**March 11, 2010** **Agenda Item 7.0: Retirement Health Savings Benefit Plan Adoption and Declaration of Trust**

**TO:** **Sacramento Public Library Authority Board Members**

**FROM:** **Rick Teichert, Deputy Director - Support Services**

**RE:** **Retirement Health Savings Benefit Plan Adoption and Declaration of Trust**

## RECOMMENDED ACTIONS:

1. **Approve** the Authority's implementation of a Retirement Health Savings (RHS) Plan benefit for all members of Local 39, Library Unit, at a total annual cost of $126,240;

2. **Adopt** Resolution #10-01, A Resolution Adopting ICMA's Employer Vantagecare Retirement Health Savings Plan, ICMA Plan Number: 803159, and Adopting the Declaration of Trust of the Sacramento Public Library Authority Integral Part Trust, and Naming the Library Director as Trustee.

## REASON FOR RECOMMENDATION

Retirement Health Savings Plan

Over the last several months, Library staff has worked with Local 39 representatives to update the collective bargaining agreement with Stationary Engineers Local 39, Library Unit, which agreement includes the provision of a Retirement Health Savings (RHS) Plan for bargaining unit members. The RHS Plan is a medical expense reimbursement program that accumulates assets to pay for medical expenses in retirement on a tax-free basis.

In seeking a service provider for the RHS Plan benefit, Library staff sought input from member jurisdictions. Library staff learned that in 2008, after an extensive nationwide search for companies providing Retirement Health Savings Plans, the County of Sacramento found ICMA to be the most cost effective as well as the most experienced provider of such plans. Staff was also informed that ICMA is the provider for the City of Sacramento's 401 and 457 Deferred Compensation Plans. Sacramento Public Library's own Deferred Compensation Plans are also provided through ICMA.

Given the information provided by the City of Sacramento and the County of Sacramento, and based on the current relationship between the Library, ICMA and the Library's employees, staff is recommending adoption of ICMA's Employer Vantagecare Retirement Health Savings Plan, ICMA Plan Number 803159 in order to implement the provision of this benefit. The recommended Resolution #10-01 includes specific language required by ICMA. The Adoption Agreement is attached as Exhibit A to the Resolution.

Sacramento Public Library Integral Part Trust

Included in the provisions of Resolution #10-01 is establishment of the Sacramento Public Library Integral Part Trust to hold assets and income of the Plan for the exclusive benefit of Plan Participants, their Spouses and Dependents, and designation of the Library Director to serve as Trustee by execution of the Declaration of Trust of the Sacramento Public Library Authority Integral Part Trust (Exhibit B), which model was made available by ICMA Retirement Corporation.

## FISCAL IMPACT

Per the collective bargaining agreement with Stationary Engineers Local 39, Library Unit being recommended for adoption at the March 11, 2010, Authority Board meeting, the Sacramento Public Library Authority shall contribute $20 per member per pay period for 24 pay periods each year -- a total of $480 per year for each member in the bargaining unit. Based on 263 members in the unit, the total cost to the Authority to provide this benefit is $126,240 per year.

There is no administrative expense to the Sacramento Public Library for providing the RHS Plan; therefore, there is no risk or cost exposure. An annual asset fee will be charged to the individual employee's account as well as an annual fee. Staff will monitor the fees to ensure costs remain within the competitive market range.

## ATTACHMENTS

Resolution #10-01, A Resolution Adopting ICMA's Employer Vantagecare Retirement Health Savings Plan, ICMA Plan Number: 803159, and Adopting the Declaration of Trust of the Sacramento Public Library Authority Integral Part Trust, naming the Library Director as Trustee.

Exhibit A: Employer Vantagecare Retirement Health Savings (RHS) Plan Adoption Agreement

Exhibit B: Declaration of Trust of the Sacramento Public Library Authority Integral Part Trust

**RESOLUTION NO. 10-01**

Adopted by the Governing Board of the Sacramento Public Library Authority on the date of:

**March 11, 2010**

**A RESOLUTION ADOPTING ICMA's EMPLOYER VANTAGECARE RETIREMENT HEALTH SAVINGS PLAN, ICMA PLAN NUMBER: 803159, AND ADOPTING THE DECLARATION OF TRUST OF THE SACRAMENTO PUBLIC LIBRARY AUTHORITY INTEGRAL PART TRUST, AND NAMING LIBRARY DIRECTOR AS TRUSTEE**

