municipality wishes to establish an irrevocable trust to be known as the “Town of Essex OPEB Liability Trust Fund” (the “Trust”) for the purpose of funding OPEB obligations as required to be reported under G.L. c.32B and the Governmental Accounting Standards Board (“GASB”) Statements 74 and 75 in relation to OPEB; and

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

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants hereinafter

set forth, the Municipality and the Trustee hereby establish the Trust and agree as follows:

ARTICLE I
DEFINITIONS

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

1.1. "Act" shall mean G.L. c.32B, §20, as amended from time to time.

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

1.3. "Dependents" shall mean a Retired Employee's spouse, a Retired Employee's unmarried children under 19 years of age and any child 19 years of age or over who is mentally or physically incapable of earning the child's own living; provided, however, that any additional premium which may be required shall be paid for the coverage of such child 19 years of age or over; provided further, that "Dependents" shall also include an unmarried child 19 years of age or over who is a full-time student in an educational or vocational institution and whose program of education has not been substantially interrupted by full-time gainful employment, excluding service in the armed forces; provided further, that any additional premium which may be required for the health insurance coverage of such student shall be paid in full by the Retired Employee. The standards for such full-time instruction and the time required to complete such a program of education shall be determined by the appropriate public authority.

1.4. "ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time and any successor statute, and the regulations issued thereunder.

1.5. "GASB 74 and 75," shall mean Governmental Accounting Standards Board, Statement No. 74 (Financial Reporting for Postemployment Benefit Plans Other Than Pension Plans) and Statement No. 75 (Accounting and Financial Reporting Postemployment Benefits Other Than Pensions).

1.6. "General Law" shall mean a law that is permanent in nature and of general application.

1.7. "OPEB Fund" shall mean all the money and property, of every kind and character, including principal and income, held by the Trustee under the Trust.

1.8. "Other post-employment benefits" or "OPEB," shall mean post-employment benefits other than pensions as that term is defined in GASB 74 and 75 (and/or including relative revisions or rescissions to those specific Statements, and subsequently issued GASB Statements applicable to OPEB administration, management, and reporting) including post-employment healthcare benefits, regardless of the type of plan that provides them, and all post-employment benefits provided separately from a pension plan, excluding benefits defined as termination offers and benefits.

1.9. "Retired Employees" shall mean those persons who have retired from employment with the Municipality and who are qualified to receive retirement benefits pursuant to G.L. c.32 or as otherwise provided by law.

1.10. "Special Law" shall mean a law addressed to a particular situation, circumstance or entity that does not establish a rule of future conduct with any substantial degree of generality, and may provide ad hoc benefits of some kind for an individual or entity or a number of them.

1.11. "Trust" shall have the meaning set forth in the preamble.

1.12. "Trust Agreement" shall mean this Declaration of Trust and Agreement.

1.13. "Trustee" shall mean the duly serving trustee designated by the Municipality, as provided pursuant to Article 5, and any successor Trustee.

ARTICLE 2

PURPOSE

2.1. The Trust is created for the sole purpose of holding assets to provide funding for OPEB, as determined by the Municipality, or as may be required by a collective bargaining agreement, or by any General Law or Special Law providing for such benefits, for the exclusive benefit of the Municipality's Retired Employees and their Dependents and/or beneficiaries and for defraying the reasonable administrative, legal, actuarial and other expenses of the Trust. The assets held in the Trust shall not be used for or diverted to any other purpose, except as expressly provided herein.

2.2. It is intended that the Trust shall meet the specified criteria set forth in GASB 74 and 75 and that it qualify as an integral part of the Municipality for all purposes under Section 115 of the Code or under any comparable provision of future legislation that amends, alters, or supersedes the Code.

2.3. In fulfillment of the above-stated purpose, the Trust may engage in any lawful act or activity for which a trust may be formed under the Act and Massachusetts law, including, without limitation, holding and managing the Trust and engaging in all activities and transactions as deemed reasonably necessary, advisable, or convenient in connection with holding and managing the Trust in accordance with the conditions set forth herein.

