

TRUST AGREEMENT FOR  
CITY OF MANITOWOC  
POST RETIREMENT INCURRED MEDICAL EXPENSE  
PLAN AND TRUST  
(PRIME PLAN)

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CITY OF MANITOWOC  
POST RETIREMENT INCURRED MEDICAL EXPENSE PLAN AND TRUST  
TRUST AGREEMENT

THIS TRUST AGREEMENT (this "Trust Agreement") is made by and between City of Manitowoc, a political subdivision of the State of Wisconsin (the "Employer") and Pelion Benefits, Inc. (the "Trustee") effective April 1, 2014.

**RECITALS:**

The Employer and the Trustee acknowledge the following:

A. The Employer is a political subdivision of the State of Wisconsin and exempt from federal income tax under the Internal Revenue Code of 1986.

B. Concurrently with the execution of this Agreement, the Employer is executing an adoption agreement (the "Adoption Agreement") to establish a post-retirement welfare benefit plan for its employees and their dependents which provides health and other benefits through self-funded medical reimbursement arrangements (the "Plan").

C. The Employer provides the Plan in accordance with section 105(h) and 106 of the Internal Revenue Code of 1986, as amended (the "Code").

D. Under the Plan, the Employer intends to make contributions to and accumulate assets in a segregated trust fund to provide post-retirement welfare benefits for its employees who qualify to participate under the Plan.

E. The Trustee is willing to hold Employer's contributions to the Plan in trust for the exclusive benefit of the participants of the Plan subject to the terms and conditions of the Adoption Agreement and this Trust Agreement.

In consideration of these Recitals and the mutual agreements which follow, the Employer and the Trustee agree as follows:

**Article 1  
DEFINITIONS**

**1.1 Definitions.** The following words and phrases shall have the meanings stated below, unless otherwise expressly provided:

- (a) Account means the individual account maintained under the Plan to record the assets held for a Participant in the Plan as provided in Article 6.3.

- (b) Administrator means the Employer. The Employer may contract with a third party to provide administrative services to implement and maintain the Plan.
- (c) Dependent means an individual who either is designated as a dependent under the terms of the Plan and is eligible for benefits under the Plan or is the Participant's legal spouse and is eligible for benefits under the Plan.
- (d) Investment Fund means any investment option selected by the Employer in which Trust assets may be invested. The Trustee shall not be required to select any Investment Fund.
- (e) Participant means an employee of the Employer who, upon retirement from the Employer's employ or termination of employment with the Employer, will be eligible for benefits as provided under the Plan.
- (f) Trust means the trust established by this Agreement.
- (g) Trustee means the person or persons appointed by the Employer to serve in that capacity, or any successor Trustee appointed by the Employer.
- (j) Vested Interest means the Participant's non-forfeitable right in the Employer's contribution as provided in the Plan's vesting schedule.

## **1.2 Construction.**

- (a) Governing Law. This Trust shall be governed by and construed in accordance with the laws of the State of WI.
- (b) Gender and Number. Words used in the masculine gender shall include the feminine gender, and words used in the singular shall include the plural where appropriate.
- (c) Severability. If any part of this Agreement shall be determined to be illegal or unenforceable for any reason, such determination shall not affect the remaining provisions of the Agreement. The remaining provisions shall be interpreted to effectuate the purpose of this Trust.

## **Article 2 ESTABLISHMENT AND ACCEPTANCE OF TRUST**

- 2.1 Establishment.** The Trust is established as of the date stated above for the exclusive benefit of Participants and their Dependents.
- 2.2 Acceptance of Trust.** All payments made by the Employer to the Trust, together with the income, gains and all other increments, shall be held, managed and

administered in trust pursuant to the terms of this Agreement. The Trustee accepts the Trust created by this Agreement and agrees to perform the duties, responsibilities and obligations under this Agreement.

### **Article 3 BENEFITS**

- 3.1 Benefits.** This Trust may provide the benefits described in the Plan to the Participant and the Participant's Dependents. Survivor benefits available under the Plan may be provided to the Dependents "only" of a deceased Participant. In the event no Dependent exists then such benefits shall be considered forfeited and returned to the Employer as a non-vested benefit.
- 3.2 Form of Benefits.** The Trust may reimburse the Employer or the Administrator for insurance premiums paid by the Employer or the Administrator on behalf of the Participants and their Dependents. The Trust may also directly reimburse the Participant or his Dependents for insurance premiums or other direct payments paid by the Participant or his Dependents under the Plan.

### **Article 4 DUTIES AND RESPONSIBILITIES**

- 4.1 Trustee Duties and Responsibilities.** As directed by the Employer in writing, the Trustee shall have the duty to hold title to assets held for the Plan in the Trustee's name. The Trustee has no duty to determine the amount of Employer contributions or to collect amounts which may be due under the Plan. The Trustee shall not be responsible for the custody, investment, safekeeping or disposition of any assets comprising the Trust to the extent such functions are performed as directed by the Employer or the Administrator.
- 4.2 Employer Duties.** The Employer shall, as required by the Plan, make contributions to the Plan from time to time and, if necessary, inform the Trustee, in writing, of the identity and value of the contributed assets to be titled in the Trustee's name. The Employer or its delegate shall maintain accurate records regarding Participants and Dependents under the Plan.

### **Article 5 INVESTMENTS**

- 5.1 Appointment of Investment Managers.** The Employer may appoint one or more investment managers to supervise and direct the investment and reinvestment of a portion or all of the Trust in accordance with the provisions of this Agreement. The Employer shall notify the Trustee in writing of any such appointment.

**5.2 Participant Direction of Investments.** No Participant or Descendent of a Participant may direct the investment of any assets contributed to this Trust by the Employer or any investment held by the Trustee under the terms of this Trust Agreement.

**5.3 Trustee Actions.** The Trustee shall not have any discretion or authority with respect to the investment of the Trust and shall act solely as a directed Trustee of the assets to which it holds title. To the extent directed by the Employer, the Trustee is authorized and empowered with the following powers, rights and duties which shall be exercised in a non-discretionary manner:

- (a) To register stocks, bonds, securities or other investments in its name as Trustee or in the name of a nominee, or to take and keep such investments unregistered.
- (b) To exercise, where appropriate, any rights of ownership in insurance contracts in which the Trust may be invested and to pay the premiums on such contracts.
- (c) At the direction of the Employer or the investment manager, to sell, write options on, convey or transfer, invest and reinvest contributions and earnings in each and every kind of property, whether real, personal or mixed, tangible or intangible, whether income or non-income producing and wherever situated.
- (d) To employ such agents and legal counsel as it deems advisable in connection with its duties and to pay such agents and legal counsel a reasonable fee. Provided the Trustee has used reasonable care in selecting its agents and legal counsel, the Trustee shall not be liable for the acts done in good faith and in reliance upon the advice of such agents and legal counsel.

**5.4 Title to Assets.** Notwithstanding anything within this Agreement to the contrary, the Trustee shall hold Plan assets as titleholder only. The Employer, the Administrator, the investment manager and any agents and subagents, but not the Trustee, shall hold custody or possession of assets titled to the Trust.

**5.5 Liability of Trustee.** The Trustee shall not incur any liability for any act or failure to act unless such act or failure to act is due to its own negligence, willful misconduct or lack of good faith. Specifically, the Trustee may act or rely upon any direction from the Employer, the Administrator, an investment manager or any of the preceding parties' agents to take title to the assets, unless this action involves or results from the Trustee's negligence, willful misconduct or lack of good faith. The Trustee may refuse to comply with any direction from the Employer, the Administrator, the investment manager or such other agents if the Trustee, in its sole and absolute discretion, deems such direction illegal.

**5.6 Indemnification.** To the extent permitted by law, the Employer indemnifies and holds the Trustee harmless from any and all actions, claims, demands, liabilities, losses or damages in connection with or arising out of: (a) Any good faith action taken or omission of the Trustee in accordance with the directions of the Employer, the Administrator, an investment manager or their agents; (b) any disbursement of any part of the Trust directed by the Employer; or (c) in accordance with any direction of the investment manager.

However, the Employer shall have no responsibility under this Article 5.6 or Article 5.7 to indemnify or hold harmless the Trustee if the Trustee by negligence or by willful misconduct fails to perform any of its duties required by the provisions of this Trust.

**5.7 Valuation of Assets.** The Employer or, if so designated by the Employer, the Administrator and the investment manager or another agent of the Employer, will be responsible for valuing all Trust assets and for holding, investing, trading and disposing of such assets. The Employer will indemnify and hold the Trustee harmless against any and all claims, actions, demands, liabilities, losses, damages or expenses which arise from or are related to any use of such valuation by the Trustee or holding, trading or disposition of such assets.

**5.8 Indemnification of Employer.** The Trustee shall indemnify and hold harmless the Employer from any and all actions, claims, demands, liabilities, losses, damages and reasonable expenses of whatsoever kind and nature in connection with or arising out of: (a) the Trustee's failure to follow the directions of the Employer, the Administrator, the investment manager or such parties' agents; (b) any disbursements made without the direction of the Employer, the Administrator, the investment manager or such parties' agents; and (c) the Trustee's negligence, willful misconduct or recklessness with respect to the Trustee's duties under this Agreement.

## **Article 6 CONTRIBUTIONS**

**6.1 Employer Contributions.** The Employer shall contribute to the Trust as specified in the various Collective Bargaining Agreements and or Employment Policies or by resolution or other official action of the Employer.

**6.2 Accrued Sick Leave and Accrued Vacation Leave.** The Employer may contribute up to 100% of a Participant's accrued sick and vacation leave according to the formula for converting the value of the Participant's eligible benefits to the Employer's contribution. A Participant will not be entitled to receive cash in lieu of the Employer's contribution to the Trust.

