

PEB Trust of Texas

PEB Trust Agreement





ARTICLE I

DEFINITIONS

"Adoption Agreement" shall have the meaning given to such term in Section 2.4.

"Advisory Committee" means the Committee appointed by the Employers to coordinate administrative and investment advisory services to the Employers and the Trustee.

"Agreement for Administrative Services" shall mean the agreement executed between the Employer and the Trustee which authorizes the Trustee to perform the specific duties of administering the Government Account of the Employer.

"Assets" shall mean all contributions and transfers of assets received by a Government Account on behalf of an Employer, together with the income and earnings from such contributions and transfers and any increments accruing to them.

"Code" shall mean the Internal Revenue Code of 1986 or its successor as amended from time to time.

"Effective Date" shall mean, with respect to each Employer, the date on which the Trustee received Plan Assets to be held in trust hereunder.

"Eligible Dependent" shall mean the spouse or dependent of an Eligible Employee who is entitled to post-employment health care benefits pursuant to any statute or ordinance or the Employer's plan, policies and/or applicable collective bargaining agreements.

"Eligible Employee" shall mean an active employee or retired employee of an Employer who is entitled to post-employment health care benefits pursuant to any statute or ordinance or the Employer's plan, policies and/or applicable collective bargaining agreements.

"Employer" shall mean a state or political subdivision thereof or an agency or instrumentality of a state or political subdivision that adopts the provisions of this Agreement, provided that such Employer's income is excludable from gross income under Section 115(1) of the Code. In no case may an organization become a participating employer in the PEB Trust unless it is a state, a political sub-division of a state, or an entity the income of which is excluded from gross income under Section 115 of the Code.

"GASB" shall mean the Governmental Accounting Standards Board or any successor thereof.



“Governmental Employees’ Post-Retirement Health Plan Account” or **“Government Account”** shall mean the legally separate account that is established for each Employer when it adopts the PEB Trust by executing an Adoption Agreement.

“OPEB” or **“Other Post-Employment Benefits”** shall mean benefits other than pension benefits, such as medical, dental, vision, life insurance, long-term care and other similar health benefits provided to retirees and excludable from the retirees’ gross incomes under Section 79,105 or similar provisions of the Code.

“OPEB Obligation” shall mean an Employer's obligation to provide post- employment health care and welfare benefits to its eligible employees as specified in such Employer's plan, policies and/or applicable collective bargaining agreements.

“PEB Trust Agreement” or **“Agreement”** shall mean this Trust Agreement which creates a trust for the purpose of commingling the assets of the Government Accounts established for each Adopting Employer.

“PEB Trust Effective Date” shall mean January 1, 2008.

“Plan” shall mean any post-retirement health care plan, adopted by an Employer as a separate plan for that Employer.

“Plan Administrator” shall mean the person or persons, including any individual designated by position of employment at the Employer, to act on its behalf in all matters relating to the Employer's participation in the PEB Trust and Government Account.

“Pooled Account” shall mean an account, established for record keeping purposes only, to commingle the Assets of the Government Account.

“Trustee” shall mean the entity appointed as trustee of the PEB Trust and the Government Accounts established pursuant to the provisions of this Agreement.

ARTICLE II

THE TRUST

2.1 Pooled Trust

The post-employee benefits trust, or PEB Trust, is a multiple employer pooled account trust arrangement established to provide economies of scale and efficiency of administration to governments that adopt it to hold and invest the assets used to fund their respective OPEB Obligations.



2.2 Purpose of PEB Trust

The PEB Trust is established 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 the Regulations issued thereunder (if any) and as a tax-exempt trust under the provisions of the state's statutory provisions applicable to each Employer. This Agreement shall be construed and the PEB Trust shall be administered in a manner consistent with such intention. The fundamental purpose of the PEB Trust is to fund post-employment benefits (other than pension benefits), such as medical, dental, vision, life insurance, long-term care and similar health benefits, offered by the Employer to its employees as specified in each Employer's applicable statute, ordinance, policies and/or collective bargaining agreements. It is intended that the Assets accumulated under the PEB Trust will reduce the Employer's OPEB obligations as determined by GASB.

2.3 Date of Adoption

The date as of which each Employer adopts the PEB Trust shall be the "Effective Date" of the PEB Trust Agreement as to that Employer.

2.4 Employers

An Employer may adopt the PEB Trust Agreement only if such Employer's income is excluded from Federal Income tax under Section 115 of the Code. Adoption must be accomplished by action of its governing body in writing accepted by the Trustee, executing the attached adoption agreement for the PEB Trust ("**Adoption Agreement**") and an Agreement for Administrative Services. Such adopting Employer shall then become an Employer under the PEB Trust. Each Employer shall furnish the Trustee with the following documents to support its adoption of the PEB Trust:

- (a) a certified copy of the resolution of the governing body of the Employer authorizing the adoption of the PEB Trust Agreement and the appointment of an individual or individuals designated by position of employment at the Employer to act on its behalf in all matters relating to the Employer's participation in this PEB Trust ("**Plan Administrator**"), including any selection or ratification of the Advisory Committee, as may be required from time to time;
- (b) an original of the Adoption Agreement executed by the Plan Administrator or other duly authorized employee of the Employer;
- (c) an original of the Agreement for Administrative Services with the Trustee executed by the Plan Administrator or other duly authorized representative of the Employer;
- (d) a copy of any plan document of each Plan that is to be funded pursuant to this Agreement;



- (e) a copy of any document in which the Employer or Plan Administrator has appointed an investment advisor and described the authority of the investment advisor;
- (f) an address notice; and
- (g) such other documents as the Trustee may reasonably request, including evidence that the Employer's income is excludable from Federal Income taxes under Section 115 of the Code.

