

ASC TRUST AGREEMENT (GOVERNMENTAL)

**1.01** **Establishment of Trust.** In conjunction with the establishment and/or maintenance of the City of Madison 401(a) Special Pay Plan, effective as of 1-1-2022, the Employer and the Trustee (as identified in the executed Trust Declaration associated with the Plan's Adoption Agreement) agree to establish and maintain a domestic Trust in the United States consisting of such sums as shall from time to time be paid to the Trustee under the Plan and such earnings, income and appreciation as may accrue thereon. The Trustee shall carry out the duties and responsibilities herein specified but shall be under no duty to determine whether the amount of any contribution by the Employer or any Participant is in accordance with the terms of the Plan.

The Trust shall be held, invested, reinvested and administered by the Trustee in accordance with the terms of the Plan and this ASC Trust Agreement (Governmental) solely in the interest of Participants and their Beneficiaries and for the exclusive purpose of providing benefits to Participants and their Beneficiaries and defraying reasonable expenses of administering the Plan. Except as provided in Section 15.02 of the Plan, no assets of the Plan shall inure to the benefit of the Employer.

Capitalized terms under this ASC Trust Agreement (Governmental) have the same meaning as defined under the Plan.

**1.02** **Types of Trustees.** The Trustee may act either as a Directed Trustee or as a Discretionary Trustee, as designated in the Trust Declaration.

(a) **Directed Trustee.** A Directed Trustee is subject to the direction of the Plan Administrator, the Employer, a properly appointed investment manager, or a Plan Participant. A Directed Trustee does not have any discretionary authority with respect to the investment of Plan assets. In addition, a Directed Trustee is not responsible for the propriety of any directed investment made pursuant to this ASC Trust Agreement (Governmental) and shall not be required to consult with or advise the Employer regarding the investment quality of any directed investment held under the Plan.

(1) **Delegation of powers.** The Directed Trustee shall be advised in writing regarding the retention of investment powers by the Employer or the appointment of an investment manager or other properly authorized person with power to direct the investment of Plan assets. Any such delegation of investment powers will remain in force until such delegation is revoked or amended in writing. The Employer is deemed to have retained investment powers under this subsection to the extent the Employer directs the investment of Participant Accounts for which affirmative investment direction has not been received.

(2) **Direction of Trustee.** Any investment direction shall be made in writing by the Employer, investment manager, or other properly authorized person, as applicable. A Directed Trustee must act solely in accordance with the direction of the Plan Administrator, the Employer, any employees or agents of the Employer, a properly appointed investment manager or other fiduciary of the Plan, a Plan Participant or other properly authorized person. (See Section 10.07 of the Plan and Section 1.04 of this ASC Trust Agreement (Governmental) relating to Participant-directed investments.)

(3) **Restriction on Trustee.** The Employer may direct the Directed Trustee to invest in any media in which the Trust may invest. However, the Employer may not borrow from the Trust or pledge any of the assets of the Trust as security for a loan to itself; buy property or assets from or sell property or assets to the Trust; charge any fee for services rendered to the Trust; or receive any services from the Trust on a preferential basis.

(b) **Discretionary Trustee.** A Discretionary Trustee has exclusive authority and discretion with respect to the investment, management or control of Plan assets. Notwithstanding a Trustee's designation as a Discretionary Trustee, a Trustee's discretion is limited, and the Trustee shall be considered a Directed Trustee, to the extent the Trustee is subject to the direction of the Plan Administrator, the Employer, or a properly appointed investment manager under an agreement between the Plan Administrator and the Trustee. A Trustee also is considered a Directed Trustee to the extent the Trustee is subject to investment direction of a Plan Participant. (See Section 10.07 of the Plan and Section 1.04 of this ASC Trust Agreement (Governmental) relating to Participant-directed investments.)

**1.03** **Responsibilities of the Trustee.** In addition to the powers, rights and responsibilities enumerated under this ASC Trust Agreement (Governmental), the Trustee has all powers necessary to carry out its duties in a prudent manner. The Trustee's powers, rights and responsibilities may be modified, supplemented or limited by a separate trust agreement or addendum, investment policy, funding agreement, or other binding document entered into between the Trustee and the Plan Administrator or Employer. Such binding document must designate the Trustee's responsibilities with respect to the Plan. A separate trust agreement or addendum, investment policy, funding agreement, or other binding document must be consistent with the terms of the Plan and must comply with all qualification requirements under the Code and regulations. To the extent the exercise of any power, right or responsibility is subject to discretion, such exercise by a Directed Trustee must be made at the direction of the Plan Administrator, the Employer, an investment manager, a Plan Participant or other properly authorized person.

