

## DISCRETIONARY OPEB TRUST AGREEMENT

This Discretionary Trust Agreement (this "Agreement") is made as of \_\_\_\_\_, 2012 by and between Neuberger Berman Trust Company National Association (the "Trust Company") and Peralta Community College District ("Peralta") Retirement Board.

WHEREAS, Peralta has adopted and maintains the Peralta Community College District Retiree Healthcare Plan (the instrument creating such plan, the "Plan") for the purpose of providing welfare benefits to certain eligible employees;

WHEREAS, the Plan appoints the Peralta Retirement Board for purposes specified therein, including for the purposes of appointing a trustee to hold in trust all funds contributed to the Plan (in such capacity, the Peralta Retirement Board shall be hereinafter referred to as the "Peralta RB") and grants the Peralta RB the authority to enter into an agreement pursuant to which a trust shall be created for such purpose; and

WHEREAS, the Peralta RB wishes to appoint the Trust Company as trustee for purposes of holding in trust all or a portion of the funds contributed to the Plan, and the Trust Company is willing to accept such appointment, upon the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, the Peralta RB and the Trust Company hereby agree to the matters set forth in this Agreement.

### ARTICLE I. CREATION OF TRUST

Section 1.1. Establishment and Name of Trust. Effective upon the execution of this Agreement by the Peralta RB and the Trustee, the Peralta RB hereby establishes with the Trust Company a trust, the name of which shall be the "Peralta OPEB GASB 45 Trust" (the trust established hereby shall hereinafter be referred to as the "Trust"). The Trust Company hereby agrees to serve as a discretionary trustee of the Trust until removal or resignation in accordance with the provisions of Article VII. In the capacity as trustee of the Trust, the Trust Company shall hereinafter be referred to as the "Trustee." The Trustee accepts the Trust upon the terms set forth in this Agreement and agrees to hold, administer and deal with the Trust Fund (as that term is defined in Section 1.2) in accordance with the terms of this Agreement.

Section 1.2. Trust Fund. Subject to the terms of this Agreement, the Trustee agrees to accept such sums of money in cash or other assets acceptable to the Trustee as contributions to the Trust as from time to time shall be paid or delivered to the Trustee by the Peralta RB or its designee. All such money or other assets, plus any income or gain thereon, less any investment loss, payment or disbursement therefrom shall constitute the trust fund (the "Trust Fund") to be held, without distinction between principal and income, and paid or distributed in accordance with the terms of this Agreement.

Section 1.3. Trustee Not Responsible for Funding. The Trustee shall have no duty or authority (including no duty or obligation to make any determination or inquiry with respect thereto), which duty and authority is solely that of the Peralta RB, (A) to require any contributions or transfers to be made to the Trust, (B) to compute any amount to be contributed or transferred to the Trust, (C) to determine whether any contribution received by the Trustee complies with the terms of the Plan or (D) to determine whether any payments should be made from the Trust Fund. The Trustee shall not be responsible for any assets until the Trustee receives such assets.

Section 1.4. Nondiversion of Assets. The Peralta RB shall be solely responsible for ensuring that all payments from the Trust Fund, including but not limited to those directed by the Peralta RB or other entity appointed in accordance with the provisions of Section 2.1, shall be consistent with the purpose of the Trust, and shall be used solely to provide benefits to participants and their beneficiaries under the Plan and to defray reasonable expenses of administering the Plan, except as otherwise permitted under the terms of the Plan and applicable law, and the Trustee shall have no duty or authority with respect thereto and shall have no duty or obligation to make any determination or inquiry with respect thereto.

Section 1.5. Tax-exempt Status. It is intended that the Trust shall qualify as an “exempt organization” under Sections 501(a) and 501(c)(9) of the Internal Revenue Code of 1986, as amended (the “Code”) (or any comparable section of any future legislation that amends, supplements or supersedes said section). Unless and until the Trustee receives written notice from the Peralta RB to the contrary, the Trustee may assume the Trust is so qualified and is exempt from federal income taxation and shall have no duty or obligation to make any determination or inquiry with respect to such status.

Section 1.6. Authorization. The Peralta RB represents and warrants that it is duly authorized to execute and implement this Agreement on behalf of Peralta, the Trust and the Plan, and such execution represents the legal, valid and binding obligation of Peralta and the Trust.

Section 1.7. Information. The Peralta RB shall promptly deliver or cause to be delivered such information, papers and documents reasonably requested by the Trustee in connection with its duties under this Agreement, including without limitation investment guidelines in a form acceptable to the Trustee (the “Investment Guidelines”). The Peralta RB agrees to promptly inform the Trustee if any information previously provided may be or may have become materially inaccurate. Notwithstanding any other provision of this Agreement to the contrary, and to the maximum extent permitted by applicable law, the Trustee shall not be liable for the consequences of any inaccuracies in such information, papers or documents. Further, the Peralta RB shall be solely responsible for the Investment Guidelines and any modifications thereto, and the Trustee shall have no authority to make any modifications thereto, but may make recommendations to the Peralta RB with respect thereto.

