

10/22/2009

ORDINANCE NO. _____

AN ORDINANCE TO AMEND ARTICLE VI, RETIREE HEALTH BENEFIT PLAN AND TRUST, OF CHAPTER 82 OF THE CODE OF ORDINANCES OF THE CITY OF ROCHESTER HILLS, OAKLAND COUNTY, MICHIGAN, REPEAL CONFLICTING ORDINANCES, AND PRESCRIBE A PENALTY FOR VIOLATIONS.

THE CITY OF ROCHESTER HILLS ORDAINS:

Section 1. Article VI of Chapter 82 of the Code of Ordinances shall be amended, as follows:

ARTICLE VI. RETIREE HEALTH BENEFIT PLAN AND TRUST

DIVISION 1 - GENERAL PROVISIONS

Sec. 82-140. Purpose.

The purpose of the Plan and Trust is to establish a Program to provide additional funding for the health insurance needs of long-term eligible employees for the use of post-employment medical insurance premiums.

The Plan and Trust is intended to be tax exempt under Section 115 of the Internal Revenue Code of 1986, as amended. The City intends the trust fund to conform to all applicable federal, state and local laws, regulations and ordinances.

Sec. 82-141. Short title.

This ~~ordinance~~Article may be known and cited as the City of Rochester Hills Retiree Health Supplemental Benefit Plan and Trust ("Plan and Trust").

Sec. 82-142. Definitions.

For the purposes of this Article, the following words shall have the meanings respectively ascribed to them by this section:

City means the City of Rochester Hills, Michigan.

Code means the Internal Revenue Code of 1986, as amended. Reference to any section or subsection of the Code includes reference to any comparable or succeeding provision of any legislation which amends or replaces such section or subsection.

Collective Bargaining Agreements means any written agreement, supplemental agreement, memorandum of understanding, final arbitrator's decision, judicial decision or decision of any public board or agency, by and between applicable Collective Bargaining Associations and the City.

Collective Bargaining Associations means those associations which participate in the Plan and Trust.

Contributions means the payment required to be made to the Trust by the City under the terms of the Plan and Trust or under authority such as ordinance, Collective Bargaining Agreement or City Council resolution for the purpose of saving assets for post-employment medical expenses.

Dependent means the spouse of a Participant or any person who may be claimed as a dependent of the Participant, as defined in Internal Revenue Code Section 152, determined without regard to Sections 152(b)(1), (b)(2) and 152(d)(1)(b).

Eligible Employee means a person employed by the City meeting the following requirements:

- (a) AFSCME Local 2491 Union Member - who was a full-time Employee of the City of Rochester Hills on March 12, 2001 and who at that time had completed 10 years of service;
- (b) AFSCME Local 1917.28 Union Member - who was a full-time Employee of the City of Rochester Hills on March 12, 2001 and who at that time had completed 10 years of service;
- (c) IAFF Local 3472 Union Member - who was a full-time Employee of the City of Rochester Hills on March 12, 2001 and who at that time had completed 10 years of service; or
- (d) Non-Union Employee - who was a full-time Employee of the City of Rochester Hills on March 12, 2001 and who at that time had completed 10 years of service (may include an elected or appointed official).

Investment Manager means an investment manager selected by the Board of Trustees.

Participant means an Eligible Employee who participates in this Supplemental Program, or, after the death of an Eligible Employee, his/her Dependents are considered Participants for purposes of this Program.

Supplemental Program or "Program" means the Supplemental Retiree Health Benefit Plan of the City as described in Division 2 of this Article and any subsequent amendments, and any Contract(s) or other applicable materials incorporated by reference into the Plan.

Plan Administrator or Administrator means the person, persons, firm, corporation or insurance company or companies, appointed by the Board of Trustees to administer the Plan. The Plan Administrator shall be responsible for the administrative functions of the Plan and shall carry out the directives of the Board of Trustees.

Plan Custodian means a bank, trust company or other organization or agent responsible for safeguarding the financial assets of the Trust.

Plan Year means the period commencing on January 1 and ending on December 31.

Property means any property, real or personal, or part interest therein, wherever situated, including, but without being limited to, preferred and common stocks, shares of investment companies, bonds, notes, debentures and mortgages, equipment trust certificates, investment trust certificates, interest in partnerships whether limited or general or in any insurance contract, policy, annuity, or other investment media offered by an insurance company, in which trust assets may be invested pursuant to the Public Employee Retirement System Investment Act.

Spouse means the legal spouse of the Participant who has met all requirements of a valid marriage contract in the state of marriage.

Trust means the Trust of the City of Rochester Hills Supplemental Retiree Health Benefit Program as provided for in Division 4 of this Article.

Trustees or Board of Trustees refers to the Board of Trustees established in Section 82-174 of this Article.

Year of Service means the completion of 2000 hours of service in a 12 month period ending on the anniversary of the Eligible Employee's hire date.

Sec. 82-143. Interpretation and law; construction.

(a) It is intended that this Program shall be and remain a medical expense plan for tax purposes under Code Section 105(c) and other applicable Code provisions. The Board of Trustees shall promptly submit this Plan and Trust to the Internal Revenue Service for appropriate rulings under the Code and all expenses incident thereto shall be borne by the Trust. The City Council may make any modifications, alterations or amendments to the Plan Document and the Trust that are necessary to obtain and retain approval of the U.S. Secretary of the Treasury or his/her delegate as may be necessary to establish and maintain the status of the Program under the provisions of the Code or other federal legislation, as now in effect or hereafter enacted, and the regulations issued thereunder.

(b) Any modification, alteration, or amendment of the Plan Document and the Trust made in accordance with this Article, may be made retroactively, if necessary or appropriate. A certified copy of the resolution of the City Council making such amendment shall be delivered to the Board of Trustees.

(c) Where not governed by Michigan law, the Plan shall be construed and enforced according to the applicable federal laws, and all provisions hereof shall be administered according to such federal laws. If any provisions of the Plan and Trust shall be for any reason invalid or unenforceable, the remaining provisions nevertheless shall remain in effect.

(d) Neither the establishment of the Plan nor the Trust nor any modification thereof, nor the creation of any fund or account shall be construed as giving to any person covered under the Plan and Trust or other person any legal or equitable right against the

City, its elected or appointed officials or employees, the Trustees or any individual Trustee, except as may otherwise be provided in this Article.

(e) Words used herein in the male gender shall be construed to include the female gender where appropriate, and words used in the singular or plural shall be construed as being in the plural or singular, where appropriate.

Sec. 82-144. Collective bargaining agreements.

~~The participation provisions of this Plan are subject to relevant provisions of applicable Collective Bargaining Agreements between the City and the various Collective Bargaining Associations of the City. The provisions of a Collective Bargaining Agreement relative to participation in this Plan and Trust are controlling in the event of a conflict between the terms of the Collective Bargaining Agreement and the Plan and Trust.~~

Nothing contained herein shall be deemed to modify or limit in any way the rights that the parties to the Collective Bargaining Agreements may have, ~~any supplements or memoranda thereto,~~ or any arbitrator's award to enforce collection of any amounts due to the Trust, including the right of the parties to sue for same.

Sec. 82-145. Notice.

Notice given to all parties shall, unless otherwise specified in this Article, be sufficient if in writing and delivered or sent by prepaid first class mail. Except as otherwise noted, the distribution or delivery of any statements or documents required under the Plan and Trust shall be sufficient if delivered in person or prepaid first class mail.

Sec. 82-146. Reporting and disclosure.

The City and the Trustees, or their respective designees, shall complete and provide to Participants, Spouses and/or Dependents and to the appropriate government agencies any reports as may be required by the Code and applicable federal, state or local law. The City and Trustees, respectively, retain the right to provide for disclosure of any information deemed in the best interest of the Participants.

Sec. 82-147. Amendments.

The provisions of the Plan and Trust may be amended at anytime by ordinance adopted by the City Council ~~or by collective bargaining between applicable Collective Bargaining Associations and the City~~ in accordance with applicable law and the tax exempt status of the Trust.

DIVISION 2 – SUPPLEMENTAL RETIREE HEALTH BENEFIT PROGRAM

Sec. 82-148. Eligibility.

To be eligible, the employee must have been actively employed with the City and have completed a minimum of 10 Years of Service with the City as of March 12, 2001.

The Plan Administrator shall prescribe the applicable form for Eligible Employees to become Participants in the Program.

Participants with 70 points of combined age and Years of Service prior to separation of service (including a minimum of 10 Years of Service as of March 12, 2001) are eligible for the supplemental benefit.

An Eligible Employee who becomes totally and permanently disabled from service with the City will be immediately eligible to receive his/her supplemental benefit upon separation from employment with the City.

Sec. 82-149. Supplemental benefit amount and duration.

The supplemental benefit amount is calculated using the following formula, based on Years of Service as of March 12, 2001:

$$(\text{Years of Service})^2 \times .05 \times 15$$

The maximum number of Years of Service that may be used in the formula to calculate the supplemental benefit is 25.

Example: Participant A completed 15 Years of Service as of March 12, 2001. Participant A is eligible to receive a monthly supplemental benefit of \$169.00.

The supplemental benefit is payable upon for a maximum period established by the Participant's total Years of Service as of March 12, 2001.

Example: Participant A completed 28 Years of Service as of March 12, 2001. Participant A retired on December 31, 2009. Participant A will receive a monthly supplemental benefit for 28 years commencing upon his retirement.

The supplemental benefit amount and duration may be amended by a resolution of City Council (for non-union employees) or as negotiated through collective bargaining (for bargaining unit employees). The amount of the supplemental benefit may not exceed the actual cost of the applicable insurance premiums or reimbursable expenses.

Sec. 82-150 Insurance premiums.

Insurance Premiums under the Supplemental Program shall be paid from the Trust in accordance with this Section.

A Participant's supplemental benefit will be paid directly to an insurance carrier providing benefits as part of the City's group health insurance benefit program or effective January 1, 2009, reimburse the cost of any individual medical plan premium payment including Medicare Advantage plans. The maximum benefit paid or reimbursed shall not exceed the Participant's supplemental benefit amount. The Participant will be required to provide the Administrator with annual proof of coverage (subject to periodic audits) and notify the Administrator immediately of any changes in coverage or termination of coverage.

Sec. 82-151. Payouts—proof of expenses.

In order to receive reimbursement for allowable expenses, a Participant must complete the Applicable Form. The Plan Administrator shall establish any procedures necessary to process payments and transfer funds to Participants. Any claim that is denied can be appealed in accordance with the appeal process set forth in this Article.

Sec. 82-152. Termination of participation.

An Eligible Employee shall cease to be a Participant in the Supplemental Program and the Plan Administrator shall terminate all supplemental benefit payments for insurance premiums and/or Medical Expenses once the Participant has received his/her maximum number of monthly benefit payments.

Sec. 82-153. Death benefits.

Upon the death of the Participant, his/her surviving spouse and/or dependent are eligible to receive the Participant's supplemental benefit for a maximum of 36 months, commencing when the Participant would have attained 70 points of combined age and Years of Service. Years of Service shall be established as of the date of the Participant's death. If the Participant retired prior to the date of his/her death, his/her surviving spouse and/or dependent is eligible to receive the Participant's supplemental benefit for the remainder of the period during which the Participant would have received the supplemental benefit to a maximum of 36 months after the death of the Participant. If the Participant's surviving spouse or dependent become totally and permanently disabled during the life of the Participant, they may receive the full supplemental benefit for which the Participant is entitled.

Sec. 82-154. Supplemental program contributions.

Employer Contributions may be made to the Program as authorized by City Council resolution. It is the City's responsibility to correctly calculate and remit the appropriate Employer Contributions.

Sec. 82-155. Delinquent contributions.

The Plan Administrator shall notify the Mayor and City Council of any delinquency in the event it comes to the Plan Administrator's attention that Contributions are not being remitted in a timely manner. The Plan Administrator may, with the approval of the Board of Trustees, establish special enforcement procedures for prompt reporting and payment.

The Board of Trustees has no liability for the delinquency of the Employer's contribution.

Sec. 82-156. Deposits.

In all cases, deposits of contributions shall be treated as actually made only as of the date the funds are accepted as in good order by the Plan Administrator.

Sec. 82-157. Employer contribution report.

The Plan Administrator shall provide an annual report for the Board of Trustees and City Council of the aggregate Employer Contributions made by the Employer.

Sec. 82-158. Valuation.

The Plan Administrator shall receive quarterly reports from the Plan Custodian that show cost and marked to market valuation of the Plan's investments.

Sec. 82-159. Year-end reports.

Within one-hundred eighty days (180) days after the end of each Plan Year, a written report shall be prepared and maintained on file by the Plan Administrator showing the assets held under the Program, a schedule of all receipts and disbursements, and all material transactions of the Program during the preceding year. This report shall be in a form and shall contain other information as the Plan Administrator requires. The report shall also contain such information as is necessary to enable the Board of Trustees to prepare its accounting due under the Trust.

Sec. 82-160. Limitation of liability.

The liability of the Program, the Employer, Plan Administrator, Board of Trustees, and the Trust to any Participant or Dependent for health insurance premiums under the Program shall be limited to the monthly benefit earned by the Participant. The City of Rochester Hills, its agencies, the Board of Trustees, and their officers, employees, and contractors shall not be responsible for any health insurance premiums and their funding under this Program in any respect.

Sec. 82-161. Claims procedure- administrator.

Any Participant may present a claim in writing to the Plan Administrator for any issue involving the Participant's supplemental benefit. The Plan Administrator shall resolve any such claim presented to it. If a Participant is not satisfied with the resolution determined by the Plan Administrator, the Participant may request in writing a claim review under Section 82-162. A Participant who requests a claim review is referred to in this Article as the "Claimant."

Sec. 82-162. Claim review.

(a) Within sixty (60) days of the date of mailing a claim denial, the Claimant may request a review of the claim by the Board of Trustees. If such request is not filed within sixty (60) days, the decision of the Plan Administrator, as applicable, shall be final and binding. The sixty (60) day period may be waived by the Board of Trustees for good cause shown.

(b) The Board of Trustees shall issue a final decision.

(c) A Participant must exhaust his or her administrative remedies under this Article before seeking judicial review.

DIVISION 3 - MISCELLANEOUS

Sec. 82-163. Federal/state taxes.

The Board of Trustees, the City, and the Plan Administrator do not guarantee that any particular Federal or State income, payroll or other tax consequence will not occur because of participation in the Program.

Sec. 82-164. Entire agreement.

The Retiree Health Benefit Plan and Trust document, relevant Collective Bargaining Agreements and employment agreements, including any properly adopted or executed amendments thereof, shall constitute the entire agreement between the City and any Participant regarding the Program. No oral statement regarding the Program may be relied upon by any Participant or other person.

Sec. 82-165. Conflicts.

In resolving any conflict between provisions of the Program and in resolving any other uncertainty as to the meaning or intention of any provision of the Program, the interpretation that (i) causes the Program to constitute a medical benefits program under the provisions of Code and the Trust to be exempt from tax under the Code, (ii) causes the Program to comply with all applicable requirements of the Code, and (iii) causes the Program to comply with all applicable statutes and rules, shall prevail over any different interpretation.

Sec. 82-166. Limitation on rights.

Neither the establishment nor maintenance of a Program nor any amendment thereof nor any act or omission under the Program (or resulting from the operation of the Program) shall be construed:

(a) as conferring upon any Participant, Dependent, or any other person a right or claim against the Trust, Board of Trustees, the City or Plan Administrator, except to the extent that such right or claim shall be specifically expressed and provided in the Program;

(b) as being consideration for, or an inducement or condition of, employment of any Participant or other person, or as affecting or restricting in any manner or to any extent whatsoever the rights or obligations of the City or any Participant or other person to continue or terminate the employment relationship at any time; or

(c) as giving any Participant the right to be retained in the service of the City or to interfere with the right of the City to discharge any Participant or other person at any time.

Sec. 82-167. USERRA compliance.

Notwithstanding any provision of this Plan and Trust document that may be to the contrary, contributions, benefits and service credit with respect to qualified military

service shall be provided as required by the Uniformed Services Employment and Reemployment Rights Act ("USERRA").

Sec. 82-168. Erroneous payments.

If the Board of Trustees or Plan Administrator makes any payment that according to the terms of a Program and the benefits provided hereunder should not have been made, the Board of Trustees or Plan Administrator may recover that incorrect payment, by whatever means necessary, whether or not it was made due to the error of the Board of Trustees or Plan Administrator, from the person to whom it was made or from any other appropriate party. For example, if any such incorrect payment is made directly to a Participant, the Board of Trustees or Plan Administrator may deduct it when making any future payments directly to that Participant.

Sec. 82-169. Release.

Any payment to any Participant shall, to the extent thereof, be in full satisfaction of the claim of such Participant being paid thereby and the Board of Trustees or Plan Administrator may condition payment thereof on the delivery by the Participant of the duly executed receipt and release in such form as may be determined by the Board of Trustees or Plan Administrator.

Sec. 82-170. Liability.

The Plan Administrator shall not incur any liability in acting upon any notice, request, signed letter, telegram or other paper or document or electronic transmission believed by the Plan Administrator to be genuine or to be executed or sent by an authorized person.

DIVISION 4 - TRUST OF THE CITY OF ROCHESTER HILLS RETIREE HEALTH BENEFIT PROGRAM

Sec. 82-171. Establishment of Trust.

(a) The Trust established in this Article shall be irrevocable and shall conform to all applicable sections of the Internal Revenue Code, the statement of purpose in Section 82-140 of this Article, and all laws, ordinances, rules, regulations, arbitrators' awards and judicial decisions interpreting the foregoing provisions.

(b) The Trust shall consist of City Contributions, all investments made or held under Trust and all income therefrom, both received and accrued, and any other property, which may be received or held by reason of the Trust.

(c) The Board of Trustees shall receive and accept for the purposes hereof all property paid to it by or at the direction of the City and shall hold, invest, reinvest, manage, administer, and distribute property and the increments, proceeds, earnings, and income thereof for the exclusive benefit of the Participants, Dependents and Beneficiaries under the Program.

Sec. 82-172. Use of Trust Assets.

(a) No part of the net earnings of the Trust may inure to the benefit of any Participant or beneficiary other than by benefit payments or for services provided to the Trustees in their administration of the Trust. The Trust assets shall not be used for or diverted to purposes other than to provide the benefits contemplated under the Plan for the exclusive benefit of retired Participants and their Spouses and eligible Dependents, except any administrative expenses for which the Trust is liable. A portion of net earnings may be used for payment for reasonable and necessary professional services and costs and expenses related to assist the Board of Trustees and Plan Administrator in the operation of the Trust. ~~The Board of Trustees shall determine what costs, fees and professional services are reasonable and necessary.~~

(b) All income, profits, recoveries, Contributions, forfeitures and any and all monies, securities and properties of any kind at anytime received or held by the Trustees hereunder, shall become part of the Trust when received, and shall be held for the uses and purposes hereof.

Sec. 82-173. Exclusive benefit trust payments.

(a) The Board of Trustees shall delegate to the Plan Administrator the responsibility for making payments from the Trust. The Plan Administrator shall make payments from the Trust to Participants and their Dependents and Beneficiaries as the Program may provide. The Plan Administrator shall ensure that any payment directed under this Section conforms to the provisions of the Program, the Trust Agreement, and the provisions of any applicable law.

(b) Payments from the Trust shall be made by check (or the check of an agent) or electronic funds transfer for the benefit of the payee. Payments or other distributions hereunder may be mailed to the payee at the address last furnished to the Plan Administrator. The Board of Trustees and Plan Administrator shall not incur any liability or other damage on account of any payment or other distribution made by the Trust in accordance with this Section.

(c) This Trust is created for the sole purpose of providing health insurance premium payments for Participants and their Dependents under the Program. No portion of the principal or income of this Trust shall revert to the City/Employer or be used for or diverted to any purpose other than the exclusive benefit of such Participants and their Dependents and Beneficiaries and the payment of reasonable expenses of the Program and Trust.

(d) Any income or earnings of the Trust shall be used to pay expenses and fees of the Trust and offset future City contributions. The Trust funds shall continue to be held by the Board of Trustees in trust and dealt with in accordance with the provisions of the Trust. At no time prior to termination shall any part of the Trust funds be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Dependents and Beneficiaries, as applicable, under the Program and defraying the reasonable expenses of administering the Trust and the Program.

Sec. 82-174. Board of trustees.

(a) The general administration, management and responsibility for the proper operation of the Trust and for making effective and construing the provisions of the Trust shall be vested in the Board of Trustees established by this Section, consistent with applicable state and federal laws and regulations. A Trustee or other fiduciary under the Trust shall discharge his or her duties with respect to the Trust solely in the interest of the Participants for the exclusive purpose of providing benefits to Participants and paying reasonable expenses of administering the Plan and Trust. A Trustee shall discharge his or her duties with the care, skill, and caution under the circumstances then prevailing, which a prudent person, acting in a like capacity and familiar with those matters, would use in the conduct of an activity of like character and purpose.

(b) The Board of Trustees shall consist of the City Treasurer and City Finance Director, and shall also include one City Councilmember and two City residents who shall be appointed by and serve at the pleasure of the City Council.

(c) Each Trustee shall be a fiduciary and have fiduciary responsibilities under applicable law and shall act prudently and in the best interests of the Trust. Each Trustee will receive and hold the Trust as Trustees by virtue of the terms, conditions and provisions of the Trust and for the purposes, uses and trusts and with the powers and duties herein set forth.

Sec. 82-175. Administration.

(a) The principal office and site of the Trust shall be 1000 Rochester Hills Drive, Rochester Hills, Michigan 48309-3033. The Board of Trustees shall have the power to move the principal office of the Trust to another location and to establish other offices, as they deem necessary.

(b) Consistent with applicable state and federal law, the Board of Trustees shall have the power to promulgate rules and regulations for the day-to-day management of the Trust, the investment of monies held by the Trust, to determine all questions regarding the interpretation of the Trust, and such other subjects as shall be deemed necessary and proper by the Trustees. All such rules and regulations shall be reduced to writing and shall be kept in the permanent office of the Trust and available for inspection by the City and the Participants. Any such rule or regulation promulgated by the Trustees shall be adopted, repealed or amended by an affirmative vote of ~~two (2)~~ Three (3) Trustees. If any rule or regulation of the Trust is found to be in conflict with any law, statute, judicial decision, arbitration decision or any other competent body or tribunal, such rule or regulation shall be deemed voided and all other rules and regulations of the Trust shall remain in full force and effect.

(c) A written instrument signed by the Trustees shall be evidence of the action of the Trustees. Any such instrument so signed shall be conclusively presumed to be authentic and all facts and matters stated therein shall be conclusively presumed to be true, and persons, including any person doing business with the Trustees, may rely on such instrument for all purposes.

(d) In the event of any suit brought against the Board of Trustees arising out of the acts within the scope and powers and duties of the Board of Trustees, or in the event of any lawsuit brought by the Trustees as authorized by this Article, the cost of the defense or prosecution of such lawsuit shall be charged to the Trust, and shall be paid directly from the Trust, provided such costs are not incurred by reason of bad faith, gross negligence, or breach of a fiduciary obligation to the Trust or to the beneficiaries thereof.

(e) The Board of Trustees shall be a quasi-judicial body and its actions shall be reviewable by writ of certiorari only.

(f) The Board of Trustees may employ such clerical personnel or administrative personnel to perform whatever administrative activities are required in the proper performance of the Trust. In addition thereto, the Board of Trustees may, if they desire, contract with a plan administrator to perform such clerical and administrative duties as they may, in their discretion, determine is reasonably and prudently necessary to carry out the Trust's activities and purposes. The plan administrator so appointed, or with whom the contract was made, may be assigned the activities of receiving the City's reports, entering the information of those reports on permanent records, maintaining such records, receiving Contributions from the City and/or on behalf of Participants in the form of checks or drafts solely for the purpose of forwarding the Contributions to the Trust's bank accounts, preparation of governmental reports, furnishing reports required by law to Participants, the preparation of checks for the payment of obligations of the Trust, and all related activities and other activities necessary to help administer the Trust. The Board of Trustees are further authorized to enter into contracts with such plan administrator for the administration of the Trust for whatever periods, in their discretion, the said Board of Trustees deem advisable. The Trustees shall be entitled to rely on the reports and recommendations of said plan administrator or any actions taken by said plan administrator with the authority granted him or her. The Board of Trustees shall not be responsible for any act taken with respect to the appointment, designation, retention, discharge, or employment of such administrator which is taken prudently and in good faith. Under no circumstances shall said administrator have control or authority with respect to the management of the Trust or its assets. The plan administrator shall not be clothed with any type of authority or power which will constitute the plan administrator as a fiduciary. Said plan administrator will not have the power or authority to act as an investment counselor or manager and will not be authorized to furnish investment advice. In the event of the plan administrator's discharge, the Board of Trustees shall require the plan administrator to return all necessary books, records and documents in the possession of said plan administrator which are necessary for the proper administration, handling and operation of the Trust. If the Board of Trustees have appointed, employed, hired or contracted with a plan administrator, a provision to this effect shall be incorporated in the written agreement between the Board of Trustees and plan administrator. The Board of Trustees may, in their discretion, assign certain administrative duties to the City; provided, however, that the direction and management of such activities shall be within the exclusive control of the Board of Trustees.

(g) The Board of Trustees may employ (an) investment manager(s) to manage the assets of the Trust. Such investment manager(s) must be registered under the Investment Advisor's Act of 1940, as amended, and must meet any applicable state and

federal requirements to act as investment manager. Such appointment may include the power to acquire and dispose of the assets of the Trust; provided, however, that if any state or federal agency promulgates any rules with respect to limitation of liability on the part of the Trustees in choosing an investment manager or counselor, then the Trustees shall follow said regulations to the extent that they can maximize the protection available to them. If the Trustees chose an investment manager or investment counselor, they shall enter into a written agreement with said investment manager or investment counselor or bank or insurance company, if such institutions act in such capacity, which will provide for the investment or reinvestment of the assets of the Trust; and upon such execution, the Trustees may convey, if it is so provided, to such investment manager, investment counselor, bank or insurance company, any assets of the Trust so that said investment manager or counselor may engage in such transactions which are legal for trust funds in the State of Michigan and in the United States and which are prudent for the Trustees to undertake. Specifically, in accordance with Section 5 of Michigan Public Act 149 of 1999, the assets of the fund shall be invested in accordance with Public Act 314 of 1965, as amended. The Trustees shall not be liable for the acts or omissions of such investment manager, investment counselor, bank or insurance company or under any obligation to invest or otherwise manage the assets of the Trust, which assets are subject to the management of such investment manager, investment counselor, bank or insurance company. The Trustees may, if they deem proper in their discretion, or if the circumstances require it, appoint such investment manager, managers, banks or insurance companies as fiduciaries and enter into an agreement with such institution, naming it a fiduciary and conveying to such fiduciary all or a portion of the assets of the Trust, so that said fiduciary may handle, manage and hold those assets conveyed to it. All assets conveyed to said fiduciary shall be subject to the provisions of the agreement or agreements between the Trustees and the fiduciary.

(h) The Board of Trustees may employ legal counsel with whom they may seek advice, consult with, require attendance at Trustees' meeting and to represent the Trustees whenever necessary, including the preparation of any documents, legal or otherwise, which may have any legal consequences. In choosing said counsel, the Trustees may, with prudence, give consideration to the developed skills and expertise of the attorney and experience and reputation he/she has achieved. The Trustees may rely upon the opinion of such counsel so chosen in respect to any action taken or suffered by the Trustees hereunder in good faith, in accordance with the opinion of said counsel, and the Trustees shall not be liable therefor.

(i) The Board of Trustees may employ an independent certified or licensed public accountant or actuary to perform services as may be required by the Board of Trustees.

(j) The Board of Trustees may authorize the purchase of insurance for the Program and for the Board of Trustees to cover liability or losses occurring for any reason, including but not limited to, an act or omission (errors or omissions) of a fiduciary, including the Trustees.

Sec. 82-176. Board of trustees' meetings.

(a) The Trustees shall meet at least once in each calendar year. The Trustees shall determine the time for the regular meetings of the Trustees and the place or places where such meetings shall be held. The Secretary of the Trustees or his or her designee, shall be responsible for giving notice of the time and place of such meetings to the other Trustees.

(b) Special meetings of the Trustees may be held at the call of one Trustee with or without notice to the other Trustees, as long as the other Trustees consent in writing thereto.

(c) All meetings shall be public, and notice of all meetings, both regular and special, shall be given in accordance with applicable law.

(d) Three (3) Trustees shall constitute a quorum.

(e) All decisions shall be made by at least three (3) affirmative votes.

Sec. 82-177. Compensation.

The Trustees shall not receive any compensation for performing any services for the Trust. Each Trustee shall be reimbursed for any expenses properly and actually incurred in the performance of his or her duties to the Trust. Included in such reasonable expenses properly and actually incurred in the performance of services to the Trust is the attendance at educational meetings and seminars organized and designed to instruct the Trustees in the proper performance of their duties as Trustees and fiduciaries and to instruct, familiarize and acquaint the Trustees with all the provisions of all applicable laws. Reasonable costs and expenses will follow the City's established travel policy related to the participation in such educational conferences conducted and carried out for the purposes expressed herein.

Sec. 82-178. Trustees' powers and responsibilities.

The Trustees shall hold all the powers of Trustees that are necessary to carry out the purposes of the Trust and are generally available to Trustees under the laws of the State of Michigan, except as limited by the Trust and by federal law and regulations. It is intended that the Plan and Trust shall be tax exempt and shall qualify under the Internal Revenue Code, particularly Section 115, and any amendments of the Code applicable to plans of this type. The Trustees shall have the continuing power and duty to propose to the City amendments to this Article, which amendments will be accomplished by ordinance which will include incorporation into this Article, to amend the Trust to the extent it becomes necessary to qualify said Plan and Trust under the Internal Revenue Code and to continue the tax exempt status of the Trust. The Board of Trustees shall take no action nor make any determination inconsistent with any qualification or ruling of the Internal Revenue Service, an arbitrator or the courts with respect to the Trust. In the case of amendments to the Internal Revenue Code or changes of regulations by the Internal Revenue Service, the Board of Trustees are empowered to take all necessary action authorized by this Article and federal and state laws and regulations to continue the qualifications of the Plan and Trust as a qualified Plan and Trust. The Board of Trustees

is also authorized to take all necessary action to maintain the Plan and Trust in compliance with applicable federal and state law. The Trustees shall have exclusive responsibility for the investment, management and control of Trust assets. In carrying out the purposes of the Trust, the Trustees shall have the following powers and duties:

(a) To make rules and regulations with respect to the Trust not inconsistent with the Program or the Code and to amend or rescind such rules and regulations;

(b) To determine, consistent with the applicable laws, rules or regulations, all questions of law or fact that may arise as to any person claiming rights under the Trust, including without limitation, Participants, former Participants, Dependents, former Dependents, Beneficiaries, Eligible Employees, and former Eligible Employees;

(c) Subject to and consistent with the Code, to construe and interpret the Trust and to correct any defect, supply any omissions, or reconcile any inconsistency in the Trust;

(d) Subject to and consistent with the Code, to construe and interpret the Trust (except as to administrative issues) and to correct any defect, supply any omission, or reconcile any inconsistency with respect to the same;

(e) To acquire by purchase, exchange, subscription, or other means, any security or other property and to retain the security or other property in trust; provided, however, the Board shall not maintain the indicia of ownership of any Trust asset outside the jurisdiction of the district courts of the United States;

(f) To invest Trust assets, including appointment of investment managers for specified portfolios;

(g) To adopt investment policies, guidelines, restrictions, and requirements;

(h) To sell at public or private sale for cash or on credit, convey, lease for long or short term or convert, redeem, exchange, or abandon all or any part of the Trust Fund;

(i) To hold part or all of the Trust Fund un-invested as may be appropriate to provide reasonable liquidity for the Trust;

(j) To contract for, purchase, or otherwise procure insurance and investment products;

(k) To take, renew, extend, foreclose, or otherwise deal with any mortgage or other security; to reduce interest on obligations held by it; to bid in property foreclosure; and to take deeds in lieu of foreclosure, with or without paying a consideration therefore;

(l) To exercise, or by general or limited power of attorney, or to refrain from exercising any right, including the right to vote, incident to any security or other property held by them;

(m) To register any Trust asset in the name of the Trust, in the name of its agent or in the name of a nominee or to hold any instrument in bearer form (but the books

and records of the Program shall at all times show that such investments are part of the Trust Fund);

- (n) To consult with and rely on the advice of legal counsel;
- (o) To employ suitable agents in furtherance of duties hereunder;
- (p) To make, execute, acknowledge, and deliver any and all instruments necessary or appropriate to carry out the powers herein granted;
- (q) To collect any and all money and other property due to the Trust and to issue full discharge therefore;
- (r) To consent to or participate in a reorganization, recapitalization, consolidation, or merger;
- (s) To exercise generally any of the powers of an owner with respect to all or any part of the Trust Fund; and
- (t) To take all actions consistent with this Trust Agreement necessary or appropriate to administer or carry out the purposes of the Trust and the Program; provided, however, the Board need not take any action unless in its opinion there are sufficient Trust assets available for the expense thereof.
- (u) The Board of Trustees shall establish a uniform system for the timely transmission of required reports and Contributions from the City on behalf of Participants. The Trustees shall have the right and duty to enforce the performance of all obligations provided for in the Trust. The Trustees shall immediately notify the City and the Plan Administrator of a delinquency, mistake or discrepancy in any report or Contribution. In a suit or action brought by the Board of Trustees commenced pursuant to this Section, the party in default agrees to pay all costs and expenses, including reasonable attorneys' fees. Delay by the Trustees in bringing this suit to recover delinquent Contributions from the City shall not be considered a waiver of any of the rights reserved to the Trust.
- (v) The Board of Trustees shall maintain proper books of accounts and records of administration of the Trust, including the minutes of all meetings, and make them available for inspection at the permanent office of the Trust during reasonable business hours by the City or any Participant covered by the Plan and Trust. The Trustees shall compile and furnish to each individual Trustee copies of all records which they individually or collectively require to properly discharge their duties. The City shall be entitled to receive from the Trustees records pertaining to the City's Contributions, and any Participant shall be entitled to receive records of the Trustees relating to the activities of the Trust.
- (w) The Board of Trustees shall cause an annual audit to be made of the Trust by a firm of independent certified or licensed public accountants, and a copy of such audit shall be made available at the principal office of the Trust for inspection by interested persons. Such audit shall contain a summary of the assets and liabilities of the

Trust, a resume of the operations for the preceding year, together with such other data as the Trustees request or is required by law.

(x) The Board of Trustees shall make reports to and file such information with the Internal Revenue Service, or any other appropriate public authority as may be required by state or federal law.

(y) The Board of Trustees may assign or allocate specific responsibilities or duties among the Trustees, or appoint committees for the purpose of overseeing any activity or pursuing or investigating any activity or transactions in which the Board of Trustees are interested. The Trustee or committee of Trustees may be assigned the responsibility to take action without prior approval by the remainder of the Board of Trustees. Any such action taken under such circumstances shall be valid, proper and not a breach of fiduciary responsibility of the Trustee or committee so appointed and so acting. The Board of Trustees may rely on the report of the individual Trustee or committee of Trustees who prepared the report or recommended the action which was undertaken by the full Board of Trustees after receiving the report of the Trustee or committee of Trustees. No Trustee shall be liable for the acts of any Trustee or committee of Trustees under these circumstances because of any act or omission on the part of the Trustee or committee of Trustees to whom such responsibilities, obligations or duties have been assigned or allocated, unless he or she participates with the knowledge that such act or omission is a breach of fiduciary responsibility or if he or she has knowledge of a breach by such other fiduciary without making reasonable efforts under the circumstances to remedy the breach.

(z) The Trust may cause the Trustees, or any person, firm or organization with which it deals who has fiduciary responsibilities under the Trust or under that person's, firm's or organization's arrangement with the Board of Trustees, to be bonded in an amount not less than ten (10%) percent of the funds handled, but in no event in excess of Five-Hundred Thousand (\$500,000.00) Dollars, unless an amount over and above that is prescribed by state or federal law. The corporation providing such bond shall meet applicable federal, state and local standards.

Sec. 82-179. Trust liabilities.

(a) The City shall not be liable for payment of Contributions to the Trust or of any expenses of the Trust of any amounts other than those required of it by the Trust. Neither the City nor any Participant or Trustee shall be liable for any debts, liabilities or obligations of the Trust except as set forth in the Trust. The City shall have no right to the return of any money properly paid into the Trust, except as otherwise specifically provided in this Article, or to money improperly paid which has already been distributed. Any contribution improperly paid into the Trust by the City shall be returned by the Trustees upon the request of the City or upon discovery by the Trustees that such monies have been improperly paid into the Trust, unless those monies have already been distributed.

(b) No part of the Trust or any benefits payable by the Board of Trustees shall be subject to alienation, sale, transfer, assignment, pledge or encumbrance charge by any person.

Sec. 82-180. Termination of the trust.

(a) Subject to the limitations of this Article, the parties hereby contemplate that new employment benefit decisions may be made by the City which may continue or modify the provisions of the Trust. The Trust shall continue during such period of time as may be necessary to carry out the provisions of any ordinance requiring payment to the Trust and the fact that such employment benefit decisions are not extended shall not by itself terminate this Trust, which shall continue for a period of time sufficient to wind up the affairs of the Trust.

(b) Provided there are no longer any Participants eligible for benefits from the Trust, the Trust may be terminated at any time by the Trustees by the execution of an instrument in writing, so long as the termination is not inconsistent with any then-existing ordinance. It shall not be necessary for the City to execute such an agreement for the Trust to terminate.

(c) The Trust shall terminate in any case upon the death of the last survivor of such persons who are living at the time of its creation or entitled to receive benefits hereunder.

(d) Upon termination of the Trust and satisfaction of all liabilities of the Trust pursuant to this Trust document, any remaining assets shall be returned to the City. Notwithstanding anything contrary in this Trust, in no event will Trust assets be distributed to an entity that is not a state, political subdivision of a state or an entity, the income of which is exclude from gross income under section 115 of the Internal Revenue Code of 1986.

Sec. 82-181. Amendments to the trust.

(a) The provisions of the Trust may be amended at anytime by

~~(1) collective bargaining between applicable Collective Bargaining Associations and the City; or~~

~~(2) by ordinance adopted by the City Council, upon recommendation by the Board of Trustees, provided, however, that such amendments are not inconsistent with any applicable agreements or laws and do not adversely affect the tax exempt status of this Trust.~~

(b) The Trust may not be amended to the extent such amendment would:

(1) alter the basic purpose of the Trust, as set forth in this Article, or divest any Participant or beneficiary of any rights which have already vested and to which they have already become entitled to and for sums of money which they are entitled to receive then or in the future; or

(2) conflict with any applicable law or government regulation; or

(3) cause the use or diversion of any part of the Trust for purposes other than those generally authorized in this Article; ~~or,~~

~~(4) conflict with any applicable Collective Bargaining Agreements.~~

(c) Despite any provision to the contrary above, or which may be inconsistent herewith, the Board of Trustees may propose amendments and shall have the duty to propose amendments to the Plan and Trust to comply with any rule or regulation of the Internal Revenue Service for qualification under the Internal Revenue Code, for the continuation of tax exemption of the Trust, for the deductibility of Contributions made by the City under applicable sections of the Internal Revenue Code, to obtain a favorable determination letter from the Internal Revenue Service, or to comply with applicable federal and state law.

Section 2. Penalty. All violations of this ordinance shall be misdemeanors and upon conviction thereof shall be punishable by a sentence of not more than ninety (90) days of confinement to jail or by a fine of not more than \$500, or both, in the court's discretion.

Section 3. Severability. This ordinance and each article, section, subsection, paragraph, subparagraph, part, provision, sentence, word and portion thereof are hereby declared to be severable, and if they or any of them are declared to be invalid or unenforceable for any reason by a court of competent jurisdiction, it is hereby provided that the remainder of this ordinance shall not be affected thereby.

Section 4. Repeal, Effective Date, Adoption.

(1) Repeal. All regulatory provisions contained in other City ordinances, which are inconsistent with the provisions of this ordinance, are hereby repealed.

(2) Effective Date. This ordinance shall become effective on _____, 2009, following its publication in the _____ on _____, 2009.

(3) Adoption. This ordinance was adopted by the City Council of the City of Rochester Hills at a meeting thereof held on _____, 2009.

Bryan K. Barnett, Mayor
City of Rochester Hills

CERTIFICATE

I hereby certify the foregoing ordinance was adopted by the City Council of the City of Rochester Hills at a meeting thereof on _____, 2009.

Jane Leslie, Clerk
City of Rochester Hills