



Office of the City Manager

CONSENT CALENDAR
January 22, 2013

To: Honorable Mayor and Members of the City Council
From:  Christine Daniel, City Manager
Submitted by: David Abel, Acting Director of Human Resources
Subject: Police Retiree Health Premium Assistance Plan

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute and implement the Berkeley Police Retiree Health Premium Assistance Plan and Trust Agreement for represented sworn police employees who retire after September 19, 2012. This action establishes the regulatory authority to enable the City to provide retiree health premium assistance as set forth in the Memorandum of Understanding (MOU) between the City and the Berkeley Police Association.

FISCAL IMPACTS OF RECOMMENDATION

There are no other fiscal impacts of the recommendation to establish the Berkeley Police Retiree Health Premium Assistance Plan and Trust Agreement. The City has had a contractual obligation to provide retiree health premium assistance payments to former represented Berkeley Sworn Police personnel who have retired since September 19, 2012.

CURRENT SITUATION AND ITS EFFECTS

The City's MOU with the Berkeley Police Association closed the Police Supplemental Retirement and Income Plan to new members as of September 19, 2012. This former plan provided eligible retired sworn Police employees and spouse/domestic partner with a cash amount equivalent to the 2-party active Kaiser monthly premium amount in effect at the time of the payment. There was no limit on the amount the City was required to pay and payments continued at the 2-party Kaiser active rate until the death of the retiree and spouse/domestic partner. In making these cash payments, the City withheld Federal and State Income taxes before making the payments.

The City and the Association agreed to end this former benefit and, in exchange, agreed to provide retiree health premium assistance to represented sworn Police employees and spouse/domestic partner on a pre-tax basis where payments are made to health insurance providers and not directly to the retiree.

BACKGROUND

On September 11, 2012, the City Council adopted Resolution No. 65,884–N.S. that authorized the City Manager to execute and implement a new MOU between the City and the Berkeley Police Association. Sections 32.3, 32.4 and 32.5 et seq. of the MOU contains provisions that the City will establish a Retiree Health Premium Assistance Plan and Trust Agreement under Internal Revenue Code Section 115 for the purpose of making retiree health premium assistance payments to health care insurance companies on behalf of the retiree and/or surviving spouse or domestic partner. The City contracted with the law firm of Hansen, Bridgett, Marcus, Vlahos, Rudy LLP (hereinafter “Hanson Bridgett”) to advise the City on this matter.

Hanson Bridgett has written 1) a Berkeley Police Retiree Health Premium Assistance Plan and 2) an Internal Revenue Code Section 115 Trust Agreement that provide retiree health premium assistance plan benefits to eligible sworn police retirees of the City without tax consequences. The Berkeley Police Retiree Health Premium Assistance Plan and the Trust Agreement are attached as Exhibits “A” and “B”. The Plan is being established to be effective September 19, 2012. Former employees, approximately 124, who retired prior to September 19, 2012, will still receive benefits under the former Berkeley Police Employees Retiree Income Plan which now becomes a closed group. The City had its outside actuary, Milliman, Inc., perform an actuarial analysis to separate plan assets and liabilities from the Police Supplemental Retirement and Income Plan, calculate an Annual Required Contribution (ARC) under Governmental Accounting Standards Board Statement 45 for this new Berkeley Police Retiree Health Premium Assistance Plan and recommend a funding strategy for the new plan.

RATIONALE FOR RECOMMENDATION

This action is necessary in order for the City to comply with the provisions of Sections 32.3, 32.4 and 32.5 et seq. of the MOU and with Section 115 of the Internal Revenue Code.

ALTERNATIVE ACTIONS CONSIDERED

No alternative actions were considered.

CONTACT PERSON

David Abel, Acting Director of Human Resources, 981-6807

Attachments:**1: Resolution**

Exhibit A: Berkeley Police Retiree Health Premium Assistance Plan

Exhibit B: Berkeley Police Retiree Health Premium Assistance Plan Trust Agreement

RESOLUTION NO. ##,###-N.S.

POLICE RETIREE HEALTH PREMIUM ASSISTANCE PLAN

WHEREAS, on September 11, 2012, the City Council adopted Resolution No. 65,884-N.S. that authorized the City Manager to execute and implement a new Memorandum of Understanding (MOU) between the City of Berkeley and the Berkeley Police Association; and

WHEREAS, Sections 32.3, 32.4 and 32.5 et seq. provide that the City will establish a new Retiree Health Premium Assistance Plan and Trust Agreement under Internal Revenue Code Section 115 for employees who retire on or after September 19, 2012; and

WHEREAS, the City has had its outside actuary, Milliman, Inc., separate plan assets and liabilities from the Berkeley Police Supplemental Retirement Plan for employees who will retire after September 19, 2012 under the Police Retiree Health Premium Assistance Plan and has calculated an Annual Required Contribution (ARC) under Governmental Accounting Standards Board Statement 45; and

WHEREAS, the current MOU between the City and the Berkeley Police Association closes the Police Supplemental Retirement and Income Plan to new members and it is necessary to create a new Berkeley Police Retiree Health Premium Assistance Plan and Trust Agreement to comply with Internal Revenue Code Section 115.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute and implement the Berkeley Police Retiree Health Premium Assistance Plan (Exhibit A) and Trust Agreement (Exhibit B) and any amendments with implementation of the Plan and Trust Agreement to be effective September 19, 2012. A record signature copy of said Berkeley Police Retiree Health Premium Assistance Plan and Trust Agreement and any amendments to be on file in the Office of the City Clerk.

Exhibits

A: Berkeley Police Retiree Health Premium Assistance Plan

B: Berkeley Police Retiree Health Premium Assistance Plan Trust Agreement

CITY OF BERKELEY
POLICE RETIREE HEALTH PREMIUM ASSISTANCE
PLAN



Effective September 19, 2012

CITY OF BERKELEY
POLICE RETIREE HEALTH PREMIUM ASSISTANCE PLAN

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**CITY OF BERKELEY
POLICE RETIREE HEALTH PREMIUM ASSISTANCE PLAN**

ARTICLE I. INTRODUCTION

- 1.1 ***Establishment and Purpose of Plan.*** The purpose of this Plan is to provide access to health care coverage by providing funds to assist Eligible Retirees of the City of Berkeley (the "City") who are members of the Berkeley Police Association (the "Association") (and their Eligible Beneficiaries) to pay for health care coverage. The Plan is established pursuant to a memorandum of understanding between the City and the Association effective June 26, 2011 and adopted by the City Council on September 11, 2012 for the purpose of paying benefits provided in section 32.2 of that MOU.

ARTICLE II. DEFINITIONS

- 2.1 ***"Administrator"*** means the third-party administrator selected by the Manager to administer the Plan after consultation with the Association and consistent with the applicable provisions in the MOU.
- 2.2 ***"Advisory Committee"*** means the committee established to advise on the Plan under section 7.3 below.
- 2.3 ***"Base Dollar Amount"*** means the applicable dollar amount payable by the Plan toward the cost of an Eligible Retiree's and/or Eligible Beneficiary's Health Plan coverage, as specified in Appendix I.
- 2.4 ***"Berkeley Police Association" or "Association"*** means the association that represents police officers who are employees of the City and that has entered into the MOU with the City.
- 2.5 ***"CalPERS"*** means the California Public Employees' Retirement System.
- 2.6 ***"City"*** means the City of Berkeley, a municipal corporation organized under the laws of the state of California.
- 2.7 ***"COBRA"*** means the Consolidated Omnibus Budget Reconciliation Act of 1985. It describes, together with COBRA regulations, the rules for the Health Plan to offer continuation coverage to qualified beneficiaries that lose coverage as a result of a qualifying event.
- 2.8 ***"Consultation with the Association"*** means that the Association has the right to be heard and noticed on all information so it can fully engage in process concerning an issue affecting the Plan. If agreement has not been reached, the City Manager

shall be entitled to make the final decision consistent with his or her fiduciary responsibility.

