

CITY OF AURORA RETIREE HEALTH INSURANCE TRUST AGREEMENT

THIS TRUST AGREEMENT is made and entered into effective as of January 1, 2007 by and between the CITY OF AURORA, Kane, DuPage, Kendall and Will Counties, Illinois (hereinafter called the "City") and the Board of Trustees of the City of Aurora Retiree Health Insurance Trust Agreement (hereinafter referred to collectively as the "Trustees.").

WITNESSETH:

WHEREAS, the City has heretofore adopted the City of Aurora Comprehensive Medical Plan, amended effective as of January 1, 2007, and as may be subsequently amended, an insured medical plan the purpose of which is to provide medical benefits for those retired employees of the City and their eligible dependents covered by the said Comprehensive Medical Plan who are in need of medical care and who meet the service and other requirements described in the said City of Aurora Comprehensive Medical Plan; and

WHEREAS, the City has heretofore adopted the City of Aurora Comprehensive Dental Plan, amended effective as of January 1, 2007 and as may be subsequently amended, an insured dental plan the purpose of which is to provide dental benefits for those retired employees of the City and their eligible dependents covered by the said City of Aurora Comprehensive Dental Plan who are in need of dental care and who meet the service and other requirements described in the said City of Aurora Comprehensive Dental Plan; and

WHEREAS, the City annually determines the required amounts of employee contributions and other matters relating to the City of Aurora Comprehensive Medical

Plan and the said City of Aurora Comprehensive Dental Plan (hereinafter referred to collectively as the "Plan"); and

WHEREAS, the City's Assistant Director of Human Resources for Benefits Administration (hereinafter called the "Plan Administrator") has been appointed to administer the Plan and the claims thereunder; and

WHEREAS, the City funds which will be contributed to the Trustees, as and when received by the Trustees, will constitute a trust fund (hereinafter called the "Trust Fund") to be held for the benefit of those retired employees and their eligible dependents under and in accordance with the Plan; and

WHEREAS, the City desires the Trustees to hold and administer the Trust Fund, and the Trustees are willing to hold and administer such Trust Fund, pursuant to the terms of this Trust Agreement;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, the City and the Trustees do hereby covenant and agree as follows:

ARTICLE I - BOARD OF TRUSTEES

1.1 Board Created. A Board of five (5) members shall constitute the Board of Trustees. The Trustees shall administer the City of Aurora Retiree Health Insurance Trust Agreement.

Three (3) individuals shall be ex officio members of the Board of Trustees, namely, the City's Chief Financial Officer/City Treasurer, the City's Director of Human Resources and the City's Assistant Director of Finance for Accounting and Financial Reporting.

The fourth and fifth members of the Board of Trustees shall be elected exclusively from those retired employees of the city who are actively participating in the City's Retiree Health Insurance Plan. All beneficiaries of the Plan who are of legal age and currently receiving health care benefits under the said Plan may vote for the elected members of the Board of Trustees.

The election for the fourth and fifth members of the Board of Trustees shall be held biennially on the third Monday in January at such place or places in the City and under the Australian ballot system and such other regulations as shall be prescribed by the City, provided, however, that the first election for the fourth and fifth members of the Board of Trustees may be held any time prior to February 28, 2007 as designated in writing by the City.

The beneficiaries of the Plan who are eligible to vote for the elected members of the Board of Trustees shall be entitled to vote only for the elected members of the Board of Trustees. No such beneficiary shall be entitled to cast more than one vote for each candidate for whom such beneficiary is eligible to vote.

The City shall canvass the ballots and declare which persons have been elected and for what term or terms respectively. In case of a tie vote between two or more candidates, the City shall determine by lot which candidate or candidates have been elected and for what term or terms respectively.

One of the members of the Board of Trustees elected in 2007 shall serve for a term of two (2) years, and the other elected member shall serve for a term of

four (4) years; and their successors shall serve for a term of four (4) years or until their successors are elected or appointed (in accord with the following paragraph).

