



IN CITY COUNCIL

Marlborough, Mass., FEBRUARY 25, 2013
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ORDERED:

That the provisions of Section 20 of Chapter 32B of the General Laws of the Commonwealth of Massachusetts, entitled Other Post-Employment Benefits Liability Trust Fund, be and is hereby accepted by the City Council for the City of Marlborough, and further, that the City Council for the City of Marlborough hereby establishes an Other Post-Employment Benefits ("OPEB") Trust under the terms and conditions provided below:

CITY OF MARLBOROUGH OTHER POST-EMPLOYMENT BENEFITS ("OPEB") TRUST TRUST AGREEMENT

This TRUST AGREEMENT is made this ___ day of _____, 2013 by and between the City of Marlborough, acting through its City Council (the "City") and the duly serving members of the Marlborough Retirement Board (the "Trustees").

WITNESSETH:

WHEREAS, the City has established certain other post-employment benefits ("OPEB"), other than pensions, for eligible former employees of the City; and

WHEREAS, the City wishes to establish an irrevocable trust (the "Trust") for the purpose of funding OPEB obligations as required to be reported under General Accounting Standards Board ("GASB") Statements 43 and 45; and

WHEREAS, the Trust is established by the City with the intention that it qualify as a tax-exempt trust performing an essential governmental function within the meaning of Section 115 of the Internal Revenue Code of 1986 and Regulations issued thereunder and as a trust for OPEB under M.G.L. c. 32B, § 20;

NOW, THEREFORE, in consideration of the foregoing promises and the mutual covenants hereinafter set forth, City and the Trustees hereby agree as follows.

ARTICLE 1 - DEFINITIONS

As used herein, the following terms shall have the following meanings:

- 1.1. "Code" means the Internal Revenue Code of 1986, as amended from time to time.
- 1.2. "ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time and any successor statute.



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1.3. "GASB 43 and 45," shall mean Government Accounting Standards Board, Statement No. 43 and Statement No. 45, Accounting and Financial Reporting by Employers for Post-Employment Benefits Other Than Pensions.

1.4. "Other post-employment benefits" or "OPEB," shall mean post-employment benefits other than pensions as that term is defined in GASB 43 and 45 including post-employment healthcare benefits, regardless of the type of plan that provides them, and all post-employment benefits provided separately from a pension plan, excluding benefits defined as termination offers and benefits.

1.5. "Retired Employee" means those persons who have retired from employment with the City and who are qualified to receive retirement benefits pursuant to M.G.L. c. 32 or as otherwise provided by law.

1.6. "Trust" means the Anywhere OPEB Trust as hereby established.

1.7. "Trustee" means the duly serving members of the Board of Trustees, and any successor Trustee appointed as provided pursuant to Article 5.

1.8. "Trust Fund" means all the money and property, of every kind and character, including principal and income, held by the Trustee under the Trust.

ARTICLE 2 - PURPOSE

2.1. The Trust is created for the sole purpose of providing funding for OPEB, as determined by the City, or as may be required by collective bargaining agreement, or by any general or special law providing for such benefits, for the exclusive benefit of the City's Retired Employees and their eligible dependents, and for defraying the reasonable administrative, legal, actuarial and other expenses of the Trust. The assets held in the Trust shall not be used for or diverted to any other purpose, except as expressly provided herein.

2.2. It is intended that the Trust shall constitute a so-called "Qualified OPEB Trust" according to the standards set forth in GASB 43 and 45, and that it further qualify as an Integral Part Trust for all purposes under Article 115(c) of the Code or under any comparable provision of future legislation that amends, alters, or supersedes the Code.

ARTICLE 3 - ESTABLISHMENT OF TRUST

3.1. In order to implement and carry out the provisions of M.G.L. c. 32B, § 20, the City hereby establishes this Trust which shall be known as the "City of Marlborough OPEB Trust."



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3.2. The Trust shall be irrevocable, and no Trust funds shall revert to the City until all OPEB owed to retired City employees have been satisfied or defeased.

3.3. The principal location of the Trust shall be Marlborough City Hall, 140 Main Street, Marlborough, Massachusetts 01752.

3.4. The Trustees hereby accept the trusts imposed upon them by this Trust Agreement and agree to perform said trusts as a fiduciary duty in accordance with the terms and conditions of this Trust Agreement.