- 2.9 **“Effective Date”** means September 19, 2012, except as provided in Appendix I.
- 2.10 **“Eligible Beneficiary”** means an individual who is the legal spouse, as determined under applicable state law, or domestic partner of an Eligible Retiree, including marriages or domestic partnerships entered into before or after the retirement of an Eligible Retiree. Whether a person is a domestic partner shall be determined by the City in accordance with the uniform procedures established for participation by domestic partners in City benefit programs, including the completing and filing of the City's Affidavit of Domestic Partnership Application.
- 2.11 **“Eligible Employee”** means a police officer who is an Employee of the City of Berkeley, who is a sworn member of the Berkeley Police Department and who is represented by the Berkeley Police Association. An individual's status as an Eligible Employee shall be determined solely by the Plan Administrator, and such determination shall be conclusive and binding upon all persons.
- 2.12 **“Eligible Retiree”** means an Eligible Employee who has met the eligibility requirements in Article III. An individual's status as an Eligible Retiree will be determined solely by the Plan Administrator.
- 2.13 **“Employee”** means an individual employed by the City, who is on the regular payroll for the City, for whom the City withholds employment taxes, and for whom the City issues a timely IRS form W-2. Therefore, for example, a common-law employee for whom the City does not issue a form W-2 is not an Employee. An individual's status as an Employee shall be determined solely by the Plan Administrator, and such determination shall be conclusive and binding upon all persons.
- 2.14 **“Health Plan”** means any medical care plan (including but not limited to HMOs, PPOs, POSs and indemnity plans) under which coverage is extended to Eligible Employees. The City may change, from time to time, at any time, and in its discretion after consultation with the Association and consistent with MOU, the Health Plans that it provides to Eligible Employees. Such change may include (but is not limited to) the following changes: insurance company or HMO, amount of coverage, care that is covered, and deductibles and co-pays. (For purposes of this section 2.14, a medical care plan does not include a plan the principal purpose of which is to provide dental, vision, chiropractic or mental health benefits.) Health Plan shall also mean any non-City sponsored individual medical care plan.
- 2.15 **“HIPAA”** means the Health Insurance Portability and Accountability Act of 1996.

- 2.16 “**Manager**” means the City Manager or the person appointed in writing by the Manager to undertake the responsibilities of the Manager as set out in this Plan.
- 2.17 “**Memorandum of Understanding**” or “**MOU**” means the memorandum of understanding between the City and the Association effective June 26, 2011 and adopted by the City Council on September 11, 2012 including any amendments thereto and any later agreements between the City and the Association.
- 2.18 “**Month of Service**” means any calendar month in which the Eligible Employee has completed no less than one hundred seventy-three and one-third (173 and 1/3) hours of service as an Eligible Employee.

Non-consecutive Months of Service shall be added together to make one Year of Service. Months of Service before a termination of employment with the City (or termination of status as an Eligible Employee) may be added to Months of Service earned after a person again becomes an Eligible Employee in order to count the person's total Years of Service.

No period of employment with the City (or with any other organization) shall be counted as Service, or for completion of a Month of Service, or for completion of a Year of Service unless that period of employment is as an Eligible Employee. Therefore, for example, if a person has 100 hours of service as an Eligible Employee in a calendar month and thereupon ceases to be an Eligible Employee but remains an Employee of the City, no more than 100 hours shall be counted in that month towards that person's Service under this Plan. In addition, under this example, that individual shall not be credited with a Month of Service for that calendar month because he did not have at least 173 and 1/3 hours of service as an Eligible Employee.

- 2.19 “**Participant**” means any individual who participates in the Plan by enrolling in a Health Plan in accordance with Article IV, who maintains continuous coverage in a Health Plan, and who receives benefits under Article V.
- 2.20 “**Plan**” means this City of Berkeley Police Retiree Health Premium Assistance Plan set forth herein, together with any and all amendments and supplements.
- 2.21 “**Plan Year**” means each period beginning on July 1 and ending on the following June 30.
- 2.22 “**Service**” means all periods of employment with the City as an Eligible Employee (and only as an Eligible Employee).

An Eligible Employee's Service shall include any period of authorized paid leave of absence and any leave for military service, provided the Eligible Employee returns

to active employment with the City as an Eligible Employee within the time prescribed by such leave or within the time following military service during which the Eligible Employee's reemployment rights are protected by law, as applicable.

Service provided to the City prior to the effective date of this Plan shall be counted as Service under this Plan.

No other service or employment with the City (or with any other organization) shall be counted as Service for any purpose under this Plan.

2.23 “**Trust**” means the trust established by the City and the Trustee to hold and invest all contributions (and earnings thereon) made under this Plan to fund the benefits provided by the Plan. At the sole discretion of the Manager, funds for this Plan may also be held under a custodial agreement.

2.24 “**Trustee**” means the Manager.

2.25 “**Year of Service**” means, with respect to any Eligible Employee, a completed period of twelve (12) Months of Service.

ARTICLE III. ELIGIBILITY

3.1 **Eligible Retirees.**

An Eligible Retiree is an Eligible Employee who has met all of the following criteria:

- (a) Is vested in CalPERS retirement benefits;
- (b) Has at least ten (10) Years of Service;
- (c) Has reached the age of 50;
- (d) Has retired from the City at age 50 or thereafter; and
- (e) Has applied for and is receiving a pension from CalPERS at the time of retirement.

An Eligible Retiree also means anyone, regardless of age, who receives a disability retirement benefit, either industrial disability or non-industrial disability from CalPERS at the time of retirement.

An Eligible Retiree is eligible to receive the benefits provided in Articles IV and V below.

3.2 ***Eligible Beneficiaries.***

The Eligible Beneficiary (if any) of each Eligible Retiree who is eligible under section 3.1 above will be eligible for benefits under Articles IV and V below, pursuant to the terms of those Articles. The Eligible Beneficiary's eligibility will terminate when he/she is no longer the legal spouse, as determined under applicable state law, or domestic partner of the Eligible Retiree, except that the Eligible Beneficiary's eligibility shall not terminate in the event of the death of the Eligible Retiree. On the death of the Eligible Retiree, his or her surviving Beneficiary (if any) will be eligible to receive benefits as provided in Article IV and V pursuant to the terms of those Articles. If the surviving Eligible Beneficiary remarries or establishes a new domestic partnership relationship, the new domestic partner will not be eligible under this plan, but the surviving Eligible Beneficiary will retain eligibility.

3.3 ***Termination of Eligibility.***

A participant ceases to be eligible to participate in the plan on: (1) the date of the participant's death or (2) the date the plan is terminated or (3) in the case of an Eligible Beneficiary, the date the individual ceases to be an Eligible Beneficiary or (4) the date the Participant fails to pay his or her portion of the premium to a Health Plan.

ARTICLE IV. ENROLLMENT IN A HEALTH PLAN

4.1 ***Immediate Enrollment.***

Upon termination of service with the City, any Eligible Retiree (together with his or her Eligible Beneficiary who is eligible under Article III) may immediately enroll in a Health Plan. Participation in a Health Plan as an Eligible Retiree will begin as soon as administratively practicable following enrollment. In no event shall enrollment as an Eligible Retiree occur prior to the date that such individual would be eligible pursuant to Article III. An Eligible Beneficiary who is eligible under Article III shall be allowed to enroll only if the Eligible Retiree is enrolled except as provided in section 3.2.

4.2 ***Delayed Enrollment.***

(a) ***In General.*** An Eligible Retiree who is eligible under Article III may delay enrollment in a Health Plan until such later date as HIPAA permits, provided that the Eligible Retiree states in writing that Health Plan coverage is being declined because the Eligible Retiree has other coverage. However, no one shall be allowed to participate in a Health Plan unless he or she has maintained medical

coverage consistent with HIPAA rules and regulations and requests enrollment no later than thirty (30) days after loss of the other coverage. Any Eligible Retiree who elects to delay coverage under this section 4.2 will be required to submit proof of medical coverage acceptable to the Administrator.

