

CITY OF NEWTON

IN BOARD OF ALDERMEN

FINANCE COMMITTEE REPORT

MONDAY, APRIL 22, 2013

Present: Ald. Gentile (Chairman), Ciccone, Linsky, Rice, Blazar, Fuller, and Lappin

Absent: Ald. Salvucci

Also present: Ald. Albright and Crossley

City officials present: David Wilkinson (Comptroller), Joe Mulvey (Acting Director of Information Technology), Leo Brehm (Director of Information Technology & Libraries; School Department), Ann Cornaro (Director of Financial Information Systems), Arthur Cabral (Project and Budget Specialist; Public Buildings Department), Josh Morse (Acting Public Buildings Commissioner), Alex Valcarce (Project Manager, Public Buildings Department), Captain Paul Anastasia (Police Department), Maureen Lemieux (Chief Finance Officer), and Robert Symanski (Financial Analyst)

#155-13 HIS HONOR THE MAYOR requesting authorization to transfer the sum of sixty-two thousand two hundred seventy-two dollars (\$62,272) from the Financial Information Systems Full-Time Salaries Account to the Financial Information Systems Computer Equipment Repairs & Maintenance Account for the purpose of funding the purchase of ~~hardware and~~ software to run FinancePlus, CommunityPlus, and ~~Munis on a fully redundant system.~~ [04/08/13 @ 6:03 PM]

ACTION: **APPROVED 7-0 AS AMENDED**

NOTE: Chief Financial Officer Maureen Lemieux provided the attached breakdown of how the requested transfer funds would be expended for installation, implementation, training, software, and software modifications. Ms. Lemieux explained that the funding does not include the purchase of hardware or updates to the Munis software as originally stated in the Mayor's letter. The Administration will request the transfer of approximately \$98,000 from within the Financial Information Systems Department and the Information Technology Department to fund those purchases at a later date.

The funds to purchase the software will be transferred from the Financial Information Systems salaries account to their computer repair and maintenance account. The new software components for CommunityPlus and FinancePlus will enable the department to move forward with the latest versions of software. By approving the funds for the software, it will enable the upgrades to be completed before the creation of a fully redundant disaster recovery storage network for the City's financial packages.

Ald. Ciccone moved approval as amended. The amendment was to strike the reference to the purchase of hardware and Munis software from the docket request. The motion carried unanimously.

#156-13 HIS HONOR THE MAYOR requesting authorization to expend a ten thousand dollar (\$10,000) grant from the Fiscal Year 2013 Underage Alcohol Enforcement Grant Program offered by the Massachusetts Executive Office of Public Safety and Security to be used to support overtime costs to enforce laws against alcohol sales to minors. [04/19/13 @ 4:48 PM]

ACTION: **APPROVED 6-0 (Linsky not voting)**

NOTE: Police Captain Paul Anastasia presented the request to expend a grant of \$10,000 to be used to increase enforcement of laws against alcohol sales to minors. This is the fourth year that the City has received the grant from the Executive Office of Public Safety and Security. The funds would be primarily used to fund overtime costs associated with the Underage Alcohol Enforcement Program. The program includes stings, as a means of compliance checks to make sure that stores, bars and restaurants are not selling alcohol to anyone underage. In addition, the Police Department will have officers work overtime to provide additional surveillance and party patrols looking for underage drinking. The Police Department provided information on the grant and a breakdown of the budget for the program, which was attached to the agenda. Ald. Ciccone moved approval and the Committee voted in favor of the motion unanimously.

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

#157-13 HIS HONOR THE MAYOR requesting authorization to appropriate the sum of one hundred nineteen thousand four hundred twenty-six dollars (\$119,426) from Fiscal Year 13 E-Rate Reimbursement Funds for the purpose of upgrading the wireless network at the high schools. [04/11/13 @ 12:16PM]

PROGRAMS & SERVICE APPROVED 6-0 on 04/17/13

ACTION: **APPROVED 5-0 (Gentile and Linsky not voting)**

NOTE: The School Department is requesting an appropriation from the E-Rate reimbursement funds to upgrade the wireless network at the high schools. The request is in keeping with both the federal requirements for use of E-Rate reimbursements and the School Departments technology plan. The City has received \$119,426 at this point in Fiscal Year 2013 from E-Rate reimbursements, which would be used to upgrade the existing 230 access points at the high schools with newer, faster access points. The new access point model supports up to 128 mobile device connections per access point and increases network data rates by 50%. The access points that are replaced at the high schools will be installed at the 15 elementary schools to improve their access points and network data rates.

The School Department is planning to support a Bring Your Own Device Policy at the high school and middle school levels. The current wireless network at the high schools has reached its maximum limit. The new network will be able to support two devices per person in each of the high schools. The schools need a digital solution to support audio and video for educational purposes. The students often use the devices during class for notes and research.

There was some concern that the students would use devices for social media purposes while in school. The School Department is currently analyzing alternatives to limit use of social media at school. The Committee members asked if the School Administration had any idea, how many Newton students did not have internet access at home. Mr. Brehm responded that the

School Department would likely be doing a survey in Fall 2013 to determine if and what technology students had available at their homes.

