

AGREEMENT AND DECLARATION OF TRUST
THE CITY OF OVERLAND PARK, KANSAS
RETIREE HEALTH CARE BENEFIT PLAN TRUST FUND

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AGREEMENT AND DECLARATION OF TRUST
THE CITY OF OVERLAND PARK, KANSAS
RETIREE HEALTH CARE BENEFIT PLAN TRUST FUND

THIS AGREEMENT is made and entered into this ___ day of _____, 2007 at Overland Park, Kansas, by and between the City of Overland Park, Kansas, a municipal corporation under the laws of the State of Kansas (the "City"), and _____, a bank or trust company organized under the laws of the State of _____ (the "Trustee").

WITNESSETH:

WHEREAS, in furtherance of its essential government function and pursuant to Resolution No. 3347, the City has heretofore provided retiree health care benefits to certain of its retired, former employees and certain former Governing Body members under the City of Overland Park, Kansas Self-Insured Group Health Care Benefit Plan;

WHEREAS, effective January 1, 2007, Statement No. 45 of the Government Accounting Standards Board will apply to the City's financial reports with respect to health care benefits to be furnished to retirees, which benefits are known as "other post employment benefits" (OPEB), which are defined to include the retiree health care benefits provided to Retirees and former Governing Body members;

WHEREAS, it is in the best interest of the City to establish a plan and trust and to make irrevocable contributions to such trust in order to fund OPEB provided by such plan;

WHEREAS, the City has named the Trustee to receive, hold and disburse funds in and from the Trust and such funds when received by the Trustee will constitute the Trust Fund;

WHEREAS, in order to establish the tax-exempt status of such trust, it is desirable to comply with the requirements under Section 115 of the Code (as defined below) to establish a "Section 115 Trust Fund" (hereinafter referred to as the "Fund" or "Trust Fund");

WHEREAS, the City intends that the Trust Fund hereby established will be exempt from income tax as an essential government function under Code Section 115 and the regulations thereunder;

WHEREAS, this instrument establishes the Trust Fund, which shall be known as the City of Overland Park, Kansas Retiree Health Care Benefit Plan Trust Fund;

NOW, THEREFORE, IT IS AGREED by and between the City and the Trustee as follows:

ARTICLE I
DEFINITIONS

1.1 “City” shall mean the City of Overland Park, Kansas.

1.2 “Claims Administrator” shall mean the corporations, individuals, or other entities, if any, retained by the City to provide specified administrative services for the Plan.

1.3 “Code” shall mean the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

1.4 “Employee” shall mean any person employed by the City, including members of the Governing Board of the City.

1.5 “Fund” or “Trust Fund” shall mean the trust fund constituted under this Agreement.

1.6 “Plan” shall mean the City of Overland Park, Kansas Retiree Health Care Benefit Plan, which is a component of the City of Overland Park, Kansas Self-Insured Group Health Care Benefit Plan.

1.7 “Retiree” shall mean eligible Retirees of the City and eligible former members of the Governing Board of the City.

1.8 “Trust Agreement” is this Agreement and any amendments or modifications thereof.

1.9 “Trustee” shall mean [_____], and its successor or successors. The Trustee acknowledges it is a fiduciary with respect to the Trust and that it serves at the pleasure of the City.

1.10 “Trust Year” shall mean the accounting year of the Trust which shall be a 12 month period beginning January 1 each year and ending December 31 each year, except for the

initial year of the Trust in which there will be a short accounting year beginning _____, 2007 and ending December 31, 2007.

1.11 Whenever appropriate, words used in this Trust Agreement in the singular may include the plural or the plural may be used as the singular, and the masculine may include the feminine.

ARTICLE II **CREATION AND PURPOSE OF TRUST**

2.1 Creation of the Fund. The City hereby creates and establishes a Trust Fund to be known as the City of Overland Park, Kansas Retiree Health Care Benefit Plan Trust Fund, which shall comprise the contributions made by the City, contributions made by Employees, Retirees and their dependents, if any, any insurance contracts entered into by the Trustee, all sums payable to the Trustee by reason of such insurance contracts, all investments made and held by the Trustee, all income from such investments, and all other money or property received and held by the Trustee for the uses and purposes set forth in this Trust Agreement.

2.2 Purpose. The purpose of the Trust Agreement is to provide for the payment of hospitalization, medical, dental, vision, long-term care and such other benefits designed to enhance the health and welfare of Retirees and their dependents (hereinafter sometimes referred to as “the benefits”). The benefits shall be provided in accordance with, and determined under, the Plan, which the City has the exclusive authority to adopt and amend. In no event shall private interests participate in or benefit from the operation of the Trust Fund.

