

**CITY OF DETROIT POST-2014 NON-SAFETY EMPLOYEE RETIREE HEALTH CARE TRUST**

THIS TRUST AGREEMENT is entered into effective \_\_\_\_\_, 2016, by and among the City of Detroit (“Detroit” or the “City”), Comerica Bank (the “Bank”), and the undersigned individual trustees (“Individual Trustees”).

WITNESSETH:

WHEREAS, the City has agreed in collective bargaining with the Unions to provide a defined level of contributions into a voluntary employees’ beneficiary association (“VEBA”), which will be established pursuant to the Side Letter Agreement in order to provide health care benefits to certain Eligible Retiree Members and their Eligible Dependents;

WHEREAS, Detroit hereby establishes this City of Detroit Post-2014 Non-Safety Employee Retiree Health Care Trust (the “Trust”);

WHEREAS, the undersigned Individual Trustees constituting the Board of Trustees shall be responsible for: (i) managing the property held by, and the administration of, this Trust; and (ii) maintaining and administering the “Health Care Plan for Post-2014 Non-Safety Employee Retirees of the City of Detroit” as provided for in the Side Letter Agreement (the “Plan”);

WHEREAS, the Board of Trustees is willing to exercise the authority granted to it herein with regard to the Trust and Plan;

WHEREAS, through this Trust Agreement, Detroit intends to designate the Bank to serve in the capacity of custodial trustee with respect to the Trust and to maintain custody of the Trust assets;

WHEREAS, the Bank is willing to receive, hold, and invest the assets of the Trust in accordance with the terms of this Trust Agreement; and

WHEREAS, the Trust and the interdependent Plan are intended to comply with the requirements of section 501(c)(9) of the Internal Revenue Code of 1986, as amended (the “Code”), and are together intended to constitute a “governmental plan” within the meaning of section 3(32) of the Employee Retirement Income Security Act of 1974;

NOW THEREFORE, in consideration of the premises and the covenants contained herein, Detroit and the Bank agree as follows:

**ARTICLE I  
DEFINITIONS**

Section 1.1 AFSCME. Michigan Council 25 of the American Federation of State, County and Municipal Employees.

Section 1.2 Bank. The entity referred to in the Preamble to this Trust Agreement named to perform the duties set forth in this Trust Agreement, or any successor thereto appointed by the Board in accordance with Section 7.3. Any corporation continuing as the result of any

merger or consolidation to which the Bank is a party, or any corporation to which substantially all the business and assets of the Bank may be transferred, will be deemed automatically to be continuing as the Bank.

Section 1.3 Board of Trustees or Board. The Board of Trustees is the body described in Article VIII, which pursuant to the Side Letter Agreement has responsibility for: (i) managing the property held by, and administering, this Trust; and (ii) adopting, maintaining and administering the Plan, through which all benefits to the Trust's beneficiaries shall be provided. It shall be constituted and operated in accordance with Article IX.

Section 1.4 Code. The Internal Revenue Code of 1986, as amended, and any successor statute thereto.

Section 1.5 Effective Date. January 1, 2015.

Section 1.6 Eligible Dependent. An individual treated as an Eligible Retiree Member's dependent, within the meaning of Code section 152, eligible to receive benefits from a voluntary employees' beneficiary association pursuant to Code section 501(c)(9) and the regulations promulgated thereunder.

Section 1.7 Eligible Retiree Member. A VEBA Beneficiary who retires from the City on or after January 1, 2015 and begins to receive monthly pension benefits under the General Retirement System that are unreduced as a result of early retirement.

Section 1.8 Investment Manager. An investment manager appointed by the Board or its successor in accordance with the provisions of Section 9.4 hereof.

Section 1.9 Participant. An Eligible Retiree Member or Eligible Dependent who is entitled to health care benefits pursuant to the terms of the Plan. Participants include both "Union Participants" (retirees or dependents who are Participants as a result of union membership) and "Non-Union Participants" (retirees or dependents who are Participants as a result of City employment but not union membership, such as supervisory employment).

Section 1.10 Plan. The Health Care Plan for Post-2014 Non-Safety Employee Retirees of the City of Detroit, to be adopted by the Board pursuant to and providing benefits as set forth in the Side Letter Agreement, and thereafter which Plan may be amended from time to time by the Board, as long as consistent with agreements reached by the City and certain of the Unions in collective bargaining, and which Plan will provide health care benefits permitted to be provided by a voluntary employees' beneficiary association under Code section 501(c)(9).

Section 1.11 Side Letter Agreement. The letter dated December 2014 between the City and certain of the Unions setting forth the City's annual contribution obligation for retiree health into the Trust, and the benefits to be provided to the Eligible Retiree Members under the Trust, and the successor agreements to such Side Letter Agreement, if any.

Section 1.12 Trust Agreement. This agreement as it may be amended thereafter from time to time by the parties hereto in accordance with the terms hereof.

Section 1.13 Trust or Trust Fund. The City of Detroit Post-2014 Non-Safety Employee Retiree Health Care Trust established by this Trust Agreement, comprising all property or interests in property held by the Bank from time to time under this Trust Agreement.

