Condensed Title:

A RESOLUTION ESTABLISHING THE CITY OF MIAMI BEACH OTHER POST-EMPLOYMENT BENEFITS (OPEB) TRUST, AND AUTHORIZING THE MAYOR TO EXECUTE THE CITY OF MIAMI BEACH OPEB TRUST DOCUMENT

Key Intended Outcome Supported:

Improve City's Overall Financial Health and Maintain Overall Bond Rating

Supporting Data (Surveys, Environmental Scan, etc.):

- Bond Ratings S&P - AA- Moody's - Aa3

Issue:

Should the City establish the Other Post –Employment Benefits Trust, including all necessary and appropriate action to carry out the purposes and terms of the OPEB Trust

Item Summary/Recommendation:

In 2004, the Governmental Accounting Standards Board (GASB) statements established standards related to benefits paid to retirees other than pensions, requiring City of Miami Beach to report under these standards for the period 10/1/07 though 9/30/08, and annually thereafter.

To date, the City has funded the these benefits on a "pay-as-you-go" basis; when the premiums are due, rather than when the liability is incurred. Since the City did not set aside funds over the years of employment for retired employees or related to past years of service for current employees, the City has to report on unfunded liabilities that relate to prior years (amortized over 30 years) as well as the current year liability related to those currently employed. For FY 2007/08, the City's annual liability (the Annual Required Contribution – ARC), including both normal costs and amortization of unfunded liability, ranges from $13.276 million based on a 8.5% discount rate to $17.432 million based on an 5% discount rate. The discount rate is the assumed rate for the long term investment yield on the investments used to finance the payment of long term benefits. With a trust, and assuming a plan to fund the trust over time, an 8.5% discount rate can be assumed. Without a trust, a 5% discount rate is assumed.

Although, GASB standards require the City to recognize the liability for OBEP benefits as incurred, it does not prescribe that these must be funded or how. The City has the options of never funding the liability; funding when and if funds become available; or funding pursuant to a plan that will provide full funding over a reasonable timeframe. None-the-less, unfunded liabilities typically affect the financial rating of the City.

The health insurance premiums that the City has funded annually on a pay-as-you-go basis count towards the City's ARC. The Net Obligations for the City for FY 2007/08 range from $6.901million with a Trust that is funded over time to $11.057 million without a Trust.

Advisory Board Recommendation:

Finance and Citywide Projects Committee recommended the creation of an OPEB Trust (2/11/09).

Financial Information:

Source of Funds:		Amount	Account
	1	$4,000,000	Funds that have been set aside and designated for OPEB in the General Fund in prior years
	2	$ 612,411	FY 2007/08 year-end transfer from Enterprise and Internal Service Funds
	3	$2,246,568	FY 2007/08 year-end transfer from the General Fund
OBPI	Total	$6,858,979	

Financial Impact Summary:

City Clerk's Office Legislative Tracking:

Sign-Offs:

Department Director	Assistant City Manager	City Manager

MIAMIBEACH

AGENDA ITEM R7E

DATE 2-25-09

MIAMIBEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMISSION MEMORANDUM

TO: Mayor Matti H. Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: February 25, 2009

SUBJECT: **A RESOLUTION ESTABLISHING THE CITY OF MIAMI BEACH OTHER POST-EMPLOYMENT BENEFITS (OPEB) TRUST, AND AUTHORIZING THE MAYOR TO EXECUTE THE CITY OF MIAMI BEACH OPEB TRUST DOCUMENT**

ADMINISTRATION RECOMMENDATION

Adopt the Resolution.

ANALYSIS

In 2004, the Governmental Accounting Standards Board (GASB) released Statement No. 43 – Financial Reporting for Postemployment Benefit Plans Other than Pension Plans (GASB 43) and Statement No. 45 – Accounting and Financial Reporting by Employers for Postemployment Benefit Plans Other than Pension Plans (GASB 45). These two statements established uniform accounting and financial reporting standards for state and local governments related to benefits paid to retirees other than pensions (OPEB), including implementation dates based on the total annual revenues of the entity. Based on the GASB standards, the City of Miami Beach is required to report under these standards as part of their year-end financial reports for the period October 1 2007 though September 30, 2008, and annually thereafter.

The City of Miami Beach currently provides the following Post Employment Benefits:

- Health and Dental Insurance
  - Employees hired prior to March 18, 2006 are eligible to receive a 50% health insurance contribution of the total premium cost. At age 65, if the retiree is eligible for Medicare Part B, the City contributes 50% of the Medicare Part B payment.
  - Employees hired after March 18, 2006, after vesting in City's retirement plans, are eligible to receive an amount per year of credible service, up to a maximum of $250 per month until age 65 and $5 per year of credible service up to a maximum of $125, thereafter.
- Life Insurance ($1,000)

To date, the City has funded the cost of these benefits on a "pay-as-you-go" basis, i.e. when the premiums are due, rather than when the liability is incurred. The GASB standards require that the liability for these OPEB costs be recognized when incurred, meaning in association with each year of service by the employee. Since the City did not set aside

funds over the years of employment for employees that are currently retired or related to past years of service for current employees, the City has to report on unfunded liabilities that relate to prior years (amortized over 30 years) as well as the current year liability related to those currently employed.