- (b) **Beneficiaries.** An Eligible Beneficiary who does not enroll simultaneously with the Eligible Retiree shall be allowed to enroll only to the extent that HIPAA creates an enrollment right. The same requirements for other medical care coverage, proof of such coverage and a request to enroll within thirty (30) days of the loss of the other coverage that apply to the Eligible Retiree shall apply to such Eligible Beneficiaries. A newly acquired Eligible Beneficiary must request enrollment within thirty (30) days of becoming an Eligible Beneficiary; otherwise the Eligible Beneficiary must wait until the next open enrollment period. The surviving Eligible Beneficiary may enroll in a Health Plan subject to the requirements for other medical care coverage and proof of such coverage of subsection (a) above, if the Eligible Retiree dies before enrollment of the Eligible Beneficiary.
- (c) An Eligible Employee who leaves the City prior to age 55, but after reaching age 50, may continue medical coverage through a City sponsored Health Plan by paying the full premiums and applicable administrative charges.

4.3 **Health Plan Premiums.**

- (a) **COBRA Participants.** During the period (if any) that an Eligible Beneficiary is receiving Plan benefits and receiving COBRA coverage, the amount of premium charged to such person for coverage in a Health Plan shall be the maximum amount that is allowed under COBRA.
- (b) **Non-COBRA Participants.** During any period that an Eligible Retiree or Eligible Beneficiary is not receiving Plan benefits under COBRA, the amount charged to such person for coverage in a Health Plan shall be the cost of such coverage plus an amount for the cost of administration, both determined by the Manager in his discretion after consultation with the Association and consistent with the MOU.

4.3 **No Split Enrollment.**

The Eligible Retiree and his or her Eligible Beneficiary shall both enroll in the same Health Plan to receive benefits under this Plan.

4.4 **Method of Enrollment.**

Enrollment in a Health Plan shall be in the manner, form and at the time established by the Administrator.

4.5 Termination of Coverage.

If an Eligible Retiree or Eligible Beneficiary becomes covered by a Health Plan and later allows coverage under all Health Plans to terminate, then he or she shall not be eligible to re-enroll in a Health Plan at any later time, except to the extent otherwise required by applicable law.

4.6 Open Enrollment.

To the extent allowed by the Manager in his or her discretion after consultation with the Association and consistent with the MOU, anyone who is eligible for benefits under this Plan shall be eligible to participate in the City's regular open enrollment (if any) for Health Plans.

4.7 Coverage and Services.

The provisions of the insurance or other health plan policy or contract (or plan document) providing coverage or services under the applicable Health Plan shall control as to the services furnished to the Eligible Retiree and/or Eligible Beneficiary. However, coverage under any Health Plan will be secondary and coverage under any other health plan will be primary (for "coordination of benefit" purposes) to the extent permitted by applicable law or consistent with current industry practice as determined by the Manager in his or her sole discretion.

ARTICLE V. PAYMENT FOR HEALTH CARE COVERAGE

5.1 Plan Payments for Health Plan Coverage.

The Plan provides financial assistance to Eligible Retirees and their Eligible Beneficiaries who enroll in a Health Plan to pay for the cost of coverage. The City shall provide information to the Administrator on whether an Eligible Retiree or Eligible Beneficiary is enrolled in a Health Plan. The amount of these Plan payments are determined as follows:

(a) Amount of Benefits

The maximum amount paid toward the Health Plan premium of an Eligible Retiree and/or Eligible Beneficiary under this Plan shall be the applicable percentage of the Base Dollar Amount identified in Appendix I herein.

(i) At all times that an Eligible Retiree does not have an Eligible Beneficiary, the Plan will pay up to the applicable percentage of the single-party Base Dollar Amount on behalf of the Eligible Retiree.

(ii) If the Eligible Retiree has an Eligible Beneficiary, the Plan will pay up to the applicable percentage of the two-party Base Dollar Amount on behalf of an Eligible Retiree at all times that the Eligible Retiree has an Eligible Beneficiary.

(iii) If the Eligible Retiree predeceases his or her Eligible Beneficiary, the Plan will pay the applicable percentage of the single-party Base Dollar Amount on behalf of the Eligible Beneficiary until the Eligible Beneficiary's death.

(b) Applicable Percentage

The applicable percentage is determined by the Eligible Retiree's Years of Service as provided in the following tables:

Years of Service Requirement – Non-disability Retirements

| Years of Service | Applicable Percentage |
|-------------------------|------------------------------|
| Less than 10 | 0% |
| 10 | 25% |
| 15 | 50% |
| 20 | 100% |

Years of Service Requirement – Disability Retirements

| Years of Service | Applicable Percentage |
|---|------------------------------|
| Less than 10 | 0% |
| 10 Years of Service and retired from CalPERS with a disability retirement benefit | 100% |

(b) The Base Dollar Amount is dependent on whether the Eligible Retiree is Medicare eligible or not Medicare eligible at the time of payment.¹ If the Eligible Retiree is deceased and his or her Eligible Retiree is receiving

¹ Medicare eligibility exists for disabled beneficiaries regardless of age.

payments, the Base Dollar Amount is dependent on whether the Eligible Dependent is Medicare eligible at the time of payment. However, if either the Eligible Retiree or Eligible Beneficiary is Medicare-eligible but the other individual is not, then the Base Dollar amount will be the actual premium charged by the Health Plan for that coverage, but if the Health Plan is a non-City sponsored Health Plan then the Base Dollar amount will be no more than the premium charged by the City-sponsored Health Plans for that coverage.

- (c) The amount paid for any Eligible Retiree and/or Eligible Beneficiary shall not exceed the monthly premium for his or her Health Plan coverage.

5.2 ***Payment to Health Plans.***

Payment shall be made on behalf of an Eligible Retiree and/or Eligible Beneficiary by the Administrator at the direction of the Trustee directly to a Health Plan and not to any individual unless specifically provided for in this Plan.

5.3 ***Method of Health Plan Payments***

- (a) An Eligible Retiree who, upon retirement with the City, receives retirement benefits from CalPERS shall have his or her share of the monthly Health Plan premium that is not paid by this Plan deducted directly from his or her monthly CalPERS retirement benefit payments and transmitted to the Administrator for payment to the Health Plan.
- (b) If the monthly retiree Health Plan premium costs are in excess of the CalPERS benefits received by an Eligible Retiree or Eligible Beneficiary, the Eligible Retiree or Eligible Beneficiary shall be required to pay directly to the Administrator the difference in premium costs via electronic transfer from the Eligible Retiree or Eligible Beneficiary's bank account or credit card.
- (c) An Eligible Retiree who, upon retirement with the City, is not receiving CalPERS retirement benefits shall be required to pay directly to the Administrator his or her share of the Health Plan premium cost. The medical premium cost shall be payable thirty (30) days in advance of the month to which the premium applies and shall include a 2% administrative fee. Payments shall be made via electronic transfer from the Eligible Retiree or Beneficiary's bank account or credit card.
- (d) Cancellation or changes of bank accounts or credit cards must be reported immediately to the Administrator. Administrative charges incurred by the Administrator as a result of insufficient funds or failure to notify the Administrator of changes in bank account or credit card status in a timely

manner shall be borne by the Eligible Retiree or Eligible Beneficiary. Any outstanding Health Plan premium and fees are due and payable to the Administrator as referenced below in section 5.4(c).

- (e) Disputes related to medical premium cost payments or administrative fees assessed may be appealed as provided in Article XII.
- (f) Notwithstanding the foregoing, COBRA Participants' timing and method of payment shall be subject to the then-current COBRA rules set forth in the Health Plan in which they are enrolled.

5.4 ***Cessation of Plan Benefits.***

- (a) Benefits under this Plan shall cease if an Eligible Retiree or, separately, an Eligible Beneficiary ceases to participate in a Health Plan, for any reason, including but not limited to failure to pay his or her share of the Health Plan premium.
- (b) Prior to any cessation of benefits under this Plan, the Administrator shall notify the City and the Eligible Retiree or his or her Eligible Beneficiary. The cessation of benefits notice shall be in writing and shall be sent by certified and regular mail to the Eligible Retiree or Eligible Beneficiary's last known address on file with the Administrator and a copy to the City.
- (c) Failure to timely remit the necessary amount (within a reasonable correction period, as determined by the Administrator in his or her sole discretion and communicated to the eligible Retiree/Beneficiary) will result in complete termination of coverage of this Plan for the Eligible Retiree and Eligible Beneficiary. Payment made by the Eligible Retiree or Beneficiary for past due medical Health Plan premium costs shall be in the form of a money order or certified check.
- (d) Disputes related to Health Plan premiums cost payments or administrative fees assessed may be appealed as provided in Article XII. However, during the appeal process, the Eligible Retiree or Eligible Beneficiary must continue to make payments otherwise required under the Health Plan's terms, notwithstanding the dispute.
- (e) An Eligible Retiree or Eligible Beneficiary whose Health Plan coverage was terminated due to non-payment of Health Plan premium shall be permitted to re-enroll in a Health Plan to the extent that HIPAA requires it, and provided that all outstanding premium amounts are paid, and the Health Plan allows reenrollment.

