

AMENDMENT NO. 2 TO  
CUSTODIAN AND DISCRETIONARY OPEB TRUST AGREEMENT  
BETWEEN NEUBERGER BERMAN TRUST COMPANY NATIONAL ASSOCIATION  
AND THE PERALTA COMMUNITY COLLEGE DISTRICT RETIREMENT BOARD

Effective March 28, 2012, the Custodian and Discretionary OPEB Trust Agreement (the "Agreement") was entered into between Neuberger Berman Trust Company National Association (the "Trust Company") and Peralta Community College District ("Peralta") Retirement Board (the "Peralta RB").

WHEREAS, Peralta is authorized under Section 4.06 of the Indenture of Trust, dated as of December 1, 2005, between Peralta and Deutsche Bank National Trust Company ("Deutsche"), dealing with the Peralta Community College District Taxable 2005 Limited Obligation OPEB Bonds (the "Indenture"), to request the trustee under the Indenture to transfer funds held by the trustee to a third party custodian to be invested as determined by Peralta (or its appropriated delegated representative) in accordance with California Government Code section 53622; and

WHEREAS, Deutsche indirectly transferred funds at the direction of Peralta which ultimately were to be held by the Trust Company in accordance with the Agreement; and

WHEREAS, U.S. Bank National Association pursuant to the Agreement of Resignation, Appointment and Acceptance dated June 21, 2013, became the successor trustee to Deutsche under the Indenture (in such capacity, "U.S. Bank"); and

WHEREAS, the Peralta RB is acting on behalf of Peralta under a delegation made under California Government Code section 53621 and wishes to continue to engage the Trust Company to maintain custody of certain of the funds transferred from Peralta's Retiree Health Benefit Program Fund under the Indenture as is permissible for the Peralta RB to do under Section 4.6 of the Indenture; and

WHEREAS, the Peralta RB has determined that it is necessary to clarify certain provisions in the Agreement;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained in the Agreement, the Peralta RB and the Trust Company hereby agree to the following amendments to the Agreement, effective October 13, 2016.

1. Article I, Section 1.1 is amended by adding the following sentence at the end of the Section, to read in its entirety as follows:

"The Trust, which shall also be known as 'Trust 1' as of the effective date of this Amendment, applies only to participants in the Plan who became employed by the District prior to July 1, 2004. The Peralta RB represents that, as of the effective date of this Amendment, no assets of the Trust relate to participants in the Plan who became employed by the District on or after July 1, 2004. The Peralta RB will provide advance written notice to the Trustee of any change with respect to the group of Plan participants to which this Trust applies."

2. Article I, Section 1.8 is amended to read in its entirety as follows:

"Section 1.8. Investment with Affiliates. The Trustee is authorized, to the extent consistent with Section 3.3 and Exhibit B of this Agreement, and as directed by the Peralta RB, 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. Further, the Trustee is also authorized, as directed by the Peralta RB, to invest in one or more affiliated mutual funds, affiliated common trust funds, affiliated hedge funds, affiliated private equity funds, affiliated exchange funds or any other affiliated 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. The Trustee shall disclose to the Peralta RB in accordance with Section 4.4 of this Agreement any receipt of indirect or incremental direct compensation (aggregated across the Trust Company and its affiliates) related to: 1) a transaction with or retention of an affiliate of the Trustee with respect to the investment, management or disposition of Trust assets, and 2) an election by the Peralta RB to invest in any fund to which the Trustee or an affiliate of the Trustee renders services."

3. Article I is amended to add a new Section 1.9 at the end thereof as follows:

“Section 1.9 Fiduciary Status. The Trustee acknowledges and agrees that it is a fiduciary of the Plan, and as such, with respect to the investment and other discretionary Trust asset management services provided under this Agreement, the Trustee is subject to California Government Code section 53622 with respect to those funds held in trust hereunder, except to the extent under Section 1.4 of this Agreement the Trustee receives a direction from Peralta to make a transfer of designated amounts from the Trust Fund following a determination by Peralta that any or all of the amounts held in the Trust Fund are and will not be required for payment of current or future retiree health benefit costs, and that such amount is to be applied to redeem or defease outstanding bonds issued under the Indenture in whole or in part; or receives a direction from Peralta or U.S. Bank (or any successor trustee under the Indenture) to make a transfer of designated amounts from the Trust Fund following a determination by U.S. Bank (or any successor trustee under the Indenture) that an Event of Default as defined under Article 8 of the Indenture has occurred. In accordance with California Government Code section 53622, the Trustee agrees that funds held in the Trust, subject to the provisions of Section 1.4 described above, are subject to the following restrictions: (A) the assets of the Trust Fund and any earnings thereon shall only be held for the purpose of providing benefits to participants in the Plan and defraying reasonable expenses of administering the Plan, and (B) in performing any duty allocated to the Trustee under this Agreement with respect to investment of the assets of the Trust Fund, the Trustee shall discharge its duties (i) solely in the interest of, and for the exclusive purposes of, providing benefits to participants in the Plan, minimizing employer contributions thereto, and defraying reasonable expenses of administering the Plan; (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 these matters would use in the conduct of an enterprise of a like character and with like aims, and (iii) shall diversify the investments of the funds so as to minimize the risk of loss and maximize the rate of return, unless under the circumstances it is clearly prudent not to do so.”