ARTICLE 3

ESTABLISHMENT OF TRUST

3.1. In order to implement and carry out the provisions of the Act, the Municipality hereby establishes this Trust which shall be known as the "Town of Essex OPEB Liability Trust Fund."

3.2. The Trust shall be irrevocable, and no Trust funds shall revert to the Municipality until all benefits owed to Retired Employees have been satisfied or released.

3.3. The principal location of the Trust shall be the office of the Treasurer of the Town, located at 30 Martin Street, Essex, MA.

3.4. The Trustee hereby accepts the duties imposed upon them by this Trust Agreement and agrees to perform said duties as a fiduciary duty in accordance with the terms and conditions of this Trust Agreement.

3.5. The Trustee shall hold legal title to all property of the Trust and neither the Municipality, nor any employee, official, or agent of the Municipality, nor any individual, shall have any right title or interest to the Trust.

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

those contributions are irrevocable.

ARTICLE 4
TRUST FUNDING

4.1. The OPEB Fund shall be credited with all amounts appropriated or otherwise made available by the Municipality and employees of the Municipality as a contribution to the Trust for the purposes of meeting the current and future OPEB costs payable by the Municipality, or any other funds donated, gifted or granted specifically to the Municipality for the Trust, or to the Trust directly, without distinction.

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

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

4.4. The Municipality shall have no obligation to make contributions to the Trust to fund OPEB, and the size of the Trust may not be sufficient at any one time to meet the Municipality's OPEB liabilities. This Trust Agreement shall not constitute a pledge of the Municipality's full faith and credit or taxing power for the purpose of paying OPEB, and no retiree or beneficiary may compel the exercise of taxing power by the Municipality for such purposes.

4.5. The obligation of the Municipality to pay or fund OPEB obligations, if any, shall be determined

by the Municipality or applicable law. Distributions of the corpus of the Trust are not debts of the Municipality within the meaning of any constitutional or statutory limitation or restriction. The Municipality's obligation to pay OPEB is not a debt of the Trust.

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

4.7. Amounts in the OPEB Fund shall in no event be subject to the claims of the Municipality's creditors, general or otherwise. The OPEB Fund shall not in any way be liable to attachment, garnishment, assignment or other process, or be seized, taken, appropriated or applied by any legal or equitable process, to pay any debt or liability of the Municipality, or of Retired Employees or their Dependents and/or beneficiaries who are entitled to OPEB.

ARTICLE 5

TRUSTEE

5.1. The Trust shall be administered by a Trustee, who shall be the Treasurer of the Town, as having been duly designated as the Trustee by a vote of the Board of Selectmen.

5.2. Upon retirement from or sooner termination or removal from employment with the Town or from the position of Treasurer, the position of Trustee shall be deemed vacant until the Treasurer's successor in office is sworn to the position.

5.3. In the event the position of Trustee is vacant or the Trustee is otherwise unable to serve, the Municipality shall appoint a Temporary Trustee until the position of Treasurer is filled or the Trustee is able to serve.

5.4. Each future Trustee shall accept in writing the office of Trustee and the terms and conditions of this Trust Agreement.

5.5. Upon leaving office, a Trustee shall promptly and without unreasonable delay, deliver to the Trust's principal office any and all records, documents, or other documents in its possession or under its control belonging to the Trust.

5.6. The Trustee shall be a special municipal employee for purposes of G.L. c.268A and shall be subject to the restrictions and prohibitions set forth therein.

