

CITY OF SEBASTOPOL
CITY COUNCIL
AGENDA ITEM

Meeting Date: October 17, 2023
To: Honorable Mayor and City Councilmembers
From: Ana Kwong, *Administrative Services Director*
Subject: Presentation and Discussion of Establishing and Administering a 115 Trust Program for Pension
Recommendation: It is recommended that the Council approve the adoption of the Section 115 Trust and Pension Funding Policy
Funding: Currently Budgeted: Yes No Not Applicable

Account Code: 100-14-01-4210

Costs authorized in City Approved Budget: Yes (Finance Initialed AK) No (Finance Exempt)

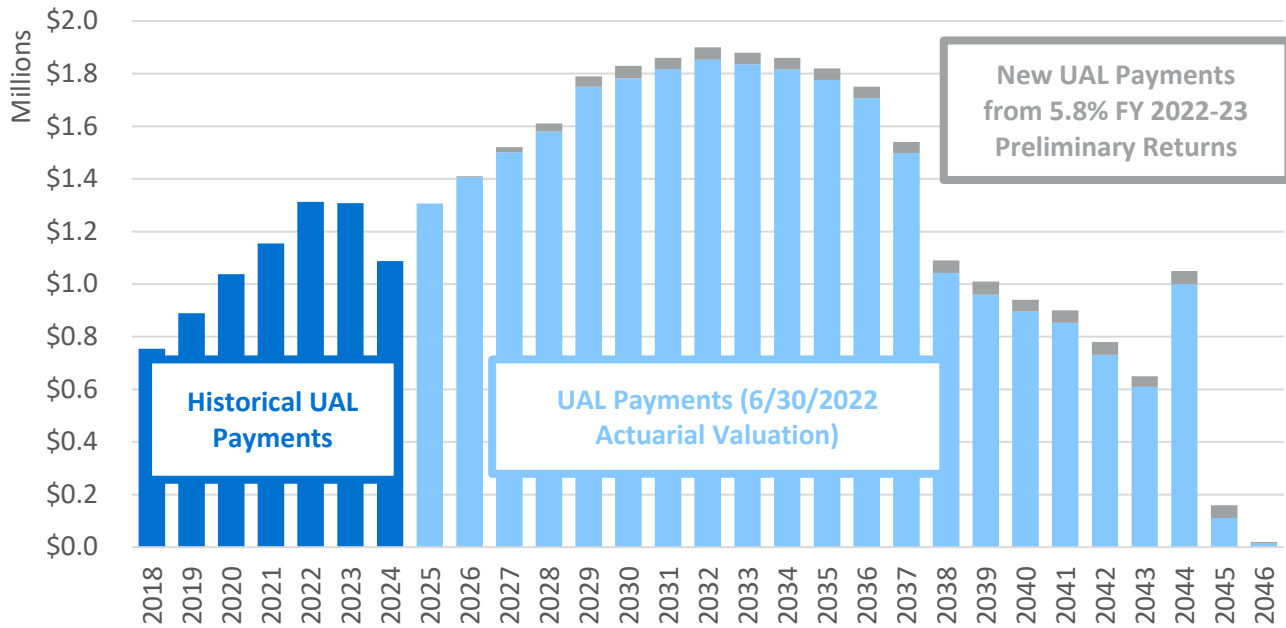
INTRODUCTION/PURPOSE:

The item is to request Council adopt resolution approving the adoption of the Multiple Employer OPEB/Pension 115 Trust administered by Shuster Advisory Group, LLC and appointing the City Manager, or his/her successor or his/her designee, as the City's Plan Administrator for the 115 Trust, and adopt the resolution approving the adoption of the City's Pension Funding Policy and related budget adjustment.

BACKGROUND:

CalPERS Unfunded Accrued Liability:

The City of Sebastopol (the "City"), like most cities in California, has an unfunded accrued liability ("UAL") associated with its CalPERS pension plans. As of June 30, 2021, the City's UAL was \$10.5 million; however, CalPERS reported investment returns of -7.5% for FY 2021-22, which increased the City's UAL to approximately \$16.6 million, as of 6/30/2022 (seen in the most recent CalPERS actuarial valuation reports). CalPERS also recently reported preliminary investment returns of 5.8% for FY 2022-23, which is projected to increase the City's UAL to \$16.8 million. This projected increase will be reflected in the City's next CalPERS actuarial valuation report that will be released in summer/fall of 2024. The 5.8% investment returns will increase the City's annual UAL payment beginning in FY 2025-26. The City's annual UAL payment has been, and will continue to be, a significant impact on its budget. Any investment underperformance by CalPERS in future years will further increase the City's future UAL balance and annual UAL payment.



Historical Efforts:

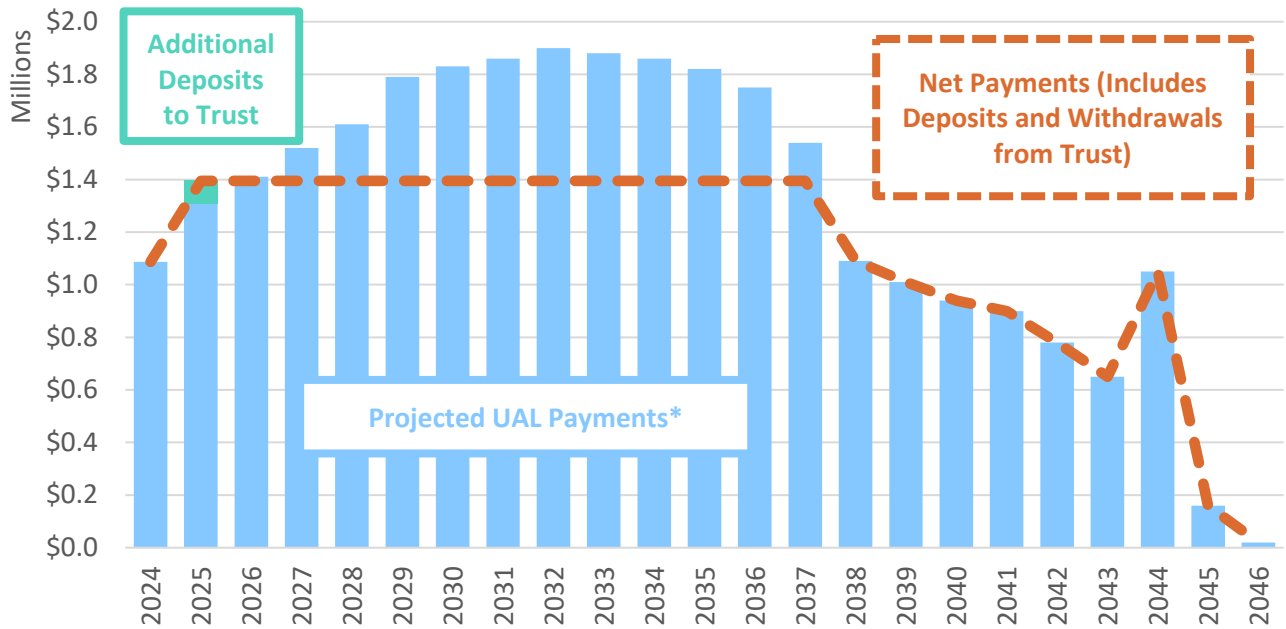
The City has previously taken steps to control pension costs, including setting aside funds in an internal City pension reserve, which has a current balance of approximately \$2.8 million. Over the past few years, the City has discussed moving these internal funds into a Section 115 Trust to capture the benefits of a trust. The topic of the Section 115 Trust for pension was brought back up to Council earlier this year at the May 16, 2023, City Council meeting when the City’s Municipal Advisor, NHA Advisors (“NHA”), delivered a fiscal sustainability presentation that touched on the City’s pension challenge and recommended the City consider a Section 115 Trust for pension. A copy of that report is attached for reference.

Benefits of a Section 115 Trust:

Assets in a Section 115 Trust are irrevocably committed to the government function specified in the applicable trust agreement. Additionally, monies held in such trusts can be invested in accordance with the rules governing those trusts, which are different from the investment rules for the City’s pooled investments. Investment restrictions that apply to the City (CA Government Code 53601) do not apply to the assets held in an Irrevocable Section 115 Trust, thus allowing for more flexibility in the investment strategy. Therefore, setting aside funds in a Section 115 Trust should, over time, allow the City to earn more interest from its reserves than it otherwise would if those funds were left in the General Fund. Especially in today’s higher interest rate environment, even the more conservative/moderate Section 115 Trust investment options are generating a strong yield.

Other benefits include:

- Ability to “smooth out” higher UAL payments in the future by withdrawing funds from the Section 115 Trust to supplement payments from the General Fund (see chart below)
- Investment diversification from CalPERS (CalPERS manages \$37.2 million of the City’s pension assets, as of the 6/30/2022 CalPERS actuarial valuation)
- Increased budgetary flexibility (i.e., Trust assets can be accessed any time to fund the City’s pension obligations and pay reasonable expenses associated therewith)
- Investments can be tailored to the City’s needs
- Oversight and control of investment selection, monitoring of performance, and ability to adjust investments based on performance
- Potential for positive rating agency and investor consideration



*Assumes CalPERS investment returns of -7.5% in FY 2021-22, 5.8% in FY 2022-23, and 6.80% from FY 2023-24 onward

DISCUSSION:

Together with NHA, City staff evaluated multiple Section 115 Trust administrators based on experience, fees, investment options, investment performance, and other criteria. It was determined by City staff and NHA that Shuster Advisory Group, LLC (“Shuster”) would be the best Trust administrator for the City’s goals. Of the administrators considered, Shuster proved to have the lowest fees and best investment performance. Shuster offers fully customizable investment portfolios at no additional cost, which the City deemed to be an important factor in its decision. Shuster does not co-mingle client assets with the assets of other agencies, unlike many of the other providers managing portfolios, and Shuster will provide the City with real-time access to view account, transaction, holdings, and performance information. Shuster’s customer service and track record with other California agencies also stood out in the evaluation process.

The Resolution put before the City Council today is to adopt a Trust administered by Shuster, with an initial deposit of approximately \$2.8 million (the balance of the City’s internal pension reserve) and related budget amendment to facilitate such transfer of funds to the 115 Trust.

About Shuster:

Shuster is an independent investment advisory firm and fiduciary. Shuster provides governmental and institutional retirement plan consulting services and private wealth management. Shuster is an SEC-Registered Investment Advisor with over \$5 billion in assets under management, focusing on serving the unique needs of governmental agencies and special districts, serving over 80 cities, agencies, and public entities. Shuster serves as fiduciary to plan investments and provides investment selection, monitoring, and management. Within the Shuster Section 115 Trust program, Shuster provides the trust administration, consultant, and investment advisor functions; Charles Schwab Trust Bank provides trust custodian services; and Alta Trust Company provides directed trustee services.

Documents to be Executed by the City:

To set up the Trust, the City will execute the following agreements:

1. Adoption Agreement for the Multiple Employer OPEB/Pension 115 Trust
2. Administrative Services Agreement
3. Investment Advisor Agreement

Next Steps for the Trust:

After City Council approval of the Trust, City staff will work with Shuster to finalize the documents and optimize an investment portfolio for the City's Trust assets (based on the City's risk tolerance and expected time horizon for withdrawals from the Trust). Once this step is completed, the Trust account will be set up and the \$2.8 million initial deposit can be made to the Trust. NHA will remain available to provide advice to City staff during these next steps.

Pension Funding Policy:

As part of a comprehensive pension cost management strategy, the City would also like to adopt a formal pension funding policy to ensure that there are guidelines and goals regarding its pension funding going forward.

The Pension Funding Policy lays out the following guidelines:

1. The City will pay at least the minimum required employer contribution to CalPERS each year
2. The City will prepay its annual UAL payment each July to achieve budgetary savings
3. The City will have a target funded ratio ranging from 85%-100% for its pension plans
4. The City will establish and maintain a Section 115 Trust dedicated to pensions
5. The City will consider Additional Discretionary Payments (ADPs) within the context of its annual evaluation of reserve levels, budgetary requirements, funded ratio, and other metrics
6. The City will evaluate a voluntary Fresh Start with CalPERS annually when the latest CalPERS actuarial valuation report is released
7. The City will only consider Pension Obligation Bonds (POBs) as a cost management strategy under very strict guidelines and after thorough due diligence and risk assessment
8. The City will review this policy periodically to determine if changes are necessary

ENVIRONMENTAL REVIEW:

The proposed action is Not a project under CEQA Not exempt Exempt under Section _____ from the requirements of the California Environmental Quality Act (CEQA).

GOALS:

This action supports the following City Council Goals and General Plan Actions:

Goal 1: Maintain the long term financial stability and sustainability of the City of Sebastopol and Operate City government in a fiscally responsible and responsive manner

Goal EV7: Maintain a Stable and Self-Sustaining Fiscal Base in Order to Generate the Resources Necessary to Provide Desired City services and Support New Growth that is Consistent with the City's values and Goals [Pg.9-8]

PUBLIC COMMENT:

As of the writing of this staff report, the City has not received any public comment. However, staff anticipates receiving public comment from interested parties following the publication and distribution of this staff report. Such comments will be provided to the City Council as supplemental materials before or at the meeting. In addition, public comments may be offered during the public comment portion of the agenda item.

PUBLIC NOTICE:

This item was noticed in accordance with the Ralph M. Brown Act and was available for public viewing and review at least 72 hours prior to schedule meeting date.

FISCAL IMPACT:

The cost for the consultant to guide and work with staff to support and implement the 115 Trust has been approved in the FY23-24 budget \$15,000. The Trust is expected to be initially funded with a \$2,800,000 deposit. At this asset level, the total annual fee is \$7,960. A fee breakdown can be seen in the table below. Annual fees are paid from Trust assets.

Service	Provider	Annual Fee (% of Assets)	Annual Fee (\$)
Administration	Shuster Advisory Group, LLC	0.05% ¹	\$1,400
Custody	Charles Schwab Trust Bank	0.01% ²	\$400
Trustee	Alta Trust	0.02% ³	\$560
Investment Management	Shuster Advisory Group, LLC	0.20%	\$5,600
Total Annual Fees		0.28%	\$7,960

¹Administration fee will convert to a flat dollar fee after the end of contract year-3 based on the highest year-end balance of the first 3 contract years

²Custodial fee is 0.01% with an annual minimum of \$400

³Trustee fee is 0.02% with an annual minimum of \$500 and annual maximum of \$5,000

An appropriation of \$2.8M to be transferred to the 115 Trust has not been appropriated in FY23-24 adopted budget. Therefore, it is requested that the City Council approve a budget amendment in the Pension Reserve Fund as necessary to fund the Trust account that will be set up and the \$2.8 million initial deposit can be made to the Trust.

RECOMMENDATION:

Staff recommends the Sebastopol City Council take the following actions:

1. Adopt Resolution approving the adoption of the Multiple Employer OPEB/Pension 115 Trust administered by Shuster Advisory Group, LLC and appointing the City Manager, or his/her successor or his/her designee, as the City’s Plan Administrator for the 115 Trust.
2. Authorize the City Manager, or his/her successor or his/her designee, to enter into the Adoption Agreement for the Multiple Employer OPEB/Pension 115 Trust.
3. Authorize the City Manager, or his/her successor or his/her designee, to enter into the Administrative Services Agreement and Investment Advisor Agreement with Shuster Advisory Group, LLC.
4. Authorize the City Manager, or his/her successor or his/her designee, to transfer \$2,800,000 to the City's 115 Trust upon completion of the Trust establishment documents.
5. Adopt Resolution approving the adoption of the City’s Pension Funding Policy.
6. Adopt Resolution approving a budget amendment of \$2.8M to be transferred from Pension Reserve Fund as the initial deposit to the 115 Trust.

Attachments:

1. Resolution (Section 115 Trust)
2. Adoption Agreement for the Multiple Employer OPEB/Pension 115 Trust
3. Administrative Services Agreement
4. Investment Advisor Agreement
5. Resolution (Pension Funding Policy)
6. City of Sebastopol Pension Funding Policy
7. Resolution (Budget Amendment)
8. NHA Report from May 2023
9. 115 Trust Presentation

RESOLUTION NO. XXXX-2023

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEBASTOPOL
APPROVING AND ADOPTING THE MULTIPLE EMPLOYER OPEB/PENSION 115 TRUST ADMINISTERED BY
SHUSTER ADVISORY GROUP, LLC AND APPOINTING THE CITY MANAGER AS THE CITY'S PLAN
ADMINSTRATOR FOR THE 115 TRUST

WHEREAS, the CITY OF SEBASTOPOL, a municipal corporation, hereinafter called CITY, provides pension benefits to eligible employees and retirees as a participant in the California Public Employees Retirement System ("CalPERS"); and

WHEREAS, the City, like most cities in California, has an unfunded accrued liability ("UAL") associated with its CalPERS pension plans; and

WHEREAS, the annual UAL payment has been, and will continue to be, a significant impact on the City's budget; and

WHEREAS, the City has discussed moving its internal pension reserves into a Section 115 Trust as a strategy to manage the City's pension costs, by capturing the benefits of a trust, such as increased investment earnings and budgetary flexibility; and

WHEREAS, the City is eligible to participate in a tax-exempt trust performing an essential governmental function within the meaning of Section 115 of the Internal Revenue Code, as amended, and the Regulations issued thereunder, and the trust is a tax-exempt trust under the relevant statutory provisions of the State of California; and

WHEREAS, together with NHA, City staff evaluated multiple Section 115 Trust programs and determined the Multiple Employer OPEB/Pension 115 Trust (the "Trust") administered by Shuster Advisory Group, LLC ("Shuster") was the best program for the City's goals; and

WHEREAS, all qualified assets held in the Trust will be irrevocably dedicated to prefunding the City's pension obligations.

NOW, THEREFORE, BE IT RESOLVED that the City of Sebastopol City Council hereby adopts a Resolution approving a Section 115 Trust to be administered by Shuster Advisory Group, LLC and appoints the City Manager, or his/her successor or his/her designee, as the City's Plan Administrator for the Trust.

Let it be further resolved that the City of Sebastopol City Council authorizes the City Manager, or his/her successor or his/her designee, to take whatever additional actions are necessary to maintain the City's participation in the Trust and to maintain compliance of any relevant regulation issued or as may be issued; therefore, authorizing him/her to take whatever additional actions are required to administer the Trust, by the following vote:

PASSED AND ADOPTED, by the CITY COUNCIL of THE CITY OF SEBASTOPOL, on this 17th day of October 2023.

VOTE:

Ayes:

Noes:
Abstain:
Absent:

APPROVED: _____
Mayor Neysa Hinton

ATTEST: _____
Mary Gourley, Assistant City Manager/City Clerk, MMC

APPROVED AS TO FORM: _____
Larry McLaughlin, City Attorney

MULTIPLE EMPLOYER OPEB/PENSION 115 TRUST

**FOR ADOPTION BY EMPLOYERS THAT ARE STATES OR LOCAL
GOVERNMENTS OR OTHER POLITICAL SUBDIVISIONS THEREOF**

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AGREEMENT

This agreement, which establishes the Multiple Employer OPEB/Pension 115 Trust (“Trust Agreement”), is entered into by and between Shuster Advisory Group, LLC (“Trust Administrator”) and Alta Trust Company (“Trustee”) effective as of October 1, 2021.

ARTICLE I. Definitions

For purposes of the Trust Agreement, the following terms have the meanings indicated below:

1.01 Account

“Account” is defined in Section 9.03.

1.02 Adoption Agreement

“Adoption Agreement” means the written instrument by which the Employer adopts and participates in the Trust in accordance with this Trust Agreement, and by which the Employer makes certain elections relating to its participation in the Trust.

1.03 Beneficiary

“Beneficiary” means any person entitled to receive benefits under the Employer’s OPEB Plan or Pension Plan.

1.04 Code

“Code” means the Internal Revenue Code of 1986, as amended from time to time. References to any section of the Code shall include any successor provision thereto.

1.05 Combined Account

“Combined Account” is defined in Section 9.03.

1.06 Confidential Information

“Confidential Information” means the information specified in Section 16.17, proprietary information of the parties to this Trust Agreement, including but not limited to, their inventions, confidential information, know-how, trade secrets, business affairs, prospect lists, product designs, product plans, business strategies, finances, and fee structures.

1.07 Employer

“Employer” means each public agency that executes the Adoption Agreement, thereby becoming a participating agency in the Trust. Such agency must be a state, a political subdivision of a state, or an entity whose income is excludible from gross income under Section 115 of the

Code. Only an entity described in the preceding sentence may become a participating employer in the Trust.

1.08 Force Majeure

“Force Majeure” means a cause or event outside the reasonable control of the parties or that could not be avoided by the exercise of due care, including, without limitation: strikes, lockouts or other acts of workmen; fire, flood, earthquake, element of nature, pandemic or acts of God; governmental restrictions or court order; war, riot, civil disorders, rebellions or revolutions; public utility, telephonic, electrical or network failure; accidents; acts of terrorism; third party non-performance (except for non-performance by a party’s employees, subcontractors, agents, representatives and/or affiliates); or unusual trading activity or disruption of trading on any exchange; or any other event that would constitute a force majeure.

1.09 Instruction(s)

“Instruction(s)” means any written or electronic direction given to the Trustee by the Employer, Plan Administrator, or Trust Administrator in a form and manner required or accepted by the Trustee. Subject to the preceding sentence, the Trustee may recognize standing requests, directions, or requisitions as Instructions.

1.10 OPEB

“OPEB” means post-employment health and welfare benefits (other than pensions) provided by the Employer under an OPEB Plan to Beneficiaries, including medical, dental, vision, life insurance, long-term care and other similar benefits.

1.11 OPEB Account

“OPEB Account” is defined in Section 9.03.

1.12 OPEB Obligation

“OPEB Obligation” means the Employer’s obligation to provide OPEB under the Employer’s OPEB Plan, including the direct costs of the OPEB and the expenses associated with providing the OPEB.

1.13 OPEB Plan

“OPEB Plan” means the policies, collective bargaining agreement, or other arrangements under which a Beneficiary is entitled to receive OPEB, but only if the policy, agreement, or other arrangement is specified by the Employer in the Adoption Agreement.

1.14 Pension Account

“Pension Account” is defined in Section 9.03.

1.15 Pension Obligation

“Pension Obligation” means the Employer’s obligation to contribute to the qualified trust of the Employer’s Pension Plan and to pay the expenses associated with providing benefits under the Pension Plan. For this purpose, “qualified trust” means a trust that is qualified under Section 401(a) of the Code and that funds retirement benefits provided under the Pension Plan. A qualified trust is separate from this Trust and will not be considered part of this Trust for any purpose.

1.16 Pension Plan

“Pension Plan” means one or more defined-benefit plans, each of which is (i) qualified under Section 401(a) of the Code, (ii) sponsored by the Employer in order to provide retirement benefits to Beneficiaries, including but not limited to a stand-alone plan maintained solely by the Employer or a multiple-employer or multiemployer plan in which the Employer participates along with one or more other employers, (iii) partly or wholly funded by the Employer’s contributions, and (iv) specified by the Employer in the Adoption Agreement.

1.17 Person

“Person” means an individual, committee of individuals, partnership, limited liability partnership, joint venture, corporation, limited liability corporation, political subdivision, non-profit or not-for-profit organization, trust, estate, unincorporated organization, association or employee organization.

1.18 Plan Administrator

“Plan Administrator” means the Person, appointed by the Employer, with the plenary authority over the Employer’s Account. The Employer must, in the Adoption Agreement, and at any other time specified by the Trustee and the Trust Administrator, certify in writing to the Trustee and the Trust Administrator the name and specimen signature(s) of the Plan Administrator; no appointment or delegation under this Section 1.18 will be effective without that certification. If no Plan Administrator is appointed, the Employer will be the Plan Administrator.

1.19 Trust

“Trust” means the Multiple Employer OPEB/Pension 115 Trust, the legal entity established by the Trust Agreement to hold, invest, and disburse funds to and for the benefit of Beneficiaries.

1.20 Trust Administrative Services Agreement

“Trust Administrative Services Agreement” means the agreement in the form attached to each Adoption Agreement and executed between the Employer and the Trust Administrator which authorizes the Trust Administrator to administer the Employer’s Account.

1.21 Trust Administrator

“Trust Administrator” means Shuster Advisory Group, LLC or any successor thereof designated by the Employers under Article XII.

1.22 Trust Agreement

“Trust Agreement” or “Agreement” means this Multiple Employer OPEB/Pension 115 Trust between the Trustee and the Trust Administrator.

1.23 Trust Fund

“Trust Fund” means all assets of whatsoever kind or nature from time to time held by the Trustee pursuant to this Trust Agreement, without distinction as to income and principal.

1.24 Trustee

“Trustee” means Alta Trust Company and any duly appointed additional or successor Trustee or Trustees acting hereunder.

ARTICLE II.

Establishment and Purpose of the Trust

2.01 Establishment

The Trust will become effective upon the initial contribution of money or other property acceptable to the Trustee in its sole discretion to an Employer’s Account under the Trust.

2.02 Purpose

The Trust is a multiple-employer trust arrangement established and maintained for the sole purposes of holding the assets used to fund Employers’ OPEB Obligations and Pension Obligations, and for paying each Employer’s reasonable, allocable expenses of administering the Trust. As such, the Trust is divided into separate Accounts to hold the assets of each participating Employer. Consistent with its purpose, the Trust is intended to qualify as a tax-exempt trust of a state or political subdivision thereof for an essential governmental function within the meaning of Section 115 of the Code and any regulations issued thereunder.

2.03 Exclusive Benefit

The Trust is irrevocable. The principal of the Trust, together with any earnings thereon, will be held in trust by the Trustee separate and apart from any assets of the Employer. Except as provided in Sections 9.03(b)(iii) and 14.04, all assets in each Account and all income thereon are irrevocably dedicated to, and will be used for the exclusive purpose of, making payments of OPEB Obligations or Pension Obligations, as applicable, under the OPEB Plan or Pension Plan for which the Account was established and for paying the reasonable expenses of the Employer’s participation in the Trust. At no time will the assets in any Employer’s Account be used for, or diverted to, any other purposes, including but not limited to payment of any other Employer’s OPEB Obligations or Pension Obligations.

2.04 No Diversion

Assets held in the Trust may not be used to satisfy claims of creditors of any Employer. No Beneficiary will be deemed a third-party beneficiary of this Agreement, nor will any Beneficiary have the right to compel any payment of any amount from the assets of the Trust or to enforce any duties of any party to or other entity referred to in this Agreement. Beneficiaries will not have any preferred claim, lien on, or security interest in, or any beneficial interest in any particular assets of the Trust. Beneficiaries will be entitled to receive payments of assets of the Trust only when, as, and if determined by the Employer in accordance with this Agreement. Except to the extent allowed by law, the Trust is not subject to attachment or garnishment or other legal process by any creditor of any such Beneficiary, nor will any Beneficiary have the right to alienate, anticipate, commute, pledge, encumber, or assign any Trust assets.

2.05 Superseding Effect of the Trust Agreement

To the extent there are any inconsistencies between this Trust Agreement and any provisions set forth in any Employer's OPEB Plan or Pension Plan, this Trust Agreement shall control, and its provisions shall supersede all other provisions in any such OPEB Plan or Pension Plan pertaining to the duties, responsibilities, obligations and liabilities of the Trustee. Under no circumstances shall the terms of any OPEB Plan or Pension Plan be interpreted as conferring any investment or administrative discretion on the Trustee.

ARTICLE III.

