

RESOLUTION NO. 19-2005

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, ESTABLISHING MEMBERSHIP TO THE PUBLIC AGENCY RETIREMENT SYSTEM (PARS) TRUST; AND PROVIDING AN EFFECTIVE DATE THEREOF.

WHEREAS, the City of Mesquite, Texas (the "City") has part-time, seasonal and temporary ("PTST") employees rendering valuable services who are ineligible for the City's existing retirement system; and

WHEREAS, the establishment of such a system for PTST employees serves the interests of the City by enabling it to provide reasonable security regarding their future retirement needs by providing such a system that will also assist in the attraction and retention of PTST personnel; and

WHEREAS, it is determined to be in the City's best interest to provide a Qualifying Retirement System for all its employees currently ineligible for such a Qualifying Retirement System, thereby meeting the requirements of Section 11332 of the Omnibus Budget Reconciliation Act ("OBRA 90") and Section 312(b)(7)(F) of the Internal Revenue Code ("IRC"); and

WHEREAS, the City is eligible to be a member of the Public Agency Retirement System ("PARS") Trust, which has made such a system available to the City and its eligible employees and qualifies under OBRA 90 Section 11332, IRC Section 312(b)(7)(F) and 457(b), and meets the meaning of the term "retirement system" as given by Section 218(b)(4) of the Federal Social Security Act; and

WHEREAS, the City has determined that the adoption of the PARS Trust serves the above objectives.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. That the City Council hereby adopts the Public Agency Retirement System ("PARS") Trust, including the PARS Section 457 FICA Alternative Retirement Plan, effective July 1, 2005, as the effective date for the benefit of part-time, seasonal and temporary employees on that date and hired thereafter.

SECTION 2. That the City Council hereby appoints City Manager Ted Barron, his successor or designee as the City's Plan Administrator for PARS.

SECTION 3. That the City's Plan Administrator is hereby authorized to implement the Plan(s), execute the PARS legal documents on behalf of the City, including the Agreement for Administrative Services, attached hereto as Exhibit "A," or the Trust Document, attached hereto as Exhibit "B," and to take whatever additional actions are necessary to maintain the City's participation in PARS and to maintain PARS compliance of any relevant regulation issued or as may be issued; therefore, authorizing him to take whatever additional actions are required to administer the City's PARS Plan(s).

SECTION 4. That this resolution shall become effective on and after July 1, 2005.

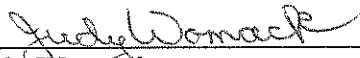
DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 16th day of May, 2005.

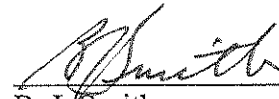


Mike Anderson
Mayor

ATTEST:

APPROVED:



Judy Womack
City Secretary

B. J. Smith
City Attorney

AGREEMENT FOR ADMINISTRATIVE SERVICES

This agreement ("Agreement") is made this _____ day of _____, 2005, between Phase II Systems, a California corporation (hereinafter "PARS"), and the City of Mesquite ("Agency").

WHEREAS, Agency has adopted the City of Mesquite PARS Section 457 FICA Alternative Retirement Plan (the "Plan") effective July 1, 2005, and is desirous of retaining PARS, as Trust Administrator to the PARS Trust, to provide administrative services;

NOW THEREFORE, the parties agree:

1. **Services.** PARS will provide the services pertaining to the Plan as described in the exhibit attached hereto as "Exhibit 1A" ("Services") in a timely manner, subject to the further provisions of this Agreement.
2. **Fees for Services.** PARS will be compensated for performance of the Services as described in the exhibit attached hereto as "Exhibit 1B."
3. **Payment Terms.** Payment for the Services will be remitted directly from Plan assets unless the Agency chooses to make payment directly to PARS. In the event that the Agency chooses to make payment directly to PARS, it shall be the responsibility of the Agency to remit payment directly to PARS based upon an invoice prepared by PARS and delivered to the Agency. If payment is not received by PARS within thirty (30) days of the invoice delivery date, the balance due shall bear interest as provided by Texas law pursuant to V.T.C.A., Government Code, Chapter 2251. If payment is not received from the Agency within sixty (60) days of the invoice delivery date, payment plus accrued interest will be remitted directly from Plan assets, unless PARS has previously received written communication disputing the subject invoice that is signed by a duly authorized representative of the Agency.
4. **Fees for Services Beyond Scope.** Fees for services beyond those specified in this Agreement will be billed to the Agency at the rates indicated in PARS' standard fee schedule in effect at the time the services are provided and shall be payable as described in Section 3 of this Agreement. Before any such services are performed, PARS will provide the Agency with written notice of the subject services, terms, and an estimate of the fees therefore.
5. **Information Furnished to PARS.** PARS will provide the Service contingent upon the Agency's providing PARS the information specified in the exhibit attached hereto as "Exhibit 1C" ("Data"). It shall be the responsibility of the Agency to certify the accuracy, content and completeness of the Data so that PARS may rely on such information without further audit. It shall further be the responsibility of the Agency to deliver the Data to PARS in such a manner that allows for a reasonable amount of time for the Services to be performed. Unless specified in Exhibit 1A, PARS shall be under no duty to question Data received from the Agency, to compute contributions made to the Plan, to determine or inquire whether contributions are adequate to meet and discharge liabilities under the Plan, or to determine or inquire whether contributions made to the

Plan are in compliance with the Plan or applicable law. In addition, PARS shall not be liable for nonperformance of Services if such nonperformance is caused by or results from erroneous and/or late delivery of Data from the Agency. In the event that the Agency fails to provide Data in a complete, accurate and timely manner and pursuant to the specifications in Exhibit 1C, PARS reserves the right, notwithstanding the further provisions of this Agreement, to terminate this Agreement upon no less than ninety (90) days written notice to the Agency.