Section 1.14 Unions. The coalition of unions comprising (a) the Association of City of Detroit Supervisors; (b) the Association of Detroit Engineers; (c) Michigan Council 25 of the American Federation of State, County and Municipal Employees, including Locals 23, 62, 207, 214, 229, 312, 542, 836, 1023, 1206-Forestry and Landscape Forepersons, 2394-Supervisory, 2799, 2920, 6087 and its City of Detroit Locals, and the Paving Foreman Association; (d) the Association of Municipal Engineers; (e) the Association of Municipal Inspectors; (f) the Association of Professional and Technical Employees; (g) the Detroit Income Tax Investigation Association; (h) the Field Engineers Association; (i) the Police Officers Labor Council (Detention Facility Officers); (j) the Senior Accountants, Analysts, and Appraisers Association; (k) the Service Employees International Union 517-M; (l) the UAW Locals 212, 412, and 2211; (m) the Police Officers Association of Michigan; (n) the Emergency Medical Service Officers Association; (o) the Association of Professional Construction Inspectors; (p) the International Brotherhood of Teamsters Local 214; (q) the International Union of Operating Engineers Local 324; (r) the Michigan Building Trades and Construction Council; and (s) the Assistant Supervisors of Street Maintenance and Construction.

Section 1.15 VEBA Beneficiary. An employee of the City who is participating in the City of Detroit General Retirement System, with respect to whom contributions are made to the Trust. In addition, VEBA Beneficiary means any other category of employee (*e.g.*, Library) who is designated as eligible for benefits under the terms of the Plan as it is amended from time to time as discussed in Section 1.10; provided that a lump sum contribution to the Trust Fund may be required by the Board in connection with the addition of any new eligibility category after January 1, 2015.

## **ARTICLE II ESTABLISHMENT OF TRUST**

Section 2.1 Purpose. The Trust is established for the purpose of providing life, sickness, accident, and other similar benefits, directly, through the purchase of insurance, or by reimbursement of expenses, to the Participants in accordance with the Plan and consistent with Section 501(c)(9) of the Code and the regulations and other guidance promulgated thereunder. The Trust, together with the Plan, is intended to constitute a voluntary employees' beneficiary association under Section 501(c)(9) of the Code.

Section 2.2 Receipt of Funds. The Bank shall accept all sums of money and other property contributed to the Trust pursuant to Article III. The Bank shall hold, manage and administer the Trust Fund without distinction between principal and income. The Bank shall be accountable for the contributions or transfers it receives, but shall not be responsible for the collection of any contributions or transfers to the Trust.

Section 2.3 Inurement and Reversion Prohibited. At no time shall any part of the principal or income of the Trust Fund be used for, or diverted to, any purpose other than sponsoring, operating and administering the Plan and Trust to provide benefits that are permitted

under Code section 501(c)(9) to Participants. Nothing in this Trust Agreement shall be construed in such a way as to prohibit the use of assets of the Trust Fund to pay reasonable fees and other expenses and obligations incurred in maintaining, administering and investing the Trust Fund or in sponsoring, administering and operating the Plan in accordance with the provisions of this Trust Agreement. At no time shall any part of the net earnings inure to the benefit of any individual other than through the provision of benefits as permitted under Code section 501(c)(9) and the regulations promulgated thereunder. In no event will the assets held in the Trust Fund revert to Detroit. Upon termination of the Trust Fund, any assets remaining upon satisfaction of all liabilities to existing Participants shall be applied, either directly or through the purchase of insurance, to provide life, sick accident or other permissible benefits under Code section 501(c)(9) and the rules and regulations promulgated thereunder, pursuant to criteria consistent with such rules and regulations.

Section 2.4 No Guarantee. Nothing contained in the Trust or the Plan shall constitute a guarantee that the assets of the Trust Fund will be sufficient to pay any benefit to any person or make any other payment. The obligation of the Plan to pay any benefit provided under the Plan is expressly conditioned on the availability of cash in the Trust to pay the benefit, and no plan fiduciary or any other person shall be required to liquidate any Plan asset in order to generate cash to pay benefits. Detroit shall not have any obligation to contribute any amount to the Trust except as may be agreed to in the Side Letter Agreement, and shall have no obligation to provide any benefits to any Eligible Retiree Member or Eligible Dependent. Except for payments of benefits under the Plan, no Participant shall receive any distribution of cash or other thing of current or exchangeable value, either from the Board or the Bank, on account of or as a result of the Trust Fund created hereunder.

Section 2.5 No Interest. Detroit shall not have any legal or equitable interest in the assets of the Trust Fund at any time, including following the termination of the Trust.

### **ARTICLE III CONTRIBUTIONS TO THE TRUST FUND**

The Bank shall accept the City's contributions to the Trust Fund. The Bank will accept other contributions to the Trust Fund, including from Participants.

### **ARTICLE IV PAYMENTS FROM THE TRUST FUND**

Section 4.1 Payments from the Trust Fund.

(a) Subject to paragraph (b) below, the Bank shall make payments from the Trust Fund to provide benefits under the Plan as directed by the Board.

(b) To the extent permitted by law, the Bank shall be fully protected in making payments out of the Trust Fund, and shall have no responsibility to see to the application of such payments or to ascertain whether such payments comply with the terms of the Plan, and shall not be liable for any payment made by it in good faith and in the exercise of reasonable care without actual notice or knowledge of the impropriety of such payments hereunder. The Bank may withhold all or any part of any payment as the Bank in the exercise of its reasonable discretion may deem proper, to protect the Bank and the Trust against any liability or claim on

account of any income or other tax whatsoever; and with all or any part of any such payment so withheld, may discharge any such liability. Any part of any such payment so withheld by the Bank that may be determined by the Bank to be in excess of any such liability will upon such determination by the Bank be paid to the person or entity from whom or which it was withheld.

Section 4.2 Method of Payments. The Bank may make any payment required to be made by it hereunder, unless directed otherwise by the Board, by direct electronic deposit of the amount thereof to the financial institution where the person or entity to whom or to which such payment is to be made maintains an account, or by mailing a check in the amount thereof by first class mail in a sealed envelope addressed to such person or entity to whom or to which such payment is to be made, according to the direction of the Board. If any dispute arises as to the identity or rights of persons who may be entitled to benefits hereunder, the Bank may withhold payment until such dispute is resolved by a court of competent jurisdiction or, at the discretion of the Board pursuant to written instructions.

Section 4.3 Third Party Administrator. The Board shall utilize a third party administrator to process individual participant claims. The Board will provide written notification to the Bank of the name of such administrator and any other relevant information required for the Bank to properly and timely process transfers to an omnibus account maintained by the third party administrator for payment of individual participant claims. The Bank will be responsible for the timely transfer of cash to the omnibus account based on the Method of Payments in Section 4.2. The Bank shall not have any responsibility for making individual participant claims payments.

Section 4.4 Excessive Payments. If the payment of any benefit under the Plan is determined to have been excessive or improper, and the recipient thereof fails to make repayment to the Bank or an administrator chosen by the Board of such excessive or improper payment upon the Bank's or administrator's request, the Bank shall deduct the amount of such excessive or improper payment from any other benefits thereafter payable to such person. Until repaid to the Bank or Bank's agent, the amount of said excessive or improper payment shall not be included in any report by the auditor, the Bank, or the administrator as an asset of the Plan or the Trust Fund.

## **ARTICLE V BANK POWERS AND DUTIES**

Section 5.1 Powers of the Bank Generally. The Bank has whatever powers are required to discharge its obligations and to accomplish any of the purposes of this Trust Agreement, including (but not limited to) the powers specified in the following Sections of this Article, and the powers and authority granted to the Bank under other provisions of this Trust Agreement. The enumeration of any power herein shall not be by way of limitation, but shall be cumulative and construed as full and complete power in favor of the Bank.

Section 5.2 Powers Exercisable by the Bank in Its Discretion. The Bank is authorized and empowered to exercise the following powers at its discretion in satisfaction of the duties imposed on it under this Trust Agreement:

(a) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted.

(b) To cause any investment in the Trust Fund to be registered in, or transferred into, its name as the institutional trustee or the name of its nominee or nominees, or to retain such investments unregistered in a form permitting transfer by delivery, but the books and records of the Bank shall at all times show that all such investments are part of the Trust Fund, and the Bank shall be fully responsible for any misappropriation in respect of any investment held by its nominee or held in unregistered form and shall cause the indicia of ownership to be maintained within the jurisdiction of the district courts of the United States.

(c) To deliver to the Board, or the person or persons identified by the Board, on a timely basis as required under Section 5.5, proxies and powers of attorney and related informational material, for any shares or other property held in the Trust.

Section 5.3 Powers Exercisable by the Bank Only Upon the Direction of the Board.  
The Bank shall exercise the following powers only upon the direction of the Board (or, in the case of subparagraphs (a) and (b)), a duly appointed Investment Manager who has been conferred such power by the Board):

(a) To receive, hold, invest and reinvest Trust Fund assets and income under provisions of law from time to time existing and in accordance with Article IX.

(b) To exercise or abstain from exercising any option, privilege or right attaching to any Trust Fund assets.

(c) To place securities orders, settle securities trades, hold securities in custody, deposit securities with custodians or securities clearing corporations or depositories or similar organizations, and other related activities as shall be necessary and appropriate in performing its duties under this Trust Agreement. Any indicia of ownership of any Trust Fund assets, however, shall not be maintained outside the jurisdiction of the district courts of the United States. Trades and related activities conducted through a broker shall be subject to reasonable fees and commissions established by the broker, which may be paid from the Trust Fund or netted from the proceeds of trades.

(d) To make payments from the Trust Fund for the provision of benefits in accordance with Article IV and for the payment of expenses as provided in Section 5.8.

(e) To employ suitable agents and depositaries (domestic or foreign), public accountants, brokers, custodians, ancillary trustees, appraisers, enrolled actuaries, and legal counsel as shall be reasonably necessary and appropriate to fulfill its obligations under this Trust Agreement and to comply with the lawful instructions of the Board, and to pay their reasonable expenses and compensation.

(f) To pay any income or other tax or estimated tax, charge or assessment attributable to any property or benefit out of such property or benefit in its sole discretion, or any tax on unrelated business income of the Trust, if any, out of the Trust Fund.

(g) To vote, in person or by general or limited proxy, at any election of any corporation in which the Trust Fund is invested, and similarly to exercise, personally or by a general or limited power of attorney, any right appurtenant to any investment held in the Trust Fund.

(h) To accept, compromise or otherwise settle any obligations or liability due to or from them as the Bank hereunder, including any claim that may be asserted for taxes, assessments or penalties under present or future laws, or to enforce or contest the same by appropriate legal proceedings.

Section 5.4 Title to Trust Fund. All rights, title and interest in and to the Trust Fund shall at all times be vested exclusively in the Bank or any institutional successor trustee under this Trust Agreement.

Section 5.5 General Duties and Obligations of Bank.

(a) In accordance with Article II, the Bank shall hold all property received by it and any income and gains thereupon. In accordance with this Article and Article IX, the Bank shall manage, invest and reinvest the Trust Fund following the directions of the Board or a duly appointed Investment Manager (who has been conferred such power by the Board), shall collect the income therefrom, and shall make payments or disbursements as directed by the Board.

(b) Subject to the provisions of Articles VII and X, the Bank shall comply with any directive issued by the Board to withdraw and transfer all or any part of the Trust Fund to another institutional trustee, custodian or a funding agent.

(c) The Board shall have responsibility for directing the Bank as to the voting (by proxy or in person) of any shares or other property held in the Trust. Accordingly, the Bank shall deliver to the Board (or the person or persons identified by the Board), on a timely basis, proxies, powers of attorney and related informational material that are necessary for the Board to fulfill its responsibility. The Bank may use agents to effect such delivery to the Board (or the person or persons identified by the Board). The Bank shall have no duty or obligation to cause any vote with respect to a matter in which it does not receive timely direction from the Board.

(d) The Bank shall discharge its duties in the interests of Participants and for the exclusive purpose of providing benefits to Participants and defraying reasonable expenses of administering the Trust and the Plan and shall act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in conduct of an enterprise of like character and with like aims. The Bank will be under no liability or obligation to anyone with respect to any failure of the Board to perform any of its obligations under the Plan or Trust Agreement or for any error or omission of the Board.

Section 5.6 Determination of Rights. The Bank shall have no power, authority, or duty hereunder in respect to the determination of the eligibility of any person to coverage under the Plan, or the entitlement of any person to any benefit payments under the Plan.

Section 5.7 Continuance of Plan; Availability of Funds. Neither the Board, the Bank nor Detroit assumes any contractual obligation as to the continuance of the Plan and shall not be

responsible for the adequacy of the Trust Fund to meet and discharge any liabilities under the Plan, and the Bank's obligation to make any payment shall be limited to amounts held in the Trust Fund at the time of the payment.

Section 5.8 Payment of Expenses. The Bank shall apply the assets of the Trust Fund to pay all reasonable costs, charges, and expenses (including, but not limited to, all brokerage fees and transfer tax expenses and other expenses incurred in connection with the sale or purchase of investments, all real and personal property taxes, income taxes and other taxes of any kind at any time levied or assessed under any present or future law upon, or with respect to, the Trust Fund or any property included in the Trust Fund and all legal, actuarial, accounting and financial advisory expenses) reasonably incurred by the Bank or the Board in connection with establishing, sponsoring, administering or operating the Trust or Plan. The Board shall by written certificate provided to the Bank request payment for any expenses related to the administration of the Trust and/or the Plan. Upon receipt of the written certificate, the Bank may make the payment requested by the Board. The expenses of the Bank shall constitute a lien on the Trust Fund.

Section 5.9 Bank Compensation. The Bank will apply the assets of the Trust Fund to pay its own fees in the amounts and on the dates set forth in Exhibit A. The Bank's compensation shall constitute a lien on the Trust Fund.

Section 5.10 Reliance on Written Instruments. The Bank shall be fully protected in acting upon any instrument, certificate or paper believed by it to be genuine and to be signed or presented by a duly authorized person or persons, and shall be under no duty to make any investigation or inquiry as to any statement contained in any such writing, but may accept the same as conclusive evidence of the truth and accuracy of the statements therein contained.

## ARTICLE VI BANK ACCOUNTS

Section 6.1 Records. The Bank shall maintain accurate and detailed records and accounts of all investments, receipts, disbursements, and other transactions with respect to the Trust, and all accounts, books and records relating thereto shall be open at all reasonable times to inspection and audit by the Board or such person or persons as the Board may designate.

Section 6.2 Annual Audit. The Trust Fund shall be audited annually by a firm of certified public accountants independent of the Bank, the members of the Board, and the City, and a statement of the results of such audit shall be provided to the Bank and, the Board, and the City and also made available for inspection by interested persons at the principal office of the Trust. Such audit must be completed no later than 120 days after the expiration of the fiscal year of the Trust.

Section 6.3 No Interest by Participants. In no event shall any Participant or beneficiary have any interest in any specific asset of the Trust Fund. At no time shall any account or separate fund be considered a savings account or investment or asset of any particular Participant, beneficiary, or class of Participants or beneficiaries, and no Participant or beneficiary shall have any right to any particular asset which the Board or Bank may have allocated to any account or separate fund for accounting purposes.



Section 6.4 Furnishing Written Accounts. The Bank shall file with the Board a written account setting forth a description of all securities and other property purchased and sold, and all receipts, disbursements, and other transactions effected by it during the accounting period to which the Board and the Bank have agreed, and showing the securities and other properties held, and their fair market values at such times and as of such dates as may be agreed by the Board and the Bank in writing. Such written account shall be filed with the Board within thirty (30) days after the close of each calendar quarter.

Section 6.5 Accounting Year, Cash Basis. The accounting year of the Trust shall be the calendar year. All accounts of the Bank shall be kept on a cash basis.

Section 6.6 Judicial Proceedings. If the Bank and the Board cannot agree with respect to any act or transaction reported in any statement, the Bank shall have the right to have its accounts settled by judicial proceedings in which only the Bank and the Board shall be necessary parties. No Participant shall have any right to compel an accounting, judicial or otherwise, by the Bank.

## **ARTICLE VII PROCEDURES FOR THE BANK**

Section 7.1 Removal. The Bank may be removed by the Board at any time upon thirty (30) days' advance written notice. Such removal shall be effective on the date specified in such written notice, provided that notice has been given to the Bank of the appointment of a successor institutional trustee or custodian in the manner set forth in Section 7.3 below.

Section 7.2 Resignation. The Bank may resign by filing with the Board a written resignation that shall take effect no less than ninety (90) days after the date of such filing, unless prior thereto a successor institutional trustee or custodian has been appointed by the Board and accepted the appointment. In no event may the Bank's resignation take effect before a successor institutional trustee or custodian has been appointed by the Board and such successor trustee has accepted the appointment, even if such appointment takes longer than ninety (90) days. If the Board fails to appoint a successor institutional trustee or custodian, the retiring Bank may seek the appointment of a successor entity in the manner set forth in Section 7.3.

### Section 7.3 Successor Bank.

(a) The Board may appoint a successor custodian by delivering to such successor an instrument in writing, executed by an authorized representative of the Board, appointing such successor entity, and by delivering to the removed or resigning Bank an acceptance in writing, executed by the successor so appointed. Such appointment shall take effect upon the date specified in Section 7.1 or 7.2 above, as applicable.

(b) Alternatively, the Board may appoint a successor custodian by securing from such successor an amendment to this Trust Agreement, executed by both the successor and an authorized representative of the Board, which replaces the current Bank with the successor custodian, appointing such successor custodian, and by delivering to the removed or resigning Bank an executed copy of the amendment. Such appointment shall take effect upon the date specified in the amendment.

(c) If no appointment of a successor custodian is made by the Board within a reasonable time after such resignation, removal or other event, any court of competent jurisdiction may, upon application by the retiring Bank, appoint a successor custodian after such notice to the Board and the retiring Bank, as such court may deem suitable and proper.

Section 7.4 Effect of Removal or Resignation of Bank. Upon the removal or resignation of the Bank in accordance with Section 7.1 or 7.2 above, the Bank shall be fully discharged from further duty or responsibility under this Trust Agreement to the extent permitted by law.

Section 7.5 Merger or Consolidation of the Bank. Any corporation continuing as the result of any merger or resulting from any consolidation, to which merger or consolidation the Bank is a party, or any corporation to which substantially all the business and assets of the Bank may be transferred, will be deemed to be continuing as the Bank.

## **ARTICLE VIII COMPOSITION OF AND PROCEDURES FOR THE BOARD OF TRUSTEES**

Section 8.1 Number and Appointment of Members. The Board of Trustees shall consist of two (2) Individual Trustees as voting members, who are selected as provided below.

(a) The Mayor of Detroit shall appoint one (1) voting member. The Board member selected by the Mayor to begin serving as of the Effective Date shall be Floyd Allen.

(b) The Unions shall appoint one (1) voting member. The Board member selected by the Unions to begin serving as of the Effective Date shall be Edward McNeil.

Each Board member shall acknowledge his or her appointment and acceptance of the duties and responsibilities set forth in this Trust Agreement in writing.

Section 8.2 Tie-Breaker Member. In the event that the Individual Trustees appointed under Section 8.1 are unable to reach a consensus vote on a decision, such Individual Trustees may appoint a mutually agreeable third trustee to break the tie (the "Tie-Breaker Member"). The Tie-Breaker Member shall be an independent individual, neither an employee of Detroit or any affiliated entity nor a member of any of the unions within the Unions, or any other union that represents active City employees or represented any VEBA Beneficiary. The Tie-Breaker Member shall only have voting power with respect to the specific decision for which he/she was appointed. Reasonable expenses actually incurred by the Tie-Breaker Member in the performance of his or her duties shall be reimbursed out of the Trust. The Individual Trustees may determine if the Tie-Breaker Member is entitled to a reasonable stipend for his or her services payable out of the Trust. The Tie-Breaker Member shall not be considered a Board member for purposes of any other provision of this Trust Agreement. In the event that the Board cannot reach agreement on a Tie-Breaker Member in a timely fashion, but no later than 15 days following failure to reach an agreement, the Tie-Breaker Member shall be appointed pursuant to the American Arbitration Association rules governing appointment of arbitrators in multiemployer plan deadlock arbitrations.

Section 8.3 Term of Office. Each member of the Board appointed under Section 8.1 above shall serve a period of four (4) years, or if earlier, until his or her death, incapacity to serve

hereunder, or resignation. A Board member whose term has ended due to the passage of time may be reappointed to serve an additional four (4) year term pursuant to the procedures set forth in Section 8.5 below.

Section 8.4 Resignation. A Board member may resign, and shall be fully discharged from further duty or responsibility under this Trust Agreement to the extent permitted by law, by giving at least ninety (90) days' advance written notice to the Board (and in the case of a Board member selected by the Mayor, to the Mayor, and in the case of a Board member selected by the Unions or AFSCME, to AFSCME), which notice shall state the date when such resignation shall take effect, which notice or time period may be waived by the Board.

Section 8.5 Vacancies. In the event of a vacancy, either by resignation, death, incapacity, expiration of term of office, or other reasons, the replacement Board member shall be appointed as provided below.

(a) In the event of a vacancy of the seat previously filled by the appointee of the Mayor of Detroit, the replacement Board member shall be appointed by the Mayor of Detroit.

(b) In the event of a vacancy of a seat previously filled by an appointee of the Unions, the replacement Board member shall be appointed by AFSCME.

Section 8.6 Fees and Expenses. Board members shall each be paid a stipend in the amount of \$1,200 per year (or a ratable portion of such amount for each month of the year during which they serve), which amount shall be payable with respect to a calendar year within 30 days after the close of such calendar year. Each Board member may be reimbursed for reasonable expenses properly and actually incurred in the performance of his or her duties. Compensation payable to the Board members and all reimbursed expenses shall be payable out of the Trust.

Section 8.7 Operation of the Board; Quorum. The Board shall hold regular meetings, and shall designate the time and place thereof in advance. The Board shall adopt its own rules of procedure and shall keep a record of proceedings. Each Board member shall be entitled to one vote on each question before the Board. Two (2) members shall constitute a quorum at any meeting. Except in situations requiring the appointment of a Tie-Breaker Member under Section 8.2, unanimous consent by the two (2) Individual Trustees shall be necessary for a decision by the Board. Notwithstanding the foregoing, the voting members of the Board may act by unanimous written consent in lieu of a meeting.

## **ARTICLE IX POWERS AND DUTIES OF THE BOARD OF TRUSTEES**

Section 9.1 General. The Board shall be responsible for adopting, maintaining and administering the Plan and its benefits, as well as administering the Trust and managing the Trust assets as provided herein, all consistent with and as provided for in the Side Letter Agreement. Subject to the provisions of this Trust Agreement, the Plan documents and applicable laws, the Board shall have sole, absolute and discretionary authority to adopt such rules and regulations and take all actions that it deems desirable for the administration of the Plan and Trust, and to interpret the terms of the Plan and Trust. The decisions of the Board will be final and binding on all Participants and all other parties to the maximum extent allowed by law. In performing its duties hereunder, the members of the Board shall comply with the terms of the Trust, and shall

discharge their duties for the exclusive purposes of providing benefits to participants and beneficiaries of the Plan and Trust and defraying reasonable expenses of the Plan and Trust, and with the care, skill, prudence, and diligence then prevailing that a prudent person acting in a like capacity – and familiar with such matters – would use in the conduct of an enterprise of like character and with like aims.

Section 9.2 Plan Design and Administration.

(a) Adoption of Plan. The Board shall adopt the Plan set forth in, and wholly consistent with, the Side Letter Agreement. No terms of the Plan shall be in conflict with the Side Letter Agreement, but in the event of the expiration of that agreement and no successor thereto, the Board may determine, in its discretion, the level of benefits to be provided with any existing assets of the Trust; provided, that in no event shall such terms be in conflict with Code section 501(c)(9) and the regulations promulgated thereunder. In the event of the expiration of the Side Letter Agreement and no successor thereto, the Board shall be under no obligation to design the Plan to assure that the assets of the Trust Fund are sufficient to provide benefits to all potential Participants of the Plan in subsequent years.

(b) Benefits. The Plan shall provide benefits as set forth in and consistent with the Side Letter Agreement. Benefits provided under the Plan shall be limited to those health care benefits permitted by Code Section 501(c)(9), and any Plan eligibility restrictions established by the Board shall conform with the requirements set forth in Treasury Regulation Section 1.501(c)(9)-2.

(c) Method of Providing Benefits. The expected cost of benefits under the Plan shall not exceed the amount expected to be available under the Trust.

(d) Plan Documentation. The Board shall be responsible for creating, adopting and/or executing any documents necessary to set forth the Plan's governing terms, and shall be responsible for communicating the terms of the Plan to the Eligible Retiree Members and Eligible Dependents in accordance with applicable law.

Section 9.3 Investment of the Trust. The assets of the Trust shall be invested in fixed income or like investments, including cash-ready instruments, for the purpose of preserving capital, providing liquidity, and producing income commensurate with the purposes of the Trust. The Board shall exercise its discretion over Trust assets with the same care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a similar capacity and familiar with those matters would use in the conduct of a similar enterprise with similar means, and shall have full power and authority to manage, control, invest and reinvest the money and other assets of the Trust Fund. The Bank shall comply with the proper written direction of the Board concerning those assets. The Board may employ outside advisors, including investment advisors, to advise it with regard to the investment of the assets of the Trust Fund. Any outside advisors shall acknowledge a fiduciary relationship to the Board and the Trust Fund.

