

Volume Submitter Basic Trust Document for

Governmental 401(a) Special Pay Plan

Governmental 401(a) Special Pay Plan Trust Agreement

ARTICLE I General Duties of the Trustees Investment, Administration and Payments

1.1 - General Duties of the Trustees - It shall be the duty of the Trustees to hold the funds and assets delivered to them from time to time pursuant to the terms of the Governmental 401(a) Special Pay Plan (a Volume Submitter plan) and any and all funds derived therefrom (all of which are sometimes hereinafter referred to generally as the "Trust Fund"), subject to the terms hereof and upon the uses and trust and for the purposes herein set forth; and, as provided in Section 1.4 hereof, to make payments out of the funds at any time held by them under this Agreement. The Trustees shall be authorized to receive assets that were held under a qualified trust or qualified custodian arrangement. The Trustees shall be responsible only for such funds and assets as shall actually be received by them as Trustees hereunder. It shall not be the duty of the Trustees to compute any amount that should be paid to them pursuant to the Plan or to enforce collection of such funds or to require the delivery to them of any such assets. In addition, the Trustees shall in no way assume responsibility with respect to the adequacy of the assets of the Trust being sufficient to fund the obligations of the Plan. The Trustees shall suitably record in their books and accounts pertaining to the Trust and the Trust Fund the contributions received from them by the Plan.

1.2 - Investment of Trust Fund - The Trustees shall from time to time proceed to invest and reinvest the contributions and any accretions thereto, whether capital gains or income or both, coming into their hands as Trustees under the Plan. Subject to any investment restrictions under applicable law, the Trustees shall exercise the power of investment as in their sole judgment and discretion they deem to be in the best interest of the Trust Fund and of the Participants under the Plan and their Beneficiaries. Investments and reinvestments of the contributions under the Plan, of any accretions thereto, whether capital gains or income or both and of the proceeds from the sale, pledge, lease or other disposition of any assets of the Trust Fund may be made in stocks, bonds, and other securities, in any other type of personal property, in common trust funds or collective investment funds of any bank, in real property, and in evidences of debt secured by personal or real property. Investments may be made in loans to Participants, in accordance with the terms of the Plan. In investing and reinvesting the Trust Fund, the Trustees shall not be confined to the class of investments prescribed for trustees or fiduciaries generally, so long as the investment does not violate applicable law. The Employer may delegate to an Investment Manager, appointed under the provisions of Section 2.4, the management of the investment of any or all of the assets of the Trust Fund. The Investment Manager, as to the assets he is managing, shall have the same powers as are given the Trustees under ARTICLE I. The responsibility for the management of any assets for which the Investment Manager is not responsible shall remain with the Trustees.

1.3 - Administration of Trust Fund - In administering the Trust Fund, the Trustees shall be specifically authorized, in their discretion:

(a) To sell, exchange, transfer, or grant options with respect to any real or personal property at any time held by them, by private contract, public auction, or otherwise, for cash or upon credit, as the Trustees may deem advisable; and no person dealing with the Trustees shall be bound to see to the application of the purchase money or to inquire into the validity, expediency, or propriety of any sale or other disposition.

(b) To acquire any real estate through foreclosure, liquidation or other salvage of any investment previously made by them; to hold such real estate pending liquidation thereof at such time, in such manner, and upon such terms as the Trustees may deem advisable; to manage, operate, repair, improve, partition, mortgage, or lease such real estate, upon such terms as the Trustees may deem advisable; and to use other Trust assets for any of such purposes.

(c) To compromise, compound and settle any obligation due to or from them as Trustees hereunder; to reduce the rate of interest or extend or otherwise modify such obligation; or to foreclose upon default or otherwise enforce such obligation.

(d) To vote in person or by proxy any stocks, bonds, or other securities held by them; to exercise any options appurtenant thereto for the conversion thereof into other stocks, bonds or securities; to exercise any rights to subscribe for additional stocks, bonds or other securities and to make any and all necessary payments therefor; and to join in, dissent from, or oppose the reorganization, recapitalization, consolidation, liquidation, sale or merger of corporations or properties in which they may be interested as Trustees.