6. **Suspension of Contributions.** In the event contributions are suspended, either temporarily or permanently, prior to the complete discharge of PARS' obligations under this Agreement, PARS reserves the right to bill the Agency for Services under this Agreement at the rates indicated in PARS' standard fee schedule in effect at the time the services are provided, subject to the terms established in Section 3 of this Agreement. Before any such services are performed, PARS will provide the Agency with written notice of the subject services, terms, and an estimate of the fees therefore.
7. **Records.** Throughout the duration of this Agreement, and for a period of five (5) years after termination of this Agreement, PARS shall provide duly authorized representatives of Agency access to all records and material relating to calculation of PARS' fees under this Agreement. Such access shall include the right to inspect, audit and reproduce such records and material and to verify reports furnished in compliance with the provisions of this Agreement. All information so obtained shall be accorded confidential treatment as provided under applicable law.
8. **Confidentiality.** Without the Agency's consent, PARS shall not disclose any information relating to the Plan except to duly authorized officials of the Agency, subject to applicable law, and to parties retained by PARS to perform specific services within this Agreement. The Agency shall not disclose any information relating to the Plan to individuals not employed by the Agency without the prior written consent of PARS, except as such disclosures may be required by applicable law.
9. **Independent Contractor.** PARS is and at all times hereunder shall be an independent contractor. As such, neither the Agency nor any of its officers, employees or agents shall have the power to control the conduct of PARS, its officers, employees or agents, except as specifically set forth and provided for herein. PARS shall pay all wages, salaries and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, such as social security, income tax withholding, unemployment compensation, workers' compensation and similar matters.
10. **Indemnification.** PARS and Agency, to the extent permitted by law, hereby indemnify each other and to hold the other harmless, including their respective officers, directors, employees, agents and attorneys, from any claim, loss, demand, liability, or expense, including reasonable attorneys' fees and costs, incurred by the other as a consequence of PARS' or Agency's, as the case may be, acts, errors or omissions with respect to the performance of their respective duties hereunder.

11. **Compliance with Applicable Law.** The Agency shall observe and comply with federal, state and local laws in effect when this Agreement is executed, or which may come into effect during the term of this Agreement, regarding the administration of the Plan. PARS shall observe and comply with federal, state and local laws in effect when this Agreement is executed, or which may come into effect during the term of this Agreement, regarding Plan administrative services provided under this Agreement.
12. **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. In the event any party institutes legal proceedings to enforce or interpret this Agreement, venue and jurisdiction shall be in any state court of competent jurisdiction sitting in Dallas County, Texas.
13. **Force Majeure.** When a party's nonperformance hereunder was beyond the control and not due to the fault of the party not performing, a party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by such cause, including but not limited to: any incidence of fire, flood, acts of God, acts of terrorism or war, commandeering of material, products, plants or facilities by the federal, state or local government, or a material act or omission by the other party.
14. **Ownership of Reports and Documents.** The originals of all letters, documents, reports, and data produced for the purposes of this Agreement shall be delivered to, and become the property of the Agency. Copies may be made for PARS but shall not be furnished to others without written authorization from Agency.
15. **Designees.** The Plan Administrator of the Agency, or their designee, shall have the authority to act for and exercise any of the rights of the Agency as set forth in this Agreement, subsequent to and in accordance with the written authority granted by the Governing Board of the Agency, a copy of which writing shall be delivered to PARS. Any officer of PARS, or his or her designees, shall have the authority to act for and exercise any of the rights of PARS as set forth in this Agreement.
16. **Notices.** All notices hereunder and communications regarding the interpretation of the terms of this Agreement, or changes thereto, shall be effected by delivery of the notices in person or by depositing the notices in the U.S. mail, registered or certified mail, return receipt requested, postage prepaid and addressed as follows:
 - (A) To PARS: PARS; 5141 California Avenue, Ste. 150, Irvine, CA 92617-3069;
Attention: President
 - (B) To Agency: City of Mesquite; 1515 North Galloway, Mesquite, TX 75149;
Attention: City ManagerNotices shall be deemed given on the date received by the addressee.
17. **Term of Agreement.** This Agreement shall remain in effect for the period beginning July 1, 2005 and ending December 31, 2007 ("Term"). This Agreement will continue unchanged for successive twelve month periods following the Term unless either party gives written notice to the other party of the intent to terminate prior to ninety (90) days before the end of the Term.

- 18. **Amendment.** This Agreement may not be amended orally, but only by a written instrument executed by the parties hereto.
- 19. **Entire Agreement.** This Agreement, including exhibits, contains the entire understanding of the parties with respect to the subject matter set forth in this Agreement. In the event a conflict arises between the parties with respect to any term, condition or provision of this Agreement, the remaining terms, conditions and provisions shall remain in full force and legal effect. No waiver of any term or condition of this Agreement by any party shall be construed by the other as a continuing waiver of such term or condition.
- 20. **Attorneys Fees.** In the event any action is taken by a party hereto to enforce the terms of this Agreement the prevailing party herein shall be entitled to receive its reasonable attorney's fees.
- 21. **Counterparts.** This Agreement may be executed in any number of counterparts, and in that event, each counterpart shall be deemed a complete original and be enforceable without reference to any other counterpart.
- 22. **Headings.** Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.
- 23. **Effective Date.** This Agreement shall be effective on the date first above written, and also shall be the date the Agreement is executed.

AGENCY:

BY: _____
 TITLE: City Manager
 DATE: _____

PARS:

BY: _____
 TITLE: Senior Vice President
 DATE: _____

APPROVED AS TO FORM:


BY: 
 TITLE: City Attorney or his Designee
 DATE: _____

EXHIBIT 1A

SERVICES

PARS will provide the following services for the City of Mesquite PARS Section 457 FICA Alternative Retirement Plan:

1. Plan Installation Services:

- (A) Meeting with appropriate Agency personnel to discuss Plan provisions, implementation timelines, benefit communication strategies, data reporting and contribution submission requirements;
- (B) Providing the necessary analysis and advisory services to finalize these elements of the Plan;
- (C) Providing for review by Agency legal counsel the documentation needed to establish the Plan;

2. Plan Administration Services:

- (A) Monitoring the receipt of Plan contributions made by the Agency to the trustee of the PARS Trust Program ("Trustee"), based upon information received from the Agency and the Trustee;
- (B) Performing periodic accounting of Plan assets, including the allocation of employer and employee contributions, distributions, investment activity and expenses (if applicable) to individual Plan participant ("Participant") accounts, based upon information received from the Agency and/or Trustee;
- (C) Acting as ongoing liaison between the Participant and the Agency in regard to distribution payments, which shall include use by the Participants of toll-free telephone communication to PARS;
- (D) Coordinating the processing of Participant distribution payments pursuant to authorized written Agency certification of distribution eligibility, authorized direction by the Agency, and the provisions of the Plan, and, to the extent possible, based upon Agency-provided Data;
- (E) Directing Trustee to liquidate Plan assets (if necessary) and make Participant distribution payments, and producing required tax filings regarding to said distribution payments;
- (F) Notifying the Trustee of the amount of Plan assets available for further investment and management, or, the amount of Plan assets necessary to be liquidated in order to fund Participant distribution payments;
- (G) Coordinating actions with the Trustee as directed by the Plan Administrator within the scope this Agreement;
- (H) Preparing and submitting periodic reports of non-contributing Participants to the Agency;

- (I) Preparing and submitting a monthly report of Plan activity to the Agency, unless directed by the Agency otherwise;
 - (J) Preparing and submitting an annual report of Plan activity to the Agency;
3. PARS is not licensed to provide and does not offer tax, accounting, legal, investment or actuarial advice. In providing the services specified above, PARS will retain qualified professional service providers at its cost as it deems necessary if the service lies outside its area of expertise.