ARTICLE 6

POWERS OF THE TRUSTEE

6.1. The Trustee shall have the general supervision of the management, investment, and re-investment of the OPEB Fund and shall have the power to control and manage the Trust and the OPEB Fund and to perform such acts, enter into such contracts, engage in such proceedings, and generally to exercise any and all rights and privileges, although not specifically mentioned herein, as the Trustee may deem necessary or advisable to administer the Trust and the OPEB Fund or to carry out the purposes of this Trust. In addition to the powers set forth elsewhere in this Trust Agreement, the powers of the Trustee, in connection with their managing and controlling the Trust and the OPEB Fund, shall include, but shall not be limited to, the following:

6.1.1. To enter into an administrative services contract or other contracts with one or more insurance companies, nonprofit hospital, medical or dental service corporations, or with one or more health care organizations or health maintenance organizations, or with one or more third-party administrators or other entities to organize, arrange, or provide for the delivery or payment of health care coverage or services (including dental services), whereby the funds for the payment of claims of eligible persons, including appropriate service charges of the insurance carrier, third party administrator or other intermediary, shall be furnished by the Trustee from the OPEB Fund for the payment by such intermediary to the health care vendors or persons entitled to such payments in accordance with the terms and provisions of said contract.

6.1.2. To purchase contracts of insurance or reinsurance through such broker or brokers as the Trustee may choose and to pay premiums on such policies.

6.1.3. To receive, hold, manage, invest and reinvest all monies which at any time form part of the Trust, whether principal or income, provided however that there shall be no investment directly in mortgages or in collateral loans and further provided that the Trustee shall comply with the provisions of Article 8 of this Trust Agreement, applicable law and any investment policy adopted by the Trustee concerning the investment and management of the OPEB Fund.

6.1.4. To borrow or raise money for the purposes of the Trust, in such amount, and upon such terms and conditions as the Trustee shall deem advisable, subject to applicable law and statutes; and for any sum so borrowed to issue the promissory note of the Trust, and to secure the repayment thereof by creating a security interest in all or any part of the Trust or the OPEB Fund; and no person lending such money shall be obligated to see that the money loaned is applied to Trust purposes or to inquire into the validity, expedience or propriety of any such borrowing. The Trustee is not permitted

to loan money from the OPEB Fund.

6.1.5. To hold cash, uninvested, for such length of time as the Trustee may determine without liability for interest thereon.

6.1.6. To employ suitable agents, advisors and counsel as the Trustee may deem necessary and advisable for the efficient operation and administration of the Trust, to delegate duties and powers hereunder to such agents, advisors and counsel, and to charge the expense thereof to the Trust. The Trustee are entitled to rely upon and may act upon the opinion or advice of any attorney approved by the Trustee in the exercise of reasonable care. The Trustee shall not be responsible for any loss or damage resulting from any action or non-action made in good faith reliance upon such opinion or advice. All delegated authority shall be specifically defined in any by-laws adopted by the Trustee.

6.1.7. To hire employees or independent contractors as the Trustee may deem necessary or advisable to render the services required and permitted for the proper operation of the Trust, and to charge the expense thereof to the OPEB Fund.

6.1.8. To continue to have and to exercise, after the termination of the Trust and until final distribution, all of the title, powers, discretions, rights and duties conferred or imposed upon the Trustee hereunder, by any by-laws adopted by the Trustee or by applicable law.

6.1.9. To construe and interpret this Trust Agreement and other documents related to the purposes of the Trust.

6.1.10. To maintain bank accounts for the administration of the Trust and the OPEB Fund and to authorize other appropriate persons to make payments from any appropriate account for

purposes of the Trust.

6.1.11. To receive and review reports of the financial condition and of the receipts and disbursements of the Trust and the OPEB Fund.

6.1.12. To adopt by-laws, investment policies, rules, regulations, formulas, actuarial tables, forms, and procedures by resolution from time to time as deemed advisable and appropriate for the proper administration of the Trust, including participation criteria, provided the same are consistent with the terms of this Trust Agreement.

6.1.13. To purchase as a general administrative expense of the Trust so-called directors and officers liability insurance and other insurance for the benefit of the Trust and/or the protection of the Trustee, Trust officers, employees, or agents against any losses by reason of errors or omissions or breach of fiduciary duty or negligence.

6.1.14. To enter into any and all contracts and agreements for carrying out the terms of this Trust Agreement and for the administration and operation of the Trust and to do all acts as he or she, in his/her discretion, may deem necessary or advisable. All such contracts and agreements, or other legal documents herein authorized, shall be executed by the Trustee.