5.5 No Cashout and No Carryover.

- (a) No cash shall be paid to any Participant under this Plan, except as reimbursement for health plan premiums paid by a participant.
- (b) If the monthly premium for health coverage is less than the maximum amount of payment that is available for any Eligible Retiree or Beneficiary under the Plan, the difference shall not be accumulated for later payment to or for the Eligible Retiree or Eligible Beneficiary.

5.6 Relationship of this Plan to Health Plans.

The only relationship between this Plan and any health plan through which Participants receive health coverage is this Plan provides financial assistance to Participants to pay for health plan coverage. This Plan is in no manner responsible for any treatment or failure to treat, or action or inaction undertaken by any particular health plan. Receipt of benefits from this Plan constitutes acknowledgment and acceptance of this section.

5.7 Overpayments by Plan.

- (a) The Administrator shall provide written notice to an Eligible Retiree or Eligible Beneficiary when an overpayment of retiree health premiums by the Plan occurs. Such overpayment notice shall be sent by certified and regular mail to the Eligible Retiree or Eligible Beneficiary's last known address on file with the Administrator, and a copy provided to the City.
- (b) The overpayment notice shall include a clear and concise explanation of how the overpayment occurred and a detailed repayment schedule.
- (c) The amount of the monthly repayment established in the repayment schedule shall not exceed the monthly amount equal to the overpayment, unless the Administrator and the Eligible Retiree or Eligible Beneficiary agree to a different repayment schedule.
 - i. In no event shall the minimum repayment per month be less than the greater of twenty dollars (\$20.00) or 5% of the total overpayment amount;
 - ii. If the amount of the overpayment is one hundred dollars (\$100.00) or less, repayment shall be made in one lump sum. Lump sum payments shall be in the form of a certified check, money order, or credit card.

- iii. In the event a Eligible Retiree or Eligible Beneficiary has been overpaid by more than one hundred dollars (\$100.00) and repays the overpayment to be repaid in one lump sum, the amount of the overpayment shall be reduced by 5%.
- (d) The repayment schedule shall go into effect sixty (60) days from the date of the overpayment notice, unless the Eligible Retiree or Eligible Beneficiary submits an appeal as provided in Article XII within thirty (30) days of receipt of the overpayment notice. The Administrator shall not recover the overpayments until resolution of the appeal.

5.8 Underpayments by Plan.

- (a) The Administrator shall provide written notice to an Eligible Retiree or Eligible Beneficiary when an underpayment of retiree health premiums occurs. Such underpayment notice shall be sent by certified and regular mail to the Eligible Retiree or Eligible Beneficiary's last known address on file with the Administrator, and a copy provided to the City.
- (b) The underpayment notice shall include a clear and concise explanation of the how the underpayment occurred and shall provide a thirty (30) days period for the Eligible Retiree or Eligible Beneficiary to appeal the amount underpaid as provided in Article XII.
- (c) If the Eligible Retiree or Eligible Beneficiary does not appeal the underpayment amount, the Administrator shall issue payment in full to the Eligible Retiree or Eligible Beneficiary within sixty (60) days of the date of the underpayment notice, provided that the Administrator confirms that the Eligible Retiree or Eligible Beneficiary paid to a Health Plan the amount of the underpayment.

ARTICLE VI. CLAIMS FOR BENEFITS

6.1 Submission of Health Plan Claims.

The purpose of this Plan is to provide financial assistance to Eligible Retirees and Eligible Beneficiaries to participate in Health Plans and not to provide any medical services. Any claim for specific benefits under any Health Plan must be made in accordance with the applicable insurance policy or contract, (or plan document) directly to the insurer, the HMO or Health Plan. Likewise, appeals of denied claims under any particular Health Plan must be made in accordance with the rules of the Health Plan.

6.2 Submission of Application for Plan Benefits.

Eligible Retirees or Eligible Beneficiaries may request benefits under this Plan by submitting an application for Plan at the time, in the form and manner prescribed by the Administrator.

6.3 Denial of Claim.

If an applicant's application for benefits under this Plan is denied, the Administrator shall provide notice to the applicant in writing of the denial. The notice shall be written in a manner calculated to be understood by the applicant and shall include:

- (a) The specific reason or reasons for the denial;
- (b) Specific references to the pertinent Plan provisions on which the denial is based;
- (c) A description of any additional material or information necessary for the applicant to perfect the claim and an explanation of why such material or information is necessary; and
- (d) An explanation of the Plan's claims appeal procedures as set forth in Article XII.

ARTICLE VII. OPERATION OF PLAN

7.1 Authority and Responsibility of the Manager.

The Manager shall be responsible for the administration of the Plan. The Manager shall ensure that the Plan is carried out, in accordance with its terms, for the exclusive benefit of persons entitled to participate in the Plan. The Manager shall have full power to operate the Plan in all of its details, subject to the limited appeal process in Article XII and in consultation with the Association and consistent with the MOU.

- (a) In consultation with the Association and consistent with the MOU and applicable law, the Manager's powers include, but are not limited to, the following authority, in addition to all other powers that are necessary or appropriate to carry out this Plan:
 - (1) To make and enforce such rules and regulations as he or she deems necessary or proper for the efficient administration of the Plan;
 - (2) To exercise discretion in interpreting the Plan;
 - (3) To exercise discretion in deciding all questions concerning the Plan and the eligibility of any person to participate in the Plan;

- (4) With input from the Advisory Committee, to engage such agents, counsel, accountants, consultants and other persons as may be required to assist in administering the Plan; and
 - (5) To allocate and delegate his or her responsibilities under the Plan and to designate other persons to carry out any of its responsibilities under the Plan, with any such allocations, delegation or designation to be in writing.
- (b) In undertaking the operation of the Plan, the Manager shall be a fiduciary; in this capacity the Manager's responsibilities include:
- (1) Discharging his or her duties solely in the interests of Plan Participants for the exclusive purpose of providing benefits to such individuals;
 - (2) Acting with the same skill, care, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of the same character and aims under the same circumstances; and
 - (3) Discharging his or her duties in accordance with the documents and instruments governing the Plan.

7.2 ***Third Party Administrator.***

The Manager may delegate to a third party administrator the responsibility for administering this Plan, including but not limited to calculating the amount of benefits, instructing the Trustee to remit payments hereunder, establishing and keeping all necessary and appropriate records relating to the Plan, communicating with employees and Participants, and taking all other administrative actions necessary or desirable for the proper administration of the Plan. The Manager shall select any such third party administrator. The Manager shall periodically review such administrator's performance and shall take such action as is necessary (including but not limited to terminating the Administrator's contract) to ensure that the administrator properly performs its duties. From time to time and at the sole discretion of the Manager, and after consultation with the Association and subject to the applicable provisions of the MOU, the administrator serving as the Plan's Administrator may be changed.

7.3 ***Advisory Committee.***

There shall be an Advisory Committee for the Plan. The membership of the Advisory Committee shall consist of a representative for the Association and a representative designated by the City Manager. The Advisory Committee and the Association shall be informed quarterly, or more often if the Committee so

determines, by the Manager and the Administrator about the financial condition and funded status of the Plan, and the Committee shall provide advice to the Manager and the Administrator concerning the financial condition and funded status of the Plan. The role of the Committee is advisory only. Given the Committee's advisory role, the members of the Advisory Committee shall not be fiduciaries with respect to the Plan. The Committee is not to play any role with respect to the administration of the plan, including but not limited to determining individual participant eligibility for plan benefits, selecting the administrator, making plan benefit payments, investing plan assets, etc.

