


# TOWN OF CLIFTON PARK TOWN BOARD MEETING

November 8, 2021

The Town Board meeting can be viewed live by visiting [www.cliftonpark.org](http://www.cliftonpark.org) Scroll down to click

 ONLINE BOARD MEETINGS

- I. Call to Order/7:00 P. M. – Wood Room, Town Hall**
- II. Pledge to Flag**
- III. Roll Call**
- IV. Approval of Town Board Minutes**
- V. Communications/Announcements**
- VI. Business**
  - **Resolutions for Consideration**
  - **Other Business**
- VII. Open Public Privilege**

NOTE:

At this time, the Town Board meeting will be open to the public following CDC and New York State Guidelines for COVID-19. If vaccinated, no mask is required. Please check [www.cliftonpark.org](http://www.cliftonpark.org) for final agenda and updates. Each speaker shall state name and address prior to addressing the Board and shall be granted the floor for a single time frame of up to five minutes. The Board asks that members of the public respect the opportunity of the speaker at the podium to be heard, and asks that the public refrain from conducting side meetings within the meeting room. In an effort to ensure that the widest number of community viewpoints are heard, the Board asks members of groups or the public to withhold comment, if their viewpoints have already been presented. The Board thanks everyone in attendance for their understanding and also for their desire to actively participate in the Town decision making process.

- VIII. Adjournment**

Resolutions for Consideration  
Clifton Park Town Board Meeting  
**November 8, 2021**

<u>SOURCE</u>	<u>RESOLUTION</u>	<u>CONTACT</u>
1. Board Member	Adopt a Town Tree Ordinance	A. Standaert
2. Assessor	Authorize the installation of SDG ImageMate Application on the Assessor's Webpage on <a href="http://cliftonpark.org">cliftonpark.org</a>	P. Barrett
3. Buildings & Grounds	Authorize the installation of LED light nodes on a portion of Wall Street	P. Barrett
4. Comptroller	Authorize the Supervisor to sign an agreement with Great-West Trust Company as retirement trustee	P. Barrett

Resolution No. \_\_\_\_\_ of 2021, a resolution adopting a town tree ordinance.

Introduced by \_\_\_\_\_, who moved its adoption, and seconded by \_\_\_\_\_.

WHEREAS, since 2007, the volunteer-based Government Re-Thinking Energy & Environment Now (G.R.E.E.N.) Committee has been assisting and advising the Town Board on energy and environmental impacts and issues; and

WHEREAS, the Town through the G.R.E.E.N. Committee has been working towards official designation as a Tree City USA through the Arbor Day Foundation and National Association of State Foresters; and

WHEREAS, to achieve Tree City USA designation, the Town must meet four separate standards: and

WHEREAS, the Town has met the first standard with a regular, official observance of Arbor Day; and

WHEREAS, the Town has met the second standard with a volunteer tree committee, established through Resolution No. 142 of 2021; and

WHEREAS, following the establishment of the Tree Committee, its volunteer members worked tirelessly on behalf of the community towards achieving the final two standards for Tree City USA designation, and

WHEREAS, after extensive research, the Tree Committee was able to document that the Town has met the third standard by spending \$2 per capita annually towards the planting, care, and removal of diseased trees; and

WHEREAS, the final standard would involve the creation of a tree ordinance to preserve, protect, and enhance the Town's natural environment through tree protection and sustainable tree planting, for the benefit of current residents and those of the generations to come; and

WHEREAS, the Tree Committee worked with the Highway Superintendent, Director of Planning, and Director of Building & Grounds, to draft a town tree ordinance to present to the Town Board; and

WHEREAS, on November 1, 2021, the Town Board conducted a public hearing to consider adoption of a Tree Ordinance; and

WHEREAS, members of the public present at the public hearing spoke in favor of the Town Board adopting the proposed Tree Ordinance; and

WHEREAS, official designation as a Tree City USA will provide numerous environmental, societal, and financial benefits to the Town; now, therefore be it

RESOLVED, that the Town Board officially adopts the Clifton Park Tree Ordinance per attached Schedule A.

Schedule A

**Clifton Park Tree Ordinance**

**Section 1. Purpose**

The intent of this Ordinance is to preserve, protect, and enhance the Town of Clifton Park's natural environment through tree protection and sustainable tree planting. The Town Board shall delegate responsibility for the management of the Town's community forest to the Tree Committee, for the benefit of Clifton Park's current residents and for those of the generations to come.

**Section 2: Motivation**

The presence of trees, shrubs and related vegetation in populated areas correlates with the health and well-being of community residents. Trees mitigate noise pollution, remove carbon dioxide in the air, prevent soil erosion, and add charm and beauty to their surroundings. Trees provide critical protection and a natural habitat for precious wildlife as well as contribute to biodiversity of the environment.

**Section 3: Establishment of a Tree Committee**

A. The Town Board shall create an advisory body known as the Clifton Park Tree Committee. This committee shall consist of between seven (7) and fifteen (15) members, all of whom are residents of the Town. A Town Board member shall serve as chairperson and an ex-officio member of this body. The Tree Committee shall endeavor to recruit at least one (1) member who is professionally educated or experienced in a field such as horticulture, botany, forestry, or related area. In addition, a Technical Adviser (non-voting) member may serve by virtue of his/her special expertise.

B. The members shall be appointed by the Town Board and will serve two-year terms. Members may be reappointed every two (2) years. If a committee member does not serve a full term, the chairperson will appoint a successor.

C. Meetings of the Tree Committee shall be held at least once per month at a time and day convenient for members. Minutes of all meetings shall be maintained and available to the community.

D. Members of the Tree Committee shall serve without compensation.

#### **Section 4. Duties and Responsibilities**

The charge of this committee includes but is not limited to:

- A. The Tree Committee shall serve as an advisory body to the Town Board and other town boards and committees. The Tree Committee shall oversee the development of a written plan, updated as necessary, for the planting, caring, preserving, pruning, removal, or disposal of trees and shrubs along town streets, in parks and preserves, and other public areas. When requested by the Town Board, the Tree Committee will investigate, research, and present findings and recommendations regarding any matter within the framework of its purpose.
- B. The Tree Committee shall help build and maintain an inventory of the location of trees on Town property; determine areas where trees could thrive but are absent; and research and develop an official list of street tree species to be planted on Town property.
- C. The Tree Committee shall sponsor educational events, provide support for tree inventory surveys, and serve as a resource for residents on the planting, care, and pruning of trees on private land.
- D. The Tree Committee shall educate the community about laws and legislation pertaining to the protection of trees.

#### **Section 5. Preservation of Trees**

The Tree Committee will strive to stay informed about proposed residential, commercial, and other new developments in Town and may request to visit the property to identify any "heritage" trees that have exceptional historical, cultural, or aesthetic value and to note any other rare, endangered, or protected plants. The Tree Committee will work with the Town to attempt to maintain any tree identified as heritage.

#### **Section 6. Tree Planting, Maintenance and Removal**

The Tree Committee will advise and support the Town on tree planting, maintenance, and removal on municipal property and rights-of-way.

#### **Section 7: Tree Protection**

The Tree Committee will support Town efforts to address and help prevent threats to trees, such as diseases and pest infestations.

## **Section 8: Nuisance Trees**

The Tree Committee will report any identified nuisance trees that could pose a threat to free passage of pedestrians or vehicles on roads within the Town of Clifton Park.

## **Section 9: Definitions**

**Heritage Trees:** Trees that have been formally recognized by the Town of Clifton Park as unique or irreplaceable. Criteria for heritage tree designation may include age, rarity, size, and/or aesthetic, botanical, cultural, ecological, social, historical, or horticultural significance.

**Nuisance:** Any thing or act that annoys or disturbs unreasonably, hurts a person's use of their property, or violates the public health, safety, and welfare.

**Park:** Includes land designated as a park pursuant to New York State statutes as well as areas such as playgrounds, pools, or other recreational facilities within the Town of Clifton Park.

**Planting:** The placing of a tree or shrub into soil that will encourage growth and maximum health and vigor.

**Preserve:** To keep a tree or shrub from harm, damage or danger; to protect and save a tree or shrub.

**Prune/Pruning:** To remove dead or living parts from a tree or shrub to increase health, vigor, and maintain a desired shape or size or form.

**Public Areas/Places:** Includes all grounds and/or property, including public streets and rights-of-way, owned, leased, or controlled by the Town of Clifton Park for public use.

**Removal:** To take away and remove a tree or shrub, including the stump, to below ground level.

**Shrub:** A woody plant with more than one main stem emerging from the ground.

**Spray/Spraying:** The application of any pesticide, fertilizer, or other substance to a tree or shrub.

**Street Tree:** Any tree or shrub planted or growing within the right-of-way of a public street.

**Town:** The Town of Clifton Park, New York.

**Tree:** A woody plant with a single central axis (trunk) emerging from ground and acquiring a minimum height of ten (10) feet at maturity.

**Trim/Trimming:** To remove parts of a shrub to maintain a desired shape or size.

## ELECTRONIC RESOLUTION REQUEST

Please type in this form. Scan and attach all backup materials.

Must be submitted by email to [mspringli@cliftonpark.org](mailto:mspringli@cliftonpark.org)

CC: [jspiegel@cliftonpark.org](mailto:jspiegel@cliftonpark.org)

SOURCE (DEPARTMENT): Town Board CONTACT: A. Standaert

REQUESTED MEETING DATE: 11/08/2021 (Subject to approval. Submissions received after 5:00 pm on the deadline date\* may be delayed to the next meeting)

### BRIEF DESCRIPTION

a resolution officially adopting the Clifton Park Tree Ordinance

BUDGET #: n/a

BUDGET DESC: n/a

\$ AMOUNT: \_\_\_\_\_

**\*\*Please contact Comptroller x233 to verify Budget Line and #. Resolution Requests without verified funding sources will not be placed on an agenda**

### ADDITIONAL COMMENTS/DETAILS

Questions regarding the resolution may be directed to Councilwoman Standaert.

A draft resolution is attached along with a copy of the ordinance as presented to the public during the public hearing held on November 1, 2021.

Please confirm with Councilwoman Standaert any edits, corrections, or changes to the draft.

*\*Typical Submission dates are the Tuesday prior to the meeting, however, may be subject to change due to holiday schedules.*

1  
Clerk to file  
Sched. A. - Tree Ordinance

WHEREAS, since 2007, the volunteer-based Government Re-Thinking Energy & Environment Now (G.R.E.E.N.) Committee has been assisting and advising the Town Board on energy and environmental impacts and issues; and

WHEREAS, the Town through the G.R.E.E.N. Committee has been working towards official designation as a Tree City USA through the Arbor Day Foundation and National Association of State Foresters; and

WHEREAS, to achieve Tree City USA designation, the Town must meet four separate standards: and

WHEREAS, the Town has met the first standard with a regular, official observance of Arbor Day; and

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WHEREAS, following the establishment of the Tree Committee, its volunteer members worked tirelessly on behalf of the community towards achieving the final two standards for Tree City USA designation, and

WHEREAS, after extensive research, the Tree Committee was able to document that the Town has met the third standard by spending \$2 per capita annually towards the planting, care, and removal of diseased trees; and

WHEREAS, the final standard would involve the creation of a tree ordinance to preserve, protect, and enhance the Town's natural environment through tree protection and sustainable tree planting, for the benefit of current resident's and those of the generations to come; and

WHEREAS, the Tree Committee worked with the Highway Superintendent, Director of Planning, and Director of Building & Grounds, to draft a town tree ordinance to present to the Town Board; and

WHEREAS, on November 1, 2021, the Town Board conducted a public hearing to consider adoption of a Tree Ordinance; and

WHEREAS, members of the public present at the public hearing spoke in favor of the Town Board adopting the proposed Tree Ordinance; and

WHEREAS, official designation as a Tree City USA will provide numerous environmental, societal, and financial benefits to the Town; now, therefore be it

RESOLVED, that the Town Board officially adopts the Clifton Park Tree Ordinance per attached Schedule A.

**ELECTRONIC RESOLUTION REQUEST**

Please type in this form. Scan and attach all backup materials.

Must be submitted by email to [mspringli@cliftonpark.org](mailto:mspringli@cliftonpark.org)

CC: [jspiegel@cliftonpark.org](mailto:jspiegel@cliftonpark.org)

SOURCE (DEPARTMENT): Board Member CONTACT: A. Standaert

REQUESTED MEETING DATE: 11-01-2021 (Subject to approval. Submissions received after 5:00 pm on the deadline date\* may be delayed to the next meeting)

**BRIEF DESCRIPTION**

Public Hearing for Tree Ordinance at 7:07pm

BUDGET #: \_\_\_\_\_

BUDGET DESC: \_\_\_\_\_

\$ AMOUNT: \_\_\_\_\_

***\*\*Please contact Comptroller x233 to verify Budget Line and #. Resolution Requests without verified funding sources will not be placed on an agenda***

**ADDITIONAL COMMENTS/DETAILS**

Attach Legal Notice  
Attach Copy of ordinance as published

*\*Typical Submission dates are the Tuesday prior to the meeting, however, may be subject to change due to holiday schedules.*

# TOWN OF CLIFTON PARK TOWN BOARD MEETING

November 1, 2021

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- VI. Business
  - Public Hearing 7:05 PM – Proposal to allow tax bill inserts
  - Public Hearing 7:07 PM – Adopt a Tree Ordinance
  - Public Hearing 7:09 PM – Adopt Solar Energy Project Fees
  - Presentation of 2021 Community Action Fund Awards
  - Resolutions for Consideration
  - Other Business
- VII. Open Public Privilege

NOTE:

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- VIII. Adjournment

TOWN OF CLIFTON PARK  
COUNTY OF SARATOGA  
STATE OF NEW YORK

NOTICE OF PUBLIC HEARING REGARDING ADOPTION OF A TREE  
ORDINANCE

Please take notice that the Town Board of the Town of Clifton Park will conduct a public hearing on November 1, 2021 at 7:05p.m. in the Wood Memorial Meeting Room in the Town Office Building, located at One Town Hall Plaza, Town of Clifton Park, County of Saratoga, State of New York to consider adoption of a Tree Ordinance.

The local ordinance is for preservation, maintenance, care removal and disposal of trees and shrubs on lands and rights-of-way owned or maintained by the Town. The Ordinance is to enhance the Town's natural environment through tree protection and sustainable tree planting for the benefit of Clifton Park's current residents and for those of the generations to come.

Copies of the proposed Tree Ordinance are available at [www.cliftonpark.org/government/legal-notices.html](http://www.cliftonpark.org/government/legal-notices.html) and are available for review in the Town Clerk's office during normal business hours.

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Teresa Brobston, Clifton Park Town Clerk

Resolution No.        of 2021, a resolution authorizing the Assessor to accept a proposal from Systems Development Group, Inc. for a web-based tool for assessment and real property information.

Introduced by \_\_\_\_\_, who moved its adoption, seconded by \_\_\_\_\_.

WHEREAS, Walter Smead, Sole Assessor, has requested the installation of a web service to integrate real property data with additional comprehensive assessment and real property information on the Assessor's page of [www.cliftonpark.org](http://www.cliftonpark.org), and

WHEREAS, Mr. Smead recommends that SDG Image Mate Online, from Systems Development Group, LLC Barneveld, NY, under State Contract, will provide an internet-based tool that will allow residents to access the assessment roll data as managed by the Town Assessor's office, including more up-to-date information than is currently available to the public, at a cost not to exceed \$1,500 for the first year; now, therefore be it

RESOLVED, that the Town Board hereby accepts the recommendation of Mr. Smead, and be it further,

RESOLVED, that the Assessor is authorized to request the installation of SDG Image Mate Online on <https://cliftonpark.org/departments/assessor.html> by Systems Development Group under NYS OGS backdrop contract, at a cost not to exceed \$1,500 to be paid from A-1355-004 (Assessor – Computer).





8140 State Route 12.  
Barneveld, New York 13304  
(315) 798-1328

## Clifton Park SDG Image Mate Online Proposal

Prepared by: Systems Development Group Inc., Utica, NY  
August 2021

SDG will provide Clifton Park with a robust web service for the retrieval and display of comprehensive assessment and real property information. The proposed system will be based upon the SDG Image Mate Online (IMO) software suite. Image Mate Online is deployed throughout New York State, as many Municipalities have opted to leverage the web to improve economic development efforts and to better serve their constituent property owners. This project will prove valuable to Clifton Park by:

- 1) Improving County Government services for Clifton Park residents.
- 2) Sharing in the advancements driven by the vast majority of NYS Municipalities that utilize IMO as their real property web portal.
- 3) Efficiently utilizing Web and Microsoft .NET technology.
- 4) Providing a consistent common user interface for Clifton Park residents with the most widely used property search engine (IMO) in New York State.
- 5) Providing a link to The IMO feedback page to provide property owners with a simple email method to discuss discrepancies with the Assessors.

SDG developed Image Mate Online using Microsoft Active Server Page (ASP.NET) technology. The software is configured to operate on Windows 20XX web and database servers. SDG also provides hosting services for New York State Counties, Towns and Businesses from our Central New York headquarters. Many New York State Municipalities are actively operating the SDG Image Mate Online System and feedback from Appraisers, Banks, Law Offices, Utilities, Realtors and most importantly the tax-payers has been extremely positive.

SDG has been awarded and maintains New York State backdrop contractor status. SDG is closely aligned with NYS DTF (ORPS) and the New York State RPS Version 4 system and maintains full compatibility with the current RPS V4 release and is fully committed to doing the same with RPS Version 5 (ACES).

SDG will provide Clifton Park with timely long term technical support with both remote and on-sight visits. As an Upstate New York company, SDG system and software engineers, will provide system implementation, enhancement and migration planning cooperative services to the County (e.g. Munis).



8140 State Route 12.  
Barneveld, New York 13304  
(315) 798-1328

### SDG Company Profile:

SDG commenced operations 30 years ago with projects to add previously unavailable digital photography and tax imaging capabilities to the standard text based NYS RPS systems in Central New York State. Word of this new, long sought, capability quickly spread throughout the State and the early projects served as a model statewide and as a springboard for additional RPS enhancements that would ultimately improve NYS assessment and valuation practices while significantly driving down related operational costs.

SDG has remained focused on addressing the technology requirements of our clients with having been contracted for repeat business with over 90% of our client base. Through a consultative process, programs including Outpost and Image Mate Online have evolved to allow the County's timely but low cost buy-in to the effective use of GIS, imaging and mobile technologies to improve the quality and efficiencies of government operations and tax payer services. Because SDG both writes and maintains the core SDG portal Outpost and IMO software programs, constant feedback from local government pushes us to continually innovate and improve our products and services while still keeping an eye on the goal of providing the best value possible to our clients.

### Clifton Park Pricing:

#### SDG Image Mate Online (IMO)

Installation , Configuration and Testing + Year 1 hosting	<b>\$1,500.00</b>
Years 2 through 5	\$1,200.00 annually
Optional	
IMO Feedback Page	\$500.00 Annually

Please let us know if you require any additional information. I can be reached by telephone at (315) 798 – 1328. My mobile number is 315-525-1063 and I can also be reached by email at [jkelly@sdgnys.com](mailto:jkelly@sdgnys.com). SDG greatly appreciates this opportunity to serve Clifton Park.

Sincerely,

A handwritten signature in black ink, appearing to read "John F. Kelly".

John F. Kelly  
President – Systems Development Group Inc.

## Walter Smead

---

**From:** John Kelly <jkelly@sdgnys.com>  
**Sent:** Friday, October 8, 2021 9:19 AM  
**To:** Walter Smead  
**Cc:** ppendleton@sdgnys.com; 'whenderson@sdgnys.com'  
**Subject:** Re: Installing Image Mate Online for the Town of Clifton Park

Town based IMO advantages:

- 1) More frequent updates of RPS data
- 2) Recent sales information for the Realtors, Appraisers, etc... is very helpful
- 3) Regularly and more frequently display of new photos adds value to the site
- 4) Having IMO playing locally eases the move to SDG Outpost mobile tablet based data collection
- 5) The Town can modify the IMO system options independently of the County
- 6) Features like the IMO property owner feedback page, displaying PDF tax bills and others work very well at the Town level
- 7) IMO services will run in a paradigm consistent with neighboring Colonie
- 8) With the fast moving Upstate New York real estate market, keeping everything current is a great help for the professional real property community
- 9) SDG works very closely with GIS provider VHB. Direct links between VHB developed GIS systems and IMO are common and popular around the State

Please let us know if this is enough to run with.

Thanks Walter,

Resolution No. \_\_\_\_\_ of 2021, a resolution approving Change Order No. 1 to a contract with Executive Electric for installation of LED streetlights within the Town.

Introduced by \_\_\_\_\_ who moved its adoption, seconded by \_\_\_\_\_.

WHEREAS, by Resolution No. 246 of 2018, the Town Board awarded an energy efficiency contract to Siemens Industry to specify and implement a program to acquire the streetlights within the Town and replace all such lights with LED lighting, and

WHEREAS, by Resolution No. 266 and No. 274 of 2019, the Town Board authorized the execution of a Purchase and Sale Agreements for streetlights within the Town, and

WHEREAS, Siemens has subcontracted with Executive Electric, LLC, 5 Shuler Street, Amsterdam to install the LED nodes in the town-owned streetlights, and

WHEREAS, Daniel Clemens, Director of Buildings, Parks, and Recreation, has identified 2 light poles on Wall Street, each with 2 lights, that were not listed on the existing inventory conducted, and

WHEREAS, the Town Board wishes to upgrade the existing 4 lights to be consistent with the new LED light fixtures being installed elsewhere in Town, and

WHEREAS, Mr. Clemens has received Change Order No. 1 from the existing subcontractor, Executive Electric for the installation of the four additional nodes at a cost not to exceed \$6,225.00; now, therefore be it

RESOLVED, that the Supervisor is authorized to sign Change Order No. 1 to accept the quote from Executive Electric for four additional streetlight nodes along Wall Street; and be it further

RESOLVED, that the Comptroller is authorized to transfer an additional \$6,225 from A-04010-140 (General Fund – Public Health – Other Payments) to A-5182-200 (General Fund – Street Lighting Equipment).

## ELECTRONIC RESOLUTION REQUEST

Please type in this form. Scan and attach all backup materials.

Must be submitted by email to [mspringli@cliftonpark.org](mailto:mspringli@cliftonpark.org)

CC: [jspiegel@cliftonpark.org](mailto:jspiegel@cliftonpark.org)

SOURCE (DEPARTMENT): B&G CONTACT: D.Clemens

REQUESTED MEETING DATE: November 8, 2021 (Subject to approval. Submissions received after NOON on the deadline date\* may be delayed to the next meeting)

### BRIEF DESCRIPTION

Authorize change order #1 for resolution # Executive Electric LLC, 5 Shuler Street Amsterdam NY to supply and install new wire to power 2 light poles in the median of Wall Street and supply and install 4 new shoebox LED lights to match others in the project with nodes for \$6,225.00

BUDGET #: A-05182-00200

BUDGET DESC: General Fund - Lighting District - Equipment

\$ AMOUNT: 6,225.00

**\*\*Please contact Comptroller x233 to verify Budget Line and #. Resolution Requests without verified funding sources will not be placed on an agenda** Mark E. Haggan

### ADDITIONAL COMMENTS/DETAILS

Transfer funds of \$6,225 from A-04010-00140 (General Fund - Public Health - Other Payments) to A-05182-00200.

\*Typical Submission dates are Wednesday prior to the meeting, however, may be subject to change due to holiday schedules.

Executive Electric LLC  
 5 Shuler Street  
 Amsterdam, NY 12010  
 peterconyne@executivegroupinc.com  
 executivegroupinc.com

# Estimate



ADDRESS
Town Of Clifton Park 1 Town Hall Plaza Clifton Park, NY 12065 United States

SHIP TO
Town Of Clifton Park 1 Town Hall Plaza Clifton Park, NY 12065 United States

ESTIMATE #	DATE	EXPIRATION DATE
QUO224	10/27/2021	11/05/2021

DATE		DESCRIPTION	QTY	RATE	AMOUNT
	<b>Electrical Services</b>	Running 1" Ridge pipe from center of roadway lights to first pole near YMCA to power up 2 poles that each have 2 lights on each. Using Copper wire for underground use. Materials and labor included Digging and back filling on Town, and all traffic control on town as well.	1	2,350.00	2,350.00
	<b>Electrical Services</b>	Installing 2 duel inline fuses one for each pole per code. Materials and labor included	1	450.00	450.00
	<b>Electrical Services</b>	Replacing 4- 400 watt equal LED shoebox lights to match others in Streetlight project. Materials, labor and equipment included	1	2,675.00	2,675.00
	<b>Electrical Services</b>	Mapping with Terra Co for installing the nodes, supplying nodes and install	1	750.00	750.00

TOTAL **\$6,225.00**

Accepted By

Accepted Date

Thank you for your business. We look forward to serving you again.

Resolution No. 112 of 2020, a resolution approving Amendment No. 1 to a contract with Niagara Mohawk dba National Grid for the acquisition of streetlights within the town.

Introduced by Councilman Romano, who moved its adoption, seconded by Councilwoman Standaert.

WHEREAS, by Resolution No. 266 of 2019, the Town Board authorized the execution of a purchase and sale agreement with National Grid for their utility-owned streetlights within the town, for an amount no greater than \$490,923 for the acquisition costs incurred by the agreement based on the estimated book value including transition and transaction costs, and

WHEREAS, under direction from the New York State Public Service Commission, National Grid undertook a review of the net book value formula by which the company valued the streetlight assets in the town, and

WHEREAS, the net book value analysis resulted in an increase in the purchase price for the National Grid streetlights within the town to \$491,863 and a decrease in related transition and transaction costs to \$8,541.79, resulting in a total new acquisition cost of \$500,404.79, and

WHEREAS, the final purchase price will be calculated and provided to the town no less than (10) days prior to the closing date, based on current inventories, and

WHEREAS, the Town Board wishes to accept the new sale price and amend the agreement with National Grid for the acquisition of streetlights in town; now, therefore, be it

RESOLVED, that the Supervisor is authorized to sign Amendment No. 1 to the agreement for purchase and sale of streetlights among Niagara Mohawk Power Corporation dba National Grid to acquire all Niagara Mohawk streetlights; and be it further

RESOLVED, that the Comptroller is authorized to transfer an additional \$9,481.79 from A-914 (Unreserved Fund Balance) to A-5182-200 (General Fund – Street Lighting Equipment).

ROLL CALL VOTE

Ayes: Councilman Whalen, Councilwoman Standaert, Councilman Romano,  
Councilwoman Walowit, Supervisor Barrett

Noes: None

DECLARED ADOPTED

June 8, 2020

\_\_\_\_\_  
Teresa Brobston, Town Clerk

Resolution No. 274 of 2019, a resolution approving a contract with New York State Electric & Gas Corporation (NYSEG) for the acquisition of streetlights within the Town and the related license and attachment agreement.

Introduced by Councilman Romano, who moved its adoption, seconded by Councilwoman Standaert.

WHEREAS, on November 29, 2017, the Town published a Request for Proposals seeking proposals from interested entities for a performance-based energy contract to acquire existing street lighting from their respective utility company owners, and the procurement and installation necessary to upgrade all lighting fixtures to Light Emitting Diode (LED) lighting under the Town's ownership, and

WHEREAS, by Resolution No. 72 of 2018, the Town Board accepted the proposal submitted by Siemens Industry, Inc. which provides guaranteed savings from energy efficiencies resulting from the use of LED technology, reduced maintenance costs, and through the elimination of certain service and maintenance charges from existing utility owners, and

WHEREAS, Siemens Inc. has completed a field audit of all facilities owned by NYSEG within the Town, and has reconciled those findings against an inventory supplied by NYSEG, including a field determination of the type, wattage, location and pole number for each such street lighting facility per Schedule A to the attached Purchase and Sale Agreement, and

WHEREAS, the inventory results in a sale price for the existing luminaires listed in Schedule A offered to the Town by NYSEG of \$81,739 for such streetlights pursuant to regulations from the NYS Public Service Commission for the book value of such utility assets, and

WHEREAS, The Town Board wishes to purchase all streetlights owned by NYSEG within the Town pursuant to The New York State Streetlight Replacement and Savings Act, and related regulatory changes that authorized municipal acquisition of such utility owned streetlights, in order to replace and upgrade such equipment with new LED technology to achieve substantial energy savings associated with the more efficient LED lights pursuant to contract with Siemens, Inc., and

WHEREAS, NYSEG has also provided a detailed license and attachment agreement intended to govern the Town's rights and responsibilities in maintaining, replacing, and operating new LED streetlights and Nightwork Lighting Control Nodes to allow for "Smart Cities" applications and technology going forward; now, therefore, be it

RESOLVED, that the Supervisor is authorized to execute the attached for the Purchase and Sale Agreement with NYSEG for their utility-owned streetlights within the Town and related license agreement for Customer-owned Area Lighting attachments; and be it further

RESOLVED, that the Comptroller is authorized to transfer \$81,739 from A-914 (Unreserved Fund Balance) to A-5182-200 (Lighting District – Equipment) for the acquisition costs incurred by the agreement.

ROLL CALL VOTE

Ayes: Councilman Whalen, Councilwoman Standaert, Councilman Romano,  
Councilwoman Walowit, Supervisor Barrett

Noes: None

DECLARED ADOPTED

December 16, 2019

Patricia O'Donnell, Town Clerk

November 5, 2018

The regular meeting of the Town Board of the Town of Clifton Park was held in the Town Office Building at 7:00 p.m. Supervisor Barrett presiding.

Present: Supervisor Barrett  
Councilman Whalen  
Councilwoman Standaert  
Councilman Romano  
Councilwoman Walowit  
Town Clerk O'Donnell

Also Present: Town Attorney McCarthy  
Mark Heggen, Comptroller  
Daniel Clemens, Supervisor of Buildings & Grounds  
Steven Myers, Director of Building and Zoning  
Louis Pasquarell, Director of Safety and Security

MOTION BY Councilman Romano, seconded by Councilwoman Walowit, to approve the minutes of the October 9 and 15, 2018 meetings as presented.

ROLL CALL VOTE

Ayes: Councilman Whalen, Councilwoman Standaert, Councilman Romano,  
Councilwoman Walowit, Supervisor Barrett

Noes: None

MOTION CARRIED

ANNOUNCEMENTS AND COMMUNICATIONS

None

PUBLIC PRIVILEGE ON RESOLUTIONS

No one wished to be heard.

Resolution No. 246 of 2018, a resolution awarding a contract to Siemens Industry, Inc. for acquisition of streetlights within the town and conversion to energy efficient LED lighting.

Introduced by Councilman Romano, who moved its adoption, seconded by Councilwoman Standaert.

WHEREAS, on November 29, 2017, the town published a Request for Proposals seeking proposals from interested entities for a performance-based energy contract to acquire existing street lighting from their respective utility company owners, and the procurement and installation necessary to upgrade all lighting fixtures to LED lighting under the town's ownership, and

WHEREAS, by initiating its procurement, the town proceeded under the New York State Streetlight Replacement and Savings Act and related regulatory changes that authorized municipal acquisition of utility owned streetlights, and

WHEREAS, by Resolution No. 72 of 2018, the Town Board accepted the proposal submitted by Siemens Industry, Inc. which provides guaranteed savings from energy efficiencies resulting from the use of Light Emitting Diode (LED) technology, reduced maintenance costs, and through the elimination of certain service and maintenance charges from existing utility owners, and

WHEREAS, by Resolution No. 100 of 2018, the Town Board approved a Letter of Intent with Siemens Industry, Inc. which authorized Siemens to proceed with an Investment Grade Audit and related design work for the project, and

WHEREAS, Siemens Inc. has completed the Investment Grade Audit, which compared the type, wattage, location and pole number for each street lighting facility within the town, comparing the data received to existing inventories carried by National Grid and NYSEG, and

WHEREAS, Siemens has proposed an energy efficiency contract which includes the specification of replacement luminaires with comparable wattage and lighting capacity, including GIS mapping for all fixture locations and smart city intelligent street lighting controls for installation after the acquisition of existing streetlights from the applicable utilities, as well as performance based guaranteed energy savings, providing the town an opportunity to offset the costs of acquisition of the existing lighting and installation of upgraded LED lighting through energy savings and efficiencies; now, therefore, be it

RESOLVED, that the Supervisor is authorized to sign the proposed Energy Efficiency Contract with Siemens Industry; and be it further

RESOLVED, that the Comptroller is authorized to transfer \$556,165 from the Unassigned Fund Balance to A-5182-200 (Lighting District-Equipment).

Shadrich Treat, Siemens Industry, reported a request has been submitted to National Grid and NYS Electric & Gas to purchase all 600 street lights- arms and bulbs (not poles). There will be a three to six month review by Public Safety Commission confirming this acquisition will be good for Clifton Park. A mock-up of six to eight lights will be done for town review. Supervisor Barrett noted the town will be saving 60 percent on energy costs by changing the current lights with LED. The total implementation cost of \$1.13 million will be paid in cash with a six-year payback, noting savings could amount to \$4.5 million over 20 years. Legislation passed in 2015 is making it possible for municipalities to do this project. Mr. Treat reviewed the proposed system's abilities, noting enabling certain abilities now will be less expensive than in the future. Siemens did an audit of lights and each has been stamped with GPS location. He said areas have been found where lights and poles don't exist, yet the town is paying for them.

ROLL CALL VOTE

Ayes: Councilman Whalen, Councilwoman Standaert, Councilman Romano,  
Councilwoman Walowit, Supervisor Barrett

Noes: None

DECLARED ADOPTED

Resolution No. 247 of 2018, a resolution re-establishing the Ballston Lake Sewer District No. 1.

Introduced by Councilwoman Standaert, who moved its adoption, seconded by Councilman Whalen.

WHEREAS, by Resolution No. 192 of 2015, the Town Board established the Ballston Lake Sewer District No. 1 in conjunction with the establishment of a companion sewer district within the Town of Ballston, and

WHEREAS, the total estimated expenditures for the joint project including pipes, conduit, pumps and related equipment at the time of establishment was up to \$10,203,729 for the joint project, including engineering, legal, administration and construction costs, based upon Map, Plan and Engineering reports of Delaware Engineering and McDonald Engineering, and

WHEREAS, the applicable engineering reports established that approximately 14% of the properties benefitted by the joint project were in Clifton Park and, therefore the estimated

Resolution No. \_\_\_\_\_ of 2021, a resolution authorizing the Supervisor to sign an amendment to the Administrative Services Agreement between the Town and Empower Retirement for the employees' deferred compensation plan.

Introduced by \_\_\_\_\_, who moved its adoption, seconded by \_\_\_\_\_.

WHEREAS, the Town of Clifton Park is a local public employer, which has adopted a deferred compensation plan pursuant to Section 5 of the New York State Finance Law, and

WHEREAS, the purpose of such plan is to provide employees with a convenient and tax-favored method of saving on a regular and long-term basis, and thereby provide for their retirement, and

WHEREAS, by Resolution No. 273 of 2019 the Town Board amended a five-year renewal agreement with MassMutual in conjunction with Reliance Trust Company to administer this plan under procedures set forth by the New York State Deferred Compensation Board, and

WHEREAS, MassMutual has been acquired by Empower Retirement which has informed the Town that it will offer Managed Account Services through Great-West Trust Company at no cost to the Town, and

WHEREAS, the proposals were reviewed by The Deferred Compensation Committee which recommended that the agreements be accepted; now, therefore be it

RESOLVED, that the Supervisor is hereby authorized to sign an amendment to its contract with Empower Retirement in conjunction with Great-West Trust Company as Trustee; and be it further

RESOLVED, that the Supervisor is also authorized to sign an agreement for Managed Account Services with Great-West Life & Annuity Insurance Company, effective February 1, 2022.

## ELECTRONIC RESOLUTION REQUEST

Please type in this form. Scan and attach all backup materials.

Must be submitted by email to [mpringli@cliftonpark.org](mailto:mpringli@cliftonpark.org)

CC: [jspiegel@cliftonpark.org](mailto:jspiegel@cliftonpark.org)

SOURCE (DEPARTMENT): Supervisor's Office CONTACT: Phil Barrett

REQUESTED MEETING DATE: November 8, 2021 *(Subject to approval. Submissions received after 5:00 pm on the deadline date\* may be delayed to the next meeting)*

### BRIEF DESCRIPTION

A resolution to authorize the Supervisor to sign a trustee change for the Deferred Compensation Plan for the Employees of the Town of Clifton Park. The trustee of the plan will change from Reliance Trust Company to Great-West Trust Company.

BUDGET #: \_\_\_\_\_

BUDGET DESC: \_\_\_\_\_

\$ AMOUNT: \_\_\_\_\_

***\*\*Please contact Comptroller x233 to verify Budget Line and #. Resolution Requests without verified funding sources will not be placed on an agenda***

### ADDITIONAL COMMENTS/DETAILS

The trust agreement per the Empower email from 10/31/21 requests an electronic signature by me. There is a section in the email where I can delegate someone else to sign, but I would enter Phil's email address with a message. Let me know if I should do that or not. I will forward a copy of the email as well and a download of the agreement. If you click on the agreement in the email, it puts my name and email address in the agreement which are removed when its downloaded.

*\*Typical Submission dates are the Tuesday prior to the meeting, however, may be subject to change due to holiday schedules.*

(PB) 5/4  
electronic



October 31, 2021

PLAN ADMINISTRATOR  
ONE TOWN HALL PLAZA  
CLIFTON PARK, NY 12065

## DEFERRED COMPENSATION PLAN FOR EMPLOYEES OF TOWN OF CLIFTON PARK

Dear Plan Sponsor,

As previously communicated, Reliance Trust Company will no longer provide directed trustee services for qualified plans administered by Empower Retirement following the acquisition of the MassMutual retirement business and will be replaced by Great-West Trust Company on February 1, 2022.

### **Action Required**

Please review and execute the following documents to facilitate the trustee change.

- **Trust agreement:** Your plan currently uses Reliance Trust Company. Included in this package is a new Great-West Trust Company Trust agreement.
- **Successor Trustee Letter:** Will be provided to Reliance Trust Company by Great-West Trust Company on your behalf.

As a result of this change, you have the following options:

- Sign the enclosed Trust Agreement, and Successor Trustee and Fee Disclosure letter with Great-West Trust Company pursuant to which Great-West Trust Company will perform directed trustee services.
- Take no action, and pursuant to your current services agreement, or amended services agreement delivered with this communication, you will be deemed to have authorized Empower to enter into the attached Trust Agreement, and Successor Trustee and Fee Disclosure notice letter with Great-West Trust Company on your Plan's behalf. Please note, if we do not receive signed documents within 90 days of the date of this letter, we will facilitate the trustee change on your behalf. A reminder notification will be provided



approximately 45 days after the date of this letter if we do not hear from you. Continuing to make contributions on behalf of the plan will ratify the selection of Great-West Trust Company as directed trustee.

- Discontinue your retirement plan services by providing notice to Empower prior to Reliance Trust Company being replaced by Great-West Trust Company as directed trustee.

Information about Great-West Trust Company was provided in a prior communication and is available via website at [www.greatwesttrustco.com](http://www.greatwesttrustco.com) or you can contact your Empower Client Services Manager or Representative.

If you have questions, please contact your Empower Client Services Manager or Relationship Manager.

Sincerely,

Great-West Trust Company



The undersigned Plan Sponsor previously maintained a trust arrangement (the "RTC Agreement") with Reliance Trust Company ("RTC") for its Deferred Compensation Plan For Employees Of Town Of Clifton Park Plan ("Plan"), pursuant to which RTC served as the non-discretionary directed trustee of the Plan. Effective February 1, 2022, the Plan Sponsor or its designee and Great-West Trust Company, LLC ("GWTC") acts as follows:

**Removal of RTC as Plan Trustee.**

The Plan Sponsor or its designee hereby removes RTC as trustee.

**Appointment of, and acceptance by, GWTC as Plan Trustee.**

The Plan Sponsor or its designee hereby appoints GWTC as successor nondiscretionary Trustee of the Plan and GWTC hereby accepts its position and agrees to all the obligations, responsibilities, and duties imposed upon the Trustee under the Trust Agreement between it and the Plan Sponsor.

**Direction to Assign Insurance Contract.**


Last, if RTC is the contract holder/owner for any group annuity contract or group funding contract for the Plan, the Plan Sponsor authorizes and directs RTC to assign the contract to GWTC as contract holder/owner.

**GWTC 408(b)(2) Disclosure**

Further, the Plan Sponsor acknowledges that it has retained an affiliate of GWTC to provide recordkeeping and administrative services (the "Recordkeeper") and that the fee for such recordkeeping services included the fee that was previously payable to RTC under the RTC Agreement. Although the Plan recordkeeping and administrative services fees are not changing as a result of the transition of trust and/or custodial services from RTC to GWTC, the Plan Sponsor acknowledges and consents that the annual fee for GWTC's services is \$750 and is included in the recordkeeping and administrative service fees for the Plan. The Recordkeeper will forward such fees to GWTC at no additional cost.

**IN WITNESS WHEREOF**, the parties hereto have caused this document to be executed in duplicate, in their names and on behalf by and through their duly authorized officers as of the day and year written above.

**GREAT-WEST TRUST COMPANY, LLC**

By: 

Title: Trust Officer

Date: February 1, 2022



**TRUST AGREEMENT**

For

**TOWN OF CLIFTON PARK**

(the "Plan Sponsor")

**GROUP CLIENT NUMBER**

**062538**

Plan Name	<b>DEFERRED COMPENSATION PLAN FOR EMPLOYEES OF TOWN OF CLIFTON PARK (the "Plan")</b>
Plan Administrator	<b>PLAN ADMINISTRATOR</b>
(Plan Sponsor will be Plan Administrator if left blank)	
Effective Date (later of this date or the date executed by Trustee)	<b>October 31, 2021</b>

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This Trust Agreement is by and between Plan Sponsor and Great-West Trust Company, LLC, a trust company chartered under the laws of the State of Colorado having a place of business in Greenwood Village, Colorado (hereinafter referred to as "Trustee").

Plan Sponsor has established or adopted the Plan for its eligible employees and their beneficiaries. A trust is maintained in connection with the Plan (the "Trust") to which Plan contributions are to be made to be held by the Trustee and to be managed, invested and reinvested for the exclusive benefit of an employee, former employee, participant, former participant, beneficiary or alternate payee who is or may be entitled to participate in or receive benefits under the Plan (collectively, "Participants"). The Plan and Trust are intended to qualify as a plan and trust which meet the applicable requirements of Section 401(a) and 501(a) or Sections 457(b) and (g), whichever is applicable, of the Internal Revenue Code of 1986, as amended, or any successor thereto (the "Code"). Plan Sponsor is a fiduciary to the Plan and is authorized under the terms of the Plan to appoint a Trustee. The Plan Sponsor desires Trustee to hold Plan funds and Trustee is willing to hold such funds pursuant to the terms of this Trust Agreement. The Plan Sponsor wishes to appoint Great-West Trust Company, LLC, as Trustee under the terms hereof. Plan Sponsor hereby warrants and represents that it is permitted, pursuant to its governing laws, including but not limited to applicable state and local laws, to appoint Great-West Trust Company, LLC, as Trustee. In consideration of the premises and of the mutual covenants herein contained, the parties covenant and agree as follows:

## 1. Definitions

"Affiliate" means a corporate entity that directly or indirectly is controlled by or is under common control with a party, including any entity that conforms to this definition after the effective date of this Agreement.

"Data" means Personal Data and Plan Data.

"Data Protection Laws" means any law with respect to the protection of Personal Data that is applicable to Trustee's Services under the Trust Agreement.

"Trust Agreement" includes this Trust Agreement and any exhibits, schedules, notices and other documents attached, incorporated or referenced herein.

"Personal Data" shall mean information that identifies or is reasonably capable of being associated with a Participant in the Plan or an eligible employee of Plan Sponsor, and includes personally identifiable financial information as defined by Title V of the Gramm-Leach-Bliley Act, but excluding data that is publicly-available and data from which individual identities have been removed and that is not linked or reasonably linkable to any individual.

"Plan Data" shall mean non-public Plan level information that is provided to Custodian in connection with receipt of the Services. Plan Data excludes data that is de-identified and aggregated for benchmarking and research purposes.

"Plan Sponsor" means the Plan Sponsor identified above, any plan administrator appointed by the Plan Sponsor (the "Plan Administrator"), fiduciaries to the Plan, and other delegates of the Plan Sponsor (other than Trustee) as dictated by the context.

## 2. Creation and Operation of the Trust

**2.1. Services.** Trustee will provide the services set forth in this Trust Agreement or as further described in schedules or appendixes hereto (collectively the "Services").

**2.2. Establishment/Acceptance of Trust.** In order to carry out the purposes of the Plan, the Trust is hereby created and established or, if previously established, is hereby continued. Trustee accepts

this Trust and agrees to act as Trustee hereunder, but only on the terms and conditions set forth in this Trust Agreement. Subject to the terms and conditions of this Trust Agreement, all right, title and interest in and to the estate of the Trust fund shall be vested exclusively in Trustee.

**2.3. Acceptance of Property.** The Trust Fund shall include only those assets which Trustee initially accepts, and assets that are subsequently added to the Trust Fund pursuant to the provisions of Trust Agreement, hereinafter referred to as the "Trust Fund". Only assets actually received by Trustee will become part of the Trust Fund. Plan Sponsor acknowledges and agrees that it is responsible for effectuating the transfer of any assets held by a prior trustee or custodian to Trustee. All assets so received, together with the income there from and any other increment thereon, shall be held by Trustee pursuant to the terms of this Trust Agreement without distinction between principal and income and without liability for the payment of interest thereon. In no event shall Trustee be considered a party to the Plan and, in the event of any conflict between this Trust Agreement and the provisions of the Plan or any other instrument or agreement forming part of such Plan, the provisions of this Trust Agreement shall take precedence. Trustee shall have only such duties with respect to the Plan as are set forth in this Trust Agreement. For the avoidance of doubt, the Plan Sponsor intends that any annuity or investment contract that both: is issued by an insurance company prior to the creation of this Trust to hold the assets of the Plan; and with respect to which an Affiliate provides recordkeeping services, is to be included in the Trust Fund and, in accordance with Section 3.3, hereby directs the Trustee to hold such contract in the Trust Fund and the Trustee hereby accepts and acknowledges receipt of such asset.

#### **2.4. Investment Powers.**

**2.4.1** Trustee shall have no discretion or authority with respect to the investment of Trust assets, but shall act solely as a directed Trustee, and in accordance with this Trust Agreement shall invest and reinvest the principal and income of the Trust and keep the Trust invested in such investments in securities or other property, real or personal, within or without the United States, including, without limitation, interests and part interests in any bond and mortgage or note and mortgage and interests and part interests in certificates of deposit, commercial paper and other short-term or demand obligations, secured or unsecured, whether issued by governmental or quasi-governmental agencies or corporations or by any firm or corporation, capital, common and preferred, voting and nonvoting stock (regardless of dividend or earnings record), and including shares of mutual funds, annuity or investment contracts issued by an insurance company, and financial options and futures or any other form of option, and shall hold such securities or property in one or more funds; or in any fund created and administered by Trustee or any other bank or Investment Manager, as defined in Paragraph 2.4.6 of this Trust Agreement, for the collective investment of the assets of employee benefit trusts that is (i) a collective investment fund or (ii) a group trust that meets all of the conditions of Revenue Ruling 81-100 as modified by Revenue Ruling 2011-1 (and while any portion of the Trust Fund is so invested, such collective investment fund or group trust shall constitute part of the Plan, and the instrument creating such fund shall constitute part of this Trust Agreement). Trustee may keep such portion of the Trust Fund in cash and cash balances or hold all or any portion of the Trust Fund in savings accounts, certificates of deposit, and other types of time or demand deposits with any financial institution or quasi-financial institution, either domestic or foreign (including Trustee and its Affiliates) as directed by the Plan Administrator, Plan Sponsor, Investment Manager, or other designated fiduciary of the Plan.

**2.4.2** To the maximum extent permitted by law, Trustee shall not be liable for the acquisition, retention or disposition of any assets of the Trust Fund or for any loss to or diminution of such assets unless due to Trustee's own willful misconduct or failure to act in good faith.

**2.4.3** Trustee shall not be the Plan Administrator. Trustee shall be a directed Trustee under the direction of the Plan Administrator, Plan Sponsor, Participants (only to the extent the investment of Plan assets are directed by Participants as provided below), Investment Manager, as appointed by Plan Sponsor or Plan Administrator, or other fiduciary of the Plan designated under the Plan, who is not the Trustee. The duties and obligations of Trustee hereunder shall be limited to those expressly imposed upon it by this Trust Agreement, notwithstanding any reference contrary in the Plan, and no further duties or obligations of Trustee shall be implied. For example, Trustee shall have no initial or ongoing duty to

determine the prudence of any Plan investment directed to be made by Plan Sponsor or any delegate thereof, to diversify Plan investments, or to make or monitor investment decisions. The Plan Administrator, Plan Sponsor or Investment Manager, as applicable, and not the Trustee are solely responsible for the prudent selection of Plan investments and for the ongoing duty to monitor and remove imprudent Plan investments. Trustee shall not be liable for any loss to, or diminution of the Plan assets, or for any other loss or damage which may result from the discharging of its duties hereunder if it acts in good faith and in accordance with the terms of this Trust Agreement and in accordance with the applicable federal or state laws, rules, and regulations.

**2.4.4** Plan Administrator, Plan Sponsor or other designated fiduciary shall select investment alternatives for the Plan (each an "Investment Alternative") which include some or all of the following types, or some other type reasonably acceptable to Trustee from an administrative standpoint: (i) securities issued by open-end investment companies registered under the Investment Company Act of 1940 ("Mutual Funds"), (ii) notes evidencing loans to Participants in accordance with the terms of the Plan, (iii) annuity or investment contracts issued by an insurance company, (iv) a portfolio of securities and obligations which is intended to produce a fixed rate of investment return, including but not limited to guaranteed investment contracts ("GICs"), United States government securities, corporate bonds, notes, debentures, convertible securities, preferred stocks, and interests in collective investment funds maintained by banks or other financial institutions which invest in such securities and obligations and other similar investments, in each case as chosen by Plan Sponsor, Plan Administrator or an Investment Manager, (v) portfolios of securities managed by an Investment Manager for which market values can be obtained readily from securities exchanges or pricing services subscribed to by Trustee, (vi) portfolios of securities issued by Mutual Funds, managed by an Investment Manager or Plan Administrator, and (vii) interests in collective investment funds and group trusts under Revenue Ruling 81-100, as modified by Revenue Ruling 2011-1, maintained by Trustee or another bank or financial institution for qualified plans.

**2.4.5** If the investment of Plan assets is to be directed by Participants, the Plan Administrator, Plan Sponsor or other designated fiduciary, who is not the Trustee, shall be solely responsible for the Plan selecting a broad range of investment alternatives among which Participants may designate investments of their accounts, providing Participants with information concerning the designated Investment Alternatives, and restricting the frequency with which Participants may issue investment instructions. Plan Administrator, Plan Sponsor or other designated fiduciary of the Plan may appoint an "Investment Manager," to manage any Investment Alternative, or any part of an Investment Alternative. Any Investment Manager so appointed shall be (i) an investment adviser registered as such under the Investment Advisers Act of 1940 ("Advisers Act"), (ii) a bank, as defined in the Advisers Act, (iii) an insurance company qualified to perform investment management services under the laws of more than one state of the United States, or (iv) another entity who has agreed to be a fiduciary with respect to the Plan. In the event of such appointment, the appointing fiduciary shall notify Trustee of any such appointment by delivering to Trustee written notice of the appointment of each Investment Manager hereunder, in the form provided by Trustee, together with an acknowledgment by the Investment Manager that it is a fiduciary of the Plan. Alternatively, the Plan Administrator or Plan Sponsor, in its capacity as a fiduciary of the Plan, may manage an Investment Alternative. In either case, the appointing fiduciary shall specify to Trustee the Investment Alternative that shall be subject to such investment management. The appointing fiduciary shall be responsible for ascertaining that, while each Investment Manager is acting in that capacity, that such Investment Manager satisfies the requirements of this paragraph 2.4.6. Trustee shall invest and reinvest the portion of the Trust Fund subject to such investment management only to the extent and in the manner directed by the Investment Manager, the Plan Administrator or Plan Sponsor, as the case may be. During the term of such appointment, Trustee shall have no liability for the acts or omissions of such Investment Manager, the Plan Administrator or Plan Sponsor, and except as provided in the preceding sentence, shall be under no obligation to invest, review, or otherwise manage the portion of the Trust Fund subject to such investment management. Trustee may maintain separate accounts within the Trust Fund for the assets of the Trust Fund subject to such investment management. The appointing fiduciary may terminate its appointment of an Investment Manager at any time and shall notify Trustee in writing of such termination. Trustee shall be protected in assuming that the appointment of an Investment Manager remains in effect until it is otherwise notified in writing by the appointing fiduciary.

**2.4.6** In the event an Investment Manager appointed hereunder is a bank or a trust company, or an affiliate of a bank or trust company, Trustee shall, upon the direction of Plan Sponsor, transfer funds to such bank, trust company, or affiliate for investment through the medium of any collective investment fund created and administered by such bank, trust company, or affiliate, acting as trustee therefor, for the collective investment of the assets of employee benefit trusts, provided that such fund is (i) a bank collective investment fund or (ii) or a group trust that meets all of the conditions of Revenue Ruling 81-100, as modified by Revenue Ruling 2011-1. In order to implement the provisions of this subsection, Trustee is authorized to enter into any required ancillary trust, agency or other type of agreement with an Investment Manager, or its Affiliate, as described in the preceding sentence.

## **2.5. Payments.**

Subject to the provisions of this Trust Agreement, Trustee shall from time to time transfer cash or other property from the Trust Fund to such persons as designated by the Plan Sponsor or Plan Administrator, at such addresses, in such amounts, for such purposes and in such manner as the Plan Sponsor or Plan Administrator may direct, provided that such transfer is administratively feasible, and Trustee shall incur no liability for any such payment made at the direction of Plan Administrator or Plan Sponsor. Plan Sponsor or Plan Administrator shall be solely responsible to insure that any payment made at its direction conforms with the provisions of the Plan, the provisions of this Trust Agreement, and the Code, and Trustee shall have no duty to determine the rights or benefits of any person in the Trust Fund or under the Plan or to inquire into the right or power of Plan Sponsor or Plan Administrator to direct any such payment.

## **3. Powers of the Trustee**

**3.1.** Trustee is authorized to exercise from time to time in accordance with directions from the Plan Administrator, Plan Sponsor, an Investment Manager, or a Participant, as the case may be, the following powers in respect of any property, real or personal, of the Trust Fund, it being intended that these powers be construed in the broadest possible manner:

**3.1.1** to sell at public or private sale for cash or upon credit or partly for cash and partly upon credit;

**3.1.2** to exchange securities or property held by it for other securities or property, or partly for such securities or property and partly for cash, and to exercise conversion, subscription, option and similar rights with respect to securities held by it, and to make payments in connection therewith;

**3.1.3** to compromise and adjust all debts or claims due to or made against it, to participate in any plan of reorganization, consolidation, merger, combination, liquidation or other similar plan or any action thereunder, or any contract, lease, mortgage, purchase, sale or other action by any corporation or other entity;

**3.1.4** to exercise any conversion privilege or subscription right available in connection with any such property; to oppose or to consent to the reorganization, consolidation, merger or readjustment of the finances of any corporation, company or association or to the sale, mortgage, pledge or lease of the property of any corporation, company or association any of the securities of which may at any time be held in the Trust Fund and to do any act with reference thereto, including the exercise of options, the making of agreements or subscriptions and the payments of expenses, assessments or subscriptions, which may be deemed necessary or advisable in connection therewith and to hold and retain any securities or other property which it may so acquire;

**3.1.5** to make distributions in cash or in specific property, real or personal, or an undivided interest therein, or partly in cash and partly in such property;

**3.1.6** to commence or defend suits or legal proceedings and to represent the Trust in all suits or legal proceedings; to settle, compromise or submit to arbitration any claims, debts or damages

due or owing to or from the Trust, provided that Trustee shall notify Plan Sponsor or Plan Administrator of all such suits, legal proceedings and claims and, except in the case of a suit, legal proceeding or claim involving solely Trustee's action or omissions to act, shall obtain the written direction of Plan Sponsor or Plan Administrator before settling, compromising or submitting to binding arbitration any claim, suit or legal proceeding of any nature whatsoever. The Trustee shall have no obligation to undertake, defend or continue to maintain any action or proceeding arising in connection with the Trust, unless and until the Plan Sponsor requests the Trustee to do so and agrees in writing to indemnify the Trustee against the Trustee's costs, expenses and liabilities (including, without limitation, attorneys' fees and expenses) relating thereto, to be primarily liable for such payment and to make periodic payments in respect of such fees and expenses during the course of such proceedings. If the Plan Sponsor thereafter does not pay such costs, expenses and liabilities in a reasonably timely manner, the Trustee shall discontinue participation in such action or proceeding, and charge the assets of the Trust Fund to the extent sufficient for any unpaid fees and expenses;

**3.1.7** upon the written direction of Plan Sponsor or Plan Administrator, to enter into any contract or policy with an insurance company or companies, for the purpose of insurance coverage or otherwise, provided that, except as provided in Section 3.3, Trustee shall be the sole owner of all such contracts or policies and all such contracts or policies shall be held as assets of the Trust Fund; and

**3.1.8** to transfer assets of the Trust Fund to a successor trustee as provided in Section 3.8.

**3.2.** Notwithstanding that Trustee acts solely as a directed trustee, Trustee shall have the following ministerial powers and authority, to be exercised in its sole discretion, with respect to the Trust Fund:

**3.2.1** to employ suitable agents and custodians;

**3.2.2** to delegate to its Affiliate, or others, any or all of its duties arising out of this Trust Agreement, including but not limited to, recordkeeping and reporting;

**3.2.3** to register any securities or other property held by it hereunder in its own name or in the name of a nominee with or without the addition of words indicating that such securities or other property are held in a fiduciary capacity and to hold any securities or other property in bearer form and to deposit any securities or other property in a depository or clearing corporation;

**3.2.4** to reverse any erroneous or provisional credit entries to the Trust Fund retroactively to the date upon which the correct entry or no entry should have been made;

**3.2.5** to make, execute and deliver, as Trustee, any and all deeds, leases, mortgages, conveyances, waivers, releases, subscription documents, or other instruments in writing necessary or desirable for the accomplishment of any of the foregoing powers, provided that in connection with the acquisition, holding or disposition of securities or other property other than publicly-traded securities, that the Investment Manager, Plan Sponsor, or Plan Administrator, as the case may, has provided written direction in a form satisfactory to Trustee; and

**3.2.6** generally to do all ministerial acts, whether or not expressly authorized, which Trustee may deem necessary or desirable in carrying out its duties under this Trust Agreement.

**3.3. Insurance Contracts.** Trustee may, at the direction of Plan Sponsor or Plan Administrator, (i) enter into one or more contracts issued by an insurance company, including such contracts providing for investment in a separate account maintained by an insurance company, (ii) transfer to any such insurance companies a portion of the Trust Fund in accordance with any such contracts, and (iii) hold any such contracts as a part of the Trust Fund until directed otherwise by Plan Sponsor or Plan Administrator. Trustee shall have no responsibility to review any contract or the creditworthiness of the insurance company issuing such contract at any time or from time to time. Plan Sponsor or Plan Administrator may direct

Trustee to (i) demand or accept withdrawals or other distributions under any such contracts; (ii) exercise or not to exercise any rights, powers, privileges and options under any such contracts; and (iii) assign, amend, modify, or terminate any such contracts. Trustee shall take no action with respect to any such contracts except at the direction of Plan Sponsor or Plan Administrator. Trustee shall incur no liability for complying with, or failing to act in the absence of, any such direction of Plan Sponsor or Plan Administrator. Any insurance companies issuing any contracts as hereinabove described may deal with Trustee as the absolute owner of any such contracts and need not inquire as to the authority of Trustee to act with regard to such contracts. In no event shall the underlying assets of such insurance company in which such contracts are invested be considered assets of the Plan or part of the Trust Fund.

### **3.4. Fiduciary Standards.**

**3.4.1** Trustee shall perform those duties under this Trust Agreement that constitute it as a fiduciary with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent trustee acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. Trustee shall exercise reasonable care with respect to its remaining duties and obligations under this Trust Agreement.

**3.4.2** Trustee shall not be responsible for the administration of the Plan, for determining the funding policy of the Plan or the adequacy of the Trust Fund to meet and discharge liabilities under the Plan, or for the investments of the Plan. Trustee shall not be responsible for any failure of Plan Administrator or Plan Sponsor to discharge any of their respective responsibilities with respect to the Plan nor be required to enforce payment of any contributions to the Trust Fund, which duty is assigned to the Plan Administrator, as a fiduciary to the Plan, and Trustee shall be a directed trustee with respect to contributions and shall have no obligation to take any action to collect any contributions except upon the direction of the Plan Administrator.

**3.4.3** Except as otherwise required by the Code, under no circumstances shall Trustee or its Affiliates or agents incur liability for any indirect, incidental, consequential or special damages (including, without limitation, lost profits) of any form incurred by any person, whether or not foreseeable and regardless of the form of the action in which such a claim may be brought, with respect to the Trust Fund or its role as Trustee.

### **3.5. Prohibition of Diversion.**

**3.5.1** At no time prior to the satisfaction of all liabilities with respect to Participants in the Plan shall any part of the corpus or income of the Trust Fund be used for, or diverted to, purposes other than for the exclusive benefit of such Participants. Except as provided below and Section 4, the assets of the Trust Fund shall never inure to the benefit of Plan Sponsor and shall be held for the exclusive purpose of providing benefits to Participants in the Plan and defraying the reasonable expenses of administering the Plan.

**3.5.2** In the case of a contribution that is made by Plan Sponsor by a mistake of fact, subsection 3.5.1 above shall not prohibit the return to Plan Sponsor of such contribution, without any earnings, but reduced by any losses, at the direction of Plan Sponsor or Plan Administrator within one year after the payment of the contribution.

**3.5.3** If a contribution by Plan Sponsor is expressly conditioned on initial qualification of the Plan under Section 401 of the Code, and if the Plan does not so qualify, then subsection 3.5.1 above shall not prohibit the return to Plan Sponsor of such contribution, without any earnings, but reduced by any losses, at the direction of Plan Sponsor or Plan Administrator within one year after the date of denial of qualification of the Plan, to the extent permitted by the Code.

**3.5.4** If a contribution by Plan Sponsor is expressly conditioned upon the deductibility of the contribution under Section 404 of the Code, then to the extent such deduction is disallowed, subsection 3.5.1 above shall not prohibit the return to Plan Sponsor of such contribution, without any

earnings, but reduced by any losses, at the direction of Plan Sponsor or Plan Administrator, to the extent disallowed, within one year after the date of such disallowance.

**3.6. Valuation of the Trust Fund and Periodic Accounts.**

**3.6.1** Trustee shall report the value of securities or other property held in the Trust Fund as follows:

a. Publicly-traded securities for which a price is readily available shall be reported based upon information and financial publications of general circulation, generally available statistical and valuation services, and records of security exchanges, or from quotes from brokers customarily used by Trustee for security pricing purposes;

b. Units or shares in Mutual Funds shall be reported at the most recently announced net asset value pursuant to regulations under the Investment Company Act of 1940;

c. Units or shares in limited liability companies, or other funds other than Mutual Funds (each, together with units or shares of Mutual Funds, a "Fund") or group trusts shall be reported at their most recent asset value or other unit or share value stated by the Fund or its operator received by Trustee prior to the date of the production of any particular statement of account;

d. Units in group trusts shall be reported at the value stated by the trustee of the group trust;

e. Contracts of a type that Trustee, acting reasonably, determines to be an over-the-counter derivative ("OTC Derivative Contracts") shall be reported at the price provided by the applicable Investment Manager, a vendor selected by that Investment Manager, Plan Sponsor or Plan Administrator; and

f. Other securities or other property shall be reported at prices certified by the applicable Investment Manager or at the price provided by a vendor or appraiser selected by the Investment Manager, Plan Sponsor or Plan Administrator.

**3.6.2** Trustee shall follow general market practice with regard to reviewing the reasonableness of prices received by it under clause 3.6.1(a), but shall not otherwise be responsible for any error or inaccuracy in any such price as received by Trustee. Plan Sponsor, Plan Administrator, or the applicable Investment Manager, as the case may be, shall be deemed to have directed Trustee as to any price reported under clauses 3.6.1(b) through 3.6.1(f), and Trustee shall conduct no review or verification of any such price.

**3.6.3** Plan Sponsor, Plan Administrator or the applicable Investment Manager shall be responsible for assessing whether the prices reported by Trustee reflect the fair market value or fair value of the applicable asset at the time as of which Trustee reports the value of the Trust Fund. Trustee shall have no obligation to make a fair value adjustment of any price received by it, although it will incorporate into its reports any fair value adjustment that Plan Sponsor, Plan Administrator, or an Investment Manager may provide instructions for, to the extent that it is practicable for Trustee to do so from an operational perspective. Trustee shall be fully protected in relying upon the prices reported in accordance with this Section 3.6 for all purposes under this Trust Agreement, as well as any requirements of the Financial Accounting Standards Board or Governmental Accounting Standards Board.

**3.6.4** Plan Sponsor acknowledges that reported prices of securities and other property (particularly values of OTC Derivative Contracts and other assets lacking a readily available price) are indicative values only and do not indicate the actual terms at which the relevant asset or liability could be sold or unwound.

**3.6.5** Trustee shall have no responsibility to determine the price of OTC Derivative Contracts except as separately agreed to in writing between Plan Sponsor and Trustee.

**3.6.6** Trustee or its agent shall keep records of all transactions relating to the Trust Fund, which shall be made available at reasonable times during normal working hours to persons designated by Plan Sponsor or as may be required by law. Trustee or its agent shall render an accounting and statement of the Trust Fund assets and their values to Plan Sponsor as or on behalf of Plan Administrator at least annually. Plan Administrator may approve or file objections to such accounting on behalf of itself and Plan Sponsor by an instrument in writing delivered to Trustee. If Plan Administrator does not file with Trustee objections to any such accounting within ninety (90) days after its receipt, Plan Administrator shall be deemed to have approved such accounting on behalf of itself and Plan Sponsor. In such case, or upon the written approval of Plan Administrator of any such accounting, Trustee and its agent shall, to the extent permitted by law, be discharged from all liability for its acts or failures to act described in such accounting. Except to the extent otherwise provided in the Code, no person, other than Plan Sponsor or Plan Administrator, may require an accounting or bring any action against Trustee with respect to the Trust Fund.

**3.6.7** Nothing contained in this Trust Agreement or in the Plan shall deprive Trustee or its agent of the right to have a judicial settlement of its accounts. In any proceeding for a judicial settlement of the accounts of Trustee or its agent or for instructions with regard to the Trust, the only necessary parties thereto in addition to Trustee and its agent as appropriate shall be the Plan Administrator. If Trustee or its agent so elects, it may join as a party or parties defendant any other person or persons.

**3.7. Plan Administrator.** Plan Sponsor shall certify to Trustee and its agent the names of the entity or persons from time to time constituting the Plan Administrator and of any other persons with authority to provide direction on behalf of the Plan under this Trust Agreement. All directions to Trustee or its agent by Plan Administrator or any other authorized representatives shall be in writing which includes directions received via electronic methods acceptable to the Trustee. Trustee and its agent shall be entitled to rely without further inquiry upon all such written directions received from the Plan Administrator or any other authorized persons.

**3.8. Plan-to-Plan Transfers; Rollovers.**

**3.8.1** Trustee or its agent may transfer part or all of the property representing a Participant's interest in the Plan to the trustees of any trust qualified under Section 401(a) of the Code or Section 457(g) of the Code, whichever is applicable, in a plan-to-plan transfer, or with respect to an eligible rollover distribution, to any eligible retirement plan as provided under Section 402(c) of the Code or Section 457(e) of the Code, whichever is applicable. Trustee or its agent may make such a transfer only at the direction of the Plan Administrator or Plan Sponsor.

**3.8.2** Trustee or its agent may accept as part of the Trust Fund such property as is acceptable to Trustee which represents a Participant's retirement benefits transferred from a trust qualified under Section 401(a) of the Code or Section 457(g) of the Code, whichever is applicable, or transferred as a permissible rollover under Section 402(c) or 408(d)(3) of the Code Code or Section 457(e) of the Code, whichever is applicable. The amount of such benefits shall at all times be separately accounted for by Plan Sponsor. A Participant shall at all times be fully vested in any property so transferred as a rollover to the Trust Fund. Such property shall be distributed to the Participant at the direction of the Plan Administrator within the time required for distribution of his retirement benefits under the applicable provisions of the Plan.

**3.9. Participating Employers.**

**3.9.1** Any entity that is required to be treated as a single employer or otherwise required to be aggregated with Plan Sponsor and which has adopted the Plan in accordance with its terms (a "Participating Employer") shall become a party to this Trust Agreement upon Plan Sponsor delivering to Trustee or its Affiliates documentation that it agrees to adopt the Plan, to become a party to this Trust Agreement, and to be bound by all the terms and conditions of the Plan and this Trust Agreement. Plan Sponsor shall have the sole authority to enforce this Trust Agreement on behalf of all Participating Employers and Trustee or its agent shall in no event be required to deal with any such Participating Employer except by dealing with Plan Sponsor as such Participating Employer's agent. Irrespective of the



number of Participating Employers which may become parties to this Trust Agreement, Trustee or its agent shall in all respects invest and administer the Trust Fund as a single fund for investment and accounting purposes without allocation of any part of the Trust Fund as between Plan Sponsor and any Participating Employer.

**3.9.2** A Participating Employer which has adopted the Plan shall cease to be a party to this Trust Agreement upon Plan Sponsor delivering to Trustee documentation that it is terminating its participation in the Plan. In such event, or in the event of the termination of Plan Sponsor or of any such Participating Employer, or in the event of the establishment, modification or continuance of any other retirement plan which separately or in conjunction with this Plan is qualified under Section 401(a) of the Code, Trustee or its agent shall continue to hold the portion of the Trust Fund which is attributable to the participation in the Plan of the employees and their beneficiaries affected by such termination, and this Trust Agreement shall continue in force with respect to such portion, until otherwise directed by the Plan Administrator or Plan Sponsor, in accordance with the provisions of the Plan and the Code.

**3.10. Alienation.** No interest in the Trust Fund shall be assignable or subject to anticipation, sale, transfer, mortgage, pledge, charge, garnishment, attachment, bankruptcy or encumbrance or levy of any kind, and the Trustee or its agent shall not recognize any attempt to assign, sell, transfer, mortgage, pledge, charge, garnish, attach or otherwise encumber the same except to the extent that such attempt is made pursuant to (i) a court order determined by the Plan Administrator to be a qualified domestic relations order, as defined in Section 414 of the Code or (ii) as required by a federal tax levy made in accordance with Section 6331 of the Code, (iii) pursuant to an offset under Section 401(a)(13)(C) of the Code or (iv) as otherwise allowed under the Code.

**3.11. Bond.** Trustee shall not be required to give any bond or any other security for the faithful performance of its duties under this Trust Agreement except as required by law.

**3.12. Proxies and Other Incidents of Ownership**

**3.12.1** The Trustee shall have no discretion with respect to voting proxies, tendering shares in a tender or exchange offer, or exercising any other rights of ownership.

**3.12.2** The Trustee shall deliver or cause to be delivered, as directed by the Plan Sponsor or Plan Administrator, to the Plan Sponsor, Plan Administrator, the designated Investment Manager, or a designated transfer agent, all proxies and proxy related materials relating to investments held under the Trust Agreement received by Trustee.

**3.12.3** The Plan Sponsor shall assign a fiduciary (which may be a person, committee or entity designated by the Plan Sponsor, or the Plan Sponsor, but which shall not be the Trustee) who shall be responsible for voting proxies, tendering shares and exercising shareholder rights.

**3.12.4** With respect to investments held in Participant-directed brokerage accounts, each Participant shall be responsible for directly voting proxies, tendering shares and exercising shareholder rights.

**4. Compensation and Expenses**

**4.1.** Trustee shall be compensated in accordance with the fee schedule provided to Plan Sponsor which may be incorporated as part of the fee schedule or other fee documentation provided to the Plan Sponsor under an agreement between the Plan Sponsor and an Affiliate of the Trustee to provide recordkeeping or other administrative services to the Plan where such fees may be paid by the Affiliate to the Trustee on behalf of the Plan. If Trustee proposes an amended written fee schedule and Plan Sponsor fails to object thereto within ninety (90) days of its receipt, the amended fee schedule shall be deemed accepted by Plan Sponsor. Trustee reserves the right to liquidate Trust assets in satisfaction of its fees hereunder in the event of non-payment by Plan Sponsor.

**4.2.** Plan Sponsor acknowledges and agrees if the Plan's assets pass through a bank account held by Trustee, it may earn credits and/or interest on Plan assets awaiting investment or pending distribution. Any credits or interest earned by Trustee are aggregated with credits and/or interest earned by its Affiliates and will be used to defray the aggregate expenses for the maintenance of bank accounts. Trustee will not retain credits and/or interest earned in excess of such maintenance expenses.

**4.3.** Credits and/or interest are earned from the use of (i) uninvested contributions received too late in the day or not received in good order to be invested same-day and (ii) proceeds from investment option redemptions where distribution checks have not been presented for payment by participants. Credits and/or interest (i) begin to accrue on contributions, on the date such amounts are deposited into the bank account and end on the date such amounts are invested pursuant to Plan participant or Plan representative instructions, and (ii) begin to accrue on distributions, on the date the check is written or on the wire date, as applicable and end on the date the check is presented for payment or when the wire clears against the account, as applicable. Earnings of credits and/or interest are at the rate the bank provides from time to time.

**4.4.** Trustee shall pay out of the Trust Fund, income taxes levied or assessed under existing or future laws against the Trust Fund, (including all Plan participant accounts) upon direction by a regulatory authority or agency or Plan Sponsor or Plan Administrator, as applicable.

**4.5.** Plan Sponsor shall pay, or if not paid by Plan Sponsor and the Plan so permits, Plan Sponsor directs Trustee to pay from the Trust Fund, the reasonable expenses relating to the Plan and Trust Fund that are permitted by law to be paid from the Trust Fund.

## **5. Confidential Information**

**5.1.** In order to perform the Services, both parties may have access to certain information of the other party, including, without limitation, trade secrets, commercial and competitively sensitive information of a party related to business methods or practices, and proprietary software or websites of the party ("Confidential Information"). For the purpose of clarity, any software or website made available by Trustee or its Affiliates ("Trustee Software") is Confidential Information of Trustee. The parties mutually agree to hold all Confidential Information of the other party in confidence using it solely for the purpose of performing or receiving Services under this Trust Agreement and not to disclose any Confidential Information of the other party to anyone except the parties' Affiliates, suppliers, and respective personnel in connection with the performance or receipt of Services hereunder or as directed or approved by the other party or its agents. Confidential Information does not include: information that is otherwise in the public domain through no action of the non-disclosing party; information that is acquired by a party from a person other than the other party or its agents without any obligation of confidentiality; or information that is independently developed by a party without reference to the Confidential Information of the other party.

### **5.2. Permitted Disclosures of Confidential Information.**

**5.2.1 Legally Required Disclosures.** In the event a party is required to make a legally required disclosure of the other party's Confidential Information, such party shall notify the other party of the disclosure as soon as reasonably practicable and shall cooperate with any efforts by such party to obtain protective treatment of such Confidential Information to the extent permitted by law. The foregoing shall not apply to (i) broad-based regulatory examinations associated with a party's general business or operations; (ii) disclosures made in conjunction with a law enforcement investigation or inquiry; (iii) or where notice is prohibited by law..

**5.3. Authorized Disclosures.** Plan Sponsor authorizes Trustee to disclose Confidential Information and Data to Plan Sponsor's advisors, third-party administrators, service providers (such as payroll providers) and representatives authorized by Plan Sponsor in writing to receive such Data. In addition, Plan Sponsor authorizes Trustee to disclose Confidential Information to: (i) any subcustodian, subcontractor, agent, securities depository, securities exchange, broker, third party agent, proxy solicitor, issuer, or any other person that Trustee believes is reasonably required to receive such information in

connection with Trustee's provision of relevant services under this Trust Agreement; (ii) its professional advisors, auditors or public accountants; (iii) its Affiliates, and (iv) any revenue authority or any governmental entity in relation to the processing of any tax relief claim.

## **6. Data Protection**

**6.1. Mutual Obligation to Protect Data.** Trustee, Plan Administrator and Plan Sponsor each agree to maintain and hold in confidence all Data and Confidential Information, as applicable, received in connection with the performance of Services under this Trust Agreement. Trustee and Plan Sponsor agree that their collection, use and disclosure of all Data is and will be at all times conducted in compliance with all applicable Data Protection Laws. Each party will implement, support, and maintain appropriate physical and logical security measures designed to secure Data, and will take all commercially reasonable organizational and technical steps to protect against unlawful and unauthorized processing of Personal Data. In accordance with the foregoing, Trustee, in conjunction with its Affiliates, maintain a comprehensive data security program designed to safeguard Data and access to the Trustee Software and systems

**6.2. Mutual Notice of an Information Security Breach.** The parties will promptly notify each other in the event of an information security breach. Such notice shall include: (i) the consequences of the breach, including (without limitation) any potential impact on the other party's security measures, systems, Data, Confidential Information, or the Trustee Software; and (ii) the corrective action taken to remedy the breach. In addition to the foregoing, Plan Sponsor will notify Trustee immediately upon discovering a compromise of the security and/or log-on credentials of any Plan Sponsor employee or agent that has a plan administration role in Trustee's system.

## **7. Business Continuity & Disaster Recovery**

Trustee will, in conjunction with its Affiliates, maintain business continuity and disaster recovery procedures to address the security, integrity and availability of the technology, operational, financial, human and other resources required to provide mission-critical Services in the event of a natural disaster or other interruption of normal business operations. Such procedures will be tested at least once annually.

## **8. Records**

Trustee shall retain all records in its custody and control that are pertinent to performance under this Trust Agreement in accordance with its record retention policy, as amended from time to time and as required by law. Subject to the foregoing, each party agrees to return or destroy the other party's Confidential Information and Data once it is no longer required for the purpose of performing or receiving the Services, provided that the parties are not obligated to destroy copies of Confidential Information or Data that must be retained for audit, legal or regulatory purposes, or is stored in non-readily accessible electronic format, such as on archival systems; in such cases Trustee's data protection obligations shall continue until such Data is destroyed in accordance with Trustee's record retention policy.

## **9. Intellectual Property Rights**

**9.1. Plan Sponsor Materials.** As between the parties hereto, excluding the Trustee Materials (as defined below), Plan Sponsor shall own all materials, trademarks, tradenames, logos, trade dress, and other Confidential Information provided or made accessible by Plan Sponsor to Trustee for use in providing the Services (collectively, the "Plan Sponsor Materials").

**9.2. Trustee Materials.** As between the parties hereto, Trustee and its Affiliates shall own all materials, documentation, user guides, forms, templates, business methods, trademarks, tradenames, logos, websites, software, technology, computer codes, domain names, text, graphics, photographs, artwork, interfaces and other information or material provided by Trustee or its Affiliates hereunder (collectively, the "Trustee Materials"). Trustee grants to Plan Sponsor a non-exclusive, non-transferable and non-sublicensable license to use the Trustee Materials during the term of the Trust Agreement solely for purposes of using Trustee's Services hereunder and subject to the terms and conditions set forth in this



Trust Agreement. All rights with respect to the Trustee Materials not specifically granted hereunder are reserved by Trustee.

## **10. Liability & Indemnification**

**10.1. Indemnification.** Trustee agrees to indemnify the Plan Sponsor from and against any and all expenses, costs, reasonable attorneys' fees, settlements, fines, judgments, damages, liabilities, penalties or court awards asserted by a third party (collectively, "Damages") to the extent resulting from the Trustee's breach of this Trust Agreement, negligence, or willful misconduct. Notwithstanding anything to the contrary herein, Trustee shall not be liable to Plan Sponsor for any Damages resulting from: (i) any acts or omissions undertaken at the direction of the or any agent or any third party authorized by Plan Sponsor to provide direction to Trustee, including but not limited to prior service providers, investment advisors, or any authorized agent thereof; or (ii) any performance of the Services as to which Trustee has complied with directions or instructions as contemplated by this Trust Agreement, or has refrained from acting in the absence of directions or instructions as contemplated by this Trust Agreement or that is in strict compliance with the terms of this Trust Agreement.

Plan Sponsor acknowledges that Trustee and its directors, officers, employees and authorized representatives are not responsible for the investment performance of any investments under the Trust.

**10.2. Limitation of Liability.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF REVENUE OR PROFIT) EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## **11. Dispute Resolution**

The parties shall engage in reasonable and good faith discussions to resolve any dispute arising out of or relating to this Trust Agreement. If the parties are unable to agree between themselves, the parties will submit the dispute to non-binding mediation conducted by a private mediator agreed to by both parties. If the parties cannot agree on a mediator, the mediator may be selected by a nationally recognized, independent arbitration or mediation organization to which the parties mutually agree. The costs of mediation shall be borne equally by the parties, and each party shall pay its own expenses. If the parties are unable to resolve the dispute through non-binding mediation, either party may initiate litigation; provided, however, that if one party requests mediation and the other party rejects the proposal or refuses to participate, the requesting party may initiate litigation.

### **11.1. Resignation or Removal of Trustee.**

**11.1.1** Trustee may resign at any time by giving ninety (90) days' written notice to Plan Sponsor. The Plan Sponsor may remove Trustee at any time by giving ninety (90) days' written notice to Trustee. In the case of the resignation or removal of Trustee, the Plan Sponsor shall appoint a successor trustee who shall have the same powers and duties as those conferred upon Trustee. If the Plan Sponsor fails to appoint a successor Trustee as of the effective date of the Trustee resignation or removal or as of the effective date of the termination of this Trust Agreement and no other Trustee remains, the Trustee will treat the Plan Sponsor as having appointed itself as Trustee and as having filed the Plan Sponsor's acceptance of appointment as successor Trustee with the Trustee.

**11.1.2** Trustee shall execute, acknowledge and deliver all documents and written instruments necessary to transfer and deliver all of the assets of the Trust Fund and all rights and privileges therein to the successor trustee or, in its discretion, to a court of competent jurisdiction as the Trustee deems necessary, within a reasonable time, after reserving such reasonable amount as it shall deem necessary to provide for any expenses and payments then chargeable against the Trust Fund for which the Trust Fund may be liable, or for payment of the retiring Trustee's fees and expenses in connection with the settlement of its account or otherwise. If the assets so withheld shall be insufficient or excessive for such

purposes, the retiring Trustee shall be entitled to reimbursement for any deficiency out of the Trust Fund from the successor trustee, or shall deliver the excess to the successor trustee, as the case may be. Following the effective date of the removal or resignation of Trustee, upon request, the Trustee shall provide the Plan Sponsor a written account of all Trust Fund transactions since the most recent report provided to the Plan Sponsor. The provisions of Section 3.6 shall be applicable to such account. The term "Trustee" as used in this Trust Agreement shall be deemed to apply to any successor trustee, permitted under Section 11.1.1, acting hereunder.

**11.1.3** Upon the appointment of a successor trustee, the resigning and removed Trustee shall be discharged from further accountability for the Trust Fund, and shall be under no further duty, obligation or responsibility for the disposition by such successor trustee of the Trust Fund or any part thereof.

## **12. Term & Termination**

**12.1. Term.** This Trust Agreement may be terminated as specified below.

**12.2. Termination.** This Trust Agreement may be terminated as follows:

**12.2.1** in the event the contract providing a funding medium or providing for recordkeeping services is discontinued or terminated with an Affiliate of the Trustee, this Trust Agreement shall be terminated as well as of the date of discontinuance or termination of such contract with no further notice required from either party to the other; or

**12.2.2** this Trust Agreement and the Trust created may be terminated at any time by the Plan Sponsor upon ninety (90) days written notice, delivered to the Trustee. Upon receipt of such notice of termination, the Trustee shall, after payment of all expenses incurred in the administration of the Trust Fund and such compensation as to which Trustee may be entitled, distribute the Trust Fund in cash or in kind to such persons or entities, including Plan Sponsor, at such time and in such amounts as Plan Administrator shall direct, which direction shall be in conformity with the provisions of the Plan and applicable provisions of the Code. Notwithstanding the foregoing, Trustee shall not be required to pay out any assets of the Trust Fund until it shall have received such rulings or determinations of the Internal Revenue Service, the or any other administrative agency as it may deem necessary or appropriate in order to assure itself that any such payment is made in accordance with the provisions of law or that it will not subject the Trust Fund or the Trustee, individually or as such Trustee, to liability. The Plan Sponsor or Plan Administrator shall be responsible for obtaining such rulings.

**12.2.3** Notwithstanding the foregoing, either party may terminate this Trust Agreement immediately upon written notice to the other party in the event a material breach of this Trust Agreement by the other party has not been cured within thirty (30) days of that party being given written notice of the material breach.

## **13. Miscellaneous**

**13.1. Affiliates.** Plan Sponsor acknowledges and agrees that Trustee may utilize the services of Affiliates, agents, subcustodians, vendors and suppliers selected by Trustee. Trustee's use of any such party will not relieve Trustee of its obligations hereunder, and Trustee shall at all times remain liable for the performance of the Services hereunder.

**13.2. Relationship of the Parties.** The relationship between the parties is that of independent contractors. Neither Trustee nor its personnel shall be considered employees of Plan Sponsor or Plan Administrator for any purpose. None of the provisions of this Trust Agreement shall be construed to create an agency, partnership or joint venture relationship between the parties or the partners, officers, members or employees of the other party by virtue of either this Trust Agreement or actions taken pursuant of this Trust Agreement.

**13.3. Assignment.** This Trust Agreement shall be binding upon and inure to the benefit of each of the parties, their Affiliates, successors and permitted assigns; provided, however, that neither party may assign its rights or obligations hereunder without the other party's prior written consent. Notwithstanding the foregoing, a party may assign this Agreement in connection with: (i) the sale of substantially all of its assets to an entity that assumes the assignor's obligations under this Agreement; (ii) a merger, acquisition or divestiture; and/or (iii) a transfer to a parent or Affiliate, in each case without the other party's consent. Any corporation which shall, by merger, consolidation, purchase or otherwise, succeed to substantially all the trust business of Trustee shall, upon such succession, and without any appointment or other action by any person, be and become successor Trustee hereunder.

**13.4. Entire Agreement; Amendment; Waiver.**

**13.4.1** This Trust Agreement, including all appendixes, exhibits, schedules, notices and attachments, constitutes the entire agreement of the parties with respect to the subject matter hereof, and supersedes all prior drafts, agreements, negotiations and proposals, written or verbal, relating to the Services, and supersedes any prior trust agreement, statement, or representation relating to the obligations of the Trustee, whether oral or written. Except as otherwise provided herein, this Trust Agreement may be modified only by an amendment signed by authorized representatives of each party. Any Trustee policies that are attached to or referenced in this Trust Agreement may be modified by Trustee at any time. No waiver of any breach of any provision of this Trust Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of such provision or any other provision hereof and no waiver shall be effective unless made in writing.

**13.4.2** Notwithstanding anything contained in this Section to the contrary, no amendment shall divert any part of the Trust Fund to, and no part of the Trust Fund shall be used for, any purpose other than for the exclusive purpose of providing benefits to Participants; provided, however, that nothing in this Section shall be deemed to limit or otherwise prevent the payment from the Trust Fund of expenses and other charges as provided in Section 4.

**13.5. Governing Law; Waiver of Jury Trial.** To the extent not preempted by federal law, this Trust Agreement and the Trust shall be construed, regulated, and administered under the laws of the United States or the State of Colorado, as applicable, without regard to conflict of law principles, and any claim arising under or related to this Trust Agreement shall be subject to the exclusive jurisdiction of the federal and state courts located in Colorado. Both parties agree to waive any right to have a jury participate in the resolution of any dispute or claim arising out of, connected with, related to or incidental to this Trust Agreement to the fullest extent permitted by law.

**13.6. Force Majeure.** Neither Trustee nor Plan Sponsor shall be liable to the other for any and all losses, damages, costs, charges, counsel fees, payments, expenses or liability due to delay or interruption in performing its obligations hereunder, and without the fault or negligence of such party, due to causes or conditions beyond its control, including, without limitation, labor disputes, riots, war and war-like operations including acts of terrorism, epidemics, explosions, sabotage, acts of God, civil disturbance, governmental restriction, transportation problems, pandemics, failure of power or other utilities including phones, internet disruptions, fire or other casualty, natural disasters, or disruptions in orderly trading on any relevant exchange or market, failure of or the effect of rules or operations of any external funds transfer system, inability to obtain or interruption of external communications facilities, or any other cause that is beyond the reasonable control of either party.

**13.7. Severability.** The provisions of this Trust Agreement are severable, and if for any reason a clause, sentence, paragraph or provision of this Trust Agreement is determined to be invalid by a court or federal or state agency, board or commission having jurisdiction over the subject matter thereof, such invalidity will not affect other provisions of this Trust Agreement that can be given effect without the invalid provision.

**13.8. Notices.** All formal notices required by this Trust Agreement will be in writing and shall be sent to Trustee as set forth below or to Plan Sponsor, as the case may be. The Plan Sponsor will be



deemed to have received any applicable notices on behalf of the Plan Administrator. All notices sent shall be effective upon receipt. Provided, however, that upon either party's written request, such communications shall be sent to such other address as a party may specify. No communication shall be binding on Trustee until it is received by Trustee.

**Trustee:**

Notice To Trustee: Great-West Trust Company, LLC  
8525 East Orchard Road  
Greenwood Village, CO 80111  
Attn: Trust Officer

With a copy to: Great-West Trust Company, LLC  
8525 East Orchard Road  
Greenwood Village, CO 80111  
Attn: General Counsel

**Plan Sponsor:**

Notice To Plan Sponsor Plan Sponsor's address of record as provided to the Trustee or its Affiliates from time to time.

**13.9. Headings; Defined Terms; Counterparts.** Section headings used in this Trust Agreement are intended for reference purposes only and shall not affect the interpretation of this Trust Agreement. Unless the context requires otherwise, capitalized terms defined in this Trust Agreement have the meanings set forth herein for all purposes of this Trust Agreement including any schedules or exhibits. This Trust Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. The parties' execution and delivery of this Trust Agreement by facsimile, email, or electronic copies shall have the same force and effect as execution and delivery of an original. Neither the gender nor the number (singular or plural) of any word shall be construed to exclude another gender or number when a different gender or number would be appropriate.

**13.10. Survival.** The provisions of the following sections shall survive the termination of this Trust Agreement: Compensation and Expenses; Confidential Information; Privacy & Data Security; Records; Intellectual Property Rights; Liability & Indemnification; Dispute Resolution; Governing Law; Waiver of Jury Trial; Survival; Severability; and any other section that would by its context be reasonably expected to survive termination.

**13.11. Reports.** The Trustee has accepted this Trust with the understanding that Plan Sponsor or Plan Administrator has entered or is entering into a service agreement with an Affiliate of the Trustee whereby such Affiliate will provide recordkeeping services for all Plan assets held pursuant to this Trust Agreement. The recordkeeping reports and related financial information provided by Affiliate shall constitute the reports of the Trustee.

**13.12. Signatures.** By signing this Trust Agreement the parties certify that they have read and understood it, that they agree to be bound by its terms, and that they have the authority to sign it. This Trust Agreement is not binding on either party until signed by both parties.

IN WITNESS WHEREOF the Plan Sponsor, Plan Administrator, if applicable, and the Trustee have executed this instrument on such dates as specified below.

**Great-West Trust Company, LLC**

  
V. 7.20.21



\_\_\_\_\_  
Signature

**Kevin Mollman**  
\_\_\_\_\_  
Printed Name

**Trust Officer**  
\_\_\_\_\_  
Title

**February 1, 2022**  
\_\_\_\_\_  
Date Signed



# Agreements/services signature page

TOWN OF CLIFTON PARK 062538

By signing this Agreements/Services Signature Page, the parties certify that they have read and understood this Agreement and all applicable documents set forth below, that they agree to be bound by the terms and conditions of these Agreements and applicable documents listed below, and that they have the authority to sign and adopt these Agreements and applicable documents.

**DOCUMENTS THAT REQUIRE SUBMISSION TO EMPOWER RETIREMENT AND ARE COVERED BY THE SIGNATURE PAGE**

- Successor Trustee Letter
- GWTC Trust Agreement

Great-West Life & Annuity Insurance Company reserves the right to provide communications and documents in an electronic format. By signing below, Plan Sponsor understands, acknowledges, and consents to the electronic communication of all general Plan Sponsor communications and the electronic delivery of plan and service-related information. Certain documents delivered electronically may still require Plan Sponsor signatures. Plan Sponsor understands and agrees that the Plan Sponsor can elect to receive all communications in paper form.

IN WITNESS WHEREOF, the parties duly execute this Agreement as follows:

**PLAN SPONSOR**

**BY:**

**PRINT NAME:**

**E-MAIL:**

**TITLE:**

**DATE:**

("Effective Date")

**GREAT-WEST LIFE & ANNUITY INSURANCE COMPANY**

By: *Paula Edmonds*

**PRINT NAME:** Paula Edmonds

**TITLE:** Head/Lead Operations

**DATE:** February 1, 2022