In the event that no retired employee of the City who is actively participating in the City's Retiree Health Insurance Plan is willing to serve on the Board of Trustees, then the Mayor shall appoint one individual to the Board of Trustees in lieu of any retiree who would otherwise be elected.

Upon the death, resignation, removal, vacancy or inability to act of any elected member of the Board of Trustees, his or her successor shall be elected for the unexpired term at a special election to be called by the City and conducted in the same manner as the regular biennial election.

Each Trustee shall be entitled to vote on any and all actions before the Board of Trustees. No decision or action shall be taken by the Board of Trustees without authorization thereof by the vote of a majority of a quorum of the Board of Trustees. No decision or action of the Board of Trustees shall become effective unless presented and so approved at a regular or duly called special meeting of the Board of Trustees.

For all purposes of this Trust Agreement, the presence of four (4) of the members of the Board of Trustees then holding office shall constitute a quorum to do business, provided, however, in the absence of a quorum a smaller number may adjourn from time to time.

Notwithstanding anything to the contrary, the City is empowered to remove any Trustee from time to time as the City deems necessary for the proper administration of the Retiree Health Insurance Trust Fund Agreement as set forth in Section 7.2 below.

1.2 Board Meetings and Officers. The Board of Trustees shall hold annually regular quarterly meetings not later than sixty five (65) days after the end of each calendar quarter, and special meetings as called by the President. At least five (5) days' notice of each meeting shall be given to each Trustee. All meetings of the Board of Trustees shall be open to the public and shall be held in the offices of the Board of Trustees or in any other place specifically designated in the notice of any meeting.

At its first quarterly meeting each year, the Board of Trustees shall elect from its members a President, Vice President, Secretary and Assistant Secretary to serve for one (1) year and until their respective successors are elected and qualified. The President and the Secretary shall be selected from the ex officio members of the Board of Trustees.

The Vice President shall perform the duties of the President during any vacancy in that office, or during the President's absence, or if the President by reason of illness or other causes is unable to perform the duties of office.

The Assistant Secretary shall act for the Secretary whenever necessary to discharge the functions of such office.

1.3 **Electronic Attendance at Board Meetings.** Any member of the Board of Trustees may attend any quarterly or special meeting via electronic means (such as by telephone, video or internet connection) provided that such electronic attendance complies with all applicable laws and also with the City's policy for electronic attendance at such Board of Trustees meetings, as amended from time to time.

ARTICLE II - CONTRIBUTIONS

2.1 **Receipt of Contributions.** The Trustees shall receive any contributions paid to the Trustees in cash or in the form of such other property as they may from time to time deem acceptable and which shall have been delivered to them. All contributions so received, together with the income therefrom and any other increment thereon shall be held, invested, reinvested and administered by the Trustees pursuant to the terms of this Trust Agreement. The Trustees shall not be responsible for the calculation or collection of any contribution under the Plan, but shall be responsible only for property received by them pursuant to this Trust Agreement.

2.2 **Compliance with Laws.** The Plan, this Trust Agreement and the Trust Fund thereunder are intended to meet all applicable requirements of the Internal Revenue Code of 1986 and the Illinois Municipal Code, as the same may be amended from time to time.

2.3 **Dedication of Assets to Public Purpose.** The assets of the Plan, including but not limited to the trust assets of the Trust Fund, are assets of the City of Aurora that are dedicated exclusively to the public and municipal purpose and function of providing medical benefits for retired employees of the City of Aurora and their eligible dependents under and in

accordance with the terms and conditions of the Plan. As such, the assets of the Plan, including but not limited to the trust assets of the Trust Fund, are legally protected from the claims of creditors of the City and also from the claims of creditors of the Plan Administrator.

ARTICLE III PAYMENTS FROM TRUST FUND

3.1 **Payments Directed by Plan Administrator.** The Trustees shall from time to time at the direction of the Plan Administrator make payments out of the Trust Fund to the Plan Administrator in such amounts and for such purposes as may be specified in the directions of the Plan Administrator. To the extent permitted by law, the Trustees shall be under no liability for any payment made pursuant to the direction of the Plan Administrator. Any direction of the Plan Administrator shall constitute a certification that the distribution or payment so directed is one which the Plan Administrator is authorized to direct.