3.5. The Trustees shall hold legal title to all property of the Trust, and neither the City, nor any employee, official, or agent of the City, nor any individual, shall have any right, title or interest to the Trust.

3.6. The Trust shall consist of such sums of money as shall from time to time be paid or delivered to the Trustees by the City, which sums, together with all earnings, profits, increments and accruals thereon, without distinction between principal and income, shall constitute the Trust hereby created and established. Nothing in this Agreement requires the City to make contributions to the Trust to fund OPEB. Any obligation of the City to pay or fund benefits shall be determined in accordance with applicable law and any agreement to provide OPEB.

ARTICLE 4 - TRUST FUNDING

4.1 The Trust Fund shall be credited with all amounts appropriated or otherwise made available to the City and employees of the City as a construction to the Trust for the purposes of meeting the current and future OPEB costs payable by the City, or any other funds donated or granted specifically to the City for the Trust, or to the Trust directly.

4.2. The Trustees shall be accountable for all delivered contributions, but shall have no duty to determine that the amounts received are adequate to provide the OPEB Benefits determined by the City.

4.3. The Trustees shall have no duty, expressed or implied, to compel any contribution to be made by the City, but shall be responsible only for property received by the Trustees under this Trust Agreement.



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6.1.5. To hold cash, uninvested, for such length of time as the Trustees may determine without liability for interest thereon.

6.1.6. To employ suitable agents, advisors and counsel as the Trustees may deem necessary and advisable for the efficient operation and administration of the Trust, to delegate duties and powers hereunder to such agents, advisors and counsel, and to charge the expense thereof to the Trust. The Trustees are entitled to rely upon and may act upon the opinion or advice of any attorney approved by the Trustees in the exercise of reasonable care. The Trustees shall not be responsible for any loss or damage resulting from any action or non-action made in good faith reliance upon such opinion or advice. All delegated authority shall be specifically defined in any by-laws adopted by the Trustees or the written minutes of the Trustees' meetings.

6.1.7. To hire employees or independent contractors as the Trustees may deem necessary or advisable to render the services required and permitted for the proper operation of the Trust, and to charge the expense thereof to the Trust.

6.1.8. To continue to have and to exercise, after the termination of the Trust and until final distribution, all of the title, powers, discretions, rights and duties conferred or imposed upon the Trustees hereunder, by any by-laws adopted by the Trustees or by law.

6.1.9. To construe and interpret this Trust Agreement and other documents related to the purposes of the Trust.

6.1.10. To maintain bank accounts for the administration of the Trust and the Trustee Fund and to authorize certain Trustees or other appropriate persons to make payments from any appropriate account for purposes of the Trust.

6.1.11. To receive and review reports of the financial condition and of the receipts and disbursements of the Trust and the Trust Fund.

6.1.12. To adopt by-laws, rules, regulations, formulas, actuarial tables, forms, and procedures by resolution from time to time as they deem advisable and appropriate for the proper administration of the Trust, including participation criteria, provided the same are consistent with the terms of this Trust Agreement.

6.1.13. To purchase as a general administrative expense of the Trust so-called director's liability insurance and other insurance for the benefit of the Trust and/or the protection of the Trustees, Trust officers, employees, or agents against any losses by reason of errors or omissions or breach of fiduciary duty or negligence.



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6.1.14. To enter into any and all contracts and agreements for carrying out the terms of this Trust Agreement and for the administration and operation of the Trust and to do all acts as they, in their discretion, may deem necessary or advisable. Except as otherwise directed by the Trustees, all such contracts and agreements, or other legal documents herein authorized, shall be executed by the Chairperson, or Secretary as may be voted by the Trustees.

6.1.15. To receive contributions or payments from any source whatsoever but such contributions or payments may not be utilized for any purpose unrelated to the provision of OPEB as herein provided or properly authorized expenses.

6.1.16. To pay taxes, assessments, and other expenses incurred in the collection, care, administration, and protection of the Trust.

6.1.17. To do all acts, whether or not expressly authorized herein, which the Trustees may deem necessary or proper in connection with the administration of the Trust, although the power to do such acts is not specifically set forth herein.

