

MASSACHUSETTS PORT AUTHORITY

RETIREE BENEFITS TRUST

THIS IRREVOCABLE TRUST AGREEMENT (this "Trust Agreement"), is made and entered into this 27th day of June, 2008 by and between the Massachusetts Port Authority, a body politic and corporate established and operating pursuant to Chapter 465 of the Acts of 1956 of the Commonwealth of Massachusetts, as amended (the "Enabling Act"), with a principal place of business at One Harborside Drive, Suite 200S, East Boston, Massachusetts 02128-2909 (the "Authority") and the Massachusetts Port Authority Retiree Benefits Trust Committee, as trustee, (the "Trustee"). The trust created herein shall be known as and will be referred to as the Massachusetts Port Authority Retiree Benefits Trust (the "Trust").

WHEREAS, the Authority has adopted, and will, from time to time, adopt certain post-employment medical, dental, disability, and other post-employment benefit programs as well as certain related financial subsidies for the benefit of its eligible Retirees, and their eligible spouses and dependents; and

WHEREAS, the Authority desires to comply with Generally Accepted Accounting Principles ("GAAP") and the Governmental Accounting Standards Board ("GASB") issued GASB statements 43 and 45 which require governmental entities that comply with GAAP, including the Authority, to recognize certain post-employment benefit costs during the working career of employees; and

WHEREAS, the Authority desires to establish the Trust to fund its retiree benefit obligations; and

WHEREAS, only payments specifically allocated for eligible post-employment benefits may be paid from the Trust; and

WHEREAS, the Authority's provision of medical and other post-employment benefits to retirees, their eligible spouses and dependents, as specified in the Plan Statement attached hereto as **Exhibit A**, constitutes an essential governmental function within the meaning of Section 115(1) of the Internal Revenue Code; and

WHEREAS, Sections 115 and 671 of the Internal Revenue Code and Section 507A of the Authority's 1978 Trust Agreement ("1978 Trust Agreement") permit the Authority to establish a separate Trust that would serve as a vehicle for accumulating amounts needed to pay for retiree medical and other post-employment benefits; and

WHEREAS, the form of this Trust Agreement was approved by the Members of the Authority (the "Board") on May 15, 2008; and

WHEREAS, the Authority will pay to the Trustee in trust hereunder the sum of \$54,064,221.00 as the initial contribution to the Trust hereby created;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, it is hereby agreed between the Authority and Trustee as follows:

ARTICLE I: CREATION OF TRUST; PURPOSE. The Trust is hereby created for the sole purpose of providing funding for post-employment health care and other benefits for Participants and Beneficiaries which is an essential governmental function. It is created as an irrevocable trust and in no event shall any part of the principal or income of this Trust be paid or revert to the Authority, or be used for any purpose whatsoever other than for the exclusive benefit of Participants and Beneficiaries, as set forth herein. The Trust is created pursuant to the Authority's Enabling Act, other applicable law and the 1978 Trust Agreement and shall constitute a governmental trust pursuant to Section 115 of the Code. The Trust shall consist of the contributions from the Authority, all investments made or held under this Trust, and all income therefrom, both received and accrued, and any other property, which may be received or held by reason of this Trust. It is intended that the Trust shall be tax-exempt and shall qualify under the Code and any amendments of the Code applicable to trusts of this type.

No part of the assets of the Trust may inure to the exclusive benefit of any Participant or Beneficiary other than by benefit payments or for services provided to the Trustee in its administration of the Trust. The assets of the Trust shall not be used for or diverted to purposes other than to provide the Benefits contemplated hereunder for the exclusive benefit of Participants and Beneficiaries, except any administrative expenses for which the Trust is liable as set forth herein. A portion of assets of the Trust may be used for payment for reasonable and necessary professional services, costs and expenses related to assisting the Trustee in the operation of the Trust.

All income, profits, recoveries, contributions, forfeitures and any and all monies, securities and properties of any kind at anytime received or held by the Trustee hereunder, shall become part of the Trust when received, and shall be held for the use and purposes hereof.

The Authority shall not be liable for any payment to the Trust of any amount other than those required of it under this Trust Agreement. Neither the Authority, nor any Participant, Beneficiary or Trustee shall be liable for any debts, liabilities or obligations of the Trust except as provided in this Trust Agreement.

ARTICLE II: IRREVOCABILITY. The Section 115 governmental trust established herein shall be irrevocable and shall conform to all applicable sections of the Code and all statutes, ordinances, rules, regulations, and judicial decisions interpreting the foregoing provisions.