(e) To accept and hold any securities or other property received by them under the provisions of ARTICLE I, whether or not the Trustees would be authorized hereunder then to invest in such securities.

(f) To make, execute, acknowledge and deliver any and all deeds, leases, assignments and instruments.

(g) To borrow or raise monies for the purposes of the Trust from any person or persons, and for any sum so borrowed to issue their promissory note as Trustees and to secure the repayment thereof by pledging all or any part of the Trust Fund; and no person loaning money to the Trustees shall be bound to see to the application of the money loaned or to inquire into the validity, expediency or propriety of any such borrowing.

(h) To cause any investments from time to time held by them to be registered in, or transferred to, their name as Trustees or the name of their nominee or nominees or to retain such instruments unregistered or in form permitting transfer by delivery; but the books and records of the Trustees shall at all times show that all such investments are part of the Trust Fund.

(i) To hold any property at any place.

(j) To appoint such agents, including counsel, as they may deem advisable for the administration of the Trust.

(k) To do all such acts, execute all such instruments, take all such proceedings and exercise all such rights and privileges with relation to any assets constituting a part of the Trust Fund as are necessary to carry out the purposes of this Agreement.

Wherever it is used in this Agreement the term "securities" shall include bonds, mortgages, deeds of trust, security interests, debentures, participations, notes, obligations, warrants and stocks of any class, and part interest therein, and such other evidences of indebtedness and certificates of interest as are usually referred to by the term "securities," and the term "property" shall include real, personal and mixed property, tangible or intangible, improved or unimproved, encumbered or unencumbered, subordinated or unsubordinated, of any kind and wherever located, and part interests therein, including air rights, leaseholds or other interests of any kind in real property including securities and also including interests in any fund that shall be or shall have been created and administered by the Trustees for the collective investment of the property of employee benefit trusts of which the Trustees hereunder are the Trustees. To the extent that property of the Trust Fund is invested in any such collective investment fund, the declaration of trust pertaining to such fund and the trust fund thereby created shall be a part of this Agreement and of the applicable Plan; and for the purposes of any valuation of the Trust Fund or any valuation of the interest or of the account of any Employee or Beneficiary under the Plan, the interest of the trust hereby created in such collective investment fund shall be valued at the times and in the manner prescribed by the declaration by which such fund was created.

1.4 - Payments from Trust Fund - The Trustees shall make payments from the Trust Fund as provided for under the provisions of the Plan so that it shall be impossible, at any time prior to the satisfaction of all liabilities under the Plan with respect to Employees of the Employer and their Beneficiaries, for any part of the Trust Fund to be used for, or diverted to, purposes other than for the exclusive benefit of Employees or their Beneficiaries. The Trustees shall have no responsibility with

respect to any payment made, pursuant to such directions, to the Employer, to any paying agent, or to any other person, and any payment so made shall be held in trust by the recipient until disbursed in accordance with the terms of the applicable Plan. Payments by the Trustees may be made by their check to the order of the payee and mailed to the payee at the address last furnished to the Trustees by the Employer or by the payee, or if no such address has been so furnished, to the payee in care of the Employer. The Trustees shall have no duty to locate any payee.

1.5 - Segregation by Bookkeeping Only - The Trustees may commingle for investment purposes assets held on behalf of a Participant under the Plan and/or assets held on behalf of any two or more Participants, but the Trustees shall keep such bookkeeping records as they deem advisable to maintain a current record of the amounts held in each account of each Participant. On each Valuation Date, if there is not actual and physical segregation of the assets, there shall be added to or deducted from the accumulation of said amount a proportionate part of the increase or decrease in value of the commingled assets; the proportion to be in the ratio which each commingled account at the Valuation Date in question bears to the total of all accounts which are commingled on said date.