To determine the impacts of the new OPEB standards, the City hired Gallagher Benefits Services to perform an actuarial analysis of the City's liabilities. Most significant in the analysis is the difference in the discount rate that can be used in the actuarial calculation depending whether the City elects to create a separate OPEB trust. The discount rate is the assumed rate for the long term investment yield on the investments used to finance the payment of long term benefits. With a trust, and assuming a plan to fund the trust over time, an 8.5% discount rate can be assumed. Without a trust, a 5% discount rate is assumed.

In summary, for FY 2007/08, the City's annual liability (the Annual Required Contribution – ARC), including both normal costs and amortization of unfunded liability, ranges from $13.276 million based on a 8.5% discount rate to $17.432 million based on an 5% discount rate for All Workers. Given the unique nature of the Fire Health Trust, there had been question as to whether the City should include the liability related to Fire Workers. Subsequent to the February 11, 2009 Finance and Citywide Projects Committee meeting where this item was discussed, outside counsel has opined that the City cannot exclude Fire Workers in the determination of the actuarial liability.

However, the health insurance premiums that the City has funded annually on a pay-as-you-go basis count towards the City's ARC. Accordingly, the Net Obligations for the City for FY 2007/08 range between $6.901million to $11.057 million for All Workers.

FY 2008 Annual Required Contribution (ARC)	
	All Workers
8.5% Discount Rate	
10/10/07 Accrued Liability (Unfunded)	$ 155,956,000
Amortization of Unfunded Liability	$ 10,420,000
Normal Cost	$ 2,856,000
FY 2007/08 GASB 45 ARC	**$ 13,276,000**
FY 2007/08 Actuall Employer Contribution	$ (6,375,000)
Net OPEB Obligation	**$ 6,901,000**
5% Discount Rate	
10/10/07 Accrued Liability (Unfunded)	$ 256,342,000
Amortization of Unfunded Liability	$ 10,707,000
Normal Cost	$ 6,725,000
FY 2007/08 GASB 45 ARC	**$ 17,432,000**
FY 2007/08 Actual Employer Contribution	$ (6,375,000)
Net OPEB Obligation	**$ 11,057,000**

Although, GASB standards require that the City recognize the liability for OBEP benefits as incurred, it does not prescribe that these must be funded or how. The City has the following options with regards to funding the liability:

- Never funding the liability
- Funding when and if funds become available
- Funding pursuant to a plan that will provide full funding over a reasonable timeframe

None-the-less, unfunded liabilities typically affect the financial rating of the City. This will be particularly important for those funds where the City is planning to sell bonds in the next few years (Water, Sewer, Stormwater, and Parking). At the February 11, 2009 Finance and Citywide Projects Committee meeting, the Committee recommended that the City administration proceed with the creation of an OPEB trust effective for FY 2007/08 and future years.

The table below shows the breakout for the FY 2007/08 ARC by fund, including department information for each of the Enterprise Fund departments:

2008 Annual Required Contribution (ARC)

	8.5% Discount Rate
Water	$ 57,456
Sewer	$ 36,178
Stormwater	$ 30,432
Parking	$ 142,657
Convention Center	$ 5,116
Sanitation	$ 115,884
Internal Service Funds	$ 224,688
Subtotal	$ 612,410
General Fund	$ 6,288,590
Total all Workers	**$ 6,901,000**

Between FY 2005/06 and FY 2006/07, the City has set aside $4 million from General Fund year-end surplus, and the recommended FY 2007/08 year-end budget amendment includes an additional $2.25 million to be used to fund the City's OPEB liability. These funds will be used to begin funding the OPEB trust. In addition, the Enterprise Funds and Internal Service Funds will provide transfers to the Trust to offset the ARC requirements in the amounts noted above for FY 2007/08.

Funding for the FY 2008/09 ARC will be evaluated based on an updated actuarial report for FY 2008/09, but the City already has the following funds budgeted which can be used to fund the Trust, in addition to the potential for additional year-end surpluses.

- $6.9 million budgeted for retiree health benefits;
- To the extent possible, fund the Enterprise Fund expenses from any FY 2008/09 savings;
- To the extent possible, fund the Internal Service Fund expenses from FY

2008/09 through chargebacks to the user departments;

- $0.4 million budgeted in the General Fund as contingency for health insurance increases above 10%.

Going forward, the City will need to develop a plan to ensure that the Trust is fully funded over a reasonable timeframe. Further, other opportunities may exist to reduce the ARC over time, thereby reducing the future year funding requirements. These include: requiring higher contributions for medical and dental plans, establishing an annual cap or increasing limits for retiree medical benefits, reducing or phasing-out dependant coverage for retiree medical benefits, increasing vesting requirements for medical benefits, etc. However, in addition to the fact that these may require collective bargaining, they may also make the City less competitive in recruitment in comparison to what other public sector organizations may offer. The administration will continue to explore what other jurisdictions and private entities are doing in this regard.

CONCLUSION

The attached Resolution will establish and fund the City of Miami Beach Other Post-Employment Benefits Trust.