ARTICLE III: DEFINITIONS. As used in this Trust Agreement, and for purposes of clarifying the concepts underlying GASB Statements 43 and 45, the following terms shall have the meanings hereinafter set out:

- (a) “Actuarial accrued liability” shall mean that portion, as determined by a particular actuarial cost method, of the actuarial present value of Trust obligations and administrative expenses which is not provided by future normal costs.

(b) “Actuarial cost method” shall mean a method of determining the actuarial present value of the obligations and administrative expenses of the Trust and for developing an actuarially equivalent allocation of the value to time periods, usually in the form of a normal cost and an actuarial accrued liability. Acceptable actuarial methods are the aggregate, attained age, entry age, frozen attained age, frozen entry age, and projected unit credit methods.

(c) “Actuarial assumptions” shall mean assumptions regarding the occurrence of future events affecting the Trust such as mortality, cost of medical inflation, withdrawal, disability, retirement, changes in contribution rates and offered post-employment benefits; rates of investment earnings and other asset appreciation or depreciation; procedures used to determine the actuarial value of assets; and other relevant items.

(d) “Actuarial valuation” shall mean the determination, as of valuation date, of the normal cost, actuarial accrued liability, actuarial value of assets, and related actuarial present values for the Trust.

(e) “Actuarially present value of total projected benefits” shall mean the present value, at the valuation date, of the cost to finance benefits payable in the future, discounted to reflect the expected effects to the time value of money and probability of payment.

(f) “Actuarially sound” shall mean that calculated contributions to the Trust are sufficient to pay the full actuarial cost of the Trust. The full actuarial cost includes both the normal cost of providing for Trust obligations as they accrue in the future and the cost of amortizing the UAAL over a period of no more than thirty (30) years or any other period in excess of thirty (30) years as may be reasonably approved by actuarial standards of practice.

(g) “Administrative expenses” shall mean all expenses incurred in the operation of the Trust, including, but not limited to all investment expenses, salaries, consulting fees, and other reasonable expenses.

(h) “Annual Required Contribution” and “ARC” shall mean that the amount that must be contributed in a given year to fully fund the Trust, as determined by the actuarial valuation in accordance with requirements of GAAP and all other such requirements under GASB Statements 43 and 45 or any subsequent GASB statement that may be applicable. This amount shall represent a level of funding that if paid on an ongoing basis is projected to cover the normal cost each year and amortize any UAAL over a period not to exceed thirty (30) years or any other period in excess of thirty (30) years as may be reasonably approved by actuarial standards of practice.

(i) “Authority” shall mean the Massachusetts Port Authority.

- (j) “Beneficiaries” shall mean all Participants, and their eligible spouses and dependents receiving Benefits.
- (k) “Benefits”- shall mean such benefits and other subsidies as currently provided to Beneficiaries and as listed in **Exhibit A**.
- (l) “Board” shall mean the Members of the Authority.
- (m) “Code” shall mean the Internal Revenue Code of 1986, as amended.
- (n) “Fiscal Year” shall mean the period commencing on the first day of July of any year and ending on the last day of June of the following year.
- (o) “GAAP” shall mean Generally Accepted Accounting Principles.
- (p) “GASB” shall mean the Government Accounting Standards Board.
- (q) “Investment Guidelines” shall mean the investment guidelines adopted annually which shall govern the powers of the Trustee as to the investment of the assets of the Trust.
- (r) “Minimum annual payment” and “Pay as you go” amount shall mean the annual amount paid by the Authority toward Benefits, which, provide sufficient funds to cover all projected Benefits expenses for Beneficiaries and related administrative costs for that year. The Authority shall calculate the minimum annual payment as part of its financial plan each year.

(s) “Obligations” shall mean those administrative expenses of the Trust and the cost of ARC which is allocated to such valuation year by the actuarial cost method used for the Trust.

(t) “Other post-employment benefits” or “retiree post-employment health care benefits” means those benefits as addressed by GASB statement 43 and GASB statement 45, or any subsequent GASB statement that may be applicable to the Trust.

(u) “Participant” shall mean any current or former employee of the Authority who has become eligible to participate in the Benefits and whose participation has not terminated under other applicable provisions.

(v) “Retiree” shall mean a retired employee of the Authority.

(w) “Trust” shall mean this Retiree Benefits Trust created and set forth herein.

(x) “Trustee” shall mean the Massachusetts Port Authority Retiree Benefits Trust Committee.

(y) “Unfunded Actuarial Accrued Liability” and “UAAL” shall mean for any actuarial valuation, the excess of the actuarial accrued liability over the actuarial value of the assets of the Trust under an actuarial cost method used by the Trust for funding purposes.

ARTICLE IV: ELIGIBILITY FOR BENEFITS. Eligible Participants and Beneficiaries who are currently covered by the post-employment Benefits program. In the event that the eligibility of any person shall be disputed, the decision of the Board upon such eligibility shall be controlling.

ARTICLE V: TRUST CONTRIBUTIONS. The Authority may make regular contributions to the Trustee, including such amounts as determined by applicable actuarial reports prepared under GASB statements 43 and 45 or subsequent GASB statements to finance the payments of the post-employment benefit obligations, and such other amounts as the Authority may designate for those purposes (including contributions made by current employees, Participants and/or Beneficiaries if any).

ARTICLE VI: PAYMENT OF BENEFITS. Benefits to be paid for under this Trust Agreement, whether directly or indirectly, shall include only the Benefits presently approved by the Board and as specified in **Exhibit A**, or as from time to time amended. No other benefits or rights are intended to be granted or created by reason of the execution of this Trust Agreement.

ARTICLE VII: TRANSFER OF OPEB BENEFIT. In the event that a Participant's OPEB benefit, and attendant financial liability, is transferred from the Authority to another entity, the Trustee may elect to transfer funds to such entity, if so directed by the Board. At such time, all obligation by this Trust to provide such OPEB benefit shall cease.

ARTICLE VIII: CONCERNING THE TRUSTEE: The Massachusetts Port Authority Retiree Benefits Trust Committee (“Committee”) is designated as the initial Trustee of this Trust. The five (5) member Committee shall consist of the Authority officers serving as the Director of Administration & Finance/Secretary-Treasurer or the equivalent position, the Director of Human Resources or the equivalent position (or, when any of such offices is vacant, any officer serving in such position in an “acting” capacity), two members appointed from time to time (and may be removed at any time) by the Chief Executive Officer and Executive Director of the Authority and one member appointed from time to time (and may be removed at any time) by the Board¹. The Director of Administration & Finance/Secretary-Treasurer shall serve as Chair of the Committee. The members of the Committee shall annually elect a Vice-Chair. The Board may appoint a person who is not an employee of the Authority to serve as a member of the Committee, in its absolute discretion.

(a) Successor Trustee Not Responsible For Acts Of Prior Trustee

No successor Trustee, whether or not specifically named herein, shall have any responsibility for the acts or omissions of any prior Trustee nor shall it have a duty to audit or investigate the accounts or administration of any such prior Trustee.

(b) Trustee Reimbursement and Compensation

¹ The second sentence of Article VIII amended by a vote of the Massport Board on March 21, 2013. The amendment removed the Chief of Staff as a designated member of the Committee and changed from one to two the number of Committee members appointed by the CEO and Executive Director.

An individual Trustee shall not receive any additional compensation for serving as Trustee hereunder. In the event that a corporate Trustee is engaged, such corporate Trustee's compensation shall be according to its schedule of fees for the administration of living trusts in effect from time to time. Notwithstanding the foregoing, in the event that the Board appoints a Trustee who is not an employee of the Authority, such Trustee's compensation shall be determined by the Board, in its absolute discretion.

A Trustee shall be entitled to reimburse himself or herself for any personal costs incurred in the administration of this Trust and for any expenses of the Trust that he/she has paid.

The Authority shall certify to the Trustee the identity of each Participant and Beneficiary on whose behalf a payment is to be made, and the nature of and the amount of such payment. As to insurance premiums to be paid from the Trust, the Authority shall certify to the Trustee the amount to be paid and the identity of the insurance company or other payee of such premiums. Upon receipt of appropriate certification under this Article VIII, the Trustee shall promptly distribute the amounts required.

The Trustee shall discharge its duties with respect to the Trust solely in the interest of the Participants and Beneficiaries for the exclusive purpose of providing benefits to Participants and Beneficiaries and paying reasonable expenses of

administering the Trust. A Trustee shall discharge his duties with the care, skill, and caution under the circumstances then prevailing which a prudent person, acting in a like capacity and familiar with those matters, would use in the conduct of an activity of like character and purpose.

ARTICLE IX: ADMINISTRATION OF TRUST. In administering this Trust, the Trustee shall administer the same for the benefit of all Participants and Beneficiaries as herein provided, without discrimination in favor of one or some Participants or Beneficiaries as against one or some other Participants or Beneficiaries.

Whenever action is required by the Trustee hereunder, the same may be taken by any individual designated as agent for the purpose. The Trustee shall notify the Authority of any change of agent. The Trustee shall be entitled to rely upon information or instructions received from an agent of the Authority whose authority to act was last certified to the Trustee by a vote of the Board. Any information or instruction from the Authority to the Trustee shall be in writing and shall be effective upon delivery to the Trustee. The Trustee shall be under no duty or responsibility to inquire into the acts or omissions of the Authority, nor shall the Trustee have any liability therefore. Should it become necessary to perform some act hereunder and there is neither direction nor information nor instructions from the Authority on file with the Trustee relating thereto, and no such information or instructions can be obtained after reasonable inquiry, the Trustee shall have full power and authority to act in the Trustee's discretion, consistently with the purpose of this Trust; and in so acting or in following any instructions from the

Authority, the Trustee shall be fully protected and shall be absolved from all liability except from fraud or bad faith.

The duties, powers and responsibilities of the Trustee shall be limited as specifically provided herein. No person serving as a Trustee hereunder shall be liable or responsible to anyone for any matter or thing whatsoever, provided only that such person has acted in good faith.

The Trustee in performing any act hereunder shall be entitled to rely upon any affidavit, certificate, letter, notice, telegram or other paper or electronic document believed by the Trustee to be genuine and upon any information or evidence believed by the Trustee to be sufficient; and the Trustee shall be protected in all payments hereunder if made in good faith and without actual knowledge of the happening of an event or a change in conditions which would affect such payments.

The Trustee shall take no action nor make any determination inconsistent with any qualification or ruling of the Internal Revenue Service, an arbitrator or the courts with respect to the Trust. In the case of amendments to the Code or changes of regulations by the Internal Revenue Service or other governmental agency, the Trustee is empowered to take all necessary actions authorized by this Trust Agreement, federal and state law and regulations, to continue the qualification of the Trust as a qualified Trust.

ARTICLE X: TRUSTEE'S ADMINISTRATIVE POWERS. The Trustee shall receive, hold, invest and reinvest contributions to the Trust and shall make disbursements

from the Trust pursuant to Article VI hereinabove. For purposes of accounting and valuation, the records of the Trust shall be maintained on a cash receipts and disbursements basis, and in accordance with GAAP. The Trustee from time to time shall capitalize unexpended income and add the same to the principal of the Trust.

Subject only to such instructions, rules and restrictions as may from time to time be adopted by the Authority and communicated to the Trustee, the Trustee shall have the following powers and rights in addition to those invested in the Trustee by law.

ARTICLE XI: INVESTMENT POWERS. To hold, manage and control the assets of the Trust, during the continuance of the Trust and in accordance with the Investment Guidelines adopted by the Trustee. The Trustee shall have full power without any court order to improve, lease for any term irrespective of the duration of the Trust, rent, sell, exchange, hold, control, invest and reinvest the same in such manner and upon such terms as the Trustee deems best, in U.S. dollars or other currencies, including (without limitation of these powers) the power to purchase shares in investment trusts and stock in investment corporations, irrespective of any statutes or rules or practices of courts now or hereafter in force limiting the investments of trust companies or trustee generally, with full power to convert realty into personalty and personalty into realty. The Trustee is authorized to issue debt obligations and sell bonds for the purpose of further funding this Trust upon approval by resolution of the Board. The Trustee shall invest the assets of the Trust consistent with the Investment Guidelines as may be adopted by the Trustee and with the primary objective and priority of preserving the assets of the Trust. The Trustee

hereunder shall not be required to dispose of any property held hereunder in order to diversify the investments of the Trust or because such holdings are of a kind not ordinarily considered as proper investments for trust estates; nor shall the Trustee be precluded from acquiring property which results in a nondiversification of the investments of the Trust or which is of a kind not ordinarily considered as proper investments for trust estates; therefore, the Trustee is granted the right to retain property so long as the Trustee shall deem such investments reasonably sound, and to acquire such property as the Trustee deems to be a reasonably sound investment, regardless of the proportion of the Trust which it represents and regardless of whether it is of a type ordinarily deemed proper for trust investments consistent with the Investment Guidelines as may be adopted by the Trustee. The Trustee is authorized to hold cash uninvested at any time and from time to time. No purchaser from nor lender to the Trustee need see to the application of the purchase or loan money to the purposes of the Trust, but the receipt of the Trustee shall be a complete discharge to any such person. The Trustee acting hereunder shall not be held responsible for any loss sustained by the Trust through any error of judgment made in good faith, but shall be liable only for the Trustee's own willful misconduct. The Trustee hereunder shall not be personally liable upon any contract of indebtedness of or claim against the Trust or upon a mortgage, trust deed, note or other instrument executed under the provisions of this Trust.

ARTICLE XII: VOTING AND RELATED POWERS. The Trustee shall vote any stocks, bonds, or other securities, to give general or special powers of attorney with or

without power of substitution; to exercise any conversion privileges, subscription rights or other options and to make any payments incidental thereto; to consent to or otherwise participate in corporate reorganizations or other changes affecting corporate securities and to delegate discretionary powers and to pay any assessments or charges in connection therewith; and generally to exercise any of the powers of an owner with respect to stocks, bonds, securities or other property held in the Trust.

ARTICLE XIII: CLAIMS BY OR AGAINST THE TRUST, TRUSTEE OR COMMITTEE. In any civil action or claim brought against the Trust, the Trustee or any member of the Committee individually, each such Committee member shall be indemnified for all expenses incurred in the defense thereof and shall be indemnified for damages to the same extent as provided for public employees in chapter two hundred and fifty-eight of the Massachusetts General Laws; provided, however, that the claim arose out of acts performed by such Committee member or members while acting within the scope of their official duties hereunder; and provided, further, that no Committee member shall be indemnified for expenses incurred in the defense of an action, or damages awarded in such action, in which there is shown to be a breach of fiduciary duty, an act of willful dishonesty or an intentional violation of law by such Committee member.

Any dispute arising between the Authority and the Trustee hereunder shall be decided exclusively by a court of competent jurisdiction in the Commonwealth of Massachusetts.

The Authority and the Trustee hereby waive trial by jury in any action, proceeding or counterclaim brought by either party against the other or any matter whatsoever arising out of or in any way connected with this Trust, the relationship of the Authority and Trustee created hereby, and/or any claim for injury or damage. In the event the Authority commences any action or proceeding against the Trustee, Trustee shall not interpose any counterclaim of any nature or description in any action or proceeding, but such claim shall be relegated to an independent action of law.

ARTICLE XIV: EMPLOYMENT OF AGENTS. The Trustee may employ agents, attorneys-in-fact, experts (including, but not limited to, actuaries, auditors, custodian, financial and/or investment advisors and investment managers) and legal counsel, and delegate discretionary powers to or rely upon information or advice furnished by such agents, attorneys-in-fact, experts or legal counsel.

ARTICLE XV: EXECUTION OF INSTRUMENTS. The Trustee shall execute and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted, and to perform any and all acts that may be necessary or convenient in the proper administration of the Trust. The Trust shall complete and provide to Participants, Beneficiaries and the appropriate governmental agencies any reports as may be required by the Code, or applicable federal, state or local law.

ARTICLE XVI: NECESSARY ACTS. The Trustee shall do all acts whether or not expressly authorized which may be necessary or proper for the protection of the property held hereunder or for the carrying out of any duty under this Trust Agreement.

ARTICLE XVII: EXEMPT FUNCTION INCOME. Prior to the filing of the Trust's annual tax return, the Trustee shall earmark as exempt function income, within the meaning of Section 512(a)(3)(B) of the Code, as much of the Trust's investment income as is permitted under Section 512(a)(3)(E) of the Code. All such income shall be segregated from the general assets of the Trust, accounted for separately on the Trust's books and records, and used solely for the payment of benefits (and directly connected reasonable costs of administration) hereunder.

ARTICLE XVIII: HOLDING OF TRUST ASSETS. All the assets in the Trust shall be held collectively for the benefit of all the Participants and Beneficiaries with no physical division thereof until such time as distribution is actually made by the Trustee.

ARTICLE XIX: NON-LIABILITY OF SUCCESSOR TRUSTEE. Each successor Trustee may accept as complete and correct and may rely upon any accounting which shall have been made by or on behalf of any Trustee hereunder prior to the date upon which such successor Trustee shall have qualified as a Trustee under this instrument, and may rely upon any statement or representation made by any Trustee then or theretofore acting hereunder as to the assets comprising the Trust or as to any other fact bearing upon the prior administration of the Trust created herein; and such successor Trustee shall not

be subject to any liability by reason of having accepted and relied upon such accounting, statement or representation in case it is subsequently established that the same was incomplete, inaccurate or untrue. No successor Trustee hereunder shall be subject to any liability or responsibility with respect to any act or omission of any other Trustee nor shall any successor Trustee have any duty to enforce or to seek to enforce any claims of any kind against any predecessor Trustee on account of or in connection with any act or omission of any Trustee hereunder.