4. Article II, Section 2.2 is amended to read in its entirety as follows:

“Section 2.2 Form of Payment and Disputed Payments. Payments from the Trust Fund may be made by check to the order of the payee (or such other form as the parties may mutually agree from time to time) 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 may rely on a written direction by the Peralta RB, or its designee, that is made in accordance with Article VIII, Section 8.3 of this Agreement and which directs the Trustee to make a payment from the Trust Fund. The Trustee shall incur no liability on account of any payment made in accordance with this Section 2.2 and a written direction of the Peralta RB, or its designee, that is made in accordance with Article VIII, Section 8.3 of this Agreement, except in the case of the gross negligence or willful misconduct of the Trustee, or its affiliate, director, officer, shareholder, employee, contractor, agent, successor or assign. 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.”

5. Article II, Section 2.4 is amended to read in its entirety as follows:

“Section 2.4 Tax 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. Pursuant to Section 1.5 of this Agreement, the Trustee shall perform such services on the basis that the Trust is exempt from federal, state and local income taxes, and shall act accordingly. The Peralta RB hereby agrees to indemnify and hold the Trustee, individually and as Trustee, and its affiliates, directors, officers, shareholders, employees, contractors, agents, successor and assigns harmless from and against all fines or penalties that may be assessed by the United States Internal Revenue Service or other taxing authority with respect to tax withholding and/or information reporting performed by the Trustee in accordance with this Section 2.4, unless such fines or penalties result from the gross negligence or willful misconduct of the Trustee or its affiliate, director, officer, shareholder, employee, contractor, agent, successor or assign.”

6. Article III, Section 3.2 is amended to read in its entirety as follows:

“Section 3.2 Investment Managers. Subject to Sections 1.8 and 1.9 above, and Section 3.3 below, the Peralta RB hereby designates and authorizes the Trustee to engage investment

managers (which may be affiliates of the Trustee, to the extent consistent with Section 1.8 of this Agreement) on behalf of the Trust with respect to one or more of the Funds, in accordance with the Investment Guidelines and the terms of this Agreement. Subject to Section 1.8, 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. 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." Except as directed by the Peralta RB, each Investment Manager shall have full discretion to invest and reinvest the assets of the Fund in accordance with the Investment Guidelines."

7. Article III, Section 3.3 is amended to read in its entirety as follows:

"Section 3.3. Sub-Accounts.

(A) The Trust Fund will be divided into Sub-Account A and Sub-Account B as provided in the "Allocation Among Sub-Accounts" form attached hereto as Exhibit B, which replaces the Exhibit B attached to the Agreement as of the effective date of this Amendment, and which shall be deemed part of the Investment Guidelines.

(B) With regard to Sub-Account A, in accordance with Section 1.8 of this Agreement, the Trustee may be the Investment Manager, or may appoint Investment Managers, that are affiliates of the Trustee (including but not limited to Neuberger Berman LLC (together with its successors, "NB LLC")), a Delaware limited liability company, an investment adviser registered under the Investment Advisers Act of 1940, as amended (the "Advisers Act"), and a registered broker-dealer) and/or purchase products (e.g., mutual funds, exchange traded funds, etc.), issued by and/or managed by persons or entities (as applicable) that are affiliates of the Trustee.

(C) With regard to Sub-Account B, in accordance with Section 1.9 of this Agreement, the Trustee shall appoint Investment Managers that 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 A) issued by and/or managed by persons or entities (as applicable) that are not affiliates of the Trustee.

(D) Any future change in the allocation of assets in the Trust Fund between Sub-Account A and Sub-Account B shall be stipulated in writing by the Peralta RB in a new "Allocation Among Sub-Accounts" form."