2.3 Title to Funds. The Trustee shall receive contributions made by any person or by the City. The Trustee shall have legal title to all of the assets of the Fund.

2.4 Property Held in Trust. The Trustee hereby declares that it will hold and disburse all contributions, monies, contracts and other property in trust for the uses and purposes set forth

in this Trust Agreement and in accordance with the Plan. Any such contributions to the Trust Fund shall be irrevocable.

2.5 Application of Fund Assets. In accordance with the directions of the City, the Trustee shall use and apply the property and assets of the Fund for the following purposes:

(a) To pay or provide for the payment of all reasonable and necessary expenses of administering the affairs of the Fund, including, but without limitation, all expenses which may be incurred in connection with the establishment, administration and maintenance of the Fund as the Trustee, in its discretion, finds necessary or appropriate.

(b) (i) To enter into a contract or contracts with an insurance company or insurance companies as a means of providing the benefits to which Retirees are entitled and to pay the premiums due from time to time thereunder, or (ii) to provide such benefits directly from the Fund, or (iii) to provide insurance premium reimbursements directly to Retirees for such benefits, or (iv) to provide the benefits using a combination of each of the foregoing methods; reserving to the Trustee the power from time to time to change the means by which the benefits are to be provided.

2.6 Insurance Agreements. All of the provisions to be contained in any contract or contracts of insurance shall be agreed upon by the insurance company and the City. All the rights and privileges granted to the contract-holder by any such contract or contracts or allowed by the insurance company shall be vested in the Trustee, and it may take any action with respect to such contract or contracts permitted or required by the terms thereof or by the insurance company.

2.7 Set-Aside. All passive income of the Trust Fund, including but not limited to interest payments and dividends from investments, during each fiscal year of the Trust Fund

shall be set aside to provide for the payment of health and welfare benefits, including the payment of any reasonable costs of administration which are directly connected with the disbursement or other handling of such income.

ARTICLE III
ADMINISTRATION OF THE TRUST FUND

3.1 Service of Process. The City shall be the designated agent for service of legal process.

3.2 Contributions to the Fund. The City shall periodically deliver to the Trustee the amounts of money, and property other than money, that are contributed by the City and Employees under the Plan to the Fund. The Trustee shall be accountable for all delivered contributions. The Trustee shall have no duty to determine that the amounts received comply with the provisions of the Plan or that the Fund is adequate to provide the benefits stipulated in the Plan. The Trustee shall have no duty, expressed or implied, to compel any contribution to be made by the City, but shall be responsible only for money or property received by it under this Agreement.

ARTICLE IV
TRUSTEE'S POWERS

4.1 General Powers. The Trustee, in addition to all powers and authorities under common law, statutory authority, and other provisions of this Agreement, shall have the following powers and authorities, to be exercised in the Trustee's sole discretion:

(a) Acquire and hold property. To purchase, or subscribe for, any securities or other property and to retain the same in trust;

(b) Dispose of property. To sell, exchange, convey, transfer, grant options to purchase, or otherwise dispose of any securities or other property held by the Trustee, by private

contract or at public auction. Any sale or other disposition may be made for cash or upon credit, or partly for cash and partly upon credit;

(c) Exercise rights under securities. To vote upon any stocks, bonds, or other securities; to give general or special proxies or powers of attorney with or without power of substitution; to exercise any conversion privileges, subscription rights, or other options, and to make any incidental payments; to oppose, or to consent to, or otherwise participate in, corporate reorganizations or other changes affecting corporate securities, and to delegate discretionary powers and to pay any related assessments or charges; and generally to exercise any of the powers of an owner of the stock, bonds, securities, or other property held as part of the Trust Fund;

(d) Hold securities through nominees. To cause any securities or other property held as part of the Trust Fund to be registered in the Trustee's own name or in the name of one or more of the Trustee's nominees, and to hold any investments in bearer form, but the books and records of the Trustee shall at all times show that all the investments are part of the Trust Fund;

(e) Hold cash. To keep any portion of the Trust Fund in cash or cash balances that the Trustee may, at various times, deem to be in the best interests of this Trust, without liability for interest on the cash;

(f) Hold certain property temporarily. To accept and retain, for a period of time that the Trustee deems advisable, any securities or other property received or acquired by it as Trustee, whether or not the securities or other property would normally be purchased as investments under this Trust;

(g) Settle claims. To settle, compromise, or submit to arbitration any claims, debts, or damages to or owing to or from the Trust Fund, to commence or defend suits or legal or administrative proceedings, and to represent the Trust Fund in all suits and legal and administrative proceedings;

