

**BUZZARDS BAY WATER DISTRICT
OTHER POST-EMPLOYMENT BENEFITS ("OPEB")
DECLARATION OF TRUST**

DECLARATION OF TRUST made this 25th day of April, 2023 by and between the Buzzards Bay Water District, acting through its Board of Commissioners (the "District"), and the duly serving Trustee.

WITNESSETH:

WHEREAS, the District has established certain other post-employment benefits, other than pensions, for eligible former employees of the District; and

WHEREAS, on April 19, 2022, The Buzzards Bay Water District voted under Article 8 of the Annual District Meeting to accept the provisions of M.G.L. c. 32B § 20, as amended by Section 15 of Chapter 218 of the Acts of 2016; and

WHEREAS, following acceptance of the provisions of G.L. c. 32B, §20, the District established a trust for the purpose of funding OPEB obligations as required to be reported under General Accounting Standards Board ("GASB") Statements 74 and 75; and

WHEREAS, the Trust, in accordance with the amended provisions of G.L. c. 32B, §20, is established by the District with the intention that it qualify as a tax-exempt trust performing an essential governmental function within the meaning of Section 115 of the Code and Regulations issued thereunder and as a trust for OPEB.

NOW, THEREFORE, in consideration of the foregoing promises and the mutual covenants hereinafter set forth, the District and the Trustee hereby declare and agree as follows.

**ARTICLE 1
DEFINITIONS**

As used herein, the following terms shall have the following meanings:

- 1.1. "Code" means the Internal Revenue Code of 1986, as amended from time to time.
- 1.2. "ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time and any successor statute.
- 1.3. "GASB 74 and 75," shall mean Government Accounting Standards Board, Statement No. 74 (Financial Reporting and Postemployment Benefit Plans Other Than Pension Plans) and Statement No. 75, (Accounting and Financial Reporting by Employers for Post- Employment Benefits Other Than Pensions).
- 1.4. "Other post-employment benefits" or "OPEB," shall mean post-employment benefits other than pensions as that term is defined in GASB 74 and 75 including post-employment healthcare benefits, regardless of the type of plan that provides them, and all post-employment benefits provided separately *from* a pension plan, excluding benefits defined as termination offers and benefits.
- 1.5. "Retired Employee" means those persons who have retired from employment with the District and who are qualified to receive retirement benefits pursuant to G.L. c. 32, or as otherwise provided by law.

- 1.6. "Trust" means the District's OPEB Trust as hereby established.
- 1.7. "Trustee" shall mean the duly serving trustee and custodian designated by the District , as provided pursuant to Article 5, and any successor Trustee.
- 1.8. "Trust Fund" means all the money and property, of every kind and character, including principal and income, held by the Trustee under this Trust.

ARTICLE 2 PURPOSE

- 2.1 The Trust is created for the sole purpose of providing funding for OPEB, as determined by the District, or as may be required by collective bargaining agreement, or by any general or special law providing for such benefits, for the exclusive benefit of the District's Retired Employees and their eligible dependents and for defraying the reasonable administrative, legal, actuarial and other expenses of the Trust. The assets held in the Trust shall not be used for or diverted to any other purpose, except as expressly provided herein.
- 2.2 It is intended that the Trust shall meet the specified criteria set forth in GASB 74 and 75 and that the Trust further qualify as an integral part of the District for all purposes under Article 115(c) of the Code or under any comparable provision of future legislation that amends, alters, or supersedes the Code.