The \$119,426 is almost enough funding to accomplish the project. If additional funds are needed, that will come from the School Department's operating budget. The project will have no impact on the planned fiber network project, which will connect all municipal and school buildings with a new fiber network. Ald. Ciccone moved approval, which carried unanimously.

REFERRED TO PUBLIC FACILITIES AND FINANCE COMMITTEES

#158-13 HIS HONOR THE MAYOR requesting authorization to appropriate the sum of one hundred thirty-two thousand dollars (\$132,000) from the Capital Stabilization Fund (Completed Bond Financed Projects) for the purpose of addressing emergency repairs to the Library chiller system. [04-11-13 @ 12:15 PM]
PUBLIC FACILITIES APPROVED 8-0 on 04/17/13

ACTION: **APPROVED 7-0**

NOTE: The Public Facilities Committee discussed and approved the request for funds to repair the water piping for the chiller system, which provides air conditioning to the main library. The project is being funded with bond funds that were not used for other completed bonded Public Building Department capital projects. Bond funds that remain unused on projects can be used for other projects but must be expended on capital projects.

The current chiller system will not operate properly unless the piping is repaired. The Public Buildings Department discovered the leak last summer, as the chiller would not always make ice overnight and the chiller would have to operate during the day to make ice in order to cool the library. The chiller was turned on twice during the day last summer resulting in the City having to pay for electricity at the highest rate to operate the chiller, which was costly.

There was some concern that the chiller systems seemed to require repair every few years. The chiller coils were replaced in the past ten years and the variable frequency drives on the air handlers were replaced. The chiller mechanism is scheduled for an overhaul in the next few years and is under an annual maintenance contract. With proper maintenance, the chiller system should last for another 10 to 15 years. If the City were to replace the chiller system, it would require that all of the ceiling in the library be opened and rebuilt. The repair to the piping is the best option in terms of value and life of system.

Ald. Lappin moved approval, which carried unanimously.

REFERRED TO PUBLIC FACILITIES AND FINANCE COMMITTEES

#205-12(2) HIS HONOR THE MAYOR requesting authorization to transfer the sum of one hundred eighty-four thousand three hundred nineteen dollars (\$184,319) within the FA Day Middle School Project Board Order to reallocate the unspent funds in various accounts. [04-11-13 @ 12:15 PM]
PUBLIC FACILITIES APPROVED 8-0 on 04/17/13

ACTION: **APPROVED AS AMENDED 7-0**

NOTE: The Mayor's Office is requesting that the Finance Committee amend the item by reducing the transfer amount to \$85,199.75. The original request was to transfer the amount of \$184,319 to replenish the Mayor's Contingency line item and provide funding to address potential change orders. The Administration would like to wait on requesting a transfer of approximately \$100,000 until the pending change orders are negotiated. The contractor has yet to provide the City with documentation substantiating the potential change orders.

The Comptroller provided the attached draft revised appropriation schedule highlighting the transfers with the requested amendment. The requested \$85,199.75 would be to refresh the Mayor's contingency in order to give the Public Buildings Department flexibility to address unknown circumstances within the project without delaying the project. The Mayor's contingency can be used without going back to the Board of Aldermen and was created to provide that type of flexibility. The \$85,199.75 would be transferred from line items within the F.A. Day Budget that contain funds that are no longer needed. The Public Buildings Department is comfortable that these funds can be transferred.

At this point, the project is expected to come in within budget. However, the unknown quantity is the sprinkler system installation. Ald. Lappin moved approval, which carried unanimously.

#209-10(4) HIS HONOR THE MAYOR requesting that the Board of Aldermen establish an irrevocable Other Post Employment Benefits Trust Agreement. [02/25/13 @ 6:32 PM]

ACTION: **APPROVED 7-0**

NOTE: Assistant City Solicitor Marie Lawlor provided the Committee with drafts of the OPEB Trust Agreement and the corresponding ordinance, which were attached to the agenda. The Committee held both the request to establish the Other Post-Employment Benefits Trust Agreement and the corresponding ordinance at the April 8, 2013 meeting for amendments to the draft agreement. The draft documents included the Committee's requests to change the trustee term limits as they related to the Board of Aldermen appointee and the registered voter appointee and include additional language related to the termination of the trust.

Ms. Lawlor informed the Committee that the State would be using Newton's version of the trust agreement as a model to provide to cities and towns, who are establish an irrevocable trust agreement. Ms. Lawlor had extensive discussions with the State regarding language in the agreement and feels that it has been thoroughly vetted.

There was a request to change both the agreement language and ordinance language. In the section related to the trustees, the current language gives the Mayor the authority to fill a vacancy for the remainder of the term if a trustee resigns or is unable to serve. Committee members felt that the Aldermen should have the authority to fill the aldermanic appointee could that person no longer serve on the board of trustees.

Ms. Lawlor stated that she would make the requested changes and provide the Committee with updated versions of the draft agreement and ordinance by the next Board of Aldermen. As

the requested changes were minor and did not require Committee review, Ald. Ciccone moved approval of the establishment of the irrevocable Other Post-Employment Benefits Trust Agreement and Ald. Fuller moved approval of the corresponding ordinances. Both motions were approved unanimously.

#209-10(5) HIS HONOR THE MAYOR requesting that the Board of Aldermen direct the City Treasurer/Collector acting as custodian of the City's OPEB trust to invest all City OPEB trust funds with the State Retiree Benefits Trust Fund pursuant to Massachusetts General Law Chapter 32A, Section 24. [03/12/13 @ 4:03 PM]

ACTION: **APPROVED 7-0**

NOTE: Please see above note for discussion of this item.

The Committee adjourned at 9:55 PM and all other items before the Committee were held without discussion. Draft Board Orders for the above items that are recommended for Board of Aldermen action are attached.

Respectfully submitted,

Leonard J. Gentile, Chairman

CITY OF NEWTON
IN BOARD OF ALDERMEN

2013

ORDERED:

That, in accordance with the recommendation of the Finance Committee through its Chairman Leonard J. Gentile, the transfer of the sum of sixty-two thousand two hundred seventy-two dollars (\$62,272) from the Financial Information Systems Full-Time Salaries Account to the Financial Information Systems Computer Equipment Repairs & Maintenance Account for the purpose of funding the purchase of software for the financial systems is hereby approved as follows:

FROM:	Financial Information Systems Salaries (011801-511001).....	\$62,272
TO:	Finance Plus Software Upgrade (C11801-58512).....	\$62,272

Under Suspension of Rules
Readings Waived and Approved

(SGD) DAVID A. OLSON
City Clerk

(SGD) SETTI D. WARREN
Mayor

Date: _____

CITY OF NEWTON
IN BOARD OF ALDERMEN

2013

ORDERED:

That, in accordance with the recommendation the Finance Committee through its Chairman Leonard J. Gentile, His Honor the Mayor is hereby authorized to expend a grant in the amount of ten thousand dollars (\$10,000) from the Fiscal Year 2013 Underage Alcohol Enforcement Grant Program offered by the Massachusetts Executive Office of Public Safety and Security to be used to support overtime costs to enforce laws against alcohol sales to minors.

Under Suspension of Rules

(SGD) DAVID A. OLSON
City Clerk

(SGD) SETTI D. WARREN
Mayor

Date_____

CITY OF NEWTON

IN BOARD OF ALDERMEN

June 4, 2012

ORDERED:

That, in accordance with the recommendation of the Programs and Services Committee through its Chairman Amy Mah Sangiolo and the Finance Committee through its Chairman Leonard J. Gentile, the sum of one hundred nineteen thousand four hundred twenty-six dollars (\$119,426) be and is hereby appropriated for the purpose of upgrading the wireless network at Newton North High School and Newton South High School, as follows:

From:	E-Rate Receipts Reserved (14I301-5901)	\$119,426
To:	NPS E-Rate Technology (C301052-585111I).....	\$119,426

Under Suspension of Rules
Readings Waived and Adopted

(SGD) DAVID A. OLSON
City Clerk

(SGD) SETTI D. WARREN
Mayor

Date: _____

CITY OF NEWTON
IN BOARD OF ALDERMEN

2013

ORDERED:

That, in accordance with the recommendation of the Finance Committee through its Chairman Leonard J. Gentile, the transfers within the F.A. Day Middle School F.A. Day Addition & Renovation Project Budget included in Board Order #205-12 approved on October 1, 2012; be and are hereby approved as follows:

From:	Seasonal Wages	\$18,292.83
	Medicare Payroll Tax	\$160.17
	Building Improvements	\$60,000
	Communications Equipment	\$6,746.75

To:	Mayor's Contingency	\$85,199.75
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Under Suspension of Rules
Readings Waived and Approved

(SGD) DAVID A. OLSON

City Clerk

(SGD) SETTI D. WARREN

Mayor

Date: _____

CITY OF NEWTON, MASSACHUSETTS
SCHOOL BUILDING IMPROVEMENT FUND
F.A. DAY MIDDLE SCHOOL RENOVATION PROJECT BUDGET
Board order # 205-12(2)

	Original Budget BO# 115-12	Other Revisions	BO# 205-12	Docket Item #205-12(2)	Amended Budget
BOND SALE PROCEEDS	\$ 7,538,396.19	-	-	-	7,538,396.19
Total Financing Budget	7,538,396.19	-	-	-	7,538,396.19
SEASONAL WAGES	10,625.00	32,867.83	-	(18,292.83)	25,200.00
CONTRACTUAL SERVICES	114,275.00	(33,293.47)	-	-	80,981.53
MEDICARE PAYROLL TAX	100.00	425.64	-	(160.17)	365.47
CONSTRUCTION CLERK OF THE WORKS	125,000.00	-	-	(18,453.00)	106,547.00
BUILDING IMPROVEMENTS	80,000.00	-	-	(60,000.00)	20,000.00
CONSULTANTS	59,959.00	12,213.00	-	-	72,172.00
ARCHITECTURAL SERVICES	750,000.19	5,000.00	-	-	755,000.19
BLDG SYSTEM COMMISSIONING	15,000.00	1,775.00	-	-	16,775.00
MAYOR'S CONTINGENCY	100,000.00	(84,319.00)	-	85,199.75	100,880.75
BOARD OF ALDERMEN CONTINGENCY	218,065.00	-	35,334.00	-	253,399.00
GENERAL CONTRACTOR	4,446,969.00	65,331.00	768,119.00	-	5,280,419.00
SPRINKLER SYSTEMS	1,688,403.00	-	(803,453.00)	-	884,950.00
COMMUNICATIONS EQUIPMENT	25,000.00	-	-	(6,746.75)	18,253.25
FURNITURE/FIXTURES/EQUIPMENT	30,000.00	-	-	-	30,000.00
Total Expenditure Budget	\$ 7,538,396.19	\$ -	\$ -	\$ -	\$ 7,538,396.19

#205-12(2)

DRAFT 4/17/2013 (clean copy)

CITY OF NEWTON

OTHER POST-EMPLOYMENT BENEFITS (“OPEB”) TRUST
AGREEMENT

TRUST AGREEMENT made this ____ day of _____, 2013 by and between the City of Newton, acting through its Mayor (the “City”) and the duly serving members of the Board of Trustees (the “Trustees”).

WITNESSETH:

WHEREAS, the City has established certain other post-employment benefits (“OPEB”), other than pensions, for eligible former employees of the City; and

WHEREAS, the City has accepted the provisions of G.L. c. 32B, Section 20 as amended by Acts 2011, Chapter 68, Section 57; and

WHEREAS, the City wishes to establish an irrevocable trust (hereinafter the “Trust”) for the purpose of funding OPEB obligations as required to be reported under Government Accounting Standards Board (“GASB”) Statements 43 and 45 or as may be required under any superseding Statements; and

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

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

ARTICLE I

DEFINITIONS

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

1.1 “Code” means the Internal Revenue Code of 1986, as amended from time to time.

1.2 “ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time and any successor statute.

- 1.3. “GASB 43 and 45” shall mean Government Accounting Standards Board, Statement No. 43 and Statement No. 45, Accounting and Financial Reporting by Employers for Post-Employment Benefits Other Than Pensions.
- 1.4. “Other post-employment benefits” or “OPEB,” shall mean post-employment benefits other than pensions as that term is defined in GASB 43 and 45 including post-employment healthcare benefits, regardless of the type of plan that provides them, and all post-employment benefits provided separately from a pension plan, excluding benefits defined as termination offers and benefits.
- 1.5. “Retired Employee” means those persons who have retired from employment with the City and who are qualified to receive retirement benefits pursuant to G.L. c. 32 or as otherwise provided by law.
- 1.6. “Trust” means the City of Newton OPEB Trust as hereby established.
- 1.7. “Trustee” means the duly serving members of the Board of Trustees, and any successor Trustee appointed as provided pursuant to Article 5.
- 1.8. “Trust Fund” means all the money and property, of every kind and character, including principal and income, held by the Trustees under this Trust.
- 1.9. “HCST Board” means the Health Care Security Trust board of trustees established pursuant to G.L. c. 29D, Section 4.
- 1.10. “SRBTF” means the State Retiree Benefits Trust Fund established pursuant to G.L. 32A, Section 24.

ARTICLE 2

PURPOSE

- 2.1. The Trust is created for the sole purpose of providing funding for OPEB, as determined by the City, or as may be required by collective bargaining agreement, or by any general or special law providing for such benefits, for the exclusive benefit of the City’s Retired Employees and their eligible dependents and for defraying the reasonable administrative, legal, actuarial and other expenses of the Trust. The assets held in the Trust shall not be used for or diverted to any other purpose, except as expressly provided herein.
- 2.2. It is intended that the Trust shall constitute a so called “Qualified OPEB Trust” according to the standards set forth in GASB 43 and 45 and that it further qualify as an Integral Part Trust

for all purposes under Article 115(c) of the Code or under any comparable provision of future legislation that amends, alters, or supersedes the Code.

ARTICLE 3

ESTABLISHMENT OF TRUST

3.1 In order to implement and carry out the provisions of G.L. c. 32B, §20, the City hereby establishes this Trust which shall be known as the “City of Newton OPEB Trust.”

3.2 The Trust shall be irrevocable, and no Trust funds shall revert to the City until all OPEB owed to retired City employees have been satisfied or defeased.

3.3 The principal location of the Trust shall be City of Newton, 1000 Commonwealth Avenue, Newton, Massachusetts 02459.

3.4 The Trustees hereby accept the trusts imposed upon them by this Trust Agreement and agree to perform said trusts as a fiduciary duty in accordance with the terms and conditions of this Trust Agreement.

3.5 The Trustees shall hold legal title to all property of the Trust and neither the City, nor any employee, official, or agent of the City, nor any individual, shall have any right, title, or interest to the Trust.

3.6 The Trust shall consist of such sums of money as shall from time to time be paid or delivered to the Trustees by the City, which together with all earnings, profits, increments and accruals thereon, without distinction between principal and income, shall constitute the Trust hereby created and established. Nothing in this Agreement requires the City to make contributions to the Trust to fund OPEB. Any obligation of the City to pay or fund benefits shall be determined in accordance with applicable law and any agreement to provide OPEB.

ARTICLE 4

TRUST FUNDING

4.1 The Trust Fund shall be credited with all amounts appropriated or otherwise made available by the City and employees of the City as a contribution to the Trust for the purposes of meeting the current and future OPEB costs payable by the City, or any other funds donated or granted specifically to the City for the Trust, or to the Trust directly.

4.2. The Trustees shall be accountable for all delivered contributions but shall have no duty to determine that the amounts received are adequate to provide the OPEB Benefits determined by the City.

4.3. The Trustees shall have no duty, expressed or implied, to compel any contribution to be made by the City, but shall be responsible only for property received by the Trustees under this Trust Agreement.

4.4. The City shall have no obligation to make contributions to the Trust to fund OPEB, and the size of the Trust may not be sufficient at any one time to meet the City's OPEB liabilities. This Trust Agreement shall not constitute a pledge of the City's full faith and credit or taxing power for the purpose of paying OPEB, and no retiree or beneficiary may compel the exercise of taxing power by the City for such purposes. The obligation of the City to pay or fund OPEB obligations, if any, shall be determined by the City or applicable law. Distributions of assets in the Trust are not debts of the City within the meaning of any constitutional or statutory limitation or restriction.

4.5. Earnings or interest accruing from investment of the Trust shall be credited to the Trust. Amounts in the Trust Fund, including earnings or interest, shall be held for the exclusive purpose of, and shall be expended only for, the payment of the costs payable by the City for OPEB obligations to Retired Employees and their dependents, and defraying the reasonable expenses of administering any plan providing OPEB Benefits as provided for in this Trust Agreement.

4.6. Amounts in the Trust Fund shall in no event be subject to the claims of the City's general creditors. The Trust Fund shall not in any way be liable to attachment, garnishment, assignment or other process, or be seized, taken, appropriated or applied by any legal or equitable process, to pay any debt or liability of the City, or of retirees or dependents who are entitled to OPEB.

ARTICLE 5

TRUSTEES

5.1. The Trust shall be administered by a Board of Trustees consisting of five members as follows: (1) The Mayor or his designee, the City Comptroller, and the Chief Financial Officer shall serve as *ex officio* members; (2) the Board of Aldermen shall annually appoint one member of the Board of Aldermen to serve as a Trustee for a term of two years; and (3) the Mayor, with the consent of the Board of Aldermen, shall appoint one (1) individual, who shall be a registered voter of the City, for a term of three (3) years. Upon the resignation or removal of the Mayor, the City Comptroller, or the Chief Financial Officer, the position of Trustee shall be deemed vacant until such time as the underlying City position is filled on either a permanent or temporary basis. The City Treasurer shall serve as a non-voting member of the Board of

Trustees. Any member of the Board of Trustees may be removed by the Mayor with the consent of the Board of Aldermen for cause.

5.2. The Mayor shall call for the first meeting of the Trustees and shall serve as the initial Chairperson of the Trustees to facilitate the organization of the Trustees.

5.3. A Trustee may resign by providing the City Clerk and Board of Trustees Chairperson with written notice thereof.

5.4. In the event the Trustee appointed by the Mayor resigns, is removed, or is otherwise unable to serve, the Mayor shall appoint a Trustee to fill the vacancy for the remainder of the term. In the event the Trustee appointed by the Board of Aldermen resigns, is removed or is otherwise unable to serve, the Board of Alderman shall appoint one of its members to fill the vacancy for the remainder of the term.

5.5. Whenever a change occurs in the membership of the Board of Trustees, the legal title to property held by this Trust shall automatically pass to those duly appointed successor Trustees.

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

5.7. Upon leaving office, a Trustee shall promptly and without unreasonable delay, deliver to the Trust's principal office any and all records, or other documents or other items in his possession or under his control belonging to the Trust.

5.8. The Trustees shall be special municipal employees for purposes of G.L. c. 268A and shall be subject to the restrictions and prohibitions set forth therein.

ARTICLE 6

POWERS OF THE TRUSTEES

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

6.1.1. To receive, hold, manage, invest and reinvest all monies which at any time form part of the Trust, whether principal or income, provided however that there shall be no investment directly in mortgages or in collateral loans and further provided that the

Trustees shall comply with the provisions of Article 7 of this Trust Agreement, applicable law and any investment policy adopted by the Trustees concerning the investment and management of Trust assets.

6.1.2. To hold cash, uninvested, for such length of time as the Trustees may determine without liability for interest thereon.

6.1.3 To develop and recommend an actuarially determined funding schedule subject to approval of the Board of Aldermen and Mayor and subject to the City 's appropriation process.

6.1.4. To employ suitable agents, advisors and counsel as the Trustees may deem necessary and advisable for the efficient operation and administration of the Trust, to delegate duties and powers hereunder to such agents, advisors and counsel, and to charge the expense thereof to the Trust. The Trustees are entitled to rely upon and may act upon the opinion or advice of any attorney approved by the Trustees in the exercise of reasonable care. The Trustees shall not be responsible for any loss or damage resulting from any action or non-action made in good faith reliance upon such opinion or advice. All delegated authority shall be specifically defined in any by-laws adopted by the Trustees or the written minutes of the Trustees' meetings.

6.1.5. To hire independent contractors as the Trustees may deem necessary or advisable to render the services required and permitted for the proper operation of the Trust, and to charge the expense thereof to the Trust.

6.1.6. To continue to have and to exercise, after the termination of the Trust and until final distribution, all of the title, powers, discretions, rights and duties conferred or imposed upon the Trustees hereunder, by any by-laws adopted by the Trustees or by law.

6.1.7. To construe and interpret this Trust Agreement and other documents related to the purposes of the Trust.

6.1.8. To authorize certain Trustees or other appropriate persons to make payments from any appropriate account for purposes of the Trust and to authorize disbursements of funds accumulated in the trust to the City for the sole purpose of payment of OPEB in accordance with an actuarially determined funding schedule.

6.1.8. To receive and review reports of the financial condition and of the receipts and disbursements of the Trust and the Trust Fund.

6.1.9. To adopt by-laws, rules, regulations, formulas, actuarial tables, forms, and procedures by resolution from time to time as they deem advisable and appropriate for the proper administration of the Trust, including participation criteria, provided the same are consistent with the terms of this Trust Agreement and applicable laws.

6.1.10. To purchase as a general administrative expense of the Trust so-called director's liability insurance and other insurance for the benefit of the Trust and/or the protection of the Trustees, Trust officers, employees, or agents against any losses by reason of errors or omissions or breach of fiduciary duty or negligence.

6.1.11. To enter into any and all contracts and agreements for carrying out the terms of this Trust Agreement and for the administration and operation of the Trust and to do all acts as they, in their discretion, may deem necessary or advisable. Except as otherwise directed by the Trustees, all such contracts and agreements, or other legal documents herein authorized, shall be executed by the Chairperson, or Secretary as may be voted by the Trustees.

6.1.12. To receive contributions or payments from any source whatsoever but such contributions or payments may not be utilized for any purpose unrelated to the provision of OPEB as herein provided or properly authorized expenses.

6.1.13. To pay taxes, assessments, and other expenses incurred in the collection, care, administration, and protection of the Trust.

6.1.14. To do all acts, whether or not expressly authorized herein, which the Trustees may deem necessary or proper in connection with the administration of the Trust, although the power to do such acts is not specifically set forth herein.

6.1.15. To compromise, settle or arbitrate any claim, debt, or obligation of or against the Trust or Trust Fund; to enforce or abstain from enforcing any right, claim debt or obligation, and to abandon any shares of stock, bonds, or other securities, or interests determined by it to be worthless; to prosecute, compromise and defend lawsuits, but without the obligation to do so, all at the risk and expense of the Trust.

6.1.16. To hire one or more consultants, actuaries, accountants, attorneys, or other professionals to assist with the administration of the Trust Fund and to pay such amounts that the Trustee deems to be reasonable, including, without limiting the generality of the foregoing, third party firms to provide legal, tax, accounting and audit services to the Trust.

6.1.17. To comply with all requirements imposed by applicable provisions of law.

6.1.18. If so authorized by vote of the Board of Aldermen with approval of the Mayor in accordance with G.L. c. 32A, Section 24 to direct the Treasurer/Custodian to take all steps necessary to invest the funds in the SRBTF.

6.1.19. If so directed by vote of the Board of Aldermen with approval of the Mayor in accordance with G.L. c. 32B, Section 20, to take all steps necessary to designate HCST Board as custodian of the Trust assets and thereby invest the funds in the SRBTF.

ARTICLE 7

LIMITATION OF TRUSTEES' POWERS, DUTIES AND RESPONSIBILITIES

7.1. Nothing contained in the Trust Agreement, either expressly or by implication, shall be deemed to impose any powers, duties or responsibilities on the Trustees other than those set forth in this Trust Agreement.

7.2. The Trustees shall have such rights, powers and duties as are provided to a named fiduciary for the investment of assets under ERISA. The Trustees shall not be liable for the making, retention or sale of any investment or reinvestment made by the Trustees as herein provided or for any loss to or diminution of the Trust Fund or for anything done or admitted to be done by the Trustees with respect to the Trust Agreement or the Trust Fund except as and only to the extent that such action constitutes a violation of the law or gross negligence.

7.3. The Trustees, in their discretion, may purchase as an expense of the Trust Fund such liability insurance for themselves or any other fiduciary selected by the Trustees as may be reasonable. The City, in its discretion, may also purchase liability insurance for the Trustees, and as the City may select, for any person or persons who serve in a fiduciary capacity with respect to the Trust.

7.4. The City shall not assume any obligation or responsibility to any person for any act or failure to act of the Trustees, any insurance company, or any beneficiary of the Trust Fund. The Trustees shall have no obligation or responsibility with respect to any action required by this Trust Agreement to be taken by the City, any insurance company, or any other person, or for the result or the failure of any of the above to act or make any payment or contribution, or to otherwise provide any benefit contemplated by this Trust Agreement.

7.5. Neither the Trustees nor the City shall be obliged to inquire into or be responsible for any action or failure to act on the part of the other. No insurance company shall be a party to this Trust Agreement, for any purpose, or be responsible for the validity of this Trust Agreement, it being intended that such insurance company shall be liable only for the obligations set forth in the policy or contract issued by it.

7.6. The Trustees shall invest and manage Trust assets as a prudent investor would, using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital, pursuant to G.L. c. 203C.

ARTICLE 8

ACTIONS BY THE TRUSTEES

- 8.1. A majority of Trustees may exercise any or all of the powers of the Trustees hereunder and may execute on behalf of the Trustees any and all instruments with the same effect as though executed by all the Trustees.
- 8.2. The Trustees may, by instrument executed by all of the Trustees, delegate to any attorney, agent or employee such other powers and duties as they deem advisable, including the power to execute, acknowledge or deliver instruments as fully as the Trustees might themselves and to sign and endorse checks for the account of the Trustees of the Trust.
- 8.3. No Trustee shall be required to give bond.

ARTICLE 9

LIABILITY OF THE TRUSTEES

- 9.1. A Trustee shall not be liable for any mistake of judgment or other action made, taken or omitted by the Trustee in good faith, nor for any action taken or omitted by any other Trustee or any agent or employee selected with reasonable care, and the duties and obligations of the Trustees hereunder shall be expressly limited to those imposed upon them by this Trust Agreement.
- 9.2. No successor Trustee shall be held responsible for an act or failure of a predecessor Trustee.
- 9.3. Trustees are public employees for purposes of G.L. c. 258, and shall be indemnified by the City against any civil claim, action, award, compromise, settlement or judgment by reason of an intentional tort to the same extent and under the same condition as other public employees of the City.
- 9.4. A Trustee shall not be liable for any mistake of judgment or other action made, taken or omitted

ARTICLE 10

MEETINGS OF THE TRUSTEES

- 10.1. The Trust may meet at such times and at such places as the Trustees shall determine.

10.2. The Trustees shall comply with the Open Meeting Law, G.L. c. 30A, §§18-25 and its implementing regulations.

10.3. A quorum at any meeting shall be a majority of the Trustees then in office.

ARTICLE 11

TAXES, EXPENSES, AND COMPENSATION

11.1. It is intended that the Trust will be a Code Article 115 trust. As such, it is expected that there will be no income taxes owed by the Trust. To the extent that any taxes are imposed on the Trust, the Trustees shall use the assets of the Trust Fund to pay for any taxes owed.

11.2. All reasonable costs and expenses of managing and administering the Trust and the Trust Fund, and reimbursement for reasonable fees incurred through the use of third party vendors or agents, shall be paid from the Trust unless the City chooses to pay the expenses directly.

ARTICLE 12

ACCOUNTS

12.1. The Trustees shall keep complete and accurate accounts of all of the Trust's receipts, investments, and disbursements under this Trust Agreement. Such records, as well as all other Trust records, shall be retained and made available for public inspection and or copying in accordance with the requirements of the Public Records Law, G.L. c. 66, §10 and G.L. c. 4, §7, clause 26th and their implementing regulations. The person or persons designated by the City shall be entitled to inspect such records upon request at any reasonable time.

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

12.3. The Trust Fund shall be subject to the Commonwealth of Massachusetts Public Employee Retirement Administration Commission's triennial audit, or as otherwise may be required by applicable law.

ARTICLE 13

ANNUAL REPORTS

13.1. The Trustees shall furnish to the City annually, or more frequently if the City so requests, a statement of account showing the condition of the Trust Funds and all investments, sales,

income, disbursements and expenses of the Trust and the Trust Fund. The Trustees shall comply with all reporting requirements as set forth in G.L. c. 32B, section 20.

ARTICLE 14

INVESTMENTS OF TRUST FUNDS

14.1. The Trustees hereby authorize and direct the City Treasurer to invest and reinvest the amounts in the Trust Fund not needed for current disbursement, consistent with the prudent investor rule, and as provided in the Investment Policy which is attached to this instrument and hereby incorporated; provided, however, that if directed by vote of the Board of Aldermen with approval of the Mayor, the City Treasurer shall be authorized to invest said amounts in the Trust Fund in the SRBTF; and further provided that if HCST is appointed as custodian of the trust as provided in Paragraph 15.1 below, HCST shall be authorized to invest and reinvest said amounts in the Trust Fund in accordance with its Investment Policy.

14.2. In no event shall the funds be invested directly in mortgages or in collateral loans.

ARTICLE 15

CUSTODY OF THE TRUST

15.1. The Trustees hereby appoint the City Treasurer as custodian of the Trust Fund and authorize the Treasurer to employ an outside custodial service to maintain custody of the Trust Funds. All funds in the Trust Fund shall be accounted for separately from all other funds of the City. Such appointment shall be in effect unless and until, by vote of the Board of Aldermen with approval of the Mayor in accordance with G.L. c. 32B, Section 20, and subject to acceptance of HCST, HCST is appointed as custodian of the Trust assets. In the event such appointment of HCST as custodian is revoked or otherwise terminated, the City Treasurer shall automatically be reappointed as custodian of the Trust Fund without further necessary action.

15.2. The City Treasurer, with the authorization of the Trustees, shall establish one or more checking accounts, which may be interest bearing or non-interest bearing accounts. Such checking account or accounts shall be funded solely from the Trust Funds, and the Trustees may authorize the City Treasurer to draw on such checking accounts for the payment of OPEB and for the administrative expenses of the Trust.

ARTICLE 16

TERMINATION OF THE TRUST

16.1. The Trust shall continue unless and until terminated pursuant to applicable state or federal law or regulation, or until all such health care and other non-pension benefits, current and future, payable by the City have been satisfied or defeased.

16.2. Upon termination of the Trust pursuant to 16.1, subject to the payment of or making provision for the payment of all obligations and liabilities of the Trust and the Trustees, the net assets of the Trust shall revert to the City, unless otherwise required by state or federal law or regulation.