7.4 *Periodic Review of Plan Benefits.*

The Manager shall have an annual financial audit conducted, by an independent outside certified public accountant, of the Plan and the Trust. In addition, the Manager periodically shall have an actuarial study performed to determine if Trust assets are sufficient to meet the Plan's projected liabilities, with the selection of the actuary subject to the applicable provisions of the MOU.

7.5 *Reliance on Tables and Reports.*

In administering the Plan, the Manager and the Administrator shall be entitled, to the extent permitted by law, to rely conclusively on all tables, valuations, certificates, opinions and reports which are furnished by, or in accordance with the instructions of accountants, counsel, actuaries or other experts employed or engaged by the Plan.

7.6 *No Additional Remuneration.*

No employee of the City may receive any remuneration from the Plan in connection with services provided by such individual to the Plan or as a member of the Advisory Committee. Reimbursement to these individuals may be made by the Administrator for reasonable incidental expenses authorized by the Manager and incurred on the Plan's behalf at the individual's personal expense.

7.7 *Indemnification.*

The City agrees to indemnify and to defend to the fullest extent permitted by law any City employee serving as a member of the Advisory Committee and Appeals Panel against all liabilities, damages, costs and expenses (including attorneys' fees and amounts paid in settlement of any claims approved by the City) occasioned by any act or omission to act in connection with the Plan, if such act or omission is in good faith, as determined by the City.

ARTICLE VIII. AMENDMENT AND TERMINATION OF PLAN

The Plan may be at any time amended or terminated by approval of the City Council after the City meets its obligation to meet and confer over amendments and/or termination of this Plan. Such amendment may include, but is not limited to, increases in the contribution rate and/or modifications in benefits (increases or decreases) provided by the Plan, consistent with section 9.3 below. No changes requiring contribution rates shall occur until notice of the funded status has been given, in accordance with section 7.3.

ARTICLE IX. FUNDING

9.1 *Establishment of Trust.*

A Trust is to be established by the City for the purpose of holding and investing assets separate and apart from the other funds of the City to fund the benefits of the Plan. The specific terms governing the Trust are to be set forth in a separate trust instrument.

9.2 *Trustee.*

- (a) The trustee of the Trust (the “Trustee”) may be the City Treasurer or an independent third party qualified to act as a trustee under California law and designated by the City, after input from the Advisory Committee.
- (b) The Trustee shall be a fiduciary of the Plan and shall act solely in the interest of the Participants. The Trustee in carrying out his or her fiduciary responsibilities, shall minimize expenses for administering the Plan. The Trustee shall act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims. Except as otherwise provided below, the Trustee shall be responsible for retaining, investing and expending Trust assets for the purpose of paying Plan benefits.
- (c) The Manager may, with input from the Advisory Committee, appoint an “investment manager” (as that term is defined in section 3(38) the Employee Retirement Income Security Act) to have responsibility for investment of the Trust assets. In this case, the Trustee shall only make such investments as are directed by the investment manager. The investment manager shall act as a fiduciary of the Plan and shall be subject to the same duties and responsibilities set out in subsection (b) above.
- (d) Trust investments shall be limited to investments that are allowed under the trust instrument.

- (e) At the sole discretion of the Manager, Trust assets may be held under a custodial agreement.

9.3 ***Contributions.***

The City's contributions to the Trust shall be governed by the terms and limitations of the MOU.

ARTICLE X. MISCELLANEOUS PROVISIONS

10.1 ***Information to Be Furnished.***

Participants shall provide the City and Administrator with such information and evidence, and shall sign such documents, as may be requested from time to time for the purpose of administration of the Plan, consistent with applicable state and federal laws.

10.2 ***Limitation of Rights.***

Neither the establishment of the Plan nor any amendment thereof, nor the payment of any benefits, will be construed as giving to any Participant or other person any legal or equitable right (including the right to re-employment) against the City, the City Council or any member thereof, the Advisory Committee, the Appeals Panel, employee organizations or any member thereof, the Manager or any person designated by the Manager to undertake his or her responsibilities under the Plan, or the Administrator, except as provided herein.

10.3 ***Mistake of Fact.***

Any mistake of fact or misstatement of fact will be corrected as soon as reasonably practicable after it becomes known and proper adjustment made, including but not limited to collection of overpayments from Plan Participants. The City, the Manager and his designee, the Administrator, and the Advisory Committee will not be liable in any manner for any determination of fact made in good faith, with the foregoing not affecting a Participant's right to appeal under Article XII and not affecting Plan overpayments and underpayments as provided in sections 5.8 and 5.9 respectively.

10.4 ***Severability.***

In the event that a provision of this Plan is declared by a court of competent jurisdiction to be either illegal or unenforceable, that provision of this Plan shall be null and void, but such nullification shall not affect any other provision of the Plan, and all other provisions remain in full force and effect. Should any such nullification occur, the City will meet and confer with the Association to the extent required by

general law to consider alternate provisions to those declared illegal or unenforceable.

10.5 *State of Jurisdiction.*

Except to the extent superseded by the laws of United States, this Plan and all rights and duties under it will be governed and administered in accordance with the laws of the State of California.

10.6 *Participant Remedies.*

An individual shall not have any right or claim to benefits from the Trust, except as specified in this Plan. Any dispute as to eligibility, type, amount or duration of benefit under this Plan or any amendment or modification thereof shall be resolved by the Appeals Panel under and pursuant to this Plan, and its decision concerning the dispute shall be final and binding upon all parties to the dispute.

10.7 *Extent of Liability.*

The benefits provided by this Plan are not insured by any contract of insurance, and there is no liability on the part of the Trustee, Administrator, other individual or entity to provide payment over and beyond the amount in the Trust collected and available for such purpose.

10.8 *Interpretation of the Trust Agreement.*

The Trustee possesses full authority and power to interpret the terms of the Trust Agreement.

10.9 *Limitations of Liability.*

Neither the establishment of the Plan or the Trust nor any modifications thereto, nor the payment of any benefits shall be construed as giving any person any legal or equitable right of action or recourse against the Administrator, the City Manager, the City or their agents or employees, except as provided in the Plan and in the Trust Agreement.

10.10 *Non-Affiliation.*

The health insurer or health plans to which the Trust makes payments are separate and distinct from the Trust and are not agents of the Trust.

10.11 *Non-Assignment of Benefits.*

Benefits payable to Eligible Retirees and their Eligible Beneficiaries under the Trust Agreement may not be anticipated, assigned (either at law or in equity), alienated, pledged, encumbered or subjected to attachment, garnishment, levy, execution or other legal or equitable process.

ARTICLE XI. EFFECTIVE DATE

- 11.1 The Plan shall be effective as of September 19, 2012, except as otherwise provided under Appendix I. Eligible Retirees who terminated City service on and after September 19, 2012 (except as provided in Appendix I) and before the Administrator begins the administration of this Plan and who otherwise would have been entitled to have amounts paid on their behalf to a Health Plan and their Eligible Beneficiaries shall be reimbursed directly from the Trust in the amounts that otherwise would have been paid to the Health Plans (or other health care plan providers). Such payment shall be made only after the Eligible Retiree or City submits to the Administrator satisfactory evidence of premiums paid for health care coverage for the Eligible Retiree and or his or her Eligible Beneficiary.
- 11.2 No benefits shall be provided to or on behalf of any employee who terminated service with the City before the date applicable to that employee as set forth in Appendix I or to or on behalf of his or her Eligible Beneficiary.

ARTICLE XII. APPEAL PROCEDURE

- 12.1 This appeal procedure is available only to Eligible Retirees and Eligible Beneficiaries and is the only appeal procedure available to Eligible Retirees and Eligible Beneficiaries. Only issues relating to eligibility for benefits under the Plan and whether the appropriate amount of benefits has been paid can be brought under this appeals procedure.
- 12.2 Eligible Retirees or Eligible Beneficiaries who have a dispute that comes within the scope of this appeal procedure shall attempt to resolve the issue with the Plan's Administrator (informal level). If a resolution cannot be reached at the informal level, it shall be the responsibility of the Eligible Retiree or Eligible Beneficiary to pursue the matter through the formal appeal process set forth in this Article XII.
- 12.3 If a dispute is not resolved informally, the Eligible Retiree or Eligible Beneficiary may request that the Retiree Medical Appeals Panel hear and issue a decision on the dispute. Any such request must be submitted in writing to the Retiree Medical Appeals Panel (Panel) for final determination and shall be sent c/o City of Berkeley, Human Resources Department on a form available through the Administrator and/or the City.