3.2 **Impossibility of Diversion.** It shall be impossible by operation of the Plan or this Trust; by termination, revocation or amendment of either the Plan or the Trust; by the happening of any contingency; by collateral arrangement or by any other means; for any part of the trust assets or trust income, or for any funds contributed to the Trust Agreement, to be used for or diverted to purposes other than the exclusive benefit of the retired employees and their dependents covered under the Plan, except that payment of taxes and administration expenses may be made from the Trust Fund as provided for herein.

ARTICLE IV - INVESTMENTS

4.1 **General.** The Trustees shall invest and reinvest the principal and income of the Trust Fund and keep the Trust Fund invested, without distinction between principal and income, in such securities or in such property, tangible or intangible, as the Trustees shall deem advisable, including but not limited to insurance policies, stocks, common or preferred, trust and participation

certificates, interests in investment companies whether so-called "open-end mutual funds" or "closed-end mutual funds", leaseholds, bonds, or notes and mortgages, and other evidences of indebtedness or ownership, Treasury Bills and other forms of United States government obligations, and federally insured savings accounts or certificates of deposit in banks or savings and loan associations bearing a reasonable rate of interest, irrespective of whether such securities or such property shall be of the character authorized by Illinois law from time to time for trust investments; provided however, that investments shall be so diversified as to minimize the risk of large losses unless under the circumstances in the sole judgment of the Trustees it is clearly prudent not to do so. Except as hereinafter expressly authorized, the Trustees are prohibited from selling or purchasing stock options or call option.

4.2 Establishment of Funding Policy. The City's Chief Financial Officer/City Treasurer (hereinafter referred to as the "Finance Director/Treasurer") shall establish and carry out a funding policy consistent with the purposes of the Plan and the requirements of applicable law, as may be appropriate from time to time. As part of such funding policy, the Finance Director/Treasurer shall from time to time request the Trustees to exercise their investment discretion so as to provide sufficient cash assets in an amount determined by the Plan Administrator under the funding policy then in effect, as necessary to meet the liquidity requirements for the administration of the Plan.

4.3 Trustees' Adherence to Funding Policy. The discretion of the Trustees in investing and reinvesting the principal and income of the Trust Fund shall be subject to the funding policy, and any changes thereof as the Finance Director/Treasurer may adopt from time to time and communicate to the Trustees in writing. It shall be the duty of the Trustees to act strictly in accordance with such funding policy and any changes therein as so communicated to the Trustees from time to time in writing.

ARTICLE V - POWERS OF TRUSTEES

5.1 **Powers.** The Trustees, in addition to all powers and authorities under common law, statutory authority, and other provisions of this Trust Agreement, shall have the following powers and authorities, to be exercised in the Trustees' sole discretion.

- a. To purchase, or subscribe for, any securities or other property and to retain the same in trust;
- b. To sell, exchange, convey, transfer, grant options to purchase, or otherwise dispose of any securities or other property held by the Trustees, by private contract or at public auction, and any sale may be made for cash or upon credit, or partly for cash and partly upon credit. No person dealing with the Trustees shall be bound to see to the application of the purchase money or to inquire into the validity, expediency, or propriety of any such sale or other disposition.
- c. To vote upon any stocks, bonds, or other securities; to give general or special proxies or powers of attorney with or without power of substitution; to exercise any conversion privileges, subscription rights, or other options, and to make any payments incidental thereto; to oppose, or to consent to, or otherwise participate in, corporate reorganizations or other changes affecting corporate securities, and to delegate discretionary powers, and to pay any assessments or charges in connection therewith; and generally to exercise any of the powers of an owner with respect to stock, bonds, securities, or other property held as part of the Trust Fund;
- d. To cause any securities or other property held as part of the Trust Fund to be registered in the Trustees' own names or in the name of one or more of

the Trustees' nominees, and to hold any investments in bearer form, but the books and records of the Trustees shall at all times show that all such investments are part of the Trust Fund;