Section 1.8. Conflicts. The Peralta RB acknowledges and agrees that the Trustee shall not be disqualified or limited in any respect, except to the extent required by applicable law, because of the rules of undivided loyalty, the duty to avoid conflicts of interest and the duty not to undertake an adverse relationship from participating in, receiving or paying anyone additional

compensation, or for any fee sharing arrangement, or for acting under this Agreement, to the extent they cannot reasonably be expected to adversely affect the Trustee's performance as Trustee under this Agreement. In this regard, the Trustee is authorized, in the exercise of its sole and absolute discretion, to enter into transactions with, and/or retain the services of, any affiliate of the Trustee upon such terms and conditions (including compensation) as the Trustee deems advisable, and the Peralta RB waives any applicable disclosure requirements with respect thereto. Further, the Trustee is also authorized, in the exercise of its sole and absolute discretion, to invest in one or more mutual funds, common trust funds, hedge funds, private equity funds, exchange funds or any other investment funds, whether or not the Trustee, or any affiliate of the Trustee, renders services to such fund or other issue and receives compensation therefrom.

## ARTICLE II. PAYMENTS FROM TRUST FUND

Section 2.1. Directed Payments. The Trustee shall make payments from the Trust Fund to such persons (including the Peralta RB) in such form or manner and in such amounts as the Peralta RB may direct from time to time. Each payment direction from the Peralta RB to the Trustee shall be in writing or in such electronic form as previously agreed upon in writing by the Peralta RB and the Trustee and shall be deemed to include a certification made by the Peralta RB that any payment from the Trust Fund directed thereby is a direction that the Peralta RB is authorized to provide to the Trustee, that complies with the terms of the Plan and that is not contrary to any provision of law applicable to the Plan or the Trust Fund. The Trustee may conclusively rely on such certification and shall have no duty to make any inquiry or investigation with respect to the correctness of such certification.

If the Peralta RB has appointed an entity as its agent for purposes of making payments from the Trust Fund, the Peralta RB shall provide the Trustee written notice of such appointment. For purposes of this Agreement, such an appointment shall become effective on the effective date thereof or, if later, on the date on which the Trustee receives written notice thereof from the Peralta RB and shall remain in effect until the Trustee receives written notice from the Peralta RB of the termination of such appointment. Such an entity duly appointed by the Peralta RB with respect to which the Trustee has received written notice from the Peralta RB shall, in its capacity as agent for the Peralta RB, hereinafter be referred to as the "TPA." If the Trustee receives written notice from the Peralta RB of the appointment of the TPA, the Trustee shall make payments from the Trust Fund in accordance with directions received by the Trustee from the TPA. Each such direction from the TPA to the Trustee shall be in writing or in such other form as previously agreed upon in writing by the TPA and the Trustee. The Trustee may conclusively rely on any such direction received by the Trustee from the TPA and shall have no duty to make any inquiry or investigation with respect to such direction.

Section 2.2. Form of Payments and Disputed Payments. Payments from the Trust Fund may be made by check to the order of the payee and may be mailed to the payee at the address last furnished to the Trustee by the Peralta RB or, if no such address has been furnished to the Trustee, to the payee in care of the Peralta RB. The Trustee shall not be liable to the Peralta RB or any other party for any act or omission or for any loss, damage or expense incurred as a result of, or in connection with, any payment from the Trust Fund made by the Trustee in accordance with this Section 2.2 or the written direction of the Peralta RB or the TPA. If a

dispute arises as to the party entitled to receive any payment from the Trust Fund, the Trustee may withhold such payment until the dispute has been settled by the parties to the dispute or resolved by a court of competent jurisdiction.

Section 2.3. Returned Payments. In the event any payment from the Trust Fund made by the Trustee at the direction of the Peralta RB or the TPA is returned to the Trustee because the payee cannot be located at the address to which the payment has been mailed, the Trustee shall promptly notify the Peralta RB of such return. The amount of such payment shall remain in the Trust Fund unless and until a written direction is received by the Trustee from the Peralta RB or the TPA with respect to such payment. The Trustee or its agent shall maintain records of all payments from the Trust Fund that are returned. The Trustee shall not be obligated to search for or ascertain the whereabouts of any such payee.

Section 2.4. Withholding and Reporting Services. The Trustee or its agent shall perform all required tax withholding and information reporting services in connection with payments from the Trust Fund made at the direction of the Peralta RB or the TPA, provided the Peralta RB or the TPA timely furnishes to the Trustee or its agent all information and documents requested by the Trustee or its agent in connection with the performance of such services. In addition to, and not by way of limiting, the provisions of Section 5.5, Peralta hereby agrees to indemnify and hold the Trustee, individually and as Trustee, and its agent or their affiliates, directors, officers, shareholders, employees, contractors, agents, successor and assigns harmless from and against all penalties that may be assessed by the United States Internal Revenue Service with respect to withholding or information reporting in accordance with the foregoing provisions of this Section 2.4, unless such penalties result from the gross negligence of the Trustee or its agent.