BE IT HEREBY RESOLVED BY THE GOVERNING BOARD OF THE SACRAMENTO PUBLIC LIBRARY AUTHORITY AS FOLLOWS:

**WHEREAS**, the Authority has employees rendering valuable services; and

**WHEREAS**, the establishment of a Retirement Health Savings Plan for such employees serves the interests of the Authority by enabling it to provide reasonable security regarding such employees' health needs during retirement, by providing increased flexibility in its personnel management system, and by assisting in the attraction and retention of competent personnel; and

**WHEREAS**, the Authority has determined that the establishment of the Retirement Health Savings Plan (the "Plan") serves the above objectives;

**NOW THEREFORE BE IT RESOLVED** that the Authority hereby adopts the Plan in the form of ICMA Retirement Corporation's Employer VantageCare Retirement Health Savings program (Exhibit A); and

**BE IT FURTHER RESOLVED** that the Authority hereby establishes the Integral Part Trust to hold assets and income of the Plan for the exclusive benefit of Plan Participants, their Spouses and Dependents, by execution of the Declaration of Trust of the Sacramento Public Library Authority Integral Part Trust (Exhibit B), which model was made available by ICMA Retirement Corporation; and

**BE IT FURTHER RESOLVED** that the Library Director shall be designated to serve as Trustee for the Plan. The Library Director shall be the coordinator and contact for the Plan and shall receive all necessary reports, notices, etc.

_____
Roberta MacGlashan, Chair

ATTEST:

Rivkah K. Sass, Secretary

By: _____
Brenda Haggard, Assistant Secretary

Exhibit A: VantageCare Retirement Health Savings (RHS) Plan Adoption Agreement
Exhibit B: Declaration of Trust of the Sacramento Public Library Authority Integral Part Trust

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# EMPLOYER VANTAGECARE RETIREMENT HEALTH SAVINGS (RHS) PLAN ADOPTION AGREEMENT

Plan Number: 8 03159 Check one: ☒ New Plan ☐ Amendment to Existing Plan

Employer Retirement Health Savings Plan Name:

**I. Employer Name:** Sacramento Public Library Authority State: California

**II. The Employer hereby attests that it is a unit of a state or local government or an agency or instrumentality of one or more units of a state or local government.**

**III. Effective Date of the Plan:** March 11, 2010

**IV. The Employer intends to utilize the Trust to fund only welfare benefits pursuant to the following welfare benefit plan(s) established by the Employer:** Retirement Health Savings Plan

**V. Eligible Groups, Participation and Participant Eligibility Requirements**

**A. Eligible Groups**

The following group or groups of Employees are eligible to participate in the VantageCare Retirement Health Savings Plan (check all applicable boxes):

- ☐ All Employees
- ☐ All Full-Time Employees
- ☐ Non-Union Employees
- ☐ Public Safety Employees – Police
- ☐ Public Safety Employees – Firefighters
- ☐ General Employees
- ☒ Collectively-Bargained Employees (Specify unit(s)) Local 39, Library Unit
- ☐ Other (specify group(s)) _____

The Employee group(s) specified must correspond to a group(s) of the same designation that is defined in the statutes, ordinances, rules, regulations, personnel manuals or other documents or provisions in effect in the state or locality of the Employer.

**B. Participation**

***Mandatory Participation:*** All Employees in the covered group(s) are required to participate in the Plan and shall receive contributions pursuant to Section VI.

> If the Employer's underlying welfare benefit plan or funding under this VantageCare Retirement Health Savings Plan is in whole or part a non-collectively bargained, self-insured plan, the nondiscrimination requirements of Internal Revenue Code (IRC) Section 105(h) will apply. These rules may impose taxation on the benefits received by highly compensated individuals if the Plan discriminates in favor of highly compensated individuals in terms of eligibility or benefits. The Employer should discuss these rules with appropriate counsel.

**C. Participant Eligibility Requirements**

1. Minimum service: The minimum period of service required for participation is N/A (write N/A if no minimum service is required).
2. Minimum age: The minimum age required for eligibility to participate is N/A (write N/A if no minimum age is required).

## VI. Contribution Sources and Amounts

### A. Definition of Earnings

The definition of Earnings will apply to all RHS Contribution Features that reference "Earnings", including Direct Employer Contributions (Section VI.B.1.) and Mandatory Employee Compensation Contributions (Section VI.B.2.).