6.1.15. To accept and/or receive gifts, grants, contributions or payments from any source whatsoever but such contributions or payments may not be utilized for any purpose unrelated to the provision of OPEB as herein provided or properly authorized expenses.

6.1.16. To pay taxes, assessments, and other expenses incurred in the collection, care, administration, and protection of the Trust.

6.1.17. To compromise, settle or arbitrate any claim, debt, or obligation of or against the Trust or OPEB Fund; to enforce or abstain from enforcing any right, claim, debt or obligation, and to abandon any shares of stock, bonds, or other securities, or interests determined by it to be worthless; to prosecute, compromise and defend lawsuits, but without the obligation to do so, all at the risk and expense of the Trust;

6.1.18. To hire one or more consultants, actuaries, accountants, attorneys or other professionals to assist with the administration of the OPEB Fund and to pay such amounts that the Trustee deems to be reasonable, including, without limiting the generality of the foregoing, third party firms to provide legal, tax, accounting and audit services to the Trust.

6.1.19. To serve as custodian with respect to the Trust assets, in accordance with the Act.

6.1.20. To comply with all requirements imposed by applicable provisions of law.

6.1.21. If so authorized in accordance with G.L. c. 32A, §24 and the Act, take all steps necessary to invest the OPEB Fund in the State Retirement Benefits Trust Fund, established in G.L. c. 32A, §24.

6.1.22. To do all acts, whether or not expressly authorized herein, which the Trustee may deem necessary or proper in connection with the administration of the Trust, although the power to do such acts is not specifically set forth herein.

ARTICLE 7

APPROPRIATIONS FROM THE OPEB FUND

7.1. Amounts from the OPEB Fund may be appropriated by a two-thirds vote of the governing body of other Governmental Unit to pay the Municipality's share of health insurance benefits for Retired Employees and Dependents and/or beneficiaries upon certification by the Trustee that such amounts are available in the OPEB Fund.

7.2. The Town Treasurer after consulting with the Board of Selectmen shall determine the amount to be appropriated from the OPEB Fund to the annual budget for retiree health insurance and notify the Trustee of that amount at the earliest possible opportunity in the annual budget cycle.

7.3. Upon the notification described in Section 7.2, the Trustee shall take diligent steps to certify those funds as available for appropriation by the Municipality, or will be available by the time the appropriation would become effective or provide an explanation why the funds are or will not be available or should not be made available.

ARTICLE 8

LIMITATION OF TRUSTEE'S POWERS, DUTIES AND RESPONSIBILITIES

8.1. Nothing contained in the Trust Agreement, either expressly or by implication, shall be deemed to impose any powers, duties or responsibilities on the Trustee other than those set forth in this Trust Agreement.

8.2. The Trustee shall: (a) act in a fiduciary capacity;(b) discharge their duties for the primary purpose of enhancing the value of the OPEB Fund; (c) 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 with like character and with like aims; and (d) diversify the investments in the fund to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

8.3. The Trustee shall have such rights, powers and duties as are provided to a named fiduciary for the investment of assets under ERISA.

8.4. The Trustee shall not be liable for the making, retention or sale of any investment or reinvestment made by the Trustee as herein provided or for any loss to or diminution of the OPEB Fund or for anything done or admitted to be done by the Trustee with respect to the Trust Agreement or the OPEB Fund except as and only to the extent that such action constitutes a violation of the law or gross negligence.

8.5. The Trustee, in their discretion, may purchase as an expense of the OPEB Fund such liability insurance for themselves or any other fiduciary selected by the Trustee as may be reasonable. The Municipality, in its discretion, also may purchase liability insurance for the Trustee, and as the Municipality may select, for any person or persons who serve in a fiduciary capacity with respect to the Trust.

8.6. The Municipality shall not assume any obligation or responsibility to any person for any act or failure to act of the Trustee, any insurance company, or any beneficiary of the OPEB Fund. The Trustee shall have no obligation or responsibility with respect to any action required by this Trust Agreement to be taken by the Municipality, any insurance company, or any other person, or for the

result or the failure of any of the above to act or make any payment or contribution, or to otherwise provide any benefit contemplated by this Trust Agreement.

