

Cambridge Redevelopment Authority
OTHER POST-EMPLOYMENT BENEFITS ("OPEB") TRUST

This TRUST AGREEMENT made this 13th day of September 2017 by the Cambridge Redevelopment Authority (CRA) acting through its Board

WITNESSETH:

WHEREAS, the CRA wishes to establish an irrevocable trust (hereinafter the "Trust") for the purpose of funding Other Post-Employment Benefits ("OPEB") obligations as required to be reported under Governmental Accounting Standards Board ("GASB") statements in relation to OPEB; and

WHEREAS, the Trust is established by the CRA 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 and Regulations issued thereunder and as a trust for OPEB under G.L. c.32B, §20.

NOW, THEREFORE, in consideration of the foregoing promises and the mutual covenants hereinafter set forth, the CRA hereby agrees as follows.

ARTICLE I DEFINITIONS

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

- 1.1. "Code" means the Internal Revenue Code of 1986, as amended from time to time.
- 1.2. "ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time and any successor statute.
- 1.3. "GASB OPEB-related Statements," shall mean Government Accounting Standards Board, Statement No. 74 and Statement No. 75, Accounting and Financial Reporting by Employers for Post-Employment Benefits Other Than Pensions, and inherently encompasses any subsequently issued GASB statements as it applies to OPEB.
- 1.4. "Other post-employment benefits" or "OPEB," shall mean post-employment benefits other than pensions as that term is defined in GASB OPEB-related Statements 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.
- 1.5. "Retired Employee" means those persons who have retired from employment with the CRA and who are qualified to receive retirement benefits pursuant to G.L. c.32 or as otherwise provided by law.

1.6. "Trust" means the Cambridge Redevelopment Authority OPEB Trust as hereby established.

1.7. "Trustee" means the duly serving members of the CRA Board, and any successor appointed as provided pursuant to Article 5.

1.9. "Trust Fund" means all the money and property, of every kind and character, including principal and income, held by the Trustee under the Trust.

ARTICLE 2 PURPOSE

2.1. The Trust is created for the sole purpose of providing funding for OPEB, as determined by the CRA, or by any general or special law providing for such benefits, for the exclusive benefit of the CRA's Retired Employees and their eligible dependents 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 constitute a so called "Qualified OPEB Trust" according to the standards set forth in GASB OPEB-related Statements and that it further qualify as a Integral Part Trust for all purposes under Article 115(c) of the Code or under any comparable provision of future legislation that amends, alters, or supersedes the Code.

ARTICLE 3 ESTABLISHMENT OF TRUST

3.1. In order to implement and carry out the provisions of G.L. c.32B, §20, the CRA hereby establishes this Trust, which shall be known as the "Cambridge Redevelopment Authority OPEB Trust."

3.2. The Trust shall be irrevocable, and no Trust funds shall revert to the CRA 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 CRA, located at 255 Main Street, 4th Floor, Cambridge, MA 02142.

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

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

3.6. The Trust shall consist of such sums of money as shall from time to time be paid or delivered to the Trustees by the CRA, which together with all earnings, profits, increments and accruals thereon,

without distinction between principal and income, shall constitute the Trust hereby created and established. Nothing in this Agreement requires the CRA to make contributions to the Trust to fund OPEB. Any obligation of the CRA to pay or fund benefits shall be determined in accordance with applicable law and any agreement to provide OPEB.

ARTICLE 4 TRUST FUNDING

4.1. The Trust Fund shall be credited with all amounts appropriated or otherwise made available by the CRA as a contribution to the Trust for the purposes of meeting the current and future OPEB costs payable by the CRA, or any other funds donated or granted specifically to the CRA for the Trust, or to the Trust directly.

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

4.3. The Trustees shall have no duty, expressed or implied, to compel any contribution to be made by the CRA, but shall be responsible only for property received by the Trustees under this Trust Agreement.

4.4. The CRA 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 CRA's OPEB liabilities. This Trust Agreement shall not constitute a pledge of the CRA'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 CRA for such purposes.

The obligation of the CRA to pay or fund OPEB obligations, if any, shall be determined by the CRA or applicable law. Distributions of assets in the Trust are not debts of the CRA within the meaning of any constitutional or statutory limitation or restriction.

4.4. Earnings or interest accruing from investment of the Trust shall be credited to the Trust. Amounts in the Trust 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 CRA for OPEB obligations to Retired Employees and their dependents, and defraying the reasonable expenses of administering any plan providing OPEB Benefits as provided for in this Trust Agreement.

4.5. Amounts in the Trust Fund shall in no event be subject to the claims of the CRA's general creditors. The Trust 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 CRA, or of retirees or dependents who are entitled to OPEB.