- e. To keep such portion of the Trust Fund in cash or cash balances as the Trustees may from time to time deem to be in the best interest of the Trust created hereby, without liability for interest thereon;
- f. To accept and retain for such time as the Trustees may deem advisable any securities or other property received or acquired by the Trustees hereunder, whether or not such securities or other property would normally be purchased as investments hereunder;
- g. 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;
- h. To settle, compromise, or submit to arbitration any claims, debts or damages to or owing to or from the Trust Fund; to commence or defend suits or legal or administrative proceedings, and to represent the Trust Fund in all suits and legal and administrative proceedings;
- i. To employ suitable agents and counsel, including, but not limited to, investment consultants and investment managers, and to pay their reasonable expenses and compensation, and such agents or counsel may or may not be agents or counsel for the City;

- j. To monitor the performance of trust assets, and to instruct investment managers and investment management consultants and to make changes as appropriate.
- k. To do all such acts, take all such proceedings, and exercise all such rights and privileges, although not specifically mentioned herein, as the Trustees may deem necessary to administer the Trust Fund and to carry out the purpose of this Trust Agreement and of the Plan.

5.2 More Than One Trustee. So long as there shall be more than one Trustee, they shall act by a majority of their number but may authorize any one or more of them to sign papers and instruments on their behalf.

5.3 Compensation and Expenses. The Trustees and the Officers shall serve without compensation, but shall be reimbursed for any reasonable expenses incurred in attending meetings of the Board of Trustees and in performing their duties on behalf of the Trust, including but not limited to reasonable counsel and accounting fees, properly and actually incurred by the Trustees in the administration of the Trust Fund. Such expenses shall be paid from the Trust Fund. All taxes of any kind and all kinds whatsoever that may be levied or assessed under existing or future laws upon or in respect of the Trust Fund, or the income thereof, shall be paid by the Trustees from the Trust Fund.

5.4 Allocation and Delegation of Fiduciary Duties. The Trustees may allocate duties among themselves and designate others as fiduciaries to carry out specific fiduciary activities under this Trust Agreement, other than the management of the assets of the Trust Fund. Each investment consultant and investment manager appointed by the Trustees must acknowledge in writing that he or she is a fiduciary with respect to the City of Aurora Retiree Health Insurance Trust Agreement because he or she has power to manage, acquire or dispose of

assets of the Trust Fund. The investment consultant and investment manager must be a person, firm or corporation registered as an investment adviser under the federal Investment Advisers Act of 1940 or a bank or insurance company qualified to perform services in the State of Illinois.

5.5 No Powers or Duties with respect to the Plan. It is the responsibility of the City and the City's Assistant Director of Human Resources for Benefits Administration to administer the City's Plan which provides retiree health insurance benefits. Consequently, the Trustees have no power or authority to administer the Plan, to interpret or construe the terms of the Plan, to change benefit levels, establish required contribution amounts, adjudicate claims or to determine any questions arising in connection with the administration, interpretation or application of the Plan. Any such determination shall be made solely and exclusively by the City and/or the City's Assistant Director of Human Resources for Benefits Administration, and any such determination by the City and/or the City's Assistant Director of Human Resources for Benefits Administration shall be conclusive and binding upon the Trustees.

ARTICLE VI - TRUSTEES' DUTIES

6.1 General. The Trustees shall, consistent with the funding policy and method determined by the City's Chief Financial Officer/City Treasurer, invest, manage and control the Trust Fund and, at the direction of the Plan Administrator, shall pay benefits required under the Plan to participant entitled thereto or, as appropriate, to their beneficiaries. The Trustees shall discharge their duties under this Trust Agreement solely in the interests of the retired employees covered under the Plan and their dependents and for the exclusive purpose of providing benefits to such persons and defraying reasonable expenses of administering the Trust Agreement, with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, and by diversifying the investments of the Trust

Fund so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so, all in accordance with the provisions of this Trust Agreement, as this Trust Agreement may be from time to time amended; but the duties and obligations of the Trustees as such shall be limited to those expressly imposed upon the Trustees by this Trust Agreement notwithstanding any reference herein to the Plan, or the provisions thereof, it being hereby expressly agreed that the Trustees are not a party to the Plan.