The Panel will consist of one (1) representative designated by the City Manager, one (1) Representative designated by the Association, and a mediator from the California State Mediation and Conciliation Service or other neutral party to which the first two representatives agree.

Notification of pending appeals will be sent to all members of the Advisory Committee referenced in Section 7.3. Any member of the Advisory Committee may attend and participate in the discussion of the appeal prior to the panel reaching a decision. In pursuing such appeal, the Eligible Retiree or Eligible Beneficiary or his/or her duly authorized representative:

- (a) must request in writing that the Panel review the denial;
- (b) may review pertinent documents; and
- (c) may submit issues and comments in writing.

The Panel shall convene a meeting within twenty-five (25) working days of receipt of the Eligible Retiree's or Eligible Beneficiary's written appeal. The Panel may hear testimony, receive written statements and shall render a final and binding decision on the appeal. The decision on review shall be issued by the Panel within ten (10) working days of the meeting, unless special circumstances require an extension of time for processing, in which case a decision shall be rendered as soon as possible. If such an extension of time is required, written notice of the extension shall be furnished to the applicant before the end of the original 10 day period. The decision on review shall be made in writing, and shall be written in a manner calculated to be understood by the Eligible Retiree's or Eligible Beneficiary's. The Panel's decision shall terminate the Plan's internal appeal process. The appeal process must be initiated within six (6) months of the issue that gave rise to the dispute or, if later, within six (6) months of the date the Eligible Retiree or Eligible Beneficiary knew or had reason to know of the dispute. If the Eligible Retiree or Eligible Beneficiary does not file a written request for review within this time period, the Eligible Retiree's or Eligible Beneficiary's claim shall be deemed to have been waived.

12.4 ***Standard of Review.***

No action of the Appeals Panel may be revised, changed, or modified by any arbitrator, court, or other entity unless the party seeking such action has exhausted all of its administrative remedies under this Plan and is able to show by clear and convincing evidence that the decision of the Appeals Panel was arbitrary and capricious in light of the information actually available to it, and considered by it, at the time of its decision.

IN WITNESS WHEREOF, the City has caused this Plan to be executed on its behalf on this ____ day of _____, 2013.

By: _____

Title: _____

**CITY OF BERKELEY POLICE RETIREE HEALTH PREMIUM ASSISTANCE PLAN
APPENDIX I**

Eligible Retirees who terminate their service with the City after the Effective Date as provided below are eligible to receive benefits under the Plan.

| | | <i>Base Dollar Amount</i> | | | |
|-----------------------------|-----------------------|---|--|---|--|
| <i>Union/Unit</i> | <i>Effective Date</i> | <i>Retiree only (not Medicare eligible)</i> | <i>Retiree & Beneficiary (Retiree not Medicare eligible)</i> | <i>Retiree only (Medicare eligible)</i> | <i>Retiree & Beneficiary (Retiree Medicare eligible)</i> |
| Berkeley Police Association | 09-12-12 | \$600 | \$1200 | \$382.90 | \$765.80 |

Beginning July 1, 2013 and effective each July 1 thereafter, the Base Dollar Amount will increase each year by the lesser of 6% or the increase in premiums charged by Kaiser-Permanente Medical Care Program ("KP").

**CITY OF BERKELEY
POLICE RETIREE HEALTH PREMIUM ASSISTANCE PLAN
TRUST AGREEMENT**

Effective September 19, 2012

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**CITY OF BERKELEY
POLICE RETIREE HEALTH PREMIUM ASSISTANCE PLAN
TRUST AGREEMENT**

THIS TRUST AGREEMENT IS MADE AS OF SEPTEMBER 19, 2012, BY AND BETWEEN THE CITY OF BERKELEY (“CITY”) AND THE CITY MANAGER, AS TRUSTEE (“TRUSTEE”). THIS TRUST AGREEMENT WAS SIGNED ON THE DATE SET OUT BELOW WITH THE SIGNATURES HERETO.

RECITALS

WHEREAS, the City established the City of Berkeley Police Retiree Health Premium Assistance Plan (For Non-Safety Members), effective September 19, 2012 , a plan providing health benefits to certain retired police officers of the City and their spouses or domestic partners (the “Plan”); and

WHEREAS, in order to set aside and hold assets for the payment of benefits the Eligible Retirees and Beneficiaries covered under the Plan, the City has established a trust to conform to the requirements of Government Accounting Standards Board Statement Number 45 and Internal Revenue Code section 115 (the "115 Trust") ; and

WHEREAS, the City and the Trustee desire to enter into this Trust Agreement to set forth the responsibilities and obligations of the Trustee; and

WHEREAS, the Trustee desires to serve as the Trustee in accordance with the terms and conditions hereinafter set forth; and

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the City and the Trustee agree, effective as of the Effective Date to establish this Trust in accordance with the following provisions:

**ARTICLE 1
DEFINITIONS AND CONSTRUCTION**

1.1 Definitions. For purposes of this Trust Agreement, capitalized terms and expressions used herein shall have the meanings set forth in the Plan or as indicated below unless the context clearly requires otherwise:

“**Administrator**” means the third-party administrator selected by the City Manager to administer the Plan after consultation with the Association and consistent with the applicable provisions in the relevant Memorandum of Understanding.

“**City**” means the City of Berkeley.

“**Code**” means the Internal Revenue Code of 1986.

“**Custodian**” means the financial institution chosen by the Trustee to hold any assets of the Plan for the sole purpose of providing benefits under the Plan and paying reasonable expenses of the Plan and Trust.

“**Effective Date**” means September 19, 2012 which is the date that this Trust is effective.

“**GASB 45**” means Government Accounting Standards Board Statement Number 45, Accounting and Financial Reporting by Employers for Post-employment Benefits Other Than Pensions.

“**Plan**” means the City of Berkeley Police Retiree Health Premium Assistance Plan (as amended from time to time).

“**Trust**” means the legal entity resulting from this Trust Agreement.

“**Trust Agreement**” means this instrument, as amended from time to time.

“**Trustee**” means the Trustee described in Article 3 herein.

1.2 Headings and Subheadings. The headings and subheadings in this Trust Agreement are inserted for the convenience of reference only and are to be ignored in any construction of the provisions thereof.

ARTICLE 2 PURPOSE

The City and Trustee have established this Trust to hold assets to pay post retirement health benefits for certain retired employees (collectively, “Eligible Retirees”) of the City, and their spouses and domestic partners (collectively, “Eligible Beneficiaries”) under the Plan. The Trust is intended to meet the requirements of GASB 45 such that Trust assets are treated as assets that reduce any liability of the City for retiree health benefits and is also intended to meet the requirements of Code section 115.

ARTICLE 3 THE TRUSTEE AND THE TRUST

3.1 The Trustee. The City shall have the authority to select and remove the Trustee of the Trust. The City Manager shall serve as the initial Trustee. The Trustee may also be the City Treasurer. An independent third party qualified to act as a trustee under California law and designated by the City may serve as Trustee, after input from the Advisory Committee. The Trustee may establish rules and by-laws as may be necessary or appropriate for the Trust's operation including, but not limited to the execution of documents on behalf of the Trustee.

3.2 Establishment of the Trust. This Trust Agreement is established as of the Effective Date. The Trustee shall hold under the Trust all assets of the 115 Trust that are for the benefit of Eligible Retirees and Beneficiaries of the Plan as of the

Effective Date together with all later contributions made under the terms of the Plan, and any income, gains or profits and reduced by any losses and expenses and distributions from the Trust. All custodial accounts and annuity contracts and other investments held under the Plan shall be titled in the name of the Trust and shall be deemed part of the Trust.