**ARTICLE 5
TRUSTEES**

- 5.1. The Trust shall be administered by a Board of Trustees consisting of the five (5) members of the CRA Board, who shall include the CRA Chair, CRA Vice Chair, CRA Treasurer, CRA Assistant Treasurer, and CRA Assistant Secretary. The CRA Executive Director shall serve as an ex officio member of the Board of Trustees.
- 5.2. The Treasurer of the Board shall serve as the initial Chairperson of the Trustees.
- 5.3. In the event a Trustee resigns, is removed, or is otherwise unable to serve, the person selected to fill the CRA Board position shall also be appointed as a Trustee to fill the vacancy.
- 5.4. Whenever a change occurs in the membership of the Board of Trustees, the legal title to property held by this Trust shall automatically pass to those duly appointed successor Trustees.
- 5.5. Each future Trustee shall accept the office of Trustee and the terms and conditions of this Trust Agreement in writing.
- 5.6. 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 his possession or under his control belonging to the Trust.
- 5.7. The Trustees shall be public officials for purposes of G.L. c.268A and shall be subject to the restrictions and prohibitions set forth therein.

**ARTICLE 6
POWERS OF THE TRUSTEES**

The Trustees shall have the power to control and manage the Trust and the Trust 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 Trustees may deem necessary or advisable to administer the Trust and the Trust Fund or to carry out the purposes of this Trust. In addition to the powers set forth elsewhere in this Agreement, the powers of the Trustees, in connection with their managing and controlling the Trust and the Trust Fund, shall include, but shall not be limited to, the following:

- 6.1. To enter into an administrative services contract or other contracts with one or more insurance companies, nonprofit hospitals, medical 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 basic life insurance 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 Trustees from the Trust 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.

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

6.3. 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 Trustees shall comply with the provisions of Article 7 of this Trust Agreement, applicable law and any investment policy adopted by the Trustees concerning the investment and management of the Trust Funds.

6.4. To borrow or raise money for the purposes of the Trust, in such amount, and upon such terms and conditions as the Trustees 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 Trust Fund; and no person lending such money shall be obligated to see that the money lent is applied to Trust purposes or to inquire into the validity, expedience or propriety of any such borrowing.

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

6.6. To employ suitable agents, advisors and counsel as the Trustees 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 Trustees are entitled to rely upon and may act upon the opinion or advice of any attorney approved by the Trustees in the exercise of reasonable care. The Trustees 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 Trustees or the written minutes of the Trustees' meetings.

6.7. To hire employees or independent contractors as the Trustees 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 Trust Fund.

6.8. 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 Trustees hereunder, by any by-laws adopted by the Trustees or by law.

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

6.10. To maintain bank accounts for the administration of the Trust and the Trust Fund and to authorize certain Trustees or other appropriate persons to make payments from any appropriate

account for purposes of the Trust.

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

6.12. To adopt by-laws, rules, regulations, formulas, actuarial tables, forms, and procedures by resolution from time to time as they deem 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.

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

6.14. 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 they, in their discretion, may deem necessary or advisable. Except as otherwise directed by the Trustees, all such contracts and agreements, or other legal documents herein authorized, shall be executed by the Chairperson..

6.15. To receive 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.

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

6.17. To do all acts, whether or not expressly authorized herein, which the Trustees 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.

6.18. To compromise, settle or arbitrate any claim, debt, or obligation of or against the Trust or Trust 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;

6.19. To hire one or more consultants, actuaries, accountants, attorneys or other professionals to assist with the administration of the Trust Fund and to pay such amounts that the Trustees deem 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.

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

ARTICLE 7
LIMITATION OF TRUSTEES' POWERS, DUTIES AND RESPONSIBILITIES

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

7.2 The Trustees shall have such rights, powers and duties as are provided to a named fiduciary for the investment of assets under ERISA (Employee Retirement Income Security Act of 1974). The Trustees shall not be liable for the making, retention or sale of any investment or reinvestment made by the Trustees as herein provided or for any loss to or diminution of the Trust Fund or for anything done or admitted to be done by the Trustees with respect to the Trust Agreement or the Trust Fund except as and only to the extent that such action constitutes a violation of the law or gross negligence.

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

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

7.5 Neither the Trustees nor the CRA 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.

7.6 The Trustees 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.

ARTICLE 8
ACTIONS BY THE TRUSTEES

8.1 A majority of Trustees may exercise any or all of the powers of the Trustees hereunder and may execute on behalf of the Trustees any and all instruments with the same effect as though executed by all the Trustees.

8.2. The Trustees may, by instrument executed by all of the Trustees, delegate to any attorney, agent or employee such other powers and duties as they deem advisable, including the power to execute, acknowledged or deliver instruments as fully as the Trustees might themselves and to sign and endorse checks for the account of the Trustees of the Trust.