1.6 - Advice of Counsel and Agents - The Trustees may from time to time consult with counsel of their own selection (including counsel to the Employer) and shall be fully protected with respect to any action taken or omitted in good faith upon such counsel's advice. The Trustees may also consult with or employ accountants or other expert assistants and shall be fully protected in acting upon their advice. The compensation and fees charged by all such persons for their services shall be deemed to be an expense of the administration of the Trust, which shall be paid from the Trust Fund. Should the Trustees for any reason fail to pay such compensation or fees, the Employer shall pay the same.

1.7 - Record Keeping - The Trustees shall keep accurate and detailed accounts of all investments, receipts and disbursements, and other transactions hereunder, and all such accounts and the books and records relating thereto shall be open to inspections at all reasonable times by the Employer or persons designated by them. Within ninety (90) days following the end of each Plan Year, and within ninety (90) days following the effective date of the resignation or removal of a Trustee, as provided in Section 2.3, the Trustees shall render a statement of their accounts and proceedings for the twelve (12) months preceding the end of the Plan Year or the period in the Plan Year preceding the effective date of the change in the trusteeship, as the case may be. One such statement shall remain on file in the office of the Trustees and duplicates thereof shall be transmitted to the Employer. The statement shall be available for inspection at the Employer's office by all persons having an interest in the Trust Fund. Each such statement shall state the resources and liabilities of and income and expenditures from the Trust Fund, as of the end of the period for which it was prepared; and such other data as may be available to the Trustees and of information to the Participants. The Trustees shall provide such information to any or all of the above and their agents at such times as may be required to comply with the reporting and disclosure requirements.

Notwithstanding the foregoing, the Trustees and the Employer, or each of them, shall have the right to apply at any time to a court of competent jurisdiction for the judicial settlement of the Trustees' account, and in any such case it shall be necessary to join as parties thereto only the Trustees and the Employer; and any judgment or decree which may be entered therein shall be conclusive upon all persons having any interest in the Trust Fund or under the Plan.

1.8 Degree of Care – Limitations of Liability - The Trustee shall not be liable for any losses incurred by the Fund by any direction to invest communicated by the Adopting Employer, Plan Administrator, investment manager appointed pursuant to Article 2.4 or any Participant or Beneficiary. The Trustee shall be under no liability for distributions made or other action taken or not taken at the written direction of the Plan Administrator. It is specifically understood that the Trustee shall have no duty or responsibility with respect to the determination of matters pertaining to the eligibility of any Employee to become a Participant or remain a Participant hereunder, the amount of benefit to which a Participant or Beneficiary shall be entitled to receive hereunder, whether a distribution to Participant or

Beneficiary is appropriate under the terms of the Plan or the size and type of any policy to be purchased from any insurer for any Participant hereunder or similar matters; it being understood that all such responsibilities under the Plan are vested in the Plan Administrator.

1.9 Indemnification of Trustee - Notwithstanding any other provision herein the Employer shall indemnify and hold harmless each Trustee and its officers, directors, employees, agents, heirs, executors, successors and assigns, from and against any and all liabilities, damages, judgments, settlements, losses, costs, charges, or expenses (including legal expenses) at any time arising out of or incurred in connection with any action taken by such parties in the performance of their duties with respect to this Plan, unless there has been a final adjudication of gross negligence or willful misconduct in the performance of such duties. Further, the Employer will indemnify each Trustee and Custodian from any liability, claim or expense (including legal expense) which the Trustee or Custodian shall incur by reason of or which results, in whole or in part, from the reliance of the Trustee or Custodian on the facts and other directions and elections the Employer communicates or fails to communicate. Further, the Employer will indemnify each Trustee and Custodian from any liability, claim or expense (including legal expense) which the Trustee or Custodian shall incur by reason of or which results, in whole or in part, from the reliance of the Trustee or Custodian on the facts and other directions and elections the Employer communicates or fails to communicate.