8.7. Neither the Trustee nor the Municipality shall be obliged to inquire into or be responsible for any action or failure to act on the part of the other. No insurance company shall be a party to this Trust Agreement, for any purpose, or be responsible for the validity of this Trust Agreement, it being intended that such insurance company shall be liable only for the obligations set forth in the policy or contract issued by it.

8.8. The Trustee shall invest and manage Trust assets as a prudent investor would, using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital, pursuant to G.L. c.203C and G.L. c.44, §54

ARTICLE 9

LIABILITY OF THE TRUSTEE

9.1. The Trustee shall not be personally liable for any mistake of judgment or other action made, taken or omitted by the Trustee in good faith and with the reasonable care typically exercised by trustees of similarly situated trust funds, nor for any action taken or omitted by any agent or employee selected with reasonable care, and the duties and obligations of the Trustee hereunder shall be expressly limited to those imposed upon the Trustee by this Trust Agreement.

9.2. No successor Trustee shall be held responsible for an act or failure of a predecessor Trustee.

9.3. In any civil action brought against the Trustee, acting within the scope of his official duties, the defense or settlement of which is made by legal counsel for the Municipality, to the extent permitted by law, the Trustee shall be indemnified from the OPEB Fund for all expenses incurred in the defense thereof and for damages to the same extent as provided for public employees in G.L. c. 258. No Trustee shall be indemnified for expenses in an action or damages awarded in such action in which there is: (a) a breach of fiduciary duty, (b) an act of willful dishonesty, or (c) an intentional violation of law by the Trustee

ARTICLE 10

TAXES AND EXPENSES

10.1. It is intended that the Trust will be a Code Section 115 trust. As such, it is expected that there will be no income taxes owed by the Trust. To the extent that any taxes are imposed on the Trust, the Trustee shall use the assets of the OPEB Fund to pay for any taxes owed.

10.2. All reasonable costs and expenses of managing and administering the Trust and the OPEB Fund, including such compensation for the Trustee as may be approved by Town Meeting from time to time, and reimbursement for reasonable fees incurred through the use of third party vendors or agents, shall be paid from the OPEB Fund unless the Municipality chooses to pay the expenses directly.

ARTICLE 11

ACCOUNTS

11.1. The Trustee shall keep complete and accurate accounts of all of the Trust's receipts,

investments and disbursements under this Trust Agreement. Such records, as well as all other Trust records, shall be retained and made available for public inspection and or copying in accordance with the requirements of the Public Records Law, G.L. c.66, §10 and G.L. c. 4, §7, clause 26th, as amended from time to time, and their implementing regulations. The person or persons designated by the Municipality shall be entitled to inspect such records upon request at any reasonable time.

11.2. The books and records of the Trust shall be audited annually in accordance with accepted accounting practices by an independent auditor, which is an independent public accounting firm within the meaning of the American Institute of Certified Public Accountants' Code of Professional Conduct. The results of the audit shall be provided to the Municipality at the same time as it is presented to the Trustee.

11.3. The OPEB Fund shall be subject to the Commonwealth of Massachusetts Public Employee Retirement Administration Commission's triennial audit.

ARTICLE 12

ANNUAL REPORTS

12.1. The Trustee shall furnish to the Municipality annually by the end of the fiscal year, or more frequently if the Municipality so requests by and through its Board of Selectmen, a statement of account showing the condition of the OPEB Fund and all investments, sales, income, disbursements and expenses of the Trust and the OPEB Fund.

12.2. The Trustee shall comply with the requirements of G.L. c. 32B, §20A with regard to filing reports with the Commonwealth of Massachusetts Public Employee Retirement Administration Commission.

ARTICLE 13

INVESTMENT OF TRUST FUNDS

13.1. The Trustee hereby authorize and direct the Town Treasurer to invest and reinvest the amounts in the OPEB Fund not needed for current disbursement, consistent with Section 8.8 above and any Investment Policy, adopted by the Trustee.