8.3. No Trustee shall be required to give bond.

ARTICLE 9 LIABILITY OF THE TRUSTEES

9.1. A Trustee shall not be liable for any mistake of judgment or other action made, taken or omitted by the Trustee in good faith, nor for any action taken or omitted by any other Trustee or any agent or employee selected with reasonable care, and the duties and obligations of the Trustees hereunder shall be expressly limited to those imposed upon them by this Trust Agreement.

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

9.3. Trustees are public employees for purposes of G.L. c.258, and shall be indemnified by the CRA against any civil claim, action, award, compromise, settlement or judgment by reason of an intentional tort to the same extent and under the same condition as other public employees of the CRA.

9.4. A Trustee shall not be indemnified for violation of the civil rights of any person if he acted in a grossly negligent, willful or malicious manner, or in connection with any matter where it is shown to be a breach of fiduciary duty, an act of willful dishonesty or an intentional violation of law by the Trustee.

ARTICLE 10 MEETINGS OF THE TRUSTEES

10.1. The Board of Trustees may meet at such times and at such places, as the Trustees shall determine.

10.2 The Trustees shall comply with the Open Meeting Law, G.L. c.30A, §18-25 and its implementing regulations.

10.2. A quorum at any meeting shall be a majority of the Trustees then in office.

ARTICLE 11 TAXES, EXPENSES, AND COMPENSATION

11.1. It is intended that the Trust will be a Code Article 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 Trustees shall use the assets of the Trust Fund to pay for any taxes owed.

11.2. All reasonable costs and expenses of managing and administering the Trust and the Trust Fund, and reimbursement for reasonable fees incurred through the use of third party vendors or

agents, shall be paid from the Trust Fund unless the CRA chooses to pay the expenses directly.

**ARTICLE 12
ACCOUNTS**

12.1. The Trustees 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 and their implementing regulations. The person or persons designated by the CRA shall be entitled to inspect such records upon request at any reasonable time.

12.2. The books and records of the Trust shall be audited annually by an independent auditor in accordance with accepted accounting practices. The results of the audit shall be provided to the CRA at the same time as it is presented to the Trustees.

**ARTICLE 13
ANNUAL REPORTS**

13.1. The Trustees shall furnish to the CRA annually, or more frequently if the CRA so requests, a statement of account showing the condition of the Trust Funds and all investments, sales, income, disbursements and expenses of the Trust and the Trust Fund.

**ARTICLE 14
INVESTMENT OF TRUST FUNDS**

14.1. The Trustees hereby authorize and direct the CRA Treasurer to invest and reinvest the amounts in the Trust Fund not needed for current disbursement, consistent with G.L. c. 203C[1][2].

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

**ARTICLE 15
CUSTODY OF THE TRUST FUNDS**

15.1. The Trustees hereby appoint the CRA Treasurer as custodian of the Trust Fund and authorize the CRA Treasurer to employ an outside custodial service to maintain custody of the Trust Funds. All funds in the Trust Fund shall be accounted for separately from all other funds of the CRA.

15.2. The CRA Treasurer, with the authorization of the Trustees, may 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 Trust Funds, and the Trustees may authorize the CRA Treasurer to draw on such checking accounts for the payment of OPEB and for the administrative expenses of the Trust.

**ARTICLE 16
TERMINATION OF TRUST**

16.1. The Trust shall continue unless and until terminated pursuant to law or by an instrument in writing signed by at least three Trustees, provided, however, that continuance of the Trust shall not be deemed to be a contractual obligation of the CRA.

16.2. 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 Trustees, the net assets of the Trust shall be transferred to the CRA and held by the CRA Treasurer to be used exclusively for providing OPEB to Retired Employees and their eligible dependents and for no other purpose.

16.3. The powers of the Trustees shall continue until the affairs of the Trust are concluded.

**ARTICLE 17
AMENDMENTS**

17.1. The Trust may only be amended as set forth herein. The CRA 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 OPEB-related Statements to be treated as funded through a qualifying trust or equivalent arrangement.

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

- The assets of the Trust may not be used for or diverted to any other purposes prior to satisfaction of the CRA's OPEB obligations, and reasonable expenses of administering the Trust.
- The duties and liabilities of the Trustees cannot be substantially changed without their written consent.

17.3. Any amendment to this Trust shall be executed in writing.

**ARTICLE 18
MERGER**

18.1. The CRA may provide for the merger of the Trust with one or more other trusts established by the City of Cambridge or other government entities for similar purposes as may be provided by law by vote of the CRA Board.

ARTICLE 19
SEVERABILITY OF INVALID PROVISIONS

19.1. 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 for any reason, and the remaining parts of the 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 20
MISCELLANEOUS

20.1. 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.

20.2. 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.

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

20.4. 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.

20.5. Until advised to the contrary, the Trustees 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.