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CITY OF DANBURY
155 DEER HILL AVENUE
DANBURY, CONNECTICUT 06810

DAN GARRICK
ASSISTANT DIRECTOR OF FINANCE

(203)797-4650
FAX: (203)796-1526

MEMORANDUM

TO: Mark D. Boughton via the Common Council ✓
FROM: Dan Garrick, Assistant Director of Finance *DG*
DATE: June 26, 2007
SUBJECT: Other Post Employment Benefit Trust Agreement

Attached for your review is a draft of a Trust Agreement for Other Post Employment Benefits. This is to move the City forward with the funding requirements set forth in GASB 45 and GASB 43. I respectfully request that the Council send this to an ad-hoc committee for further review.

**CITY OF DANBURY
OTHER POST EMPLOYEE BENEFIT
TRUST AGREEMENT**

THIS TRUST AGREEMENT is made and entered into as of _____, 2007 by and between the City of Danbury (the "City") and the City Director of Finance (the "Trustee").

WHEREAS, the City has established one or more plans that provide for certain post-employment benefits, including retiree medical benefits, life insurance, but excluding pension benefits (collectively "OPEB Benefits") for certain groups of employees and retirees of the City, their spouses and dependents (collectively "Retirees") which are named in Exhibit A as amended from time to time (collectively the "Plan");

WHEREAS, the City has adopted an ordinance pursuant to the Connecticut General Statutes Section 7-450 to establish a trust to hold and invest Plan assets and a Other Post Employee Benefit Board of Trustees (the "Other Post Employee Benefit Board") to oversee the investment of such assets (the "Ordinance");

WHEREAS the City desires to fund OPEB Benefits through the trust herein established (the "Trust");

WHEREAS, the provision of OPEB Benefits to Retirees is an essential governmental function and an integral part of the exempt activities of the City;

WHEREAS, the City calculates and records the expenses and liabilities of OPEB Benefits pursuant to Government Accounting Standards Board ("GASB") Statement 45 ("GASB 45");

WHEREAS, consistent with the provisions of GASB 45 and GASB Statement 43 ("GASB 43"), the funds which will be contributed to the Trust, as and when received by the Trustee, and earnings and losses thereon shall constitute a trust fund (the "Trust Fund") which shall be irrevocable and shall be held for the benefit of Retirees in accordance with the Plan;

WHEREAS, consistent with the provisions of GASB 45 and GASB 43, the Trust assets shall be legally protected from creditors of the City; and

WHEREAS, the City desires the Trustee to hold and administer the Trust Fund, and the Trustee is willing to hold and administer such Trust Fund, pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration of the promises and of the mutual covenants contained herein, the City and the Trustee agree as follows:

ARTICLE I - CREATION OF TRUST

1.1 *Creation of Trust.* The City hereby creates with the Trustee a Trust consisting of such sums as shall be paid to the Trustee, and all amounts thereafter contributed under the Plan, and the earnings and appreciation thereon, less the losses and depreciation thereon and less payments made by the Trustee under the Plan and this Trust Agreement with respect to

Retirees. The City hereby appoints and the Trustee hereby agrees to accept said appointment as Trustee hereunder.

1.2 *Exclusive Purpose of Trust.* The Trustee shall hold the assets of the Trust for the exclusive purpose of providing benefits to Retirees and defraying reasonable expenses of administering the Plan and Trust. No part of the net earnings of the Trust shall inure to the benefit of the City or any other person, except through the payment of benefits permitted under the Trust.

1.3 *Incorporation of Plan and Ordinance.* The provisions of the Plan and the Ordinance shall be read as an integral part of this Trust Agreement, and are specifically incorporated herein by reference.

1.4 *Protection of Trust Assets.* All assets of the Trust shall be legally protected from creditors of the City to the full extent of applicable law.

ARTICLE II - CONTRIBUTIONS

2.1 *Receipt of Contributions.* The Trustee shall receive any contributions paid to it in cash or in the form of such other property as it may from time to time deem acceptable and which shall have been delivered to it. All contributions so received, together with the income therefrom and any other increment thereon, shall be held, invested, reinvested and administered by the Trustee pursuant to the terms of this Agreement without distinction between principal and income. The Trustee shall not be responsible for the calculation or collection of any contribution under the Plan, but shall be responsible only for property received by it pursuant to this Agreement.

2.2 *Compliance with Laws.* This Agreement and the Trust Fund thereunder are intended to meet the requirements of Section 115 of the Code and Section 7-450 of the Connecticut General Statutes.