2.5 Government Account

An Employer that adopts the PEB Trust Agreement, as provided in Section 2.4, shall be deemed to have adopted a legally separate and individual Government Account whose provisions are identical to those of this Agreement. The Assets of a Government Account shall only be available to pay post-employment health care and welfare benefits of Eligible Employees of the Employer that created such Account. The Account is created for the purpose of receiving contributions made to fund the adopting Employer's OPEB Obligation; accumulating, managing and investing those contributions; and providing payments to health care providers (or reimbursing an Employer that has made payments to health care providers) on account of each Employer's OPEB Obligation. No separate accounts shall be established for individual Eligible Employees or Eligible Dependents.

2.6 Assets of Government Account

The Assets of each Government Account shall consist of all contributions and transfers received by the Account on behalf of the Employer, together with the income and earnings from such contributions and transfers, and any other increments accruing to them, net of any investment losses, benefits, expenses or other costs. All contributions or transfers shall be received by the Trustee in cash or in other property acceptable to the Trustee. The Trustee shall manage and administer the Assets of the Government Account without distinction between principal and income. The Trustee shall have no duty to compute any amount to be transferred or paid to the Trust by the Employer and the Trustee shall not be responsible for the collection of any contributions or transfers to any Government Account.

2.7 Commingling for Investment and Administration

The Assets of each Government Account may be commingled by the Trustee for investment and administrative purposes, to provide economies of scale and efficiency of administration to the Government Accounts. The responsibility for Plan level accounting within these Pooled Account(s) shall be that of the Trustee.



2.8 Trustee Accounting

The Trustee shall be responsible only for maintaining records and maintaining accounts for the aggregate assets of the PEB Trust and for each Government Account, based upon the accounts). Each Employer shall have a right to cause an audit of the records of the PEB Trust and each Government Account at any reasonable time.

2.9 No Diversion of Assets

The Assets in each Government Account shall be held in trust and prudently invested for the exclusive purpose of providing post-employment health care and welfare benefits to the Eligible Employees of the Employer that created the Government Account and defraying the reasonable administrative and actuarial expenses of such Government Account. Under no circumstances may the Assets in one Account be used for or diverted to, any other purpose, including, but not limited to, the satisfaction of any other Employer's OPEB Obligation.

2.10 Nature of Trust

Neither the full faith and credit nor the taxing power of any Employer is pledged to the distribution of benefits hereunder. Except for contributions and other amounts hereunder, no other amounts are pledged to the distribution of benefits hereunder. Distributions of benefits are neither general nor special obligations of any Employer, but are payable solely from the Assets of each Government Account, as more fully described herein. No employee of any Employer or dependent of any employee may compel the exercise of the taxing power by any Employer.

Distributions of Assets under a Government Account are not debts of any Employer 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 Employer's property, or upon any Employer's income, receipts, or revenues, except amounts in the Accounts which are, under the terms of each Plan and this Trust set aside for distributions. Neither the members of the legislative body of any Employer nor its officers, employees, agents or volunteers are liable hereunder.

ARTICLE III

ADMINISTRATIVE MATTERS

3.1 Appointment of Trustee

The Advisory Committee by vote of a majority of its members may appoint a bank, trust company, retirement board, insurer, committee or other entity as permitted by law, to serve as the successor Trustee of this PEB Trust. Such action must be in writing. Upon the written acceptance of such entity it shall become the Trustee of the PEB Trust and



each Government Account. By executing an Adoption Agreement, the adopting Employer hereby appoints the Board of Directors of the PEB Trust as the initial Trustee as of the Effective Date.

3.2 Removal of Trustee

The Advisory Committee by a majority vote may remove the Trustee and choose another Trustee of the PEB Trust. Such action must be in writing and delivered to the Trustee and each Plan Administrator. The Employer, or the Plan Administrator, if authorized by the Employer, also may withdraw its Government Account from the PEB Trust by giving at least ninety (90) days prior written notice to the Trustee. If the Employer or the Plan Administrator acts to remove the Account, the Employer or the Plan Administrator shall appoint a successor trustee for its Government Account, and such appointment shall vest the successor trustee with title to the Assets of the Government Account. Upon the successor trustee's acceptance of such appointment, Assets having a value equal to the funds held in the Government Account shall be segregated and placed in a separate trust by the Trustee. As soon as practicable thereafter, such Assets shall be transferred to a trust established by the Employer, provided that (i) such trust shall satisfy the requirements of Section 115 of the Code, and (ii) all assets held by such trust shall qualify as "plan assets" within the meaning of GASB Statement No. 45, in each case as reasonably determined by the Employer and certified in writing by the Employer to the Trustee.

3.3 Resignation of Trustee

The Trustee may resign as trustee of this PEB Trust at any time by giving at least ninety (90) days prior written notice to the Advisory Committee and the Plan Administrator of each Employer that has adopted the PEB Trust Agreement and not terminated its participation in the PEB Trust. Such resignation shall also be deemed a resignation as trustee of each of the Government Accounts. The Employer's appointment of a successor trustee to the Government Account will vest the successor trustee with title to the Assets of its Government Account upon the successor trustee's acceptance of such appointment.

If the Trustee resigns or is removed by the Advisory Committee pursuant to Section 3.2, the Advisory Committee shall appoint a successor trustee. The Trustee shall, upon the appointment and acceptance of a successor trustee, transfer and deliver the Assets and all records relating to the PEB Trust to the successor, after reserving such reasonable amount as it shall deem necessary to provide for its fees and expenses and any sums chargeable against the PEB Trust for which it may be liable. The Trustee shall do all acts necessary to vest title of record in the successor trustee.



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