16.3. The powers of the Trustees shall continue until the affairs of the Trust are concluded.

ARTICLE 17

AMENDMENTS

17.1. The Trust may only be amended as set forth herein. The City may amend the Trust at any time as may be necessary to comply with the requirements for tax exemption under Section 115 of the Code, to conform the Trust to the laws of the Commonwealth of Massachusetts and to meet the financial reporting standards set forth by the Government Accounting Standards Board (GASB) to be treated as funded through a qualifying trust or equivalent arrangement.

17.2. This Trust Agreement may be amended, but not revoked, from time to time by the City, subject to the following limitations:

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

17.2.2. The duties and liabilities of the Trustees cannot be substantially changed without their written consent.

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

ARTICLE 18

MERGER

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

ARTICLE 19

SEVERABILITY OF INVALID PROVISIONS

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

ARTICLE 20

MISCELLANEOUS

20.1. This Trust Agreement shall be interpreted, construed and enforced, and the Trust hereby created shall be administered in accordance with and governed by the laws of the United States and of the Commonwealth of Massachusetts.

20.2. The titles to Articles of this Trust Agreement are placed herein for convenience of the reference only, and the Trust Agreement is not to be construed with reference thereto.

20.3. No person shall be obliged to see to the application of any money paid or property delivered to the Trustees, or as to whether or not the Trustees have acted pursuant to any authorization herein required, or as to the terms of this Trust Agreement. In general, each person dealing with the Trustees may act upon any advice, request or representation in writing by the Trustees, or by the Trustees's duly authorized agent, and shall not be liable to any person in so doing. The certification of the Trustees that they are acting in accordance with this Trust Agreement shall be conclusive in favor of any person relying thereon.

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

20.5. Until advised to the contrary, the Trustees may assume this Trust is entitled to exemption from taxation under Section 115 of the Internal Revenue Code of 1986 or under any comparable section or sections of future legislation that amend, supplement or supersede one or both of those sections of the Internal Revenue Code.

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

BOARD OF TRUSTEES:

Trustee

Trustee

Trustee

Trustee

Trustee

DRAFT FOR DISCUSSION PURPOSES:
(CLEAN COPY)

CITY OF NEWTON

IN BOARD OF ALDERMEN

ORDINANCE NO.

April , 2013

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF NEWTON
AS FOLLOWS:

That the Revised Ordinances of Newton, Massachusetts, 2007, as amended, be and are hereby further amended with respect to Chapter 18 as follows:

1. Insert a new ARTICLE XVII as follows:

ARTICLE XVII CITY OF NEWTON OTHER POST-EMPLOYMENT
BENEFITS TRUST

18-230 Designation and purpose.

This trust is established to administer the fund known as the City of Newton Other Post-Employment Benefit Trust Fund in conformity with the provisions of G.L. c. 32B, section 20 and with the terms of The City of Newton Other Post-Employment Benefits Trust Agreement (OPEB Trust), a copy of which shall be kept on file with the city clerk. In accordance with its terms, the OPEB Trust shall be irrevocable, and its sole purpose is to provide funding for the City's other post-employment benefits for the exclusive benefit of the City's retired employees and their eligible dependents and for defraying the reasonable expenses of the Trust.

18-231 Board of Trustees

There shall be a board of trustees, with the powers and duties set forth in the OPEB Trust, consisting of five members as follows: (1) the Mayor or his designee, the City Comptroller, and the City Chief Financial Officer shall serve as *ex officio* members; (2) the Board of Alderman shall annually appoint one member of that Board to serve for a term of two (2) years; and (3) the Mayor, with the consent of the Board of Aldermen, shall appoint one (1) individual, who shall be a registered voter of the City, for a term of three (3) years. Upon the resignation or removal of the Mayor, the City Comptroller, or the City Chief

Financial Officer, the corresponding position of Trustee shall be deemed vacant until such time as the underlying City position is filled on either a permanent or temporary basis. Upon resignation or removal of the Trustee appointed by the Board of Aldermen, that board shall appoint an alderman as Trustee to fill the vacancy for the remainder of the term. Upon resignation or removal of the Trustee appointed by the Mayor, the Mayor shall appoint a Trustee to fill the vacancy for the remainder of the term. The City Collector-Treasurer shall serve as a non-voting member of the Board of Trustees. Any member of the Board of Trustees may be removed by the Mayor with the consent of the Board of Aldermen for cause.

18-232 Custodian

The City Collector-Treasurer, by virtue of his office, shall be the custodian of the OPEB trust fund, and shall invest and reinvest the funds consistent with the prudent investor rule established in G.L. c. 203C. As provided in G.L. c. 32A, Section 24(d) the Collector-Treasurer is hereby authorized to invest all or a portion of the fund, as directed by the Trustees, in the State Retiree Benefits Trust Fund established in G.L. c. 32A, Section 24.

2. Renumber current ARTICLE XVII to ARTICLE XVIII and renumber its paragraphs accordingly.

Approved as to legal form and character:

DONNALYN B. LYNCH KAHN
City Solicitor

Under Suspension of Rules
Readings Waived and Adopted

EXECUTIVE DEPARTMENT
Approved:

(SGD) DAVID A. OLSON
City Clerk

(SGD) SETTI D. WARREN
Mayor