(a) **Responsibilities regarding administration of the Trust.**

(1) The Trustee, the Employer and the Plan Administrator shall each discharge their assigned duties and responsibilities

under this ASC Trust Agreement (Governmental) and the Plan solely in the interest of Participants and their Beneficiaries in the following manner:

- (i) for the exclusive purpose of providing benefits to Participants and their Beneficiaries and defraying reasonable expenses of administering the Plan;
  - (ii) with the care, skill, 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 a like character and with like aims; and
  - (iii) by diversifying the available investments under the Plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.
- (2) The Trustee will receive all contributions, earnings and other amounts made to and under the terms of the Plan. The Trustee is not obligated in any manner to ensure that such amounts are correct in amount or that such amounts comply with the terms of the Plan or the Code. The Trustee is not liable for the manner in which such amounts are deposited or the allocation between Participant's Accounts, to the extent the Trustee follows the written direction of the Plan Administrator or Employer.
  - (3) The Trustee will make distributions (and Participant loans, if authorized under the Plan) from the Trust in accordance with the written directions of the Plan Administrator or other authorized representative. To the extent the Trustee follows such written direction, the Trustee is not obligated in any manner to ensure a distribution (or Participant loan) complies with the terms of the Plan, that a Participant or Beneficiary is entitled to such a distribution (or Participant loan), or that the amount distributed (or loaned) is proper under the terms of the Plan. If there is a dispute as to a payment from the Trust, the Trustee may decline to make payment of such amounts until the proper payment of such amounts is determined by a court of competent jurisdiction, or the Trustee has been indemnified to its satisfaction.
  - (4) The Trustee may employ agents, attorneys, accountants and other third parties to provide counsel on behalf of the Plan, where the Trustee deems advisable. The Trustee may reimburse such persons from the Trust for reasonable expenses and compensation incurred as a result of such employment. The Trustee shall not be liable for the actions of such persons, provided the Trustee acted prudently in the employment and retention of such persons. In addition, the Trustee will not be liable for any actions taken as a result of good faith reliance on the advice of such persons.
  - (5) The Trustee shall keep full and accurate accounts of all receipts, investments, disbursements and other transactions hereunder, including such specific records as may be agreed upon in writing between the Employer and the Trustee. All such accounts, books and records shall be open to inspection and audit at all reasonable times by any authorized representative of the Employer or the Plan Administrator. A Participant may examine only those individual account records pertaining directly to such Participant.
  - (6) Except as provided in Section 15.02 of the Plan, at no time prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries under the Plan shall any part of the corpus or income of the Fund be used for, or diverted to, purposes other than for the exclusive benefit of Participants or their Beneficiaries, or for defraying reasonable expenses of administering the Plan.

**(b) Responsibilities regarding investment of Plan assets.**

- (1) The Trustee shall be responsible for holding the assets of the Trust in accordance with the provisions of the Plan.
- (2) The Trustee may invest and reinvest, manage and control the Plan assets in a manner that is consistent with the Plan's funding policy and investment objectives of the Plan. The Trustee may invest in any investment, as authorized under this subsection (b), which the Trustee deems advisable and prudent, subject to the proper written direction of the Plan Administrator, the Employer, a properly appointed investment manager, a Plan Participant or other properly authorized person. The Trustee is not liable for the investment of Plan assets to the extent the Trustee is following the proper direction of the Plan Administrator, the Employer, a Participant, an investment manager, or other person or persons duly appointed by the Employer to provide investment direction. In addition, the Trustee does not guarantee the Trust in any manner against investment loss or depreciation in asset value or guarantee the adequacy of the Trust to meet and discharge any or all liabilities of the Plan.
- (3) The Trustee may hold any securities or other property in the name of the Trustee or in the name of the Trustee's nominee, and may hold any investments in bearer form, provided the books and records of the Trustee at all times show such investment to be part of the Trust.
- (4) The Trustee may retain such portion of the Plan assets in cash or cash balances as the Trustee may, from time to

time, deem to be in the best interests of the Plan, without liability for interest thereon.