13.2. In no event shall the funds be invested directly in mortgages or in collateral loans.

ARTICLE 14

CUSTODY OF THE TRUST FUNDS

14.1. The Trustee shall be the custodian of the OPEB Fund and shall be bonded in any additional amounts necessary to protect fund assets pursuant to the Act.

14.2. All funds in the OPEB Fund shall be accounted for and reported separately from all other funds of the Municipality.

14.3. The Trustee shall establish one or more checking accounts, which may be interest bearing or non-interest bearing accounts. Such checking account or accounts shall be funded solely from the OPEB Fund, and the Trustee may draw on such checking accounts for the payment of OPEB and for the administrative expenses of the Trust.

ARTICLE 15

TERMINATION OF TRUST

15.1. The Trust shall continue unless and until terminated pursuant to law or by an instrument in writing signed by the Trustee and the Board of Selectmen of the Municipality, provided, however, that continuance of the Trust shall not be deemed to be a contractual obligation of the Municipality.

15.2. Upon termination of the Trust, subject to the payment of or making provision for the payment of all obligations and liabilities of the Trust and the Trustee, the net assets of the Trust shall be transferred to the Municipality and held by the Municipality's Treasurer to be used exclusively for providing OPEB to Retired Employees and their Dependents and/or beneficiaries and for no other purpose.

15.3. The powers of the Trustee shall continue until the affairs of the Trust are concluded.

ARTICLE 16

AMENDMENTS

16.1. The Trust may only be amended as set forth herein. The Municipality, by majority vote of its Board of Selectmen, may amend the Trust at any time as may be necessary to comply with the requirements for tax exemption under Section 115 of the Code, to conform the Trust to the laws of the Commonwealth of Massachusetts and to meet the standards set forth in GASB statements concerning OPEB trust funds to be treated as funded through a qualifying trust or equivalent arrangement.

16.2. This Trust Agreement may be amended, but not revoked, from time to time by the Municipality, subject to the following limitations:

16.2.1. The assets of the Trust may not be used for or diverted to any other purposes prior to satisfaction of the Municipality's OPEB obligations, and reasonable expenses of administering the Trust.

16.2.2. The duties and liabilities of the Trustee cannot be changed substantially without their written consent.

16.3 Any amendment to this Trust Agreement shall be executed in writing and shall be signed by both the Board of Selectmen and the Trustee.

ARTICLE 17

MERGER

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

ARTICLE 18

SEVERABILITY OF INVALID PROVISIONS

18.1. If any provision of this Trust Agreement is determined invalid, illegal, or unenforceable for any reason, then the provision shall be severed from the remaining provisions of the Trust Agreement and the remaining parts of the Trust Agreement shall be construed to give the maximum practical effect to

the purposes stated herein, as if the invalid, illegal, or unenforceable provision was never a part.

ARTICLE 19

MISCELLANEOUS

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

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

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


19.4. This Trust Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which together shall constitute but one instrument, which may be sufficiently evidenced by any counterpart, which counterparts may be executed and/or transmitted electronically via facsimile, email or a portable document format (PDF), or other electronic means.

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

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

(Signature Page Follows)

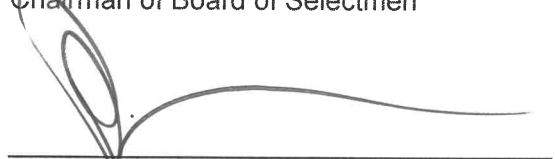
Witnessed By:

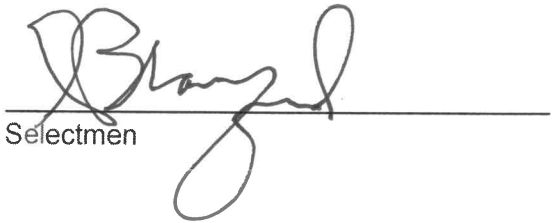

Selectmen's Assistant

03/08/2021
Date


Board of Selectmen:


Chairman of Board of Selectmen


Selectmen


Selectmen

Trustee:


Town Treasurer