JMG:KGB:PW

RESOLUTION NO. _____

A RESOLUTION ESTABLISHING THE CITY OF MIAMI BEACH OTHER POST-EMPLOYMENT BENEFITS ("OPEB") TRUST, AND AUTHORIZING THE MAYOR TO EXECUTE THE CITY OF MIAMI BEACH OPEB TRUST DOCUMENT.

WHEREAS, the City of Miami Beach has established and maintains certain employee and retirement benefit plans that provide post-employment benefits other than pensions ("OPEB"), including but not limited to medical, dental, vision and prescription-drug coverage, to participants and their dependents who are eligible for coverage thereunder; and

WHEREAS, the Governmental Accounting Standards Board (GASB) has issued Statement 43 and Statement 45, which establish standards for accounting and financial reporting for state and local governmental employers that offer other post-employment benefits to participants and their eligible dependents; and

WHEREAS, GASB Statement 43 and GASB Statement 45 require the City of Miami Beach to account for any OPEB unfunded actuarial accrued liability, i.e., the present value of other post-employment benefits earned but not funded and amortized over a period not to exceed thirty (30) years; and

WHEREAS, the City of Miami Beach wishes to establish an irrevocable trust pursuant to Section 115 of the Internal Revenue Code for the purpose of funding and pre-funding other post-employment benefits provided under its retirement benefit plans in accordance with GASB Statement 43 and GASB Statement 45;

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND THE CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA that the City of Miami Beach OPEB Trust Document (the "Trust Document") is hereby adopted and approved in substantially the form attached hereto as Exhibit "A."

BE IT FURTHER RESOLVED, that the Mayor is hereby authorized to execute and deliver the Trust Document in substantially the form attached hereto as Exhibit "A", and the City Manager is directed and authorized to take all necessary and appropriate action to carry out the purposes and terms of the OPEB Trust.

BE IT FURTHER RESOLVED, that the following funds that have been set aside and designated for OPEB in the General Fund, shall be transferred to the OPEB Trust concurrent with the creation of said Trust and the adoption of this Resolution, and said funds shall be reflected as assets of the OPEB Trust upon the effective date of this Resolution These funds resulted from the following:

(a) $2,000,000 set aside from the FY 2005/06 General Fund budget; and
(b) $2,000,000 set aside from the FY 2006/07 General Fund budget;

BE IT FURTHER RESOLVED, that the following funds shall be transferred to the OPEB Trust upon the adoption of the year-end budget amendments to the FY 2007/08 budgets specified below:

(a) $2,246,568 as part of the FY 2007/08 General Fund year-end budget amendment.
(b) $612,411 as part of the FY 2007/08 Enterprise and Internal Service Funds year-end budget amendment.

BE IT FINALLY RESOLVED, that this Resolution and the Trust Document attached hereto as Exhibit "A" shall become effective as of September 30, 2008, and that all resolutions and parts of resolutions in conflict with this Resolution are hereby repealed to the extent of the conflict.

PASSED AND ADOPTED by the City Commission of the City of Miami Beach, Florida, this _____ day of _____, 2009.

_____
Mayor

Attest:

_____
City Clerk

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney 2/19/09
Date

CITY OF MIAMI BEACH, FLORIDA
OPEB TRUST

By Resolution ___, enacted on _____, the CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA (as Grantor), transferred, assigned and conveyed to the BOARD OF TRUSTEES (Trustee) the sum of _____ dollars ($_____) to be held in trust for the purposes set forth herein. This Trust shall hereafter be known as the City of Miami Beach, Florida, OPEB Trust.

WHEREAS, the City has established and maintains certain employee benefit plans that provide post-employment benefits other than pensions (hereinafter "other post-employment benefits" or "OPEBs"), such as but not limited to medical, dental, vision and prescription drug coverage, to OPEB Participants who are eligible for coverage thereunder; and

WHEREAS, the Governmental Accounting Standards Board (GASB) has issued Statement 43 (hereinafter "GASB 43") and Statement 45 (hereinafter "GASB 45"), which establish standards for accounting and financial reporting for state and local governmental employers that offer OPEBs to their OPEB Participants; and

WHEREAS, among other things, GASB 43 and GASB 45 require the City to account for its unfunded actuarial accrued liability, i.e., the present value of OPEBs earned but not funded and amortized over a period not to exceed thirty (30) years; and

WHEREAS, as authorized by O.C.G.A. § 47-20-10.1, the City and Trustee desire to establish an irrevocable trust to be known as City of Miami Beach OPEB Trust (the "Trust"), which will be an entity separate from the City for the exclusive purpose of providing funds to pay for OPEBs, with the intent that (i) the income of the Trust will be exempt from federal and state income tax (under Internal Revenue Code Section 115 with respect to federal income tax), (ii) transfers to the Trust will not be taxable to OPEB Participants, (iii) the Trust will qualify as a trust for purposes of GASB 43 pursuant to Paragraph 4 of GASB 43, and (iv) all assets of the Trust are and will be irrevocably dedicated to, and shall be used for the exclusive purpose of, providing for payments of OPEBs and for paying expenses of administering the Trust, and will not be available to any creditors of the City; and

WHEREAS, this Trust, either in whole or in part, shall not be used for, nor shall any of the income or other assets held under the terms of this Trust be used for, purposes other than the payment of OPEBs to or on behalf of OPEB Participants under the employee benefit plans or the expenses incident thereto or expenses of the Trust; and

WHEREAS, the Trustee is willing to accept the Trust; and

WHEREAS, Trust assets shall be held by the Trustee at all times and the Trust assets shall not be considered funds or assets of the City for any purpose;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and conditions hereinafter set forth and in order to state said Trust, the City and the Trustee hereby mutually covenant and agree as follows:

SECTION 1

DEFINITIONS

The following words or phrases shall have the meanings set forth below unless a different meaning plainly is required by the context. Any reference to a section number shall refer to a section of this Trust Document unless otherwise specified.

1.1 "Board of Trustees" means the Board established pursuant to Section 7 of this Trust Document, the membership of which, as so constituted from time to time, comprises the Trustee.

1.2 "Code" means the Internal Revenue Code, as amended from time to time.

1.3 "City" or "Miami Beach" means Miami Beach, Florida, acting by and through its City Manager and its duly-elected City Commission.

1.4 "Investment Manager" means the individuals or companies appointed by the Trustee pursuant to Section 5.1 to manage all or a portion of the investments of the Trust fund.

1.5 "OPEB Participants" means participants who are eligible for other post-employment benefits under the Plans, together with their eligible dependents.

1.6 "Other post-employment benefits" or **"OPEBs"** means post-employment benefits, other than pension benefits, paid pursuant to the Plans on behalf of OPEB Participants after an employee's separation from service. Such benefits may include, but shall not necessarily be limited to, medical, prescription drugs, dental, vision, Medicare Part B premiums, and life insurance. The participating other post-employment benefit plans, as amended from time to time, shall be incorporated herein by reference, and the terms herein shall have the meanings attributed to them in such plans.

1.7 "Plan" or "Plans" means such employee benefit plan or plans for which OPEBs are funded in whole or in part by the City under this Trust.

1.8 "Trust" means the trust fund created by this Trust Document.

1.9 "Trust Document" means this instrument, including all amendments thereto.

1.10 "Trustee" means, as the context requires, an individual member or all of the then current membership of the Board of Trustees.

SECTION 2

ESTABLISHMENT OF TRUST

2.1 Trust Established. The City hereby establishes the Trust with respect to such funds as shall from time to time be paid over to the Trustee in accordance with the Plans and earnings thereon, if any. The Trust shall be held, managed and administered by the Trustee in trust in accordance with the provisions of this Trust Document. The principal of the Trust, together with any earnings thereon, shall be held by Trustee separate and apart from any assets of the City. All Trust assets and all income thereon are irrevocably dedicated to, and shall be used for the exclusive purpose of, making payments of other post-employment benefits for the benefit of OPEB Participants and for paying expenses of administering the Trust.

2.2 Compliance. The Trust is intended to comply with and be a tax-exempt governmental trust under Section 115 of the Code. This Trust Document shall be interpreted in a manner consistent with that intent and with the intention of the City that the Trust hereunder satisfies those requirements of GASB Statement 43 and GASB Statement 45.

2.3 Exclusive Benefit. Except as provided under applicable law, no part of the corpus or income of the Trust fund may be used for, or diverted to, any purpose other than for the exclusive benefit of OPEB Participants under any Plan prior to the satisfaction of all liabilities of the Plan with respect to such OPEB Participants and payment of expenses of administering the Trust.

2.4 Limit of Interests.

(a) No Right to Reversion. Except as provided in subsection (b) hereof, neither the City, the Board of Trustees, nor any Trustee shall have any right, title, interest, claim, or demand whatsoever in or to the funds held by the Trust, other than the right to a proper application thereof and accounting therefor by the Board of Trustees as provided herein, nor shall any funds revert to the City, the Board of Trustees, or any Trustee.

(b) Return of Contributions. Notwithstanding any other provisions of this Trust Document, if and to the extent permitted by the Code and other applicable laws and regulations thereunder and by GASB Statement 43 and GASB Statement 45, upon the City's request, a contribution that is deposited into the Trust by a mistake in fact shall be returned by the Trustee to the City within a reasonable period of time.

2.5 Spendthrift Provision. All assets, income and distributions of the Trust shall be protected against the claims of creditors of the City and OPEB Participants, and shall not be subject to execution, attachment, garnishment, the operation of bankruptcy, the insolvency laws or other process whatsoever, nor shall any assignment thereof be enforceable in any court.

2.6 Named Fiduciary. The Trustee shall be the fiduciary for the Trust fund and shall have the power to delegate responsibilities under this Trust Document. Such delegations may be to officers and employees of the City of Miami Beach or to other individuals or organizations, including an actuary or a third-party administrator or record keeper, all of whom shall hold those

delegations at the pleasure of the Trustee. Any employee of the City of Miami Beach who already receives full-time pay, and who is delegated such fiduciary responsibilities, shall serve without additional compensation except for reimbursement for expenses properly and actually incurred. Whenever the Trustee delegates a fiduciary duty in writing, the Trustee shall be free from liability for breach of such duty to the fullest extent permitted by law.