8. Article III, Section 3.4 is amended to read in its entirety as follows:

"Section 3.4 Settlement of Securities Transactions. The Peralta RB and the Trustee hereby acknowledge that when the Trustee is instructed by the Peralta RB, or its designee, to deliver 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, except in the case of the gross negligence or willful misconduct of the Trustee, its affiliate, director, officer, shareholder, employee, contractor, agent, successor or assign. 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 and to the extent consistent with Sections 1.8 or 1.9 of this Agreement, 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."

9. Article IV, Section 4.1(B) is corrected to read in its entirety as follows (this does not represent a change to the Agreement; however, the underlined portion of this provision was inadvertently omitted in the executed Agreement):

"(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 maturity or take other action if notice of such redemption or other action has not been provided to the Trustee by the issuer, the Peralta RB, the Investment Manager or one of the nationally recognized bond or corporate action services;"

10. Article IV, Section 4.1(E) is amended to read in its entirety as follows:

“(E) to hold any property in its own name or in the name of a nominee (which may be an affiliate of the Trustee, to the extent consistent with Section 1.8 of this Agreement), 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, except in the case of the gross negligence or willful misconduct of the Trustee, its affiliate, director, officer, shareholder, employee, contractor, agent, successor or assign) and to hold any investment in bearer form, provided that the books and records of the Trustee shall at all times show that all such investments are beneficially owned by the Trust Fund;”

11. Article IV, Section 4.1(G) is amended to read in its entirety as follows:

“(G) to employ suitable agents, legal counsel (who may be legal counsel for the Peralta RB or the Trustee in its corporate capacity, to the extent consistent with Section 1.9 of this Agreement), auditors and accountants, as necessary and appropriate to assist the Trustee in performing services under this Agreement, which, other than with respect to investment and other discretionary Trust asset management services (which are subject to Sections 5.4 and 5.5 below) shall be, without liability for any loss occasioned by any such party so employed (except in the case of the gross negligence or willful misconduct of the Trustee, its affiliate, director, officer, shareholder, employee, contractor, agent, successor or assign) and to pay the reasonable expenses and compensation of each such party so employed from the Trust Fund;”

12. Article IV, Section 4.3(B) is amended to read in its entirety as follows:

“(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, to the extent consistent with Section 1.8 of this Agreement) that is insured by an instrumentality of the United States federal government;”

13. Article IV, Section 4.3(C) is amended to read in its entirety as follows:

“(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, to the extent consistent with Section 1.8 of this Agreement), common or preferred stocks, investment trust shares, bonds, notes or other evidences of indebtedness or real or personal property;”

14. Article IV, Section 4.3(I) is amended to read in its entirety as follows:

“(I) to borrow money from any entity (which may be the Trustee or an affiliate of the Trustee to the extent consistent with Section 1.8 or Section 1.9 of this Agreement), 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;”

15. Article IV is amended by adding the following new Section 4.4 to read in its entirety as follows:

“Section 4.4 Duties of Trustee. The Trustee shall:

“(A) Provide monthly, quarterly, and annual reports on the investment performance of the total Trust Fund, by Fund, asset class (i.e., equity and fixed income), and Investment Manager, including analysis of the current market environment and the asset allocation of the current investment program in a format mutually agreed to by the parties;

“(B) Disclose, in a manner consistent with the requirements of Section 408(b)(2) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), all direct and indirect fees, commissions, discounts, and other compensation, including reimbursement for expenses, that may be paid to the Trustee or its affiliates in connection with the services provided to the Trust Fund and/or the Peralta RB under this Agreement, and update such disclosures promptly after a material modification of such payments or additional payments are made;

(C) Maintain: (1) an appropriate level of professional liability insurance coverage for errors and omissions in the performance of any service under this Agreement, with a minimum coverage limitation of ten million dollars (\$10,000,000.00), and (2) an appropriate level of fiduciary liability insurance coverage applicable to the performance of duties allocated to the Trustee under this Agreement with respect to investment of the assets of the Trust Fund, with a minimum coverage limitation of ten million dollars (\$10,000,000.00), and provide evidence of such to the Peralta RB upon request."

16. Article V, Section 5.4 is amended to read in its entirety as follows:

"Section 5.4 Trustee Liability for Non-Discretionary Services. 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, other than investment and other discretionary Trust asset management services to the extent in breach of Section 1.9 of this Agreement, including any action taken in accordance with a direction from the Peralta RB or its designee, or an Investment Manager, that is made in accordance with Article VIII, Section 8.3 of this Agreement, or any failure to act by the Trustee in the absence of directions from the Peralta RB or an Investment Manager, except in the case of the breach of Section 1.9 of this Agreement, or the gross negligence or willful misconduct of the Trustee, its affiliate, director, officer, shareholder, employee, contractor, agent, successor or assign. Furthermore, with respect to the performance of services under this Agreement, the Trustee shall have no liability to the Peralta RB or the Plan for any indirect, general, special or consequential damages incurred by the Peralta RB or the Plan. With respect to the performance of services under this Agreement other than investment and other discretionary Trust asset management services, the Trustee shall not be liable to the Plan or the Trust for any act or omission of any other party or fiduciary of the Plan that is not the Trustee or the Trustee's affiliate, director, officer, shareholder, employee, contractor, agent, successor or assign. The Trustee and the Peralta RB hereby agree that the Trustee shall have no power, duty or authority to interpret the terms of the Plan."

17. Article V, Section 5.5 is amended to read in its entirety as follows:

"Section 5.5. Indemnification.

(A) 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 (to the extent not in breach Section 1.9 of the Agreement), including without limitation, any action by the Trustee taken 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, except in the case of breach of Section 1.9 of this Agreement, or the gross negligence or willful misconduct of the Trustee, its affiliate, director, officer, shareholder, employee, contractor, agent, successor or assign.

(B) To the fullest extent permitted under applicable law and notwithstanding any other provision of this Agreement, the Trustee shall indemnify and hold harmless the Peralta RB and the Trust Fund, including their designees, directors, officers, employees, contractors, agents, successors and assigns, for, from and against any losses, damages, costs and expenses (including but not limited to reasonable attorneys' fees, judgments, fines, and amounts paid in settlement, to the extent such settlement has been approved by the Trust Company) incurred by the Peralta RB or the Trust Fund that relate to or arise from the Trustee's performance of investment and other Trust asset management services provided under this Agreement, in each case to the extent resulting from the Trustee's breach of Section 1.9 of this Agreement. Notwithstanding the foregoing, no indemnified party hereunder shall be entitled to indemnification to the extent that any such loss was directly caused by such party's own gross negligence or willful misconduct."

18. Article VI, Section 6.4 is amended to read in its entirety as follows:

"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 (in substantially the form provided as of the date

hereof, or such other form mutually agreed by the parties) 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). Upon the expiration of the 150-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 A) any matters therein as to which the Peralta RB shall have filed written objections with the Trustee within such 150-day period, or B) any matter therein that is attributable to fraud or a criminal violation by the Trustee, its affiliate, director, officer, shareholder, employee, contractor, agent, successor or assign. 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.”

19. Article VI, Section 6.6 is deleted.

20. Article VII, Section 7.2 is amended to read in its entirety as follows:

“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 all of the duties and obligations allocated to it under this Agreement, 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 accounting 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 transfer of the Trust Fund to the successor trustee shall include, as reasonably requested by such successor trustee and agreed to by the Trustee, agreement to which shall not be unreasonably withheld by the Trustee, copies of records maintained by the Trustee with respect to assets of the Trust Fund so transferred. The Trustee shall not be responsible for any act or omission of a successor trustee. The receipt of the Trust Fund and Trust records 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; however, 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 with respect to the Trustee's performance of services under this Agreement."

21. Article VII, Section 7.4 is deleted.

22. Article IX, Section 9.1 is amended to read in its entirety as follows:

"Section 9.1. Interpretation of Plan. The Trustee shall not be deemed a party to the Plan, and the Peralta RB shall be solely responsible for the interpretation of any Plan term. The Retirement Board represents that the terms of this Agreement are consistent with the terms of the Plan, and agrees that the Trustee shall have no responsibility for interpreting the terms of the Plan."

23. Article IX, Section 9.2 is amended to read in its entirety as follows:

"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 accordance with Section 1.9 of this Agreement, 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."

24. Article IX, Section 9.6 is amended to read in its entirety as follows:

"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, to a successor to the business or substantially all of the assets or accounts of the Trust Company, or to 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; (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 60 days after such notice. The foregoing provisions will apply and inure to the benefit of the Trust Company and all such successive assignees.”

25. Article IX, Section 9.7 is amended to read in its entirety as follows:

"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 through the date of such final distribution of the Trust Fund). 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 V, 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. All assets remaining in the Trust Fund upon termination of the Trust shall, as directed by the Peralta RB, be transferred to, or the Trust shall be merged with, such other trust or trusts maintained by the District for the purpose of providing welfare benefits to certain eligible employees of the District."

26. Article IX, Section 9.8 is amended to read in its entirety as follows:

"Section 9.8 Legal Action. The Trustee shall not be required to engage in an administrative proceeding or litigation on behalf of the Peralta RB or the Trust Fund except as directed by the Peralta RB. In any case in which the Trustee engages in an administrative proceeding or

litigation on behalf of and for the benefit of the Peralta RB or the Trust Fund, including for example filing proofs of claim forms and other documentation in connection with class action settlements, its expense thereof shall constitute a charge against the Trust Fund unless paid by or on behalf of the Peralta RB. The Trustee shall not be entitled to charge the Trust Fund for any expense incurred by the Trustee with respect to a claim that is subject to indemnification under Section 5.5 of this Agreement.”

27. Article IX, Section 9.11 is amended to read in its entirety as follows:

“Section 9.11. Situs; Governing State Law. The Trust shall be governed by, and interpreted in a manner consistent with, the laws of the State of California and, to the extent applicable, the Internal Revenue Code.”

28. Article IX, Section 9.12 is amended to read in its entirety as follows:

“Section 9.12. Jurisdiction and Certain Waivers. All proceedings under this Agreement shall be brought in courts located in Alameda County, California. The Peralta RB and the Trustee hereby submit to the jurisdiction of such courts for such purposes and hereby waive the right to a trial by jury in any action or proceeding related to this Agreement.”

29. Article IX, is amended to add new Sections 9.14 and 9.15 at the end thereof to read in their entirety as follows:

“Section 9.14. Conflicts of Interest.

(A) The Trustee represents that it is familiar with California Government Code Sections 1090 et seq. and 87100 et seq. The Trustee and the Peralta RB each represent to the other that it does not know of any facts that constitute a violation of said sections or Peralta’s conflict of interest code, Board Policy 2710. The Trustee represents that it is not presently aware of any facts which reasonably suggest a financial or personal interest or the appearance of such in the Agreement, or in the performance thereof, or in any portion of the profits thereunder, by any member of the Peralta RB, or other officer, agent, or employee of the Peralta RB, or any department thereof. If the Trustee subsequently becomes aware of any such facts described

hereunder, the Trustee shall promptly provide notice to the Peralta RB of same, along with a proposal for remedying the violation. The Peralta RB, at its sole discretion, may determine whether the proposal or any other proposed resolution is satisfactory.

(B) The Trustee represents that it does not presently have, and shall not have during the period of the Agreement, any interest that would conflict in any material manner or degree with the performance of services required by the Agreement. The Trustee further represents that it will not knowingly employ, subcontract to, or otherwise involve any person or entity having such conflicts of interest in the performance of the Agreement. If the Trustee subsequently becomes aware of any such conflicts of interest, the Trustee shall promptly provide notice to the Peralta RB of same, along with a proposal for remedying the violation. The Peralta RB, at its sole discretion, may determine whether the proposal or any other proposed resolution is satisfactory.

Section 9.15 Fraud or Misappropriation. The Trustee certifies that none of its officers has been convicted of fraud or misappropriation of funds.”

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## EXHIBIT B

EFFECTIVE OCTOBER 13, 2016

### Allocation Among Sub-Accounts

Attachment to Amendment No. 2 to  
Custodian and Discretionary OPEB Trust Agreement Between  
Neuberger Berman Trust Company National Association and  
The Peralta Community College District Retirement Board

This Exhibit B replaces the Exhibit B attached to the Agreement. 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: 40% Proprietary Investments

Sub-Account B: 60% Non-Proprietary Investments

Subject to Section 1.8, the Trustee shall rebalance the amounts in the Trust Fund in accordance with the directions above once every 12 months, on the first business day of the month, with the first such rebalancing to occur on the first business day of December, 2017 (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, and subject to Section 1.8.

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, subject to Section 1.8, and taking into account contractual or other limitations on subscriptions or additions of monies in commingled investment funds.

EXECUTION

IN WITNESS WHEREOF, the Peralta RB and the Trust Company have executed this Amendment No. 2 to the Agreement to evidence (a) their acceptance of the changes to the Agreement effected by this Amendment No. 2, including the attached Exhibit B, and (b) their agreement to be bound by the terms of the amended Agreement. This Amendment No. 2 may be executed in two or more counterparts, each of which shall be deemed originals, and all of which taken together shall constitute one instrument.

PERALTA COMMUNITY COLLEGE  
DISTRICT RETIREMENT BOARD

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

NEUBERGER BERMAN TRUST COMPANY  
NATIONAL ASSOCIATION

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_