(h) Invest in savings accounts. To invest funds of the Trust Fund in night deposits or savings accounts bearing a reasonable rate of interest;

(i) Invest in government obligations. To invest in Treasury Bills and other forms of United States government obligations;

(j) Exercise conversion and subscription rights. If any bonds, notes, stocks, or other securities held by the Trustee shall entitle the holder to an option or privilege to convert it into bonds, notes, stocks, or other securities, or if the right or privilege is given to the holder to subscribe for additional or other bonds, notes, stocks, or other securities, the Trustee is authorized to exercise the options, rights and privileges from time to time and to make the conversions and subscriptions, to make the required payment, and to hold the acquired securities as investments of the Fund;

(k) Invest in certificates of deposit. To deposit monies in federally insured savings accounts or certificates of deposit in banks or savings and loan associations; and

(l) Subject to the City's reserved power under Section 4.4 to appoint an investment manager or managers to manage (including the power to acquire and dispose of) all or any part of the assets of the Plan.

4.2 Payments from the Fund. Payments shall be made from the Fund by the Trustee by direction of the City (or other party to which the City delegates this authority in writing, providing a copy to the Trustee), in accordance with the purpose of this Trust Fund. If the

direction is made by telephone, the direction shall be confirmed by subsequent letter. The Trustee shall be fully protected in making payments from the Fund in accordance with such written directions from such party. The Trustee shall have no responsibility to see to the application of the payments or to ascertain whether any such written directions comply with the terms of the Plan. The Trustee shall have no liability under this Trust for actions taken on payments from the Fund when following such written directions. In addition, to the payment of benefits pursuant to the Plan, the Trustee shall also be permitted to pay out of the Trust Fund all real and personal property taxes, income taxes and other taxes of any and all kinds levied or assessed under existing or future laws upon or in respect to the Trust Fund or any money, property or securities forming a part thereof. Moreover, the Trustee may pay all expenses incident to the establishment and administration of the Plan and Trust Fund, including but not limited to reasonable fees for legal, accounting and actuarial services rendered to the Plan and Trust Fund, if any.

Notwithstanding any provision of this Agreement to the contrary, if the Plan and the Trust Fund established hereunder shall for any reason fail to be granted tax exempt status under Section 115 of the Code, and the Internal Revenue Service notifies the City in writing that the Plan and Trust Fund do not so qualify, the City shall provide the Trustee with a copy of such notification, and the Trust Fund shall continue to be operated in accordance with this Agreement, subject to Section 7.2. In addition, if a contribution was made to the Trust Fund based on a mistake of fact, the Trustee shall, upon written notification from the City which made such contribution, return such contribution to the City.

4.3 Interpretation. The Trustee shall have the right and power to construe and interpret the provisions of the Trust Fund, and all parts thereof, and to administer the Trust Fund

for the best interests of the Employees, Retirees and the City. It may construe any ambiguity, or supply any omission, or reconcile any inconsistencies in such manner and to such interest as it deems proper. Except to the extent that the City has reserved to itself the authority to resolve issues of Plan eligibility and other Plan-related matters, the Trustee shall have further authority to resolve all questions with respect to the individual rights of the Employees and Retirees under the Trust Fund, including, but not by way of limitation, all issues with respect to any Employee or Retiree's eligibility for benefits. The interpretation or construction placed upon any term or provision of the Trust Fund by the Trustee and any action by the Trustee taken pursuant thereto, shall be final and conclusive upon all parties hereto, the Employees, Retirees and all other persons concerned; provided (a) that no decision of the Trustee shall take away any right specifically given by this Trust Fund; and (b) that any insurance carrier shall not be bound by any decision of the Trustee concerning its liability under any contract or contracts of insurance obtained pursuant to Section 2.6.

4.4 Investment Manager. In the event that the City appoints an investment manager to invest all or any of the assets of the Trust Fund, the investment manager shall have the powers granted to the Trustee with respect to the assets of the Trust Fund assigned to the investment manager for purposes of investment, and the Trustee shall be relieved of all liability with respect to the management and investment of such assets so long as any such investment manager is retained. For purposes of this paragraph and of Section 4.11 the term “investment manager” shall mean any party that:

- (a) is registered as an investment broker under the Investment Advisors Act of 1940, is a bank, or is an insurance company qualified to manage, acquire and dispose of plan assets under the laws of more than one state;

- (b) acknowledges in writing that it is a fiduciary with respect to the Plan; and
- (c) is granted the power to manage, acquire or dispose of any asset of the

Trust Fund pursuant to this section.