- (5) The Trustee may collect and receive any and all moneys and other property due the Plan and to settle, compromise, or submit to arbitration any claims, debts, or damages with respect to the Plan, and to commence or defend on behalf of the Plan any lawsuit, or other legal or administrative proceedings. Any such arbitration cannot be used to resolve any claim, debt or damage with respect to the Plan arising from a dispute with a Plan Participant.
- (6) The Trustee may pay expenses out of Plan assets as necessary to administer the Trust and as authorized under the Plan.
- (7) The Trustee may borrow or raise money on behalf of the Plan in such amount, and upon such terms and conditions, as the Trustee deems advisable. The Trustee may issue a promissory note as Trustee to secure the repayment of such amounts and may pledge all, or any part, of the Trust as security.
- (8) The Trustee is authorized to execute, acknowledge and deliver all documents of transfer and conveyance, receipts, releases, and any other instruments that the Trustee deems necessary or appropriate to carry out its powers, rights and duties hereunder.
- (9) The Trustee, upon the written direction of the Employer or Plan Administrator, is authorized to enter into a transfer agreement with the Trustee of another qualified retirement plan and to accept a transfer of assets from such retirement plan on behalf of any Employee of the Employer. The Trustee is also authorized, upon the written direction of the Employer or Plan Administrator, to transfer some or all of a Participant's vested Account Balance to another qualified retirement plan on behalf of such Participant.
- (10) If the Employer maintains more than one Plan, the assets of such Plans may be commingled for investment purposes. The Trustee must separately account for the assets of each Plan.
- (11) If the Trustee is a bank or similar financial institution, the Trustee is authorized to invest in any type of deposit of the Trustee (including its own money market fund) at a reasonable rate of interest.
- (12) The Trustee is authorized to invest Plan assets in a common/collective trust fund, or in a group trust fund that satisfies the requirements of IRS Revenue Ruling 81-100, as modified by Revenue Ruling 2004-67, Revenue Ruling 2014-24 and subsequent IRS guidance. All of the terms and provisions of any such common/collective trust fund or group trust into which Plan assets are invested are incorporated by reference into the provisions of the Trust for the Plan. The assets in a group trust may be pooled with the assets of a custodial account under Code §403(b)(7), a retirement income account under Code §403(b)(9), and a Code §401(a)(24) governmental plan without affecting the tax status of the group trust, subject to the requirements under Rev. Rul. 2011-1 (as modified by Notice 2012-6).

**1.04 Trustee to Follow Participant Investment Direction.** To the extent the Plan allows Participants to direct investment of their Accounts, the Trustee is authorized to follow the Participant's written direction (or other form of direction deemed acceptable by the Trustee).

(a) **Exceptions to following Participant investment direction.** The Trustee may decline to follow a Participant's investment direction to the extent such direction would:

- (1) Result in a prohibited transaction;
- (2) Cause the assets of the Plan to be maintained outside the jurisdiction of the U.S. courts;
- (3) Jeopardize the Plan's tax qualification;
- (4) Be contrary to the Plan's governing documents;
- (5) Cause the assets to be invested in collectibles within the meaning of Code §408(m);
- (6) Generate unrelated business taxable income; or
- (7) Result (or could result) in a loss exceeding the value of the Participant's Account.

(b) **Other conditions relating to Participant investment direction.** The Trustee will not be responsible for any loss or expense resulting from a failure to follow a Participant's direction in accordance with the requirements of this paragraph. Participants' directions will be processed as soon as administratively practicable following receipt of such

directions by the Trustee. The Trustee, Plan Administrator, or Employer will not be liable for a delay in the processing of a Participant direction that is caused by a legitimate business reason (including, but not limited to, a failure of computer systems or programs, failure in the means of data transmission, the failure to timely receive values or prices, or other unforeseen problems outside of the control of the Trustee, Plan Administrator, or Employer).