6.1.18. To compromise, settle or arbitrate any claim, debt, or obligation of or against the Trust or Trust Fund; to enforce or abstain from enforcing any right, claim, debt or obligation, and to abandon any shares of stock, bonds, or other securities, or interests determined by it to be worthless; to prosecute, compromise and defend lawsuits, but without the obligation to do so, all at the risk and expense of the Trust.

6.1.19. To hire one or more consultants, actuaries, accountants, attorneys or other professionals to assist with the administration of the Trust Fund and to pay such amounts that the Trustee deems to be reasonable, including, without limiting the generality of the foregoing, third party firms to provide legal, tax, accounting and audit services to the Trust.

6.1.20. To comply with all requirements imposed by applicable provisions of law.

6.1.21. To serve as custodian with respect to Trust assets.

ARTICLE 7- LIMITATION OF TRUSTEES' POWERS, DUTIES AND RESPONSIBILITIES

7.1. Nothing contained in the Trust Agreement, either expressly or by implication, shall be deemed to impose any powers, duties or responsibilities on the Trustees other than those set forth in this Trust Agreement.



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7.2. The Trustees shall have such rights, powers and duties as are provided to a named fiduciary for the investment of assets under ERISA. The Trustees shall not be liable for the making, retention or sale of any investment or reinvestment made by the Trustees as herein provided or for any loss to or diminution of the Trust Fund or for anything done or admitted to be done by the Trustees with respect to the Trust Agreement or the Trust Fund except as and only to the extent that such action constitutes a violation of the law or gross negligence.

7.3. The Trustees, in their discretion, may purchase as an expense of the Trust Fund such liability insurance for themselves or any other fiduciary selected by the Trustees as may be reasonable. The City, in its discretion, may also purchase liability insurance for the Trustees, and as the City may select, for any person or persons who serve in a fiduciary capacity with respect to the Trust.

7.4. The City shall not assume any obligation or responsibility to any person for any act or failure to act of the Trustees, any insurance company, or any beneficiary of the Trust Fund. The Trustees shall have no obligation or responsibility with respect to any action required by this Trust Agreement to be taken by the City, any insurance company, or any other person, or for the result or the failure of any of the above to act or make any payment or contribution, or to otherwise provide any benefit contemplated by this Trust Agreement.

7.5. Neither the Trustees nor the City shall be obliged to inquire into or be responsible for any action or failure to act on the part of the other. No insurance company shall be a party to this Trust Agreement, for any purpose, or be responsible for the validity of this Trust Agreement, it being intended that such insurance company shall be liable only for the obligations set forth in the policy or contract issued by it.

7.6. The Trustees shall invest and manage Trust assets as a prudent investor would, using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital, pursuant to M.G.L. c. 203C.

ARTICLE 8 – ACTIONS BY THE TRUSTEES

8.1. A majority of Trustees may exercise any or all of the powers of the Trustees hereunder and may execute on behalf of the Trustees any and all instruments with the same effect as though executed by all the Trustees.



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20.2. The titles to Articles of this Trust Agreement are placed herein for convenience of reference only, and the Trust Agreement is not to be construed by reference thereto.

20.3. No person shall be obliged to see to the application of any money paid or property delivered to the Trustees, or as to whether or not the Trustees have acted pursuant to any authorization herein required, or as to the terms of this Trust Agreement. In general, each person dealing with the Trustees may act upon any advice, request or representation in writing by the Trustees, or by the Trustee's duly authorized agent, and shall not be liable to any person in so doing. The certification of the Trustees that they are acting in accordance with this Trust Agreement shall be conclusive in favor of any person relying thereon.

20.4. This Trust Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which together shall constitute but one instrument, which may be sufficiently evidenced by any counterpart.

20.5. Until advised to the contrary, the Trustees may assume this Trust is entitled to exemption from taxation under Section 115 of the Internal Revenue Code of 1986 or under any comparable section or sections of future legislation that amend, supplement or supersede one or both of those sections of the Internal Revenue Code.

IN WITNESS WHEREOF, the parties hereto have caused this Trust Agreement to be executed in their respective names by their duly authorized officers as of the day and year first above written.

Witnessed By:

MARLBOROUGH CITY COUNCIL,
By Its President,

Patricia Pope

Date:

Witnessed By:

MARLBOROUGH RETIREMENT BOARD:
By Its Chairman,

Gregory P. Brewster

Date:

