

VILLAGE OF DOWNERS GROVE
Report for the Village
10/1/2019

SUBJECT:	SUBMITTED BY:
Other Post-Employment Benefits (OPEB) Trust	Judy Buttny Finance Director

SYNOPSIS

Resolutions have been prepared to authorize the creation of an OPEB Trust and to adopt an OPEB Investment Policy and an OPEB Funding Policy.

STRATEGIC PLAN ALIGNMENT

The goals for 2017-2019 include *Steward of Financial, Environmental and Neighborhood Sustainability*.

FISCAL IMPACT

The FY19 Budget provides \$20,000 in the Health Fund related to creation of the OPEB Trust. Actual expenses were \$5,025. The FY20 will budget \$5,000 for annual trustee fees for U.S. Bank.

UPDATE & RECOMMENDATION

This item was discussed at the September 17, 2019 Village Council meeting. Staff recommends approval on the October 1, 2019 consent agenda.

BACKGROUND

All municipalities in Illinois are required to provide retired employees access to the employee health benefit program. The required provision of health benefits is known as Other Post-Employment Benefits (OPEB). While retirees pay health benefit premiums to help cover the cost of the benefits, the cost to the Village of providing the health benefits to retirees exceeds the amount paid to the Village in premiums. This difference creates a liability for the Village. The unfunded liability for OPEB is the actuarially calculated difference between the amount paid to the Village by retirees and the amount the Village will have to pay to provide their health benefits. The Government Accounting Standards Board (GASB) requires municipalities to calculate financial liability of OPEB. The unfunded liability appeared in the Village's financial statements beginning in 2018.

Failure to create a plan to fund the OPEB liability will likely negatively impact the Village's bond rating, which would increase the cost of issuing bonds for capital improvement projects. The Village's OPEB unfunded liability is \$10.5 million.

The Village has been aware of the OPEB unfunded liability issue for several years and has been taking actions to reduce the liability. In 2012, the Village reduced the OPEB unfunded liability by \$7.2 million by using a fully insured Medicare Supplement plan to provide health benefits to retirees 65 years of age and older. As part of the FY18 Budget, the Village created an OPEB Fund and placed \$300,000 in the fund. The 2017-2019 Long Range Plan identified OPEB Unfunded Liability as a key issue. The LRP recommends a strategy of establishing an OPEB trust to fund current and future liabilities similar to a pension fund. The LRP includes Develop a Plan to Address OPEB Unfunded Liability as a Priority Action Item. Specific actions for this Priority Action Item are to draft and approve a Trust Document, Funding Policy and Investment Policy.

Trust Document

The OPEB Trust is the mechanism through which assets are accumulated and retiree benefits are funded. It ensures that:

- the employer contributions to the trust are irrevocable
- trust assets are dedicated to providing benefits to Village retirees in accordance with the terms of the trust
- trust assets are legally protected from creditors.

In addition, the Trust has broader investment powers which will enable the trust to attain a higher investment return.

Staff is proposing that the Village establish an irrevocable trust with a Section 115 Trust Agreement with U.S. Bank serving as trustee for the OPEB assets. Annual fees for this service will be \$5,000. U.S. Bank will have custody of the OPEB assets, and execute investments upon direction from Village staff.

Funding Policy

The purpose of the policy is to state the funding goals and actuarial assumptions to be used for the OPEB Trust. Similar to the pension funding policy, this policy should state the amount to be contributed each year to the OPEB Trust. Staff worked with the Village's actuary, Lauterbach & Amen, to prepare the policy. The current approach recommended by staff is to use a phase-in strategy with a fixed amount invested for the first few years, with funding the Actuarially Determined Contribution as the long term goal. The initial contributions will be \$300,000 per year.

Investment Policy

The purpose of the investment policy is to provide a clear understanding of the objectives, goals, risk tolerance, and investment guidelines established for the OPEB Trust. The Investment policy covers permitted investments, targets and ranges for asset allocation. The Village worked with PFM Asset Management LLC to develop an investment strategy and policy. The investment policy proposes an asset allocation of 60/40 Equity/Fixed Income and also defines an asset allocation range with a 20% corridor on each side of the target to account for market shifts. When the allocations breach the specified ranges, the portfolio will be rebalanced. Staff will report investment performance on a quarterly basis to Village Council.

ATTACHMENTS

Resolutions

Section 115 Trust Agreement

OPEB Funding Policy

OPEB Investment Policy

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION OF
A SECTION 115 TRUST AGREEMENT**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That the form and substance of an Agreement (the "Agreement"), between the Village of Downers Grove ("Customer") and U.S. Bank National Association (the "Bank"), to establish an irrevocable trust for the purpose of funding Other Post-Employment Benefits (OPEB) obligations, as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Village Manager and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.

4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

Mayor

Passed:

Attest: _____

Village Clerk

SECTION 115 TRUST AGREEMENT

This Section 115 Trust Agreement (the “Agreement”) is made this ____ day of _____, 2019 between the Village of Downers Grove , a municipal corporation, organized under the laws of the State of Illinois (the “Customer”), and U.S. Bank National Association, a national banking association organized under the laws of the United States with offices in Minneapolis, Minnesota (the “Bank”).

WHEREAS, the Customer has established certain Other Post-Employment Benefits (“OPEB”), other than pensions, for eligible former employees of the Customer; and

WHEREAS, the Customer 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 in relation to OPEB; and

WHEREAS, the Trust is established by the Customer with the intention that it qualify as a tax-exempt trust performing an essential governmental function within the meaning of Section 115 of the Code and Regulations issued thereunder.

WHEREAS, the Customer is the sponsor of the Plan (as defined below) and wishes to appoint the Bank as the trustee of certain assets of the Plan, and the Bank wishes to accept the appointment;

NOW, THEREFORE, the parties hereto do hereby agree as follows:

SECTION 1 DEFINITIONS

1.1. “**Account**” means (i) the trust maintained under this Agreement for the Assets (as defined below), which trust is known as the Village of Downers Grove OPEB Trust and (ii) where the context requires, one or more Sub-accounts (as defined below).

1.2. “**Accounting Standards**” means Governmental Accounting Standards Board (GASB) Codification Statement No. 72, *Fair Value Measurement and Application*.

1.3. “**Assets**” means the securities, cash, and other property the Customer deposits, or causes to be deposited, from time to time under this Agreement, including contributions made under the Plan and amounts the Customer causes to be transferred to the Account from another funding medium maintained for the Plan; investments and reinvestments thereof; and income thereon, as provided herein.

1.4. “**Beneficiaries**” means beneficiaries of Participants (as defined below).

- 1.5. **“CFR”** means the Code of Federal Regulations.
- 1.6. **“Client-controlled Asset”** means an asset that is neither registered in the name of the Account (with the Bank designated as trustee), the Bank (with or without trust designation), or the Bank’s nominee nor maintained by the Bank at a Depository (as defined below) or with a sub-custodian nor held by the Bank in unregistered or bearer form or in such form as will pass title by delivery.
- 1.7. **“Code”** means the Internal Revenue Code of 1986, as amended.
- 1.8. **“Depository”** means any central securities depository (such as the DTC), international central securities depository (such as Euroclear Bank SA/NV), or Federal Reserve Bank.
- 1.9. **“DTC”** means the Depository Trust Company.
- 1.10. **“Employer Securities”** means securities issued by an employer of employees covered by the Plan or issued by an affiliate of such employer.
- 1.11. **“ERISA”** means the Employee Retirement Income Security Act of 1974, as amended.
- 1.12. **“Funding Policy”** means a periodic written analysis of the Plan’s cash-flow history, short-term financial needs, long-term financial needs, sources of money for plan-administration expenses, expected levels and timing of contributions, expected levels and timing of distributions, liquidity needs (including but not limited to the anticipated liquidity required to make benefit distributions), sponsor’s ability to provide future funding, and other significant information which could affect cash-flow or the exercise of discretion to manage the Assets.
- 1.13. **“Harm”** means claims, costs, damages, delayed payment or non-payment on Assets sold, expenses (including attorneys’ and other professional fees), fines, interest, liabilities, losses, penalties, stockholders’ assessments (asserted on account of asset registration), and taxes.
- 1.14. **“Indemnified Person”** means the Bank and its affiliates and their directors, officers, employees, successors, and assigns.
- 1.15. **“Investment Advice”** means a recommendation, or a suggestion to engage in or refrain from taking a particular course of action, as to (i) the advisability of acquiring, holding, disposing of, or exchanging any Asset or any securities or other investment property or (ii) the Guidelines, the Funding Policy, the permissible investments set forth in this Agreement, the composition of the Plan’s portfolio, or the selection of persons to provide investment advice or investment management services with respect to the Assets.
- 1.16. **“Investment Advisers Act”** means the Investment Advisers Act of 1940, as amended.
- 1.17. **“Investment Company Act”** means the Investment Company Act of 1940, as amended.
- 1.18. **“Investment Manager”** means any person or firm (other than the Bank) which (i) has

the power to manage, acquire, or dispose of any asset of a plan; (ii) is registered as an investment adviser under the Investment Advisers Act or is a bank as defined in the Investment Advisers Act or is an insurance company qualified to manage, acquire, or dispose of any asset of a plan under the laws of more than one state; (iii) has acknowledged in writing that it is a fiduciary with respect to the Plan; and (iv) has been appointed to manage Assets as provided under this Agreement.

1.19. **“Investment Policy”** means the written investment objectives, policies, strategies, and restrictions for the Account (or for any Sub-accounts therein), including but not limited to proxy-voting guidelines, as amended from time to time.

1.20. **“Investment Powers”** means the powers set forth in Section 4.1 hereof.

1.21. **“IRS”** means the Internal Revenue Service.

1.22. **“Legal Action”** means any freeze order, garnishment, levy, restraining order, search warrant, subpoena, writ of attachment or execution, or similar order relating to the Account.

1.23. **“Messaging System”** means any financial-messaging system, network, or service acceptable to the Bank, such as the Society for Worldwide Interbank Financial Telecommunication messaging system.

1.24. **“Participants”** means Plan participants.

1.25. **“Plan”** means the plan listed in **Exhibit A (Covered Plan)** hereto.

1.26. **“Plan Administrator”** means the plan administrator listed in **Exhibit A (Covered Plan)** hereto.

1.27. **“Plan Type”** means the plan type listed in **Exhibit A (Covered Plan)** hereto.

1.28. **“Private Fund”** means an “investment company” that is not subject to registration with the SEC (as defined below) under the Investment Company Act, pursuant to Section 3(c)(1) or (7) thereof.

1.29. **“SEC”** means the United States Securities and Exchange Commission.

1.30. **“Securities Exchange Act”** means the Securities Exchange Act of 1934, as amended.

1.31. **“State”** means the State of the United States of America first written above.

1.32. **“Statement Recipient”** means the Plan Administrator, each Investment Manager, and anyone else the Plan Administrator so designates.

1.33. **“Sub-account”** means a separate portion of the Account.

1.34. **“Trustee Type”** means the trustee type listed in **Exhibit A (Covered Plan)** hereto.

SECTION 2 ABOUT THE PLAN

2.1. **Generally.** The Customer hereby represents and warrants that the Plan is a Plan Type, the Customer is the sponsor of the Plan, and the Plan Administrator is the administrator (and not the third-party administrator) of the Plan.

2.2. **Tax Status.** The Customer hereby represents and warrants as follows:

2.2.1. **The Account.** The Customer has obtained IRS approval, or an opinion from a lawyer licensed in the State, which approval or opinion states as follows: The Account satisfies all the requirements of Code Section 115 and is exempt from federal, state, and local income tax. The Account’s trustee is not required to file or furnish to any taxing authority or any taxpayer any federal, state, or local taxes, tax returns, or information returns with respect to the Plan or Account. No contribution to, or benefit distribution from, the Account is includible in the gross income of any Participant or Beneficiary under Code Section 61, state law, or local law or is wages for Federal Insurance Contributions Act (FICA), Federal Unemployment Tax Act (FUTA), or income-tax withholding purposes.

2.2.2. **The Plan.** The Plan is a “governmental plan” as defined in Section 414(d) of the Internal Revenue Code of 1986, as amended; is a “Section 401(a)(24) governmental plan” as defined in Revenue Ruling 2011-1; and is not subject to Federal income taxation. The Plan’s governing document expressly provides that it is impossible for any part of the corpus or income of the Plan to be used for, or diverted to, purposes other than for the exclusive benefit of the Plan participants and their beneficiaries. And, the Plan is prohibited from assigning any part of its equity or interest in the trust.

2.2.3. **Examination.** The Plan is not under examination by the IRS.

2.3. **Fiduciary Status.**

2.3.1. The Customer hereby represents and warrants as follows:

2.3.1.1. **ERISA.** The Plan is (i) a “governmental plan” within the meaning of ERISA Section 3(32) and (ii) pursuant to ERISA Section 4(b)(1), not subject to ERISA.

2.3.1.2. **Enabling Law.** The sections of state or local statute, rule, ordinance, or by-law listed in **Exhibit A (Covered Plan)** hereto authorize the Customer to establish the Plan and to establish a financial-institution trust (separate and apart from the State) for the Plan, including the authority to adopt this Agreement.

2.3.1.3. **Public Deposits.** None of the Assets is subject to a public-deposits, public-funds, or other State law that would require the Bank to set aside any direct government obligations, government-guaranteed obligations, surety bonds, letters of credit, or other assets as security, regardless of the type or amount of capital of the Bank, the amount of public deposits held by the Bank, or the extent to which the Assets are not insured by the Federal Deposit Insurance Corporation or exceed federal deposit insurance limits.

2.4. **GASB Status.** The Customer hereby represents and warrants as follows:

2.4.1. **Revocability.** Contributions from the Customer and other contributing entities to the Plan and earnings on those contributions are irrevocable.

2.4.2. **Dedication.** Plan assets are dedicated to providing Plan benefits to Participants and Beneficiaries in accordance with the benefit terms.

2.4.3. **Protection from Creditors.** Plan assets are legally protected from the creditors of the Customer, other contributing entities, the Plan Administrator, Participants, and Beneficiaries.

2.5. **Full Faith and Credit; Taxing Power; Debts**

2.5.1. Neither the full faith and credit nor the taxing power of the Customer is pledged to the distribution of benefits under this Agreement. Except for contributions and other amounts under this Agreement, no other amounts are pledged to such distributions. Such distributions are neither general nor special obligations of the Customer but are payable solely from the Assets of the Account, as more fully described herein. No Participant, Beneficiary, or employee of the Customer may compel the exercise of the taxing power by the Customer.

2.5.2. Distributions of benefits under this Agreement are not debts of the Customer within the meaning of any constitutional or statutory limitation or restriction. Such distributions are not legal or equitable pledges, charges, liens, or encumbrances, upon any of the Customer's property, or upon any of its income, receipts, or revenues, except amounts in the Account which are, under the terms of the Plan and this Agreement, set aside for distributions. Neither the members of the governing body of the Customer nor its officers, employees, agents, or volunteers are liable under this Agreement.

SECTION 3 APPOINTMENT AND ACCEPTANCE

3.1. **Appointment; Acceptance.** The Customer hereby represents and warrants that applicable law provides that the Customer may appoint a trustee of any assets of the Plan. Pursuant to that power of appointment, the Customer hereby appoints the Bank as trustee of the Assets, and the Bank hereby accepts such appointment, subject to the terms of this Agreement.

3.2. **Establishment of Account.**

3.2.1. **Assets Held in Account.** The Customer hereby deposits Assets, or causes Assets to be deposited, with the Bank. The Customer hereby represents and warrants that all Assets are Plan assets. The Bank holds Assets in trust. As directed by the Plan Administrator, the Bank will establish one (1) or more Sub-accounts and allocate Assets among Sub-accounts.

3.2.2. **Separate and Apart; Exclusive Benefit.** The principal and income of the Account will be held separate and apart from the assets of the Customer and, except as permitted by law, will never inure to the benefit of the Customer and will be held for the exclusive purposes of providing benefits to Participants and Beneficiaries and defraying reasonable expenses of administering the Plan. It will be impossible, whether by amending this Agreement or otherwise, at any time before the satisfaction of all liabilities to Participants and Beneficiaries for any part of the principal or income of the Account to be used for, or diverted to, other purposes. The Bank will keep the Assets (other than deposits at the Bank) separate and apart from the assets of the Bank, pursuant to paragraph (b) (Separation of fiduciary assets) of 12 CFR Section 9.13 and paragraph (c) (Segregation of fiduciary and general assets) of 12 United States Code Section 92a.

3.2.3. **Disposition of Certain Contributions.**

3.2.3.1. **Mistake of Fact.** If a Customer contribution to the Account was made by a mistake of fact, the Customer may direct the Bank to return the contribution to the Customer within one (1) year of such contribution. In such a case, the Customer will direct the return of no more than the excess of the amount contributed over the amount that would have been contributed had no mistake occurred, adjusted for the excess's pro rata share of any net loss (but not any net gain) experienced by the Account while the excess was held in the Account.

3.2.3.2. **Not Qualified.** Customer contributions to the Account are conditioned upon the Trust's initial qualification under Code Section 115. If the Trust receives an adverse determination with respect to its initial qualification, the Customer may direct the Bank to return Customer contributions to the Customer within one (1) year of such determination, provided such return is consistent with Code Section 115.

3.3. **Direction.** The Bank is subject to the directions of the Customer, the Plan Administrator, and any Investment Manager as set forth herein.

3.4. **Allocation of Duty to Manage the Assets.**

3.4.1. **Plan Administrator.**

3.4.1.1. **Investment Policy; Funding Policy.** The Customer hereby reserves to the Plan Administrator sole discretion to determine the Investment Policy; to establish and carry out a Funding Policy consistent with the objectives of the Plan and the requirements of applicable law; and to deliver the Investment Policy, the Funding Policy, and

this Agreement to each person that has discretion to manage Plan assets. The Customer hereby represents and warrants that (i) the Investment Policy, the Funding Policy, and the permissible investments set forth herein are the only investment restrictions imposed upon the Account by the Customer and (ii) following such restrictions will not cause a violation of any applicable law.

3.4.1.2. **Power to Manage, Appoint.** The Customer hereby reserves to the Plan Administrator discretion to manage the Assets (subject to the Investment Policy, the Funding Policy, and the permissible investments set forth herein) and to appoint an investment manager or managers to manage (including the power to acquire and dispose of) the Assets.

3.4.2. **Investment Manager.** The Customer hereby represents and warrants that any investment manager so appointed (i) is an Investment Manager and (ii) unless the Customer notifies the Bank to the contrary, has sole discretion to manage the Assets (subject to the Investment Policy, the Funding Policy, and the permissible investments set forth herein).

3.4.4. **Bank.**

3.4.4.1. With respect to Assets that are subject to an Investment Manager's discretion to manage, the Bank has no discretion to manage, and the Bank exercises the Investment Powers only as directed by the Investment Manager.

3.4.4.2. With respect to Assets that are not subject to an Investment Manager's discretion to manage, the Bank has no discretion to manage, and the Bank exercises the Investment Powers only as directed by the Plan Administrator.

3.4.4.3. **Sweep Direction.** To the extent the Bank has no discretion and has received no such direction as to cash Assets held in the Account, the Bank will use such Assets to purchase a position in the Account's designated sweep vehicle.

SECTION 4 POWERS OF THE BANK

4.1. **Investment Powers.** Subject to Section 3.4 hereof, the Bank has the power to:

4.1.1. **Purchase, Hold, and Sell Assets.** Purchase with, and hold as, Assets without distinction between principal and income any securities or property, without limitation by any rule of law limiting the investment of trust assets in or to certain kinds of investments or prescribing the portion of a trust which may be invested in any kind of investment, including, but not limited to, any securities or property administered, advised, custodied, held, issued, offered, sponsored, supported by the credit of, underwritten, or otherwise serviced by the Bank or by the Bank's affiliate, and to sell the same. Without limiting the generality of the foregoing:

4.1.1.1. **Examples of Permissible Investments.** The Bank may so invest and reinvest in any real or personal property, including, but not limited to, DTC-eligible securities; Fed book-entry securities; domestic open-end mutual funds; global securities; American depositary receipts; closely-held or restricted stock; collective investment funds; deposit accounts at a bank, such as certificates of deposit, demand deposit accounts, or money market deposit accounts; derivatives (forwards, futures, options, or swaps); life-insurance or annuity contracts; loan agreements or notes; real-estate deeds, leases, or mortgages; Private Funds; or Employer Securities.

4.1.1.2. **81-100 Group Trusts.** The Bank may deposit and hold Assets in, pool Assets with other participating trusts in, and withdraw Assets from, a group trust which is exempt from taxation under Code Section 501(a) pursuant to the principles of Revenue Ruling 81-100, as amended, subject to the group-trust instrument. Any such group-trust instruments, including those listed on an **exhibit** hereto, are hereby incorporated herein by reference and prevail over contrary provisions of this Agreement, and the subject group trusts are hereby adopted as part of the Plan.

4.1.2. **Process Corporate Actions.**

4.1.2.1. Respond to voluntary corporate actions (such as proxies, redemptions, or tender offers) and mandatory corporate actions (such as class actions, mergers, stock dividends, or stock splits) affecting shareholders of an Asset, after providing notice of any such action to any person authorized under this Agreement to direct the exercise of the Investment Powers with respect to the Asset.

4.1.2.2. Notwithstanding anything herein to the contrary, the Bank will, without providing notice, (i) cause Assets to participate in any mandatory exchange transaction that neither requires nor permits approval by the owner of the Assets and (ii) file any proof of claim received by the Bank regarding class-action litigation over a security held in the Account during the class-action period, regardless of any waiver, release, discharge, satisfaction, or other condition that might result from such filing.

4.1.3. **Lend Securities.** Engage in securities-lending transactions with Assets, to the extent the Customer and the Bank have entered into a separate securities-lending agreement with respect to the Assets.

4.1.4. **Hire Service Providers.** Hire service providers (including, but not limited to, investment managers, investment advisers, and brokers) to assist the Bank in exercising the foregoing powers, including any service provider that is affiliated with the Bank.

4.1.5. **Do Other Things.** Perform other acts necessary to the proper discharge of its duties under this Agreement.

4.2. **Administrative Powers.** The Bank has the power to:

4.2.1. **Safe-keep Assets.** Safe-keep Assets as set forth herein.

4.2.2. **Exchange Foreign Currency.** Exchange foreign currency into and out of United States dollars through customary channels, including the Bank's foreign-exchange department.

4.2.3. **Borrow Money.** As directed by the Plan Administrator, borrow funds on an interest-free basis to the extent expressly permitted under applicable law.

4.2.4. **Settle Purchases and Sales.** Settle purchases and sales as set forth herein.

4.2.5. **Register Assets.** Register any Asset in the name of the Account (with the Bank designated as trustee), the Bank (with or without trust designation), or the Bank's nominee or to hold any Asset in unregistered or bearer form or in such form as will pass title by delivery, provided that the Bank's records at all times show that all such assets are part of the Account.

4.2.6. **Maintain Assets at a Depository or with a Sub-custodian.** Maintain Assets that are (i) book-entry securities at any Depository or with any sub-custodian and to permit such Assets to be registered in the name of the Account (with the Bank designated as trustee), the Bank (with or without trust designation), the Bank's nominee, the Depository, the Depository's nominee, the sub-custodian, or the sub-custodian's nominee and (ii) physical securities at the Bank's office in the United States and in a safe place.

4.2.7. **Collect Income.** Collect income as set forth herein.

4.2.8. **Advance Funds or Securities.** Advance funds or securities in furtherance of settling securities transactions and other financial-market transactions under this Agreement.

4.2.9. **Sign Documents.** Make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any or all other instruments that may be necessary or appropriate to the proper discharge of its duties under this Agreement.

4.2.10. **Distribute Assets.** As directed by the Plan Administrator, distribute Assets, including benefit distributions to or for the benefit of Participants and Beneficiaries (or to a guardian, conservator, or other legal representative on behalf of a Participant or Beneficiary that the Plan Administrator has determined to be incompetent) and distributions in payment of Plan expenses.

4.2.11. **Retain Disputed Funds.** Withhold delivery or distribution of Assets that are the subject of a dispute pending final adjudication of the dispute by a court of competent jurisdiction.

4.2.12. **Hold Assets Un-invested.** Hold Assets un-invested pending investment, distribution, resolution of a dispute, or for other operational reasons, and to deposit the same in an interest-bearing or noninterest-bearing deposit account of the Bank, notwithstanding any sweep direction for the Account.

4.2.13. **Litigate.** Bring or defend lawsuits involving the Account at the sole expense of the Account and to settle the same, only with the Customer's or Plan Administrator's written

approval.

4.2.14. **Provide Statements.** Provide statements as set forth herein.

4.2.15. **Hire Service Providers.** Hire service providers (including, but not limited to, attorneys, depositories, and sub-custodians) to assist the Bank in exercising the foregoing powers, including any service provider that is affiliated with the Bank.

4.2.16. **Do Other Things.** Perform other acts necessary to the proper discharge of its duties under this Agreement.

SECTION 5 SAFE-KEEP ASSETS

5.1. **Safe-keeping.** As directed by the Customer, the Bank will from time to time receive Assets. The Bank will safe-keep the Assets.

SECTION 6 SETTLE PURCHASES AND SALES

6.1. The Bank will settle purchases made with Assets and sales of Assets, according to the Bank's instruction-deadline schedule, provided that the Bank has all the information and the Account has all the assets necessary for the purchase or sale.

6.2. The Customer hereby represents and warrants that neither the Customer nor the Plan Administrator will (i) notify any third party that, despite the fact that the Account has insufficient assets for the transaction, the Bank will settle the purchase of an asset nor (ii) direct anyone else to provide such notice.

SECTION 7 COLLECT INCOME

7.1. The Bank will collect all income, principal, and other distributions due and payable on Assets.

7.2. If the Plan Administrator or an Investment Manager directs the Bank to search the DTC's Legal Notice System for notice that a particular Asset is in default or has refused payment after due demand, then the Bank will conduct such a search and notify such directing party of any such notice the Bank finds therein.

SECTION 8 PROVIDE STATEMENTS

8.1. **Accounting.** The Bank will maintain proper books of account and complete records of Assets and transactions in the Account, including increases or decreases in the value of the Account due to contributions to the Account, distributions from the Account, investment experience on Assets, and expenses and fees actually charged to the Account.

8.2. **Statements.**

8.2.1. **Account Statements.** The Bank will furnish each Statement Recipient with (i) an Account statement with the frequency designated below (or as subsequently agreed upon by the Bank and the Customer) within thirty (30) calendar days after the end of the reporting period and (ii) a final Account statement within thirty (30) calendar days after the Bank has transferred all Assets from the Account as provided under this Agreement. Such Account statements will reflect Asset transactions during the reporting period and ending Asset holdings. To the extent the Plan Administrator has established an account in the Bank's on-line portal and granted access thereunder to Statement Recipients, the Bank will furnish such Account statements by way of such system. If no frequency is so designated or agreed upon, the Customer will be deemed to have designated "Monthly".

(Check at least one):

- Monthly
- Quarterly
- Semi-annually
- Annually

8.2.2. **Client-controlled Assets.** The Bank will exclude Client-controlled Assets from the Account statements. The Customer hereby acknowledges that (i) such assets are not held in the Account and (ii) the Bank is not trustee of such assets and not responsible for performing any duties under this Agreement with respect to such assets.

8.3. **Confirmations; Notification by Agreement.** Except to the extent the Assets are subject to the Bank's discretion to manage, the Account statements described above (including their timing and form) serve as the sole written notification of any securities transactions effected by the Bank for the Account. Even so, the Customer has the right to demand that the Bank provide written notification of such transactions pursuant to 12 CFR Sections 12.4(a) or (b) at no additional cost to the Customer.

8.4. **Price-reporting.** For purposes of reporting the price of an Asset on an Account statement:

8.4.1. **Pricing from Vendor or Market.** If the Bank receives a price from a third-party pricing vendor, or if a price is readily determinable on an established market, then the Bank will report such price.

8.4.2. **Pricing from Customer.** If the Bank does not receive a price from a third-party pricing vendor, and a price is not readily determinable on an established market, then the

Customer will, upon the Bank's request, direct the Bank as to the price; the Bank will then report such price. Absent such a direction, the Bank will report the most recent price that the Bank received from the Asset's broker, fund accountant, general partner, issuer, manager, transfer agent, or other service provider (commonly known as a pass-through price).

8.4.2.1. To the extent the price of an Asset is so reported, the Customer hereby represents and warrants as follows: (i) The Customer received, read, and understood any governing documents (such as a limited liability company agreement, limited partnership agreement, trust agreement, or declaration of trust), offering documents (such as a fact sheet, offering circular, offering memorandum, private placement memorandum, prospectus, or summary description), and subscription documents (such as an adoption agreement or subscription agreement) for the Asset; understands the Asset's eligibility requirements, fees and expenses, transfer and withdrawal limitations, type, category, issuer, objectives, principal strategies and risks, current underlying investments, and the identity of the Asset's administrator, investment advisor, auditor, and other service providers (and any affiliations among them) and the services they provide, respectively, to the Asset and the compensation they receive therefor. (ii) Such price reflects such documents, investment-related information, service-provider information, and fee-and-expense information.

8.4.2.2. To the extent an Asset is (i) an Employer Security the price of which is not readily determinable on an established market or (ii) real estate, the Customer hereby covenants as follows: The Customer will obtain a written valuation of such property from an independent third-party appraiser whenever required by applicable law and, regardless of whether required by applicable law, at least annually. Each appraiser will be independent of all parties other than the Plan and will have the facilities and expertise to do the valuation. Each valuation will state the appraiser's qualifications, the property's value (and the methods used to determine it), a description of the property, the factors considered in making the valuation, the purpose of the valuation, the significance of the valuation methods, the effective date of the valuation, the economic and industry outlook, the property's book value, and the property's marketability. If the property is an Employer Security, each valuation will also state the issuer's nature, history, and financial condition, as well as the actively-traded market-price of similar issuers' securities. Before relying on the valuation, the Customer will read and understand the valuation, verify the accuracy of the underlying information, make sure the appraiser's assumptions and methods are reasonable, discuss the appraisal with the appraiser, determine that reliance on the appraiser's advice is reasonably justified, and determine that the Customer need not hire a second independent third-party appraiser to review the valuation or to prepare another valuation.

8.4.3. **Limitations.** The Customer hereby acknowledges that the Bank is performing a routine, ministerial, non-discretionary price-reporting function; that the reported price might be neither fair market value nor fair value (under Accounting Standards or applicable law); and that the reported price is not a substitute for (i) investigating the Asset's value in connection with a decision to acquire, hold, dispose of, or exchange any securities or other investment property; (ii) obtaining and ensuring the reliability of an independent third-party appraisal with respect to such a decision; or (iii) obtaining Investment Advice.

8.4.4. **Pricing Sources; Methodology.** Upon the Customer's request, the Bank will provide the Customer (or the certified public accountant engaged by the Plan Administrator to opine on the Plan's financial statements) with information about the Bank's pricing sources and methodologies.

8.5. **Statement Review.** The Plan Administrator will review the Account statements promptly upon delivery.

SECTION 9 LIMITATIONS ON DUTIES; INDEMNIFICATION

9.1. **Limitations on Duties.** The duties of the Bank will be strictly limited to those set forth in this Agreement, and no implied covenants, duties, responsibilities, representations, warranties, or obligations will be read into this Agreement against the Bank. Without limiting the generality of the foregoing, the Bank has no duty to:

9.1.1. Request or obtain a ruling or other guidance from the IRS or any other governmental authority as to (or otherwise determine, monitor, or question) the tax character or consequences of the form and operation of the Account, provided that the Plan Administrator may direct the Bank to sign a request for such guidance where the Plan trustee's signature is required by law (such as certain applications for recognition of exemption from income tax).

9.1.2. Act as the administrator of the Plan, including, but not limited to, construing the terms of the Plan; determining eligibility for Plan benefits (including, but not limited to, eligibility for participation, vesting, or distribution, as well as the timing, amount, or form thereof); resolving benefit claims or claim appeals; prescribing forms (including, but not limited to, forms for electing participation, distribution, or withdrawal or for providing notices to Participants or Beneficiaries); establishing, maintaining, or reconciling to any individual accounts; selecting or monitoring any forfeiture funds or any investment alternatives (including default investment alternatives) into which Participants or Beneficiaries may direct the investment of assets held in, or contributed to, their individual accounts; disclosing any plan-related, investment-related, or fee-and-expense information required to be disclosed to Participants or Beneficiaries; or receiving investment, distribution, or other directions from Participants or Beneficiaries.

9.1.3. Act as trustee of any Plan assets other than the Assets.

9.1.4. Act as investment manager of, or take notice of the management of, any Plan assets other than Assets that are subject to the Bank's discretion to manage (if any).

9.1.5. Provide Investment Advice.

9.1.6. Act as record-keeper or broker that makes the Plan's designated investment alternatives available to Participants or Beneficiaries (such as on a record-keeping platform or similar mechanism).

9.1.7. Determine, monitor, or collect Plan contributions; rather, the Bank will be subject to the Plan Administrator's direction regarding such matters; or monitor compliance with any applicable funding requirements.

9.1.8. Inspect, review, or examine any Client-controlled Asset or governing, offering, subscription, or similar document with respect thereto, to determine whether the asset or document is authentic, genuine, enforceable, properly signed, appropriate for the represented purpose, is what it purports to be on its face, or for any other purpose, or to execute such document, or to take physical possession of such asset or document.

9.1.9. (i) Collect any income, principal, or other distribution due and payable on an Asset if the Asset is in default or if payment is refused after due demand or (ii) except as expressly provided herein, to notify the Customer in the event of such default or refusal.

9.1.10. Provide notice of, or forward, mini-tenders (which are tender offers for less than 5% of an outstanding equity or debt issue) for any equity issue or, if any of the following is true, for any debt issue: The debt issue is not registered with the SEC. The debt issue has a "first received, first buy" basis with no withdrawal privilege and includes a guarantee of delivery clause. Or, the tender offer includes the statement that "the purchase price includes all accrued interest on the note and has been determined in the sole discretion of the buyer and may be more than or less than the fair market value of the notes" or similar language.

9.1.11. Question whether any direction received under this Agreement is prudent or consistent with the terms of the Plan; to solicit or confirm directions; or to question whether any direction received under this Agreement by email or Messaging System, or entered into the Customer's or Plan Administrator's account in the Bank's on-line portal, is unreliable or has been compromised, such as by identity-theft.

9.1.12. Calculate, withhold, prepare, sign, disclose, file, report, remit, or furnish to any taxing authority or any taxpayer any federal, state, or local taxes, tax returns, or information returns that may be required to be calculated, withheld, prepared, signed, disclosed, filed, reported, remitted, or furnished with respect to the Plan (such as paying Plan benefits) or Account, except to the extent such duties are required by law to be performed only by the Bank in its capacity as trustee under this Agreement or are expressly set forth herein.

9.1.13. Monitor service providers hired by the Customer or by the Plan Administrator.

9.1.14. Maintain or defend any legal proceeding in the absence of indemnification, to the Bank's satisfaction, against all expenses and liabilities which it may sustain by reason thereof.

9.1.15. Advance funds or securities or otherwise expend or risk its own funds or incur its own liability in the exercise of its powers or rights or performance of its duties under this Agreement.

9.1.16. Escheat any Asset, whether in connection with a benefit-distribution check issued

by the Bank under this Agreement or in any other circumstance, except to the extent the Plan Administrator directs the Bank to the contrary.

9.1.17. Question the extent to which Assets offset Plan liabilities on the Customer's books, records, and financial statements.

9.2. **Indemnification.**

9.2.1. The Customer hereby indemnifies and releases each Indemnified Person, and holds each Indemnified Person harmless from and against, and an Indemnified Person will incur no liability to any person for, any Harm that may be imposed on, incurred by, or asserted against an Indemnified Person by reason of the Customer's or its agent's action or omission in connection with this Agreement or the Account.

9.2.2. The foregoing provisions will survive the termination of this Agreement.

9.3. **Force Majeure.** No party is liable for any delay or failure in performing its obligations under this Agreement caused by wars (whether declared or not and including existing wars), revolutions, insurrections, riots, civil commotion, acts of God, accidents, fires, explosions; stoppages of labor, strikes, or other differences with employees (other than the Bank's disputes with its employees); laws, regulations, orders, or other acts of any governmental authority; or any other circumstances beyond its reasonable control. Nor will any such failure or delay give any party the right to terminate this Agreement.

9.4. **Damages.** No party is liable for any indirect, incidental, special, punitive, or consequential damages arising out of or in any way related to this Agreement or the performance of its obligations under this Agreement. This limitation applies even if the party has been advised of, or is aware of, the possibility of such damages.

9.5. **Statements.** The Bank is not liable with respect to the propriety of the Bank's actions or omissions reflected in a statement provided under this Agreement, except to the extent (i) a Statement Recipient objects to the Bank within ninety (90) calendar days after delivery of such statement or (ii) such acts or omissions could not be discovered through reasonable examination of such statement.

SECTION 10 FEES AND EXPENSES

10.1. **Fees.** The Bank is entitled to receive compensation for providing services under this Agreement. A schedule of that compensation is attached as **Exhibit B (Fee Schedule)** hereto.

10.2. **Expenses.** Reasonable expenses, fees, costs, and other charges incurred by the Bank in providing services under this Agreement (including, but not limited to, compensation, expenses, fees, costs, and other charges payable to service providers hired under this Agreement) are

expenses of the Account, and the same will not be offset from the Bank's compensation unless required by applicable law.

10.3. **Outstanding Fees and Expenses.** To the extent of any outstanding compensation, expenses, fees, costs, or other charges incurred by the Bank in providing services under this Agreement, the Customer hereby grants the Bank a first-priority lien and security interest in, and right of set-off against, the Assets. The Bank may execute that lien and security interest, and exercise that right, at any time.

10.4. **Advance of Funds or Securities.** To the extent of any advance of funds or securities under this Agreement, the Customer hereby grants the Bank a first-priority lien and security interest in, and right of set-off against, the Assets. The Bank may execute that lien and security interest, and exercise that right, at any time. Furthermore, nothing in this Agreement constitutes a waiver of any of the Bank's rights as a securities intermediary under Uniform Commercial Code §9-206.

SECTION 11 TERMINATION

11.1. **Termination of Agreement.** This Agreement terminates upon the effective date of the Bank's resignation or removal under this Agreement.

11.2. **Resignation; Removal.**

11.2.1. The Bank may resign under this Agreement by notice to the Customer. The Customer may remove the Bank under this Agreement by notice to the Bank. The resignation or removal will be effective thirty (30) calendar days after delivery of the notice, except to the extent the parties agree in writing to a different effective date. By such effective date, the Customer will appoint a new trustee and provide the Bank with the new trustee's signed, written acknowledgment of trusteeship. If the Customer fails to do so, the Bank will have the right to petition a court at Account expense for appointment of a new trustee.

11.2.2. Upon receiving such acknowledgment or notice of such court-appointment, the Bank will transfer Assets to the new trustee as directed by the Customer or by the court, as the case may be. However, the Bank will not be required to transfer any Assets until the Bank has received payment or reimbursement for all (i) compensation, expenses, fees, costs, or other charges incurred by the Bank in providing services under this Agreement and (ii) funds or securities advanced under this Agreement.

11.3. **Reversion.** Upon Plan termination, the Plan Administrator may direct the Bank to return Assets to the Customer, provided (i) Assets were sufficient to satisfy all Plan benefits; (ii) Assets were first distributed to satisfy all such benefits; and (iii) such return is consistent with Code Section 115. The Customer hereby represents and warrants that the Plan Administrator will not give such a direction unless all applicable conditions under law for reversion have already been satisfied.

SECTION 12 MISCELLANEOUS

12.1. **Services Not Exclusive.** The Bank is free to render services to others, whether similar to those services rendered under this Agreement or of a different nature.

12.2. **Binding Obligations.** The Customer and the Bank each hereby represent and warrant that (i) it has the power and authority to transact the business in which it is engaged and to execute, deliver, and perform this Agreement and has taken all action necessary to execute, deliver, and perform this Agreement and (ii) this Agreement constitutes its legal, valid, and binding obligation enforceable according to the terms hereof.

12.3. **Complete Agreement; Amendment; Prevalence.**

12.3.1. **Complete Agreement.** This Agreement contains a complete statement of all the arrangements between the parties with respect to its subject matter and supersedes any existing agreements between them concerning the subject.

12.3.2. **Amendment.** This Agreement may be amended at any time, in whole or in part, by a written instrument signed by the Customer and the Bank. Notwithstanding the foregoing, the terms of **Exhibit B (Fee Schedule for Plans)** hereto alone govern amendments thereto.

12.3.3. **Prevalence of This Agreement.** The Customer hereby represents and warrants that the Plan document, as amended from time to time, is (i) not relevant to the powers, rights, and duties of the Bank under this Agreement and (ii) not inconsistent with this Agreement (including, but not limited to, with regard to the identity of any fiduciary). In the event of such an inconsistency, this Agreement prevails with respect to the powers, rights, and duties of the Bank.

12.4. **Governing Law; Venue.** This Agreement will be governed, enforced, and interpreted according to the laws of the State without regard to conflicts of laws, except where pre-empted by federal law. All legal actions or other proceedings directly or indirectly relating to this Agreement will be brought in federal court (or, if unavailable, state court) sitting in the State.

12.5. **Successors and Assigns.**

12.5.1. This Agreement binds, and inures to the benefit of, the Customer, the Bank, and their respective successors and assigns.

12.5.2. No party may assign any of its rights under this Agreement without the consent of each other party, which consent will not be unreasonably withheld. The Customer hereby acknowledges that the Bank will withhold consent unless and until the Bank verifies an assignee's identity according to the Bank's Customer Identification Program and, to that end, the Customer hereby agrees to notify the Bank of such assignment and provide the Bank with the

assignee's name, physical address, EIN, organizational documents, certificate of good standing, and license to do business, as well as other information that the Bank may request. No consent is required if a party merges with, consolidates with, or sells substantially all of its assets to another entity, provided that such other entity assumes without delay, qualification, or limitation all obligations of that party under this Agreement by operation of law or by contract.

12.6. **Severability.** The provisions of this Agreement are severable. The invalidity of a provision herein will not affect the validity of any other provision.