Section 9.4 Appointment of Investment Managers. The Board, from time to time, may appoint one or more independent Investment Managers, pursuant to a written investment management agreement describing the powers and duties of the Investment Manager, consistent with this Trust Agreement, to direct the investment and reinvestment of all or a portion of the

Trust (hereinafter referred to as an "Investment Account"). The Board shall determine that each Investment Manager is a fiduciary to the Board and Trust with demonstrated expertise in the type of investments authorized by the Board, consistent with Section 9.3 and in satisfaction of the requirements of section 38.1133(11) of the Investment Act and, is entitled (under its investment management agreement) to direct the investment and reinvestment of the Investment Account for which it is responsible, in its sole and independent discretion and without limitation, except for any limitations which from time to time the Board determines shall modify the scope of such authority. If an Investment Manager is appointed, it shall have the authority of the Bank specified in Section 5.1 hereof with respect to the Investment Account over which it has investment discretion and the Bank's duties with respect to such Investment Account shall be limited to following the instructions of the Investment Manager. Provided that an Investment Manager is prudently selected and monitored by the Board, the Board shall have no liability (a) for the acts or omissions of such Investment Manager; (b) for following directions of such Investment Manager which are given in accordance with this Trust Agreement; or (c) for any loss of any kind which may result by reason of the manner of division of the Trust into Investment Accounts.

Section 9.5 Government Reports and Returns. The Board shall file all reports and returns that are required to be made with respect to the Trust and the Plan.

Section 9.6 Compromise or Settle Claims. The Board may compromise, settle and release claims or demands in favor of or against the Trust or the Board on such terms and conditions as the Board may deem advisable. The Board may at all times rely upon the advice of independent counsel in reaching such decisions.

Section 9.7 Appointment of Administrator. The Board may appoint one or more third parties to perform any administrative functions and to otherwise maintain census data and administer the benefits of the Plan.

Section 9.8 Employment of Assistance. The Board has the exclusive authority to employ, contract and pay for all professional services including, but not limited to, actuarial, investment, legal, accounting, medical, and any other services that the Board considers necessary for the proper operation and administration of the Plan and Trust. The powers granted to the Board in this subparagraph include complete control of the procurement process, including contracts for office space, computer hardware and software, and human resource services. In accordance with the provisions of Section 5.3 hereof, the Board may direct the Bank to pay reasonable compensation therefor from the Trust Fund. The Board may take or may refrain from taking any action in accordance with or reliance upon the opinion of counsel or such expert advisors.

Section 9.9 Reliance on Written Instruments. The Board shall be fully protected in acting upon any instrument, certificate or paper believed by them to be genuine and to be signed or presented by a duly authorized person or persons, and shall be under no duty to make any investigation or inquiry as to any statement contained in any such writing, but may accept the same as conclusive evidence of the truth and accuracy of the statements therein contained.

Section 9.10 No Individual Liability on Contracts. The Board shall not be liable personally for any debts, obligations, or undertakings contracted by them, or for the breach of any contracts. Such claims and obligations shall be paid out of the Trust; provided, however,

that neither the Board nor any of its members shall be exempt from personal liability for willful misconduct, intentional wrongdoing, breach of applicable fiduciary duty, negligence or fraud, and the Trust shall not indemnify the Board for such liabilities or to the extent that application of this sentence would violate any law.

Section 9.11 Detroit, the Unions and AFSCME Not Liable for Conduct of Board. The Board is not in its capacity as a Board, and no member of such Board shall be considered, an officer, agent, employee, or representative of Detroit, the Unions, or AFSCME. In its capacity as a Board, the Board and each of its members is a principal acting independently of Detroit, the Unions, and AFSCME, each of which shall not be liable for any act, omission, contract, obligation, liability, debt, or undertaking of the Board or its officers, agents, or representatives.

Section 9.12 Liability Insurance. The Board may obtain and keep current a policy or policies of insurance, insuring members of the Board from and against any liabilities, costs and expenses incurred by such persons as a result of any act, or omission to act, in connection with the performance of their duties, responsibilities and obligations under this Trust Agreement or the Plan. To the extent permitted by applicable law, the premiums on such policies may be paid from the Trust Fund.

Section 9.13 Reimbursement for Defense of Claims. To the extent permitted by applicable law, and not otherwise covered by liability insurance purchased by the Trust (without regard to any non-recourse rider purchased by the insured), the Board, its individual trustees, employees of the Board and persons acting on the Board's behalf pursuant to an express written delegation to the extent such written delegation provides for indemnification (each separately, the "Indemnified Party") shall be indemnified and held harmless by the Trust Fund for all reasonable costs and expenses, including without limitation attorney's fees, judgments, settlements, liabilities, fines, or penalties, incurred or suffered in defense of any claim demand, cause of action or administrative proceeding that seeks to hold the Indemnified Party personally liable for any loss to the Plan or Trust Fund or for damages suffered by any party to, or beneficiary of this Trust Agreement arising out of conduct reasonably believed to be good faith acts within the scope and powers and duties of the Indemnified Party, provided that, an independent fiduciary shall have the right to approve of the retention of any counsel whose fees would be paid by the Trust Fund, but such approval shall not be withheld unreasonably. In the event that indemnification is made by the Trust pursuant hereto, the Indemnified Party shall agree to reimburse the Trust for all fees, costs and expenses to the extent that it is determined that the Indemnified Party's acts or omissions constituted fraud, bad faith, willful misconduct, negligence, or breach of fiduciary duty, and an independent fiduciary shall take all reasonable steps to ensure reimbursement at the time the Trust Fund agrees to indemnify pursuant to this Section; provided further that in the case of a final judicial determination of negligence or breach of fiduciary duty the Indemnified Party's reimbursement obligation shall be limited to the lesser of \$50,000 or the deductible on any non-recourse commercial liability insurance policy.