### ARTICLE III. INVESTMENT OF TRUST FUND

Section 3.1. Separate Investment Funds. Except as provided in the following provisions of this Section 3.1, the Trustee shall maintain the Trust Fund as a single fund for investment purposes. At any time and from time to time, the Trustee may in its discretion establish within the Trust Fund one or more investment funds, each of which shall be invested and reinvested in accordance with the Investment Guidelines and the following provisions of this Article III. As hereinafter used in this Agreement, the term “Fund” shall refer to the Trust Fund or, if one or more separate investment funds has or have been established in accordance with the foregoing provisions of this Section 3.1, shall refer to the separate investment fund to which the provision using such term is being applied.

Section 3.2. Investment Managers. Subject to Section 3.3 below, the Peralta RB hereby designates and authorizes the Trustee to exercise the authority of the Peralta RB to engage investment managers (which may be affiliates of the Trustee) on behalf of the Trust with respect to one or more of the Funds and consistent with the Investment Guidelines. To the extent the Trustee does not engage an investment manager with respect to a Fund, the Trustee shall be deemed to be the investment manager for such Fund. Each such investment manager shall have full discretion to invest and reinvest the assets of the Fund in accordance with the investment guidelines provided by the Trustee. The Trustee and each other investment manager duly

engaged by the Trustee for a Fund shall, in its capacity as investment manager for such Fund, hereinafter be referred to as an “Investment Manager.”

Section 3.3. Sub-Accounts. The Trust Fund will be divided into Sub-Account A, Sub-Account B and Sub-Account C as provided in the “Allocation Among Sub-Accounts” form attached hereto as Exhibit B, which shall be deemed part of the Investment Guidelines. With regard to Sub-Account A, the Trustee may appoint other Investment Managers, but only if they are affiliates of the Trustee, and/or purchase products (e.g., mutual funds, exchange traded funds, etc., that are not otherwise designated for Sub-Account C) issued by and/or managed by persons or entities (as applicable) who are affiliates of the Trustee. With regard to Sub-Account B, the Trustee may appoint Investment Managers, but only Investment Managers who are not affiliates of the Trustee, and/or purchase products (e.g., mutual funds, exchange traded funds etc. that are not otherwise designated for Sub-Account C) issued by and/or managed by persons or entities (as applicable) who are not affiliates of the Trustee. With regard to Sub-Account C, the Trustee shall select and direct investments of the Trust Fund allocated to Sub-Account C to different commingled vehicles for “alternative” strategies (e.g., private equity and venture funds, hedge funds and limited partnerships) for investments managed by Investment Managers who may or may not be affiliates of the Trustee. It is expected that a significant portion of the assets in Sub-Account C will be in the form of private investment vehicles not subject to the Investment Company Act of 1940, as amended (the “ICA”), by reason of an exemption such as Section 3(c)(1) or Section 3(c)(7) of the ICA. The allocation of assets in the Trust Fund between Sub-Account A, Sub-Account B and Sub-Account C shall be stipulated in writing by the Peralta RB in an attached Allocation Among Sub-Accounts.

Section 3.4. Settlement of Securities Transactions. The Peralta RB and the Trustee hereby acknowledge that when the Trustee is instructed to delivery property against payment, delivery of the property and receipt of payment may not be simultaneous. In any such case, the risk of non-receipt of payment shall be the Trust’s and the Trustee shall have no liability if payment is not received. All credit to the Trust of the anticipated proceeds of sales and redemptions of property and of anticipated income from property shall be conditional upon receipt by the Trustee of final payment and may be reversed to the extent final payment is not received. The Trustee or one of its affiliates may, in its discretion, advance funds to the Trust to facilitate the settlement of any transaction. In the event of such an advance, the Trust shall immediately reimburse the Trustee or its affiliates, as the case may be, for the amount of such advance.

#### IV. POWERS OF TRUSTEE

Section 4.1. General Powers. The Trustee is authorized and empowered:

- (A) to hold monies uninvested temporarily, without liability for interest thereon, until such monies shall be invested, reinvested or disbursed;
- (B) to collect all interest, dividends and other income payable with respect to property held by the Trust and to surrender securities at maturity or when advised of earlier call for redemption, provided that the Trustee shall not be liable for failure to surrender any security for redemption prior to

- (C) to hold property in its vaults, at a domestic or foreign central depository or clearing corporation, in non-certificated form with the issuer, on Federal Book Entry at the Federal Reserve Bank of New York, with a custodian appointed in accordance with subsection (D) immediately below or, with the prior approval of the Peralta RB, at any other location;
- (D) to appoint another bank or other entity (which may be an affiliate of the Trustee) as custodian including for any securities or other assets and to arrange for the custody of foreign securities or other foreign assets and to pay the reasonable expenses and compensation of such bank or other entity from the Trust Fund;
- (E) to hold any property in its own name or in the name of a nominee (which may be an affiliate of the Trustee), including the nominee of any central depository, clearing corporation or custodian with which securities may be deposited (and the Peralta RB agrees to hold the Trustee harmless from any liability as a holder of record), and to hold any investment in bearer form, but the books and records of the Trustee shall at all times show that all such investments are part of the Trust Fund;
- (F) to form any corporation, association, partnership or joint venture under the laws of any jurisdiction, to participate in the forming of any such corporation association, partnership or joint venture, or to acquire an investment in or otherwise make use of any corporation, association partnership or joint venture, in any case for the purpose of facilitating the Trust's investment in, holding title to, managing or liquidating any property;
- (G) to employ suitable agents, investment managers (who may be affiliates of the Trustee), legal counsel (who may be legal counsel for the Peralta RB or the Trustee in its corporate capacity), auditors and accountants, without liability for any loss occasioned by any such party so employed, and to pay the reasonable expenses and compensation of each such party so employed from the Trust Fund;
- (H) to commence or defend suits or legal proceedings and to represent the Trust in all suits or legal proceedings in any court or before any other body or tribunal; provided, however, the Trustee shall have no obligation to take any legal action for the benefit of the Trust unless and until it is indemnified by Peralta for all expenses in connection therewith, including, without limitation, attorneys' fees and expenses;

- (I) to make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers granted to the Trustee in this Agreement;
- (J) to deliver to the relevant Investment Manager all notices, proxy solicitation materials and other instruments received by the Trustee relating to the voting of any stock or other security of the Fund having voting privileges, the exercise of any option or privilege with respect to any stock or other security of the Fund, including any right or privilege to subscribe for or otherwise to acquire stock or other security, a plan of refinance, merger, consolidation, reorganization or liquidation of any corporation or other enterprise in which the Fund may have an interest, the formation of any committee for the deposit stock or other security of the Fund to effectuate such a plan, the exchange of stock or other security of the Fund in connection with such a plan or a voting trust for the deposit of stock or other security of the Fund; and
- (K) to take any and all action not specifically described in the foregoing provisions of this Section 4.1 the Trustee may deem necessary or desirable for the protection of the Trust Fund.

Section 4.2. At Direction of Peralta RB. The Trustee is authorized and empowered, at the direction of the Peralta RB, to settle, compromise or submit to arbitration any claims, debts or damages due or owing to or from the Trust.

Section 4.3. At Direction of an Investment Manager. The Trustee is authorized and empowered, at the direction of an Investment Manager in accordance with the provisions of Article III, or in its discretion with respect to a Fund to the extent the Trustee is acting as Investment Manager with respect to such Fund:

- (A) to manage, invest and reinvest the money or other property comprising the Fund, without distinction between principal and income;
- (B) to deposit funds in one or more savings or similar accounts with any bank or savings and loan association (which may be an affiliate of the Trustee) that is insured by an instrumentality of the federal government;
- (C) to invest or reinvest the whole or any portion of the money or other property comprising the Fund in mutual funds, commingled trust funds, partnership interests (which may be mutual funds, commingled trust funds or partnership interests offered by any affiliate of the Trustee), common or preferred stocks, investment trust shares, bonds, notes or other evidences of indebtedness or real or personal property;
- (D) to exchange any investment or property, real or personal, for other investments or properties;

- (E) to sell, exchange, transfer, convey or otherwise dispose of any investment or property, real or personal, for cash or on credit, by private contract or public action;
- (F) to extend the time for payment of, or to modify, renew or release security from, any mortgage, note or other evidence of indebtedness, or to take advantage of or waive any default; to foreclose mortgages and bid on property under foreclosure or to take title to property by conveyance in lieu of foreclosure, either with or without the payment of additional consideration;
- (G) to vote in person or by proxy all stocks and other securities having voting privileges, to exercise or refrain from exercising any option or privilege with respect to stock and other securities, including any right or privilege to subscribe for or otherwise to acquire stock and other securities or to sell any such right or privilege; to assent to and join in any plan of refinance, merger, consolidation, reorganization or liquidation of any corporation or other enterprise in which the Trust may have an interest, to deposit stocks and other securities with any committee formed to effectuate the same, to pay any expense incidental thereto, to exchange stock and other securities for those issued pursuant to any such plan and to deposit any investment in a voting trust;
- (H) to abandon any property, real or personal, considered to be worthless or not of sufficient value to warrant its keeping or protecting, to abstain from the payment of taxes, water rents, assessments, repairs, maintenance and upkeep of such property, to permit any such property to be lost by tax sale or other proceedings and to convey any such property for a nominal consideration or without consideration;
- (I) to borrow money from any entity (which may be the Trustee or an affiliate of the Trustee) or any person in such amounts and upon such terms and conditions as shall be deemed advisable, to issue its promissory note as Trustee to evidence such debt and to secure the payment of such debt by pledging any property held by the Trust;
- (J) to manage and operate any real property, to make repairs, alterations and improvements thereto, to insure such property against loss by fire or other casualty; to lease or grant options for the sale of such property, which lease or option made be for a period of time that may extend beyond the life of this Trust, and to take any other action or enter into any other contract respecting such property consistent with the best interests of the Trust;



- (K) to invest all or any portion of the Fund in one or more group annuity contracts, deposit administration contracts or other such contract issued by an insurance company;
- (L) to write or purchase call or put options or to trade in financial options and futures and to take appropriate actions in connection therewith;
- (M) to lend securities to a broker-dealer registered under the Securities Exchange Act of 1934 or to a bank and invest the collateral posted by such borrower;
- (N) to purchase and sell foreign exchange and contracts for foreign exchange; and
- (O) generally, with respect to all cash, stocks and other securities and property, real or personal, to exercise all the same rights and powers as are or may be lawfully exercised by persons owning cash, stocks or other securities or such property in their own right.

#### ARTICLE V. COMPENSATION AND INDEMNIFICATION OF TRUSTEE PAYMENT OF TRUST EXPENSES AND TAXES

Section 5.1. Trustee Compensation. The Trustee shall be entitled to receive from the Trust Fund the fees set forth in the schedule attached hereto as Exhibit A. The fee schedule set forth in Exhibit A may be amended only upon the written consent of the Peralta RB and the Trustee.

Section 5.2. Trust Expenses. Except as otherwise provided in Exhibit A, all brokerage costs, transfer taxes and other expenses incurred in connection with the investment and reinvestment of the Trust Fund, all expenses incurred in connection with the acquisition or holding of any real or personal property, any interest therein or mortgage thereon, the compensation and expenses of the Investment Manager, all administrative expenses incurred by the Trustee in the performance of its duties under this Agreement, including fees for legal services rendered to the Trustee, the compensation and expenses of the Trustee as set forth in Exhibit A, all administrative expenses of the Plan and Trust, and all other proper charges and disbursements of the Trustee shall be paid by the Trust and, until paid, shall constitute a charge upon the Trust Fund. The Trustee may pay any fee or expense incurred by the Trustee in connection with the administration of the Trust from the Trust Fund without the approval or direction of the Peralta RB.

Section 5.3. Trust Taxes. If the Trustee receives notice from any governmental authority that purports to levy or assess any tax with respect to the Trust Fund, the Trustee shall provide written notice of such levy or assessment to the Peralta RB. Within ten business days after the Peralta RB's receipt of such notice, the Peralta RB shall direct the Trustee to pay the tax or to protest the levy or assessment of the tax in the manner reasonably directed by the Peralta RB. If the Peralta RB fails to provide such direction in a timely manner, the Peralta RB shall be deemed to have directed the Trustee to pay such tax from the Trust Fund. The Trustee agrees

that it will take such reasonable steps as the Peralta RB may so direct to protest such levy or assessment or, if the Peralta RB has directed that the tax so levied or assessed be paid, to seek a refund thereof. The Peralta RB acknowledges and agrees that the Trustee may charge additional compensation in connection with any such actions. While any administrative or judicial proceeding in connection with such protest is pending, the Trustee shall not pay any part of the tax so protested, but the Trustee shall pay the protested tax as soon as practicable after it has been finally determined in such proceeding to be due and owing or as soon as practicable after such protest has been withdrawn or discontinued with the Peralta RB's written consent. Notwithstanding the foregoing, the Trustee shall not pay any tax from the Trust Fund to extent that the Peralta RB has provided the Trustee written notice that such tax shall be paid by Peralta and Peralta pays such tax on or before the applicable due date.

Section 5.4. Trustee Liability. The Trustee shall not be liable to Peralta or the Peralta RB or any other party for any act or omission or for any loss, damage or expense incurred as a result of, or in connection with, the performance by the Trustee of its obligations under this Agreement, including, without limitation, any action by the Trustee in accordance with the directions of the Peralta RB or the Investment Manager or any failure to act by the Trustee in the absence of directions from the Peralta RB or the Investment Manager. Furthermore, the Trustee shall have no liability for any indirect, general, special or consequential damages and the Peralta RB shall at all times mitigate damages to the fullest extent possible. The Trustee shall not be liable to the Plan or the Trust for any act or omission of any fiduciary of the Plan or any other party. The Trustee and the Peralta RB hereby agree that nothing in this Agreement shall be deemed to impose upon the Trustee any direct obligation to any participant in, or beneficiary of, the Plan and the Trustee shall have no power, duty or authority to interpret the terms of the Plan.

Section 5.5. Trustee Indemnification. Peralta hereby agrees to indemnify and hold the Trustee, individually and as Trustee, its affiliates, and their directors, officers, shareholders, employees, contractors, agents, successor and assigns harmless from and against all losses, claims, actions, demands, suits, proceedings, damages, fines and expenses (including attorneys' fees and expenses) incurred in connection with any claim, suit, action or other proceeding that relates to, or arises from, the performance by the Trustee of its obligations under this Agreement, including, without limitation, any action by the Trustee in accordance with the directions of the Peralta RB, the Investment Manager or any other authorized party or any failure to act by the Trustee in the absence of directions from the Peralta RB, the Investment Manager or any other authorized party.

Section 5.6. Indemnification as Successor Trustee. If the Trust Company is at any time acting as a successor trustee for the Plan, Peralta hereby agrees to indemnify and hold the Trustee, individually and as Trustee, its affiliates, and their directors, officers, shareholders, employees, contractors, agents, successor and assigns harmless from and against all losses, claims, actions, demands, suits, proceedings, damages, fines and expenses (including attorneys' fees and expenses) incurred in connection with any claim, suit, action or other proceeding that relates to, or arises from, any act or omission of a predecessor trustee.

## ARTICLE VI. RECORDS AND VALUATION

Section 6.1. Records Maintenance. The Trustee shall maintain accounts of all receipts, disbursements and other transactions of the Trust Fund and such other records as the Peralta RB shall from time to time direct, as agreed to by the Trustee. The Trustee's accounts, books and records relating to the Trust Fund shall be open to inspection and audit at all reasonable times by the Peralta RB or its designee or any other person entitled to inspect and audit such accounts, books and records under applicable law. Unless otherwise agreed to by the Trustee, the Trustee shall not be required to maintain any separate accounts or records with respect to any participants in the Plan or any beneficiary thereof and any such accounts or records required to be maintained by the terms of the Plan shall be maintained by the Peralta RB or other party authorized by the terms of the Plan.

Section 6.2. Valuation of Trust Fund. The Trust Fund shall be valued as of each valuation date specified by the terms of the Plan and identified by the Peralta RB to the Trustee. The Trustee shall report to the Peralta RB the value of the Trust Fund within a reasonable period of time after each such valuation date. The Trustee shall provide, or shall cause the Investment Manager to provide, such valuations of the assets comprising the Fund as are necessary to enable the Trustee to satisfy its obligations under this Agreement.

Section 6.3. ASC 820 Reporting. The Trust Company shall, at the request of the Peralta RB, perform a value price level default classification under Accounting Standards Codification 820 ("ASC 820") for each Trust Fund asset, and shall provide this information to the Peralta RB and any accounting firm the Peralta RB designates in writing to the Trust Company. The Peralta RB agrees to review such information with the Trust's accounting firm. The Peralta RB acknowledges and agrees that the Trust Company is not a certified public accountant and therefore the Peralta RB, and not the Trust Company, is responsible for compliance with any ASC 820 reporting requirements.

Section 6.4. Annual Accounting. Within 90 days after the close of each fiscal year of the Trust (or such other date as may be agreed upon by the Peralta RB and the Trustee), and within 120 days after the effective date of the removal or resignation of the Trustee, the Trustee shall file with the Peralta RB a written account setting forth all receipts, disbursements and other transactions of the Trust Fund effected during the year (or, in the case of the removal or resignation of the Trustee, portion thereof) ending on such date (but not including any part of such year for which such an account has been previously filed). The Trustee shall not be obligated to provide additional reports to the Peralta RB. Upon the expiration of the 60-day period immediately following the date the Trustee files such written account with the Peralta RB, the Trustee shall be forever released and discharged from all liability and accountability to anyone with respect to its acts or failures to act described by such account, except with respect to any matters therein as to which the Peralta RB shall have filed written objections with the Trustee within such 60-day period. The Trustee and the Peralta RB shall cooperate in good faith to resolve any matter with respect to which the Peralta RB has, in a timely manner, filed a written objection with the Trustee.

Section 6.5. Right to Judicial Settlement. Nothing in this Agreement or in the Plan shall be construed as depriving the Trustee of the right to have a judicial settlement of any account rendered by it, and the Trustee may pay the reasonable expenses incurred in connection therewith from the Trust Fund. In any proceeding for such a judicial settlement, the only necessary party thereto in addition to the Trustee shall be the Peralta RB, and no participant in the Plan or other person having or claiming an interest in the Trust Fund shall be entitled to any notice or service of process, except as may be required by law. Any judgment, decision or award entered in any such proceeding or action shall be conclusive and binding upon all interested persons.

Section 6.6. Additional Reports. As mutually agreed upon between the Trustee and Peralta RB, from time to time Trustee shall provide reports with analysis regarding asset allocation, investment management services and investment performance. These reports may include data on services provided by an affiliate of the Trustee.

## ARTICLE VII. RESIGNATION, REMOVAL AND SUCCESSION OF TRUSTEE

Section 7.1. Resignation or Removal of Trustee. The Trustee may resign at any time by giving at least 30 days prior written notice to the Peralta RB or on such shorter period of notice as consented to by the Peralta RB. The Peralta RB may remove the Trustee at any time by giving at least 30 days prior written notice to the Trustee or on such shorter period of notice as consented to by the Trustee.

Section 7.2. Appointment of Successor. In the event of the resignation or removal of the Trustee, the Peralta RB shall appoint a successor trustee. For purposes of this Agreement, the appointment of a successor trustee shall not be effective unless and until the Trustee has received written evidence of the appointment of the successor trustee and of the acceptance by the successor trustee of such appointment. Until the final distribution of the Trust Fund, the Trustee shall continue to have and may exercise all of the powers and rights conferred upon it by the terms of this Agreement, including without limitation the provisions of Article V. The Trustee shall account for the administration of the Trust Fund up to the effective date of its removal or resignation in accordance with the provisions of Article VI. As soon as practicable following approval of such account in the manner provided in Section 6.4, the Trustee shall deliver the Trust Fund to the successor trustee but may reserve such reasonable amount as the Trustee may deem necessary to provide for its expenses, compensation and any taxes or other amounts chargeable or payable out of the Trust Fund. If such reserve is insufficient to pay such amounts, the Trustee shall be entitled to receive the amount of any deficiency from the Trust Fund after transfer to the successor trustee. The Trustee shall not be responsible for any act or omission of a successor trustee, and Section 5.2 and all indemnities herein, including, without limitation, the indemnities set forth in Sections 5.5 and 5.6, shall remain in full force and effect. The receipt of the Trust Fund by the successor trustee and the approval of the Trustee's final accounting by the Peralta RB in the manner provided in Section 6.4 shall constitute a full and complete discharge of the Trustee.

Section 7.3. Application for Successor. If the Trustee has not received written evidence of the appointment of a successor trustee and of the acceptance by the successor trustee

of its appointment as successor trustee on or before the thirtieth day after notice of resignation or removal of the Trustee has been received by the other party, the Trustee may apply to any court of competent jurisdiction for the appointment of a successor trustee.

Section 7.4. Legal Successor to Trust Company. Any company into which the Trust Company may be merged or with which it may be consolidated, or any company resulting from any merger or consolidation to which the Trust Company is a party, shall be the successor of the Trust Company hereunder without the execution or filing of any paper and without any further action on the part of the parties hereto, with like effect as of such successor had originally been appointed as Trustee herein.

## ARTICLE VIII. COMMUNICATIONS

Section 8.1. Communications to Peralta RB. Any written notice to the Peralta RB relating to this Agreement shall be addressed as set forth below, unless otherwise specified in writing by the Peralta RB to the Trustee, and shall be effective upon receipt by the addressee:

Peralta Community College District Retirement Board

Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

Any notice of resignation of the Trustee shall be sent to the Peralta RB by certified or registered mail, return receipt requested.

Section 8.2. Communications to Trustee. Any written notice or direction to the Trustee relating to this Agreement shall be addressed as set forth below, unless otherwise specified in writing by the Trustee to the Peralta RB, and shall be effective upon receipt by the addressee:

Neuberger Berman Trust Company National Association  
605 Third Avenue, 19<sup>th</sup> Floor  
New York, NY 10158

Attention: Diane E. Lederman, Managing Director and General Counsel  
(legal notices only)  
Edward L. Berman, Senior Vice President

Any notice of removal of the Trustee shall be sent to the Trustee by certified or registered mail, return receipt requested.

Section 8.3. Requirement of a Writing. Any action by the Peralta RB pursuant to this Agreement, including, without limitation, all directions to the Trustee, shall be in writing, signed on behalf of the Peralta RB or in such electronic form as agreed upon in writing by the Peralta

RB and the Trustee. On or before the effective date of this Agreement, the Peralta RB shall certify to the Trustee in writing the names of the individual or individuals authorized to act on behalf of the Peralta RB for all purposes relating to this Agreement and shall furnish to the Trustee a specimen of the signature of each such individual. The Trustee may rely on the authority of each such individual until the Trustee receives written notice from the Peralta RB of the termination of such individual's authority.

## ARTICLE IX. MISCELLANEOUS

Section 9.1. Conflict with Plan. The responsibilities, duties and rights of the Trustee are solely as set forth in this Agreement and no provision of the Plan or any other document shall be deemed to affect such responsibilities, duties and rights. If there is a conflict between any provision of the Plan and any provision of this Agreement with respect to any matter involving the Trustee, the provision of this Agreement shall be controlling.

Section 9.2. Compliance with Law. In the exercise of its powers and the performance of its duties and responsibilities under this Agreement, the Trustee shall act in good faith and in accordance with applicable law. The Trustee shall not be required to furnish any bond in any jurisdiction for the performance of its duties under this Agreement and, if a bond is required despite this provision, no surety shall be required on such bond.

Section 9.3. Information Requirements. Each of the Trustee and the Peralta RB shall furnish to the other party any documents, reports, return, statements or other information that the other party reasonably determines necessary to perform its duties or responsibilities, or to enforce its rights, under this Agreement or applicable law.

Section 9.4. Dealing with Trustee. Any person dealing with the Trustee shall be under no obligation to inquire concerning the validity of anything that the Trustee purports to do, nor need any person see to the proper application of any money paid or any property transferred upon the order of the Trustee or to inquire into the Trustee's authority as to any transaction.

Section 9.5. Right to Amend. This Agreement may be amended at any time and from time to time by a written instrument executed by the Peralta RB and delivered to the Trustee; provided, however, that any amendment affecting the powers, duties, obligations, responsibilities, rights or fees of the Trustee must be approved in advance in writing by the Trustee; and provided further, however, that no amendment may violate the terms of the Plan or applicable law (which determination shall be the sole responsibility of the Peralta RB and not the Trustee). Any amendment to this Agreement shall apply to the Trust Fund as constituted at the time the amendment becomes effective as well as to that portion of the Trust Fund that is acquired after the amendment becomes effective.

Section 9.6. Assignment. Except as provided in this Section 9.6, neither party may assign or delegate any of its rights and obligations under this Agreement without the prior written consent of the other. The Peralta RB consents to any assignment by the Trust Company of any and all of its rights, duties and obligations hereunder if (a) such assignment is to an affiliate or to a successor to the business or substantially all of the assets or accounts of the Trust

Company, (b) the Trust Company gives written notice of such assignment to the Peralta RB within 14 days of the assignment's effective date, and (c) the Peralta RB continues to receive the services performed by the Trust Company and such assignee without objection for a period of 30 days after such notice. The foregoing provisions will apply and inure to the benefit of the Trust Company and all such successive assignees.

Section 9.7. Termination of Trust. In the event of the termination of the Trust, the Trustee shall continue to administer the Trust Fund in accordance with the terms of this Agreement until all of the purposes for which the Trust has been established have been accomplished or the Trustee has disposed of the Trust Fund after the payment of or other provision for all expenses incurred in the administration of the Trust (including, without limitation, any compensation to which the Trustee may be entitled). Until the final distribution of the Trust Fund, the Trustee shall continue to have and may exercise all of the powers and rights conferred upon it by the terms of this Agreement, including without limitation the provisions of Article V. Upon any such termination of the Trust, or upon the resignation or removal of the Trustee in accordance with the provisions of Article VII, Section 5.2 and all indemnities herein, including, without limitation, the indemnities set forth in Sections 5.5 and 5.6, shall remain in full force and effect.

Section 9.8. Legal Action. The Trustee shall not be required to engage in administrative proceedings or litigation without being indemnified to its satisfaction against any expense thereof. In any case in which the Trustee engages in administrative proceedings or litigation in discharge of its fiduciary obligations, its expense thereof shall constitute a charge against the Trust Fund unless paid by or on behalf of the Peralta RB.

Section 9.9. Headings. Headings to articles and sections of this Agreement are for convenience of reference only and shall not be considered in the construction of the provisions of this Agreement.

Section 9.10. Severability. If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remaining provisions of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 9.11. Situs; Governing State Law. As long as the Trust Company is the trustee of the Trust, the situs of the Trust shall be the State of New York and the Trust shall be construed, regulated and administered in accordance with the provisions of the laws of the State of New York without reference to principles of conflicts of law.

Section 9.12. Jurisdiction and Certain Waivers. All proceedings under this Agreement shall be brought in courts located in New York, New York. The Peralta RB hereby submits to the jurisdiction of such courts for such purposes and hereby waives the right to a trial by jury in any action or proceeding related to this Agreement.

Section 9.13. Survival. The indemnities provided in this Agreement shall survive the termination of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first written above.

PERALTA COMMUNITY COLLEGE  
DISTRICT RETIREMENT BOARD

By: \_\_\_\_\_  
Name:  
Title:

NEUBERGER BERMAN TRUST COMPANY  
NATIONAL ASSOCIATION

By: \_\_\_\_\_  
Name:  
Title:



EXHIBIT A  
Fee Schedule

EXHIBIT B

Allocation Among Sub-Accounts

Attachment to Discretionary OPEB Trust Agreement between  
NBTCNA and Peralta dated \_\_\_\_\_, 2012

Until such time as this form of Allocation Among Sub-Accounts is replaced by the Peralta RB by delivery to and receipt by the Trustee of an executed substitute form, the assets in the Account shall be allocated between Sub-Accounts as follows:

Sub-Account A: \_\_\_\_\_

Sub-Account B: \_\_\_\_\_

Sub-Account C: \_\_\_\_\_

The Trustee shall rebalance amounts in the Trust Fund in accordance with the directions above once every \_\_\_\_\_ months, on the first business day of the month, with the first such rebalancing to occur on the first business day of \_\_\_\_\_, 201\_ (each rebalancing a “Scheduled Rebalancing” and each such date, a “Scheduled Rebalancing Date”). After giving effect to any such Scheduled Rebalancing, investments in any of the Sub-Accounts identified above subject to such Scheduled Rebalancing shall be deployed in a manner that is consistent with the applicable investment guidelines to which such Sub-Account is subject, after taking into account contractual or other limitations on subscriptions or additions of monies in commingled investment funds with contractual restrictions on redemptions.

To the extent that on any Scheduled Rebalancing Date, one or more Sub-Accounts do not at such time maintain sufficient liquidity to effect any such Scheduled Rebalancing by reason of investments in commingled investment funds with contractual or other restrictions on redemptions, then within five business days of such Scheduled Rebalancing Date, the Trustee shall enter a redemption request (to the extent not then previously entered) in the amount of the deficiency for the next available redemption date, and any such amounts, once received, shall be applied upon receipt, *pro rata*, across any Sub-Account which were called for by the Scheduled Rebalancing on the Scheduled Rebalancing Date preceding such distribution date and shall be deployed in such Sub-Accounts taking into account contractual or other limitations on subscriptions or additions of monies in commingled investment funds.

To the extent any new allocation is directed on behalf of the Trust Fund, such new direction shall become effective as of the first business day of the month following the end of a calendar quarter after receipt by the Trustee of an executed substitute "Allocation Among Sub-Accounts" form (or such earlier date consented to by the Trustee) and shall be deployed taking into account contractual or other limitations on subscriptions or additions of monies in commingled investment funds with contractual restrictions on redemptions.

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By:

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Date