ARTICLE III - PAYMENTS FROM TRUST FUND

3.1 *Payments Directed by the City.* The Trustee shall from time to time at the City's direction make payments out of the Trust Fund to the persons or entities to whom such monies are to be paid in such amounts and for such purposes as may be specified in the City's directions. The Trustee shall be under no liability for any payment made pursuant to the direction of the City. Any direction of the City shall constitute a certification that the distribution or payment so directed is one which the City is authorized to direct.

3.2 *Impossibility of Diversion.* It shall be impossible at any time for any part of the Trust Fund to be used for, or diverted to, purposes other than to provide the benefits contemplated under the Plan for the exclusive benefit of Retirees, except that any taxes and administration expenses for which the Trust is liable may be made from the Trust Fund as provided for herein.

ARTICLE IV - DUTIES OF THE CITY

4.1 *General.* The OPEB plans of the groups listed on Exhibit A, as amended from time to time, constitute the Plan. The City shall amend Exhibit A if and when the information required to be contained therein changes. After the execution of this Trust Agreement, the City shall promptly file with the Trustee a certified list of the names and specimen signatures of any individual authorized to act for the City. The City shall promptly notify the Trustee of

the addition or deletion of any person's name from such list. Until receipt by the Trustee of notice that any person is no longer authorized to so act, the Trustee may continue to rely on the authority of the person. All certification, notices, and directions by any such person or persons to the Trustee shall be in writing signed by such person or persons. The Trustee may rely on any such certification, notices, and direction purporting to have been signed by or on behalf of such person or persons that the Trustee reasonably believes to have been signed thereby. The Trustee may rely on any such certification, notices, and direction purporting to have been signed by a duly authorized officer or agent of the City.

4.2 *Contributions.* The City shall make contributions to the Trust from time to time as it may, in its sole discretion, deem appropriate. The Trustee shall have no duty or authority to ascertain whether contributions should be made by the City or to bring an action to enforce the City to make such contributions.

4.3 *Indemnification of Trustee.* The City shall indemnify and hold harmless the Trustee for any liability or expense, other than liability and expenses incurred as a result of the Trustee's negligence or willful misconduct, including without limitation reasonable attorney's fees, incurred by the Trustee with respect to holding, managing, investing, or otherwise administering the Trust Fund.

ARTICLE V - INVESTMENTS

5.1 *Responsibility for Investment.* Except as provided in Section 5.2 of this Article, and upon receipt of direction from the Other Post Employee Benefit Board, the Trustee shall have the power to invest and reinvest the Trust Fund.

5.2 *Appointment of Investment Manager.* Upon receipt of direction from the Other Post Employee Benefit Board, the Trustee shall appoint an investment manager(s) to direct the investment and reinvestment of all or a part of the Trust Fund (the "Separate Account"). Each such investment manager shall, unless its appointment provides otherwise, have the power to direct the Trustee in the exercise of its investment powers with respect to the Separate Account and the Trustee shall exercise such powers as directed in writing by the investment manager. Except as otherwise provided by applicable law, the Trustee shall have no liability: (i) for the acts or omissions of an investment manager; (ii) for following the investment directions of an investment manager; (iii) for failing to act in the absence of investment manager direction; or (iv) for any diminution in the value of the Trust Fund as a result of following the direction of an investment manager. The Trustee shall take such actions and enter into such agreements as are necessary or appropriate to permit the investment manager to manage the Separate Account, including but not limited to establishing a brokerage account in the name of the Trustee and transferring to such brokerage account the Separate Account for which an investment manager has been appointed to enable the investment manager to make trades and otherwise exercise the powers granted to it, and entering into a custodial agreement with an institutional custodian with respect to the Separate Account for which an investment manager has been appointed to enable the investment manager to exercise the powers granted to it.

5.3 *Investment Subject to Prudent Investor Rule.* The assets of the Trust Fund, whether invested by the Trustee or by an investment manager appointed by the Trustee, shall be invested and managed in compliance with the prudent investor rule set forth in the Connecticut General Statutes Sections 45a-541 to 45a-5411, inclusive.

5.4 *Establishment of Funding Policy.* The City shall establish and carry out a funding policy consistent with the purposes of the Plan. As part of such funding policy, the City shall from time to time direct the Trustee and, if applicable, the Trustee shall direct the

investment manager, to exercise its investment discretion so as to provide sufficient cash assets in an amount determined by the City, under the funding policy then in effect, to meet the liquidity requirements for the administration of the Plan.

5.5 *Adherence to Funding Policy.* The discretion of the Trustee, or of the investment manager, if applicable, in investing and reinvesting the principal and income of the Trust Fund shall be subject to the funding policy, and any changes thereto which the City may adopt from time to time and communicate to the Trustee in writing. The Trustee and investment manager, if applicable, shall have the duty to act strictly in accordance with such funding policy, and any changes therein, as so communicated to the Trustee from time to time in writing.

ARTICLE VI- POWERS OF THE TRUSTEE

6.1 *General.* The Trustee shall discharge its duties under this Agreement solely in the interest of the Retirees covered under the Plan and for the exclusive purpose of providing benefits to such persons and defraying reasonable expenses of administering the Trust, with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, and by diversifying the investments of the Trust so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so, all in accordance with the provisions of this Agreement insofar as they are consistent with the provisions of the prudent investor rule set forth in Connecticut General Statutes Sections 45a-541 to 45a-5411, inclusive, as this Agreement and the Connecticut General Statutes may be from time to time amended. The duties and obligations of the Trustee as such shall be limited to those expressly imposed upon it by this Agreement notwithstanding any reference herein to the Plan, or the provisions thereof, it being hereby expressly agreed that the Trustee is not a party to the Plan.

6.2 *Powers.* The Trustee, in addition to all powers and authorities under common law, statutory authority, and other provisions of this Agreement, shall have the following powers and authorities, to be exercised in the Trustee's sole discretion, provided that such exercise shall be limited by the terms of Article V and Section 6.1 above:

- (a) To retain any property at any time received by the Trustee;
- (b) To purchase, or subscribe for, any securities or other property and to retain the same in trust;
- (c) To sell, exchange, convey, transfer, grant options to purchase, or otherwise dispose of any securities or other property held by the Trustee, by private contract or at public auction, and any sale may be made for cash or upon credit, or partly for cash and partly upon credit. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity, expediency, or propriety of any such sale or other disposition;
- (d) To vote upon any stocks, bonds, or other securities; to give general or special proxies or powers of attorney with or without power of substitution; to exercise any conversion privileges, subscription rights, or other options, and to make any payments incidental thereto; to oppose, or to consent to, or otherwise participate in, corporate reorganizations or other changes affecting corporate securities, and to delegate discretionary powers, and to pay any assessments or charges in connection therewith; and generally to exercise any of the powers of

an owner with respect to stock, bonds, securities or other property held as part of the Trust Fund;

- (e) To cause any securities or other property held as part of the Trust Fund to be registered in the Trustee's own name or in the name of one or more of the Trustee's nominees, and to hold any investments in bearer form, but the books and records of the Trustee shall at all times show that all such investments are part of the Trust Fund;
- (f) To keep such portion of the Trust Fund in cash or cash balances as the Trustee may, from time to time, deem to be in the best interests of the trust created hereby, without liability for interest thereon;
- (g) To accept and retain for such time as it may deem advisable any securities or other property received or acquired by it as Trustee hereunder, whether or not such securities or other property would normally be purchased as investments hereunder;
- (h) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (i) To settle, compromise, or submit to arbitration any claims, debts, or damages to or owing to or from the Trust Fund, to commence or defend suits or legal or administrative proceedings, and to represent the Trust Fund in all suits and legal and administrative proceedings;
- (j) To employ suitable agents and counsel and to pay their reasonable expenses and compensation, such agents or counsel may or may not be agents or counsel for the City;
- (k) To acquire real estate by purchase, exchange, or as the result of any foreclosure, liquidation, or other salvage as the result of any foreclosure, liquidation, other salvage of any investment previously made hereunder; to hold such real estate in such manner and upon such terms as the Trustee may deem advisable; and to manage, operate, repair, develop, improve, partition, mortgage, or lease for any term or terms of years any such real estate or any other real estate constituting a part of the Trust Fund, upon such terms and conditions as the Trustee deems proper, using other trust assets for any of such purposes if deemed advisable;
- (l) To invest funds of the Trust Fund in night deposits or savings accounts bearing a reasonable rate of interest in a Trustee's bank;
- (m) To invest in Treasury Bills and other forms of United States government obligations;
- (n) To deposit monies in federally insured savings accounts or certificates of deposit in banks or savings and loan associations;
- (o) To do all such acts, take all such proceedings, and exercise all such rights and privileges, although not specifically mentioned herein, as the Trustee may deem

necessary to administer the Trust Fund, and to carry out the purposes of this Trust.

6.3 *More Than One Trustee.* If there shall be more than one trustee, they shall act by a majority of their number, but may authorize any one or more of them to sign papers and instruments on their behalf.