ARTICLE 3 ESTABLISHMENT OF TRUST

- 3.1 In accordance with the provisions of G.L. c. 32B, §20, the District hereby establishes this Trust which shall be known as the "**Buzzards Bay Water District OPEB Trust.**"
- 3.2 The Trust shall be irrevocable, and no Trust funds shall revert to the District until all benefits owed to Retired Employees have been satisfied or released.
- 3.3 The principal location of the Trust shall be the office of the District Treasurer, located at 15 Wallace Ave, Buzzards Bay, MA 02532.
- 3.4 The Trustee hereby accepts the duties imposed upon him/her by this Declaration of Trust and agrees to perform said duties as a fiduciary duty in accordance with the terms and conditions of this Declaration of Trust.
- 3.5 The Trustee shall hold legal title to any property of the Trust and neither the District, nor any employee, official, or agent of the District, nor any individual, shall have any right title or interest to the Trust.
- 3.6 The Trust shall consist of such sums of money as shall from time to time be paid or delivered to the Trustee by the District, which together with all earnings, profits, increments and accruals thereon, without distinction between principal and income, shall constitute the Trust hereby created and established. Nothing in this Declaration requires the District to make contributions to the Trust to fund OPEB. Any obligation of the District to pay or fund benefits shall be determined in accordance with applicable law and any agreement to provide OPEB.

**ARTICLE 4
TRUST FUNDING**

- 4.1 The Trust Fund shall be credited with all amounts appropriated or otherwise made available by the District and employees of the District as a contribution to the Trust for the purposes of meeting the current and future OPEB costs payable by the District, or any other funds donated or granted specifically to the District for the Trust, or to the Trust directly.
- 4.2 The Trustee shall be accountable for all delivered contributions but shall have no duty to determine that the amounts received are adequate to provide the OPEB Benefits determined by the District.
- 4.3 The Trustee shall have no duty, expressed or implied, to compel any contribution to be made by the District, but shall be responsible only for property received by the Trustee under this Declaration of Trust.
- 4.4 The District shall have no obligation to make contributions to the Trust to fund OPEB, and the size of the Trust may not be sufficient at any one time to meet the District's OPEB liabilities. This Declaration of Trust shall not constitute a pledge of the District's full faith and credit or taxing power for the purpose of paying OPEB, and no retiree or beneficiary may compel the exercise of taxing power by the District for such purposes.
- 4.5 The obligation of the District to pay or fund OPEB obligations, if any, shall be determined by the District or applicable law. Distributions of assets in the Trust are not debts of the District within the meaning of any constitutional or statutory limitation or restriction.
- 4.6 Earnings or interest accruing from investment of the Trust shall be credited to the Trust. Amounts in the Trust Fund, including earnings or interest, shall be held for the exclusive purpose of, and shall be expended only for, the payment of the costs payable by the District for OPEB obligations to Retired Employees and their dependents, and defraying the reasonable expenses of administering any plan providing OPEB Benefits as provided for in this Declaration of Trust.
- 4.7 Amounts in the Trust Fund shall in no event be subject to the claims of the District's general creditors. The Trust Fund shall not in any way be liable to attachment, garnishment, assignment, or other process, or be seized, taken, appropriated, or applied by any legal or equitable process, to pay any debt or liability of the District, or of retirees or dependents who are entitled to OPEB.

**ARTICLE 5
TRUSTEE**

- 5.1 The trust shall be administered by a Trustee, who shall be the District Treasurer, as having been duly designated as the Trustee by a vote under Article 8 of the April 25, 2023, Buzzards Bay Water District Annual Meeting.
- 5.2 Upon expiration of the term or sooner resignation or removal of the District Treasurer, the position of Trustee shall be deemed vacant.
- 5.3 In the event that the position of Trustee is vacant or the of the Trustee is otherwise unable to serve, the Board of Water Commissioners shall appoint a temporary Trustee until the Position of District Treasurer is filled of the Trustee is able to serve.

5.4 Each Future Trustee shall accept in writing the office of the Trustee and the terms and conditions of this Trust Agreement.

5.5 Upon leaving office, a Trustee shall promptly and without reasonable delay, deliver to the Trust's principal office any and all records, or documents in its possession or under its control belonging to the Trust.

ARTICLE 6 POWERS OF THE TRUSTEE

6.1 The Trustee shall have the power to control and manage the Trust and the Trust Fund and to perform such acts, enter into such contracts, engage in such proceedings, and generally to exercise any and all rights and privileges, although not specifically mentioned herein, as the Trustee may deem necessary or advisable to administer the Trust and the Trust Fund or to carry out the purposes of this Trust. In addition to the powers set forth elsewhere in this Declaration, the powers of the Trustee, in connection with his/her managing and controlling the Trust and the Trust Fund, shall include, but shall not be limited to, the following:

- 6.1.1 To enter into an administrative services contract or other contracts with one or more insurance companies, nonprofit hospital, medical or dental service corporations, or with one or more health care organizations or health maintenance organizations, or with one or more third-party administrators or other entities to organize, arrange, or provide for the delivery or payment of health care coverage or services (including dental services), whereby the funds for the payment of claims of eligible persons, including appropriate service charges of the insurance carrier, third party administrator or other intermediary, shall be furnished by the Trustee from the Trust Fund for the payment by such intermediary to the health care vendors or persons entitled to such payments in accordance with the terms and provisions of said contract.
- 6.1.2 To purchase contracts of insurance or reinsurance through such broker or brokers as the Trustee may choose and to pay premiums on such policies.
- 6.1.3 To receive, hold, manage, invest and reinvest all monies which at any time form part of the Trust, whether principal or income, provided however that there shall be no investment directly in mortgages or in collateral loans and further provided that the Trustee shall comply with the provisions set forth in this Declaration of Trust, applicable law and any investment policy adopted by the Trustee concerning the investment and management of the Trust funds.
- 6.1.4 To borrow or raise money for the purposes of the Trust, in such amount, and upon such terms and conditions as the Trustee shall deem advisable, subject to applicable law and statutes; and for any sum so borrowed to issue the promissory note of the Trust, and to secure the repayment thereof by creating a security interest in all or any part of the Trust or the Trust Fund; and no person lending such money shall be obligated to see that the money lent is applied to Trust purposes or to inquire into the validity, expedience or propriety of any such borrowing.
- 6.1.5 To hold cash, uninvested, for such length of time as the Trustee may determine without liability for interest thereon.

- 6.1.6 To employ suitable agents, advisors and counsel as the Trustee may deem necessary and advisable to the efficient operation and administration of the Trust, to delegate duties and powers hereunder to such agents, advisors, and counsel, and to charge the expense thereof to the Trust. The Trustee is entitled to rely upon and may act upon the opinion or advice of any attorney approved by the Trustee in the exercise of reasonable care. The Trustee shall not be responsible for any loss or damage resulting from any action or non-- action made in good faith reliance upon such opinion or advice.
- 6.1.7 To hire employees or independent contractors as the Trustee may deem necessary oradvisable to render the services required and permitted for the proper operation of the Trust, and to charge the expense thereof to the Trust Fund.
- 6.1.8 To continue to have and to exercise, after the termination of the Trust and until final distribution, all of the title, powers, discretions, rights and duties conferred or imposed upon the Trustee hereunder, by any by-laws adopted by the Trustee or by law.
- 6.1.10 To construe and interpret this Declaration of Trust and other documents related to the purposes of the Trust.
- 6.1.11 To maintain bank accounts for the administration of the Trust and the Trust Fundand to authorize certain persons to make payments from any appropriate account for purposes of the Trust.
- 6.1.12 To receive and review reports of the financial condition and of the receipts anddisbursements of the Trust and the Trust Fund.
- 6.1.13 To adopt by-laws, rules, regulations, formulas, actuarial tables, forms, and procedures by resolution from time to time as he/she deems advisable and appropriate for the proper administration of the Trust, including participation criteria, provided the same are consistent with the terms of this Declaration of Trust.
- 6.1.14 To purchase as a general administrative expense of the Trust so-called director's liability insurance and other insurance for the benefit of the Trust and/or the protection of the Trustee, Trust officers, employees, or agents against any losses by reason of errors or omissions or breach of fiduciary duty or negligence.
- 6.1.15 To enter into any and all contracts and agreements for carrying out the terms of thisDeclaration of Trust and for the administration and operation of the Trust and to do all actsas he/she, in his/her discretion, may deem necessary or advisable. All such contracts and agreements, *or* other legal documents herein authorized, shall be executed by the Trustee.
- 6.1.16 To receive contributions or payments from any source whatsoever but such contributions or payments may not be utilized for any purpose unrelated to the provision of OPEB as herein provided or properly authorized expenses.
- 6.1.17 To pay taxes, assessments, and other expenses incurred in the collection, care,administration, and protection of the Trust.
- 6.1.18 To take all actions, whether or not expressly authorized herein, which the Trustee may deem necessary or proper in connection with the administration of the Trust, althoughthe power to take such actions is not specifically set forth herein.

- 6.1.19 To compromise, settle or arbitrate any claim, debt, or obligation of or against the Trust or Trust Fund; to enforce or abstain from enforcing any right, claim, debt or obligation, and to abandon any shares of stock, bonds, or other securities, or interests determined by him/her to be worthless; to prosecute, compromise and defend lawsuits, but without the obligation to do so, all at the risk and expense of the Trust;
- 6.1.20 To hire one or more consultants, actuaries, accountants, attorneys or other professionals to assist with the administration of the Trust Fund and to pay such amounts that the Trustee deems to be reasonable, including, without limiting the generality of the foregoing, third party firms to provide legal, tax, accounting and audit services to the Trust.
- 6.1.21 To comply with all requirements imposed by applicable provisions of law.

ARTICLE 7
LIMITATION OF TRUSTEE'S POWERS, DUTIES AND RESPONSIBILITIES

- 7.1 Nothing contained in the Declaration of Trust, either expressly or by implication, shall be deemed to impose any powers, duties, or responsibilities on the Trustee other than those set forth in this Declaration of Trust.
- 7.2 The Trustee shall have such rights, powers, and duties as are provided to a named fiduciary for the investment of assets under ERISA. The Trustee shall not be liable for the making, retention or sale of any investment or reinvestment made by the Trustee as hereinprovided or for any loss to or diminution of the Trust Fund or for anything done or admitted to be done by the Trustee with respect to the Declaration of Trust or the Trust Fund except as and only to the extent that such action constitutes a violation of the law or gross negligence.
- 7.3 The Trustee, in his/her discretion, may purchase as an expense of the Trust Fund such liability insurance for him/herself or any other fiduciary as may be reasonable. The District, in its discretion, may also purchase liability insurance for the Trustee, and as the District may select, for any person or persons who serve in a fiduciary capacity with respect to the Trust.
- 7.4 The District shall not assume any obligation or responsibility to any person for any act or failure to act of the Trustee, any insurance company, or any beneficiary of the Trust Fund
- 7.5 The Trustee shall have no obligation or responsibility with respect to any action required by this Declaration of Trust to be taken by the District, any insurance company, or any other person, or for the result or the failure of any of the above to act or make any payment or contribution, or to otherwise provide any benefit contemplated by this Declaration of Trust.
- 7.6 Neither the Trustee nor the District shall be obliged to inquire into or be responsible for any action or failure to act on the part of the other. No insurance company shall be a party to this Declaration of Trust, for any purpose, or be responsible for the validity of this Declaration of Trust, it being intended that such insurance company shall be liable only for the obligations set forth in the policy or contract issued by it.
- 7.7 The Trustee shall invest and manage Trust assets as a prudent investor would, using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital, pursuant to G.L. c. 203C.

**ARTICLE 8
ACTIONS BY THE TRUSTEE**

- 8.1 The Trustee may delegate to any attorney, agent, or employee such other powers and duties as he/she deems advisable, including the power to execute, acknowledged or deliver instruments as fully as the Trustee might him/herself and to sign and endorse checks for the account of the Trustee.
- 8.2 The Trustee shall be required to give bond.

**ARTICLE 9
LIABILITY OF THE TRUSTEE**

- 9.1 The Trustee shall not be liable for any mistake of judgment or other action made, taken or omitted by him/her in good faith, nor for any action taken or omitted by any agent or employee selected with reasonable care, and the duties and obligations of the Trustee hereunder shall be expressly limited to those imposed upon him/her by this Declaration of Trust.
- 9.2 No successor Trustee shall be held responsible for an act or failure of a predecessor Trustee.
- 9.3 The Trustee is a public employee for purposes of G.L. c. 258 and shall be indemnified by the District against any civil claim, action, award, compromise, settlement or judgment by reason of an intentional tort to the same extent and under the same condition as other public employees of the District.
- 9.4 The Trustee shall not be indemnified for violation of the civil rights of any person if s/he acted in a grossly negligent, willful, or malicious manner, or in connection with any matter where it is shown to be a breach of fiduciary duty, an act of willful dishonesty or an intentional violation of law by the Trustee.

**ARTICLE 10
TAXES, EXPENSES, AND COMPENSATION**

- 10.1 It is intended that the Trust will be a Code Section 115 trust. As such, it is expected that there will be no income taxes owed by the Trust. To the extent that any taxes are imposed on the Trust, the Trustee shall use the assets of the Trust Fund to pay for any taxes owed.
- 10.2 All reasonable costs and expenses of managing and administering the Trust and the Trust Fund, including such compensation for the Trustee as may be approved by District Meeting from time to time, and reimbursement for reasonable fees incurred through the use of third-party vendors or agents, shall be paid from the Trust Fund unless the District chooses to pay the expenses directly.

**ARTICLE 11
ACCOUNTS**

- 11.1 The Trustee shall keep complete and accurate accounts of all of the Trust's receipts, investments and disbursements under this Declaration of Trust. Such records, as well as all other Trust records, shall be retained and made available for public inspection and/or copying in accordance with the requirements of the Public Records Law, G.L. c. 66, §10 and G.L. c.4, §7, clause twenty-six, as amended from time to time, and their implementing regulations. Any person or persons designated by the District shall be entitled to inspect such records upon request at any reasonable time.

11.2 The books and records of the Trust shall be audited annually by an independent auditor in accordance with accepted accounting practices. The results of the audit shall be provided to the District at the same time as it is presented to the Trustee.

11.3 The Trust Fund shall be subject to the Commonwealth of Massachusetts Public Employee Retirement Administration Commission's triennial audit.

ARTICLE 12 ANNUAL REPORTS

12.1 The Trustee shall furnish to the District annually, or more frequently if the District so requests, a statement of account showing the condition of the Trust Funds and all investments, sales, income, disbursements and expenses of the Trust and the Trust Fund.

ARTICLE 13 INVESTMENT OF TRUST FUNDS

13.1 The Trustee is authorized to invest and reinvest the amounts in the Trust Fund not needed for current disbursement, consistent with the prudent investor rule, and as provided in the Investment Policy, if applicable.

13.2 In no event shall any funds be invested directly in mortgages or in collateral loans.

ARTICLE 14 CUSTODY OF THE TRUST FUNDS

14.1 The Trustee is hereby appointed as custodian of the Trust Fund and authorized to employ an outside custodial service to maintain custody of the Trust Funds. All funds in the Trust Fund shall be accounted for separately from all other funds of the District.

14.2 The Trustee shall establish one or more checking accounts, which may be interest bearing or non-interest-bearing accounts. Such checking account or accounts shall be funded solely from the Trust Funds, and the Trustee may draw on such checking accounts for the payment of OPEB and for the administrative expenses of the Trust.

ARTICLE 15 TERMINATION OF TRUST

15.1 The Trust shall continue unless and until terminated pursuant to law or by an instrument in writing signed by the Trustee, provided, however, that continuance of the Trust shall not be deemed to be a contractual obligation of the District.

15.2 Upon termination of the Trust, subject to the payment of or making provision for the payment of all obligations and liabilities of the Trust and the Trustee, the net assets of the Trust shall be transferred to the District and held by the District Treasurer to be used exclusively for providing OPEB to Retired Employees and their eligible dependents and for no other purpose.

15.3 The powers of the Trustee shall continue until the affairs of the Trust are concluded.

ARTICLE 16 AMENDMENTS

16.1 The Trust may only be amended as set forth herein. The District may amend the Trust at any time as may be necessary to comply with the requirements for tax exemption under Section 115 of the Code, to conform the Trust to the laws of the Commonwealth of Massachusetts and to meet the standards set forth in GASB 74 and GASB 75 to be treated as funded through a qualifying trust or equivalent arrangement.

16.2 This Declaration of Trust may be amended, but not revoked, from time to time by the District, subject to the following limitations:

16.2.1 The assets of the Trust may not be used for or diverted to any other purposes prior to satisfaction of the District's OPEB obligations, and reasonable expenses of administering the Trust.

16.2.2 The duties and liabilities of the Trustee cannot be substantially changed without his/her written consent.

16.2.3 Any amendment to this Trust shall be executed in writing.

ARTICLE 17 MERGER

17.1 The District may provide for the merger of the Trust with one or more other trusts established by the District or other government entities for similar purposes as may be provided by law.

ARTICLE 18 SEVERABILITY OF INVALID PROVISIONS

18.1 If any provision of this Declaration of Trust is determined invalid, illegal, or unenforceable for any reason, then the provision shall be severed from the remaining provisions of the Declaration of Trust for any reason, and the remaining parts of the Declaration shall be construed to give the maximum practical effect to the purposes stated herein, as if the invalid, illegal, or unenforceable provision was never a part.

ARTICLE 19
MISCELLANEOUS

- 19.1 This Declaration of Trust shall be interpreted, construed, and enforced, and the Trust hereby created shall be administered in accordance with and governed by the laws of the United States and of the Commonwealth of Massachusetts.
- 19.2 The titles to Articles of this Declaration of Trust are placed herein for convenience of reference only, and the Declaration of Trust is not to be construed by reference thereto.
- 19.3 No person shall be obliged to see to the application of any money paid or property delivered to the Trustee, or as to whether or not the Trustee has acted pursuant to any authorization herein required, or as to the terms of this Declaration of Trust. In general, each person dealing with the Trustee may act upon any advice, request, or representation in writing by the Trustee, or by the Trustee's duly authorized agent, and shall not be liable to any person in so doing. The certification of the Trustee that he/she is acting in accordance with this Declaration of Trust shall be conclusive in favor of any person relying thereon.

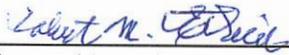
This Declaration of Trust may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which together shall constitute but one instrument, which may be sufficiently evidenced by any counterpart.

Until advised to the contrary, the Trustee may assume this Trust is entitled to exemption from taxation under Section 115 of the Code or under any comparable section or sections of future legislation that amend, supplement or supersede one or both of those sections of the Code.

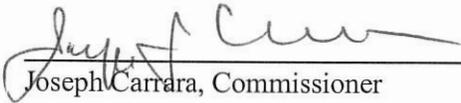
IN WITNESS WHEREOF, the parties hereto have caused this Declaration of Trust to be executed in their respective names by their duly authorized officers as of the day and year first above written.

IN WITNESS WHEREOF, this Declaration of Trust has been duly executed on the date written above.

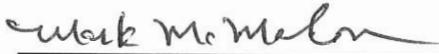
BOARD OF COMMISSIONERS:



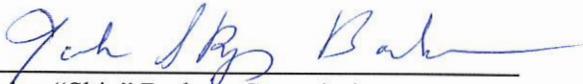
Robert Ethier, Chairman



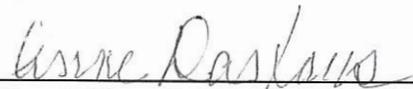
Joseph Carrara, Commissioner



Mark McMahon, Commissioner



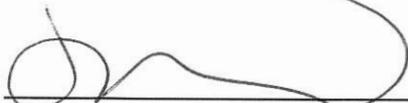
Galon "Skip" Barlow, Commissioner



Vacant, Commissioner

Dated: 6/23/23

OPEB FUND TRUSTEE



Jean Garvey, Treasurer/Clerk

Dated: 6/23/23