ARTICLE II Taxes, Compensation and Expenses of Trustees Appointment – Tenure

2.1 - Taxes - Any taxes lawfully assessed upon or with respect to the Trust Fund shall be a charge against the Trust Fund and shall be paid by the Trustees in the usual course of business, provided, however, that if the Trustees, upon the advice of counsel, believe any particular tax to be unlawfully assessed, they may refrain from paying the same and may contest the validity thereof in such manner as they shall deem appropriate. The words “tax” or “taxes” used in this paragraph shall include interest and penalties imposed with respect thereto.

2.2 - Compensation - Expenses - Any Trustee who is not an Employee shall receive each year such compensation as is agreed between the Employer and the Trustee. However, any Trustee who is an Employee of the Employer shall receive no compensation for his services as such Trustee. In addition, the Trustees, whether or not they are Employees of the Employer, shall be entitled to receive reimbursement for all reasonable expenses incurred by them.

Such compensation and expenses shall be a charge upon the Trust Fund and shall be withdrawn from the Trust Fund by the Trustees unless the amount of such compensation and expenses shall be separately paid by the Employer.

2.3 - Appointment - Tenure - Each Trustee may resign by giving thirty (30) days’ written notice to the Employer. Any Trustee may be removed for any or no reason, the removal to be by resolution adopted by the Board of Directors of the Employer, a copy of which shall be given to or mailed to the last known address of the Trustee being removed, which resolution shall specify the date on which the removal shall become effective. In the event of the death, resignation or removal of a Trustee, a successor shall be appointed as promptly as possible by the Board of Directors of the Employer, which appointment shall become effective upon acceptance in writing of such appointment by the successor Trustee, which writing shall be filed with the Employer. Pending the appointment of and the execution and filing of the acceptance by any successor, the then acting or remaining Trustees hereunder shall have full power to act. The Employer also may appoint an additional Trustee or Trustees in the same manner as a successor Trustee. Every successor Trustee appointed to and accepting a trusteeship hereunder shall have all the rights, title, powers, duties, exemptions, and limitations of the original Trustees.

2.4 - Investment Manager - The Employer may appoint any person, firm or corporation to be an

Investment Manager who: (a) has the power to manage, acquire or dispose of plan assets, (b) is registered as an investment adviser under the Investment Adviser's Act of 1940, is a bank, as defined in that Act or an insurance company qualified to manage, acquire or dispose of plan assets under the laws of more than one state, and (c) who acknowledges in writing that he is a fiduciary with respect to the Plans. The appointment shall be made in the same manner called for in Section 2.3. The Investment Manager shall hold office until its resignation or removal. The appointment of any Investment Manager shall become effective upon acceptance in writing by the Investment Manager. The Investment Manager shall be paid such reasonable compensation and shall be reimbursed for, or advanced on account of, such reasonable expenses, as may be mutually agreed upon between it and the Employer. Said compensation and expenses shall be paid to the Investment Manager out of the Trust Fund when approved by the Employer. The Employer reserves to itself the right to pay such remuneration and expenses. The powers of the Investment Manager shall be limited to those granted to it by the Employer in a written agreement between the Employer and the Investment Manager. The Investment Manager shall be paid such reasonable compensation and shall be reimbursed for, or advanced on account of, such reasonable expenses, as may be mutually agreed upon between it and the Employer. Said compensation and expenses shall be paid to the Investment Manager out of the Trust Fund when approved by the Employer. The Employer reserves to itself the right to pay such remuneration and expenses. The powers of the Investment Manager shall be limited to those granted to it by the Employer in a written agreement between the Employer and the Investment Manager.

ARTICLE III Amendment and Termination

3.1 - **Amendment** - This Trust shall not be deemed to constitute a contract between the Employer and any Participant or to be a consideration or an inducement for the employment of any Participant or Employee. The Employer shall have the right at any time and from time to time by resolution of its Board of Directors to modify or amend this Agreement in whole or in part, in accordance with applicable law, except that the duties and responsibilities of the Trustees shall not be increased without their written consent; provided, however, that no such amendment shall become effective which makes it possible to divert any part of the Trust Fund for purposes other than the exclusive benefit of the Employees of the Employer and their Beneficiaries, except as may be permitted by law. The Secretary of the Employer shall file certified copies of the resolution of amendment with the Trustees; and the Employees shall be notified if any substantial provision of the Trust is changed by amendment. Any amendment shall be effective as of the date specified therein.