- 1.05 Responsibilities of the Employer.** The Employer will provide to the Trustee written notification of the appointment of any person or persons as Plan Administrator, investment manager, or other Plan fiduciary, and the names, titles and authorities of any individuals who are authorized to act on behalf of such persons. The Trustee shall be entitled to rely upon such information until it receives written notice of a change in such appointments or authorizations.

The Employer may authorize the Trustee to enter into a merger or consolidation agreement with the Trustee of another plan to effect such merger or consolidation.

- 1.06 Effect of Plan Amendment.** Any amendment that affects the rights, duties or responsibilities of the Trustee or Plan Administrator may only be made with the Trustee's or Plan Administrator's written consent. Any amendment to the Plan must be in writing and a copy of the resolution (or similar instrument) setting forth such amendment (with the applicable effective date of such amendment) must be delivered to the Trustee.

- 1.07 More than One Trustee.** If the Plan has more than one person acting as Trustee, the Trustees may allocate the Trustee responsibilities by mutual agreement. The Trustees may agree to make decisions by a majority vote or may permit any one of the Trustees to make any decision, undertake any action or execute any documents affecting this Trust without the approval of the remaining Trustees. The Trustees may agree to the allocation of responsibilities in a separate trust agreement or other binding document.

- 1.08 Annual Valuation.** The Plan assets will be valued at least on an annual basis. The Employer may designate more frequent Valuation Dates under §11-1 of the Plan's Adoption Agreement. Notwithstanding any election under §11-1 of the Plan's Adoption Agreement, the Trustee and Plan Administrator may agree to value the Trust on a more frequent basis, and/or to perform an interim valuation of the Trust.

- 1.09 Reporting to Plan Administrator and Employer.** Within a reasonable time after the end of each Plan Year or within a reasonable time after its removal or resignation, the Trustee shall file with the Plan Administrator a written account of the administration of the Trust showing all transactions effected by the Trustee from the last preceding accounting to the end of such Plan Year or date of removal or resignation. The accounting will include a statement of cash receipts, disbursements and other transactions effected by the Trustee since the date of its last accounting, and such further information as the Trustee and/or Employer deems appropriate. Upon approval of such accounting by the Plan Administrator, neither the Employer nor the Plan Administrator shall be entitled to any further accounting by the Trustee. The Trustee shall have a reasonable time following its receipt of a written disapproval from the Employer to provide the Employer with a written explanation of the terms in question. If the Employer again disapproves of the accounting, the Trustee may file its accounting with a court of competent jurisdiction for audit and adjudication.

- 1.10 Reasonable Compensation.** The Trustee shall be paid reasonable compensation in an amount agreed upon by the Plan Administrator and Trustee. The Trustee also will be reimbursed for any reasonable expenses or fees incurred in its function as Trustee. The Plan will pay the reasonable compensation and expenses incurred by the Trustee, unless the Employer pays such compensation and expenses. Any compensation or expense paid directly by the Employer to the Trustee is not an Employer Contribution to the Plan.

- 1.11 Resignation and Removal of Trustee.** The Trustee may resign at any time by delivering to the Employer a written notice of resignation at least thirty (30) days prior to the effective date of such resignation, unless the Employer consents in writing to a shorter notice period. The Employer and Trustee may agree to a longer notification period prior to the resignation of the Trustee. The Employer may remove the Trustee at any time, with or without cause, by delivering written notice to the Trustee at least 30 days prior to the effective date of such removal. The Employer may remove the Trustee upon a shorter written notice period if the Employer reasonably determines such shorter period is necessary to protect Plan assets or to ensure the Plan is being operated for the exclusive benefit of Participants and their Beneficiaries. Upon the resignation, removal, death or incapacity of a Trustee, the Employer may appoint a successor Trustee which, upon accepting such appointment, will have all the powers, rights and duties conferred upon the preceding Trustee. In the event there is a period of time following the effective date of a Trustee's removal or resignation before a successor Trustee is appointed, the Employer is deemed to be the Trustee. During such period, the Trust continues to be in existence and legally enforceable, and the assets of the Plan shall continue to be protected by the provisions of the Trust.