12.7. **No Vested Benefits.** Neither the creation nor the operation of the Account causes the vesting of any Participant's or Beneficiary's right to Plan benefits.

12.8. **Solvency.** The Customer hereby represents and warrants that the Customer is neither insolvent nor subject to any pending bankruptcy proceeding. The Customer will promptly notify the Bank of any such insolvency or proceeding.

12.9. **Tax-Lot Selection-Method.** The Customer hereby directs the Bank to use the following tax-lot selection-method for the Account, except to the extent the Customer directs the Bank to the contrary: Average Federal Tax Cost (in which shares are sold across all tax lots using the average cost) and, to the extent such method is not permitted for Account investments, First In First Out (in which shares are sold from tax lots having the earliest federal tax acquisition date).

12.10. **Shareholder Communications Act Election.** Under the Shareholder Communications Act of 1985, as amended, the Bank must try to permit direct communications between a company that issues a security held in the Account (the "Securities-Issuer") and any person who has or shares the power to vote, or the power to direct the voting of, that security (the "Voter"). Unless the Voter registers its objection with the Bank, the Bank must disclose the Voter's name, address, and securities positions held in the Account to the Securities-Issuer upon the Securities-Issuer's request ("Disclosure"). To the extent that the Customer is the Voter, the Customer hereby (i) acknowledges that failing to check one and only one box below will cause the Customer to be deemed to have consented to Disclosure and (ii) registers its (*check only one*):

- Consent to Disclosure.
- Objection to Disclosure.

12.11. **Authorized Persons.** With respect to this Agreement:

12.11.1. The Customer will notify the Bank of the identity of each (i) employee of the Customer who is authorized to act on the Customer's behalf, (ii) third-party agent that is authorized to act on the Customer's behalf, and (iii) employee of each third-party agent who is authorized to act on such agent's behalf. In no event is any such agent authorized to execute this Agreement or any amendment thereto or to terminate this Agreement.

12.11.2. If the Plan Administrator is the Customer, then any such employee or agent has the same authority with respect to the Plan Administrator as such employee or agent has with respect to the Customer. If the Plan Administrator is not the Customer, then the

Customer will notify the Bank of the identity of each (i) employee of the Customer who is authorized to act on the Plan Administrator's behalf, (ii) third-party agent that is authorized to act on the Plan Administrator's behalf, and (iii) employee of each third-party agent who is authorized to act on such agent's behalf. In no event is any such agent authorized to execute this Agreement or any amendment thereto or to terminate this Agreement.

12.11.3. The Bank may assume that any such employee or agent continues to be so authorized, until the Bank receives notice to the contrary from the Customer (or, with respect to any such employee of any such agent, from such agent).

12.11.4. The Customer hereby represents and warrants that any such employee or agent was duly appointed pursuant to a procedure specified in the Plan and is appropriately monitored and covenants that the Customer (or the Plan Administrator, as the case may be) will furnish such employee or agent with a copy of this Agreement, as amended from time to time, and with a copy of any communications given under this Agreement to the Customer (or to the Plan Administrator, as the case may be). The Customer hereby acknowledges that (i) such employee's or agent's actions or omissions are binding upon the Customer (or upon the Plan Administrator, as the case may be) as if the Customer (or the Plan Administrator, as the case may be) had taken such actions or made such omissions itself and (ii) the Bank is indemnified, released, and held harmless accordingly.

12.12. **Delivery of Directions.**

12.12.1. Any direction, notice, or other communication provided for in this Agreement will be given in writing and (i) unless the recipient has timely delivered a superseding address under this Agreement, addressed as provided under this Agreement, (ii) entered into the Customer's or Plan Administrator's account, as the case may be, in the Bank's on-line portal, or (iii) sent to the Bank by Messaging System.

If to the Bank:

Authorized Officer: c/o

Vice President and Relationship Manager

U.S. Mailing Address:

Phone Number:

Email Address:

If to the Customer:

Authorized Officer: c/o

U.S. Mailing Address:

Phone Number:

Email Address:

If to the Plan Administrator:

See Exhibit A (Covered Plan) hereto.

12.12.2. Any direction received under this Agreement by email or Messaging System, or entered into the Customer's or Plan Administrator's account in the Bank's on-line portal, is deemed to be given in a writing signed by the sender. The Customer hereby represents and warrants that the Customer and the Plan Administrator maintain commercially reasonable security measures for preventing unauthorized access to their respective portal accounts; to the email accounts of their employees, agents, and agents' employees; and to any Messaging System used by their employees, agents, and agents' employees, and the Customer hereby assumes all risk to the Account of such unauthorized access. The Customer hereby acknowledges that the Customer is fully informed of the protections and risks associated with the various methods of transmitting directions to the Bank and that there may be more secure methods of transmitting directions than the methods selected by the Customer, the Plan Administrator, and their agents.

12.13. Plan Expenses; Benefit-payment Account.

12.13.1. **Plan Expenses.** The Plan Administrator may direct the Bank from time to time to charge an expense, or type of expense, against the Account. The Customer hereby represents and warrants that any expense, or type of expense, so directed to be charged is a permissible Plan expense (and is not a settlor expense).

12.13.2. **Benefit-payment Account.** The Customer hereby covenants that (i) any direction under this Agreement to distribute Assets to or for the benefit of Participants and Beneficiaries through any benefit-payment account will comply with any applicable trust requirement and anti-inurement requirement; (ii) any such benefit-payment account will be registered in the name of the Account (with the Bank designated as trustee and with only Bank personnel designated as authorized signers), the Bank (with only Bank personnel designated as

authorized signers), or a Plan trustee other than the Bank (with no Bank personnel designated as authorized signers) or will be maintained by an insurance company qualified to do business in a state of the United States and regulated and supervised and subject to periodic examination by an agency of such state pursuant to an administrative services only (ASO) contract between such insurance company and the Customer (with no Bank personnel as authorized signers); and (iii) any such other trustee will be a bank or trust company that has been granted trust powers under state or federal law. If any such benefit-payment account is so registered in the name of another trustee, then the Customer hereby acknowledges that (x) the benefit-payment account is a Client-controlled Asset, (y) the Bank is not a co-trustee with the other trustee; no asset is held by the Bank and the other trustee; the Bank will not use reasonable care to prevent the other trustee from committing a breach; and the Bank is not liable with respect to the actions or omissions of the other trustee; and (z) the Customer alone has the duty to appoint and monitor the other trustee, and the Customer will indemnify, release, and hold harmless the Bank under this Agreement for the actions and omissions of the other trustee.

12.14. Co-fiduciary Responsibility. Except as may be required by applicable law, no fiduciary with respect to the Plan (i) is responsible for the actions or omissions under this Agreement of any other fiduciary with respect to the Plan or (ii) has a duty to question whether any other fiduciary with respect to the Plan is fulfilling its own responsibilities under this Agreement.

12.15. Spendthrift. Except as expressly permitted by the terms of the Plan and applicable law, (i) no Participant or Beneficiary has the power to assign or alienate a beneficial interest in the Account; (ii) neither the Bank, the Customer, nor the Plan Administrator will recognize an assignment or alienation of a beneficial interest in the Account; and (ii) no beneficial interest in the Account is subject to attachment, garnishment, execution following judgment, or other legal process.