Definition of earnings: NA

### B. Direct Employer Contributions and Mandatory Contributions

1. Direct Employer Contributions

The Employer shall contribute on behalf of each Participant

- ☐ _____ % of Earnings
- ☐ $ _____ each Plan Year
- ☐ A discretionary amount to be determined each Plan Year
- ☒ Other (describe): $480/year; $20 per pay period (24 annual pay periods) Library Unit Full Time and Part Time

2. Mandatory Employee Compensation Contributions

The Employer will make mandatory contributions of Employee compensation as follows:

☐ Reduction in Salary - _____ % of Earnings or $ _____ will be contributed for the Plan Year.

☐ Decreased Merit or Pay Plan Adjustment - All or a portion of the Employees' annual merit or pay plan adjustment will be contributed as follows:

An Employee shall not have the right to discontinue or vary the rate of Mandatory Contributions of Employee Compensation.

3. Mandatory Employee Leave Contributions

The Employer will make mandatory contributions of accrued leave as follows (provide formula for determining Mandatory Employee Leave contributions):

☐ Accrued Sick Leave _____

☐ Accrued Vacation Leave _____

☐ Other (specify type of leave) Accrued _____ Leave

An Employee shall not have the right to discontinue or vary the rate of mandatory leave contributions.

### C. Limits on Total Contributions (check one box)

The total contribution by the Employer on behalf of each Participant (including Direct Employer and Mandatory Employee Contributions) for each Plan Year shall not exceed the following limit(s) below. Limits on individual contribution types are defined within the appropriate section above.

☒ There is no Plan-defined limit on the percentage or dollar amount of earnings that may be contributed.

☐ _____ % of earnings*

*Definition of earnings: ☐ Same as Section VI.A.. ☐ Other

☐ $ _____ for the Plan year.

See Section V.B. for a discussion of nondiscrimination rules that may apply to non-collectively bargained self-insured Plans.

**VII. Vesting for Direct Employer Contributions**

**A. Vesting Schedule** (check one box)

☒ The account is 100% vested at all times.

☐ The following vesting schedule shall apply to Direct Employer Contributions as outlined in Section VI.B.1.:

| Years of Service Completed | Vesting Percentage |
|---|---|
| _____ | _____% |
| _____ | _____% |
| _____ | _____% |
| _____ | _____% |
| _____ | _____% |
| _____ | _____% |
| _____ | _____% |
| _____ | _____% |
| _____ | _____% |
| _____ | _____% |

**B. The account will become 100% vested upon the death, disability, retirement*, or attainment of benefit eligibility (as outlined in Section IX) by a Participant.**

*Definition of retirement (check one box):

☐ Retirement as defined in the primary retirement plan of the Employer

☐ Separation from service

☐ Other _____

**C. Any period of service by a Participant prior to a rehire of the Participant by the Employer shall not count toward the vesting schedule outlined in A above.**

**VIII. Forfeiture Provisions**

Upon separation from the service of the Employer prior to attainment of benefit eligibility (as outlined in Section IX), or upon reversion to the Trust of a Participant's account assets remaining upon the participant's death (as outlined in Section XI), a Participant's non-vested funds shall (check one box):

☒ Remain in the Trust to be reallocated among all remaining Employees participating in the Plan as Direct Employer Contributions for the next and succeeding contribution cycle(s).

☐ Remain in the Trust to be reallocated on an equal dollar basis among all Plan Participants.

☐ Remain in the Trust to be reallocated among all Plan Participants based upon Participant account balances.

☐ Revert to the Employer.

**IX. Eligibility Requirements to Receive Medical Benefit Payments from the VantageCare Retirement Health Savings Plan**

**A. A Participant is eligible to receive benefits:**

☐ At retirement only (also complete Section B.)
Definition of retirement:

☐ Same as Section VII.B.

☐ Other _____

_____

☒ At separation from service with the following restrictions

☒ No restrictions

☐ Other _____

_____

☐ At age _____ only

☐ At retirement and age _____ (also complete section B)
Definition of retirement:

☐ Same as Section VII.B.

☐ Other _____

_____

☐ At retirement **or** age _____
Definition of retirement:

☐ Same as Section VII.B.

☐ Other _____

_____

☐ Other, specified as follows (also complete Section B if applicable): _____

_____

**B. Termination prior to general benefit eligibility: In the case where the general benefit eligibility as outlined in Section IX.A includes a retirement component, a Participant who separates from the service of the Employer prior to retirement will be eligible to receive benefits:**

☐ Immediately upon separation from service.

☐ At age _____.

**C. A Participant that becomes totally and permanently disabled**

☐ as defined by the Social Security Administration

☐ as defined by the Employer's primary retirement plan

☐ other _____

will become immediately eligible to receive medical benefit payments from his/her VantageCare Retirement Health Savings Plan account.

D. Upon the death of the Participant, benefits shall become payable as outlined in Section XI.

## X. Permissible Medical Benefit Payments

Benefits eligible for reimbursement consist of:

- [x] All Medical Expenses eligible under IRC Section 213* other than direct long-term care expenses, and including non-prescription medications allowed under IRS guidance.
- [ ] The following Medical Expenses (select only the expenses you wish to cover under the VantageCare Retirement Health Savings Plan):
  - [ ] Medical Insurance Premiums
  - [ ] Medical Out-of-Pocket Expenses*
  - [ ] Medicare Part B Insurance Premiums
  - [ ] Medicare Part D Insurance Premiums
  - [ ] Medicare Supplemental Insurance Premiums
  - [ ] Prescription Drug Insurance Premiums
  - [ ] COBRA Insurance Premiums
  - [ ] Dental Insurance Premiums
  - [ ] Dental Out-of-Pocket Expenses*
  - [ ] Vision Insurance Premiums
  - [ ] Vision Out-of-Pocket Expenses*
  - [ ] Qualified Long-Term Care Insurance Premiums
  - [ ] Non-Prescription medications allowed under IRS guidance*
  - [ ] Other qualifying medical expenses (describe)*

** See Section V.A. for a discussion of nondiscrimination rules which may apply to non-collectively bargained, self-insured Plans.*

## XI. Benefits After the Death of the Participant

In the event of a Participant's death, the following shall apply:

### A. Surviving Spouse and/or Surviving Dependents

The surviving spouse and/or surviving eligible dependents (as defined in Section XII.D.) of the deceased Participant are immediately eligible to maintain the account and utilize it to fund eligible medical benefits specified in Section X above.

Upon notification of a Participant's death, the Participant's account balance will be transferred into the Vantagepoint Money Market Fund* (or another fund selected by the Employer). The account balance may be reallocated by the surviving spouse or dependents.

** Please read the current Vantagepoint Mutual Funds prospectus carefully prior to investing. An investment in this fund is neither insured nor guaranteed and there can be no assurance that the Fund will be able to maintain a stable net asset value of $1.00 per share. Vantagepoint Mutual Funds are distributed by ICMA-RC Services, LLC, a wholly-owned broker-dealer affiliate of ICMA Retirement Corporation. Member FINRA/SIPC.*

If a Participant's account balance has not been fully utilized upon the death of the eligible spouse, the account balance may continue to be utilized to pay benefits of eligible dependents. Upon the death of all eligible dependents, the account will revert to the Plan to be applied as specified in Section VIII.

**B. No Surviving Spouse or Surviving Dependents**

If there are no living spouse or dependents at the time of death of the Participant, the account will revert to the Plan to be applied as specified in Section VIII.

**XII. The Plan will operate according to the following provisions:**

**A. Employer Responsibilities**

1. The Employer will submit all VantageCare Retirement Health Savings Plan contribution data via electronic submission.
2. The Employer will submit all VantageCare Retirement Health Savings Plan Participant status updates or personal information updates via electronic submission. This includes but is not limited to termination notification and benefit eligibility notification.

**B.** Participant account administration and asset-based fees will be paid through the redemption of Participant account shares, unless agreed upon otherwise in the Administrative Services Agreement.

**C.** Assignment of benefits is not permitted. Benefits will be paid only to the Participant, his/her Survivors, the Employer, or an insurance provider (as allowed by the claims administrator). Payments to an third-party payee (e.g., medical service provider) are not permitted with the exception of reimbursement to the Employer or insurance provider (as allowed by the claims administrator).

**D.** An eligible dependent is the Participant's lawful spouse and any other individual who is a person described in IRC Section 152(a), as clarified by Internal Revenue Service Notice 2004-79.

**E.** The Employer will be responsible for withholding, reporting and remitting any applicable taxes for payments which are deemed to be discriminatory under IRC Section 105(h), as outlined in the VantageCare Retirement Health Savings Plan Employer Manual.

**XIII. Employer Acknowledgements**

**A.** The Employer hereby acknowledges it understands that failure to properly fill out this Employer VantageCare Retirement Health Savings Plan Adoption Agreement may result in the loss of tax exemption of the Trust and/or loss of tax-deferred status for Employer contributions.

**B.** ☐ Check this box if you are including supporting documents that include plan provisions.

**EMPLOYER SIGNATURE**

**By:**_____ **Date:** _____

**Title:** Authority Board Chair

**Attest:**_____ **Date:** _____

**Title:** Authority Board Secretary

Accepted: VANTAGEPOINT TRANSFER AGENTS, LLC

Angela C. Montez

Assistant Secretary, ICMA-RC

# DECLARATION OF TRUST OF THE
# NAME OF EMPLOYER
# INTEGRAL PART TRUST

Declaration of Trust made as of the 11th day of March, 20 10, by and between the Sacramento Public Library Authority (Name of Employer), California (State) a Joint Powers Authority (Type of Entity) (hereinafter referred to as the "Employer") and Library Director (Name or Title of Trustee) or its designee (hereinafter referred to as the "Trustee").

## RECITALS

WHEREAS, the Employer is a political subdivision of the State of California (State) exempt from federal income tax under the Internal Revenue Code of 1986; and

WHEREAS, the Employer provides for the security and welfare of its eligible employees (hereinafter referred to as "Participants"), their Spouses and Dependents by the maintenance of one or more post-retirement welfare benefit plans, programs or arrangements which provide for life, sickness, medical, disability, severance and other similar benefits through insurance and self-funded reimbursement plans (collectively the "Plan"); and

WHEREAS, it is an essential function and integral part of the exempt activities of the Employer to assist Participants, their Spouses and Dependents by making contributions to and accumulating assets in the trust, a segregated fund, for post-retirement welfare benefits under the Plan; and

WHEREAS, the authority to conduct the general operation and administration of the Plan is vested in the Employer or its designee, who has the authority and shall be subject to the duties with respect to the trust specified in this Declaration of Trust; and

WHEREAS, the Employer wishes to establish this trust to hold assets and income of the Plan for the exclusive benefit of Plan Participants, their Spouses and Dependents;

NOW, THEREFORE, the parties hereto do hereby establish this trust, by executing the

Declaration of Trust of the Sacramento Public Library Authority (Name of Employer) Integral Part Trust (hereinafter referred to as the "Trust"), and agree that the following constitute the Declaration of Trust (hereinafter referred to as the "Declaration"):

## ARTICLE I

### Definitions

1.1 Definitions. For the purposes of this Declaration, the following terms shall have the respective meanings set forth below unless otherwise expressly provided.

(a) **"Account"** means the individual recordkeeping account maintained under the Plan to record the interest of a Participant in the Plan in accordance with Section 7.3.

(b) **"Administrator"** means the Employer or the entity designated by the Employer to carry out administrative services as are necessary to implement the Plan.

(c) **"Beneficiary"** means the Spouse and Dependents, who will receive any benefits payable hereunder in the event of the Participant's death. In the case where there is no Spouse or Dependents, any amount of contributions, plus accrued earnings thereon, remaining in the Account must, under the terms of the Plan, be returned to the Trust.

(d) **"Code"** means the Internal Revenue Code of 1986, as amended from time to time.

(e) **"Dependent"** means an individual who is a person described in Code Section 152(a).

(f) **"Investment Fund"** means any separate investment option or vehicle selected by the Employer in which all or a portion of the Trust assets may be separately invested as herein provided. The Trustee shall not be required to select any Investment Fund.

(g) **"Nonforfeitable Interest"** means the interest of the Participant or the Participant's Spouse and Dependent (whichever is applicable) in the percentage of Participant's Employer's contribution which has vested pursuant to the vesting schedule specified in the Employer's Plan. A Participant shall, at all times, have a one hundred percent (100%) Nonforfeitable Interest in the Participant's own contributions.

(h) **"Spouse"** means the Participant's lawful spouse as determined under the laws of the state in which the Participant has his primary place of residence.

(i) **"Trust"** means the trust established by this Declaration.

(j) **"Trustee"** means the Employer or the person or persons appointed by the Employer to serve in that capacity.

## ARTICLE II

### Establishment of Trust

2.1 The Trust is hereby established as of the date set forth above for the exclusive benefit of Participants, their Spouses and Dependents.

## ARTICLE III

### Construction

3.1 This Trust and its validity, construction and effect shall be governed by the laws of the State of California.

3.2 Pronouns and other similar words used herein in the masculine gender shall be read as the feminine gender where appropriate, and the singular form of words shall be read as the plural where appropriate.

3.3 If any provision of this Trust shall be held illegal or invalid for any reason, such determination shall not affect the remaining provisions, and such provisions shall be construed to effectuate the purpose of this Trust.