4.5 Expenses. The proper expenses of the Trustee, including the compensation of its agents, may be paid by the City, but if not, shall constitute a charge upon the Trust Fund and shall be paid by the Trustee out of the Trust Fund.

4.6 Resignation and Removal. Any Trustee may resign at any time by giving at least 30 days' written notice of such resignation to the City. The City may remove any Trustee at any time by notifying that Trustee of its removal.

4.7 Successors. In the event of the removal, resignation, death, incapacity, or unwillingness to serve of any Trustee, the City shall designate a successor Trustee who shall, upon agreeing in writing to be bound as a Trustee by the provisions of this Trust Agreement, become vested with all the estate, rights, powers, discretion, and duties of the predecessor Trustee.

4.8 Surrender of Records. A retiring Trustee shall surrender to the successor Trustee all records, books, documents, monies, and other properties in its possession which are held by the Trustee for, or incident to, the fulfillment and administration of this Trust Agreement and Plan.

4.9 Third Parties. A third party dealing with the Trustee may conclusively presume that any exercise of powers by the Trustee is in accordance with the provisions of this Trust Agreement and Plan. No third party dealing with the Trustee shall be obliged to take cognizance of the provisions of this Trust Agreement or Plan; nor to inquire into the necessity or expediency of any action of the Trustee; nor to see to the application of any monies or properties by the

Trustee. The responsibility of such a third party shall be limited to the terms of its agreements with the Trustee.

4.10 Reliance. The Trustee shall be entitled to rely upon all tables, valuations, certificates and reports furnished by an insurance company, upon all certificates and reports made by any duly appointed accountant or actuary, and upon all opinions given by any duly appointed legal counsel. The Trustee shall be fully protected against any action taken in good faith in reliance upon any such tables, valuations, certifications, reports, or opinions. All actions so taken shall be conclusive upon all persons having any interest under the Trust Agreement and Plan.

4.11 Administrative Powers of the Trustee. Notwithstanding the appointment of an investment manager, the Trustee shall have the following powers and authority, to be exercised in its sole discretion, with respect to the Trust Fund:

(a) Employee agents. To employ suitable agents, custodians and counsel to pay their reasonable expenses and compensation out of the Trust Fund;

(b) Reverse errors. To reverse any erroneous or provisional credit entries to the Trust Fund retroactively to the date upon which the correct entry or no entry should have been made;

(c) Execute instruments. To make, execute and deliver, as Trustee, any and all deeds, leases, mortgages, conveyances, waivers, releases or other instruments in writing necessary or desirable for the accomplishment of any of the foregoing powers; and

(d) Necessary and implied powers. Generally, to do all ministerial acts, whether or not expressly authorized, which the Trustee may deem necessary or desirable in carrying out its duties under this agreement.

**ARTICLE V
TRUSTEE DUTIES**

5.1 Accounts and Records. (a) Maintenance of accounts and records. The Trustee shall maintain accurate and detailed records and accounts of all properties of the Fund and all investments, receipts, disbursements, and other transactions under this Trust.

(b) Inspection and audit. All the accounts, books, and records of the Fund shall be open at all reasonable time to inspection and audit by any persons designated by the City. The Trustee shall, at the written direction of the City, submit the accounts, books, and records of the Fund to auditors of the City.

(c) Submission of annual report. Within ninety (90) days following the close of each fiscal year of the Trust, the Trustee shall file with the City a written report setting forth all investments, receipts, disbursements, and other transactions carried out by the Fund during the period. The report shall include a listing of the Fund assets and the fair market value of the Fund assets at the end of the period.

(d) Approval of annual report. The City may approve any annual accounting by the Trustee by giving the Trustee written notice of the approval. Failure by the City to disapprove the annual accounting within 30 days of its receipt shall be deemed an approval. The Trustee shall have the right at its own expense to have the accounts settled by judicial proceedings if so elected.

5.2 Standard of Care. The Trustee shall discharge its duties under this Fund and under the Plan solely in the interest of those individuals entitled to benefits under the Plan, and:

(a) Benefits and expenses. Subject to Section 2.5, assets of the Trust Fund shall not be diverted for any other use except for the exclusive purpose of providing benefits to

Participants and other persons entitled to benefits under the Plan; and defraying reasonable expenses of administering the Plan and the Trust;

(b) Prudent man standard. With the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; and

(c) Diversification of investments. By diversifying the investments of the Fund so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

ARTICLE VI **CITY AND EMPLOYEE CONTRIBUTIONS**

6.1 Contributions. As specified in the Plan, the City and, to the extent deemed appropriate by the City, persons entitled to receive plan benefits, shall make contributions hereunder in amounts necessary to fund the benefits provided for in the Plan.