2.7 Segregation of Assets. Assets under the Trust may be segregated only for investment purposes. No individual account for any OPEB Participant will be maintained at any time under the Trust, and no OPEB Participant will have any right or title with respect to any specific assets of the Trust. Accordingly, no OPEB Participant will have a preferred claim, lien on, security interest in, or any beneficial interest in, any particular assets of the Trust. OPEB Participants will be entitled to receive payments of assets of the Trust (or have such assets paid on behalf of such OPEB Participants) only as determined by the Trustee in accordance with this Trust Document.

2.8 City Contributions. In its sole discretion, the City from time to time and at any time may make contributions of cash or other assets acceptable to Trustee to the Trust, from employer contributions, employee contributions, or any other source. Neither Trustee nor any OPEB Participant nor any other person or entity shall have the right to compel such contributions. All such contributions and all income thereon are irrevocably dedicated to, and shall only be used for, those purposes authorized in Paragraphs 2.1 and 2.3 of the Trust Document.

2.9 Annual Audit. The City shall appoint a responsible accounting firm to conduct an annual audit of the Trust at the sole expense of the City. The results of such audit shall be provided to the Trustee.

SECTION 3

DUTIES OF THE TRUSTEE

3.1 Management of Trust Fund. The Trustee shall manage the assets of the Trust fund, as would a prudent person under like circumstances who is familiar with such matters.

3.2 Receipt of Contributions. Trustee agrees to accept contributions to the Trust that are paid to the Trustee by the City in accordance with the terms of this Trust Document. The Trustee shall receive all contributions in cash or in such other form as permitted under the laws of the State of Florida and acceptable to the Trustee. The Trustee shall be accountable to the City for the funds remitted to it by the City, and shall have a duty to see that the payment received complies with the provisions of the Plans and with any statute, regulation or rule applicable to contributions.

3.3 Disbursement of Assets.

(a) Disbursements. Subject to Paragraphs 2.1 and 2.3 of this Trust Document, the Trustee shall from time to time make payments or disbursements out of the Trust fund to persons or other entities in such amounts as are necessary for the payment of other post-employment benefits pursuant to and in accordance with the terms of the Plans, and for the payment of reasonable and proper expenses of the Trust. In addition, the Trustee shall from time to time

make payments or disbursements out of the Trust fund to such persons or other entities, including the City, for the reimbursement of the Plans' other post-employment benefit obligations or expenses previously satisfied by such persons or other entities. The Trustee shall pay all fees and expenses reasonably incurred by it in the administration of other post-employment benefits under the Plans and the Trust fund unless the City directly pays such fees and expenses. Nothing contained in this Trust Document or any of the Plans shall constitute a guarantee that Trust assets will be sufficient to pay any other post-employment benefits to any particular OPEB Participant.

(b) Expenses. The reasonable and proper expenses of the Plans and the Trust shall include, but not be limited to:

(i) the fees of any third-party administrator and actuary's fees as agreed upon by the Trustee from time to time;

(ii) expenses incurred by the Trustee in the operation and administration of the other post-employment benefits under the Plans and this Trust fund;

(iii) the fees and other charges against the Trust fund by any Investment Manager or other person or firm that provides services for the other postemployment benefits provided under the Plans or the Trust fund, including attorney's fees; and

(iv) any income or other taxes properly levied or assessed against the Trust fund.

3.4 Other Duties.

(a) Records. The Trustee shall keep such accounts and records and make such reports and disclosures as shall be required by law and by the Governmental Accounting Standards Board under this Trust Document and under the Plans. The records of the Trust pertaining to the City shall be open to inspection by the City at all reasonable times and will be audited on an annual basis by such persons as the City may specify.

(b) Statements. On or before March 1 each year, the Trustee shall furnish the City with an annual statement of account showing the condition of the Trust fund and all investments, receipts, disbursements and other transactions effected by the Trustee during the fiscal year covered by the statement and also stating assets of the Trust held at the end of the fiscal year. The statement of account shall be conclusive on all persons, including the City, except as to any transaction concerning which the City files with the Trustee written exceptions or objections within ninety (90) days after receipt of the statement of account.

(c) Compliance. The Trustee shall take such action (or refrain from taking such action, as the case may be) as shall be necessary to comply with the Trust, other agreements between the Trustee and the City or applicable State of Florida and federal laws.

(d) Authority to Delegate Duties. The Trustee is authorized to delegate any of the duties assigned to it in this Agreement, other than those duties relating to the investment or

management of the assets of the Trust fund, to any individual or organization it deems qualified to perform such duties. The Trustee is only authorized to delegate investment and asset management duties to an Investment Manager pursuant to the provisions of Section 4. When delegating duties, the Trustee shall document the delegation in either (i) a written amendment to this Trust approved by the City, (ii) Trustee minutes or resolutions, or (iii) a separate written agreement with the delegate.

(e) Delegation of Duties. The Trustee may delegate the administrative duties under the Plan to an actuary and/or third party administrator. The duties of the actuary and/or third party administrator shall be set forth in an agreement for administrative services between the Trustee and the actuary and/or third party administrator.