6.2 Consultation and Indemnification. The Trustees may consult with counsel and the Trustees shall not be deemed imprudent by reason of its taking or refraining from taking any action in accordance with the opinion of counsel. The City agrees, to the extent permitted by law, to indemnify and hold the Trustees harmless from and against any liability that the Trustees may incur in the administration of the Trust Fund, unless arising from the Trustees' own willful breach of the provisions of this Trust Agreement. The Trustees shall not be required to give any bond or any other security for the faithful performance of their duties under this Trust Agreement, except such as may be required by a law which prohibits the waiver thereof.

6.3 Accounts and Records. The Trustees shall keep accurate and detailed accounts of all investments, receipts, disbursements and other transactions hereunder and all such accounts and other records relating thereto shall be open to inspection and audit at all reasonable times by any person designated by the Finance Director/Treasurer, by the Plan Administrator or by the City. The Trustees shall furnish to a designated representative of the City a written statement of account within 180 days after the end of the Plan's December 31st year end, setting forth all receipts and disbursements, additions, deductions, assets, liabilities and net assets of the Trust Fund in accordance with Statement No. 43 of the Governmental Accounting Standards Board, as such Statement No. 43 may be amended from time to time. The City's designated representative shall acknowledge receipt thereof in writing and advise the Trustees of his approval or disapproval thereof. Failure by the City's designated representative to disapprove any such statement of account within thirty (30) days after receipt thereof shall be deemed approval thereof. The approval or deemed approval by the City's designated representative of the

statement of account shall serve to release and discharge the Trustees from any liability or accountability to the City as respects the propriety of the Trustees' acts or transactions shown in the Trustees' statement of account, except with respect to any acts or transactions as to which the City's designated representative shall file written objections with the Trustees within the ninety (90) day time period prescribed above.

6.4 Limitation on Trustees' Liability. The Plan Administrator shall administer the Plan as provided therein, and the Trustees shall not be responsible in any respect for administering the Plan nor shall the Trustees be responsible for the adequacy of the City's contributions to the Trust Fund to meet or discharge any payments or liabilities under the Plan. The Trustees shall be entitled conclusively to rely upon any notice, instruction, direction or other communication of the Plan Administrator.

ARTICLE VII. - RESIGNATION, REMOVAL AND SUCCESSION OF TRUSTEE

7.1 Resignation. A Trustee may resign his or her position as Trustee (without resigning his or her employment with the City) at any time by giving ninety (90) days' notice in writing to the City and the other Trustee(s).

7.2 Removal. The Mayor of the City, with the approval of the City Council, may remove a Trustee at any time in a manner generally similar to that provided in Section 3.1-35-10 of the Illinois Municipal Code (65 ILCS 5/ 3.1-35-10).

7.3 Successor Trustees. Upon the resignation or removal of an ex officio Trustee, the Mayor, with the approval of the City Council, shall appoint a successor trustee who shall have the same powers and duties as those conferred upon the resigning or removed Trustee hereunder. Upon acceptance of such appointment by the successor trustee, the resigning or removed Trustee shall assign, transfer and pay over to such successor trustee the funds and properties then constituting the Trust Fund. The Trustees are authorized to pay or reserve for payment any expenses of the resigned or removed Trustee upon appropriate proof thereof.

7.4 **Report by Trustees.** Within 60 days after the resignation or removal of a Trustee, the remaining Trustees may furnish to a designated representative of the City a written statement of account with respect to the portion of the year for which the removed or resigned Trustee served. The City's designated representative forthwith upon his receipt of such statement of account, shall acknowledge receipt thereof in writing and advise the remaining Trustees of his approval or disapproval thereof. Failure by the City's designated representative to disapprove any such statement of account within thirty (30) days after his receipt thereof shall be deemed approval thereof. The approval or deemed approval of the statement of account by the City's designated representative shall serve to release and discharge the remaining Trustees from any liability or accountability to the City as respects the propriety of the Trustees' acts or transactions shown in the statement of account, except with respect to any acts or transactions as to which the City's designated representative shall file written objections with the Trustees within the ninety (90) day time period prescribed.