EXHIBIT 1B
FEES FOR SERVICES

1. PARS will be compensated for performance of Services, as described in Exhibit 1A based upon the following schedule:

(A) A distribution fee equal to \$12.00 per terminated Participant ("Distribution Fee"), which shall be deducted solely from the terminating Participant's account;

(B) An annual asset fee to be paid by the Agency based on the following schedule:

<u>For Plan Assets from:</u>	<u>Annual Rate:</u>
\$1 to \$500,000	2.00%
\$500,001 to \$2,500,000	1.50%
\$2,500,001 to \$5,000,000	1.25%
\$5,000,001 to \$10,000,000	1.00%
\$10,000,001 and above	0.75%

Annual rates are prorated and paid monthly. The annual asset fee shall be calculated by the following formula [Annual Rate divided by 12 (months of the year) multiplied by the Plan asset balance at the end of the month]. Asset based fees are subject to a \$300.00 monthly minimum. Trustee and Investment Management Fees are not included.

(C) A fee equal to the out of pocket costs charged to PARS by an outside contractor for formatting contribution data on to a suitable magnetic media, charged only if the contribution data received by PARS from the Agency is not on readable magnetic media ("Data Processing Fee").

EXHIBIT 1C

DATA REQUIREMENTS

PARS will provide the Services under this Agreement contingent upon receiving the following information:

1. Contribution Data – readable magnetic media containing the following items of employee information related to the covered payroll period:
 - (A) Agency name
 - (B) Employee's legal name
 - (C) Employee's social security number
 - (D) Payroll date
 - (E) Employer contribution amount
 - (F) Employee contribution amount
2. Distribution Data – written Plan Administrator's (or authorized Designee's) direction to commence distribution processing, which contains the following items of Participant information:
 - (A) Agency name
 - (B) Participant's legal name
 - (C) Participant's social security number
 - (D) Participant's address
 - (E) Participant's phone number
 - (F) Participant's birthdate
 - (G) Participant's condition of eligibility
 - (H) Participant's effective date of eligibility
 - (I) Signed certification of distribution eligibility from the Plan Administrator, or authorized Designee
3. Executed Legal Documents:
 - (A) Certified Board Resolution
 - (B) Adoption Agreement
 - (C) Plan Document
 - (D) Trustee Investment Forms
4. Other information requested by PARS

**PARS BENEFIT TRUST
FBO
THE CITY OF MESQUITE
457 FICA ALTERNATIVE RETIREMENT PLAN
EFFECTIVE JULY 1, 2005**

TRUST DOCUMENT

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**PARS Benefit Trust FBO The City of Mesquite
457 FICA Alternative Plan Effective July 1, 2005**

This Trust Agreement (the "Trust Agreement") is made by and among **The City of Mesquite** (the "Agency") as the sponsor of the **PARS Benefit Trust FBO The City of Mesquite 457 FICA Alternative Plan Effective July 1, 2005** (the "Plan"), the Plan Administrator or the Plan's administrative committee (the "Administrator") and Union Bank of California, N.A., a national banking association as Trustee ("Union Bank of California" or the "Trustee").

PURPOSE

The Agency has established the **PARS Benefit Trust FBO The City of Mesquite 457 FICA Alternative Plan Effective July 1, 2005** for the benefit of eligible employees.

The Agency has established this Trust for the exclusive purpose of providing Plan benefits to its employees ("Participants") and their beneficiaries ("Beneficiaries") and defraying reasonable expenses of the Plan and Trust. The Agency has reserved the right to amend this Trust from time to time.

The Plan provides that, from time to time, cash and other assets may be provided or forwarded to the Trustee by the Agency to be held and administered in trust for the uses and purposes of the Plan, solely for the purpose of providing such benefits. Subject to specific conditions set forth in this Trust Agreement, the Trustee agrees that it will receive cash and other property of the Plan acceptable to the Trustee, constituting Plan contributions from the Agency or transfers for the benefit of the Plan, and shall hold and invest such cash and other property (the "Assets") for the uses and purposes and upon the terms and conditions stated in this Trust Agreement (the "Trust"). The Agency intends that the Plan shall qualify under Section 457(b) of the Internal Revenue Code of 1986, as amended (the "Code"), and that the Trust hereby created shall be treated as a trust exempt from tax under Section 501 of the Code, and shall not be subject to any claims of the Agency's creditors.

ARTICLE I

TRUST FUND

1.1 Signing Authority. The Agency shall certify in writing to the Trustee the names and specimen signatures of all those who are authorized to act as, and on behalf of, the Administrator, and those names and specimen signatures shall be updated as necessary by such governing board or other duly authorized officer of the Agency.

1.2 Acceptance of Assets. All contributions or transfers shall be received by the Trustee in cash or in any other property acceptable to the Trustee. The Trust shall consist of the contributions and transfers of Assets received by the Trustee, together with the income and earnings from such Assets, and any increments accruing to them. The Trustee shall manage and administer the Trust without distinction between principal and income. The Trustee shall have no other duty to compute any amount to be transferred or paid to it by the Agency and it shall not be responsible for the collection of any contributions or transfers due to the Trust.

1.3 Establishment of Trust. The principal of the Trust, and any earnings thereon shall be held separate and apart from other funds of Agency and shall be used exclusively for the uses and purposes of Participants and Beneficiaries as herein set forth. Participants and Beneficiaries shall have no preferred claim on, or any beneficial ownership interest in, any assets of the Trust.

1.4 Ongoing Contributions to Trust. Agency, in its sole discretion, may at any time, or from time to time, make additional deposits of cash or other property acceptable to the Trustee to augment the principal to be held, administered and disposed of by Trustee as provided in this Trust Agreement. Neither the Trustee nor any Participant shall have any right to compel such additional deposits.

1.5 No Duty of Trustee to Enforce Collection. Notwithstanding anything herein to the contrary, the Trustee shall have no authority or obligation to enforce the collection of any contribution or transfer to the Trust.