Acceptance of, Contributions to, Distributions from Trust

3.01 Acceptance of Trust

The Trustee, by affixing its signature to this Trust Agreement, accepts this Trust and agrees to act as the directed Trustee of the Trust according to the terms and conditions of this Trust Agreement, all of which the parties hereto agree, and to which the Employers and all Beneficiaries from time to time hereunder, and all those Persons claiming through or under any of them, shall be deemed to have agreed. Nothing contained in any OPEB Plan or Pension Plan, either expressly or by implication, shall be deemed to impose any powers, duties or responsibilities on the Trustee beyond those imposed by this Trust Agreement. The Trustee shall not have the authority to interpret any OPEB Plan or Pension Plan.

3.02 Contributions and Transfers

(a) **Account Assets.** Each Employer may at any time make (or cause to be made) contributions or transfers of cash or other assets acceptable to the Trustee to the Trust from any source. Neither the Trustee, the Trust Administrator, nor any Beneficiary will have any right to compel such contributions or transfers or any duty to determine whether any such contributions or transfers comply with the Employer's OPEB Plan or Pension Plan, as applicable. In addition, neither the Trustee nor the Trust Administrator is responsible for separately accounting of any contributions or transfers to the Trust or for determining the source of these amounts.

(b) **Acceptance of Contributions and Transfers.** All contributions or transfers received by the Trust, together with the income therefrom, any other increment thereon, and all

assets acquired by investment or reinvestment, shall be held, managed, and administered by the Trustee pursuant to the terms of this Trust Agreement without distinction between principal and income and without liability for the payment of interest thereon. The Trustee shall not be responsible for the collection of any contributions under or required by an OPEB Plan or Pension Plan, and the Trustee will have the responsibilities specified in this Trust Agreement only for amounts actually received by it hereunder. The Trustee shall have no power or duty to inquire whether the amount of any contributions or transfers delivered to it by an Employer is correct or complies with the terms of the OPEB Plan or Pension Plan.

3.03 Distributions

(a) Plan Administrator.

(i) Each Employer's Plan Administrator has the exclusive authority and responsibility to determine the extent to which amounts will be paid from the Employer's Account. Neither the Trust Administrator nor the Trustee will make or authorize disbursements or transfers from any Employer's Account without the explicit written direction from the Employer's Plan Administrator.

(ii) From time to time, the Plan Administrator (or the Trust Administrator, at the Plan Administrator's direction) may direct disbursements of amounts from the Employer's Combined Account for any purpose permitted under Section 3.03(a)(iii) or (iv).

(iii) Amounts under the Employer's OPEB Account may be disbursed to (A) the Plan Administrator for subsequent distribution to or for the benefit of the Employer's Beneficiaries, (B) any party providing services for the Employer's OPEB Plan, including but not limited to any insurer, third-party administrator, or other service provider, (C) the Employer's Beneficiaries themselves, or (D) the Employer as reimbursement for any OPEB Obligation amount paid or incurred by the Employer.

(iv) Amounts under the Employer's Pension Account may be disbursed to (A) the Pension Plan as contributions to the plan's qualified trust, (B) the Plan Administrator, for subsequent payment of the Employer's Pension Obligation, (C) any party providing services for the Employer's Pension Plan, including but not limited to any insurer, third-party administrator, or other service provider, or (D) the Employer as reimbursement for any Pension Obligation amount paid or incurred by the Employer.

(b) **Trustee Liability for Distributions Pursuant to Instructions.** The Trustee is not liable for any distribution made at the direction of the Plan Administrator or the Trust Administrator, and has no duty to make inquiry as to whether any such distribution is made pursuant to the provisions of the OPEB Plan or Pension Plan or any applicable law, or as to the effect of any such direction for tax purposes or otherwise. Likewise, the Trustee need not see to the application of any such distribution made to or for the benefit of a Beneficiary.

(c) **Limitations.** The Trustee shall neither be responsible for the adequacy of the Trust Fund to discharge any payments and liabilities under any OPEB Plan or Pension Plan, nor be required to make any distributions from an Employer's Account (or subaccount(s), as applicable)

in excess of the net realizable value of the Account's (or subaccount's assets) at the time of the distribution.

ARTICLE IV.

Trustee

4.01 Trustee Powers

If and to the extent directed by the Trust Administrator, the Trustee is authorized and empowered to do the following:

(a) To purchase or subscribe for securities or other property and to retain them in trust; to sell any securities or other property at any time held by it at either public or private sale for cash or other consideration or on credit at such time or times and on such terms and conditions as may be deemed appropriate; to exchange such securities or other property and to grant options for the purchase or exchange thereof, and to convey, partition or otherwise dispose of, with or without covenants, including covenants of warranty of title, any securities or other property free of all trusts; to charge the Trust for the cost of all securities purchased or received against a payment and to credit the Trust with the proceeds received from the securities sold or delivered against payment. For any trades not settled immediately upon placement, the Trustee shall have the right to sell securities from the Trust in a reasonably prudent fashion sufficient to recover any funds advanced;

(b) To oppose, or consent to and participate in, any plan of reorganization, consolidation, merger, combination or other similar plan; to oppose or to consent to any contract, lease, mortgage, purchase, sale or other action by any corporation pursuant to such plan, and to accept and retain any securities or other property issued under any such plan; to delegate discretionary power thereto and to pay and agree to pay part of its expenses and compensation and any assessments levied with respect to any such securities or other property so deposited;

(c) To assign, renew, extend or discharge or participate in the assignment, renewal, extension or discharge of any debt, mortgage or other lien, upon such terms, including a partial release, as may be deemed advisable by the Trustee, and to agree to a reduction in the rate of interest thereon or to any other modification or change in the terms thereof or of any guarantee pertaining thereto, in any manner and to any extent that may be deemed in the best interest of the Trust Fund; to waive any default, whether in the performance of any covenant or condition of any note, bond or mortgage or in the performance of any guarantee, or to enforce any such default in such manner and to such extent as may be deemed advisable; to exercise and enforce any and all rights of foreclosure and to exercise and enforce, in any action, suit or proceeding at law or in equity, any rights or remedies in respect of any debt, mortgage, lien or guarantee;

(d) To exercise all conversion and subscription rights pertaining to any securities or other property;

(e) Except as limited in Section 3.02(b), to collect and receive any and all moneys, securities or other property of whatsoever kind or nature due or owing or belonging to the Trust Fund and to give full discharge therefor;

(f) Upon the receipt of Instructions from the Trust Administrator, to exercise, personally or by general or limited power of attorney, any right, including the right to vote or grant proxies, discretionary or otherwise, appurtenant to any assets held by the Trust, and the right to participate in voting trusts with other stockholders. The Trust Administrator shall have responsibility for instructing the Trustee as to voting such shares and the tendering of such shares, by proxy or in person. In no event shall the Trustee be responsible for the voting or tendering of shares of securities held in the Trust or for ascertaining or monitoring whether or how proxies are voted or whether the proper number of proxies is received;

(g) To register any securities or other property held by it hereunder in the name of the Trustee or in the names of nominees with or without the addition of words indicating that such securities or other property are held in a fiduciary capacity, to take and hold the same unregistered or in form permitting transferability by delivery, to deposit or arrange for the deposit of securities in a qualified central depository even though, when so deposited, such securities or other property may be held in the name of the nominee of such depository with other securities deposited therein by other Persons, or to deposit or to arrange for the deposit of any securities or other property issued by the United States government, or any agency or instrumentality thereof, with a Federal Reserve bank, provided that the books and records of the Trustee shall at all times disclose that all such securities or other property are part of the Trust Fund;

(h) To settle, compromise or submit to arbitration, any claims, debts or damages due or owing to or from the Trust Fund; to commence or defend suits or legal proceedings whenever, in its judgment, any interest of the Trust Fund so requires, and to represent the Trust Fund in all suits or legal proceedings in any court of law or equity or before any other body or tribunal and to charge against the Trust Fund all reasonable expenses and attorney's fees in connection therewith;

(i) To borrow money for the purposes of the Trust Fund from others, excluding the Trustee in its corporate capacity and excluding any other party in interest;

(j) To invest and reinvest all or a part of the Trust Fund, in accordance with the Trust Administrator's Instructions, in any available investments and to dispose of all or any part of the securities or other property which may from time to time or at any time constitute the Trust Fund, in accordance with the Trust Administrator's Instructions;

(k) To register Trust Fund property in the Trustee's own name, in the name of a nominee or in bearer form, provided the Trustee's records and accounts show that such property is an asset of the Trust Fund;

(l) To exercise or dispose of any right it may have as the holder of any security, to convert the same into another security, to acquire any additional security or securities, to make any payments, to exchange any security, or to do any other act with reference thereto;

(m) To exchange any property for other property upon such terms and conditions as the Trustee may deem proper, and to give or receive money to effect equality in price;

(n) To deposit any security with any protective or reorganization committee, to delegate to that committee such power and authority as the Trustee may deem proper, and to agree

to pay out of the Trust Fund that portion of the expenses and compensation of that committee as the Trustee may deem proper;

(o) To hold that portion of the Trust Fund as necessary for ordinary administration, to transfer assets to another trust or fiduciary, pending investment Instructions, and to disburse funds in cash, without liability for interest, by depositing the same in any bank (including deposits that bear no interest or a reasonable rate of interest in a bank or similar financial institution supervised by the United States or a State, even where a bank or financial institution is the Trustee, subject to the rules and regulations governing such deposits, and without regard to the amount of any such deposit); and

(p) To retain insurance contracts that are guaranteed investment contracts.

4.02 Authority of Trustee

A third party dealing with the Trustee shall not make, or be required by any Person to make, any inquiry concerning the authority of the Trustee to take or omit any action but shall be fully protected in relying upon the certification of the Trustee that it has authority to take such proposed action. No Person dealing with the Trustee shall be required to follow the application by the Trustee of any moneys, securities or other property paid or delivered to the Trustee.

4.03 Power to Do All Necessary Acts

To the extent not inconsistent with the express provisions hereof, enumeration of any power herein shall not be by way of limitation, but shall be cumulative and construed as full and complete power in favor of the Trustee. In addition to the authority specifically herein granted, the Trustee shall have such power to do all acts as may be deemed necessary for full and complete management of the Trust Fund and appropriate to carry out the purposes of this Trust Fund, and shall further have all powers and authorities conferred on trustees by the laws of the State of South Dakota. Notwithstanding the foregoing, nothing in this Section shall impose on the Trustee any obligation or power to exercise discretion over the investment of assets of the Trust, the distribution of such assets or the interpretation of the OPEB Plan or Pension Plan.

4.04 Action by the Trustee

The Trustee may delegate ministerial acts, specifically including, but not limited to, the signing of checks, endorsement of stock certificates, production of statements and accountings provided for hereunder, execution of transfer instruments and any other document, and the signing of tax returns and governmental reports to be done by any agent of the Trustee, including without limitation, the custodian of the Trust assets.

4.05 Consultation with Counsel and Accountant

The Trustee may from time to time consult with counsel or an accountant who may also be counsel or an accountant for an Employer, and as long as the Trustee acts in conformity with the standards of Section 6.01, the opinion of such counsel or accountant with respect to legal matters or accounting matters, respectively, shall have full and complete authorization and protection in

respect of any action taken or suffered by the Trustee in good faith and in accordance with such opinion.

4.06 Returns, Reports, and Information

Except as set forth in a written agreement between the parties, the Plan Administrator shall be responsible for the preparation and filing of all returns, reports, and information required of the Trust or OPEB Plan or Pension Plan by law, including (as applicable) any information or tax returns. The Plan Administrator shall also be responsible for making any disclosures to Beneficiaries required by law regarding the relevant OPEB Plan or Pension Plan, benefits thereunder and the tax treatment of such benefits.

4.07 Acts of Prior Trustees

The assets of the Trust Fund or evidence of ownership shall be held by the Trustee under the terms of this Trust Agreement. If the assets represent amounts transferred from another trustee, the Trustee named hereunder shall not be responsible for any actions or inactions of prior fiduciaries, including the review of the propriety of any investment under the former trust; said review to be the responsibility of prior fiduciaries. The Trustee named hereunder shall not be required to examine or question in any way the administration of the Trust prior to its appointment.

4.08 Plan Assets Not Held in Trustee's Trust

The Trustee under this Trust Agreement has no duties or responsibilities for assets of an OPEB Plan or Pension Plan that are not held in this Trust.

ARTICLE V. Trust Administrator

5.01 Powers and Duties of the Trust Administrator

The Trust Administrator has sole discretion and authority to do any of the following:

- (a) At the direction of the Plan Administrator, direct distributions from the Employer's Account, including from any subaccount under the Account;
- (b) Direct distributions from the Employer's Account for the payment of the Trust Administrator's fees;
- (c) Direct the Trustee as to the investment and management of Trust assets; and
- (d) Such other acts as may be agreed to by the Employer and the Trust Administrator in the Trust Administrative Services Agreement or are necessary or appropriate to effect the intent of this Agreement.

5.02 Reliance

In the performance of its duties hereunder, the Trust Administrator is entitled to reasonably rely on, and is under no obligation to investigate Instructions or data received from the Plan Administrator, including whether the amount of contributions or transfers made to the Trust by the Employer comply with the Employer's OPEB Plan or Pension Plan. Accordingly, the Trust Administrator will not be liable for action or inaction that is caused directly or indirectly by erroneous or late Instructions or data furnished by the Plan Administrator.

5.03 Trust Administrator not Custodian of Trust Assets

The Trust Administrator shall not take possession of or act as custodian for the cash, securities or other assets of the Trust and shall have no responsibility in connection therewith.

5.04 Registered Investment Advisor

The Trust Administrator hereby represents that it is a registered investment advisor under the Investment Advisers Act of 1940. The Trust Administrator shall immediately notify every Employer and the Trustee if at any time during the term of this Agreement it is not so registered or if its registration is suspended. The Trust Administrator agrees to perform its duties and responsibilities under this Agreement with reasonable care as provided by law. The federal securities laws impose liabilities under certain circumstances on persons who are required to act in good faith. Nothing in this Agreement shall in any way constitute a waiver or limitation of any rights which the Employers, the Trust Administrator, or the Trustee may have under any federal securities laws.

5.05 Investment Advice to Other Clients

The Employers and the Trustee understand that the Trust Administrator performs investment advisory services for various other clients which may include investment companies, commingled trust funds and individual portfolios. The Employers and the Trustee agree that the Trust Administrator may give advice or take action with respect to any of its other clients which may differ from advice given or the timing or nature of action taken with respect to the Trust, so long as it is the policy and practice of the Trust Administrator, to the extent practical, to allocate investment opportunities to the Trust over a period of time on a fair and equitable basis relative to other clients. The Trust Administrator will not have any obligation to purchase, sell or exchange any security for the Trust solely by reason of the fact that the Trust Administrator, its principals, affiliates, or employees may purchase, sell or exchange such security for the account of any other client or for themselves.

5.06 Trust Administrator Separate from Employer and Trustee

The Trust Administrator, its employees, officers and representatives, shall not be deemed to be employees, agents, partners, servants, and/or joint ventures of any of the Employers or the Trustee by virtue of this Agreement or any actions or services rendered under this Agreement.

5.07 Recordkeeping

The Trust Administrator shall maintain appropriate records of all its activities hereunder.

5.08 Disclosure Statement

The Trust Administrator warrants that at least five business days before the execution of this Agreement, it has delivered to the Trustee the Trust Administrator's current Securities and Exchange Commission Form ADV, Part II. The Trustee hereby acknowledges receipt of the disclosure statement at least five business days before the execution of this Agreement.

**ARTICLE VI.
Trustee and Trust Administrator**

6.01 Standard of Conduct and Liabilities of Fiduciaries

The Trustee, Trust Administrator, and any other fiduciary to the Trust will discharge their respective duties with respect to the Trust (i) solely in the interest of, and for the exclusive purposes of funding OPEB Obligations and Pension Obligations, maximizing the amount available for such funding, and paying reasonable expenses of administering the Trust, and (ii) with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, or in accordance with such other standard as may, from time to time, be required by law, and in accordance with this Trust Agreement. The Trustee, Trust Administrator, and any other fiduciary to the Trust may not cause the Trust to engage in a transaction if it knows or should know that such transaction directly or indirectly may cause the Trust to no longer meet the requirements of Code Section 115 or other applicable law. The fiduciary standards reflected in this Section 6.01 apply to the parties hereunder according to and limited by the scope of such party's duties, as expressly described in this Trust Agreement. Neither the Trustee, Trust Administrator or other fiduciary shall have any obligation or liability with respect to a breach of this standard of conduct by another fiduciary hereunder unless such fiduciary knowingly participates in an act or omission by such other fiduciary, with knowledge that such act or omission constitutes a breach of this standard of care.

6.02 Trustee Indemnification of Trust Administrator

The Trustee, solely from its assets and not from the Trust assets, will indemnify the Trust Administrator and each of its affiliates against, and will hold them harmless from, any and all damages imposed upon or incurred by any of them by reason of, or in connection with the Trustee's or affiliate's performance (or non-performance) of its duties under this Agreement in a manner that constitutes willful misconduct or willful breach of the standard of care articulated in Section 6.01, except to the extent that such damages resulted from the Trust Administrator's or affiliate's performance (or non-performance) of its duties under this Agreement in a manner that constitutes willful misconduct or willful breach of the standard of care articulated in Section 6.01.

6.03 Trust Administrator Indemnification of Trustee

The Trust Administrator, solely from its assets and not from the Trust assets, will indemnify the Trustee and each of its affiliates against, and will hold them harmless from, any and all damages imposed upon or incurred by any of them by reason of, or in connection with the Trustee's and each of its affiliates' services under this Agreement, except to the extent that such damages resulted from the Trustee's or affiliate's performance (or non-performance) of its duties under this Agreement in a manner that constitutes willful misconduct or willful breach of the standard of care articulated in Section 6.01. The foregoing shall in no way limit or otherwise restrict any rights to indemnification which the Trust Administrator may have under any Adoption Agreement executed and delivered by the Trust Administrator and an Employer.

6.04 Survival of Indemnifications

The indemnification obligations set out in this Article VI will survive the termination of this Agreement.

**ARTICLE VII.
Investments**

7.01 Trustee

The Trustee shall hold and administer Trust assets without distinction between principal and income.

7.02 Trust Administrator

(a) The Trust Administrator has exclusive authority and responsibility for the management and investment of Trust assets, and the Trustee is authorized and directed to comply with the written directions of the Trust Administrator concerning Trust assets. The Trust Administrator may, from time to time and in its sole discretion, allocate some or all of the cash in an Account at the end of each business day into a sweep investment fund managed by the Trust Administrator. Any amounts held in a sweep investment fund would typically be reallocated on the next business day. The Trust Administrator may not issue any such direction in violation of the terms of the Trust. The Trustee has no duty or authority to (i) review, question, approve or make inquiries as to any investment directions given pursuant to this Agreement, or (ii) determine whether investments directed by the Trust Administrator are in compliance with any applicable State laws.

(b) Each Employer hereby authorizes and directs the Trustee to pay for securities and receive payment from the sale of securities or other investment transactions arising out of Instructions of the Trust Administrator. All Instructions regarding the investment of the Trust Fund received by the Trustee from the Trust Administrator are deemed to have been authorized by the Employer.

7.03 Investment Direction

The Trust Administrator will direct the Trustee to invest the assets of each Employer's Account in any investments permitted under this Agreement.

7.04 Reliance

The Trustee may rely upon any certificate, notice, or other documentary confirmation or any Instruction issued or given by the Trust Administrator, which the Trustee reasonably believes to be genuine and to have been issued or given by the Trust Administrator. The Trustee will not be liable for the acts or omissions of the Trust Administrator or for reasonably following the Trust Administrator's Instructions. In addition, the Trustee has no duty or responsibility to take any action outside the scope of any Instruction from the Trust Administrator, or to refuse any such Instruction, unless the Trustee knows that such action or refusal would result in the Trustee itself committing a breach of fiduciary duty or participating in a breach of fiduciary duty by the Trust Administrator.

7.05 Broker Executed Investments

Transactions in investments that require execution through a broker will be executed through such broker or brokers as the Trust Administrator will select. The indicia of ownership of Trust assets will be held by the Trustee at all times, and the Trustee shall serve as sole custodian of Trust assets.

7.06 Affiliated Broker/Dealers

Neither the Trustee, the Trust Administrator, nor any affiliate of the Trustee or Trust Administrator will act as broker dealer to execute transactions, including the purchase of securities directly distributed, underwritten or issued by an affiliate of the Trustee, or otherwise provide investment services with respect to the Trust; provided, however, that the Trustee (or its affiliate) may provide ancillary non-advisory investment services with respect to the Trust, including investment of Trust assets in money market or stable value funds distributed, underwritten or issued by the Trustee (or its affiliate) to the extent these investments are permitted under this Agreement. The Trustee and the Trust Administrator will disclose any services or relationships to each Employer before the Employer's commencement of participation in the Trust and at least annually thereafter, and any such services will be provided at standard commission rates, mark-ups or concessions.

7.07 Quarterly Reports

The Trust Administrator will provide to each Employer a quarterly analysis of the performance of the investments of each Account. The asset information for such analysis will be supplied to Trust Administrator by the Trustee.

ARTICLE VIII.
The Plan Administrator and the Employer

8.01 Action by the Plan Administrator

The Trustee shall be fully protected in reasonably relying upon Instructions provided by the Employer, Plan Administrator, or Trust Administrator.

8.02 Reliance

(a) The Employer agrees that the Trustee may reasonably rely on Instructions from the Plan Administrator and the Trust Administrator, and the Employer agrees that the Trustee shall be under no duty to make an investigation with respect to any Instructions received from the Plan Administrator or the Trust Administrator.

(b) The Employer agrees that neither the Plan Administrator nor the Trust Administrator is an agent of the Trustee.

(c) The Employer may remove a Plan Administrator and designate a new representative at any time by written notice to the Trustee in a form satisfactory to the Trustee. The Employer will give the Trustee prompt written notice of any change in the identity or authority of the Plan Administrator. Removal of Person as Plan Administrator will not have the effect of canceling any Instruction that has been received by the Trustee from the removed Person prior to the date that notice of removal is received by the Trustee. Until written notice of such change is received, the Trustee may conclusively rely upon and be protected in acting on the latest identification provided to it without further inquiry or verification.

ARTICLE IX.
Accounts and Records

9.01 Records

(a) The Trustee shall maintain true, accurate, and detailed accounts of all investments, receipts, disbursements and other transactions hereunder. All accounts, books, and records relating thereto shall be open to inspection and may be audited from time to time by any person designated by the Trust Administrator during the Trustee's regular business hours as mutually agreed to in writing by the parties.

9.02 Accounting

(a) Within 60 days after the close of each calendar year, within 60 days after the removal or resignation of the Trustee, and from time to time as mutually agreed to by the Trust Administrator and the Trustee, the Trustee shall file an account with the Trust Administrator which shall show:

(i) The assets of the Trust Fund, as of the end of such period, and current value thereof; and

(ii) All investments, receipts, disbursements, and other transactions effected by it during such calendar year or other period for which such accounting is filed.

(b) The Trust Administrator may approve such accounting by notice of approval delivered to the Trustee or by failure to express objection to such accounting delivered to the Trustee within 90 days from the date upon which the accounting is delivered to the Trust Administrator. Upon the expiration of 90 days from the date of filing such account with the Trust Administrator or upon earlier specific approval thereof by the Trust Administrator, the Trustee, as between each Employer, the Plan Administrator and the Trustee, will forever released and discharged from all liability as to all items and matters included in such accounting as if settled by the decree of a court of competent jurisdiction, except with respect to any such action or transaction to which the Trust Administrator shall within such 90-day period, file written objections with the Trustee.

9.03 Accounts

(a) **Separate Accounts.** Upon the effective date of an Employer's participation in the Trust, the Trustee will establish a separate Account to which the Trustee will (i) credit all contributions or transfers from the Employer to the Trust and any income and gains attributable to those amounts, and (ii) debit all distributions, transfers from the Trust, and any losses and expenses attributable to those amounts. The Employer will have an interest only in the assets in the Employer's Account, and those assets will be available only to pay the Employer's OPEB Obligations and Pension Obligations and will not be available to pay any other Employer's obligations.

(b) **Subaccounts.** Each Employer's Account contains up to three types of subaccounts (each of which may contain one or more subaccounts): a "Combined Account," "Pension Account," and "OPEB Account". Assets under the Combined Account are available to fund the Employer's Pension Obligations or OPEB Obligations and allocable expenses of participating in the Trust. Assets under the Employer's Pension Account are available only to fund the Employer's Pension Obligation and allocable expenses of participating in the Trust. Assets under the Employer's OPEB Account are available only to fund the Employer's OPEB Obligation and allocable expenses of participating in the Trust. Contributions or transfers to an Employer's Account will be allocated to the subaccounts as follows:

(i) Contributions and transfers received by the Trust on the Employer's behalf will be allocated to the Combined Account, Pension Account or OPEB Account, or any combination of these subaccounts, as directed by the Plan Administrator.

(ii) Any contributions or transfers for which the Plan Administrator does not provide allocation directions will be held in the Combined Account. The Plan Administrator may at any time direct the allocation of amounts in the Combined Account to either the Pension Account or the OPEB Account.

(iii) Once allocated to the Pension Account or the OPEB Account, amounts under the Trust may not subsequently be transferred to any other subaccount. Notwithstanding the preceding sentence, at the Plan Administrator's direction, the Trustee will reverse any allocation

to the Pension Account or OPEB Account and deposit the funds (together with allocable earnings and losses) in one or both of the other two subaccounts, but only if the Plan Administrator notifies the Trustee in writing within 30 days after the allocation that the allocation was due to mistake of fact and provides any other documentation required by the Trustee in its sole discretion.

ARTICLE X.
Fees and Expenses

10.01 Expenses of Administration

(a) **Generally.** Subject to Section 2.04, each Employer’s Account will be charged for allocable Trustee Fees, Trust Administration Fees, and any other fees specified in the Trust Administrative Service Agreement. To the extent permitted in the Trust Administrative Service Agreement and Adoption Agreement, the Employer may elect in the Adoption Agreement to instead pay such fees from the Employer’s assets.

(b) **Trust Administration Fees.** “Trust Administration Fees” means the fees of the applicable investment funds and the fees for all services of the Trust Administrator specified in the Trust Administrative Services Agreement. The Trust Administrator is authorized to instruct the Trustee to disburse funds from the Account for the payment of the Trust Administration Fees to the Trust Administrator to the extent not paid by the Employer or deducted from the gross earnings of the investment funds. If and to the extent that the Trustee requests that the Trust Administrator render services to the Trust other than those to be rendered by the Trust Administrator hereunder, such additional services will be compensated separately on terms to be agreed upon between the Trust Administrator and the Trustee.

(c) **Trustee Fees.** The Trustee will be paid compensation as provided in the Employer’s Adoption Agreement. Such compensation may be paid by the Employer or, upon receipt of Instructions from the Trust Administrator, Employer, or Plan Administrator, may be deducted from the Trust Fund.

(d) **Expenses.**

(i) The Trustee is authorized to disburse funds from the Trust to pay all reasonable expenses of administering the Trust, including, without limitation, any taxes payable by the Trust, insurance premiums, and any fees and expenses of legal counsel, actuaries, and accountants providing services to the Trust.

(ii) The Trustee may charge the Trust for the cost of all securities purchased or received against a payment and credit the Trust with the proceeds received from the securities sold or delivered against the payment. For any trades not settled immediately upon placement, the Trustee shall have the right to sell securities from the Trust in a reasonably prudent fashion sufficient to recover any funds advanced.

10.02 Authorization with Respect to Taxes

The Trustee may execute, as trustee, any declarations or certificates pertaining to the Trust that may be required under any tax law(s) or governmental regulation(s) now or hereafter without

prior approval of the Employer. The Trustee shall notify the Plan Administrator of any tax levied upon or assessed against the Trust Fund of which the Trustee has knowledge. If the Trustee receives no Instructions from the Plan Administrator, the Trustee may pay the tax from the Trust Fund. If the Plan Administrator wishes to contest the tax assessment, it shall give appropriate and timely instructions to the Trustee. The Trustee shall not be required to bring any legal actions or proceedings to contest the validity of any tax assessments unless the Trustee has been indemnified to its satisfaction against loss or expense related to such actions or proceedings, including reasonable attorney's fees.