## **ARTICLE X AMENDMENT, TERMINATION AND MERGER**

Section 10.1 Amendment. The Trust Agreement may be amended at any time in writing by the joint action of the City and AFSCME, provided that such amendment shall not adversely affect the exempt status of the Trust or Plan under Section 501(c)(9) of the Code. No

amendment to the Trust Agreement shall modify the responsibilities of the Bank hereunder unless the Bank has first consented to such amendment.

Furthermore, there shall be no reduction or elimination of funding for a group of Union Participants without the consent of AFSCME, the union(s) representing such group, or for a group of Non-Union Participants without the consent of the City. In addition, such amendment requires unanimous consent of the Board.

#### Section 10.2 Termination.

(a) The Trust and this Trust Agreement may be terminated at any time in writing by joint action of the City and AFSCME. Upon termination of this Trust Agreement, the assets of the Trust Fund shall be paid out at the direction of the Board in the following order of priority: (i) the payment of reasonable and necessary administrative expenses (including taxes); (ii) the payment of benefits to Participants entitled to payments for claims arising prior to such termination; and (iii) upon satisfaction of all liabilities to existing Participants, either directly or through the purchase of insurance, to provide life, sick accident or other permissible benefits in accordance with Code section 501(c)(9) and the rules and regulations promulgated thereunder; provided that any benefits purchased or provided under this clause (iii) shall be funded and offer benefits on a pro-rata basis for Union Participants and Non-Union Participants based on the number of Participants in such group as compared to the total number of Participants on the date of termination. Neither Detroit nor any member of the Board shall have any beneficial interest in the Trust Fund, except to the extent an Individual Trustee is also a Participant in the Plan. Any determination by the Board or an administrator to distribute assets of the Trust upon termination to an Individual Trustee who is also a Participant must have the written concurrence of the Bank. The Trust Fund shall remain in existence until all assets have been distributed.

(b) Upon termination, the Bank and the Board shall continue to have all of the powers provided in this Trust Agreement as are necessary or desirable for the orderly liquidation and distribution of the Trust Fund in accordance with the provisions hereof.

Section 10.3 Merger or Transfer of Assets and/or Liabilities. To the extent permitted by Code section 501(c)(9) and other applicable law, the City and AFSCME jointly may cause the Trust to be merged with another trust or jointly may cause some or all of the assets and/or liabilities of the Trust Fund to be transferred directly to another trust for the purpose of providing health or welfare benefits to some or all of the Participants on such terms and conditions as the City and AFSCME jointly may determine.

### ARTICLE XI MISCELLANEOUS

Section 11.1 Rights in Trust Fund. No Participant or other person shall have any right, title or interest in the Trust Fund or any legal or equitable right against the Bank, the Board, or Detroit, except as may be otherwise expressly provided in the Plan or in this Trust Agreement.

Section 11.2 Non-Alienation. Except to the extent required by applicable law, the rights or interest of any Participant to any benefits or future payments hereunder or under the provisions of the Plan shall not be subject to attachment or garnishment or other legal process by any creditor of any such Participant, nor shall any such Participant have any right to alienate,

anticipate, commute, pledge, encumber or assign any of the benefits or payments which he may expect to receive, contingent or otherwise, under this Trust Agreement.

Section 11.3 Controlling Laws. The Trust shall be construed and the terms hereof applied according to the laws of the state of Michigan to the extent not superseded by federal law.

Section 11.4 Counterparts. This Trust Agreement may be executed in any number of counterparts, each of which shall be considered as an original.

Section 11.5 Headings. The headings and subheadings of this Trust Agreement are for convenience of reference only and shall have no substantive effect on the provisions of this Trust Agreement.

Section 11.6 Notices. All notices, requests, demands and other communications under this Trust Agreement shall be in writing and shall be deemed to have been duly given (a) on the date of receipt if served personally or by confirmed facsimile or other similar communication; (b) on the first business day after sending if sent for guaranteed next day delivery by Federal Express or other next-day courier service; or (c) on the fourth business day after mailing if mailed to the party or parties to whom notice is to be given by registered or certified mail, return receipt requested, postage prepaid, and properly addressed as follows:

If to the Bank:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

If to the Board:

Edward McNeil  
600 W. Lafayette, Suite 500  
Detroit, MI 48226

Floyd E. Allen  
2500 Fisher Building  
3011 West Grand Boulevard  
Detroit, MI 48202

Richard G. Mack, Jr.  
600 West Lafayette, 4<sup>th</sup> Floor  
Detroit, MI 48226

If to the Union:

AFSCME Michigan Council 25  
600 W. Lafayette, Ste. 500



Detroit, MI 48223

IN WITNESS WHEREOF, and as evidence of the establishment of the Trust created hereunder, the parties hereto have caused this instrument to be executed as of the date above first written.

**BANK**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**CITY OF DETROIT**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**INDIVIDUAL TRUSTEES**

By: Floyd Allen  
Floyd Allen  
Date: Oct 7, 16

By: Edward McNeil  
Edward McNeil  
Date: 10-18-16

**EXHIBIT A**  
**Bank Compensation**