## ARTICLE IV

### Benefits

4.1 **Benefits.** This Trust may provide benefits to the Participant, the Participant's Spouse and Dependents pursuant to the terms of the Plan.

4.2 **Form of Benefits.** This Trust may provide benefits by cash payment. This Trust may reimburse the Participant, his Spouse and Dependents for insurance premiums or other payments expended for permissible benefits described under the Plan. This trust may reimburse the Employer, or the Administrator for insurance premiums.

## ARTICLE V

### General Duties

5.1 It shall be the duty of the Trustee to hold title to assets held in respect of the Plan in the Trustee's name as directed by the Employer or its designees in writing. The Trustee shall not be under any duty to compute the amount of contributions to be paid by the Employer or to take any steps to collect such amounts as may be due to be held in trust under the Plan. The Trustee shall not be responsible for the custody, investment, safekeeping or disposition of any assets comprising the Trust, to the extent such functions are performed by the Employer or the Administrator, or both.

5.2 It shall be the duty of the Employer, subject to the provisions of the Plan, to pay over to the Administrator or other person designated hereunder from time to time the Employer's contributions and Participants' contributions under the Plan and to inform the Trustee in writing as to the identity and value of the assets titled in the Trustee's name hereunder and to keep accurate books and records with respect to the Participants of the Plan.

## ARTICLE VI

### Investments

6.1 The Employer may appoint one or more investment managers to manage and control all or part of the assets of the Trust and the Employer shall notify the Trustee in writing of any such appointment.

6.2 The Trustee shall not have any discretion or authority with regard to the investment of the Trust and shall act solely as a directed Trustee of the assets of which it holds title. To the extent directed by the Employer (or Participants or their Spouses and Dependents to the extent provided herein) the Trustee is authorized and empowered with the following powers, rights and duties, each of which the Trustee shall exercise in a nondiscretionary manner:

(a) To cause stocks, bonds, securities, or other investments to be registered in its name as Trustee or in the name of a nominee, or to take and keep the same unregistered;

(b) To employ such agents and legal counsel as it deems advisable or proper in connection with its duties and to pay such agents and legal counsel a reasonable fee. The Trustee shall not be liable for the acts of such agents and counsel or for the acts done in good faith and in reliance upon the advice of such agents and legal counsel, provided it has used reasonable care in selecting such agents and legal counsel;

(c) To exercise where applicable and appropriate any rights of ownership in any contracts of insurance in which any part of the Trust may be invested and to pay the premiums thereon; and

(d) At the direction of the Employer (or Participants, their Spouses, their Dependents, or the investment manager, as the case may be) to sell, write options on, convey or transfer, invest and reinvest any part thereof in each and every kind of property, whether real, personal or mixed, tangible or intangible, whether income or non-income producing and wherever

situated, including but not limited to, time deposits (including time deposits in the Trustee or its affiliates, or any successor thereto, if the deposits bear a reasonable rate of interest), shares of common and preferred stock, mortgages, bonds, leases, notes, debentures, equipment or collateral trust certificates, rights, warrants, convertible or exchangeable securities and other corporate, individual or government securities or obligations, annuity, retirement or other insurance contracts, mutual funds (including funds for which the Trustee or its affiliates serve as investment advisor, custodian or in a similar or related capacity), or in units of any other common, collective or commingled trust fund.

6.3 Notwithstanding anything to the contrary herein, the assets of the Plan shall be held by the Trustee as title holder only. Persons holding custody or possession of assets titled to the Trust shall include the Employer, the Administrator, the investment manager, and any agents and subagents, but not the Trustee. The Trustee shall not be responsible or liable for any loss or expense which may arise from or result from compliance with any direction from the Employer, the Administrator, the investment manager, or such agents to take title to any assets nor shall the Trustee be responsible or liable for any loss or expense which may result from the Trustee's refusal or failure to comply with any direction to hold title, except if the same shall involve or result from the Trustee's negligence or intentional misconduct. The Trustee may refuse to comply with any direction from the Employer, the Administrator, the investment manager, or such agents in the event that the Trustee, in its sole and absolute discretion, deems such direction illegal.