- 1.12 Indemnification of Trustee.** Except to the extent that it is judicially determined that the Trustee has acted with gross negligence or willful misconduct, the Employer shall indemnify the Trustee (whether or not the Trustee has resigned or been removed) against any liabilities, losses, damages, and expenses, including attorney, accountant, and other advisory fees, incurred as a result of:

- (a) any action of the Trustee taken in good faith in accordance with any information, instruction, direction, or opinion

given to the Trustee by the Employer, the Plan Administrator, investment manager, or legal counsel of the Employer, or any person or entity appointed by any of them and authorized to give any information, instruction, direction, or opinion to the Trustee;

- (b) the failure of the Employer, the Plan Administrator, investment manager, or any person or entity appointed by any of them to make timely disclosure to the Trustee of information which any of them or any appointee knows or should know if it acted in a reasonably prudent manner; or
- (c) any breach of fiduciary duty by the Employer, the Plan Administrator, investment manager, or any person or entity appointed by any of them, other than such a breach which is caused by any failure of the Trustee to perform its duties under this Trust.

**1.13 Liability of Trustee.** The duties and obligations of the Trustee shall be limited to those expressly imposed upon it by the Plan and Trust or as subsequently agreed upon by the parties. Responsibility for administrative duties required under the Plan or applicable law not expressly imposed upon or agreed to by the Trustee shall rest solely with the Plan Administrator and the Employer.

The Employer agrees that the Trustee shall have no liability with regard to the investment or management of illiquid Plan assets transferred from a prior Trustee, and shall have no responsibility for investments made before the transfer of Plan assets to it, or for the viability or prudence of any investment made by a prior Trustee, including those represented by assets now transferred to the custody of the Trustee, or for any dealings whatsoever with respect to Plan assets before the transfer of such assets to the Trustee. The Employer shall indemnify and hold the Trustee harmless for any and all claims, actions or causes of action for loss or damage, or any liability whatsoever relating to the assets of the Plan transferred to the Trustee by any prior Trustee of the Plan, including any liability arising out of or related to any act or event, including prohibited transactions, occurring prior to the date the Trustee accepts such assets, including all claims, actions, causes of action, loss, damage, or any liability whatsoever arising out of or related to that act or event, although that claim, action, cause of action, loss, damage, or liability may not be asserted, may not have accrued, or may not have been made known until after the date the Trustee accepts the Plan assets. Such indemnification shall extend to all applicable periods, including periods for which the Plan is retroactively restated to comply with any tax law or regulation.

**1.14 Conflicting Trust Provisions.** In the event of any conflict between the terms of the Plan and any conflicting provision contained in any associated Trust, including this ASC Trust Agreement (Governmental), or custodial account document, the terms of the Plan will govern.

**1.15 Governing Law.** The provisions of this Plan and this ASC Trust Agreement (Governmental) shall be construed, administered, and enforced in accordance with the provisions of applicable federal and/or state law in which the Trustee has its principal place of business. The foregoing provisions of this section shall not preclude the Employer and the Trustee from agreeing to a different state law with respect to the construction, administration and enforcement of the Plan, which may be reflected herein as a modification to this ASC Trust Agreement (Governmental).

**1.16 Severability of Provisions.** In the event that any provision of this ASC Trust Agreement (Governmental) shall be held to be illegal, invalid or unenforceable for any reason, the remaining provisions herein shall be construed as if the illegal, invalid or unenforceable provisions had never been included in this ASC Trust Agreement (Governmental).

**1.17 Appointment of Custodian.** The Employer, Plan Administrator or Trustee may appoint a Custodian to hold all or any portion of the Plan assets. A Custodian has the powers, rights and responsibilities similar to those of a Directed Trustee. The Custodian will be protected from any liability with respect to actions taken pursuant to the direction of the Trustee, Plan Administrator, the Employer, an investment manager, or other third party with authority to provide direction to the Custodian. The Employer, Plan Administrator or Trustee also may enter into a separate agreement with the Custodian. Such separate agreement must be consistent with the terms of the Plan.

**1.18 Modification of ASC Trust Agreement (Governmental) Provisions.** The Employer and the Trustee may amend this ASC Trust Agreement (Governmental), provided the amended provisions are not in conflict with any provision of the Plan and do not cause the Plan to fail to qualify under Code §401(a). The Employer and Trustee may document any modification to the ASC Trust Agreement (Governmental) below or under a separate Trust addendum.