1.6 Plan Administration. The Agency and not the Trustee shall be responsible for administering the Plan (including without limitation determining the rights of the Agency's employees to participate in the Plan, determining any Participant's right to benefits under such Plan), and issuing statements to Participants of their interest in the Trust and Plan.

1.7 Participant Accounts. The Agency shall maintain, or cause to be maintained, a separate account for each Participant under the Plan (the "Account") in which it shall keep a record of the share of such Participant under such Plan in the Trust. The Agency may appoint a third-party administrator or record-keeper (the "Record-keeper") to maintain such Accounts. A Participant's Account under the Plan shall represent the portion of the Trust allocated to provide such Participant benefits under such Plan. If the Trustee is directed by the Agency to segregate the Trust into separate Accounts for each Participant, at the time it makes a contribution to the Trust, the Agency shall certify to the Trustee the amount of such contribution being made in respect of each Participant under the Plan.

1.8 Tax Reporting. The Agency and not the Trustee shall be responsible for all income tax reporting and calculation and payment of any wage withholding or other tax requirements in connection with the Trust and any contributions thereto, and any income earned thereby, and payments or distributions therefrom, and Agency agrees to the extent permitted by law to indemnify and defend Trustee against any liability for any such taxes, interest or penalties resulting from or relating to the Trust, provided, however, that UBOC as Trustee shall file such tax reports for the Trust as required by law and as agreed to by the parties in writing from time to time.

ARTICLE II

INVESTMENTS

2.1 Administrator Authority. Except as otherwise provided in this Article II, the Administrator appointed by the Agency shall have all power over and responsibility for the management, disposition, and investment of the Trust Assets, and the Trustee shall comply with proper written directions of the Administrator concerning those Assets. The Administrator shall not issue directions in violation of the terms of the Plan and Trust or prohibited by any applicable federal or state laws or regulations governing the establishment and operation of trusts by governmental entities for the purpose of providing retirement benefits for their employees or other individuals providing services to such entities, including, but not limited to, laws governing the actions of plan fiduciaries. Except to the extent required by applicable state or federal law or regulations, or otherwise provided in this Trust Agreement, the Trustee shall have no duty or responsibility to review, initiate action, or make recommendations regarding Trust Assets and shall follow investment directions and retain Assets until directed in writing by the Administrator to dispose of them. The Trustee shall not be liable for any investment decisions of the Administrator or any investment losses in the Account attributable to investment decisions of the Administrator.

2.2 Trustee as Manager. The Administrator may also delegate all or a portion of its investment authority to the Trustee for all or a portion of the Trust Assets. Upon written acceptance of that delegation, the Trustee shall have full power and authority to invest and reinvest that portion of the Trust so designated by the Administrator in investments of any kind. The Trustee shall be responsible for proper diversification of the Assets only if all the Plan Assets are subject to its management.

The Administrator shall have the responsibility for establishing and carrying out a funding policy and method consistent with the objectives of the Plan, taking into consideration the Plan's short-term and long-term financial needs (hereinafter referred to as the "Permissible Investment Guidelines"). The Trustee's responsibility for investment and diversification of the Assets in the portion of the Trust for which Trustee has investment discretion shall be subject to, and is limited by, the funding policy and investment guidelines issued to it by the Administrator and any Statutes.

It is understood and acknowledged that the Administrator, rather than the Trustee, shall be responsible for the funding policy, for overall diversification of Trust Assets (unless the Trustee has investment responsibility for all Plan Assets), for benefit allocation, distribution, and for overall compliance of the Trust with statutory limitations on the amount of the Trust's investment in any assets.

2.3 Insurance Contract. The Administrator may direct the Trustee in writing to invest assets of the Trust in group or individual insurance contracts of all kinds authorized under the Plan, Statutes and Permissible Investment Guidelines provided such contracts are issued by an insurance company or companies qualified to do business in more than one state, and the Administrator shall have the sole responsibility and shall direct the Trustee with respect to such insurance contracts. The administration of these insurance contracts shall be the sole responsibility of the Administrator, and the Trustee shall follow the directions of the Administrator with respect to the administration of any such contracts.

2.4 Independent Investment Manager. The Administrator may appoint one or more investment managers to direct the Trustee in the investment of all or a specified portion of the Trust Assets. Any investment manager shall be a qualified investment advisor under the Investment Advisors Act of 1940. The Administrator may also remove any investment manager. The Administrator shall promptly notify the Trustee in writing of the appointment or removal of any investment manager.

The Administrator shall cause the investment manager to acknowledge to the Trustee in writing that the investment manager is a fiduciary with respect to the Plan and Trust. If the foregoing conditions are met, the investment manager shall have the power to manage, acquire, retain, or dispose of any Trust Assets subject to the investment manager's management and direction. The Trustee shall not be liable for the acts or omissions of such investment manager, or be under an obligation to review the investments of, or to invest or otherwise manage any asset of the Trust that is subject to the management and direction of such investment manager.

ARTICLE III

TRUSTEE'S POWERS

3.1 General Trustee's Powers. Except as otherwise provided in Article II, the Trustee shall have full power and authority with respect to property held in the Trust to do all such acts, take all proceedings, and exercise all such rights and privileges, whether specifically referred to or not in this document, as could be done, taken or exercised by the absolute owner, including, without limitation, the following:

(a) To invest and reinvest the Trust or any part hereof in any one or more kind, type, class, item or parcel of property, real, personal or mixed, tangible or intangible; or in any one or more kind, type, class, item or issue of investment or security; or in any one or more kind, type, class or item of obligation, secured or unsecured; or in any combination of them; and to retain the property associated with such investment or reinvestment for the period of time that the Trustee deems appropriate.

(b) To buy, sell, assign, transfer, acquire, loan, lease (for any purpose, including mineral leases, and for terms within or extending beyond the life of this Trust), exchange and in any other manner to acquire, manage, deal with and dispose of all or any part of the Trust property, for cash or credit and upon any reasonable terms and conditions.