3.2 - **Termination** - This Trust shall continue for such time as may be necessary to accomplish the purpose for which it was created but it may be terminated and discontinued, in its entirety, or as it applies to the Plan, at any time by action of the Board of Directors or other governing body of the Employer. Notice of such termination shall be given to the Trustees by the Secretary of the Employer in the form of a certified copy of the resolution of the Board of Directors in which it terminated the Plan and/or this Trust. Such termination of this Trust shall take effect as of the date contained in such resolution. If and when this Trust is terminated as aforesaid, the Trustees shall liquidate the Trust Fund with respect to the Plan and effect distribution thereof in accordance with the provisions of the Plan. Upon the approval of the account of the acts and transactions of the Trustees, either informally in the manner set forth in Section 1.7 hereof or by a court of competent jurisdiction, as may be required, and upon completing such liquidation and distribution, the Trustees shall be relieved from all further liability with respect to all amounts so paid and of all further duties and responsibilities hereunder. In any event, this Trust shall terminate when no property remains in the hands of the Trustees.

ARTICLE IV Miscellaneous Provisions

4.1 - **Laws Governing - Invalidity** - This Trust shall be administered, construed and enforced according to the state and local laws of the state specified in the Adoption Agreement, except to the extent such laws have been expressly preempted by federal law. If any provision of this Trust shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision hereof and this Trust shall be construed and enforced as if such provision had not been included.

4.2 - **Employees' Trust** - This Trust Agreement, and the Plan of which it is a part, is for the exclusive benefit of the Employees of the Employer, Participants under the Plan and their Beneficiaries. Before the satisfaction of all liabilities to Participants or their Beneficiaries or as may be permitted by the Plan or by law no part of the corpus or income of the Trust created hereunder shall be used for or diverted to purposes other than for the exclusive benefit of such Employees, Participants or their Beneficiaries or defraying the reasonable expenses of this Trust and the Plan.

4.3 - **Spendthrift Clause** - No Participant shall have the right at any time to alienate or assign benefits provided under the Plan and held in this Trust. If any Participant shall attempt to alienate or assign his benefits, or should his benefits be attempted to be made subject to attachment, execution, garnishment, or other legal or equitable process, such legal or equitable process shall be void. This Section shall not apply if a Participant's benefits are subject to a Domestic Relations Order (as defined in Section 414(p) of the Code) entered on or after January 1, 1985 that would constitute a Qualified Domestic Relations Order but for the Employer's status as a governmental entity, in which case payment shall be made in accordance with the applicable requirements of such Domestic Relations Order.

4.4 - **Agreement Binding on Heirs** - This Agreement shall be binding upon the parties hereto and all Participants under the Plan established by the Employer, and upon their respective heirs, executors, administrators, successors, and assigns, and upon all persons having or claiming to have any interest of any kind or nature in or under this instrument.

4.5 - **All Copies Deemed Originals** - This Agreement may be executed and/or conformed in any number of counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the Employer hereby causes this Trust Agreement to be executed on this ____ day of _____, ____.

EMPLOYER:

City of Madison

By: _____

Mayor

City Clerk

APPROVED:

City Comptroller

City Attorney

Further, the Employer hereby appoints the below named as Trustee under the Plan. By signature below the Trustee accepts appointment as Trustee effective the date of the Plan, if a new plan, or the effective date of this Plan amendment, if this is an amendment of an existing Plan.

TRUSTEE:

J.D. Benefits, Inc.

By: _____

Authorized Signature

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CITY OF MADISON

**ADOPTED BASIC TRUST DOCUMENT
FOR GOVERNMENTAL 401(A) SPECIAL PAY PLAN**