6.4 The Employer hereby indemnifies and holds the Trustee harmless from any and all actions, claims, demands, liabilities, losses, damages or reasonable expenses of whatsoever kind and nature in connection with or arising out of (i) any action taken or omitted in good faith by the Trustee in accordance with the directions of the Employer or its agents and subagents hereunder, or (ii) any disbursements of any part of the Trust made by the Trustee in accordance with the directions of the Employer, or (iii) any action taken by or omitted in good faith by the Trustee with respect to an investment managed by an investment manager in accordance with any direction of the investment manager or any inaction with respect to any such investment in the absence of directions from the investment manager. Notwithstanding anything to the contrary herein, the Employer shall have no responsibility to the Trustee under the foregoing indemnification if the Trustee fails negligently, intentionally or recklessly to perform any of the duties undertaken by it under the provisions of this Trust.

6.5 Notwithstanding anything to the contrary herein, the Employer or, if so designated by the Employer, the Administrator and the investment manager or another agent of the Employer, will be responsible for valuing all assets so acquired for all purposes of the Trust and of holding, investing, trading and disposing of the same. The Employer will indemnify and hold the Trustee harmless against any and all claims, actions, demands, liabilities, losses, damages, or expenses of whatsoever kind and nature, which arise from or are related to any use of such valuation by the Trustee or holding, trading, or disposition of such assets.

6.6 The Trustee shall and hereby does indemnify and hold harmless the Employer from any and all actions, claims, demands, liabilities, losses, damages and reasonable expenses of whatsoever kind and nature in connection with or arising out of (a) the Trustee's failure to follow the directions of the Employer, the Administrator, the investment manager, or agents thereof, except as permitted by the last sentence of Section 6.3 above; (b) any disbursements made without the direction of the Employer, the Administrator, the investment manager or agents thereof; and (c) the Trustee's negligence, willful misconduct, or recklessness with respect to the Trustee's duties under this Declaration.

## ARTICLE VII

## Contributions

7.1 **Employer Contributions.** The Employer shall contribute to the Trust such amounts as specified in the Plan or by resolution.

7.2 **Accrued Leave.** Contributions up to an amount equal to the value of accrued sick leave, vacation leave, or other type of accrued leave, as permitted under the Plan. The Employer's Plan must provide a formula for determining the value of the Participant's contribution of accrued leave . The Employer's Plan must contain a forfeiture provision that will prevent Participants from receiving the accrued leave in cash in lieu of a contribution to the Trust.

7.3 **Accounts.** Employer contributions, including mandatory Participant contributions, and contributions of accrued leave, all investment income and realized and unrealized gains and losses, and forfeitures allocable thereto will be deposited into an Account in the name of the Participant for the exclusive benefit of the Participant, his Spouse and Dependents. The assets in each Participant's Account may be invested in Investment Funds as directed by the Participant (or, after the Participant's death, by the Spouse or Dependents) or the Employer, as required under the Plan, from among the Investment Funds selected by the Employer.

7.4 **Receipt of Contributions.** The Employer or, if so designated by the Employer, the Administrator or investment manager or another agent of the Employer, shall receive all contributions paid or delivered to it hereunder and shall hold, invest, reinvest and administer such contributions pursuant to this Declaration, 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 hold title to property received in respect of the Plan in the Trustee's name as directed by the Employer or its designee pursuant to this Declaration.

7.5 No amount in any Account maintained under this Trust shall be subject to transfer, assignment, or alienation, whether voluntary or involuntary, in favor of any creditor, transferee, or assignee of the Employer, the Trustee, any Participant, his Spouse, or Dependent.

7.6 Upon the satisfaction of all liabilities under the Plan to provide such benefits, any amount of Employer contributions, plus accrued earnings thereon, remaining in such separate Accounts must, under the terms of the Plan, be returned to the Employer.

## ARTICLE VIII

### Other Plans

If the Employer hereafter adopts one or more other plans providing life, sickness, accident, medical, disability, severance, or other benefits and designates the Trust hereby created as part of such other plan, the Employer or, if so designated by the Employer, the Administrator or an investment manager or an-other agent of the Employer shall, subject to the terms of this Declaration, accept and hold hereunder contributions to such other plans. In that event (a) the Employer or, if so designated by the Employer, the Administrator or an investment manager or another agent of the Employer, may commingle for investment purposes the contributions received under such other plan or plans with the contributions previously received by the Trust, but the books and records of the Employer or, if so designated by the Employer, the Administrator or an investment manager or another agent of the Employer, shall at all times show the portion of the Trust Fund allocable to each plan; (b) the term "Plan" as used herein shall be deemed to refer separately to each other plan; and (c) the term "Employer" as used herein shall be deemed to refer to the person or group of persons which have been designated by the terms of such other plans as having the authority to control and manage the operation and administration of such other plan.