(f) Liability Limitations. The Trustee shall not be liable for the acts or omissions of parties to whom it has specifically delegated duties, except with respect to any acts or omissions in which the Trustee participates knowingly or which h the Trustee knowingly undertakes to conceal, and which the Trustee knows constitutes a breach of fiduciary responsibility. The Trustee shall be held harmless, to the extent provided for in the laws of the State of Florida, by the City and OPEB Participants, together with their heirs, successors and assignees, from any and all liability hereunder for acts or omissions performed in good faith and with prudence. Except as otherwise provided by contract or applicable law, no person acting in a fiduciary capacity with respect to the Trust shall be liable for any action taken or not taken with respect to the Trust except for actions that constitute negligence or willful misconduct.

SECTION 4

INVESTMENT OF TRUST ASSETS

4.1 General Investment Power. The assets of the Trust shall be invested by the Trustee in accordance with an investment policy adopted by the Trustee in accordance with section 218.415, Fla. Stat. Except to the extent such duties are specifically delegated to one or more Investment Managers under Paragraph 4.4, the Trustee shall manage and control assets of the Trust, including selecting and retaining or disposing of any investment of such assets.

4.2 Full Investment Powers. The Trustee shall have full discretion and authority with regard to the investment of Trust assets, except to the extent it has delegated such discretion to a properly appointed Investment Manager with respect to Trust assets under such Investment Manager's control or direction. The Trustee is authorized and empowered with all investment powers conferred on trustees by the laws of the State of Florida.

4.3 Investment Managers. The provisions in this subsection shall control the appointment and use of Investment Managers, as follows:

(a) Appointment. The Trustee may appoint one or more Investment Managers to manage the assets of all or any part of the Trust fund. Each such Investment Manager shall be either:

(i) registered as an investment adviser under the Investment Advisers Act of 1940;

(ii) a bank, as defined in such Act; or (iii) an insurance company qualified to perform the services of an Investment Manager under the laws of more than one state.

The Trustee shall obtain from any Investment Manager a written statement:

(i) acknowledging it is a fiduciary with respect to the Trust assets under its management; and

(ii) certifying that it is either an investment adviser, a bank, or an insurance company, which is qualified to be appointed as an Investment Manager under this Trust Document. The Trustee shall enter into a written contract or agreement with each such Investment Manager in connection with its appointment as such, and such contract shall be subject to such terms and conditions and shall grant to the Investment Manager such authority and responsibilities as the Trustee deems appropriate under the circumstances. The Trustee shall not be responsible for any investment decision made by an Investment Manager unless the Trustee actually makes that decision.

(b) Trustee Duties. Any investment directions or notifications from an Investment Manager to the Trustee may be made orally or in writing, or in such manner as shall be agreed upon between the Investment Manager and the Trustee; provided, in the event the Investment Manager gives the Trustee oral recommendations, directions or notifications, the Investment Manager shall confirm such directions or notifications in writing immediately thereafter.

(c) Violation of Trustee's Fiduciary Duties. Notwithstanding the foregoing, if, in the Trustee's sole discretion, the execution of any instruction with respect to, or the continued holding of any assets in, an investment managed by an Investment Manager would be in violation of the Trustee's fiduciary responsibilities, the Trustee may refuse to execute such instruction or may dispose of such asset or assets, respectively; provided, the Trustee shall not be responsible for the acts or omissions of such Investment Manager. In any such case, the Trustee shall promptly notify the Investment Manager of such situation.

(d) Failure to Direct. In the event that an appointed Investment Manager shall fail to invest all or any portion of the assets under its management, the Trustee shall be responsible for the investment of such assets. If an appointed Investment Manager shall fail to give the Trustee instructions or directions relating to the voting of shares held pursuant to an investment directed by the Investment Manager or the execution and delivery of proxies, or relating to the purchase and sale of fractional shares or the exercise of any other ownership right, the Trustee shall take such action as it deems to be in the best interest of the Trust, provided such action is consistent with the then existing investment policies established by the Trustee.

(e) Termination of Appointment. Upon termination of the appointment of an Investment Manager, the Trustee may appoint a successor Investment Manager with respect to the investments formerly under the management of the terminated Investment Manager or may

merge or combine such investments with other investments or Trust assets within the guidelines of the investment policies established by the Trustee.

(f) Asset Transfer. If the Trustee directs an Investment Manager to hold a portion of the assets of the Trust as well as make the investment decisions for such funds, the Trustee shall enter into such contractual or other arrangements as are necessary for the transfer and custody of such assets of the Trust fund. If the Trustee terminates such Investment Manager, it shall take such action to recapture and take directly into the Trust fund any assets so transferred.

(g) Reports and Valuations. An Investment Manager who has custody of any portion of the assets of the Trust shall keep accurate and detailed books and records on all investments, receipts, disbursements and other transactions for such account and shall determine the fair market value of the assets of such account as of each reporting date determined by the Trustee, and, further, shall file a copy of such books and records and valuations with the Trustee on or before such deadlines as the Trustee shall reasonably set. The Trustee also shall have the right to request that any person who is responsible for making the investment decisions for an investment account determine the fair market value of any asset, or all of the assets, held for that account and file a copy of such valuation with the Trustee before such deadlines as the Trustee reasonably shall set, and each such person shall comply with any such request.