6.4 *Fees and Expenses.* The Trustee may be paid such reasonable compensation as shall from time to time be agreed upon in writing by the City and the Trustee. An individual serving as Trustee who already receives full-time pay from the City shall not receive compensation from this Trust except for reimbursement of expenses properly and actually incurred. In addition, the Trustee shall be reimbursed for any reasonable expenses, including reasonable counsel and accounting fees, incurred by the Trustee in the administration of the Trust Fund. Such compensation and expenses shall be paid from the Trust Fund unless sooner paid by the City. All taxes of any kind and all kinds whatsoever that may be levied or assessed under existing or future laws upon, or in respect of, the Trust Fund or the income thereof shall be paid by the Trustee from the Trust Fund.

6.5 *Consultation and Indemnification.* The Trustee may consult with counsel and the Trustee shall not be deemed imprudent by reason of its taking or refraining from taking any action in accordance with the opinion of counsel.

6.6 *Accounts and Records.* The Trustee shall keep accurate and detailed accounts of all investments, receipts, disbursements, and other transactions hereunder, and all such accounts and other records relating thereto shall be open to inspection and audit at all reasonable times by any person designated by the City or the Other Post Employee Benefit Board.

ARTICLE VII – AMENDMENT AND TERMINATION OF AGREEMENT

7.1 *Amendment.* Any or all of the provisions of this Agreement may be amended at any time and from time to time, in whole or in part, by an instrument in writing. No such amendment shall authorize or permit any part of the Trust Fund (other than such part as is required to pay taxes and administration expenses) to be used for or diverted to purposes other than for the exclusive benefit of Retirees; no such amendment shall cause or permit any portion of the Trust Fund to revert to or become the property of the City; and no such amendment which affects the rights or duties of the Trustee may be made without the Trustee’s written consent.

7.2 *Termination.* This Agreement may be terminated at any time by the City, and upon such termination, the Trust Fund shall be paid out by the Trustee as and when directed by the City, in accordance with the provisions of Section 1.2 of Article I and Section 3.2 of Article III hereof and the terms of the Plan. Upon termination of the Trust, Trust Funds shall be applied to pay any remaining debts, liabilities and approved claims of the Plan. Any assets remaining in the Trust after meeting its obligations shall be distributed to the City.

ARTICLE VIII – GENERAL

8.1 *Limited Effect of Plan and Trust.* Neither the establishment of the Plan nor the Trust nor any modification thereof, nor the creation of any fund or account, nor the payment of any welfare benefits, shall be construed as giving to any person covered under the Plan or other person any legal or equitable right against the Trustee, the City, or any officer or employee thereof, except as may otherwise be provided in the Plan or in the Trust. Under no

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circumstances shall the term of employment of any employee be modified or in any way affected by the Plan or this Trust.

8.2 *Protective Clause.* Neither the City nor the Trustee shall be responsible for the validity of any contract of insurance issued in connection with the Plan or Trust or for the failure on the part of the insurer to make payments provided by such contract, or for the action of any person which may delay payment or render a contract null and void or unenforceable in whole or in part.

8.3 *Construction of Trust.* This Trust shall be construed and enforced according to the laws of the State of Connecticut and the Code. If any provision of this Trust shall be held illegal or invalid for any reason, such determination shall not affect the remaining provisions of the Trust.

8.5 *Gender and Number.* Wherever any words are used herein in the masculine, feminine or neuter, they shall be construed as though they were also used in another gender in all cases where they would so apply, and whenever any words are used herein in the singular or plural form, they shall be construed as though they were also used in the other form in all cases where they would so apply.

8.6 *Headings.* The headings and sub-headings of this Trust have been inserted for convenience of reference and are to be ignored in any construction of the provisions hereof.

IN WITNESS WHEREOF, this Agreement has been executed the day and year first above written.

CITY OF DANBURY, CONNECTICUT

Date: _____

By: _____

Its: _____

DIRECTOR OF FINANCE

Date: _____

Name: _____

Groups covered by City of Danbury OPEB Plans

- Danbury Municipal Employees' Association, Inc.(DMEA)
- Danbury Non Union Employees
- Danbury Police Union Local #891
- Local 677 International Brotherhood of Teamsters
 - Public Buildings Division
 - Public Utilities
 - Public Works Department
 - School Lunch Personnel
- Local 801 International Association of Fire Fighters
- NEA Danbury
- Danbury School Nurses Association
- UE Local 222 CLIU Local 35 Custodian, Maintenance, and Drivers
- CSEA/SEIU Local 2001 Danbury Para Educators Including One on One Tutors
- CSEA/SEIU Local 2001 CTW Educational Secretaries