7.5 **Waiver of Notice.** In the event of any resignation or removal of a Trustee, the remaining Trustees and the City may in writing waive any notice of resignation or removal as may be provided hereunder.

ARTICLE VIII - AMENDMENT AND TERMINATION OF TRUST AGREEMENT

8.1 **Amendment.** Any or all of the provisions of this Trust Agreement may be amended at any time and from time to time, in whole or in part, by an instrument in writing. However, no such amendment shall authorize or permit any part of the Trust Fund (other than such part as is required to pay taxes and administration expenses) to be used for or diverted to purposes other than for the exclusive benefit of the retired employees and their dependents; no such amendment shall cause or permit any portion of the Trust Fund to revert to or become the property of the City prior to complete satisfaction of all liabilities of the Plan with respect to

benefits to retired employees and their eligible dependents; and no such amendment which affects the rights or duties of the Trustees may be made without the Trustees' written consent.

8.2 Termination This Trust Agreement may be terminated by the City at any time, and upon such termination, or upon the dissolution or liquidation of the Trust Agreement by the City, the assets of the Trust Fund shall be applied and distributed as follows:

- (1) First, all liabilities and obligations of the Trust Fund for medical benefits under the Plan for eligible retired employees of the City and their eligible dependents covered by the Plan shall be paid, satisfied and discharged, or adequate provision shall be made therefor;
- (2) Second, all taxes, administrative expenses and other obligations of the Trust Fund shall be paid, satisfied and discharged, or adequate provision shall be made therefor; and
- (3) Any remaining assets of the Trust Fund shall be distributed to the City for municipal purposes.

ARTICLE IX - GENERAL

9.1 Source of Funds. The Trust Fund shall constitute the primary source of funds which may be used to pay the medical benefits awarded under the Plan, and the City shall not be liable in any way or in any manner for the payment of any such medical benefits to the extent that monies are available from the Trust Fund.

9.2 Limited Effect of Plan and Trust Agreement. Neither the establishment of the Plan nor this Trust Agreement nor any modification thereof, nor the creation of any fund or account, nor the payment of any medical benefits, shall be construed as giving to any person

covered under the Plan or other person any legal or equitable right against the Trustees, the City, or any officer or employee thereof, except as may otherwise be specifically provided in the Plan or in this Trust Agreement. Under no circumstances shall the terms of employment of any employee be modified or in any way affected by the Plan or this Trust Agreement.

9.3 Protective Clause. Neither the City, the Plan Administrator, nor the Trustees shall be responsible for the validity of any contract of insurance issued in connection with the Plan or this Trust Agreement or for the failure on the part of the insurer to make payments provided by such contract, or for the action of any person which may delay payment or render an insurance contract null and void or unenforceable in whole or in part.

9.4 Construction of Trust Agreement. This Trust Agreement shall be construed and enforced according to the laws of Illinois and all provisions hereof shall be administered according to the laws of such State. If any provisions of this Trust Agreement shall be held illegal or invalid for any reason, such determination shall not affect the remaining provisions of the Trust Agreement.

9.5 Gender and Number. Whenever any words are used herein in the masculine, feminine or neuter, they shall be construed as though they were also used in another gender in all cases where they would so apply, and whenever any words are used herein the singular or plural form, they shall be construed as though they were also used in the other form in all cases where they would so apply.

9.6 Headings. The headings and subheadings of this Trust Agreement have been inserted for convenience of reference and are to be ignored in any construction of the provisions hereof.

IN WITNESS WHEREOF, this Trust Agreement has been executed on the day and year first above written.

CITY OF AURORA
By Thomas Weiser
Its Mayor

ATTEST:

Cheryl M. Vonhoff

BOARD OF TRUSTEES,

CITY OF AURORA

RETIREE HEALTH INSURANCE TRUST FUND:

Bryan W. Casuto
Jude B. Read
Byron A. Sauer
Steph W. Weismann
Joyce L. Hammond