3.3 Exclusive Benefit Rule. Except as provided in section 6.2 below and the Plan, it shall be impossible, at any time, for any part of the Trust assets, other than such part as is required to pay taxes (if any) and expenses, to be returned to, or revert to, the City, or to be recoverable by the City, or to be used for, or diverted to, purposes other than for the exclusive benefit of the Eligible Retirees and Eligible Beneficiaries who receive benefits under the Plan. Notwithstanding the prior sentence, the Trustee shall return to the City any contributions that were made on account of a mistake in fact; any such return shall be made no later than one year after the contribution is received and no earnings on such contribution shall be returned. The Trustee shall determine whether a contribution was made on account of a mistake in fact.

3.4 (a) Contributions. The City may at any time, or from time to time, make contributions of cash or other property in Trust with Trustee to augment the principal to be held, administered and disposed of by Trustee as provided in this Trust agreement. Except as may be provided in labor agreements between the City and the Association, no one shall have any right to compel such additional contributions.

(b) **Receipt of Contributions.** The Trustee shall receive all contributions made under the Plan. However, the Trustee may elect to have contributions paid directly to the Custodian. The Trustee shall be under no duty to determine whether the amount of any contribution is in accordance with the Plan or to collect or enforce payment of any contribution.

3.5 Distributions.

(a) The City, or its agent, shall deliver to the Trustee a schedule (the "Payment Schedule") that sets out the amounts payable with respect to each Eligible Retiree and his or her Eligible Beneficiary, or that provides a formula or other instructions acceptable to the Trustee for determining the amounts so payable, the form in which such amount is to be paid (as provided for or available under the Plan), the time of commencement for payment of such amounts, and the health care provider to whom such amount is to be paid on behalf of each Eligible Retiree and his or her Eligible Beneficiary. Except as otherwise provided herein, the Trustee shall direct the Administrator to make payments on behalf of the Plan participants in accordance with the Payment Schedule. The Trustee shall make arrangements for the withholding and reporting of any federal, state or local taxes (if any) that may be required to be withheld with respect to the payment of benefits pursuant to the terms of the Plan and shall pay amounts withheld to the appropriate taxing authorities or determine that such amounts have been reported, withheld and paid by the City.

(b) The entitlement of an employee (or former employee) or his or her spouse or domestic partner (or former spouse or domestic partner) to benefits under the Plan shall be determined pursuant to the terms of the Plan and any claim for such benefits shall be considered and reviewed under the procedures set out in the Plan.

(c) Notwithstanding section 3.5(a), the City may make payment of benefits directly to Plan Participants or their Eligible Beneficiaries as they become due under the terms of the Plan. The City shall notify the Trustee of its decision to make payment of benefits directly prior to the time amounts are payable to Participants or their Eligible Beneficiaries.

ARTICLE 4 DUTIES AND POWERS OF THE TRUSTEE

4.1 Duties.

(a) The Plan, the Administrator, the Trustee and the Trust shall be governed by the fiduciary requirements of Section 17, Article XVI of the California Constitution. The Administrator and Trustee shall have exclusive responsibility to administer the Plan and Trust (to the extent of their responsibilities set out in the Plan and Trust Agreement) and shall act solely in the interest of the retired Employees and Eligible Beneficiaries who receive benefits under the Plan and in accordance with the terms of the Plan and Trust Agreement and governing California and federal law.

(b) The Trustee shall act 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. The Trustee shall act solely in the interest of the Eligible Retirees and Eligible Beneficiaries who receive benefits under the Plan and in accordance with the terms of the Plan and Trust Agreement and governing California and federal law. No part of the Trust assets may be used for, or diverted to, purposes other than for the exclusive purposes of providing benefits to such persons, except as is provided herein and in the Plan.

(c) The Trustee shall incur no liability to any person for any action taken pursuant to a direction, request or approval given by the City which is contemplated by, and in conformity with, the terms of the Plan or this Trust and is given in writing by the City.

(d) Notwithstanding any powers granted to the Trustee pursuant to this Trust Agreement or to applicable law, the Trustee shall not have any power that could give this Trust the objective of carrying on a business and dividing the gains therefrom, within the meaning of section 301.7701-2 of the Procedure and Administrative Regulations promulgated pursuant to the Code.

4.2 General Powers. The Trustee shall have all powers necessary or appropriate to perform properly the duties herein set forth and conferred on the Trustees by applicable law, unless expressly provided otherwise herein or in the Plan.

However, if an insurance policy is held as an asset of the Trust, the Trustee shall have no power to name a beneficiary of the policy other than the Trust, to assign the policy (as distinct from conversion of the policy to a different form) other than to a successor trustee, or to loan to any person the proceeds of any borrowing against such policy.

The Trustee may consult with legal counsel (who may also be counsel for the City) with respect to any of its duties or obligations arising under the Trust Agreement. In the event of a dispute between the City and any party, the Trustee may apply to a court of competent jurisdiction to resolve the dispute.

4.3 Investment Powers.

(a) Except as otherwise provided below, all rights associated with assets of the Trust shall be exercised by the Trustee or the person designated by the Trustee, and shall in no event be exercisable by, or rest with Plan participants.

(b) The Trustee shall determine all investments of the Trust and in this regard shall act in accordance with the rules of Section 17, Article XVI of the California Constitution in this regard. In accordance with these rules, the Trustee may engage professional investment managers and consultants or advisors.

(c) The Trustee, with input from the Advisory Committee, may appoint an investment manager (as defined in section 3(38) of the Employee Retirement Income Security Act of 1974), who shall have responsibility for investment of some, or all of the Trust assets. The Investment Manager shall have the investment powers granted the Trustee except to the extent the Investment Manager's powers are specifically limited by the Trustee.

4.4 Agents. The Trustee may employ such counsel, accountants, brokers, actuaries and other agents and provide for such clerical, accounting, actuarial and other services as the Trustee may deem advisable to perform its duties under this Trust Agreement.

4.5 Claims. The Trustee shall have the power and authority to settle, compromise or submit to arbitration, any claims, debts or damages due or owing to or from the Trust; to commence or defend suits or legal or administrative proceedings whenever, in its judgment, any interest of the Trust so requires; and to represent the Trust in all suits or legal or administrative proceedings in any court of law or equity or before any other body or tribunal. The Trustee shall inform the City and the Administrator as soon as possible about any such claims, debts or damages, and shall fully cooperate with the City and the Administrator with respect to any suits or legal or administrative proceedings that result from or arise out of such claims, debts or damages.

4.6 Accounting.

(a) The Trustee shall keep, or cause to be kept, appropriate and accurate accounts of, and records reflecting all transactions concerning the Trust,

including but not limited to contributions, gains, losses, expenses, and distribution of benefits. If the Trustee elects to have all contributions paid directly to a custodian, then the Trustee shall be entitled to rely on the records of accounts provided to it by such custodian, and by the City with respect to contributions, gains, losses, expenses, distributions of benefits and all other transactions involving the Trust. The Trustee shall be entitled to be reimbursed for its actual and reasonable expenses incurred in preparing any accounting.

(b) The Trustee shall furnish the City with a written account of the transactions concerning assets under the Trust within sixty (60) days following the close of each calendar year and within sixty (60) days after the removal or resignation of the Trustee. Unless the Trustee and City agree otherwise, the Trustee shall deliver to the City a written account of its administration of the Trust during such year or during the period from the close of the last preceding year to the date of such removal or resignation, setting forth all information agreed to by the Trustee and the City, including investments, receipts, disbursements and other transactions affected by it, including a description of all securities and investments purchased and sold with the cost or net proceeds of such purchases or sales, and showing all cash, securities and other property held in the Trust at the end of such year or as of the date of such removal or resignation, as the case may be.

(c) At any time, the City may (but is not required to) engage an independent certified public accountant to examine the Plan's financial statements or internal control procedures. If the City engages an independent accountant, the City shall require that such engagement provide that the examination be made according to generally accepted auditing standards (or according to other agreed-upon procedures that the Trustee approves in writing). The Trustee is entitled to rely upon the accountant's examination and opinion and all reports relating to the examination.

(d) The Trustee shall have financial statements for the Trust prepared annually and shall have those statements audited by an independent certified public accountant.