## ARTICLE IX

### Disbursements and Expenses

9.1 The Employer or its designee shall make such payments from the Trust at such time to such persons and in such amounts as shall be authorized by the provisions of the Plan provided, however, that no payment shall be made, either during the existence of or upon the discontinuance of the Plan (subject to Section 7.6), which would cause any part of the Trust to be used for or diverted to purposes other than the exclusive benefit of the Participants, their Spouses and Dependents pursuant to the provisions of the Plan.

9.2 All payments of benefits under the Plan shall be made exclusively from the assets of the Accounts of the Participants to whom or to whose Spouse or Dependents such payments are to be made, and no person shall be entitled to look to any other source for such payments.

9.3 The Employer, Trustee and Administrator may be reimbursed for expenses reasonably incurred by them in the administration

of the Trust. All such expenses, including, without limitation, reasonable fees of accountants and legal counsel to the extent not otherwise reimbursed, shall constitute a charge against and shall be paid from the Trust upon the direction of the Employer.

## ARTICLE X

### Accounting

10.1 The Trustee shall not be required to keep accounts of the investments, receipts, disbursements, and other transactions of the Trust, except as necessary to perform its title-holding function hereunder. All accounts, books, and records relating thereto shall be maintained by the Employer or its designee.

10.2 As promptly as possible following the close of each year, the Trustee shall file with the Employer a written account setting forth assets titled to the Trust as reported to the Trustee by the Employer or its designee.

## ARTICLE XI

### Miscellaneous Provisions

11.1 Neither the Trustee nor any affiliate thereof shall be required to give any bond or to qualify before, be appointed by, or account to any court of law in the exercise of its powers hereunder.

11.2 No person transferring title or receiving a transfer of title from the Trustee shall be obligated to look to the propriety of the acts of the Trustee in connection therewith.

11.3 The Employer may engage the Trustee as its agent in the performance of any duties required of the Employer under the Plan, but such agency shall not be deemed to increase the responsibility or liability of the Trustee under this Declaration.

11.4 The Employer shall have the right at all reasonable times during the term of this Declaration and for three (3) years after the termination of this Declaration to examine, audit, inspect, review, extract information from, and copy all books, records, accounts, and other documents of the Trustee relating to this Declaration and the Trustees' performance hereunder.

## ARTICLE XII

### Amendment and Termination

12.1 The Employer reserves the right to alter, amend, or (subject to Section 9.1) terminate this Declaration at any time for any reason without the consent of the Trustee or any other person, provided that no amendment affecting the rights, duties, or responsibilities of the Trustee shall be adopted without the execution of the Trustee to the amendment. Any such amendment shall become effective as of the date provided in the amendment, if requiring the Trustee's execution, or on delivery of the amendment to the Trustee, if the Trustee's execution is not required.

12.2 Upon termination of this Declaration and upon the satisfaction of all liabilities under the Plan to provide such benefits, any amount of Employer contributions, plus accrued earnings thereon, remaining in such separate Accounts must, under the terms of the Plan, be returned to the Employer.

## ARTICLE XIII

### Successor Trustees

13.1 The Employer reserves the right to discharge the Trustee for any or no reason, at any time by giving ninety (90) days' advance written notice.

13.2 The Trustee reserves the right to resign at any time by giving ninety (90) days' advance written notice to the Employer.

13.3 In the event of discharge or resignation of the Trustee, the Employer may appoint a successor Trustee who shall succeed to all rights, duties, and responsibilities of the former Trustee under this Declaration, and the terminated Trustee shall be deemed discharged of all duties under this Declaration and responsibilities for the Trust.

## ARTICLE XIV

### Limited Effect of Plan and Trust

Neither the establishment of the Plan and the Trust or any modification thereof, the creation of any fund or account, nor the payment of any 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 Administrator, the Employer or any officer or employee thereof, except as may otherwise be expressly provided in the Plan or in this Declaration.

## ARTICLE XV

### Protective Clause

Neither the Administrator, the Employer, nor the Trustee shall be responsible for the validity of any contract of insurance or other arrangement maintained in connection with the Plan, or for the failure on the part of the insurer or provider to make payments provided by such contract, or for the action of any per-son which may delay payment or render a contract void or unenforceable in whole or in part.

IN WITNESS WHEREOF, the Employer and the Trustee have executed this Declaration by their respective duly authorized officers, as of the date first hereinabove mentioned.

**EMPLOYER:**

By: _____ Title: Authority Board Chair

**TRUSTEE(S):**

By: _____ Title: Library Director

By: _____ Title: _____

By: _____ Title: _____

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