- 6.3 **Accounts.** Employer contributions, investment income, realized and unrealized gains and losses and forfeitures will be deposited into each Participant's Account for the exclusive benefit of the Participant and his Dependents.
- 6.4 **Receipt of Contributions.** The Employer or, if designated by the Employer, the Administrator, investment manager or other agent of the Employer shall receive all contributions paid or delivered to it under this Agreement. The Employer or its designee shall hold, invest, reinvest and administer such contributions pursuant to this Agreement, without distinction between principal and income. The Trustee shall not be responsible for the calculation or collection of any contribution under the Plan, but shall hold title to Plan assets in the Trustee's name as directed by the Employer.
- 6.5 **Anti-Assignment.** No assets maintained under this Trust shall be subject to transfer, assignment or alienation, whether voluntary or involuntary, in favor of any creditor, transferee or assignee of the Employer, the Trustee, any Participant or any Dependent.
- 6.6 **Reversion of Assets.** Upon the satisfaction of all liabilities under the Plan, any amount of Employer contributions and accrued earnings remaining in the Trust shall be returned to the Employer.

#### **Article 7 DISBURSEMENTS AND EXPENSES**

- 7.1 **Exclusive Benefit.** The Employer or its designee shall make payments from the Trust in accordance with the Plan. However, no payment shall be made which would cause any part of the Trust to be used for or diverted to purposes other than the exclusive benefit of the Participants and their Dependents.
- 7.2 **Payment From Accounts.** All payments of benefits under the Plan to a Participant shall be made exclusively from the Account of that Participant.
- 7.3 **Expenses.** The Employer, Trustee and Administrator may be reimbursed for expenses reasonably incurred by them in the administration of the Trust. All such expenses, including reasonable fees of accountants and legal counsel, shall constitute a charge against and shall be paid from the Trust upon the direction of the Employer.

#### **Article 8 ACCOUNTING**

- 8.1 **Record keeping.** The Trustee is not required to maintain accounts of the investments, receipts, disbursements and other transactions of the Trust, except as necessary to perform its title-holding function under this Agreement. All such records shall be maintained by the Employer or its designee.

- 8.2 **Reports.** As soon as possible following the close of each year, the Trustee shall provide the Employer with a written account describing assets titled to the Trust that were reported to the Trustee by the Employer or its designee.

**Article 9  
MISCELLANEOUS**

- 9.1 **Bonding.** The Trustee shall be required to provide proof of fidelity bond coverage in the exercise of its powers under this Agreement in a form and in an amount that is reasonably satisfactory to the Employer.
- 9.2 **Additional Duties.** The Employer may engage the Trustee as its agent to perform any duties required of the Employer. Any such engagement shall not increase the responsibility or liability of the Trustee under this Agreement.
- 9.3 **Audit.** The Employer shall, at all reasonable times during the term of this Agreement and for three years after the termination of this Agreement, have the right to examine, audit, inspect, review, extract information from and copy all books, records, accounts and other documents of the Trustee relating to this Agreement and the Trustees' performance of its duties.
- 9.4 **Limitation.** Neither the Plan nor the Trust gives any Participant, Dependent or any other person any legal right against the Trustee, the Administrator or the Employer, except as expressly provided in the Plan or this Agreement.
- 9.5 **Protections.** The Administrator, the Employer and the Trustee shall not be responsible for the validity of any insurance contract or any action of any insurer or any other service provider that offers or provides services pursuant to the Plan or this Agreement.

**Article 10  
AMENDMENT AND TERMINATION**

- 10.1 **Amendment and Termination.** The Employer reserves the right to alter, amend or terminate this Agreement at any time for any reason, without the consent of the Trustee or any other person. No amendment affecting the rights, duties or responsibilities of the Trustee shall be adopted unless the Trustee executes the amendment.
- 10.2 **Reversion on Termination.** Upon termination of this Agreement and satisfaction of all liabilities under the Plan, any amount of Employer contributions, plus accrued earnings, remaining in Accounts shall be returned to the Employer.

**Article 11**  
**SUCCESSOR TRUSTEES**

- 11.1 Dismissal.** The Employer may dismiss the Trustee at any time by giving a thirty (30) day written notice to the Trustee.
- 11.2 Resignation.** The Trustee may resign at any time by giving a thirty (30) day written notice to the Employer.
- 11.3 Successor Trustee.** In the event of Trustee succession, the Employer will appoint a successor Trustee that shall succeed to all rights, duties and responsibilities of the former Trustee under this Agreement. If a successor Trustee is not appointed, the Plan Sponsor shall act as interim Trustee. The former Trustee shall be discharged of all duties and responsibilities under this Trust Agreement as of the effective date of resignation or dismissal.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2014.

EMPLOYER:  
CITY OF MANITOWOC

BY \_\_\_\_\_  
Justin M. Nickels  
Mayor

BY \_\_\_\_\_  
Name: Jennifer Hudon  
Title: City Clerk

TRUSTEE:

BY [Signature]  
Name: Vincent C. Bartle  
Title: President

BY [Signature]  
Name: Christine L. Chmura  
Title: Vice President