12.16. Uncashed Benefit-Distribution Checks. To the extent the Bank holds cash Assets uninvested pending distribution to a Participant or Beneficiary in an interest-bearing or noninterest-bearing deposit account of the Bank on the void-after date imprinted on the underlying benefit-distribution check issued by the Bank under this Agreement, the Customer hereby directs the Bank to use such Assets promptly thereafter as provided in any sweep direction for the Account.

12.17. Legal Advice. The Customer hereby acknowledges that it (i) did not receive legal advice from the Bank concerning this Agreement, (ii) had an adequate opportunity to consult an attorney of its choice before executing this Agreement, and (iii) executed this Agreement upon its own judgment and, if sought, the advice of such attorney.

12.18. RESERVED.

12.19. Legal Action. If the Bank is served with a Legal Action, then the Bank will, to the extent permitted by law, use commercially reasonable efforts to notify the Customer of such service. The Customer will reimburse the Bank for any expenses, fees, costs, or other charges incurred by the Bank in responding to the Legal Action, including, but not limited to, any fees charged by an attorney of the Bank's choice. If the Customer notifies the Bank that the Customer is seeking a protective order to resist the Legal Action, then the Bank will provide

reasonable cooperation at the Customer's request and sole cost and expense. In any event, the Bank may comply with the Legal Action at any time, except to the extent the Bank has received a protective order that prevents the Bank from complying.

12.20. Representations and Warranties. The Customer hereby covenants that, if any of the representations or warranties that it provides in this Agreement becomes inaccurate or incomplete, it will promptly notify the Bank thereof and of any fact, omission, event, or change of circumstances related thereto.

12.21. Publicity. No party will disclose the existence of this Agreement or any terms thereof in advertising, promotional, or marketing materials without obtaining, in each case, the prior written consent of each other party.

12.22. Counterparts and Duplicates. This Agreement may be executed in any number of counterparts, each of which, without production of the others, will be deemed to be an original, but all of which together will constitute the same instrument. This Agreement, and any direction, notice, or other communication given under this Agreement, may be proved either by an executed original or by a reproduced copy thereof (including, but not limited to, an electronic file copy thereof).

12.23. Effective Date. This Agreement will become effective when all parties have signed it. The date of this Agreement will be the date this Agreement is signed by the last party to sign it (as indicated by the date associated with that party's signature).

IN WITNESS WHEREOF, an authorized officer of each party hereby executes this Agreement on the date stated beneath that party's signature.

THE CUSTOMER (AS DEFINED IN THIS AGREEMENT)

By: _____
(Signature of the Customer's authorized officer)

(Printed name of the Customer's authorized officer)

Its: _____
(Title of the Customer's authorized officer)

Dated: _____

U.S. BANK NATIONAL ASSOCIATION

By: _____
(Signature)

(Printed name)

Its: Vice President and Relationship Manager

Dated: _____

SECTION 115 TRUST AGREEMENT**Exhibit A****Covered Plan****Trustee Type**

(Check only one): Directed trustee Discretionary trustee

Plan:

Village of Downers Grove Retiree Health Plan
Retiree Medicare Advantage Plan

Plan Type

(Check only one): DC other postemployment benefits
 DB other postemployment benefits

Plan Type

Governmental; the enabling law is:
§§ _____

Plan Administrator

(Check only one): The Plan Administrator is the Customer.
 The Plan Administrator is not the Customer; see below instead.

Plan Administrator: _____ Committee
(Do not enter the name of any third-party administrator.)

Authorized Officer: c/o _____

U.S. _____ Mailing _____ Address: _____

Phone Number: _____

Email Address: _____

Effective Date. This Exhibit will become effective when all parties have signed it. The date of this Exhibit will be the date this Exhibit is signed by the last party to sign it (as indicated by the date associated with that party's signature).

More than one plan may be listed in this **Exhibit A (Covered Plan)**. If more than one plan is listed, then:

1. The Customer hereby represents and warrants as follows:
 - 1.1. All such plans are of the Plan Type.

1.2. The plan document governing each such plan provides that it is impossible at any time before the satisfaction of all liabilities to plan participants and beneficiaries for any part of the principal or income of the plan to be used for, or diverted to, purposes other than for providing benefits to the plan's participants and beneficiaries and defraying reasonable expenses of administering the plan.

1.3. Each such plan has adopted the Account as part of the plan with the consent of the Customer.

1.4. The sponsor of each such plan has appointed the Customer as its agent with sole power to exercise powers and fulfill duties under this Agreement otherwise allocable to the sponsor, including but not limited to directing the Bank, receiving disclosure with respect to the Account, authorizing fees paid with respect to the Account, and indemnifying an Indemnified Person.

1.5.

1.5.1. The Account is not an "*investment company*" under the Investment Company Act, because there is no expectation of financial return or profit on the part of Participants and Beneficiaries, their interests in the Account are thus not securities, and the Account is thus not an "*issuer*" within the meaning of Section 3(a)(22) thereof. Furthermore, interests in the Account are not subject to registration under the Securities Act, because they are not "*securities*" within the meaning of Section 2(a)(1) thereof (for the reasons stated above) and because they are neither bought nor sold.

1.5.2. The Account is excluded from "*investment company*" status under the Investment Company Act pursuant to Section 2(b) thereof, as "*an instrumentality of*" "*a State, or any political subdivision of a State, or any agency . . . [or] authority . . . of any . . . of the foregoing*". Any interest in the Account is an "*exempted security*" under the Securities Act pursuant to Section 3(a)(2) thereof, as "*any security issued . . . by any public instrumentality of one or more States*", so the Account is permitted to offer such an interest without filing a registration statement with the SEC.

2. All such plans participate in the Account, and the Account is a master trust.

3. The term "Plan" includes all such plans (individually or collectively, as the context requires).

4. The Bank will maintain a separate account to reflect the interest of each such plan, including separate accounting for the plan's contributions to the Account, disbursements made from the plan's account, and the investment experience of the Account allocable to the plan's account. No such plan may assign its interest in the Account. Nor may any part of the principal or income of the Account that equitably belongs to any such plan be used for, or diverted to, purposes other than for providing benefits to the plan's participants and beneficiaries and defraying reasonable expenses of administering the plan.

5. The Plan Administrator may direct the Bank to adopt an alternative “unit” method of accounting for deposits, transfers, withdrawals, and distributions which issues, transfers, redeems, and adjusts (for changes in value) “units” which will have a uniform value in the Account.
6. The Bank will have the power to commingle the assets of all such plans and to manage such assets as a single Account.
7. Amendments to this Agreement automatically pass-through to the Plan.

IN WITNESS WHEREOF, an authorized officer of each party hereby executes this Exhibit on the date stated beneath that party’s signature.

THE CUSTOMER (AS DEFINED IN THIS AGREEMENT)

By: _____
(Signature of the Customer’s authorized officer)

(Printed name of the Customer’s authorized officer)

Its: _____
(Title of the Customer’s authorized officer)

Dated: _____

U.S. BANK NATIONAL ASSOCIATION

By: _____
(Signature)

(Printed name)

Its: Vice President and Relationship Manager

Dated: _____

SECTION 115 TRUST AGREEMENT

Exhibit B

Fee Schedule