ARTICLE XI.
Resignation or Removal of Trustee

11.01 Resignation

The Trustee may resign at any time by giving at least 90 days' prior notice of such resignation to the Trust Administrator, or such shorter period as the Trust Administrator may agree to in writing.

11.02 Removal

(a) The Trust Administrator may remove the Trustee (or any successor trustee) upon 60 days' prior written notice to the Trustee, which notice may be waived in writing by the Trustee.

(b) Additionally, with approval of at least two-thirds of the participating Employers, the Employers may instruct the Trust Administrator in writing to remove the Trustee (or any successor trustee) upon 60 days' prior written notice to the Trustee, which notice may be waived in writing by the Trustee, and to replace the Trustee with a corporate Trustee satisfactory to the Trust Administrator in its sole judgment.

11.03 Appointment of Successor Trustee

(a) Upon notice of the Trustee's resignation or removal, the Trust Administrator shall promptly designate a successor corporate Trustee qualified to act as the Trustee of the Trust under applicable state law, such resignation or removal to be effective upon acceptance of appointment by such successor corporate Trustee.

(b) If the Trust Administrator does not designate a successor corporate Trustee, or if a successor corporate Trustee designated by the Trust Administrator has not accepted its appointment within 60 days after the Trustee gives notice of its resignation or receives notice of removal, either the Trustee (at the expense of the Trust) or the Trust Administrator (at its expense) may apply to any court of competent jurisdiction for appointment of a successor.

11.04 Transfer of Assets to Successor Trustee

Upon acceptance of such appointment by a successor Trustee, the Trustee shall assign, transfer, pay over and deliver the assets then constituting the Trust Fund to the successor Trustee. The Trustee is authorized, however, to reserve such reasonable sum of money, as to it may seem advisable, to provide for any sums chargeable against the Trust Fund for which it may be liable,

or for its fees and expenses in connection with the settlement of its account or otherwise, and any balance of such reserve remaining after payment of such fees and expenses shall be paid over to the successor Trustee. If the reserve is not sufficient for all amounts otherwise payable hereunder, the resigning or removed Trustee shall be entitled to reimbursement for any deficiency from the successor Trustee and the Employer, which shall be jointly and severally liable therefor. Each, successor Trustee shall succeed to the title of all securities or other property then held in the Trust Fund and vested in its predecessor without the signing or filing of any further instrument, but any resigning or removed Trustee shall execute all documents and do all acts necessary to vest such title of record in any successor Trustee. The terminating Trustee shall transfer all property of the Trust Fund then held by it to such successor Trustee. The terminating Trustee may require as a condition of making such transfer that the Employer provide the Trustee with an indemnification against any losses arising from the replacement of the Trustee.

11.05 Terminating Trustee's Accounting

Within 60 days after the transfer to the successor Trustee, the terminating Trustee shall provide the Trust Administrator with an accounting in the form and manner prescribed for the annual account by Article IX and the terminating Trustee shall be compensated for such accounting as specified in the relevant Adoption Agreements. Unless the Trust Administrator files written objections with the Trustee within 90 days after such account has been mailed or otherwise delivered, the account shall be deemed to have been approved by the Trust Administrator.

11.06 Changes in Organization of Trustee

Any corporation, banking association or trust company into which a corporate Trustee may be merged, converted or with which it may be consolidated, or any corporation, banking association, or trust company, resulting from any merger, reorganization or consolidation to which a corporate Trustee may be a party, or any corporation, banking association or trust company to which all or substantially all of the trust business of a corporate Trustee may be transferred shall be the successor of the corporate Trustee hereunder without the execution or filing of any instrument or the performance of any other act and with the same powers and duties as conferred upon the Trustee hereunder. In any such event, it shall not be necessary for the Trustee or any successor Trustee to give notice thereof to any person, and any requirements, statutory or otherwise, that notice shall be given is hereby waived.

11.07 Trust Administrator Bankruptcy

(a) If the Trust Administrator becomes insolvent, files for or becomes subject to bankruptcy or a similar proceeding in state or federal court, the Trust Administrator will notify the Trustee in writing as soon as possible. The notification will include confirmation of the Person (s) who will direct the Trustee.

(b) Notwithstanding any provision hereof to the contrary, in the case of bankruptcy, insolvency, or dissolution of the Trust Administrator, the Trustee will have the right to petition a court of competent jurisdiction to appoint a new Trustee, the costs of such action being payable from the Trust Fund.

(c) If the Trustee receives notice of the Trust Administrator's bankruptcy, insolvency or dissolution (either by the Trust Administrator or a court of competent jurisdiction), any fees and other expenses relating to the provision of services under this Trust Agreement (whether current or overdue) may be immediately deducted from the Trust Fund.

ARTICLE XII.
Resignation or Removal of Trust Administrator

12.01 Resignation

The Trust Administrator may resign at any time upon 90 days' prior written notice to each of the Employers, which notice may be waived in writing by the Employers.

12.02 Removal

With the approval of at least two-thirds of the participating Employers, the Employers may remove the Trust Administrator upon 90 days' prior written notice to the Trust Administrator and the Trustee, which notice may be waived by the Trust Administrator.

12.03 Designation of Successor Trust Administrator

Upon notice of the Trust Administrator's resignation, the Employers will promptly designate a successor Trust Administrator qualified to act as the Trust Administrator of the Trust under applicable state law, such resignation to be effective upon acceptance of appointment by such successor Trust Administrator. The Employers will not remove the Trust Administrator unless Employers have designated such a successor Trust Administrator who shall have agreed with Employers and the Trustee to act as the Trust Administrator under an agreement substantially similar to this Agreement.

12.04 Designation of Successor Trustee

Upon notice of the Trustee's resignation or removal, the Trust Administrator shall promptly designate a successor corporate Trustee qualified to act as the Trustee of the Trust under applicable state law, such resignation or removal to be effective upon acceptance of appointment by such successor corporate Trustee.

12.05 Compensation Pending Appointment of Successor

Until a successor Trust Administrator is appointed and assumes its duties as the Trust Administrator under this Agreement, the Trust Administrator shall be entitled to compensation for its services in accordance with Section 10.01(b).

12.06 Merger, Conversion, Consolidation or Sale of Trust Administrator

Any company into which the Trust Administrator may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Trust Administrator may sell or transfer all or substantially all of its investment advisory business, shall be, with the prior

consent of Employers in the manner set forth in Section 14.03(b), the successor to such Trust Administrator.

12.07 Successor Trust Administrator; No Duty to Investigate

A successor corporate Trustee shall have no duty to audit or otherwise inquire into the acts or transactions of its predecessor.

**ARTICLE XIII.
Amendment of Trust**

With the approval of at least two-thirds of the Employers then participating in the Trust, the Trust Administrator may amend the Trust; provided, however, that no amendment may: (a) cause any assets held in any Employer's Account to be used for or diverted to any purpose other than for the exclusive purposes of funding the Employer's OPEB Obligations or Pension Obligations, as applicable, or defraying the reasonable expenses of administering the Account; (b) eliminate the requirement that none of the assets held in any Employer's Account revert to the Employer prior to the satisfaction of all OPEB Obligations or Pension Obligations (as applicable) under the OPEB Plan or Pension Plan for which the Account was established; or (c) affect the Trustee's duties, responsibilities, rights, or liability or potential liability under this Trust Agreement, unless the Trustee provides advance written consent to such amendment.

**ARTICLE XIV.
Participation**

14.01 Eligibility

Only public agencies may become participating Employers in the Trust. For this purpose, a public agency means a state, political subdivision of a state, or an entity whose income is excludible from gross income under Section 115 of the Code.

14.02 Commencement of Participation

A public agency may become a participating Employer in the Trust by furnishing the Trust Administrator with the following: (i) an executed Adoption Agreement, (ii) an executed Trust Administrative Services Agreement, (iii) a certified copy of a resolution, minutes, or other documentary evidence of the Employer's governing body approving the adoption of the Agreement, and (iv) any other documentation as the Trust Administrator may require. The public agency will become a participating Employer upon the Trust Administrator's written acceptance of the documents described in the preceding sentence.

14.03 Termination of Participation

(a) An Employer may elect in writing to withdraw from the Trust by filing such election with the Trust Administrator and the Trustee at least 30 days before the effective date of the withdrawal. As soon as administratively practicable after the effective date, the Trustee will segregate the withdrawing Employer's Account and transfer the assets in such Account to a trust established by agreement between the Employer and a successor trustee, but only if the Employer

certifies in writing to the Trust Administrator that the trust satisfies the requirements of Section 115 of the Code.

(b) In the event the Trust Administrator contemplates an assignment of this Agreement in connection with a change of control or otherwise (collectively, an “assignment”), the Trust Administrator will provide each Employer with written notice at least 60 days before the effective date of such assignment. Upon receipt of such notice, each Employer may elect to terminate participation and withdraw from the Trust at any point prior to the effective date of the assignment as set forth in the notice. If an Employer does not provide notice of its desire to terminate within the 60-day notice period, the Employer’s consent to the contemplated assignment will be implied.

(c) If the Employer has a Combined Account and both its Pension Obligation and OPEB Obligation have terminated, Section 14.04(b) will apply. If the Employer has an OPEB Account and its OPEB Obligation has terminated, Section 14.04(c) will apply. If the Employer has a Pension Account and its Pension Obligation has terminated, Section 14.04(d) will apply. An Employer’s Pension Obligation or OPEB Obligation will be deemed terminated for these purposes upon the Trust Administrator’s receipt of a certified copy of a resolution, minutes, or other documentary evidence of the Employer’s governing body approving of the respective termination.

(d) Each Employer agrees to immediately notify the Trust Administrator upon receipt of a determination from the Internal Revenue Service that has the effect of rendering the Employer’s Account ineligible for the tax exemption under Section 115 of the Code, such as any determination that the Employer is not a public agency. In such a case, as soon as administratively practicable after the Trust Administrator notifies the Trustee of the Internal Revenue Service’s determination, the Trustee will segregate and place the Employer’s Combined Account, OPEB Account, and Pension Account (as applicable) in a separate trust established for the exclusive purpose of funding the Employer’s OPEB and Pension Obligation, OPEB Obligation only, or Pension Obligation only, respectively.

14.04 Termination of Employer’s Account

(a) An Employer’s Account will automatically terminate upon the termination of the Employer’s participation in the Trust and the transfer of the assets in the Employer’s Account under Section 14.03.

(b) If an Employer has a Combined Account and maintains an OPEB Plan or Pension Plan, but not both, Section 14.04(b) or (c) (as applicable) will apply to the assets in the Combined Account. If the Employer maintains both an OPEB Plan and Pension Plan, the Trustee will continue to maintain, and will have all of the powers and duties under this Agreement with respect to, the Employer’s Combined Account until the Employer’s OPEB Obligation under its OPEB Plan and Pension Obligation under its Pension Plan are fully satisfied. Any assets remaining in the Employer’s Combined Account after both such obligations are fully satisfied will be paid to the Employer to the extent permitted by law and consistent with the requirements of Section 115 of the Code.

(c) If an Employer’s OPEB Plan terminates, the Trustee will continue to maintain, and will have all of the powers and duties under this Agreement with respect to, the Employer’s OPEB

Account until the Employer's OPEB Obligation under its OPEB Plan is fully satisfied. Any assets remaining in the Employer's OPEB Account after its OPEB Obligation is fully satisfied will be paid to the Employer to the extent permitted by law and consistent with the requirements of Section 115 of the Code.

(d) If an Employer's Pension Plan terminates, the Trustee will continue to maintain, and will have all of the powers and duties under this Agreement with respect to, the Employer's Pension Account until the Employer's Pension Obligation under its Pension Plan is fully satisfied. Any assets remaining in the Employer's Pension Account after its Pension Obligation is fully satisfied will be paid to the Employer to the extent permitted by law and consistent with the requirements of Section 115 of the Code.

14.05 Reversion.

Neither the Trust Administrator nor the Employers nor any entity related to any of them will have any beneficial interest in the Trust or receive any amounts upon termination of the Trust or at any other time, except as provided in Sections 9.03(b)(iii) and 14.04.

ARTICLE XV. Termination of Trust

15.01 Termination of Trust Fund

The Trust may be terminated by the unanimous agreement of all Employers, which action must be in writing and delivered to the Trustee and Trust Administrator.

15.02 Liquidation of Trust

Upon termination of the Trust, the Trust will continue to exist, and the Trust Administrator and the Trustee will continue to have all powers provided in this Agreement as are necessary or desirable for the orderly liquidation and distribution of Trust assets in accordance with the provisions hereof until all Trust assets have been distributed. The Trustee will distribute assets remaining in each Employer's Account at the direction of the Trust Administrator in the following order of priority: (1) payment of reasonable administrative expenses (including taxes and termination costs) of the Trust, (2) payment of the OPEB Obligations and Pension Obligations currently payable under the Employer's OPEB Plan and Pension Plan, as applicable, and (3) payment to a trust that satisfies the requirements of Section 115 of the Code and any other applicable law. .

Until the final distribution of the Trust assets, the Trustee shall continue to have all the powers provided under this Trust Agreement that are necessary or desirable for the orderly liquidation and distribution of the Trust Fund. In no instance upon any termination or discontinuance and subsequent distribution may the Trust Fund or any part of it be used for, or diverted to, purposes other than those described in the preceding paragraph.

ARTICLE XVI.
Miscellaneous

16.01 Applicable Law

The powers and duties of the Trustee and all questions of interpretation, construction, operation, and effect of this Trust Agreement shall be governed by the laws of the State of South Dakota. All contributions to the Trustee shall be deemed to take place in the State of Colorado, and the Trustee shall be liable to account in the courts of that state.

16.02 Evidence

Evidence required of anyone under this Trust Agreement may be by certificate, affidavit, document, facsimile, E-mail or other form which the person acting in reliance thereon considers to be pertinent and reliable, and to be signed, made, or presented by the proper party.

16.03 Notices

All communications under this Agreement must be in writing and will be deemed to have been duly given (1) on the date of receipt if served personally or by confirmed facsimile or other similar communication; (2) on the first business day after sending if sent for guaranteed next day delivery by a next-day courier service; or (3) on the fourth business day after mailing if mailed to the party or parties to whom notice is to be given by registered or certified mail, return receipt requested, postage prepaid, and properly addressed as follows:

If to an Employer:	At the address listed for such purpose on the Employer's Adoption Agreement
If to Trust Administrator:	Shuster Advisory Group, LLC 225 S. Lake Ave, #600 Pasadena, CA 91101 Attention: Mark Shuster, Managing Member
If to Trustee:	Alta Trust Company 9380 Station Street, Suite 450 Lone Tree, CO 80124 Attention: Adam Ponder, CEO

16.04 Limitation on Claims

No claim may be made by the Employer against the Trustee for any lost profits or any special, indirect or consequential damages in respect of any breach or wrongful conduct in any way related to this Trust Agreement. The preceding sentence does not apply to any losses suffered by the Employer's Account due to the Trustee's breach of the standard of care articulated in Section 6.01.

16.05 Severability of Provisions

Should any provision of this Trust Agreement be held invalid or illegal for any reason, such illegality or invalidity shall not affect the remaining provisions of this Trust Agreement, but shall be fully severable, and the Trust Agreement shall be construed and enforced as if such illegal or invalid provision had never been inserted herein.

16.06 Construction of Trust Agreement

If and whenever the Trustee be, in good faith, in doubt as to the proper construction or interpretation of this Trust Agreement, or any other question that may arise during the administration of the Trust herein created, the Trustee is authorized to resolve all such doubts and questions in such manner as it may deem proper, without the necessity of resorting to a court for construction or instructions, and all decisions so made shall be binding and conclusive on all persons ever interested hereunder. In addition, the Trustee may apply to the Plan Administrator for Instructions, directions, authorizations or information, and the Trustee may demand assurances satisfactory to it that any action that it is directed to take will not adversely affect the tax exemption of the Trust; provided, however, that no such assurances shall be required if, in the opinion of counsel (which counsel may also be counsel for the Employer), such action does not adversely affect the tax exemption of the Trust. This Trust Agreement shall be binding upon all persons who are ever entitled to such benefits hereunder, their heirs, executors, administrators and legal representatives, and upon all Employers and their successors, and upon the Trustee and its successors.

16.07 Spendthrift Provisions

No Beneficiary shall have any right to assign, transfer, appropriate, encumber, commute or anticipate his interest in the Trust Fund, or any payments to be made hereunder, and no benefits or payments, rights, or interests of any such person of any kind or nature, shall be in any way subject to any legal or equitable process or writ by way of levy, garnishment, execution or attachment for payment of any claim against any such person, nor shall any such person have any right of any kind whatsoever with respect to the Trust Fund, or any estate or interest therein, or with respect to any other property or rights, other than the right to receive such distributions as are lawfully made out of the Trust Fund, as and when the same, respectively, are due and payable, under the terms of this Trust Agreement. The Trustee shall not recognize any attempted alienation or encumbrance of the right or interest hereunder of any Beneficiary. Neither the Trust Fund nor any benefits hereunder shall be liable for or subject to the debts, contracts, liabilities, engagements, or torts of any person to whom such benefits or funds are payable, nor shall the Trust Fund or any benefits hereunder be considered an asset of such person in the event of his bankruptcy.

16.08 Title of Trust Assets

The legal and equitable title and ownership of all assets at any time constituting a part of the Trust Fund shall be and remain with the Trustee, and no Beneficiary will have any legal or equitable estate therein, save and except that a Beneficiary shall be entitled to receive distribution as and when lawfully made under the terms hereof. Notwithstanding anything to the contrary, the

Trust Fund will be held by the Trustee as title holder only. A Person (or Persons) other than the Trustee will hold custody or possession of the Trust Fund.

16.09 Rights Determined from Entire Instrument

This Trust Agreement embodies the entire agreement and understanding of the parties relating to the subject matter hereof. This Trust Agreement, for convenience only, has been divided into Articles and Sections, but the rights, powers, duties, privileges, and other legal relationships shall be determined from this Trust Agreement as an entirety and without regard to the division into Articles and Sections or to the headings prefixing such Sections.

16.10 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 obligation hereunder or any subsequent failure or refusal to comply with any other obligation hereunder.

16.11 Word Usage

Whenever appropriate, words used in this Trust Agreement in the singular may mean the plural, the plural may mean the singular, and the masculine may mean the feminine. The words "herein," "hereof," "hereto" and "hereunder" shall refer to this Trust Agreement.

16.12 Assignment

This Trust Agreement, and any of the rights and obligations hereunder, may not be assigned by the Employer without the prior written consent of the other party, and such consent may be withheld in any such party's sole discretion. The Trustee may assign this Trust Agreement in whole or in part, and any of its rights and obligations hereunder without the consent of the Employer, provided notice of such assignment is sent to the Employer at least 30 days prior to the effective date of any such assignment. All provisions in this Trust Agreement shall extend to and are binding upon the parties hereto and their respective successors and permitted assigns.

16.13 Force Majeure

The Trustee may delay the processing of any transaction provided for hereunder due to a Force Majeure.

16.14 Complete Agreement

This Trust Agreement and any schedule of fees provided to the Trustee by the Employer or the Plan Administrator embody the entire agreement and understanding of the parties relating to the subject matter hereof.

16.15 Taxes

The Employer shall bear all taxes (inclusive of sales and use taxes), duties, levies, and other similar charges (and any related interest and penalties), however designated, imposed as a result

of the receipt of services rendered under this Agreement, including but not limited to any tax which the Employer is required to withhold or deduct from payments to the Trustee, except:

(i) Any tax imposed upon the Trustee in a jurisdiction outside the United States if such tax is allowable as a credit against U.S. federal income taxes of Trustee; and

(ii) Any income tax imposed upon the Trustee by the United States or any governmental entity within the United States.

In order for the exception contained in (i) to apply, the Employer must furnish the Trustee with such evidence as may be required by the United States taxing authorities to establish that such tax has been paid so that the Trustee may claim the credit. The fees to be charged by the Trustee to the Employer under this Agreement, depending on the facts and circumstances of the particular tax jurisdiction, may include Value Added Tax (“VAT”), Goods and Services Tax (“GST”) and other similar taxes (collectively, “VAT”). Where the Trustee is obligated to report and pay VAT with respect to services provided under this Agreement, the Employer agrees to be invoiced by the Trustee for the VAT at the applicable prevailing VAT rate.

16.16 Data

Notwithstanding anything in this Agreement to the contrary, aggregated and/or statistical data shall not be considered Confidential Information provided that any such data does not specifically identify any of Employer’s confidential information. The Trustee may share the Employer’s data, Personal Information and confidential information among the Trustee’s related companies so long as the same protective provisions contained in Section 16.17 are followed by every entity to which disclosure is made.

16.17 Confidentiality

The Trustee and the Trust Administrator and each Employer (by execution of an Adoption Agreement) agree to the confidentiality requirements set forth in this Section 16.17. Each of Trustee and Trust Administrator anticipates that it may provide information to the other and to Employers regarding its operations and services that it deems to be confidential and that Employers may provide information they deem to be confidential, including personal information about Participants, to the Trustee and/or Trust Administrator. To the extent the Trustee, the Trust Administrator and Employers receive such information (a “Receiver”) from another party (the “Provider”), each Receiver agrees to maintain any and all such information strictly confidential and shall not, without the Provider’s prior written consent, disclose such information in any manner whatsoever, in whole or in part, and shall not duplicate, copy or reproduce such information in any manner whatsoever, except in accordance with the terms of this Agreement.

(a) Notwithstanding the preceding paragraph, the Receiver may use the Information as reasonably required to carry out the purposes of this Agreement and the information may be disclosed by the Receiver:

(i) To the employees, agents and consultants of the Employer (including the Plan Administrator) in connection with Receiver’s performance or use of the services provided under this Agreement, as applicable;

(ii) To auditors, counsel, and other representatives of the Employer and Plan Administrator for the purpose of providing assistance to the Receiver in the ordinary course of Receiver's performance or use of the services, as applicable;

(iii) If legally obligated or compelled to disclose any of the information in order to perform its obligations or under a valid court or regulatory order; iv. If the information is publicly available prior to or subsequent to its disclosure to the Receiver;

(iv) If the Receiver can show that the information was in the possession of the Receiver, or any affiliate at the time of disclosure and was not acquired, directly or indirectly, under any obligation of confidentiality to the Provider; or

(v) If the information is independently acquired or developed by the Receiver without violation of its obligations hereunder.

(b) Upon the termination of this Agreement for any reason, the parties shall return to each other, or destroy, any and all copies of information of the other in their possession, except for any copies reasonably required to maintain such party's customary archives or computer back-up procedures, and as otherwise required by applicable law, rule or regulation. Each party agrees that it will implement and maintain commercially reasonable measures to protect the security, confidentiality and integrity of nonpublic information and provide the Providers Employer with information regarding such security measures upon the reasonable request.

(c) A breach of any provision of Section 16.17 or of Section 16.18 of this Agreement may cause the Trustee irreparable injury and damage and therefore may be enjoined through injunctive proceedings, in addition to any other rights or remedies which may be available to such party, at law or in equity. Notwithstanding the provisions of Article VI, any proceeding brought by the Trustee to seek relief under this provision shall be brought in a federal or state court of competent jurisdiction in Los Angeles, California.

16.18 USA Patriot Act Notification

The following notification is provided to Employer pursuant to Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318:

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT. To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each Person or entity that opens an account, including any deposit account, treasury management account, loan, other extension of credit, or other financial services product. What this means for the Employer: When Employer opens an account, if the Employer is an individual, the Trustee will ask for the Employer's name, taxpayer identification number, residential address, date of birth, and other information that will allow the Trustee to identify Employer, and, if Employer is not an individual, Trustee will ask for the Employer's official name, taxpayer identification number, business address, and other information that will allow the Trustee to identify the Employer. The Trustee may also ask, if the Employer is an individual, to see a valid driver's license or other identifying documents, and, if the Employer is not an individual, to see the Employer's legal organizational documents or other identifying documents.

16.19 Execution in Counterparts

This Trust Agreement may be executed in any number of counterparts, each of which shall be deemed an original and no other counterpart need be produced. Telephonic or electronic facsimile copies of original signatures, writings, or initials on this Trust Agreement shall be as valid as the original signatures, writings, or initials.

IN WITNESS WHEREOF, the parties have caused this Trust Agreement to be executed by their duly authorized officers effective as of the date and year first written above.

**ALTA TRUST COMPANY
As Trustee**



By


CEO

Title

10/1/2021

Date

**SHUSTER ADVISORY GROUP, LLC,
As Trust Administrator**



By Mark Shuster

Managing Partner

Title

9/29/21

Date

TRUST ADMINISTRATIVE SERVICES AGREEMENT

This agreement (“Agreement”) is made this 10th day of October, 2023, by and between CITY OF SEBASTOPOL (the “Employer”) and SHUSTER ADVISORY GROUP, LLC (the “Trust Administrator”).

WHEREAS, the Employer has adopted one or more plans, policies, or collective bargaining agreements (“Plans”) in order to provide other post-employment health and welfare benefits (other than pensions) (“OPEB”) or retirement benefits; and

WHEREAS, the Trust Administrator and Alta Trust Company (the “Trustee”) have entered into an agreement (the “Trust Agreement”) establishing the Multiple Employer OPEB/Pension 115 Trust (the “Trust”); and

WHEREAS, the Employer has adopted the Trust by executing the adoption agreement to which this Agreement is attached (the “Adoption Agreement”) in order to fund the OPEB and retirement benefits payable under the Plans; and

WHEREAS, the Employer wishes to retain the services of the Trust Administrator to administer the Employer’s account under the Trust (“Account”).

NOW THEREFORE, the Employer and the Trust Administrator hereby agree as follows:

Capitalized words not defined this document are defined in the Trust Agreement.

1. Trust Administrator Services

The Trust Administrator will provide the following services for the Employer’s Account:

1.1 Administrative Services

- A. Instruct the custodian of the Account to make disbursements from the Employer’s Account at the direction of the Employer for the payment of OPEB or retirement benefits under the Employer’s Plans funded by the Account;
- B. Verify custodian’s receipt of contributions made to the Account as informed by the Employer;
- C. Provide the Employer after the end of each calendar quarter with an analysis of the performance of the investments of the Account and a statement of the changes in the investments made during such calendar quarter;
- D. Provide annual statements of Trust accounts;
- E. Instruct the custodian to disburse funds from the Account for the payment of the fees and expenses described in Section 2.1 and 3.2; and

- F. Coordinate such other actions with the Trustee and custodian of the Account as directed by the Plan Administrator that are within the scope of the Trust Administrator’s duties under the Trust Agreement.

1.2 Investment Management Services

- A. Determine the asset allocation of investments in the Employer’s Account (“Investment Strategy”) based on information provided by the Employer or the Plan Administrator, including the anticipated amounts of cash required by the Plans for distributions and other expenses, and the appropriate risk tolerance for the Plans based on the Plans’ asset-liability characteristics and the Employer’s resources;
- B. Prepare a recommended policy statement of the Account’s Investment Strategy acceptable to the Employer to the extent necessary to accomplish the Account’s Investment Strategy (“Investment Policy Statement”);
- C. Execute the Account’s Investment Strategy by instructing the Trustee to buy and sell shares of investments permitted under the Trust in accordance with the Investment Policy Statement;
- D. In consultation with the Employer, reassess and alter the Investment Strategy and Investment Policy Statement at least annually to the extent necessary to “rebalance” the Account investments; and
- E. Perform reviews at least annually of the performance of the investments held in the Account, add or reduce allocations to each investment or add or delete investments in its judgment (to the extent permitted under the Investment Policy Statement and the Trust), and promptly advise the Employer of any additions or deletions of Account investments.

2. Compensation

2.1 Fees. For all services provided by the Trust Administrator under this Agreement and the Trustee under the Trust Agreement, the following fees will apply:

Trust Administration Fees (This Agreement) ¹ :	0.05%
Trustee Fees (Trust Adoption Agreement) ² :	0.02%
Custodial Asset Based Fee (Custodial Agreement) ³ :	0.01%
Investment Advisory Fees (Investment Advisory Agmt.):	0.20%

Fees will be collected quarterly other than the Investment Advisory Fee which will be collected monthly.

*1 - Will convert to a flat dollar fee after the end of contract year-3 based on the highest year-end balance of the first 3 contract years.
 2 - Annual minimum fee per plan of \$500. Annual maximum fee per plan of \$5,000.
 3 - Annual minimum fee per plan of \$400. Custodian may also charge fees related to non-standard assets, checks and wire fees outlined in the Custodial Agreement for the Plan.*

The Trust Administrator will notify the Employer in writing of any change in the above fee amounts at least 60 days before the effective date of the change.

2.2 Fees for Additional Services. If and to the extent that the Employer requests the Trust Administrator to render services other than those described under this Agreement, such additional services will be compensated separately on terms to be agreed upon between the Trust Administrator and the Employer.

2.3 Pooled Investments. Assets invested by the Trust Administrator under the terms of this Agreement may from time to time be invested in individual securities, or in a proprietary money market mutual fund or local government investment pool (either, a "Pool"). Each Pool is a commingled fund managed by the Trust Administrator. Average daily net assets subject to the fees described in this section shall not take into account any funds invested in the Pool. Expenses of the Pool, including compensation for the Trust Administrator and the Pool custodian, are described in the relevant prospectus or information statement and are paid from the Pool.

3. Expenses

3.1 Furnishing of Administrative Services, Office Space, Equipment and Personnel. The Trust Administrator will furnish at its own expense all necessary administrative services, office space, equipment, clerical personnel, telephone and other communication facilities, investment advisory facilities, and executive and supervisory personnel required to perform the services under this Agreement, inclusive of reasonable costs required to attend meetings with the Employer.

3.2 Expenses of Employer's Account. Except as otherwise provided in this Agreement, Employer agrees to pay all expenses under the Trust incurred by (or allocable to) the Employer's Account including, without limitation, taxes, expenses (including front- or back-end charges) of an investment fund, fees and expenses of the Account's independent auditors and legal counsel, insurance premiums, expenses of the Trustee, the keeping of books and accounts, and the allocable costs of the annual Trust accounting described in Section 9.02 of the Trust Agreement. The Trust Administrator will calculate expenses allocable to the Account on a pro-rata basis, or in any other reasonable and equitable manner determined by the Trust Administrator.

4. Payment Terms. At the end of each calendar month, the Trust Administrator will prepare and submit fees and expenses under this Agreement as described in Sections 2.1 and 3.2. Except to the extent that the Employer has elected in the Adoption Agreement to pay such fees and expenses, the Employer authorizes the Trust Administrator to charge such fees and expenses to the Employer's Account and authorizes and instructs the custodian to disburse funds from the Account for the payment of the fees and expenses. If the Employer has elected in the Adoption Agreement to pay such fees and expenses the Trust Administrator will prepare and submit monthly invoices to the Employer. If the Employer does not fully pay any invoice within 15 calendar days after the invoice's postmark, then the Employer hereby authorizes the Trust Administrator to charge the unpaid amount to the Account and instructs the custodian to disburse such amount from the Account for the payment of the fees and expenses. If sufficient funds are not available or cannot for any reason

otherwise be disbursed from the Account, the Trust Administrator will notify the Employer, and the Employer will pay the unpaid amount to the Trust Administrator from other sources within 10 calendar days after receiving the notice.

- 5. Registered Advisor; Duty of Care.** The Trust Administrator hereby represents it is a registered investment advisor under the Investment Advisers Act of 1940. The Trust Administrator will immediately notify the Employer if at any time during the term of this Agreement it is not so registered or if its registration is suspended. The Trust Administrator agrees to perform its duties and responsibilities under this Agreement with reasonable care. The federal securities laws impose liabilities under certain circumstances on persons who are required to act in good faith. Nothing herein in any way constitutes a waiver or limitation of any rights which the Employer, the Trust, or the Trust Administrator may have under any federal securities laws. The Employer hereby authorizes the Trust Administrator to sign an Internal Revenue Service Form W-9 on behalf of the Employer and to deliver such form to broker-dealers or others from time to time as required in connection with securities transactions pursuant to this Agreement.
- 6. Trust Administrator's Other Clients.** The Employer understands that the Trust Administrator performs investment advisory services for various other clients which may include investment companies, commingled trust funds and/or individual portfolios. The Employer agrees that the Trust Administrator, in the exercise of its professional judgment, may give advice or take action with respect to any of its other clients which may differ from advice given or the timing or nature of action taken with respect to the Account. The Trust Administrator has no obligation to purchase, sell or exchange any security for the Employer solely by reason of the fact that the Trust Administrator, its principals, affiliates, or employees may purchase, sell or exchange such security for the account of any other client or for itself or its own accounts.
- 7. Risk Acknowledgment.** The Trust Administrator does not guarantee the future performance of the Account or any specific level of performance, the success of any investment decision or strategy that the Trust Administrator may use, or the success of Trust Administrator's overall management of the Account. The Employer understands that investment decisions made for the Employer's Account by the Trust Administrator are subject to various markets, currencies, economic, political and business risks, and that those investment decisions will not always be profitable. The Employer understands that past performance does not necessarily predict future performance for the Account. The Trust Administrator will manage only the securities, cash and other investments held in Employer's Account and in making investment decisions for the Account, the Trust Administrator will not consider any other securities, cash or other investments owned by the Employer or any of the Plans. Neither the Trust Administrator nor its officers, directors, agents, employees, and affiliate shall be liable for any losses in the Account, or any loss, cost, indebtedness, or liabilities arising from the Trust Administrator's management of the investments in the Account (together, "Losses") except for any Losses that result from an act or omission of the Trust Administrator constituting a violation of law or an act or omission of the Trust Administrator constituting gross negligence, willful misfeasance, bad faith or reckless disregard of its obligations under this Agreement or as otherwise may be provided by law. The Trust Administrator is not responsible for any loss incurred by reason of any act or omission of the Employer, the custodian of the Account, a third party manager, any broker-dealer, or any other third party.

8. **Term of Agreement.** This Agreement will remain in effect until terminated by either party at any time by giving 60 days' written notice to the other party of its intent to terminate.
9. **Force Majeure.** The Trust Administrator has no liability for any losses arising out of the delays in performing or inability to perform the services which it renders under this Agreement which result from events beyond its control, including interruption of the business activities of the Trust Administrator or other financial institutions due to acts of God, acts of governmental authority, acts of war, terrorism, civil insurrection, riots, labor difficulties, or any action or inaction of any carrier or utility, or mechanical or other malfunction.
10. **Disciplinary Actions.** The Trust Administrator will promptly notify the Employer if the Trust Administrator is found to have violated any state or federal securities law or regulation in any criminal action or civil suit in any state or federal court or in any disciplinary proceeding before the Securities and Exchange Commission or any other regulatory agency or department of the United States, any registered securities exchange, the Financial Industry Regulatory Authority, or any regulatory authority of any State based upon the performance of services as an investment advisor.
11. **Confidentiality.** The Trust Administrator will not disclose any information relating to the Plans or the Account except to authorized officers of the Employer, the Plan Administrator the Trustee and third parties retained by the Trust Administrator to perform specific services within this Agreement without the Employer's consent. The Employer will not disclose any information relating the Trust to individuals other than authorized officers of the Employer and the Plan Administrator, or their respective designees, without the Trust Administrator's consent.
12. **Independent Contractor.** The Trust Administrator, its employees, officers and representatives, will not be deemed to be employees, agents (except as to the purchase or sale of securities described in Section 1), partners, servants, and/or joint ventures of the Employer or the Account by virtue of this Agreement or any actions or services rendered under this Agreement.
13. **Records.** The Trust Administrator will maintain appropriate records of all its activities hereunder. The Trust Administrator will use its best efforts to provide the Employer with a statement within 60 days following the end of each calendar quarter showing deposits, withdrawals, purchases and sales (or maturities) of investments, earnings received during the quarter, and the value of assets held on the last business day of the calendar quarter, all as provided for in the Trust Agreement, based on the information requested from and furnished to it by the Trustee.
14. **Ownership of Reports and Documents.** The Trust Administrator acknowledges that the originals of all correspondence, documents, reports and records produced in the course of providing the services pursuant to this Agreement are the property of the Employer. In the event this Agreement is terminated, the Trust Administrator agrees to provide such originals to the Employer. The Trust Administrator will not furnish copies of any such correspondence, documents reports and records to any party other than the Employer or the Plan Administrator, or their respective designees, or third parties retained by the Trust Administrator to perform services under this Agreement without the Employer's consent. Notwithstanding the preceding provisions of this paragraph, the Trust Administrator is authorized to retain copies of any correspondence, documents,

reports, and records to the extent needed to comply with applicable law, including but not limited to federal securities laws.

15. **Trust Administrator’s Disclosure Statement.** The Trust Administrator warrants that it has delivered to the Employer, at least 48 hours prior to the execution of this Agreement, the Trust Administrator’s current Securities and Exchange Commission Form ADV, Part II, including, without limitation, Schedule H thereto (disclosure statement). The Employer acknowledges receipt of such disclosure statement at least 48 hours prior to the execution of this Agreement.
16. **Amendment.** This Agreement shall not be changed, modified, terminated or discharged in whole or in part, except by an instrument in writing signed by both parties hereto, or their respective successors or assigns.
17. **Successors and Assigns.** The provisions of this Agreement are binding on the Trust Administrator and its respective successors and assigns, provided, however, that the rights and obligations of the Trust Administrator may not be assigned without the Employer’s consent.
18. **Designees.** In accordance with Section 1.18 of the Trust Agreement, the Employer will certify to the Trust Administrator in writing the persons or entity with the plenary authority pursuant to applicable state law over the investment and management of the Employer’s Plans or its designee (“Plan Administrator”). The Plan Administrator has the authority to act on behalf of, and to exercise any of the rights of, the Employer under this Agreement. In accordance with Section 6.1(l) of the Trust Agreement, the Trust Administrator may designate and engage the services of such agents, representatives, advisors, counsel, accountants and other third parties, including affiliates of the Trust Administrator, and delegate its authority to perform specified services under this Agreement to such third parties. Any such designee shall have the authority to perform the services delegated to it by the Trust Administrator. Any officer of the Trust Administrator has the authority to exercise any of the rights of the Trust Administrator under this Agreement.
19. **Notice.** Written notices required under this Agreement will be sent by regular mail, certified mail, overnight delivery or courier, and will be deemed given when received at the parties’ respective addresses shown below. Either party must notify the other party in writing of a change in address.

Employer’s Address:

City of Sebastopol
7120 Bodega Avenue
Sebastopol, CA 95473
Attn: City Manager

Trust Administrator’s Address:

Shuster Advisory Group, LLC
155 N. Lake Ave, #500
Pasadena, CA 91101
Attn: Mark Shuster, Managing Member

- 20. **Arbitration.** The Employer understands and agrees that, to the extent permitted by law, all claims and disputes arising out of transactions or activities in connection with the Account, or construction, performance, or breach of this Agreement, will be determined by arbitrators sitting in Los Angeles, California, in accordance with the current rules then in effect of the American Arbitration Association. The arbitrators may allocate attorneys' fees and arbitration costs between parties. In this regard, the Employer understands that: (1) Arbitration is final and binding on the parties; (2) the parties are waiving their right to seek a judicial determination in court, including the right to jury trial; (3) pre-arbitration discovery is generally more limited than and different from court proceedings; (4) the arbitrators' award is not required to include factual findings or legal reasoning and any party's right to appeal or seek modification of rulings by the arbitrators is strictly limited; (5) the panel of arbitrators will typically include a minority of arbitrators who are in the securities industry; and (6) arbitration will be conducted according to the securities arbitration rules then in effect of the American Arbitration Association.

- 21. **Applicable Law.** This Agreement will be construed, enforced and administered according to the laws of the state of California, without regard to its conflicts of law principles. In the event that either party institutes legal proceedings against the other, venue will lie in any court of competent jurisdiction in the state of California.

- 22. **Entire Agreement.** This Agreement, including exhibits and any other documents referenced herein, constitutes the entire agreement of the parties with respect to the subject matter of this Agreement, and supersedes all prior negotiations, agreements, and understandings, whether written or oral, with respect thereto.

- 23. **Severability.** If any provision of this Agreement is held by any court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of the Agreement will continue in full force and effect.

- 24. **Counterparts.** This Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed will be deemed to be a complete original and all of which together will constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized officers on the date set forth in the first paragraph of this Agreement.

TRUST ADMINISTRATOR
Shuster Advisory Group, LLC

EMPLOYER
City of Sebastopol

By: _____

By: _____

Its: _____

Its: _____

**INVESTMENT ADVISOR AGREEMENT
MULTIPLE EMPLOYER OPEB/PENSION 115 TRUST**

This agreement (“Agreement”) is entered into between **Shuster Advisory Group, LLC** (“SHUSTER”), a California limited liability company, and **City of Sebastopol** (“EMPLOYER”) as further identified on Appendix A., as the responsible plan fiduciary for the **Plan(s)** further identified in Appendix A, desires to engage SHUSTER to provide the services described in this Agreement according to the terms of this Agreement.

1. **Fiduciary Authority.** The account for which SHUSTER is providing investment advisory service is part of a multiple employer trust intended to qualify as a tax-exempt trust of a state or political subdivision thereof for an essential governmental function within the meaning of Section 115 of the Code and any regulations issued thereunder and the EMPLOYER has fiduciary authority with respect to the account for the employer.
2. **Term.** The term of this Agreement will commence **October 17, 2023**.
3. **Services.** SHUSTER agrees to perform the Fiduciary Services described in Appendix B.
4. **Fees.**
 - (A) The compensation, direct and indirect, of SHUSTER for the performance of the Services is described in Appendix C.
5. **Fiduciary Status: Limitations on Functions.** EMPLOYER acknowledges that:
 - (A) In performing the Fiduciary Services, SHUSTER is acting as an investment fiduciary of the Plan and as a registered investment advisor under the Investment Advisers Act of 1940.
 - (B) In performing Fiduciary Services, SHUSTER does not act as, nor has SHUSTER agreed to assume the duties of, a trustee or the Plan Administrator, and SHUSTER has no discretion or responsibility to interpret the Plan documents, to determine eligibility or participation under the Plan, or to take any other action with respect to the management, administration or any other aspect of the Plan.
 - (C) SHUSTER does not provide legal or tax advice.
 - (D) Investments are subject to various market, political, currency, economic, and business risks, and may not always be profitable. As a result, SHUSTER does not and cannot guarantee financial results.
 - (E) SHUSTER may, by reason of performing services for other EMPLOYERs, from time to time acquire confidential information. EMPLOYER acknowledges and agrees that SHUSTER is unable to divulge to the EMPLOYER or any other party, or to act upon, any such confidential information with respect to its performance of this Agreement.
 - (F) SHUSTER is entitled to rely upon all information provided to SHUSTER (whether financial or otherwise) from reputable third parties or by EMPLOYER, EMPLOYER’s representatives or third-party service providers to EMPLOYER, the Plan or SHUSTER, without independent verification. EMPLOYER agrees to promptly notify SHUSTER in writing of any material change in the financial and other information provided to SHUSTER and to promptly provide any such additional information as may be reasonably requested by SHUSTER.
 - (G) EMPLOYER understands that SHUSTER: (i) may perform other services for other clients, (ii) may charge a different fee for other clients, and (iii) may give advice and take action that is different for each client even when retirement plans are similar.

(H) SHUSTER has no responsibility to provide any services related to assets not included in the SHUSTER investment portfolio or purchased directly by Client. Such assets shall be referred to collectively as “Excluded Assets.” The Excluded Assets shall be disregarded in determining the Fees payable to SHUSTER pursuant to this Agreement, and the Fees shall be calculated only on the remaining assets (the “Included Assets”).

6. **Representations of EMPLOYER.** EMPLOYER represents and warrants as follows:

- (A) It is the responsible plan fiduciary for the control and/or management of the assets of the Plan, and for the selection and monitoring of service providers for the Plan. SHUSTER is entitled to rely upon this statement until notified in writing to the contrary.
- (B) The person signing the Agreement on behalf of EMPLOYER has all necessary authority to do so.
- (C) The execution of this Agreement and the performance thereof is within the scope of the investment authority authorized by the governing instrument and/or applicable laws. The signatory on behalf of EMPLOYER represents that the execution of the Agreement has been duly authorized by appropriate action and agrees to provide such supporting documentation as may be reasonably required by SHUSTER.
- (D) The Plan and related Trust permit payment of fees out of Plan assets. EMPLOYER has determined that the fees charged by SHUSTER are reasonable and are the obligation of the Plan; however, if EMPLOYER desires, it may pay the fees directly, rather than with Plan assets.

7. **Representation of SHUSTER.** SHUSTER represents as follows:

- (A) SHUSTER is registered as an investment adviser (“RIA”) under the Investment Advisers Act of 1940.
- (B) The person signing this agreement on behalf SHUSTER has the power and authority to enter into and perform this Agreement.
- (C) SHUSTER agrees to take reasonable steps to protect Private Participant Information and Plan Investment Data in its possession;
SHUSTER is not responsible for the assessment of systems and procedures of third parties for the protection of plan and participant data;
SHUSTER is not responsible for the actions by or the failure to act by EMPLOYER, by other service providers, or by Plan participants to protect Data;
SHUSTER shall have no liability in the event of a Data breach or a violation of participant privacy rights (under the California Consumer Privacy Act or otherwise) unless said breach is the direct result of negligence, recklessness, or willful misconduct of an employee of SHUSTER.

8. **Standard of Care.** SHUSTER will perform the Fiduciary Services described in Appendix B to the Plan in accordance with the standard of care of the prudent man rule set forth in ERISA Section 404(a)(1)(B).

9. **Termination.** Either party may terminate this Agreement upon 30 days prior written notice to the other party. Such termination will not, however, affect the liabilities or obligations of the parties arising from transactions initiated prior to such termination, and such liabilities and obligations (together with the provisions of section 8, 17, and 18) shall survive any expiration or termination of this Agreement. Upon termination, SHUSTER will have no further obligation under this Agreement to act or advise EMPLOYER with respect to services under this Agreement.

10. **Receipt of Disclosure and Consent to Electronic Delivery.** EMPLOYER acknowledges receipt and undertakes to review and consider the disclosures made by SHUSTER (including in this Agreement, the Form

ADV Part 2 and SHUSTER Privacy Policy), in particular the portions related to services, compensation, and potential conflicts of interest, as well as the remainder of the disclosures concerning, among other matters, background information such as educational and business history, business practices such as the types of advisory services provided, the methods of securities analysis used, and the like.

Further, EMPLOYER consents to electronic delivery (via email or other generally accepted method) of current and future distributions of SHUSTER's Form ADV Part 2 and Privacy Policy. Consent to electronic delivery may be canceled at any time by sending a written request to SHUSTER.

11. **Notices.** Any and all notices required or permitted under this Agreement shall be in writing and shall be sufficient in all respects if (i) delivered personally, (ii) mailed by registered or certified mail, return receipt requested and postage prepaid, or (iii) sent via a nationally recognized overnight courier service to the EMPLOYER's address listed on Appendix A and SHUSTER's address, 155 N. Lake Ave, Ste. 500, Pasadena, CA 91101, or such other address as any party shall have designed by notice in writing to the other party.
12. **Assignability.** This Agreement is not assignable by either Party hereto without the prior written consent of the other Party.
13. **Effect.** This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, successors, survivors, administrators and assigns.
14. **Entire Understanding and Modification.** This Agreement constitutes and contains the entire understanding between the parties and supersedes all prior oral or written statements dealing with the subject matter herein. This Agreement can be amended or modified by the written consent of the Parties.
15. **Severability.** If any one or more of the provisions of this Agreement shall, for any reason, be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement and this Agreement shall be enforced as if such illegal or invalid provision had not been contained herein.
16. **Headings.** All headings used herein are for ease of reference only and in no way shall be construed as interpreting, decreasing or enlarging the provisions of this Agreement.
17. **Applicable Law; Forum.** The laws of the State of California shall govern this Agreement in all respects, including but not limited to the construction and enforcement thereof, unless otherwise preempted or superseded by federal law.
18. **Arbitration Agreement.** To the extent permitted by law, all controversies between EMPLOYER and SHUSTER, which may arise out of or relate to any of the services provided by SHUSTER under this Agreement, or the construction, performance or breach of this or any other Agreement between SHUSTER and EMPLOYER, whether entered into prior to, on or subsequent to the date hereof, shall be settled by binding arbitration in Pasadena, Los Angeles County, California, under the Commercial Arbitration Rules of the American Arbitration Association. Judgment upon any award rendered by the arbitrator(s) shall be final, and may be entered into any court having jurisdiction.
19. **Amendment Process.** The Agreement may be modified, by written agreement of both EMPLOYER and SHUSTER.

20. **Waiver of Limitation.** Nothing in this Agreement shall in any way constitute a waiver or limitation of any rights which EMPLOYER or Plan or any other party may have under federal or state securities laws.

This Agreement constitutes both an agreement between the parties and a disclosure statement. The Parties have caused this Agreement to be executed by their duly authorized officers as of the date set forth above. This Agreement shall not be binding on SHUSTER or the EMPLOYER until each has accepted it, in writing, as indicated by their signatures below.

EMPLOYER: City of Sebastopol

Shuster Advisory Group, LLC

Signature: _____

Signature: _____

Name: _____

Name: Mark Shuster

Title: _____

Title: Managing Member

Date: _____

Date: _____

*The EMPLOYER is signing this Agreement both as the employer that sponsors the Plan and as the fiduciary responsible for selecting the Plan's investments and engaging its service providers.

APPENDIX A – EMPLOYER/PLAN SPONSOR - PLAN INFORMATION

EMPLOYER/Plan Sponsor City of Sebastopol	Tax ID# XXXX		
Plan Name 1 City of Sebastopol Pension Stabilization Trust Account	Type of Plan <input type="checkbox"/> OPEB Plan <input checked="" type="checkbox"/> Pension Plan <input type="checkbox"/> Other: _____		
Plan Name 2	Type of Plan <input type="checkbox"/> OPEB Plan <input type="checkbox"/> Pension Plan <input type="checkbox"/> Other: _____		
Plan Name 3	Type of Plan <input type="checkbox"/> OPEB Plan <input type="checkbox"/> Pension Plan <input type="checkbox"/> Other: _____		
Plan Name 4	Type of Plan <input type="checkbox"/> OPEB Plan <input type="checkbox"/> Pension Plan <input type="checkbox"/> Other: _____		
Plan Name 5	Type of Plan <input type="checkbox"/> OPEB Plan <input type="checkbox"/> Pension Plan <input type="checkbox"/> Other: _____		
Mailing Address 7120 Bodega Avenue	City Sebastopol	State CA	Zip Code 95473
Phone 707-823-1153	Email (for purposes of notice/electronic delivery) lmclaughlin@cityofsebastopol.org		
Legal Address (<input checked="" type="checkbox"/> Same as Mailing Address)	City	State	Zip Code

APPENDIX B – FIDUCIARY SERVICES

SHUSTER will perform the following fiduciary services:

1. Development of an Investment Policy Statement (IPS). The IPS establishes the investment policies and objectives for the Plan(s) as well as the criteria and standards for selecting and monitoring the investments. The EMPLOYER shall have the ultimate responsibility and authority to establish such policies and objectives and to adopt the investment policy statement.
2. Consistent with the Investment Policy Statement, SHUSTER will select the initial investment options within the Plan(s).
3. SHUSTER will periodically review the investments within the Plan(s) and shall be responsible for making additions/deletions thereto.
4. SHUSTER will provide periodic investment advisory reports that document consistency of fund management and performance to the guidelines set forth in the IPS, and to make recommendations to maintain, or remove and replace investment options. Reports to include: Market Overview, In-Depth Portfolio Summary, Plan Asset Allocation Analysis and Fund Performance Comparison to the Index.
5. Meet with EMPLOYER on a periodic basis to discuss reports and recommendations.
6. Annually review the IPS with the EMPLOYER to ensure it continues to meet the EMPLOYER's needs.

LIMITATIONS ON FIDUCIARY SERVICES

SHUSTER shall not be responsible or liable for the recommendations of or services rendered by anyone other than SHUSTER. The ability to perform the above services is contingent upon the rules, policies, processes, and responsiveness to our requests for information of EMPLOYER, Plan Sponsor, Custodian, and Trustee.

APPENDIX C - FEE SCHEDULE

1. SHUSTER will not receive any other compensation, direct or indirect, for its services under this agreement. If SHUSTER receives any other compensation for Services, SHUSTER will disclose the amount of such compensation, the services provided for such compensation, the payer of such compensation, and a description of SHUSTER's arrangement with the payer to the EMPLOYER and will offset that compensation against its stated fees.
2. All fees are billed in arrears.
3. The initial fee will be the amount, prorated for the number of days included in the initial billing period from the effective payment start date.
4. If this Agreement is terminated prior to the end of a billing period, SHUSTER shall be entitled to a fee, prorated for the number of days in the billing period prior to the effective date of termination.
5. All fees will be due and payable within 30 days and are payable to "Shuster Advisory Group, LLC"
6. The annual fee for services shall be as follows:

Beginning with the effective date of this Agreement, the annual fee for service shall be 0.20% (20 basis points) per annum, charged as 0.0167% monthly to all included assets in each Plan as of the date of the calculation. Fees will be deducted from Plan assets and will be paid to SHUSTER by the Trust/Custodian for the Plan(s).

At SHUSTER's discretion the billing period described above may be adjusted to quarterly.

RESOLUTION NO. XXXX-2023

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEBASTOPOL
APPROVING AND ADOPTING A PENSION FUNDING POLICY

WHEREAS, the CITY OF SEBASTOPOL, a municipal corporation, hereinafter called CITY, provides pension benefits to eligible employees and retirees as a participant in the California Public Employees Retirement System (“CalPERS”); and

WHEREAS, the City, like most cities in California, has an unfunded accrued liability (“UAL”) associated with its CalPERS pension plans; and

WHEREAS, the annual UAL payment has been, and will continue to be, a significant impact on the City’s budget; and

WHEREAS, the City has worked with its Municipal Advisor, NHA Advisors, LLC (“NHA”) to evaluate and select a Section 115 Trust provider as a strategy to manage the City’s pension costs; and

WHEREAS, the City expressed interest in establishing a formal Pension Funding Policy as part of a comprehensive pension cost management strategy that includes implementation of the Section 115 Trust; and

WHEREAS, together with NHA, City staff has drafted a Pension Funding Policy for City Council consideration to ensure that there are guidelines and goals regarding its pension funding going forward.

NOW, THEREFORE, BE IT RESOLVED that the City of Sebastopol City Council hereby adopts a Resolution approving the proposed Pension Funding Policy.

PASSED AND ADOPTED, by the CITY COUNCIL of THE CITY OF SEBASTOPOL, on this 17th day of October 2023.

VOTE:

Ayes:

Noes:

Abstain:

Absent:

APPROVED: _____
Mayor Neysa Hinton

ATTEST: _____
Mary Gourley, Assistant City Manager/City Clerk, MMC

APPROVED AS TO FORM: _____
Larry McLaughlin, City Attorney

City of Sebastopol

Pension Funding Policy

Introduction:

The City of Sebastopol (“City”) provides its permanent employees with a defined benefit pension through the California Public Employees’ Retirement System (“CalPERS”). Recent investment returns and assumption changes at CalPERS have increased the City’s required payments to the pension plan and decreased the plan’s funded status. The City is anticipating that CalPERS may enact more conservative changes and assumptions in the future to increase the financial stability of its pension program, and that those future changes and assumptions will result in higher City contributions. The City has assessed options to help address the increased pension costs and their volatility and has determined that it would be beneficial to adopt a Section 115 Trust in which to set aside City funds for future pension payments.

Purpose:

The purpose of this Pension Funding Policy (“Policy”) is to establish a plan, methodology and a process for funding current and future costs associated with the City’s contractual obligations to provide pension benefits as set forth in the City’s labor agreements.

Background:

A pension is a retirement account that an employer maintains to give employees a fixed payout when they retire. The City’s plan is a defined benefit plan. The payout typically depends on how long the employee works for the employer, the employee’s benefit factor, and the employee’s salary.

Investment earnings, employee contributions and employer contributions fund the total pension cost, including benefits and expenses. Employer contributions are set by actuaries using an assumed investment rate of return (also known as the discount rate), and other assumptions related to salary, payroll, cost of living, mortality rate, disabilities, terminations and retirements. The employer contributions are determined by periodic actuarial valuations under state law.

Policy:

It is the policy of the City to fulfill its obligation to maintain fiscally responsible management practices and to ensure that promised pension benefits are funded. To that end, the City will meet its pension funding obligations as follows:

1. **Actuarially Determined Contributions:** Each fiscal year, the City will contribute to CalPERS the amount determined by CalPERS actuaries to be the minimum required employer contribution for that year. The minimum contribution consists of two components, normal cost and unfunded accrued liability (“UAL”). The normal cost is expressed as a rate that is applied to pensionable payroll costs and reflects the cost of pension benefits earned by employees in the current fiscal year. The UAL payment is a flat dollar amount that represents a portion of the cost of past benefits earned by employees, but for which, because of deviations in actual experience and changes in assumptions about investment performance, the normal cost rates established for those prior years have been determined to be insufficient to provide the promised retirement benefit. The CalPERS actuaries recalculate the total UAL each year and an updated multi-year amortization schedule is provided to show the projected annual minimum payments.

2. **Annual UAL Prepayment:** CalPERS offers the option to make monthly payments on the UAL or prepay the entire annual UAL amount at a discounted level by the end of July. Assuming the City's current reserves meet their respective reserve policies, at that point the City will prepay its annual UAL payment each July to achieve budgetary savings.
3. **Funded Ratio Goal:** The City's goal is to achieve and maintain a funded ratio ranging from 85% to 100% for each of its pension plans. A funded ratio of 100% signifies that the City's assets held with CalPERS, in addition to assets held in other pension accounts, match its accrued liabilities for pension. If the City has assets in a Section 115 Trust, these assets should be included in the City's funded ratio calculation.
4. **Section 115 Pension Trust:** The City will establish and maintain a pension stabilization fund in the form of a Section 115 Pension Trust ("Trust"). Assets in the Trust may be used only for pension related costs and at the direction of the City Council. The City's objective with the Trust is to accumulate assets to fund its CalPERS pension costs, as well as mitigate the budget impact of costs associated with future UAL. The City will strive to meet the following guidelines:
 - *Initial Deposit:* It is recommended that the balance of the City's internal pension reserve be transferred to the Trust in FY 2023-24 to initially fund the Trust.
 - *Investment Portfolio Selection:* City staff will work with its advisory team, including the Trust's investment advisor, to select investment portfolios based on the City's risk tolerance and projected withdrawal schedule from the Trust.
 - *Ongoing Deposits:* At the end of each fiscal year, the City will evaluate the economic feasibility of an additional annual contribution to the Trust. Additional annual contributions will be made from surplus remaining after all other City reserve policies have been met.
 - *Enterprise Funds:* A portion of the City's pension costs within its CalPERS Miscellaneous Plan are attributable to employees within the City's Enterprise Funds. Therefore, the City will ensure that any deposits to the Trust and withdrawals from the Trust are made in consideration of this fact to ensure equitable cost/benefit between City funds and CalPERS Plans. In years when Enterprise Funds have met their minimum reserve policy goals, such Enterprise Funds can contribute a portion of remaining surplus to the Trust. The City will strive to ensure that any withdrawals from the Trust benefit the Enterprise Funds equitably.
 - *Use of Trust Funds:* The funds in the Trust may be used for any of the following purposes at the City's discretion: (1) City's annual UAL payment to CalPERS, (2) City's annual normal cost payment to CalPERS, (3) reimbursement to the City for CalPERS pension costs, and (4) Additional Discretionary Payments to CalPERS.
 - *Funding Goals:* As stated above, the City is targeting a funded ratio ranging from 85% to 100% for each of its pension plans. When measuring its funded ratio, the City should incorporate assets in the Trust, in addition to the assets under management by CalPERS. The City may consider foregoing contributions to the Trust if its funded ratio is determined to be too high, or if the current assets on deposit in the Trust are projected to be sufficient to cover budgetary fluctuations in the future.
5. **Additional Discretionary Payments:** CalPERS allows member agencies to make Additional Discretionary Payments ("ADPs") at any time and in any amount, which would serve to reduce the

City's UAL and future required contributions. Once the City's Trust is established, the City has the option to make ADPs to CalPERS using the assets held in the Trust, if desired. The City will consider ADPs within the context of its annual evaluation of reserve levels, budgetary requirements, funded ratio, and other timing considerations unique to CalPERS' investment performance. ADPs may prove to be advantageous in the future once Trust levels are funded to sufficient thresholds to stabilize budgetary volatility.

6. **Fresh Start:** CalPERS member agencies can voluntarily opt into a shorter UAL amortization with level annual payments, called a Fresh Start. A Fresh Start allows the agency to pay off its UAL faster and with level payments, which generates lower cumulative payments and aids in budgeting. However, annual Fresh Start payments are typically higher in the near term and there is no flexibility to undo the Fresh Start. The City will annually evaluate the pros and cons of a Fresh Start after the latest CalPERS actuarial valuation report containing the Fresh Start amortization schedule is released.
7. **Pension Obligation Bonds:** Pension Obligation Bonds ("POBs") are a tool that can be used to provide an ADP to CalPERS upon the determination that the cost to borrow the funds for the payment is less than continuing to make the projected prescribed UAL payments at the current discount rate. If the City considers issuing POBs, the following guidelines will apply:
 - Expert advice and analysis by actuaries and municipal advisors will be utilized to quantify the risk of CalPERS investment underperformance (including discount rate reductions, stock market crashes, or sustained investment underperformance) and the threshold at which the City would be worse off issuing POBs versus not.
 - Significant education and evaluation will occur at the City staff and Council level given the complexity of POBs.
 - The interest rate on the POBs shall be at least 2.5% less than the current CalPERS discount rate.
 - The final maturity date on the POBs will be no greater than the final projected payment date of the UAL at the time the POBs are issued.
 - The POBs structure will contain an early call provision.
 - The POBs shall not finance normal cost and shall only be used to refinance UAL.
 - The POBs should provide significant demonstrated cash flow savings.
 - The City shall budget and transfer at least 25% of projected cash flow savings to the Trust to mitigate against future UAL likely to occur. Any cash flow savings not transferred to the Trust shall be transferred to the City's other reserves.
8. **Policy Review:** The City will review this policy periodically to determine if changes to this policy are necessary to ensure progress is being made towards funding the City's CalPERS pension costs and mitigating the impact of the costs associated with future UAL.

RESOLUTION NUMBER: -2023

CITY OF SEBASTOPOL

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEBASTOPOL AUTHORIZING APPROVAL OF THE 115 TRUST AND APPROVING A BUDGET AMENDMENT FOR THE INITIAL DEPOSIT

WHEREAS, the City of Sebastopol has previously taken steps to control pension costs, including setting aside funds in an internal City pension reserve, which has a current balance of approximately \$2.8 million; and,

WHEREAS, over the past few years, the City has discussed moving these internal funds into a Section 115 Trust to capture the benefits of a trust; and,

WHEREAS, assets in a Section 115 Trust are irrevocably committed to the government function specified in the applicable trust agreement; and,

WHEREAS, monies held in such trusts can be invested in accordance with the rules governing those trusts, which are different from the investment rules for the City's pooled investments; and,

WHEREAS, setting aside funds in a Section 115 Trust should, over time, allow the City to earn more interest from its reserves than it otherwise would if those funds were left in the General Fund. Especially in today's higher interest rate environment, even the more conservative/moderate Section 115 Trust investment options are generating a strong yield; and,

WHEREAS, after City Council approval of the Trust, City staff will work with Shuster to finalize the documents and optimize an investment portfolio for the City's Trust assets (based on the City's risk tolerance and expected time horizon for withdrawals from the Trust); and,

WHEREAS, once this step is completed, the Trust account will be set up and the \$2.8 million initial deposit can be made to the Trust; and,

WHEREAS, an appropriation of \$2.8M to be transferred to the 115 Trust has not been appropriated in FY23-24 adopted budget.

NOW, THEREFORE, BE IT RESOLVED that the City of Sebastopol City Council hereby approve a budget amendment in the Pension Reserve Fund as necessary to fund the Trust account that will be set up and the \$2.8 million initial deposit can be made to the Trust.

The above and foregoing Resolution was duly passed, approved, and adopted at a meeting by the City Council on the 17th day of October, 2023, by the following vote:

VOTE:

Ayes:

Noes:

Abstain:

Absent:

APPROVED: _____

Mayor Neysa Hinton

ATTEST: _____
Mary Gourley, Assistant City Manager/City Clerk, MMC

APPROVED AS TO FORM: _____
Larry McLaughlin, City Attorney

CITY OF SEBASTOPOL

FISCAL SUSTAINABILITY DISCUSSION



NHA | ADVISORS
Financial & Policy Strategies.
Delivered.

MAY 16, 2023



Project Objectives

- ▶ Assess current fiscal condition of City
 - ▶ Understand key aspects of financial forecast
 - ▶ Bonding options/feasibility for new projects
- ▶ Identify potential financial challenges and risks
 - ▶ Rising pension costs
 - ▶ Inflation, labor, capital needs
 - ▶ Legislative changes
- ▶ Discuss potential strategies to improve financial position
 - ▶ Pension cost management
 - ▶ Revenue enhancements



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Executive Summary

- ▶ City has maintained minimum unassigned reserve targets over last 5 years
 - ▶ Over 22% of annual budget; unassigned reserve target of 15%-20%
 - ▶ Reserves have been bolstered by one-time revenues (not recurring sustainable revenues)
- ▶ \$0.9M FY 2022-23 structural deficit projected to widen to \$2.6M in FY 2023-24, increasing to \$3.0M by FY 2028-29
 - ▶ Unassigned reserves will be depleted by FY 2024-25 (based on the City's current forecast)
- ▶ City can consider revenue enhancement and/or cost management strategies to balance budget and enhance resiliency to future economic shocks
 - ▶ Pension Cost Management: Section 115 Trust to mitigate pension costs increases/volatility
 - ▶ Revenue enhancement considerations: Sales Tax, TOT, UUT, Cannabis Tax, Parcel Tax
 - ▶ Voter approved bonding options for capital: General Obligation, Parcel Tax





1. KEY ASPECTS OF FISCAL SUSTAINABILITY

NHA's Fiscal Sustainability Criteria



Delivery of Essential Services

Are City's essential service levels at risk if there is an economic downturn or other "Black Swan" events (i.e., COVID, natural disaster)?



Financial Health

Economic environment; Reserve levels (At/above policy levels created through comprehensive evaluation of areas of specific risk); Revenue and expense historical trends and projections; Budgetary performance; Budgetary flexibility; Debt burden; Policies & practices



Capital Funding

Pay-as-you-go vs. Debt; Reserve levels; Bonding Capacity; Are critical assets being maintained to prevent potential catastrophic events and/or essential service disruptions?



Resiliency

Sustainability under financial and/or operational duress; 5-10-year forecasting; How would the City fare assuming a near-term recession or a catastrophic event?



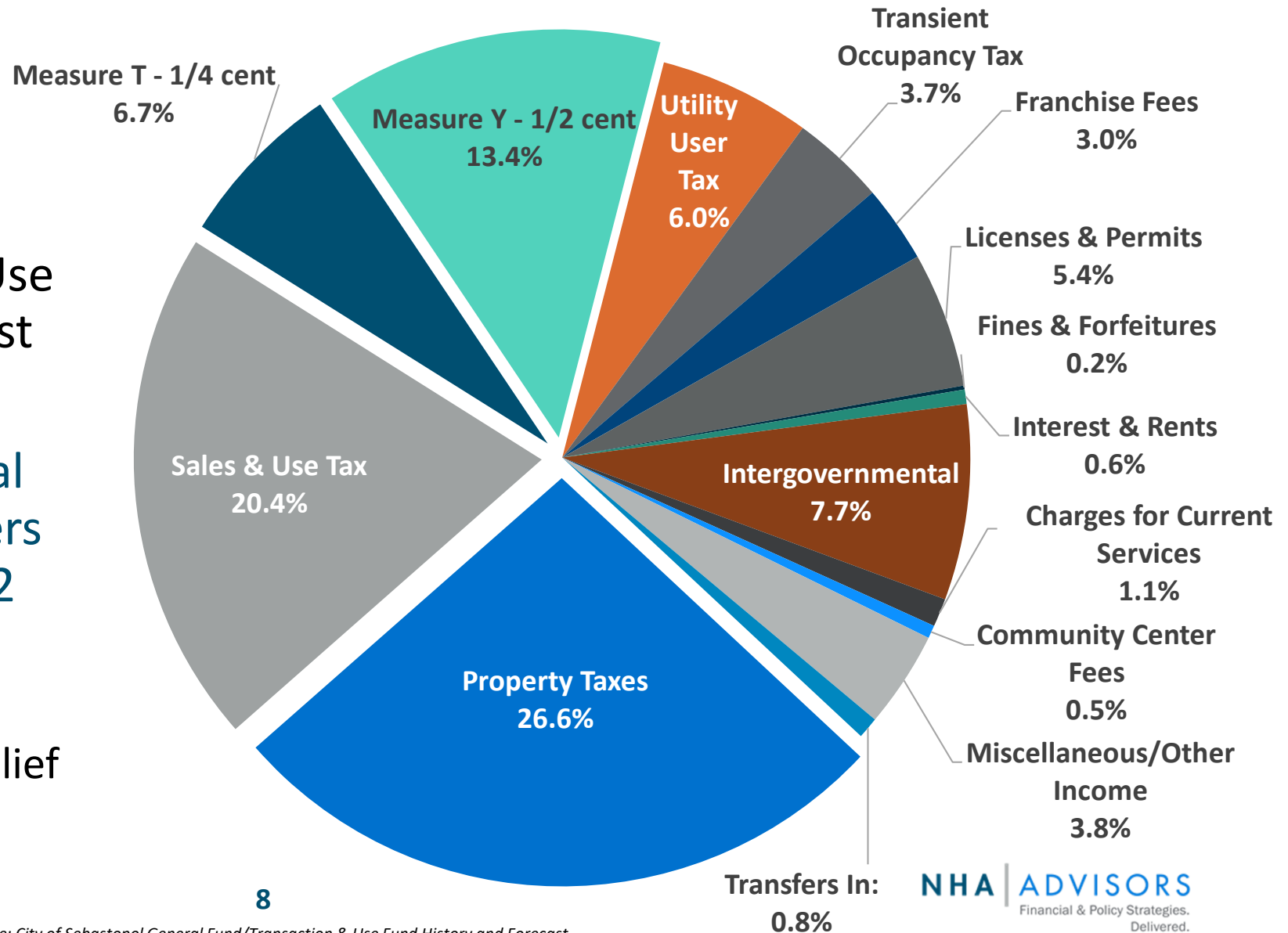


2. FINANCIAL SNAPSHOT

2022-23 General Fund Budget Revenues

▶ \$12.1M Total Budget

- ▶ \$9.3M (77%) derived from taxes
 - ▶ Property Tax and Sales/Use Taxes are the City's largest revenue categories
- ▶ \$0.7M (6%) increase in total revenues (including transfers in) compared to FY 2021-22
 - ▶ Notable increase to Intergovernmental revenue, due to one-time Covid-19 relief funds in FY 2022-23

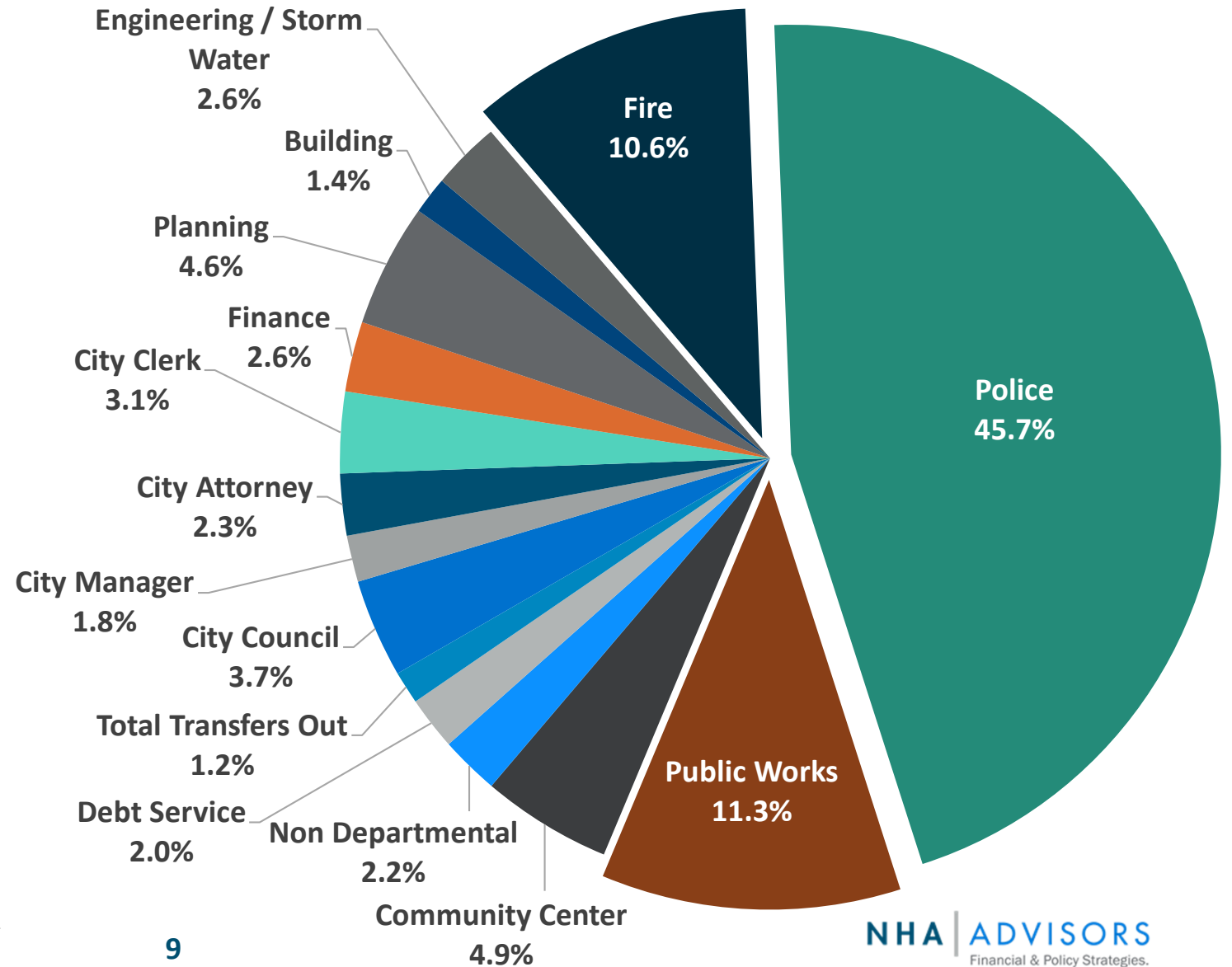


Source: City of Sebastopol General Fund/Transaction & Use Fund History and Forecast

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2022-23 General Fund Budget Expenditures

- ▶ \$13.0M Expenditures
 - ▶ \$7.3M (56%) Public Safety
- ▶ \$2.0M (18%) increase in total expenditures (including transfers out) compared to FY 2021-22
 - ▶ Notable increases in public safety and public works expenditures



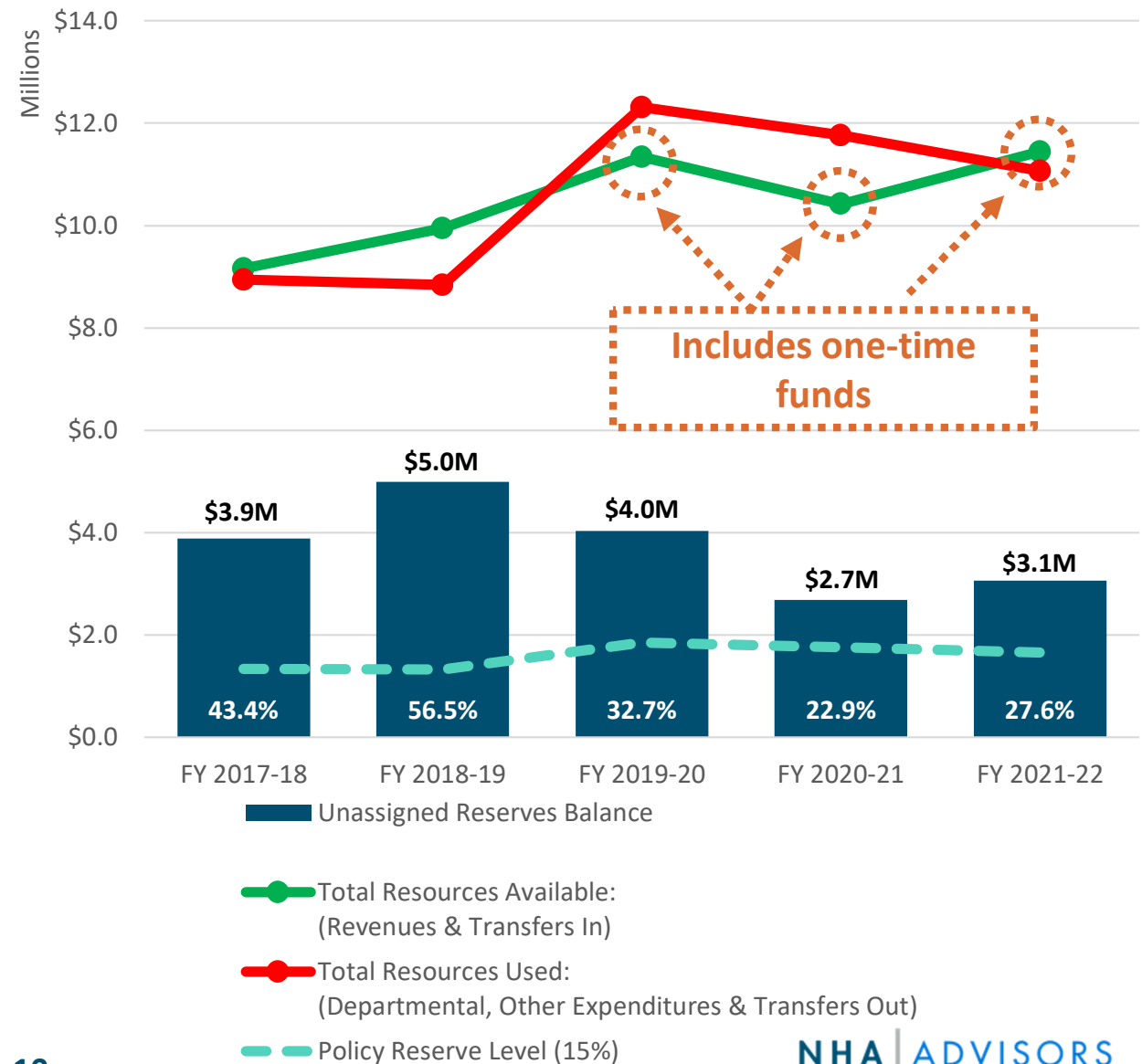
Source: City of Sebastopol General Fund/Transaction & Use Fund History and Forecast

General Fund Revenues, Expenses, & Fund Balance

5-Year History



- ▶ City has been operating with a structural deficit for several years
- ▶ Unassigned reserves have decreased by 39% (from \$5.0M to \$3.1M) over last three years, despite \$3.0M in one-time funds
 - ▶ **Without one-time funds, reserves would have been depleted**
- ▶ One-time funds:
 - ▶ \$900K of one-time ARPA funds FY 2021-22
 - ▶ City also received one-time funds FY 2019-20 (\$1.6M; State flood-related money + insurance reimbursement) and FY 2020-21 (\$0.5M; County homeless initiatives + CARES Act)

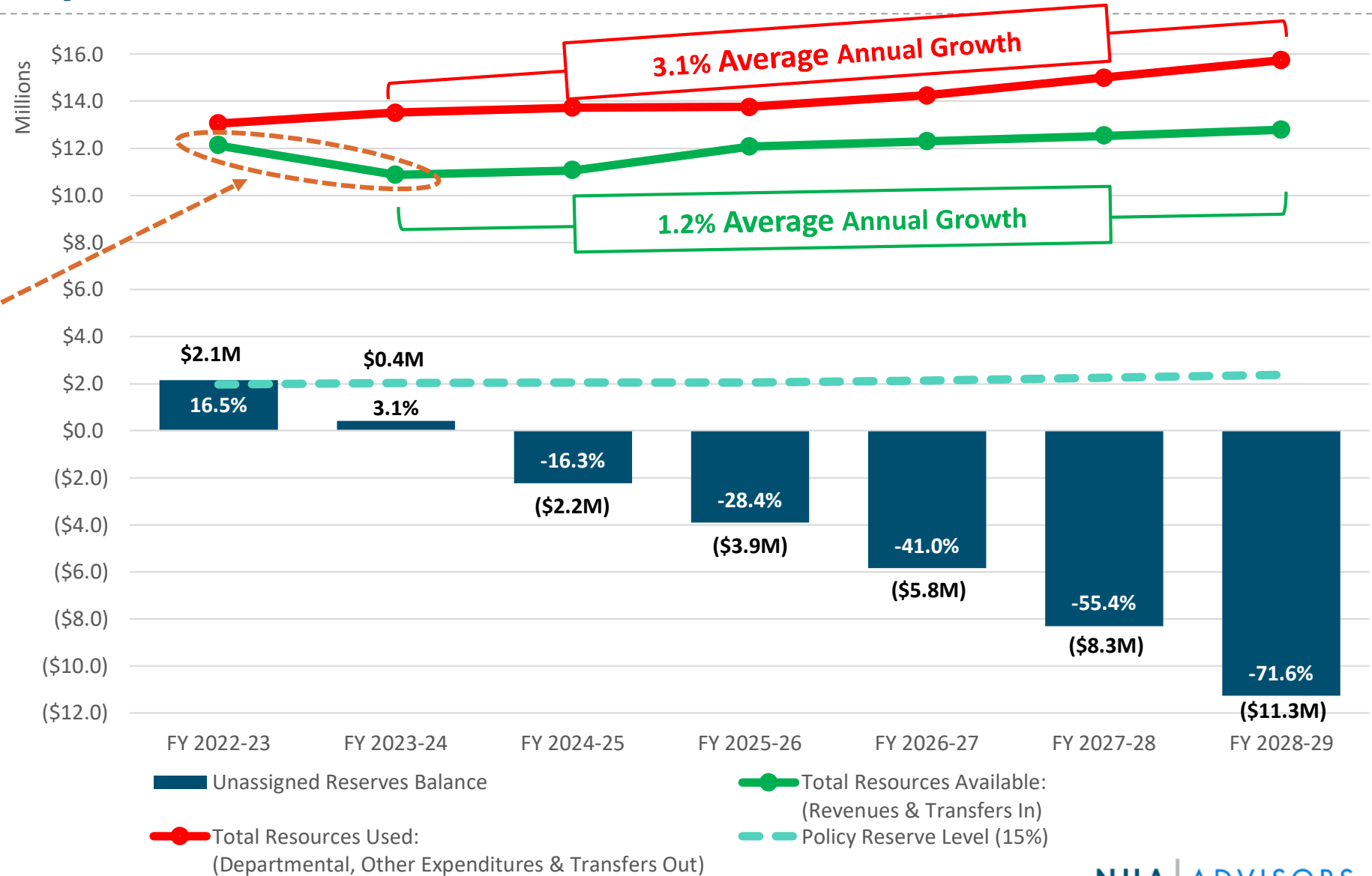


General Fund Budget + Projection

Resources Used projected to exceed Resources Available



- ▶ FY 2022-23 budget deficit and projected FY 2023-24 deficit decrease reserve levels to 3.1% by FYE 2024
- ▶ Revenue decrease for FY 2023-24 due to one-time funds (ARPA + donation) in FY 2022-23
- ▶ Projected deficits impact unassigned reserve balance → **(\$11.3M)** by FYE 2029