(c) To make "deposits" with any bank or savings and loan institution, including any such facility of the Trustee or an affiliate thereof provided that the deposit bears a reasonable rate of interest;

(d) To retain all or any portion of the Trust in cash temporarily awaiting investment or for the purpose of making distributions or other payments, without liability for interest thereon, notwithstanding Trustee's receipt of "float" from such uninvested cash;

(e) To place uninvested cash and cash awaiting distribution in one or more mutual funds and/or commingled investment funds maintained by or made available by the Trustee, and to receive compensation from the sponsor of such fund(s) for services rendered, separate and apart from any trustee's fees hereunder. Trustee or Trustee's affiliate may also be compensated for providing investment advisory and other services to any such mutual fund or commingled investment funds. Agency acknowledges receipt of prospectuses for such funds;

(f) To borrow money for the purposes of the Trust from any source other than a party in interest of the Plan, with or without giving security and to pay interest, to issue promissory notes and to secure the repayment thereof by pledging all or any part of the Trust assets;

(g) To take all of the following actions as directed by a fiduciary or other person with investment discretion over the Trust assets; to vote proxies of 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 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 stocks, bonds, securities or other property held in the Trust;

(h) 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;

(i) To pay, or cause to be paid, from the Trust any and all real or personal property taxes, income taxes or other taxes or assessments of any or all kinds levied or assessed upon or with respect to the trust or the Plan;

(j) To enter into, modify, renew and terminate annuity contracts of deposit administration of immediate participation or other group or individual type with one or more insurance companies and to pay or deposit all or any part of the Trust thereunder; to provide in any such contract for the investment of all or any part of funds so deposited with the insurance company in securities under separate accounts; to exercise and claim all rights and benefits granted to the contract holder by any such contracts;

(k) To exercise all the further rights, powers, options and privileges granted, provided for, or vested in trustees generally under applicable federal or state laws, as amended from time to time, it being intended that, except as herein otherwise provided, the powers conferred upon the Trustee herein shall not be construed as being in limitation of any authority conferred by law, but shall be construed as in addition thereto.

3.2 Additional Powers. In addition to the other powers enumerated above, and whether or not the Administrator has retained investment authority, the Trustee in any and all events is authorized and empowered:

(a) To invest funds in any type of interest-bearing account including without limitation, time certificates of deposit or interest-bearing accounts issued by Union Bank of California, N.A., or any mutual fund or short term investment fund ("Fund"), whether sponsored or advised by Union Bank of California or any affiliate thereof; Union Bank of California, N.A. or its affiliate may be compensated for providing investment advice or other services to such Fund, in addition to any Trustee's fees received pursuant to this Trust Agreement; provided, that such compensation is reasonable;

(b) To cause all or any part of the Trust to be held in the name of the Trustee (which in such instance need not disclose its fiduciary capacity) or, as permitted by law, in the name of any nominee, and to acquire for the Trust any investment in bearer form; but the books and records of the Trust shall at all times show that all such investments are a part of the Trust and the Trustee shall hold evidences of title to all such investments;

(c) To serve as sole custodian with respect to the Trust assets with the sole exception of insurance policy or annuity contracts, the underlying assets of which shall be maintained by the insurance company issuer;

(d) To employ such agents and counsel as may be reasonably necessary in managing and protecting the Trust assets and to pay them reasonable compensation; to employ any broker-dealer, including any broker-dealer affiliated with the Trustee, and pay to such broker-dealer its standard commissions; to settle, compromise or abandon all claims and demands in favor of or against the Trust; and to charge any premium on bonds purchased;

(e) In addition to the powers listed herein, to do all other acts necessary or desirable for the proper administration of the Trust, as though the absolute owner thereof and to exercise and perform any and all of the other powers and duties specified in this Trust Agreement;

(f) To abandon, compromise, contest, arbitrate or settle claims or demands; to prosecute, compromise and defend lawsuits, but without obligation to do so, all at the risk and expense of the Trust;

(g) To permit such inspections of documents at the principal office of the Trustee as are required by law, subpoena or demand by United States agency and to disclose the Agency's name to issuers of securities in connection with shareholder communications unless directed otherwise in

writing;

(h) To comply with all requirements imposed by applicable state Statutes or other applicable provisions of state or federal law;

(i) To seek written instructions from the Agency, Administrator or other fiduciary or, to the extent Participants are permitted to direct the investment of all or any portion of their Accounts under the Plan, from a Participant, on any matter and await written instructions from such person without incurring any liability. If at any time the Agency, the Administrator, a fiduciary or Participant should fail to give directions to the Trustee, the Trustee may but is not required to act in the manner that in its discretion seems advisable under the circumstances for carrying out the purposes of this Trust. Such actions shall be conclusive on the Administrator and the Agency and the Participant if written notice of the proposed action is given to the Administrator five (5) days prior to the action being taken, and the Trustee receives no response;

(j) As directed by the Administrator:

(i) To cause the benefits provided under the Plan to be paid directly to the persons entitled thereto under the Plan, and in the amounts and in the manner specified, or to disburse such sums to the Agency, who shall be responsible to distribute sums due; and make appropriate tax reports to Participants, Beneficiaries and taxing authorities, and to charge such payments against the Trust with respect to which such benefits are payable;

(ii) To compensate such executive, consultant, actuarial, accounting, investment, appraisal, administrative, clerical, secretarial, custodial, depository and legal, personnel and other employees or assistants as are engaged by the Administrator in connection with the administration of the Plan and to pay from the Trust the necessary expenses of such, personnel, employees and assistants, to the extent not paid by the Agency and directed by the Administrator;

(iii) To impose a reasonable charge to cover the cost of furnishing to Participants or Beneficiaries upon their written request documents as may be legally required by applicable state or federal law or regulations;

(iv) To act upon proper directions of the Agency, the Administrator or any other fiduciary or Participant including directions in writing, or oral instructions which Trustee in its discretion may follow prior to receipt of written instructions, instruction given by photostatic teletransmission using facsimile signature, or those instructions which are digitally recorded on the Trustee's oral recording or VRU communications system. If oral or digital instructions are given, to act upon those in Trustee's discretion prior to receipt of written instructions. Trustee's recording or lack of recording of any such oral or digital instructions taken in Trustee's ordinary course of business shall constitute conclusive proof of Trustee's receipt or non-receipt of the oral or digital or VRU instructions;

In exercising the power and authority under this subparagraph (iv), the Trustee will perform telephonic verification to the Administrator, or other authorized representative properly designated by the Administrator or the Agency, or such other security procedure selected by the Administrator prior to wire transfer of funds as the Trustee may require. The Administrator, the Agency, and the Plan assume all risk with respect to delays or transfers if the Trustee is unable to reach the Administrator or other authorized representative properly designated by the Administrator, or in the event of delay as a result of attempts to comply with any other security procedure selected by the Administrator in connection with wire transfers or otherwise;

(v) To pay from the Trust the expenses reasonably incurred in the administration of the Trust as provided in the Plan, to the extent such expenses are not paid by the Agency pursuant to Section 10.2;

(vi) To maintain insurance for such purposes, in such amounts and with such companies as the Administrator shall elect, including insurance to cover liability or losses occurring by reason of the acts or omissions of fiduciaries (but only if such insurance permits recourse by the insurer against a fiduciary in the case of a breach of a fiduciary obligation by such fiduciary).

ARTICLE IV

TRUSTEE'S DUTIES

4.1 **Powers Subject to Duties.** The Trustee shall exercise any of the foregoing powers from time to time as required by any applicable federal or state law.

4.2 **Records.** The Trustee shall maintain or cause to be maintained suitable records, data and information relating to its functions hereunder. The Trustee shall keep accurate and detailed accounts of all investments, receipts, disbursements and other actions hereunder. Its books and records relating to the Trust shall be open to inspection and audit at all reasonable times by the Agency, the Administrator or their duly authorized representatives.

4.3 **Accounts.** Within ninety days after the close of each Plan Year and within ninety days after the resignation or removal of the Trustee as provided in Article VI hereof, the Trustee shall render to the Agency a written account showing in reasonable summary the investments, receipts, disbursements and other transactions engaged in by the Trustee during the preceding Plan Year or accounting period with respect to the Trust. Such written accounts shall set forth the assets and liabilities of the Trust. The Agency or Administrator shall have ninety days after the Trustee's mailing of each such written account within which to file with the Trustee written objections. Upon the expiration of each such period, the Trustee shall be forever released and discharged from all liability and accountability to the Agency, the Administrator and Participants with respect to the propriety of its acts and transactions shown in such account except with respect to any such acts or transactions as to which the Agency files written objections within such ninety-day period with the Trustee.

4.4 Reports. The Trustee shall file such descriptions and reports and shall furnish such information and make such other publications, disclosures, registrations and other filings as are required of the Trustee by the Code or any other applicable law or regulation.

4.5 Follow Administrator and Investment Manager Direction. The Trustee shall have the power and duty to comply promptly with all proper directions of the Administrator, the Agency, and any duly appointed investment manager. Except as to investment directions received from the Administrator or investment manager, the Trustee shall not act on any directions or requests received from Participants.

ARTICLE V

RESTRICTIONS ON TRANSFER

5.1 Persons to Receive Payment.

(a) As directed by the Administrator, the Trustee shall, except as otherwise provided in subsection (b), pay all amounts distributable hereunder only to the person or persons designated under the Plan or deposit to the Participant's or Beneficiary's checking or savings account and not to any other person or corporation, and only to the extent of assets held in the Trust. The Administrator's instructions to the Trustee regarding whether or not to make distributions, and the amount of such distributions, shall be conclusive on all Participants and Beneficiaries.

(b) In the event any controversy shall arise as to the person or persons to whom any distribution or payment is to be made by the Trustee, or as to any other matter arising in the administration of the Plan or Trust, the Trustee may, (i) retain the amount in controversy pending resolution of the controversy or the Trustee, (ii) file an action seeking declaratory relief, (iii) interplead the Trust Assets in issue, and (iv) name the Agency and/or any or all persons making conflicting demands as necessary parties.

(c) The Trustee shall not be liable for the payment of any interest or income on any amount withheld or interpleaded under subsection (b).

(d) The expenses incurred by the Trustee for taking any action under subsection (b) shall be charged by the Trustee to the Trust unless paid by the Agency.

5.2 Assignment and Alienation Prohibited. In accordance with Section 457 of the Code, Trust Assets shall not be subject to any claims of Agency or other creditors. Additionally, no benefit or interest available hereunder shall be subject in any manner to assignment or alienation, whether voluntarily or involuntarily, or to legal process except as permitted in the Internal Revenue Code, applicable state or federal law, or as provided in the Plan.

ARTICLE VI

RESIGNATION, REMOVAL AND SUCCESSION

6.1 **Resignation or Removal of Trustee.** The Trustee may resign at any time upon ninety days' prior written notice to the Agency (which notice may be waived by the Agency). Agency may remove the Trustee upon ninety days' prior written notice to the Trustee (which notice may be waived by the Trustee).

6.2 **Designation of Successor.** Upon notice of the Trustee's resignation or removal, Agency shall promptly designate a Successor Trustee who will accept transfer of the assets of the Trust. If no Successor Trustee is designated within thirty days of notice of Trustee's resignation or removal, the Administrator shall designate a Successor Trustee.

6.3 **Court Appointment of Successor.** If neither the Agency nor the Administrator designates a Successor Trustee within thirty days after the Trustee gives notice of resignation or receives notice of removal, the Trustee may, at the expense of the Trust, apply to a court of competent jurisdiction to appoint a Successor Trustee. Until a Successor Trustee is appointed, and all Trust assets are delivered to the Successor Trustee, the Trustee shall be entitled to be compensated for its services according to its published fee schedule then in effect for acting as Trustee in accordance with the Plan and Trust.

6.4 **Successor's Powers.** A Successor Trustee shall have the same powers and duties as those conferred upon the original Trustee hereunder. A resigning Trustee shall transfer the Trust Assets and shall deliver the books, accounts and records of the Trust to the Successor Trustee as soon as practicable. The resigning Trustee is authorized, however, to reserve such amount from the Assets of the Trust as may be necessary for the payment of its fees and expenses incurred prior to its resignation, and the Trust Assets shall remain liable to reimburse the resigning Trustee for any costs, expenses or attorneys' fees or losses incurred, whether before or after resignation, due solely to Trustee's holding title to and administration of the Trust Assets.

6.5 **Successor's Duties.** A Successor Trustee shall have no duty to audit or otherwise inquire into the acts and transactions of its predecessor.

ARTICLE VII

AMENDMENT

7.1 **Power to Amend.** The Agency shall have the right at any time, and from time to time, to modify or amend this Trust Agreement in whole or in part, effective upon thirty days' prior written notice to the Trustee, provided, however, that the Trustee's duties and responsibilities shall not be amended without the Trustee's express written consent.

7.2 **Limitation on Amendment.** No amendment shall be made, at any time, under which any part of the Trust may be diverted to purposes other than for the exclusive benefit of Participants and their Beneficiaries.

7.3 **Conformity with Law.** Notwithstanding anything herein to the contrary, this Trust Agreement may be amended prospectively or retroactively at any time by the Agency if deemed necessary to conform to the provisions and requirements of the Internal Revenue Code or regulations promulgated pursuant thereto in order to maintain the tax-exempt status hereof thereunder, or to conform to the provisions and requirements of any law, regulation, order or ruling affecting the character or purpose of the Plan or Trust. No such Amendment shall be effective to add or change the Trustee's powers or duties absent Trustee's written consent.

ARTICLE VIII

LIABILITIES

8.1 **Declaration of Intent.** Nothing in this Article purports to relieve a fiduciary from liability for any responsibility, obligation or duty under any applicable Statutes. However, to the full extent permitted by law, it is the intent of this Article to relieve each fiduciary from all liability for any acts or omissions of any other fiduciary or any other person and to declare the absence of liabilities of all persons referred to in this Article to the extent not imposed by law or by provisions of this Trust Agreement. Each of the following Sections, in declaring such limitations, is set forth without limiting the generality of this Section but in each case shall be subject to the provisions, limitations and policies set forth in this Section.

8.2 **General Limitations of Liability.**

(a) No fiduciary shall be liable with respect to a breach of fiduciary duty under any applicable Statutes if such breach was committed before he or she became a fiduciary or after he or she ceased to be a fiduciary.

(b) No fiduciary shall be liable for any act or omission of any other person to whom fiduciary responsibilities (other than Trustee responsibilities) are allocated by the Plan, the Trust Agreement or by a fiduciary.

8.3 **Liability of the Trustee.**

(a) The Trustee shall have no powers, duties or responsibilities with regard to the administration of the Plan or to determine the rights or benefits of any person having or claiming an interest under the Plan or in the Trust or under this Trust Agreement or to examine or control any disposition of the Trust or part thereof which is directed by the Administrator.

(b) The Trustee shall have no liability for the adequacy of contributions for the purposes of the Plan or for enforcement of the payment thereof.

(c) The Trustee shall have no liability for the acts or omissions of the Agency or the Administrator.

(d) The Trustee shall have no liability for following proper directions of a fiduciary, the Agency, the Administrator or a Participant when such directions are made in accordance with this Trust Agreement.

(e) During such period or periods of time, if any person other than the Trustee, including but not limited to a Participant, is directing the investment and management of Trust Assets, the Trustee shall have no obligation to determine the existence of any conversion, redemption, exchange, subscription or other right relating to any securities purchased on the directions of such person if notice of any such right was given prior to the purchase of such securities. If such notice is given after the purchase of such securities, the Trustee shall notify the Administrator, which shall transmit the notice to the directing party. The Trustee shall have no obligation to exercise any such right unless it is informed of the existence of the right and is instructed to exercise such right, in writing, by a fiduciary or a Participant through the Administrator within a reasonable time prior to the expiration of such right.

(f) During such period or periods of time, if the Trustee is directed to purchase securities issued by any foreign government or agency thereof, or by any corporation domiciled outside of the United States, it shall be the responsibility of the directing party to advise the Trustee in writing with respect to any laws or regulations of any foreign countries or any United States territories or possessions which shall apply, in any manner whatsoever, to such securities, including, but not limited to, receipt of dividends or interest by the Trustee for such securities.

(g) If the Plan and Trust cease to be subject to Sections 457 and 501 of the Code, the Agency shall immediately notify Trustee. Agency shall indemnify the Trustee for any federal or state income taxes, and any federal estate and state estate or inheritance taxes which the Trustee is required to pay as a result of a distribution made at the direction of the Administrator, in which event the Agency shall be subrogated to the right of the Trustee to proceed against such Participant, Beneficiary, the executor of the estate of a deceased Participant or any other person for reimbursement of the amount paid and any taxes due.

8.4 Indemnification of Trustee.

(a) The Trustee shall not be liable for, and the Plan Administrator agrees to indemnify and hold the Trustee harmless from and against any claims, demands, loss or liability imposed on the Trustee, including reasonable attorneys' fees and costs incurred by the Trustee, caused by and related to (i) any acts taken in accordance with any directions (or any failure to act in the absence of such directions) from the Plan Administrator, or any other party to whom Plan Administrator has given authority to direct the Trustee, which the Trustee reasonably believes to have been given by any of them; (ii) the negligence or willful misconduct of the Plan Administrator, or any other person designated to act on Plan Administrator's behalf; or (iii) the Plan Administrator's execution of its duties under this Trust Agreement, except in the event of the Trustee's gross negligence or material

breach of this Agreement which directly causes the loss to the Trust.

(b) The Plan Administrator further agrees to indemnify the Trustee for and against any claims, demands or liabilities imposed on the Trustee, including reasonable attorneys' fees and costs incurred by the Trustee, which exceed amounts payable or available from the Trust, arising as a result of claims asserted by a third person or persons, not otherwise described in (a), and whether such person or persons are related to the Trust, for action or failure to take action with respect to Trust Assets.

8.5 Indemnification of Member Plan Administrator. The Trustee agrees to indemnify the Plan Administrator against, and hold the Plan Administrator harmless from, all liabilities and claims (including reasonable attorney's fees and costs incurred by the Plan Administrator) against the Plan Administrator as a result of any breach of fiduciary responsibility by the Trustee which proximately causes loss to the Trust, and where Trustee knowingly participates in such a breach, knowingly undertakes to conceal such breach, has actual knowledge of such breach and fails to take reasonable action to remedy such breach or through its gross negligence in performing its duties under this Agreement, proximately causes loss to the Trust.

ARTICLE IX

DURATION AND TERMINATION

9.1 Termination. It is intended that this Trust shall be treated as being exempt from tax under Section 501(a) of the Code and that the Plan referred to herein shall qualify under Section 457(b) of the Code. However, notwithstanding any other provisions of the Trust, if the Internal Revenue Service is requested to issue to the Agency a favorable written determination or ruling with respect to the initial qualification of the Plan and exemption of the Trust from tax and such request is denied, the Trustee shall, after receiving a written direction from the Administrator, pay to each Participant that portion of the Trust applicable to said Participant's voluntary contributions, if any, and provided the Plan so states, pay to the Agency any part of the Trust attributable to Agency contributions then remaining in the Trustee's possession, less any investment losses and Trustee's fees and costs incurred to date of distribution. As a condition to such repayment, Agency shall be solely responsible for any tax reporting and withholding required, and to the extent permitted by law the Agency agrees to indemnify, defend, and hold the Trustee harmless from all claims, actions, demands, or liabilities arising in connection with such repayment, and provided further that such repayment will occur within one year after the date the request for qualified status is denied.