ARTICLE XX: DECISION OF MAJORITY OF TRUSTEES TO GOVERN. Except as otherwise expressly provided, when there are three or more Trustees authorized to act in any particular matter, the agreement of a majority of the Trustees shall be required, and when there are two Trustees authorized to act in any particular, the agreement of both Trustees shall be required. Each Trustee shall be liable only for his own acts in the administration of this Trust. No Trustee shall be in any way or to any extent liable to the Participants, Beneficiaries or others for anything done hereunder by his fellow Trustee(s) to which he or she did not actively consent or of which he or she did not actively approve.

ARTICLE XXI: ACCOUNTS. The Trustee shall keep accurate and detailed accounts of all investments, receipts and disbursements and other transactions hereunder and in accordance with GAAP, and all accounts, books and records relating thereto shall be open to inspection by any person designated by the Board at all reasonable times. Not later than 120 days after the end of each Fiscal Year of the Trust, the Trustee shall cause

an audit to be made of its books and accounts by an independent certified public accountant and the Trustee shall provide copies of such audits to the Authority. In addition the foregoing annual audit requirement contained herein, the financial records of the Trust shall be subject to an audit by the Authority at any reasonable time.

ARTICLE XXII: AMENDMENTS. This Trust shall be used for direct and/or indirect funding of Benefits, as now in force and as hereafter amended, adopted or implemented. The Authority reserves the right by action of its Board to amend the Trust at any time without the consent of the Trustee, but no such amendment shall cause or permit any portion of the corpus or income of the Trust to revert to the Authority or become the property of or be used for the benefit of the Authority. Any amendment which is necessary to bring this Trust into conformity with government laws or regulations in order to qualify the Trust under GASB statements 43 and 45 or any subsequent GASB statement that may be applicable shall be made retroactively.

ARTICLE XXIII: TERMINATION OF CONTRIBUTIONS. The Authority has established this Trust with the bona fide intention and expectation that from year to year it will be able to and will deem it advisable to make its contributions as herein provided. However, the Authority reserves the right to fund the benefits on a “pay-as-you-go” basis and realizes that circumstances not now foreseen or circumstances beyond its control may make it either impossible or inadvisable to continue to make its contributions as herein provided. In the event the Authority decides it is impossible or inadvisable for it to

continue to make its contributions as herein provided, the Authority shall have the right to terminate its contributions.

In the event of complete termination of contributions by the Authority, with or without formal action by the Board, the Authority shall make no further contributions to the Trust, the Trust shall remain in existence, and other than the provisions for contributions by the Authority, all the provisions of the Trust which are necessary in the opinion of the Trustee shall remain in force.

ARTICLE XXIV: TERMINATION OF TRUST. In the event that (i) the Authority's contributions to the Trust have been terminated completely in accordance with the provisions of the preceding paragraph, and (ii) all assets of the Trust have been distributed in accordance with the purposes of this Trust Agreement, the Board shall also have the power to terminate the Trust completely by appropriate resolutions specifying the date of such termination, certified copies of which shall be delivered to the Trustee and all of the assets in the Trust on the date specified in such resolutions shall be held, administered and distributed by the Trustee in the manner provided herein. In no case will Trust assets be distributed to an entity that is not a state, a political subdivision of a state, or an entity the income of which is excluded from gross income under § 115(1) of the Code.²

ARTICLE XXV: REMOVAL OR RESIGNATION OF TRUSTEE. Any Trustee hereunder may be removed by resolution of the Board upon delivery to such Trustee of a

² The last sentence of Article XXIV was added by a vote of the Massport Board on May 20, 2009.

certified copy of such resolution of removal. Any Trustee hereunder may resign as Trustee, upon written notice to that effect, delivered to the Authority. Such removal or resignation shall become effective upon the date specified in such resolution or such notice, as the case may be, which shall be not less than 15 days subsequent to the delivery of such certified copy of resolution or such notice. In the event of the removal, resignation, death or inability to serve of any Trustee hereunder, a successor shall be appointed by resolution of the Board, a certified copy of which resolution shall be delivered to such successor. In the event of the removal, resignation, death or inability to serve of any Trustee hereunder after the Authority shall have gone out of business or ceased to exist or been dissolved, voluntarily or involuntarily, or had a receiver or trustee in bankruptcy appointed, a successor may be appointed by election by a majority in interest of the Participants then having an interest in the Trust. A successor Trustee, upon accepting such appointment, shall become vested with the same powers, duties, privileges, and immunities as if such Trustee had been originally named in this Trust as a Trustee. In case of the removal, resignation, death or inability to serve of a Trustee, said Trustee or his personal representative shall forthwith turn over to the remaining or succeeding Trustee all accounts and records in such Trustee's possession, and shall execute such instruments as may be necessary to terminate such trusteeship. No bond shall be required of the Trustee named herein or any of the Trustee's successors.

Not later than 60 days after the effective date of the removal or resignation of a Trustee, the Trustee shall file with the Authority a written report setting forth all investments,

receipts, disbursements, and other transactions effected by the Trustee from the date of the prior such report to the date of removal or resignation of a Trustee, as the case may be. Such report shall contain an exact description of all securities and investments held at the effective date of such removal or resignation of a Trustee, as the case may be, and the cost of each item thereof, as carried on the books of the Trustee. Upon the expiration of 90 days from the date of filing such report, the Trustee, including a Trustee who resigned or was removed, shall be forever released and discharged from any liability or accountability to anyone as respects the propriety of the Trustee's acts or transactions shown in such report, except with respect to any such acts or transactions as to which the Authority shall within such 90-day period file with the Trustee a written statement claiming fraud or bad faith on the part of the Trustee; and neither the Authority nor any other person shall have the right to demand or be entitled to any further or different accounting by the Trustee.

ARTICLE XXVI: EXPENSES OF ADMINISTRATION. All reasonable expenses of administering the Trust, including any investment counsel fees incurred by the Trust, and any expenses directly related to particular transactions involving purchases or sales of property by the Trust or the production or collection of income, such as transfer taxes, brokers' commissions, etc., shall be paid by the Trustee out of the assets of the Trust.

ARTICLE XXVII: RIGHTS OF PARTICIPANTS AND BENEFICIARIES. Participating in this Trust shall not give any Participant or Beneficiary any right to be retained in the

service of the Authority or any right or claim to any benefits hereunder unless such benefits have accrued under the terms and provisions of the applicable program.

ARTICLE XXVIII: CONSTRUCTION. It is intended that this Trust shall be construed so as to qualify as tax-free under Section 115(1) of the Code.

ARTICLE XXIX: DEFENSE OF TRUST. The Authority shall have the right to defend the position of the Trust created hereunder in all situations and causes, including as tax-free under Internal Revenue Code Section 115(1).

ARTICLE XXX: AUTHORITY OF TRUSTEE: No Trustee or successor Trustee whenever acting shall be required to furnish any bond or other security for the faithful performance of its duties as a Trustee, and if any bond should be required, no surety shall be furnished thereon.

ARTICLE XXXI: ADMINISTRATIVE AND GENERAL PROVISIONS.

- (i) Accrued And Undistributed Income. Upon the death of any Beneficiary for whom a trust is held or a share of the Trust allocated, any accrued or undistributed net income with respect thereto, shall be held and accounted for or distributed in the same manner as if it had been accrued or received after the death of such Beneficiary.
- (ii) Accounting. Trustee shall not be required to make any accounting of the administration of the Trust corpus to any court of competent

jurisdiction unless Trustee elects otherwise. Absent such election, an accounting shall be made to the Authority at such reasonable times as may be required, at least annually, but no more often than quarterly.

ARTICLE XXXII: MISCELLANEOUS PROVISIONS.

- (i) No Employment Contract. The adoption and maintenance of this Trust Agreement shall not be deemed to constitute a contract between the Authority and any Participant who is rehired or any Beneficiary who is hired, or to be a consideration for, inducement to or condition of employment of any such person. If a Participant is rehired or a Beneficiary is hired, nothing herein contained shall be construed to give any Participant or Beneficiary the right to be retained in the employ of the Authority or to interfere with the right of the Authority to terminate the employment of any Participant or Beneficiary at any time with or without cause.
- (ii) Trust Available for Inspection. A copy of the Trust Agreement and any and all future amendments thereto shall be available for inspection by Participants or Beneficiaries at the principal office of the Trustee at all reasonable times.
- (iii) Prohibition on Assignment. No Benefit shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge,

encumbrance or charge, and any attempt to do so shall be void. No Benefit shall in any manner be liable for or subject to the debts, contracts, liabilities, engagements or torts of any person. If any Participant or Beneficiary entitled to Benefits hereunder becomes bankrupt or attempts to anticipate, alienate, sell, transfer, assign, pledge, encumber or charge any benefit, or if any attempt is made to subject any such Benefit to the debts, contracts, liabilities, engagements or torts of the Participant or Beneficiary entitled to any such Benefit, except as specifically provided, then such Benefit shall cease and terminate in the discretion of the Authority, and may be applied by the Trustee for the benefit of any Beneficiary, in such manner and proportion as the Trustee may deem proper.