SECTION 5

POWERS OF THE TRUSTEE

5.1 General Authority. Except to the extent such powers are specifically delegated to an Investment Manager under Paragraph 4.4 of this Trust Document, the Trustee shall receive, hold, manage, convert, sell, exchange, invest, reinvest, disburse and otherwise deal with the assets of the Trust, including contributions to the Trust and the income and profits therefrom, without distinction between principal and income and in the manner and for the uses and purposes set forth in this Trust Document.

5.2 Specific Powers. In the management of the Trust, the Trustee or its delegate, as the case may be, shall have the following powers in addition to the powers customarily vested in trustees by the laws of the State of Florida but in no way in derogation thereof, and such powers shall be exercised in accordance with proper directions and the investment policy established by the Trustee or the Investment Committee and without order of, and report to, any court:

(a) Sales. To sell, exchange, convey, transfer or otherwise dispose of any property held in the Trust, by private contract or at public auction. No person dealing with the Trustee shall be bound to see the application of the purchase money or other property delivered to the Trustee or to inquire into the validity, expediency or propriety of any such sale or other disposition;

(b) Purchase of Property. With any cash at any time held by it, to purchase or subscribe for any authorized investment and to retain the same in the Trust;

(c) Retention of Cash. To hold cash without interest in such amounts as may be in its opinion reasonable for the proper operation of the Trust;

(d) Exercise of Owner's Rights. To give general or special proxies or powers of attorney with or without power of substitution with respect to any corporate stock or other security; to exercise any conversion privileges, subscription rights or other options, and to make any payments incidental thereto; to oppose, consent to, or otherwise participate in reorganizations or other changes affecting any stock, bond, note or other property, and to delegate discretionary powers and pay any assessments or charges in connection therewith, and generally to exercise any of the powers of an owner, including voting rights, with respect to any stock, bond, note or other property held as part of the Trust;

(e) Registration of Investment. To cause any stock, bond, other security or other property held as part of the Trust to be registered in its own name or in the name of one or more of its nominees; provided, the books and records of the Trustee shall at all times show that all such investments are part of the Trust;

(f) Disbursement. To make disbursements for the payment of other post-employment benefits under the Plans and for the payment of reasonable and proper expenses of this Trust or of the Plans as related to OPEBs;

(g) Retention of Disputed Funds. To retain any funds or property subject to any dispute without liability for the payment of interest; and to decline to make payment or delivery of the funds or property until final adjudication is made by a court of competent jurisdiction;

(h) Execution of Instruments. To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments, which may be necessary or appropriate to carry out the powers herein granted;

(i) Settlement of Claims and Debts. To settle, compromise or submit to arbitration any claims, debts or damages due or owing to or from the Trust, to commence or defend legal or administrative proceedings and to represent the Trust in all legal and administrative proceedings;

(j) Employment of Agents, Advisors and Counsel. To employ and to act or refrain from acting on the advice or opinion of suitable agents, actuaries, accountants, investment advisers, brokers and counsel, and to pay their reasonable expenses and compensation;

(k) Power to do any Necessary Act. To do all acts which it may deem necessary or proper and to exercise any and all powers of the Trustee under the Plans and this Trust Document upon such terms and conditions as it may deem in the best interests of the Trust;

(l) Loans. To borrow money only for such periods of time and upon such terms and conditions as the Trustee deems necessary and proper to cover any temporary, short-term overdrafts, and to secure such loans by mortgaging, pledging or conveying any property of the Trust; and

(m) Appointment of Custodian. To appoint a custodian to safeguard the assets of the Trust. The City hereby authorizes and directs the Trustee t o enter into such agreements with any such custodian as may be necessary to establish an account with the custodian. For administrative purposes, contributions deposited to the appointed custodian shall be deemed as contributions deposited with the Trustee on behalf of the Trust.

5.3 Standard of Care. The Trustee shall discharge its duties under this Trust Document with the care and skill required with respect to such duties. The Trustee shall not be responsible for the title, validity, or genuineness of any property or evidence of title thereto received by it or delivered by it pursuant to this Trust Document and shall be held harmless in acting upon any notice, request, direction, instruction, consent, certification, or other instrument believed by it to be genuine and delivered by the proper party or parties.

5.4 Exclusive Benefit Rule. Except as otherwise provided by any applicable provision of any statute, regulation, ordinance, resolution or other post-employment benefit plan, no portion of the vested principal or the income of the Trust shall revert to the City, or ever be used for or diverted to any purpose other than for (i) the exclusive benefit of OPEB Participants and (ii) the payment of reasonable expenses of such plans and the Trust. The Trustee shall administer the Trust in compliance with IRC Section 503(b).

SECTION 6

ADMINISTRATION

6.1 Bonds and Reports to Court. Each Trustee shall be bonded to the extent required by law, except that, to the extent the requirement of any such bond may be waived, such waiver shall be deemed to have been exercised, and no such bond shall be required. The Trustee shall not be required to make any inventory or appraisal or report to any court or to secure any order of any court for the exercise of any power herein contained.

6.2 Accounting by Trustee. The Trustee, or its delegate, shall cause to be created and maintained adequate and distinct written or computerized records with respect to the operation of the Trust, including all investments, and any pending litigation to which the Trust or the Trustee is a party. Such records shall be retained for so long as the contents thereof may be or become material to the administration of the Trust or in the full and complete discharge of liabilities to any and all OPEB Participants.

6.3 Expenses. The expenses incurred by the Trustee in the performance of its duties hereunder, all proper charges and disbursements of the Trustee, including all personal property taxes, income taxes and other taxes of any and all kinds whatsoever that may be levied or assessed under existing or future laws upon or in respect of the Trust, or any money, property or security forming a part of the Trust fund, may be paid by the Trustee from the Trust, and the same shall constitute a charge upon the Trust, unless the City pays the same or any part thereof. Notwithstanding the foregoing, neither the City nor the Trust shall be liable or responsible for the payment of fees, expenses, taxes or charges incurred by any Trustee on account of any

misfeasance, malfeasance or nonfeasance by any Trustee or on account of any act or omission in violation of this Trust Document or any applicable law.

6.4 Action of the Trustee. A majority of the Trustee shall constitute a quorum and acts of a majority of the Trustees present at any meeting at which a quorum is present or acts approved by all Trustees in writing shall be deemed to be valid acts. Notwithstanding the above, the duly elected chairperson of the Trustee as designated by the Trustee may execute any documents relating to the Trust, including contracts relating to the investment or reinvestment of the assets of the Trust, documents necessary for the exercise of any ownership rights thereunder, service agreements or other related documents, and may perform other such ministerial acts. The Trustee shall keep minutes of its proceedings and complete and accurate records which may be examined at any reasonable time on behalf of the City by any officer or employee designated in writing by the City.

SECTION 7

SELECTION AND TERM OF BOARD OF TRUSTEES

7.1 Membership. The Board of Trustees shall have three (3) members, as follows:

1. Chief Financial officer or designee.

2. _____ or designee.

3. _____ or designee.

7.2 Term. Members of the Board of Trustees holding the positions specified above serve for as long as they hold the specified position. Designees shall serve at the pleasure of the designating official.

7.3 Compensation. Except with respect to actual expenses incurred by Trustees as provided in Paragraph 6.3, Trustees shall not receive any compensation for their services rendered as Trustees.

SECTION 8

AMENDMENT OR TERMINATION OF TRUST

8.1 Amendment of Trust. This Trust Document may be amended at any time by written instrument executed by the Trustee and the City. Notwithstanding the foregoing, no such amendment shall conflict with the terms of the Plans or shall make the Trust revocable.

8.2 Termination of Trust. The City reserves the right at any time to terminate this Trust; provided, however, that under no circumstance shall any portion of the Trust revert to or become property of the City. Upon termination, the Trustee shall continue to administer the Trust in accordance with the provisions contained herein until all obligations under the Plans have been discharged and satisfied or all funds have been paid out. Until all assets of the Trust are distributed, the Trust shall continue, and this Trust Document shall remain in effect. Any assets remaining in the Trust following termination and after all obligations under the Plans have been discharged and satisfied shall revert to the City.

8.3 Property Not Transferred. The Trustee reserves the right to retain such property as is not suitable for distribution or transfer at the time of the termination of the Trust and shall hold such property for the benefit of those persons or other entities entitled to such property until such time as the Trustee is able to make distribution. Upon the appointment and acceptance of a successor trustee, the Trustee's sole duties shall be those of a custodian with respect to the property not transferred.

SECTION 9

MISCELLANEOUS

9.1 Successors and Assigns. The stipulations in this Trust Document shall inure to the benefit of, and shall bind, the successor and assigns of the respective parties.

9.2 No Third Party Beneficiaries. The provisions of this Trust Document are intended to benefit only the parties hereto, their respective successors and assigns, and OPEB Participants under each Plan. There are no other third party beneficiaries.

9.3 Waiver. No waiver by either party of any failure or refusal to comply with an obligation hereunder shall be deemed a waiver of any other or subsequent failure or refusal to so comply.

9.4 Conflict. In resolving any conflict among provisions of the Trust and in resolving any other uncertainty as to the meaning or intention of any provision of the Trust, the interpretation that (i) causes the Trust to be exempt from tax under IRC Sections 115 and 501(a), and (ii) causes the participating other post-employment benefit plan and the Trust to comply with all applicable requirements of law shall prevail over any different interpretation.

9.5 Severability. If any term or provision of this Trust Document or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of

this Trust Document, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Trust Document shall be valid and enforceable to the fullest extent permitted by law.

9.6 Section Headings. The headings of the various sections and subsections of this Trust Document have been inserted only for the purposes of convenience, are not part of this Trust Document and shall not be deemed in any manner to modify, explain, expand or restrict any of the provisions of this Trust Document.

9.7 Governing Law. This Trust shall be governed and construed in accordance with the laws of the State of Florida and, to the extent applicable, the Internal Revenue Code.

9.9 Effective Date. This Trust shall be effective as of Octber 1, 2008.

IN WITNESS WHEREOF, the City of Miami Beach and the Trustee have caused this Trust Document to be signed by their duly authorized officers or representatives on this ____ day of _____, 2009. (The remainder of this page left intentionally blank.)

MIAMI BEACH, FLORIDA

By: _____
, Mayor

Miami Beach City Commission

ATTEST:

_____
, City Clerk

APPROVED AS TO FORM:

_____
, City Attorney

BOARD OF TRUSTEES

_____
Trustee

_____
Trustee

_____
Trustee