(e) Notwithstanding anything in this Trust Agreement to the contrary, the Trustee shall have the right at any time to petition any appropriate court for a settlement of the Trust assets or for the court's instructions regarding the Trustee's obligations under the Trust.

4.7 Expenses. If the City does not pay or reimburse the Trustee for the administrative fees and expenses of the Trust (including but not limited to auditing, actuarial, administrative, and legal fees), the Trustee may pay from the Trust, reasonable expenses for administering the Trust and investing Trust assets. No additional compensation shall be paid to the Trustee for services provided under this Trust if the Trustee is also an employee or officer of the City.

4.8 Indemnification and Insurance.

(a) For a Trustee who is also an employee or officer of the City, his or her duties under this Trust Agreement shall be treated as official duties, and he or she shall be entitled to relief from liability, and defense and indemnification, to the same extent as provided for any government officer or employee in the conduct of his/her official duties.

(b) To the extent consistent with his or her fiduciary duties, if the Trustee is also an employee or officer of the City, the Trustee may purchase, with Trust assets, fiduciary liability (and other appropriate) insurance to protect the Trust.

(c) If the Trustee undertakes or defends any litigation arising in connection with this Trust, the City (i) may indemnify Trustee against Trustee's costs, expenses and liabilities (including, without limitation, attorneys' fees and expenses) relating thereto, and (ii) agree to be primarily liable for such payments. If the City does not pay such costs, expenses and liabilities in a reasonably timely manner, Trustee may obtain payment from the Trust.

(d) The Trustee shall not be liable for the payment of any benefits in excess of the assets of the Trust.

ARTICLE 5 REPLACEMENT OF THE TRUSTEE

5.1 Replacement of the Trustee.

(a) The City may remove and replace the Trustee at any time and from time to time by giving thirty (30) days advance written notice to the Trustee of removal and replacement. The parties may agree to waive the thirty (30) day notice period. This 30-day notice period may be shortened by the City in its discretion to the extent necessary to protect the rights and benefits of Plan Participants and beneficiaries.

(b) In the event a Trustee is replaced, the relieved trustee shall take all necessary and appropriate steps to transfer all Trust assets to the successor trustee as soon as possible. The relieved trustee shall undertake a reasonable accounting of the Trust, but such accounting shall not cause unreasonable delay in any transfer of Trust assets.

(c) The replacement of the Trustee shall not result in the termination of this Trust Agreement. A successor Trustee shall have the same powers and duties as those herein conferred upon the Trustee, except as provided in any new trust agreement between the City and such replacement.

5.2 Resignation of the Trustee.

(a) The Trustee may resign at any time by giving thirty (30) days advance written notice to the Administrator and the City. The parties may agree to waive the thirty (30) day notice period.

(b) If the Trustee ceases to hold the position of City Manager, City Treasurer or other position required to be the Trustee, such person shall immediately cease being the Trustee.

(c) If the Trust Agreement is amended in a way that increases the duties of the Trustee, and the Trustee objects thereto, the Trustee may resign by giving ten (10) days advance written notice to the Administrator and the City.

(d) Upon resignation of the Trustee, the City shall designate another individual (or person holding a specified position) to be the Trustee.

5.3 Appointment of Successor Trustee.

(a) If the Trustee resigns or is removed, the City may appoint a successor trustee in accordance with the provisions of section 3.1 of the Trust Agreement. The appointment shall be effective when accepted in writing by the successor trustee, who shall have all of the rights and powers of the relieved trustee, including ownership rights in the Trust assets. The relieved trustee shall execute any instrument necessary or reasonably requested by the City or the successor trustee to evidence the transfer. The replacement of the Trustee shall not result in the termination of this Trust Agreement.

(b) The successor trustee shall not be responsible for, and the City shall indemnify and defend the successor trustee from any claim or liability resulting from any action or inaction of any prior trustee or from any other past event, or any condition existing at the time it becomes successor trustee.

ARTICLE 6 AMENDMENT OF THE TRUST AGREEMENT AND TERMINATION OF THE TRUST

6.1 Amendment of the Trust Agreement. This Trust Agreement may be amended by the City in its sole discretion. This Trust Agreement does not provide or create any contractual or other obligation of the City or any other Employer to provide any benefit to any person. Notwithstanding the foregoing, no such amendment shall conflict with the terms of the Plan. Any assets held in the Trust at the time of amendment shall continue to be held in the Trust and used, in accordance with section 3.3, to (i) provide health benefits in accordance with the Plan, and (ii) pay reasonable expenses of administration and investment. Any amendment may be made without the consent of the Trustee or any other person or entity. If the Trust Agreement is amended in a way that increases the duties of the Trustee, and the Trustee objects thereto, the Trustee may resign by giving 10 days advance written notice to the Administrator and the City.

6.2 Termination of the Trust. The Trust may be terminated by the City at any time, however, the Trust shall not fully terminate until such time that all liabilities of the Plan and Trust are satisfied. Assets held in the Trust, at the time such action is taken to terminate the Trust, shall continue to be held in Trust and used to (i) provide

health benefits in accordance with the Plan, and (ii) pay reasonable expenses of administration and investment. Upon termination of the Trust, after all benefits owed under the Plan have been paid and all Plan and Trust expenses have been paid, any assets remaining in the Trust shall revert to the City or be transferred to another entity or person that meets the requirements to be tax exempt under the Code.

ARTICLE 7 MISCELLANEOUS

7.1 Reliance. The parties hereto shall be protected in acting upon any notice, resolution, request, consent order, certificate, report, opinion, statement or other document which they reasonably believed to be genuine and to have been signed by the proper party or parties or by a person or persons authorized to act on its behalf.

7.2 Person Dealing with the Trustee. No person dealing with the Trustee shall be under any obligation to inquire into the validity, expediency or propriety of any action by the Trustee or of any exercise by it of any of the powers conferred upon it by this Trust Agreement. The execution by the Trustee of any instrument, document or paper in connection with the exercise of any of the powers enumerated herein shall, of itself, be conclusive evidence to all persons of the authority of the Trustee to execute the same and to exercise the powers incident thereto.

7.3 Anti-Alienation. No right or claim to, or interest in, any part of the Plan's or Trust's assets, or any payment from this Plan or Trust shall be subject to anticipation, alienation, sale, transfer, assignment, mortgage, pledge, encumbrance, hypothecation, commutation, garnishment, charge, or any other process of any court except as specifically permitted under the Plan or this Trust Agreement or required by law such as a domestic relations order issued by a court of competent jurisdiction. No benefit payable from the Plan or Trust to any person shall in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements, or torts of any such person, nor shall it be subject to attachment or legal process for or against such person, except to such extent required by law. Any attempt to anticipate, alienate, sell, transfer, assign, mortgage, pledge, garnish, encumber, charge, or levy against any benefit under the Plan or Trust shall be void, except as required by law. No portion of the benefits payable under the Plan or Trust shall be subject to the bankruptcy estate of any person, except as required by law.

7.4 Notices. All orders, requests, directions and instructions communicated between the Administrator and the Trustee shall be in writing, and signed by a person authorized to act on his or her behalf.

7.5 Law. This Trust Agreement is made in the State of California, and shall be construed in accordance with the laws thereof and applicable federal law.

7.6 Invalidity. In the event any provision of this Trust Agreement shall be held illegal or invalid for any reason, said illegality or invalidity shall not affect the

remaining provisions hereof, and this Trust Agreement shall thereafter be construed and enforced as if said illegal or invalid provisions had never been included therein.

7.7 No contractual obligation. This Trust Agreement does not provide or create any contractual or other obligation of the City or any other Employer to provide any benefit to any person.

7.8 Entire Agreement. This Agreement constitutes the entire agreement between the City and the Trustee. This Trust Agreement shall not be modified or amended by any other statement, representation or agreement, whether written or oral, between any person or persons whomsoever, except as provided in this Trust Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Trust Agreement to be executed by their representatives thereunto duly authorized as of _____.

_____, 2013

CITY OF BERKELEY

(Signature)

(Name)

(Title)

_____, 2013

TRUSTEE

(Signature)

(Name)

(Title)