- (iv) Subrogation. In the event that benefits are paid under the terms of this Trust Agreement to or for a Participant or Beneficiary, the Trust shall be subrogated to any and all rights of recovery of such Participant or Beneficiary against a third party. The Trust's right of subrogation shall only become operative if the Participant or Beneficiary receives payment from the third party and shall be limited to the dollar amount previously paid by the Trust for said Benefits.

- (v) No Vested Rights. This Trust Agreement creates no vested rights of any kind. No Participant, Beneficiary, nor any person claiming through him, shall have any right, title or interest in or through the Trust Agreement, or any part thereof.
- (vi) Severability. Should any part of this Trust subsequently be invalidated by a court of competent jurisdiction, the remainder thereof shall be given effect to the maximum extent possible.
- (vii) Gender and Number. Where used in this Trust Agreement, the masculine gender includes the feminine and the plural form includes the singular.
- (viii) Titles and Headings. The captions preceding the provisions of this Trust Agreement are used solely as a matter of convenience and in no way define, modify or limit the scope or intent of any provision of this Trust Agreement.
- (ix) Tax Effects. Neither the Authority, the Board, nor the Trustee make any warranty or other representation as to whether any payments received will be treated as includible in gross income for federal or state income tax purposes.
- (x) Incorporation by Reference. To the extent that the actual terms and conditions of the separate benefits offered under this Trust Agreement are contained in separate, written documents governing

each respective benefit, such documents shall govern in the event of a conflict between the individual document and this Trust Agreement as to substantive content. To that end, each such separate document, as amended or subsequently replaced, is hereby incorporated by reference as if fully recited herein.

- (xi) Applicable Law. All questions pertaining to validity, construction, regulation and the effect of this Trust or any of the provisions hereof, shall be determined under the laws of the Commonwealth of Massachusetts, except to the extent preempted by any other applicable Federal law.

ARTICLE XXXIII: INDEMNIFICATION OF TRUST BY PARTICIPANTS OR BENEFICIARIES. If any Participant or Beneficiary receives one or more payments or reimbursements under this Trust Agreement that are not for Benefits, such Participant or Beneficiary shall indemnify and reimburse the Trust for any liability it may incur for failure to withhold federal or state income tax or Social Security tax from such payments or reimbursements; provided, however, such indemnification and reimbursement shall not exceed the amount of additional federal and state income tax that the Participant or Beneficiary would have owed if the payments or reimbursements had been made to the Participant or Beneficiary as regular cash compensation, plus the Participant's or Beneficiary's share of any Social Security tax that would have been paid on such

compensation, less any such additional income and Social Security tax actually paid by the Participant or Beneficiary.

Whenever payments have been made by this Trust with respect to Benefits in a total amount, which is in excess of the maximum amount of payment necessary at that time to satisfy the intent of any coordination of benefits provision or the Participant or Beneficiary does not make voluntary payment under the provisions hereof within 30 days after notification thereof, the Trustee shall have the right to recover such payments, to the extent of such excess, from among one or more of the following, as the Trustee shall determine:

- any persons to, or for, or with respect to whom such payments were made; or any other organization.

ARTICLE XXXIV: TRUST. This Trust is executed and delivered in the Commonwealth of Massachusetts, and the Trust hereby created shall be deemed a special purpose governmental Trust, created pursuant to Internal Revenue Code Section 115 and shall in all respects be construed and regulated by the laws of the Commonwealth of Massachusetts.

IN WITNESS WHEREOF, the Authority pursuant to action of its Board, and the Trustee have caused this Trust Agreement to be executed in their name and on their behalf, by their representatives thereunto duly authorized, as of the day and year first above written.

[Signatures follow]

MASSACHUSETTS PORT AUTHORITY

By: _____
Thomas J. Kinton, Jr.
Chief Executive Officer and Executive Director

ATTEST:

As _____ (SEAL)

By: _____

MASSACHUSETTS PORT AUTHORITY
RETIREE BENEFITS COMMITTEE,
as TRUSTEE of the
MASSACHUSETTS PORT AUTHORITY
RETIREE BENEFITS TRUST

By: _____
Trustee

EXHIBIT A
BENEFITS