6.2 Receipt of Assets. The Trustee shall receive and accept into the Trust Fund all currency and all securities or other property paid to it in accordance with instructions from an authorized person, provided that, in the case of securities or other property, such securities or other property are reasonably acceptable to the Trustee. The Trustee need not inquire into the source of any currency or securities or other property transferred to it nor into the authority or right of the transferor of such currency or securities or other property to transfer the same to the Trustee.

ARTICLE VII **AMENDMENT AND DISSOLUTION OF TRUST**

7.1 Amendment. The City reserves the right to alter, amend or terminate this Agreement at any time for any reason, without the consent of the Trustee or any other person.

7.2 Dissolution. Dissolution/termination of this Trust Fund shall occur only upon the payment of any and all obligations and expenses of the Trust Fund, including the payment of remaining debts and liabilities and satisfaction of all obligations to provide benefits under the Trust Agreement. Upon satisfaction of such obligations and expenses any remaining assets in the Trust Fund may be distributed in accordance with the direction of the City.

7.3 Trustee's Action. Upon dissolution/termination of the Trust Fund, the Trustee shall continue as Trustee for the purpose of winding up the affairs of the Trust Fund, and may take any action with regard to any contract or contracts which may be required by an insurance company, and which the Trustee, in its discretion, may deem appropriate.

ARTICLE VIII **MISCELLANEOUS PROVISIONS**

8.1 Assignment. No Employee or Retiree nor any person claiming by or through such Employee or Retiree shall have any right, title or interest in or to the funds or other property of the Trust Fund or any part thereof, except as specifically provided. No benefits under this Trust Agreement or under the Plan shall be assigned, alienated or be subject to anticipation or garnishment, attachment, execution or levy of any kind, or be liable for the debts or obligations of such Employee or Retiree except as provided in the Plan. In addition, funds or other property of the Trust Fund shall be protected from creditors of the City and shall not be assigned, alienated or subject to anticipation or garnishment, attachment, execution or levy of any kind, or be liable for the debts or obligations of the City.

8.2 Notices. Notices given to the Trustee or the City hereunder shall (unless herein otherwise specified) be sufficient if in writing and delivered to, or sent by prepaid first class mail or prepaid telegram to, the addressee thereof at his address. Except as herein otherwise provided, distribution or delivery of any statement or document required hereunder to be made to the

Trustee or the City shall be sufficient if delivered in person or if sent by postpaid first class mail to his address.

8.3 Retention of Employees. Nothing contained in this Trust Agreement or the Plan shall be construed to give any Employee the right to be retained in the employ of the City or to interfere with the right of the City to terminate the employment of any Employee at any time.

8.4 Exclusive Benefit. This Trust Agreement and the Plan is for the exclusive benefit of the Employees and Retirees eligible for benefits thereunder and in no event shall any of the contributions of the City to the Trust Fund or the earnings or increments thereon, revert to or in any other way or manner be returned to the City or diverted otherwise than for the exclusive benefit of the Employees and Retirees eligible for benefits thereunder, unless all obligations and expenses under the Plan and the Fund have been satisfied.

8.5 Entire Agreement. This Agreement, together with any fee agreement between the parties, sets out the entire agreement between the parties in connection with the subject matter, and this Agreement supersedes any prior agreement, statement, or representation relating to the obligations of the Trustee, whether oral or written.

8.6 Severability. If any provisions of this Agreement shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Agreement shall continue to be fully effective.

8.7 Headings. Headings and subheadings in this Agreement are inserted for convenience of reference only and are not to be considered in the construction of its provisions.

8.8 No Liability for Acts of Predecessor and Successor Trustee. The Trustee shall have no liability for the acts or omissions of any predecessors or successors in office.

8.9 Insurance Contracts. Neither the City nor the Trustee shall be responsible for the validity of any contract of insurance issued in connection with the Plan or the Trust, or for the failure on the part of any insurer to make timely payments provided by any such contract.

ARTICLE IX
EXECUTION OF AGREEMENT SITUS OF TRUST

9.1 Execution. This Trust Agreement may be executed in one or more counterparts. The signature of a party on any counterpart shall be sufficient evidence of his execution hereof.

9.2 Situs. This Trust Agreement shall be deemed to have been executed and delivered in, and with reference to, the laws of the State of Kansas and it and the Trust Fund established hereunder shall be governed by said laws except to the extent preempted by federal law.

IN WITNESS WHEREOF, the City and the Trustee have signed this instrument as of the day and year first above mentioned.

CITY OF OVERLAND PARK, KANSAS

By: _____

TRUSTEE:
