

TRUST AGREEMENT
FOR THE LOS ANGELES CITY EMPLOYEES' RETIREMENT SYSTEM
HEALTH CARE FUND

Effective [INSERT DATE]

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This Trust Agreement (the "Agreement") for the Los Angeles City Employees' Retirement System Health Care Fund (the "Fund") is entered into by and between the City of Los Angeles (the "City") and the Board of the Los Angeles City Employees' Retirement System (the "Board") with respect to the Fund.

WITNESSETH

WHEREAS, the Fund is hereby established pursuant to Section 4.1102.1 of Chapter 11 of Division 4 of the Los Angeles Administrative Code (the "Administrative Code") for the sole purpose of funding the retiree health care benefits provided to eligible retired members, their eligible beneficiaries, and their qualified survivors (together, "Participants") of the Los Angeles City Employees' Retirement System Pension Plan pursuant to the programs established by Section 4.1105 of the Administrative Code (the "Retiree Health Care Programs").

WHEREAS, it is the intention of the City and Board that the Fund qualify for exemption from federal income tax under Section 115(1) of the Internal Revenue Code of 1986, as amended (the "Code").

WHEREAS, Section 4.1102.1 of the Administrative Code provides that the Board shall serve as the trustee of the Fund, and requires the City and Board to enter into this Agreement to establish the respective roles and responsibilities of the Board and the City with respect to the administration and investment of the Fund.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, it is agreed by and between the City and the Board as follows:

1. **NAME, PURPOSE AND ACCEPTANCE OF FUND**

(a) Name and Purpose of Fund. The Fund created hereunder is known as the Los Angeles City Employees' Retirement System Health Care Fund. The Fund is a funding entity for the Retiree Health Care Programs. The Fund's purpose is to hold and invest assets to fund benefits under the Retiree Health Care Programs. The Fund may provide an alternative funding mechanism, in addition to or in lieu of the 401(h) account described in Section 4.1150 of the Administrative Code (the "401(h) Account"), as determined by the Board in accordance with Section 4.1150.1 of the Administrative Code.

(b) Acceptance of Fund. The Board hereby accepts the Fund, agrees to hold in trust and administer the assets of the Fund as a discretionary trustee, and agrees to carry out the provisions hereof on its part to be performed. The duties of the Board with respect to the Fund and its assets shall be limited to those duties that are set forth in this Agreement and applicable law.

2. **FUND ASSETS, CONTRIBUTIONS AND PAYMENTS**

(a) **Definition of Fund Assets.** The Fund assets shall consist of all money as shall from time to time be paid or delivered to the Board by the City pursuant to this Agreement or by Participants in the form of premium payments (including without limitation premium reserve payments), as well as any surplus premiums returned to the Fund by health insurance providers and/or funds from any premium stabilization reserves held by health insurance providers, provided that the foregoing surplus premiums and premium stabilization reserve funds originated from the Fund or from Participant premium payments, which together with all earnings, profits, increments and accruals thereon, without distinction between principal and income, less any loss or diminution in value, shall constitute the “Fund Assets.”

(b) **Contributions.** The City shall make contributions to the Fund from time to time which contributions shall be treated as Fund Assets when contributed. Nothing in this Agreement requires the City to make contributions to the Fund, and any obligation of the City to pay or fund benefits shall be determined in accordance with applicable law and any other agreement. The Fund may also receive premium payments (including without limitation premium reserve payments) from Participants which shall be treated as Fund Assets when contributed. The Fund may also receive surplus premiums returned to the Fund by health insurance providers and/or funds from any premium stabilization reserves held by health insurance providers, provided that the foregoing surplus premiums and premium stabilization reserve funds originated from the Fund or from Participant premium payments. The Board shall receive contributions to the Fund in cash acceptable to the Board, and the Board shall have exclusive responsibility for investing and managing the contributions actually received by it.

(c) **Title to Fund Assets.** Subject to Section 3(b), all rights, title and interest in and to the assets of the Fund shall at all times be vested exclusively in the Board as trustee, and the Board, as trustee, shall hold legal title to all Fund Assets. Neither the City, nor any employee, official, or agent of the City, nor any Participant or other individual, shall have any right title or interest in any Fund assets.

(d) **Payments by the Board.** Payments of money or property from the Fund shall be solely for the purposes of funding retiree health care benefits provided to Participants through the Retiree Health Care Programs that the City would otherwise be obligated to pay, and for paying the reasonable expenses of administering the Fund and administering the Retiree Health Benefit Programs in accordance with Chapter 11 of Division 4 of the Administrative Code.

3. **POWERS AND DUTIES OF THE BOARD**

(a) **Investments.** Consistent with Section 4.1102.1 of Chapter 11 of Division 4 of the Administrative Code, the Board shall have sole, exclusive, and plenary authority over the Fund Assets, including the sole and exclusive authority, control over and responsibility for directing the investment and management of Fund Assets. The Board shall not issue a direction in violation of the terms of this Agreement. The Board shall have all powers necessarily and reasonably implied from its investment and management responsibilities, including but not limited to:

(i) Invest and reinvest the principal and income of the Fund, without distinction between principal and income, in any form or type of investment, financial instrument, or financial transaction deemed prudent by the Board, consistent with the Board's fiduciary duties under Los Angeles City Charter Section 1106, subsection (c) and Article XVI, Section 17, subsection (c) of the California Constitution, including without limitation in such securities or in such property, real or personal, tangible or intangible, or part interest therein, wherever situated, whether or not productive of income, or consisting of wasting assets, as the Board deems proper, including but not limited to stocks, common or preferred, trust and participation certificates, interests in investment companies, limited partnerships, limited liability companies and other similar investment funds or vehicles, leaseholds, fee titles, beneficial interest in any trusts, equipment trust certificates, bonds, debentures, notes, mortgages and other evidences of indebtedness or ownership, and to retain the same for such period of time as it deems appropriate;

(ii) Without limiting the Board's powers described in Section 3(a)(i), hold Fund Assets (A) in cash, (B) in obligations issued or fully guaranteed as to payment of principal or interest of the U.S. Government, (C) in commercial paper, (D) in variable-amount demand notes, or (E) in accounts (bearing a rate of interest that is reasonable for such accounts at the time held) of a bank acting as a fiduciary with respect to Fund Assets that it holds;

(iii) Without limiting the Board's powers described in Section 3(a)(i), to invest in guaranteed investment contracts issued by insurance companies, including group annuity contracts, and similar investments issued by banking institutions located either domestically or internationally.

(iv) Without limiting the Board's powers described in Section 3(a)(i), to lend securities upon a secured basis, permitting custody and control and voting authority of the securities to pass to the borrower during the period of the loan and to receive a lending fee or other consideration, and without limiting the foregoing, to engage in any securities lending program on behalf of the Fund, and in connection therewith to direct or manage the investment of cash collateral and other assets received as collateral.

(v) Without limiting the Board's powers described in Section 3(a)(i), hold such portion of the Fund in non-U.S. currencies as deemed desirable by the Board consummating investment transactions and in facilitating investment of income and other payments accruing to investment assets held by the Fund;

(vi) To establish and maintain bank, brokerage, commodity, currency and other similar accounts, whether in the United States or in any other country, to enter agreements in connection therewith and, from time to time, to deposit securities or other Fund Assets in such accounts;

(vii) To vote, either in person or by general or limited proxy, or refrain from voting, any corporate securities for any purpose; to exercise or sell any option, subscription or conversion rights; to consent to or join in any voting trusts, reorganizations, consolidations, mergers, foreclosures and liquidations, and in connection therewith to deposit securities with or

under the direction of any protective committee; and to accept and hold any securities or other property received through the exercise of any of the foregoing powers;

(viii) To lease or grant options to lease Fund Assets for any period of time even though commencing in the future and even though extending beyond the termination of the Fund;

(ix) To borrow money, extend or renew any existing indebtedness and mortgage or pledge any property in the Fund; no mortgagee shall be obliged to see to the application of any mortgage money or inquire into the validity, expediency or propriety of any such mortgage;

(x) To convey, assign, transfer, exchange, partition, grant options with respect to, sell at a public or private sale or otherwise dispose of any and all of the Fund Assets and any reinvestments thereof from time to time for such price and upon such terms as the Board sees fit; no purchaser shall be obliged to see to the application of any purchase money or inquire into the validity, expediency or propriety of any such sale or other disposition;

(xi) To adopt an investment policy and asset allocation goals consistent with the purpose of the Fund described in Section 1(a).

(xii) Without limiting the generality of any of the foregoing, to perform all acts whether or not expressly authorized herein which the Board deems necessary or desirable for the protection and operation of the Fund; and

(xiii) Without limiting the generality of any of the foregoing, to commingle and/or co-invest all or any portion of the Fund Assets with retirement fund assets of the Los Angeles City Employees' Retirement System Pension Plan (the "Pension Fund") (including through a group trust under Revenue Rulings 81-100 and 2011-1), but without any obligation to do so.

(b) Management of the Fund by Board. Subject to applicable law, the Board shall have the sole, exclusive, and plenary authority, and shall have fiduciary responsibility, over the management and investment of Fund Assets. The Board shall have all powers necessarily and reasonably implied from such authority, control and responsibility, including, but not limited to, the following:

(i) To invest the Fund Assets pursuant to this Agreement and to enter into and carry out every agreement with respect to the Fund that may be necessary or advisable to discharge its investment responsibility;

(ii) To cause a state or federally chartered depository institution, the deposits of which are insured by the Federal Deposit Insurance Corporation, or any trust company licensed under state or federal law to conduct the business of a trust company or any Federal Reserve Bank, to act as custodian for the Fund Assets;

(iii) To cause any securities or other property, real or personal, belonging to the Fund to be held or registered in the Board's name, as trustee, or in the name of a nominee or

in such other form as the Board deems best, provided that the books and records of the Board shall at all times show that all such investments are part of the Fund;

(iv) To employ and delegate any powers granted hereunder to investment advisers, investment consultants, investment managers, other investment professionals, agents, attorneys, custodians, and employees, and pay their reasonable compensation and expenses;

(v) To defend, settle, compromise, contest, prosecute, foreclose on or abandon claims in favor of or against the Fund, and all costs, expenses (including without limitation, attorneys' fees) and disbursements in connection therewith shall be a charge against the Fund; and

(vi) To organize (under the laws of any state) corporations, partnerships, limited liability companies or trusts for the purpose of acquiring and holding title to any property which the Fund acquires.

(vii) To make, execute, and file any and all tax elections, filings, returns and forms deemed necessary, desirable or appropriate under the provisions of any U.S., non-U.S., state or local laws and regulations.

(viii) To establish a contingency reserve within the Fund to be utilized to defray increases in future premium rates, to reduce contribution rates, or to implement cost containment programs for the Retiree Health Care Programs, as determined by the Board.

(ix) To perform any and all other acts necessary or appropriate for the administration of the Fund and, in the exercise of any power or discretion, to execute and deliver all necessary instruments and give full receipts and discharges.

4. **FIDUCIARY RESPONSIBILITIES AND INDEMNITIES**

(a) **Fiduciary Duties.** Subject to the other terms of this Agreement, including but not limited to Sections 4(b) and (c), the Board, and its officers and employees shall:

(i) Discharge their duties under this Agreement solely in the interest of, and for the exclusive purpose of funding benefits to Participants under the Retiree Health Care Programs, minimizing City contributions necessary to fund the Retiree Health Care Programs, and defraying reasonable expenses of the Fund. Consistent with Los Angeles City Charter Section 1106, subsection (a) and Article XVI, Section 17, subsection (b), the duty to Participants shall take precedence over any other duty. No part of the principal or income of the Fund shall be used for, or diverted to, purposes other than the exclusive benefit of Participants or for the payment of reasonable expenses of administering the Fund and the Retiree Health Care Programs.

(ii) Discharge their duties under this Agreement with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims and in accordance with the terms of this Agreement.

(iii) Diversify the investments of the Fund so as to minimize the risk of loss and to maximize the rate of return, unless under the circumstances it is clearly not prudent to do so.

(b) Insurance. The Fund may purchase liability insurance covering the Board, its officers and employees in accordance with applicable law.

(c) Advice of Counsel. The Board may consult with and rely upon qualified legal counsel, including, without limitation, in-house counsel, with respect to the meaning and construction of this Agreement, of any provision hereof, or concerning its powers or obligations, including but not limited to its fiduciary duties, hereunder.

5. ACCOUNTS AND REPORTS OF THE BOARD

(a) Records and Reports. The Board shall keep complete and accurate accounts of all of the Fund's contributions, transactions, investments and disbursements under this Agreement. The Board's records shall reflect the City's contributions, investment experience and expenses allocable to those contributions, and disbursements made to pay benefit or expense obligations of the Retiree Health Care Programs and shall distinguish the assets of the Fund from those of the Pension Fund. Upon reasonable written notice, the Board shall allow the City or any other authorized state or federal agency or any duly authorized representative thereof to access, examine, audit, excerpt, copy, or transcribe any pertinent transaction, activity, or other record relating to this Agreement, except where disclosure is not permitted under investment-related agreements with third parties.

(b) Financial Statements. The Board shall file annual financial statements with the City showing the financial condition of the Fund at the close of the preceding fiscal year. The financial statements shall be prepared in accordance with generally accepted accounting principles on the basis of pronouncements of the Government Accounting Standard Board or its successor organization, and provided to the City in conjunction with the financial statements for the Pension Fund and 401(h) account.

(c) Audits. The books and records of the Fund shall be audited at least once each fiscal year by an independent auditor in accordance with accepted auditing standards, the costs of which audit shall be considered a cost of Fund administration. The results of the audit shall be provided to the City by the Board. The Board shall retain the services of a certified public accountant to perform the annual audit, which may be the same party the Board retains to audit the Pension Fund. The City retains the right to direct that a separate and additional audit of the Fund be performed at the City's expense.

(d) Compliance with Privacy Laws. Any records, reports or other information furnished under this Section 5 shall be furnished in accordance with and subject to any applicable privacy laws, including but not limited to Title II of the Health Insurance Portability and Accountability Act of 1996, as may be amended from time to time, and the guidance promulgated thereunder

6. **REIMBURSEMENT OF EXPENSES**

(a) Payment of Expenses. The Board shall be entitled to payment or reimbursement of all of its reasonable and appropriate expenses incurred in administering or investing the Fund in accordance with this Agreement, as reasonably determined by the Board in its sole and absolute discretion. The expenses of the Pension Fund shall not be treated as expenses of this Fund, and the expenses of this Fund shall not be treated as expenses of the Pension Fund. Such expenses shall be paid directly from Fund Assets without further authorization or approval, provided that the City shall pay such expenses to the extent there are insufficient Fund Assets. The Board shall maintain adequate records of expenses incurred in administering or investing the Fund, which records shall be subject to audit by the City upon written request. Except as provided herein, the Board shall serve without compensation.

(b) City Expenses. All appropriate and reasonable expenses incurred by the City or other persons designated to act on behalf of the City in administering the Fund shall be paid promptly from the Fund upon written request from the City.

7. **RESIGNATION OF THE BOARD**

Subject to applicable law, the Board may resign from its responsibilities as trustee with respect to the Fund upon at least one hundred eighty (180) days written notice to the City; provided, however, if any Fund Assets are commingled and/or co-invested with Pension Fund assets, the City shall allow at least three hundred sixty (360) days following written notice of removal for the transfer of such assets to the successor trustee in cash, in kind, or in some combination of both as determined by the Board. Upon resignation of the Board as trustee, the City shall appoint a successor trustee. Upon the Board's transfer of the assets of the Fund to the successor trustee, all rights and privileges with respect to the assets of the transferred Fund under this Agreement shall vest in the successor trustee. Upon such transfer, the Board's responsibilities and duties as trustee under this Agreement with regard to the Fund Assets shall terminate.

8. **AMENDMENT AND TERMINATION**

(a) Amendment. The parties may not amend this Agreement, except by a written agreement that each party signs. No amendment shall be made that will permit any part of the Fund to be used for, or diverted to, any purpose other than to fund benefits to Participants under the Retiree Health Care Programs or to pay reasonable expenses of administering the Retiree Health Care Programs and the Fund until all liabilities under the Retiree Health Care Programs have been satisfied.

(b) Termination. The Fund shall terminate automatically upon the satisfaction of all liabilities under Retiree Health Care Programs. Any assets remaining in the Fund upon termination of the Fund shall be used solely to satisfy any obligation that the City may have to provide benefits to Participants under the Retiree Health Care Programs; provided, however, that notwithstanding anything in this Agreement to the contrary, any assets that remain in the Fund upon termination and after satisfaction of all of the City's liabilities with regard to the Retiree Health Care Programs shall revert solely to the City's General Fund.

9. **MISCELLANEOUS**

(a) **Entire Agreement.** This Agreement and any and all Exhibits, Schedules and Appendices attached hereto contain the final, complete, entire and exclusive statement of the terms of the agreement between the parties pertaining to the subject matter of this Agreement, and supersedes all other previous oral and written agreements or understandings, and all contemporaneous oral and written negotiations, commitments, understandings and communications between the parties, relating to the subject matter of this Agreement; provided, however, the terms of this Agreement are not intended to, and do not, modify the terms of any other agreement or arrangement providing for retirement benefits or the rights and obligations of the parties thereunder with regard to the Retiree Health Programs.

(b) **Construction and Governing Law.** The parties intend that the income of the Fund qualify for exemption from federal income tax under Section 115(1) of the Code. This Agreement shall be construed and administered consistent with this intent, and shall otherwise be construed, administered and enforced according to applicable laws of the State of California. If any provision is susceptible to more than one interpretation, the interpretation to be given is that which is consistent with the foregoing intent.

(c) **Execution and Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute but one instrument, which may be sufficiently evidenced by any one counterpart.

(d) **Severability.** If any provision of this Agreement is held by any court to be void, illegal, invalid, or unenforceable, in whole or in part, the remaining terms and provisions will not be affected thereby, and each of such remaining terms and provisions of this Agreement will be valid and enforceable to the fullest extent permitted by law, unless a party shows by a preponderance of the evidence that the invalidated provision was an essential economic term of the agreement or that an essential purpose of this Agreement would be defeated by the loss of the void, illegal, invalid or unenforceable provision.

(e) **Surviving Provisions.** The provisions of this Agreement that expressly survive the termination of this Agreement, and other provisions which by their nature are intended to survive expiration of this Agreement, including but not limited to Sections 4(b) and (c), will survive the expiration of this Agreement.

(f) **Notices** All notices, requests, demands or other communications required or desired to be given hereunder or under any law now or hereafter in effect shall be in writing. Such notices shall be deemed to have been given one business day after delivery by facsimile with telephone confirmation of receipt, or by reputable overnight courier, or if delivered as permitted by Section 9(a), or three business days after being mailed by first class registered or certified mail, postage prepaid, and addressed as follows (or to such other address as either party from time to time may specify in writing to the other party in accordance with this notice provision).

If to the Board:

If to the City:

(g) Time of the Essence. Time is of the essence in respect to all provisions of this Agreement that specify a time for performance.

(h) Headings and Construction. The language in all parts of this Agreement shall in all cases be construed according to its fair meaning, and not strictly for or against any party hereto. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party does not apply in interpreting this Agreement. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement

(i) Gender. As used in this Agreement, the masculine gender shall include the feminine and neuter genders and the singular shall include the plural and the plural the singular as the context requires.

IN WITNESS WHEREOF, the Board and the City have caused this Agreement to be executed as of the ____ day of _____, _____.

BOARD OF ADMINISTRATION OF THE LOS ANGELES CITY EMPLOYEES' RETIREMENT SYSTEM

By: _____

Title: _____

CITY OF LOS ANGELES

By: _____

Title: _____