9.2 Exclusive Benefit. This Trust may be terminated at any time by the Agency, and upon such termination, the Trust Assets shall be distributed by the Trustee as and when directed by the Administrator in accordance with the provisions of this Trust Agreement and the Plan document. From the date of termination of the Plan and until the final distribution of the Trust, the Trustee shall continue to have all the powers provided under this Trust that are necessary or desirable for the orderly liquidation and distribution of the Trust. In no instance upon any termination, or discontinuance and subsequent distribution shall the Trust or any part of it be used for, or diverted to, purposes other than for the exclusive benefit of Participants, their Beneficiaries, and defraying the administrative expenses of the Plan and Trust until all Plan liabilities have been satisfied, except in

the instance of the failure of the Trust initially to qualify for tax-exempt status as set forth in Section 9.1 and in the event of a return of assets mistakenly contributed as set forth in Section 9.3.

9.3 Return of Mistaken Contributions. Notwithstanding any other provision of this Agreement, it is specifically provided that if a contribution or any portion thereof is made by the Agency by virtue of a mistake of fact, the Trustee shall, upon written request of the Agency, return such amounts as may be permitted by law to the Agency.

9.4 Duration. This Trust shall continue in full force and effect for the maximum period of time permitted by law and in any event until the expiration of twenty-one years after the death of the last surviving person who was living at the time of execution hereof who at any time becomes a Participant in the Plan, unless this Trust is sooner terminated in accordance with the Plan or the terms of this Trust Agreement.

ARTICLE X

MISCELLANEOUS

10.1 Delegation. By written notice to the Trustee, the Administrator or the Agency may authorize the Trustee to act on matters in the ordinary course of the business of the Trust or on specific matters upon the signature of its delegate.

10.2 Expenses and Taxes.

(a) The Agency, or at its option, the Trust, shall pay the Trustee its expenses in administering the Trust and reasonable compensation for its services as Trustee at a rate to be agreed upon by the parties to this Agreement, based upon Trustee's published fee schedule. However, the Trustee reserves the right to alter this rate of compensation at any time by providing the Agency with notice of such change at least thirty days prior to its effective date. Reasonable compensation shall include compensation for any extraordinary services or computations required, such as determination of valuation of assets when current market values are not published and interest on funds to cover overdrafts. The Trustee shall have a lien on the Trust for compensation and for any reasonable expenses including counsel, appraisal, or accounting fees, and these may be withdrawn from the Trust as and when viewed and payable, or if Agency has elected to pay expenses of the Trust, may be withdrawn from the Trust unless paid by the Agency within thirty days after mailing of the written billing by the Trustee.

(b) Reasonable counsel fees, reasonable costs, expenses, and charges of the Trustee incurred or made in the performance of its duties, including but not limited to expenses relating to investment of the Trust such as broker's commissions, stamp taxes, and similar items and all taxes of any and all kinds that may be levied or assessed under existing or future laws upon or in respect to the Trust or the income thereof shall be paid from the Trust Assets, unless paid by the Agency.

10.3 Third Parties.

(a) No person dealing with the Trustee shall be required to follow the application of purchase money paid or money loaned to the Trustee or inquire as to whether the Trustee has complied with the requirements hereof.

(b) In any judicial or administrative proceedings, only the Agency and the Trustee shall be necessary parties and no Participant or other person having or claiming any interest in the Trust shall be entitled to any notice or service of process (except as required by law). Any judgment, decision or award entered in any such proceeding or action shall be conclusive upon all interested persons.

10.4 Successor Agency. If any successor to an Agency continues the Plan adopted by the Agency, such successor shall concurrently become a successor first party to this Trust Agreement by giving written notice of its adoption of the Plan and this Trust Agreement to the Trustee by duly authorized persons; such successor Agency shall become a signatory to this Trust Agreement upon its written notice to Trustee of the Successor's adoption hereof.

10.5 Relation to Plan. All words and phrases used herein shall have the same meanings as in the Plan, and this Trust Agreement and the Plan shall be read and construed together. Whenever the Plan provides that the Trustee shall act as therein prescribed, the Trustee shall be and is hereby authorized and empowered to do so for all purposes as fully as though specifically so provided herein or so directed by the Administrator. The Trustee shall furnish the Agency with copies of the Trust Agreement and all amendments thereto.

10.6 Use of Trust Funds. Except as provided in Section 9.2 and 9.3, under no circumstances shall any part of the Trust be recoverable by the Agency from the Trustee or from any Participant or former Participant, his or her Beneficiaries, or any other person or be used for or diverted to purposes other than for the exclusive purposes of providing benefits to Participants and their Beneficiaries, provided, however, that:

(a) An Agency's excess contribution may be returned to such Agency in accordance with the provisions of the Plan, and

(b) The portion, if any, of the Trust attributable to an Agency not required for the satisfaction of all liabilities to Participants and their Beneficiaries shall, upon such Agency's termination of the Plan, revert to such Agency.

10.7 Location of Trust Fund Assets. Except as authorized by applicable state or federal laws or regulations, the indicia of ownership of any assets of the Trust and Plan shall not be maintained outside the jurisdiction of the District Courts of the United States.

10.8 Partial Invalidity. If any provision of this Trust Agreement is held to be invalid or unenforceable for any reason, this Agreement shall be construed and enforced as if such provisions had not been included and such illegality or invalidity shall not affect the remaining portions of this Trust Agreement, unless such invalidity prevents accomplishment of the objectives and purposes of

this Trust Agreement and the Plan. In the event of any such holding, the parties will immediately amend this Trust Agreement as necessary to remedy any such defect.

10.9 Construction. This Trust Agreement shall be constructed, administered and enforced according to the Internal Revenue Code and where state law is applicable, under applicable Statutes and laws of the State of Texas applied fairly and equitably in accordance with the purposes of the Plan.

ADOPTION

Executed this ____ day of _____, _____.

**THE CITY OF MESQUITE, Sponsor of: PARS Benefit Trust FBO The City of Mesquite
457 FICA Alternative Plan Effective July 1, 2005.**

By: _____

(Signature)

Ted G. Barron _____

(typed or printed name)

City Manager _____

(title)

APPROVED AS TO FORM:

By: *Helmi F. ...* _____

City Attorney or his Designee

**UNION BANK OF CALIFORNIA, N.A.
TRUSTEE**

Accepted this ____ day of _____, _____.

Accepted this ____ day of _____, _____.

By: _____

(Signature)

(typed or printed name)

(title)

By: _____

(Signature)

(typed or printed name)

(title)