General Fund Budget + Projection

Key Forecast Assumptions

- ▶ Forecasted revenues & expenses are based off the FY 2023-24 proposed budget data
- ▶ Projected deficits exaggerated by inflationary expenditure assumptions compared to conservative revenue growth rates

Annual Growth Rate (2025 - 2029)

Revenues:

Property Tax	2.00%
Sales & Use Tax	2.00%
Measure T - 1/4 cent	2.00%
Measure Y - 1/2 cent	2.00%
Utility User Tax	1.50%

Expenses:

Salaries	3.00%
CalPERS Rates	7.70% - 25.70% (depending on plan)
Health Insurance	5.00% - 12.00% (depending on provider)
Materials & Supplies	5.00%

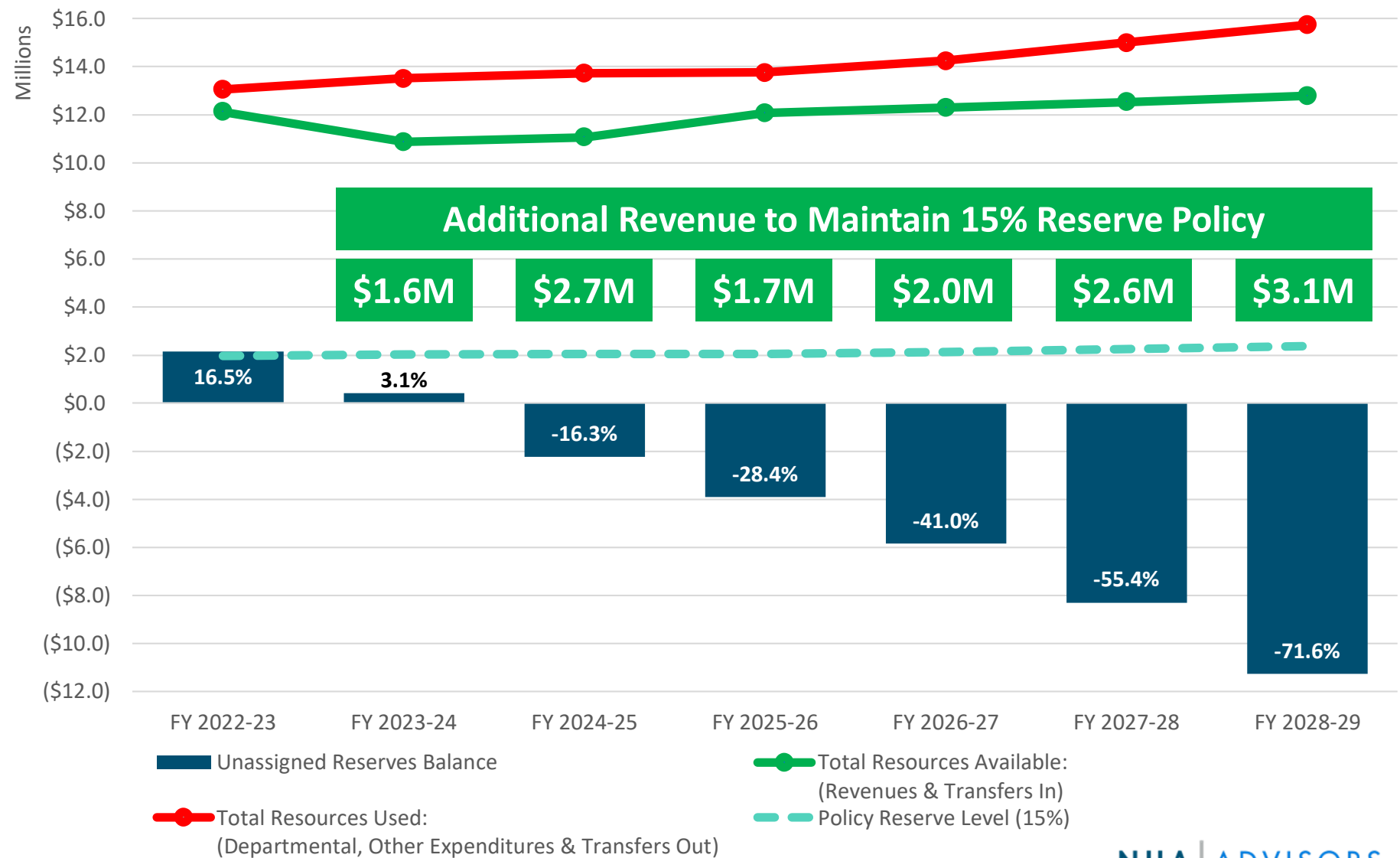




General Fund Budget + Projection

Additional Revenue and/or Cost Containment Required to Maintain Reserves

- ▶ New Revenue of **\$3.1M** required by FY 2028-29 to maintain 15% reserve target
- ▶ Strong Property Tax and Sales Tax Revenue Growth (5% annually) would generate **\$1.4M/year** by FY 2028-29



Credit Rating Scorecard

Estimated “AA” Category GO Rating Using S&P Scorecard

Strengths:

- ▶ **Economy:** Median Household Income 127% of national
- ▶ **Liquidity:** \$11.2M in governmental cash/investments
- ▶ **Budgetary Flexibility***:** \$8.1M in General Fund balance (74% of General Fund expenditures)
- ▶ **Debt & Contingent Liabilities:** Low debt burden

Weaknesses:

- ▶ **Budgetary Performance***:** Negative net result in General Fund and total governmental funds
- ▶ **Pension Liability**

*** Denotes potential area of credit concern – structural deficit (budgetary performance) could lead to weakening reserve levels (budgetary flexibility)

S&P's Local Government GO Criteria (Issuer Credit Rating)

Key Rating Factors	Weight	Score
Institutional Framework	10%	2.00
Economy	30%	1.50
Management	20%	3.00
Financial Measures		
Liquidity	10%	1.00
Budgetary Performance	10%	3.00
Budgetary Flexibility	10%	1.00
Debt & Contingent Liabilities	10%	1.00
Estimated Score		1.85

Indicative Rating Outcomes

Estimated Score	Indicative Rating
1.00-1.64	AAA
1.65-1.94	AA+
1.95-2.34	AA
2.35-2.84	AA-
2.85-3.24	A+
3.25-3.64	A
3.65-3.94	A-



City's Debt Profile

Low Debt Burden; CalPERS UAL Debt is Largest Debt on Balance Sheet

Debt	Outstanding Principal*	Final Maturity (FYE)	Source of Repayment	Annual Debt Service as % of FY 2022-23 General Fund Budget
Governmental Activities				
Special Assessment Bonds (<i>Improvements to Woodstone Center</i>)	\$35,000	2023	Assessments	N/A
Capital Lease Agreement (<i>Clean Renewable Energy Projects</i>)	\$292,767	2025	General Fund	0.75%
Lease Financing Agreements (<i>Purchase of a Mobile Home Park</i>)	\$308,102	2028	General Fund	0.50%
2021 Refunding Lease (<i>Refunds 2006 Financing Used for Various Projects, Including a Sewer Force Main, Skate Park, Water Booster Pump, Solar Panels, and more</i>)	\$338,264	2026	General Fund	0.66%
2022 Finance Purchase Agreement (<i>Energy Efficiency and Conservation Equipment and Improvements</i>)**	\$1,126,307	2037	General Fund	0.66%
Total	\$2,100,440	--		
Business-Type Activities				
2021 Refunding Loan (<i>Refunds 2015 Financing Used for Removal of Arsenic from Water Well Seven and its Treatment System</i>)	\$955,734	2035	Water Fund	N/A
2021 Refunding Lease (<i>Refunds 2006 Financing Used for Various Projects, Including a Sewer Force Main, Skate Park, Water Booster Pump, Solar Panels, and more</i>)	\$487,375	2026	Water/ Wastewater	N/A
2022 Finance Purchase Agreement (<i>Energy Efficiency and Conservation Equipment and Improvements</i>)**	\$3,812,582	2037	Water/ Wastewater	N/A
Total	\$5,255,691	--		
CalPERS Pension Liability				
Unfunded Accrued Liability ("UAL" – More Detail in Section 3A of Presentation)	\$15,770,000	2046	General Fund/ Water/Wastewater	8% - 10% (FY 2022-23)



*As of 6/30/2022

** Energy conservation debt offset by energy savings

Source: City of Sebastopol 2022 ACFR

Very Comprehensive City Policies & Practices

New Pension Funding Policy Could be Considered

Annual Operating Budget Policy

- Maintain multi-year financial forecast

Capital Improvement Program

- Maintain 5-year capital improvement program

Revenue Policies

- Maintain diversified and stable revenue base

Expenditure Policies

- Expenditures are to be budgeted and controlled to not exceed estimated revenues

Cash Management/ Investment Policy

- Investments will prioritize safety, liquidity, and return on investment, in that order

Debt Management Policy

- City should plan and use debt in a manner that sustains financing payments at manageable levels

Fund Balance Policies

- Unassigned General Fund balance of 15-20% of annual operating expenditures
- Maintain CalPERS Retirement & OPEB Reserve

Financial Reporting Policy

- City's accounting and financial reports are to be maintained in conformance with GAAP

Security & Risk Practices

- Having faced a cyber/fraud incident in 2021, the City has recently implemented protective measures recommended by Kroll, a leading risk consultant.

Pension Funding Policy

- Recommended; outlines long-term strategy for managing and stabilizing rising pension costs

This policy is a recommendation and has not yet been approved by the City



Source: City of Sebastopol FY 2022-23 Budget



3. HEADWINDS FOR CITY'S FINANCIAL HEALTH

Headwinds for City's Financial Health



Labor

- **CalPERS Costs:** Poor CalPERS investment performance is projected to increase the City's UAL by 50% or more
- **Staffing:** Additional annual costs as new positions are added. Inflationary pressures and salary increases



Capital Project Funding

- Limited bonding capacity projected in the General Fund and Enterprise Funds
- Due to weakened General Fund reserve levels, it is currently not feasible to use reserves to pay for various capital projects, especially large ones



Economy

- Current recessionary pressures
- Sales Tax revenue, which makes up almost 40% of the City's governmental activities revenue, can be volatile under recessionary pressures
- TOT revenue could also be affected



Legislative/Political

- Local or statewide legislation that impacts the City's ability to raise revenues
- California Business Roundtable Initiative (November 2024 Ballot)
- City's UUT would need to be readopted in compliance with the Initiative, if it passed





3A. HEADWINDS FOR CITY'S FINANCIAL HEALTH: RISING PENSION COSTS

Background - Retirement Plans

- ▶ 2 CalPERS plans
 - ▶ Miscellaneous: 100 covered members
 - ▶ Safety (Police & Fire): 61 covered members

- ▶ PEPRA (2013) helpful to manage long-term pension costs for new employees

- ▶ 99% of UAL is attributable to Classic employees

MISCELLANEOUS PLANS			
Benefit Group	# of Actives	% of Actives	Benefit Formula
Miscellaneous	18	64.3%	2.0% @ 55
PEPRA Miscellaneous	10	35.7%	2.0% @ 62
Total Active Members	28	100.0%	-
Total Covered Members	100	-	-

SAFETY PLANS			
Benefit Group	# of Actives	% of Actives	Benefit Formula
Safety Fire	1	7.1%	3.0% @ 50
Safety Police	7	50.0%	3.0% @ 50
PEPRA Safety Fire	1	7.1%	2.7% @ 57
PEPRA Safety Police	5	35.7%	2.7% @ 57
Total Active Members	14	100%	-
Total Covered Members	61	-	-

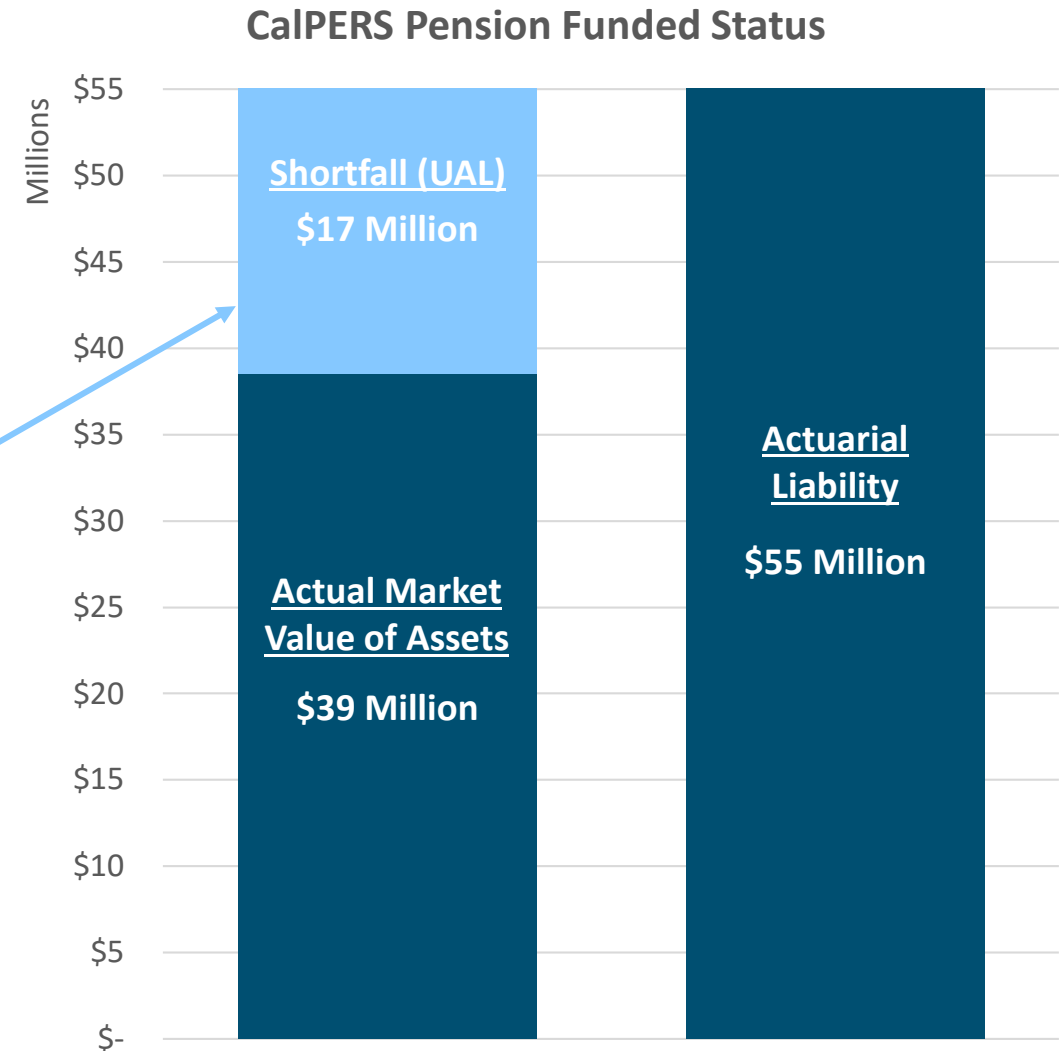


Source: City of Sebastopol CalPERS Actuarial Valuation Reports (June 30, 2021)

Background on How CalPERS Works

Two Payments Made to CalPERS Annually

- ▶ **(1) Normal Cost (“NC”)** = Annual cost for current employees
- ▶ **(2) Unfunded Accrued Liability (“UAL”)**: Annual payment to amortize the “debt” to CalPERS
 - ▶ CalPERS actuaries calculate how much the City is required to have in its account with them to pay out benefits to City’s retirees over the next 30-40 years (Actuarial Liability)
 - ▶ CalPERS annually calculates the Market Value of City’s assets held on account with them; Most public agencies have *less assets than required* to meet Actuarial Liability
 - ▶ This shortfall (i.e., the “UAL”) is not repaid all at once but amortized over time with the City paying down a portion each year (principal and interest)
 - CalPERS uses a “discount (i.e., interest) rate” of 6.80%
 - CalPERS annually adjusts this repayment schedule by adding a new “base” (i.e., layer) which adds to (in bad investment years) or lowers (good investment years) the overall repayment schedule
 - Over the past 20 years, the addition of these “layers,” along with other CalPERS assumption changes, has created a very irregular repayment shape for most CalPERS public agencies



Note: The numbers reported in this chart assume FY 2021-22 returns of -7.5%, FY 2022-23 returns of 3.35%, and 6.80% returns from FY 2023-24 onward. Due to rounding, amounts may not add up exactly.



Historical PERS Returns

5-Year: 6.7%
10-Year: 7.7%
20-Year: 6.9%
30-Year: 7.7%

Why CalPERS Costs have Trended Higher

Then (late 1990s)...

- ▶ Robust investment returns (10%+)
 - ▶ Retirement plans were “Super-Funded” through the late 1990s
 - ▶ Earnings on funds were more than adequate to cover retirement costs
- ▶ Super-funded status induced widespread retirement benefits enhancements....

Now ...

- ▶ Sluggish returns outlook (<7%)
- ▶ Assumptions have changed/changing
 - ▶ Discount Rate: 8.25% → 7.00% → 6.80%
 - ▶ Inflation rate (prices going up)
 - ▶ Mortality rates (people living longer)
 - ▶ Actuarial Valuation → Market Valuation
 - ▶ Shorter (20 year) amortization
- ▶ UAL payments have grown rapidly from past changes, remain exposed to the effects from future poor investment returns and assumption changes

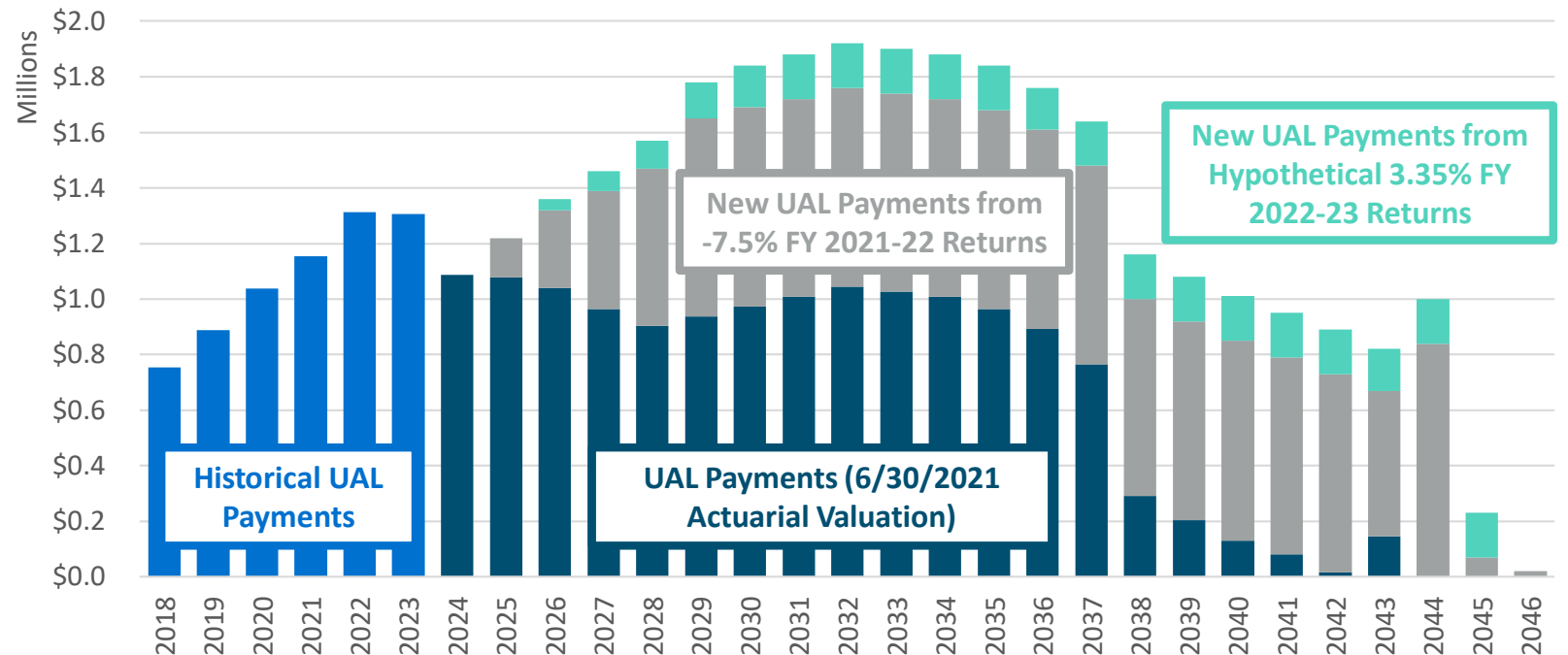
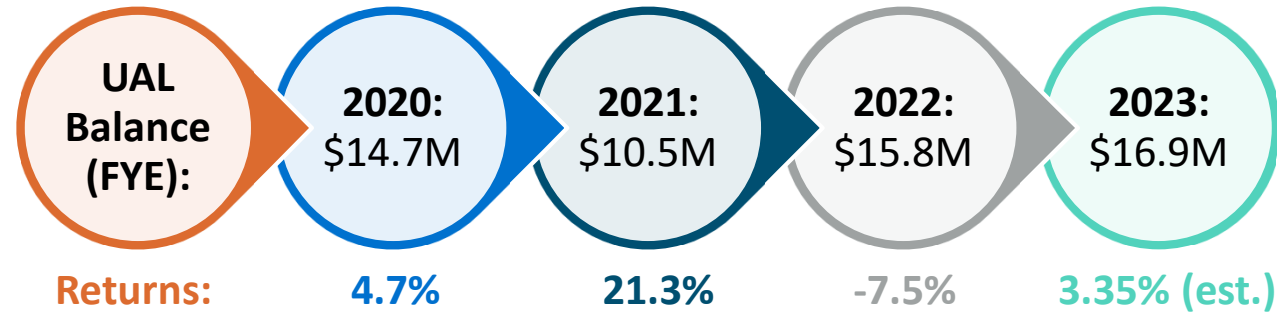


Historical and Projected UAL Payment Schedule



Current Estimated Pension Debt Approaching \$20 Million

- ▶ The City's UAL balance had nearly doubled from \$7.9M in FYE 2014 to \$14.7M in FYE 2020
- ▶ The City's UAL balance as of FYE 2021 is \$4.2M lower than FYE 2020 but is expected to increase \$5.3M in the next CalPERS valuation
- ▶ The City's UAL balance could increase another \$1.1M if CalPERS earns 3.35% in FY 2022-23 (CalPERS' investment returns as of end of March)
- ▶ City's \$0.8M UAL payment in 2018 has increased to \$1.3M in 2023. Projected payments peak at nearly \$1.9M in 2032.
- ▶ Rapidly increasing impact to City's budget
- ▶ Note that the UAL will fluctuate annually moving forward based on future CalPERS investment returns & assumption changes



Source: CalPERS Pension Outlook Tool. Assumes FY 2021-22 returns of -7.5%, FY 2022-23 returns of 3.35%, and 6.80% returns from FY 2023-24 onward.

UAL Cost-Containment Strategies – Not Mutually Exclusive

(1) Prepay UAL early in Fiscal Year (≈ 3.3% discount)



(2) Negotiate Cost Sharing With Employees

- Require employees to pay their share; new employees already governed by lower cost/benefit PEPRAs plans
- Negotiated cost sharing of the City's share

(3) Fresh Start Amortization offered by CalPERS

- Pros: Smooths payment, shortens repayment period; reduces overall interest paid from shorter amortization period
- Cons: New structure “locked-in” + increased annual payments in near term; still amortized at discount rate

Currently not recommended

(4) Use Cash Reserves to Pay Extra (two options)



- Section 115 Trust - Separate trust solely dedicated to pension/OPEB
- ADP – Reduce UAL through direct lump sum payment to CalPERS
 - Choose optimal amortization bases to pay off

(5) Restructure All or Portion of Remaining UAL

- Restructure portion of UAL at lower bond interest rate and “smooth out” payments for enhanced budget predictability, near and mid-term potential savings, and preservation of cash for other critical projects

Currently not recommended;
Continue to Monitor



Use Cash Reserves: Section 115 Trust

- ▶ **What is it?** Dedicated (restricted to pension/OPEB) account managed by 3rd party
- ▶ **Pros:**
 - ▶ Potential for increased investment returns vs. current General Fund reserves
 - ▶ General Fund investments restricted by Government Code (limits types of instruments and maturities)
 - ▶ **Flexibility – more investment options than CalPERS and the City can decide when and how to use**
 - ▶ Longer-Term: Trust funds can grow over time and pay off full UAL in the future
 - ▶ Shorter-Term: Apply during challenging budget years or to **“smooth”** payment spikes in UAL and/or Normal Cost
 - ▶ Diversify asset management away from CalPERS
 - ▶ Potential shock absorber for volatility from CalPERS investment performance & assumption changes
- ▶ **Cons:**
 - ▶ Market risk (dependent on type of investment portfolio)
- ▶ Note: The Trust will show up as an asset on the City’s financial statements, but will not technically offset UAL until funds are transferred to CalPERS



Use Cash Reserves: ADP

- ▶ **What is it?** City makes Additional Discretionary Payment (“ADP”) directly to CalPERS and designates which amortization base(s) / layer(s) shall be paid off
 - ▶ CalPERS will eliminate payments associated with the portion of the UAL paid off, essentially giving the City credit at the discount/interest rate (currently 6.8%)
- ▶ **Pros:**
 - ▶ Reduced future payments
 - ▶ Reduced UAL / higher CalPERS funding ratio
 - ▶ Broader, less restrictive CalPERS investment portfolio has potential for higher returns
- ▶ **Cons:**
 - ▶ Re-investment and market timing risk with ADP funds
 - ▶ No options for other investment portfolios like there is with a Section 115 Trust



Section 115 Trust vs. CalPERS ADP Comparison

OPTION	Section 115 Trust	CalPERS ADP
Reduced UAL & UAL Payments with CalPERS	No	Yes
Reduced Pension Liability in ACFR	No (but the Trust will show up as an asset on the City's financial statements)	Yes
Control of Investment Strategy	Yes	No
Funds Managed By	Trust Administrator	CalPERS
Flexibility in Uses	Yes (annual pension or OPEB expense, ADP, OPEB, etc.)	No
Savings	Varies; Depends on when City utilizes funds to pay liabilities	Immediate; Length of time varies based on which amortization component is paid off (City's amortization bases currently range from 1 - 27 years)
Enhanced Budgetary Flexibility	Yes	Limited
How Many Agencies in CA Have Used?	Hundreds of CA agencies maintain Section 115 Trusts	Historically, hundreds of ADPs made by CA agencies annually

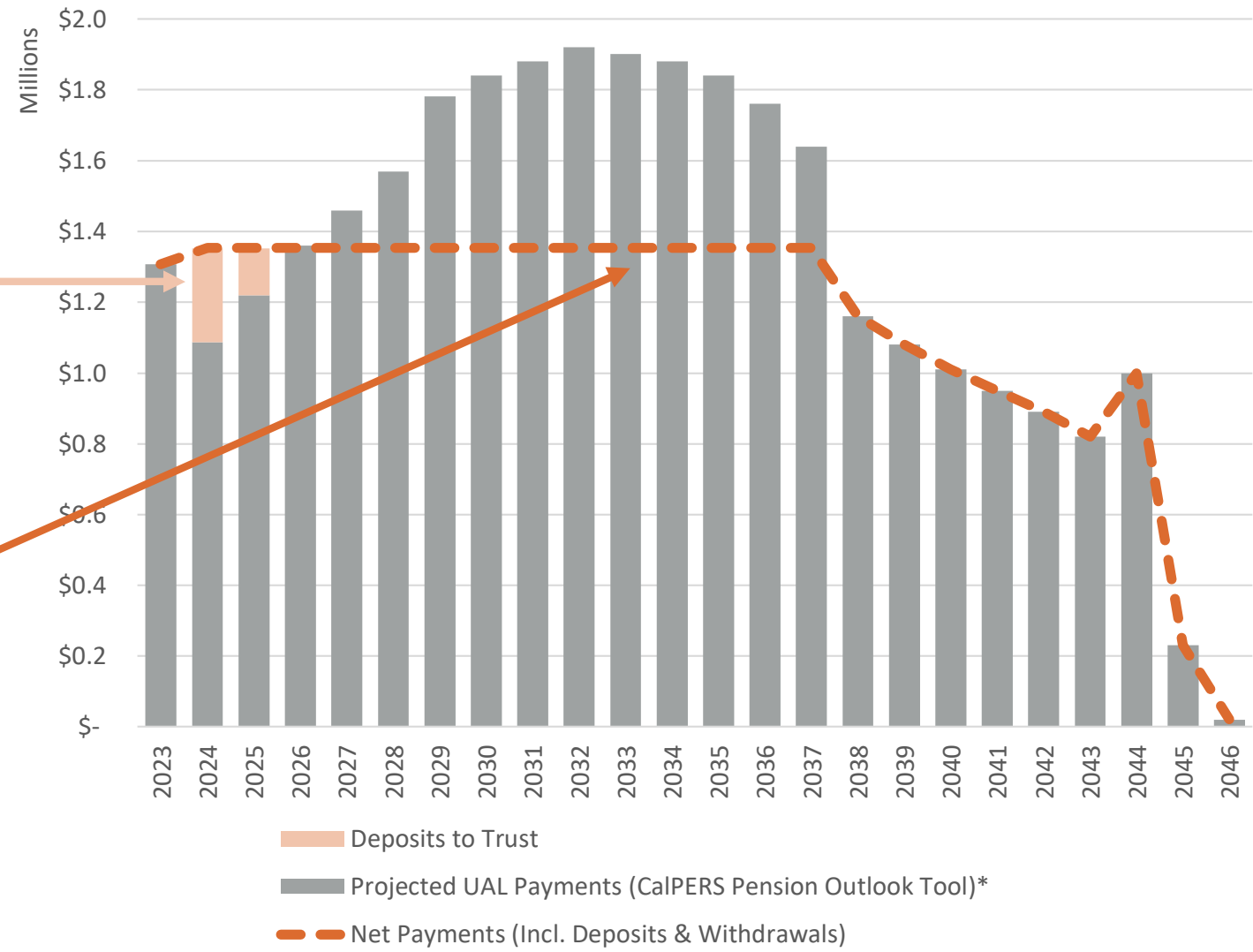




Considerations for Managing New 6.80% UAL Debt

Apply Section 115 Trust Assets to Smooth Out Peak UAL Payments

- ▶ Assumes City's existing pension reserve of \$2.8M is **transferred to a Section 115 Trust**
 - ▶ A main benefit of moving funds to a Section 115 Trust is the increased potential for interest earnings vs. current General Fund investments (especially in today's inflationary environment)
- ▶ Assumes an additional total of \$0.4M is deposited in 2024 - 2025
- ▶ Assumes a 4.50% long-term investment returns rate**
- ▶ Funds could be withdrawn from the Section 115 Trust during higher payment years to stabilize net impact to the General Fund
 - ▶ Smooth annual payments at \$1.4M
 - ▶ Projected to generate \$1.4M of savings, net of existing pension reserves and additional deposits
- ▶ Budgetary savings during elevated UAL payments in years 2027 – 2037 will help protect the City's General Fund deficit from widening



**This long-term investment returns rate is not fixed/guaranteed

*Assumes FY 2021-22 returns of -7.5%, FY 2022-23 returns of 3.35%, and 6.80% returns from FY 2023-24 onward.

Section 115 Trust

Overview of Steps to Select the Provider and Establish the Trust

Establishment of the Trust can be completed in 30 – 90 days

Evaluate potential
Section 115 Trust
Providers

Select Provider and
work with its
Investment Advisor to
determine preferred
investment portfolio

Formal City Council
adoption of necessary
documentation

Trust established and
funded by City (if
desired at that time)





3B. HEADWINDS FOR CITY'S FINANCIAL HEALTH: STAFFING

Summary of City-Wide Staffing Study

- ▶ In the fall of 2021, the City engaged Regional Government Services (RGS) to conduct a City-wide staffing study
 - ▶ Study completed in September 2022
- ▶ City has approved a couple of the staffing changes recommended by RGS
- ▶ City staffing is a long-term solution that will continue to be discussed and evaluated
- ▶ **Additional annual staffing costs estimated by the study are not factored into the City's forecast**



Source: RGS City-Wide Staffing Study (2022)



3c. HEADWINDS FOR CITY'S FINANCIAL HEALTH: CAPITAL IMPROVEMENT PROJECT FUNDING

Overview of City's Capital Improvement Plan (CIP)

- ▶ \$30.8M of CIP expenditures for FY 2022-23 through FY 2027-28
 - ▶ Expenditures concentrated in bikes, pedestrians & safety projects and paving projects
 - ▶ Does not include larger potential facility projects such as a fire station, library, City hall, etc.

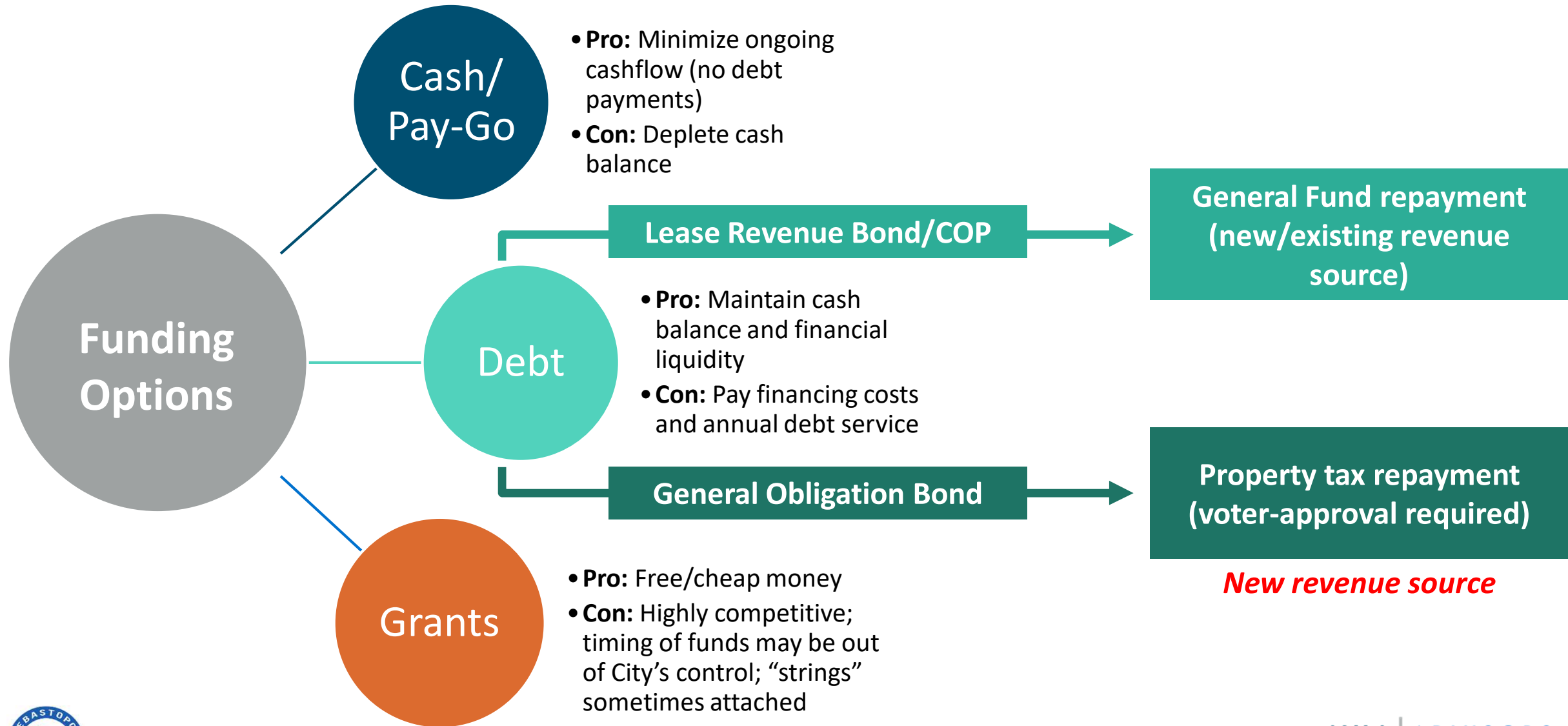
	FY 2022-23	FY 2023-24	FY 2024-25	FY 2025-26	FY 2026-27	FY 2027-28	Total
Project Category Expenditures							
Bikes, Pedestrians & Safety	\$48,500	\$1,601,000	\$3,411,000	\$9,801,000	\$0	\$0	\$14,861,500
Transition Plan ADA Projects	\$35,000	\$338,500	\$0	\$0	\$0	\$0	\$373,500
Housing Projects	\$0	\$10,500	\$402,000	\$0	\$0	\$0	\$412,500
Parks Projects	\$256,500	\$779,000	\$445,000	\$0	\$0	\$0	\$1,480,500
Paving Projects	\$472,400	\$1,470,000	\$2,577,500	\$1,255,000	\$0	\$0	\$5,774,900
Sewer/Wastewater Projects	\$79,000	\$1,730,500	\$581,500	\$0	\$0	\$0	\$2,391,000
Stormwater Projects	\$52,000	\$202,000	\$1,366,500	\$400,000	\$0	\$0	\$2,020,500
Water Projects	\$392,000	\$635,000	\$808,500	\$1,642,000	\$0	\$0	\$3,477,500
Arts Projects	\$6,500	\$50,500	\$0	\$0	\$0	\$0	\$57,000
Total	\$1,341,900	\$6,817,000	\$9,592,000	\$13,098,000	\$0	\$0	\$30,848,900
Unfunded	\$0	\$205,500	\$1,686,500	\$1,655,000	\$0	\$0	\$3,547,000



Source: City of Sebastopol 5-Year Capital Improvement Program
from the DRAFT FY 2023-24 Budget

Funding Options for Capital Projects

Pay-Go, Debt, & Grants



Funding Options for Capital Projects (Hypothetical \$10M Project)

Lease Revenue Bond, General Obligation Bond, Parcel Tax



	Lease Revenue Bond	General Obligation Bond	Parcel Tax
Annual Debt Service (30-year repayment)	\$750,000	\$750,000	\$750,000
Paid for by	General Fund	Property Owners: ~\$34 per \$100K A.V. per year; ~\$170 per \$500K A.V. per year	Property Owners: ~\$270 per parcel per year
Voter Approval Required	No	Yes – 2/3rds	Yes – 2/3rds
Tax Formula	N/A	Based on % of Assessed Value	Fixed Tax Formula
Use of Bond Proceeds	Capital Improvements Only	Capital Improvements Only	Capital Improvements, Programs or Services
Use of Tax Revenue	N/A	Debt Service Only	Debt Service and Operations
Key Benefit	No voter-approval required	Lowest interest rate	Most equitable tax distribution
Key Negative	General Fund Budget Burden	No ability to fund operational costs	Higher homeowner tax amount than GO Bond



Capital Funding Capacity in Water & Wastewater Enterprise Funds

- ▶ Water/Wastewater Rate Study (Willdan 2019)
 - ▶ Water/Wastewater rates implemented in FY 2019-20 through FY 2022-23
- ▶ Water/wastewater revenues insufficient to meet rising operating expenses
- ▶ Net Revenues insufficient to generate bonding capacity or fund CIP
 - ▶ New debt will typically require debt service coverage of 1.20x
- ▶ **The City has authorized a contract for a new utility rate study**
 - ▶ This rate study will propose new utility rate increases to support future capital

Water Enterprise Fund

	Actual			
	FYE 2019	FYE 2020	FYE 2021	FYE 2022
Net Revenues:	\$590,697	\$255,283	\$500,786	\$143,907
Debt Service:	\$141,949	\$142,515	\$192,484	\$158,197
Debt Service Coverage:	4.16x	1.79x	2.60x	0.91x

Wastewater Enterprise Fund

	Actual			
	FYE 2019	FYE 2020	FYE 2021	FYE 2022
Net Revenues:	\$251,222	(\$142,289)	\$6,037	(\$377,713)
Debt Service:	\$90,117	\$89,132	\$96,423	\$72,852
Debt Service Coverage:	2.79x	-1.60x	0.06x	-5.18x



Source: City of Sebastopol Annual Comprehensive Financial Reports



3D. HEADWINDS FOR CITY'S FINANCIAL HEALTH: LEGISLATIVE/POLITICAL

Possible Legislative/Political Headwinds to Consider

Local initiatives to terminate existing transaction and use tax measures

California Business Roundtable Initiative (November 2024 Ballot)

Any other legislation impairing the City's current/future revenue

California Business Roundtable Initiative (Initiative #21-0042A1)

- Limits ability of voters and state and local governments to raise revenues for government services
- **Revisions to local tax authority:** Requires voter approval for taxes applied to territory that is annexed; Requires sunset date on all new taxes; General tax ballot label must say “for general government use”
- **Revisions to local fee authority:** Fees must be “reasonable to the payor”. “Actual cost” of providing the product or service for which the fee is charged is defined as the “minimum amount necessary to reimburse the government...”
- **Retroactive Window: Taxes and fees approved after January 1, 2022, will sunset in December 2025 if not readopted in compliance with the initiative**





4. ADDITIONAL REVENUE SOURCES



Sebastopol Has Done A Lot... What are Actions for the Future?

Voluntary Taxes

Studies

Actions for the Future



- Transaction and Use Tax
- Business/Franchise Tax
- Transient Occupancy Tax
- Utility Users Tax

- Fire Department Feasibility Study (Completed 2023)
- City-Wide Staffing Study (Completed 2023)
- Fee Study (Completed 2020)
- Utility Rate Study (Currently in progress; previously completed in 2019)
- Fiscal Sustainability Assessment (in progress)

- Potential Sales Tax Increase
- Potential Utility User Tax Increase
- Potential Transient Occupancy Tax Increase
- Potential Parcel Tax (June 2024)?*
- Cost Allocation Study (Most recently completed in 2000)
- Cannabis Tax Feasibility Study

*Use of tax revenues to be determined

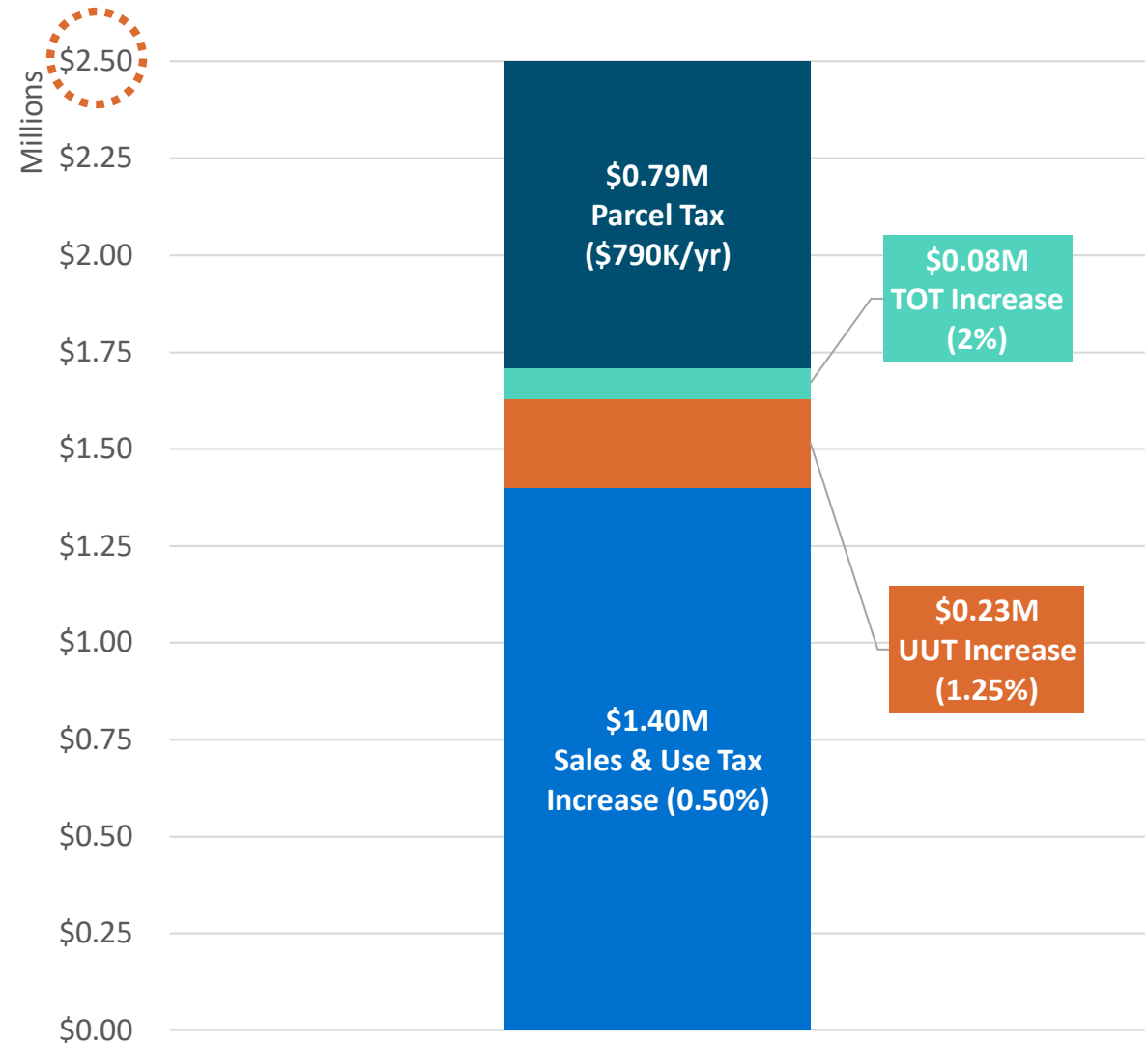


Potential Revenue Enhancements

\$2.5M Hypothetical Funding Gap Goal

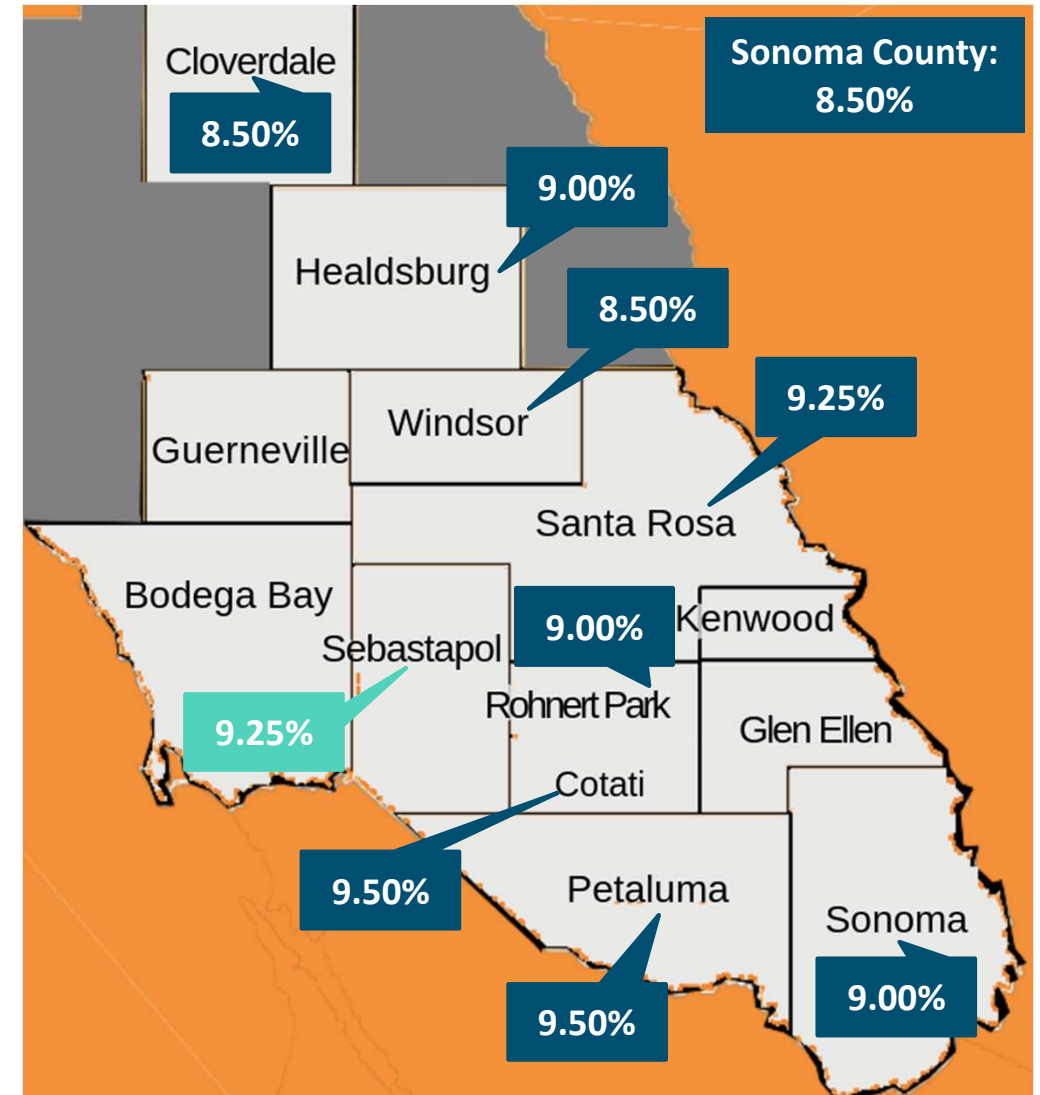
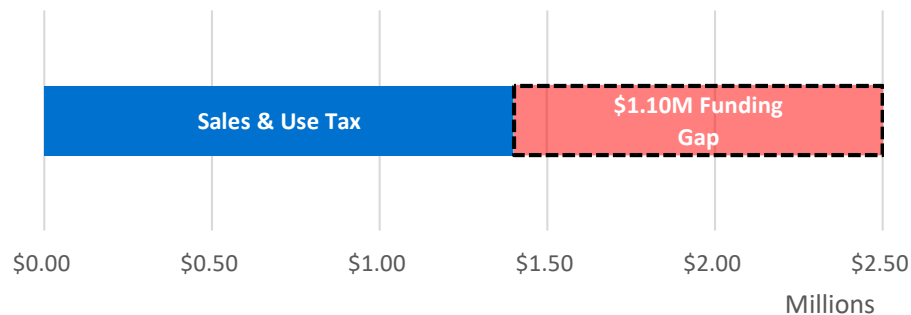


- ▶ Hypothetical \$2.5M funding gap is filled in with the following:
 - ▶ Sales & Use Tax Increase of 0.50% → \$1.40M/year
 - ▶ UUT Increase of 1.25% → \$0.23M/year
 - ▶ TOT Increase of 2.00% → \$0.08M/year
 - ▶ Potential Parcel Tax in June 2024 → \$0.79M/year
- ▶ This \$2.5M funding gap goal can be reached in various ways
 - ▶ E.g., larger parcel tax and lower sales & use tax increase; cost containment strategies



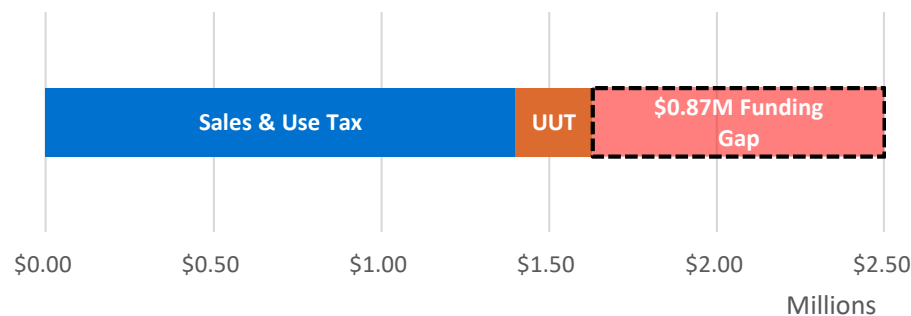
Sales & Use Tax Rate

- ▶ City sales & use tax rate (9.25%) 2nd highest within nine major Sonoma County cities
 - ▶ Cotati/Petaluma (9.50%)
- ▶ Sales & use tax rate for Sonoma County, any of its cities, and the Sonoma County Transportation Authority is currently capped at 10.25%
 - ▶ CA Senate Bill 152 (2018) raised the cap from 2% to 3% above the State/local base sales & use tax rate of 7.25%
 - ▶ The City currently has capacity for 1% in new taxes, however future countywide taxes could utilize some of this capacity
- ▶ Increasing the City's rate by 0.50% is projected to generate an additional ~\$1.4M/year

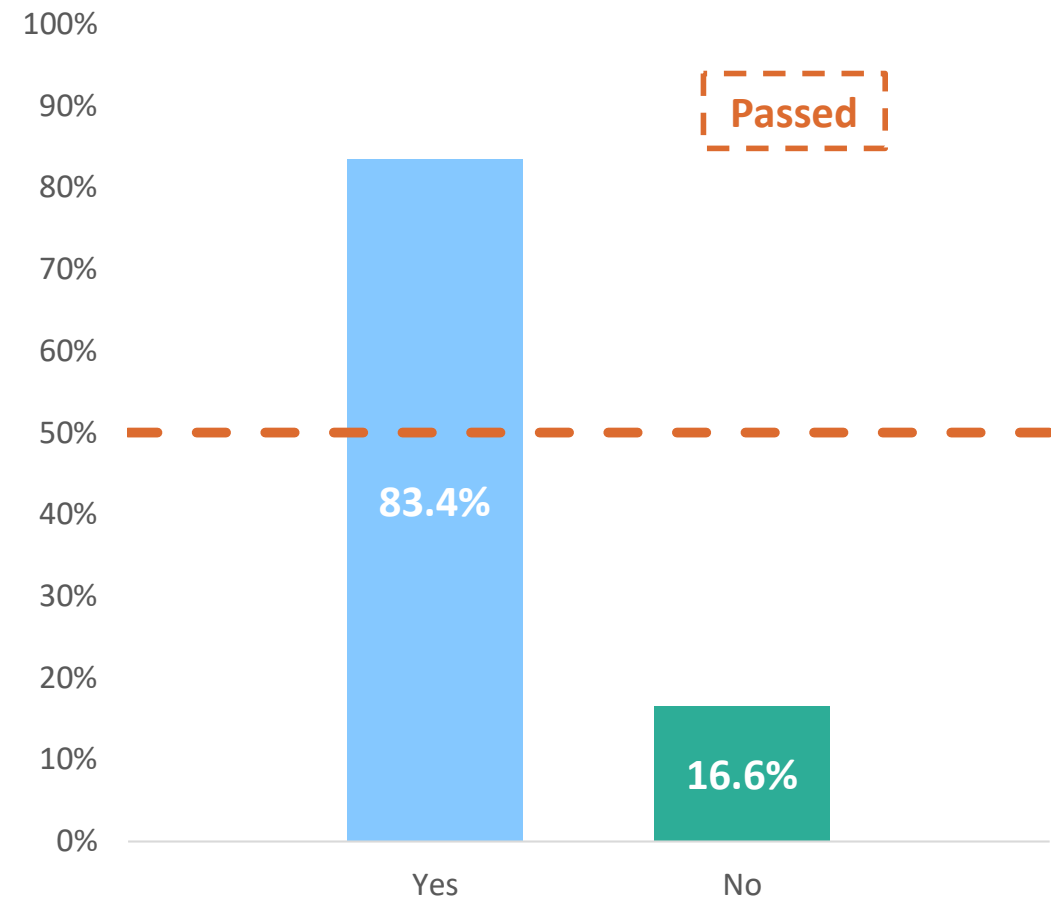


Utility Users Tax

- ▶ In the November 2022 election, the City’s Measure N passed, maintaining the City’s 3.75% Utility Users Tax (“UUT”) and removing the tax’s sunset clause
 - ▶ **Primary Objective:** Maintain City services including Police and Fire, 9-1-1 emergency services, park maintenance and repair, youth and senior recreation and for unrestricted general revenue purposes
 - ▶ **Revenue projection:** \$700,000/year
- ▶ Santa Rosa UUT rate → 5.00%
 - ▶ Measure N increase from 3.75% to 5.00% = an additional ~\$230K/year

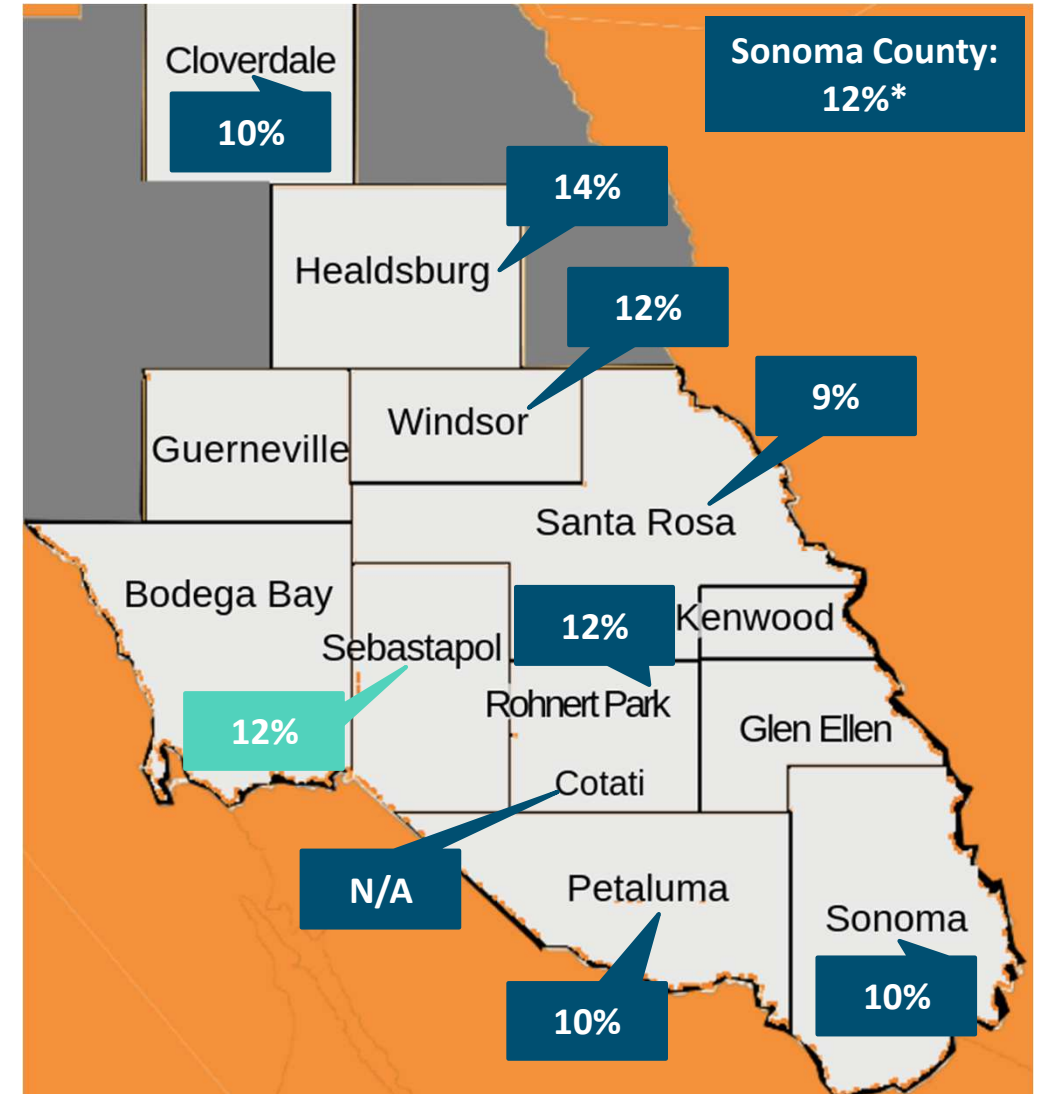
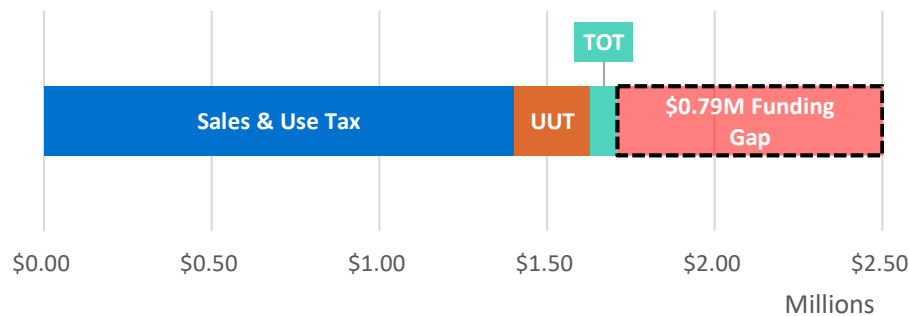


Sebastopol Measure N (November 2022)



Transient Occupancy Tax

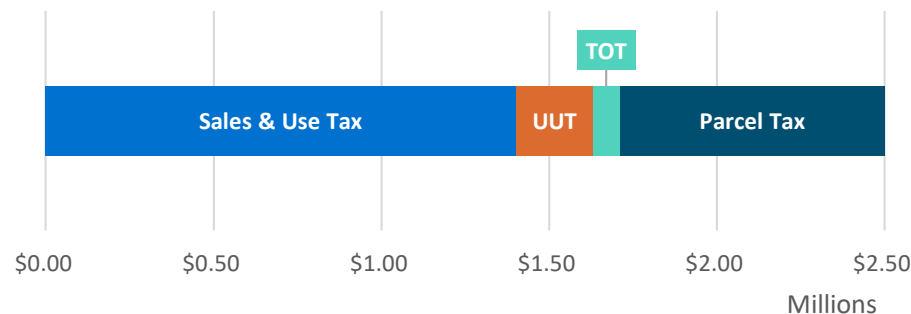
- ▶ In the November 2018 election, the City’s Measure R passed, increasing the City’s Transient Occupancy Tax (“TOT”) from 10% to 12%
 - ▶ Revenue projection: \$514K/year
- ▶ City’s TOT rate is 2nd highest (tied) of the nine major Sonoma County cities
 - ▶ Healdsburg has the highest (14%)
- ▶ Increasing rate to 14% is projected to generate an additional ~\$80K/year
- ▶ Additional TOT revenue also possible from future hotel development, such as the anticipated Hotel Sebastopol



*Levied in Sonoma County at a rate of 12% for accommodations at lodging and camping facilities in the unincorporated areas of the County.
 Source: Sonoma County Economic Development Board Transient Occupancy Tax Report (Q3 2022)

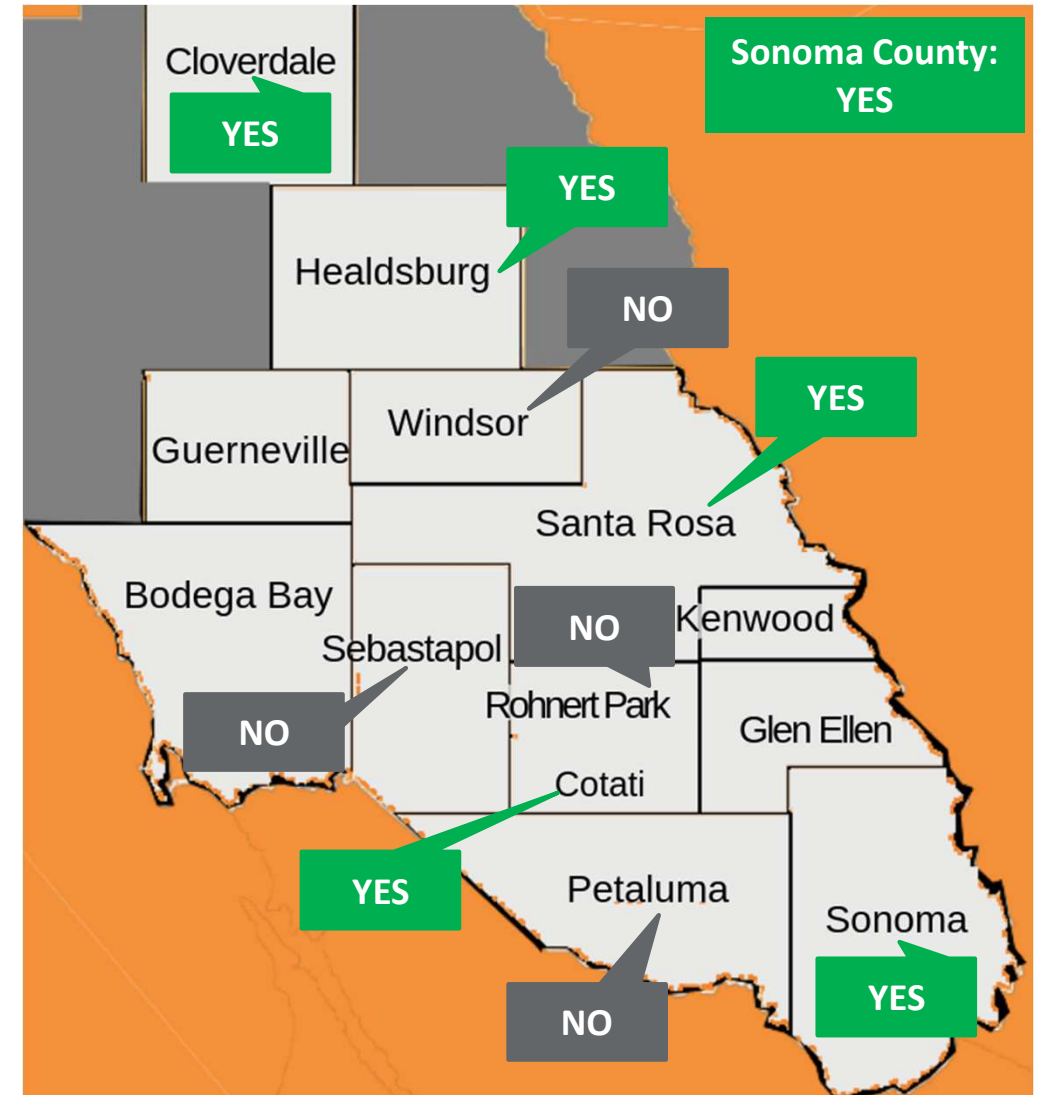
Parcel Tax

- ▶ A parcel tax is a special tax (similar to a CFD) on a parcel/unit of real property
- ▶ The tax differs from a property tax in that it is not based on the value of the property
 - ▶ It is generally based on either a flat per-parcel rate or a rate that varies based on use or size of the parcel
- ▶ Parcel taxes may be imposed for any municipal purpose, such as funding services, improvements to infrastructure, streets or parks, and protection of open space
- ▶ **Limitations of Use:** A parcel tax may be levied as a general tax or restricted for a special purpose
- ▶ **Procedure for implementation:** Parcel taxes may be levied for general purposes or restricted to a particular purpose. Parcel taxes require two-thirds voter approval
- ▶ **Potential levy as it relates to the City:** Generating \$790K in annual revenues (the amount remaining to fill the hypothetical funding gap goal) would require an annual ~\$290/parcel levy
 - ▶ The annual levy would need to be verified by a special tax consultant



Local Cannabis Tax

- ▶ Tax imposed on the sale, cultivation, distribution or manufacturing of cannabis
- ▶ 5 of 9 Sonoma County cities have Cannabis Tax
 - ▶ Sonoma County also has a Cannabis Tax
- ▶ Cannabis Tax Revenue:
 - ▶ Cotati: \$0.59M (FY 2020-21 actual)
 - ▶ Santa Rosa: \$1.8M (budgeted for FY 2022-23)
 - ▶ Healdsburg: \$0.5M (projected in ballot measure)
 - ▶ Sonoma: \$0.15M (budgeted for FY 2022-23)
 - ▶ Cloverdale: \$0.27M (FY 2021-22 actual)





5. FINAL TAKEAWAYS



Final Takeaways

- ▶ Without action or significant growth in revenues (not projected), the City's projected structural financial deficit will reduce / eliminate its reserves over the next 3-5 years
- ▶ Recommended that the City of Sebastopol...
 1. Identify economic development (i.e., increasing the tax base) opportunities
 2. Evaluate and attempt to secure revenue enhancements (i.e., increasing the tax rate on existing tax base)
 - ▶ Sales Tax Increase, UUT Increase, TOT Increase, Potential Parcel Tax (June 2024), Cannabis Tax
 3. Develop long-term pension funding strategy to manage CalPERS UAL, the City's largest debt
 - ▶ A Section 115 Trust can be created and dedicated towards stabilizing future pension costs
 4. Identify cost containment opportunities





CITY OF SEBASTOPOL

ADOPTION OF A SECTION 115 TRUST & PENSION FUNDING POLICY

NHA | ADVISORS
Financial & Policy Strategies.
Delivered.

OCTOBER 17, 2023

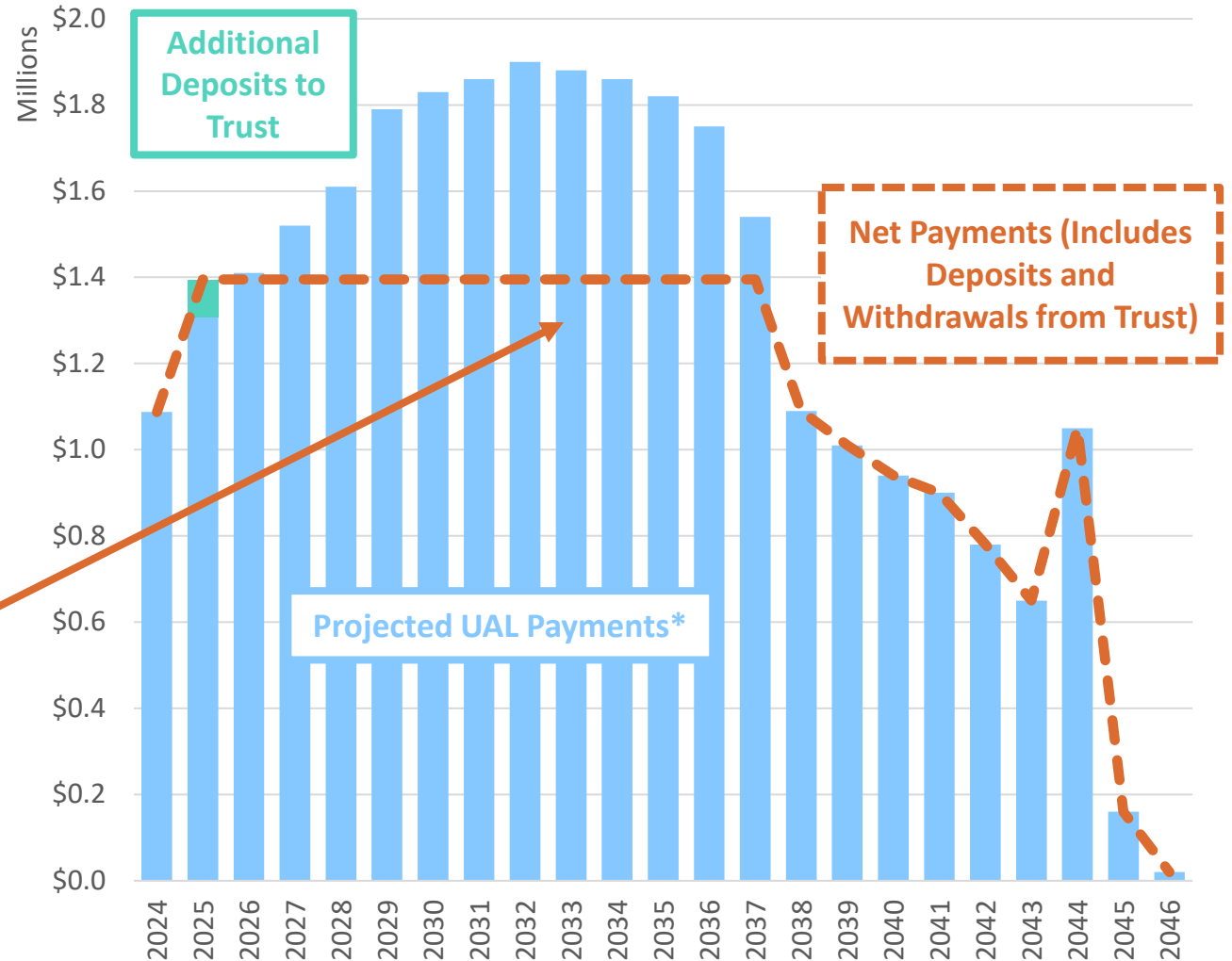
Executive Summary

- ▶ The City has previously taken steps to control pension costs, including setting aside funds in an internal City pension reserve, which has a current balance of approximately \$2.8 million
- ▶ Over the past few years, the City has discussed moving these internal funds into a Section 115 Trust to capture the benefits of a trust
- ▶ The topic of the Section 115 Trust was brought back up to Council earlier this year when the City’s Municipal Advisor, NHA Advisors (“NHA”), delivered a fiscal sustainability presentation that touched on the City’s pension challenge and recommended the City consider a Section 115 Trust for pension
- ▶ Together with NHA, City staff evaluated multiple Trust programs, and determined the Trust administered by Shuster Advisory Group, LLC to be the best for the City’s goals
- ▶ In addition to adopting a Section 115 Trust, the City would also like to adopt a formal pension funding policy as part of a comprehensive pension cost management strategy



CalPERS UAL Recap + Benefits of a Section 115 Trust

- ▶ City's UAL increased from \$10.5M to \$16.6M due to CalPERS' -7.5% investment returns in FY 2021-22 (this is reflected in the latest CalPERS actuarial reports)
- ▶ City's UAL is projected to increase another \$0.2M due to CalPERS' 5.8% investment returns in FY 2022-23
 - ▶ Increase will be reflected in the next CalPERS actuarial reports released in summer/fall of 2024
 - ▶ The 5.8% returns will increase the City's annual UAL payment beginning in FY 2025-26
- ▶ The City will be able to withdraw funds from its Section 115 Trust during years of higher UAL payments to stabilize the net impact to the General Fund
- ▶ Another key benefit of the Section 115 Trust is the potential for higher investment returns on assets



*Assumes CalPERS investment returns of -7.5% in FY 2021-22, 5.8% in FY 2022-23, and 6.80% from FY 2023-24 onward

Trust Evaluation and Selection

- ▶ Together with NHA, City staff evaluated multiple Section 115 Trust administrators based on experience, fees, investment options, investment performance, and other criteria
- ▶ The Trust administered by Shuster Advisory Group, LLC (“Shuster”) was determined to be the best for the City’s goals
 - ▶ Lowest fees and best investment performance across comparable portfolios
 - ▶ Client assets are not co-mingled with the assets of other agencies
 - ▶ Fully customizable investment portfolios (at no additional cost)

Shuster Advisory Group, LLC

- Independent investment advisory firm and fiduciary providing governmental and institutional retirement plan consulting services and private wealth management
- SEC-Registered Investment Advisor with over \$5 billion in assets under management
- Currently serving over 80 cities, agencies, and public entities
- Serves as fiduciary to plan investments and provides investment selection, monitoring, and management
- Within its Section 115 Trust program, Shuster provides the trust administration, consultant and investment advisor functions; Charles Schwab Trust Bank provides trust custodian services; and Alta Trust Company provides directed trustee services



Fiscal Impact – Trust Fees

- ▶ At a \$2.8 million asset level, the total annual fee is \$7,960, which is composed of \$1,400 for administration, \$960 for custodian and trustee services, and \$5,600 for investment management
- ▶ Annual fees are paid from Trust assets

Service	Provider	Annual Fee (% of Assets)	Annual Fee (\$)
Administration	Shuster Advisory Group, LLC	0.05% ¹	\$1,400
Custody	Charles Schwab Trust Bank	0.01% ²	\$400
Trustee	Alta Trust	0.02% ³	\$560
Investment Management	Shuster Advisory Group, LLC	0.20%	\$5,600
Total Annual Fees		0.28%	\$7,960

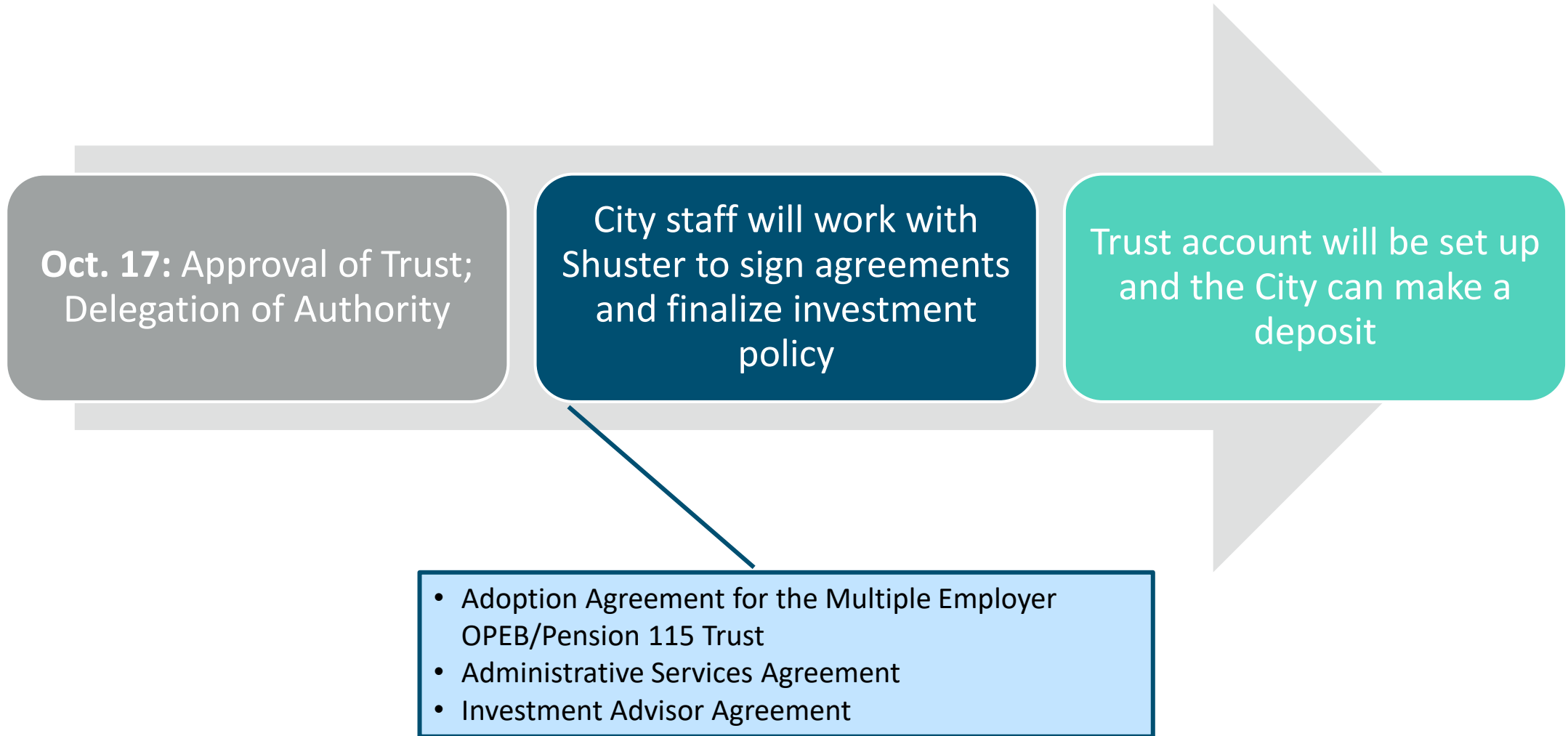
1 – Administration fee will convert to a flat dollar fee after the end of contract year-3 based on the highest year-end balance of the first 3 contract years

2 – Custodial fee is 0.01% with an annual minimum of \$400

3 – Trustee fee is 0.02% with an annual minimum of \$500 and annual maximum of \$5,000



Timeline of Trust Implementation



Pension Funding Policy

- ▶ As part of a comprehensive pension cost management strategy, the City would also like to adopt a formal pension funding policy to ensure there are guidelines and goals regarding its pension funding going forward
- ▶ The City's Pension Funding Policy outlines the following:
 - ▶ The City will pay at least the minimum required employer contribution to CalPERS each year
 - ▶ The City will prepay its annual UAL payment each July to achieve budgetary savings
 - ▶ The City will have a target funded ratio ranging from 85%-100% for its pension plans
 - ▶ The City will establish and maintain a Section 115 Trust dedicated to pensions
 - ▶ The City will consider ADPs and Fresh Starts within the context of its annual evaluation of reserve levels, budgetary requirements, funded ratio, and other metrics
 - ▶ The City will only consider POBs as a cost management strategy under very strict guidelines and after thorough due diligence and risk assessment



Action Needed from City Council

1. Adopt Resolution approving the adoption of the Multiple Employer OPEB/Pension 115 Trust administered by Shuster Advisory Group, LLC and appointing the City Manager, or his/her successor or his/her designee, as the City's Plan Administrator for the 115 Trust
2. Authorize the City Manager, or his/her successor or his/her designee, to enter into all related or required agreements
3. Authorize the City Manager, or his/her successor or his/her designee, to transfer \$2,800,000 to the City's 115 Trust upon completion of the Trust establishment documents
4. Adopt Resolution approving the adoption of the City's Pension Funding Policy

