

**GUILFORD COUNTY
LAW ENFORCEMENT OFFICERS' SPECIAL SEPARATION
ALLOWANCE (LEOSSA) TRUST AGREEMENT**

Established as of _____ (date)

**GUILFORD COUNTY
LAW ENFORCEMENT OFFICERS' SPECIAL SEPARATION
ALLOWANCE (LEOSSA) TRUST AGREEMENT**

This **Trust Agreement** is entered into as of the ____ day of _____, 20____ (hereinafter "**Effective Date**"), by and between The County of Guilford, North Carolina (hereinafter the "**Employer**") and the Guilford County Law Enforcement Officers' Special Separation Allowance (LEOSSA) Trust Board of Trustees (hereinafter the "**Board**");

RECITALS:

WHEREAS, Guilford County has established and maintains certain employee and retirement benefit plans that provide post-employment benefits, including but not limited to retirement benefits to the County's qualified sworn law enforcement officers as required by Article 12D of NC General Statute Chapter 143 in the form of a Separation Allowance; and

WHEREAS, the Governmental Accounting Standards Board (GASB) has issued Statements 67 and 68 (hereinafter "GASB 67" and "GASB 68") and Statement 34 (hereinafter "GASB 34"), which establish standards for accounting and financial reporting for state and local governmental employers that offer defined benefit pension plans; and

WHEREAS, the Employer and Trustee desire to establish an irrevocable trust pursuant to NC General Statute Section 159-30.2 to be known as the Guilford County LEOSSA Trust (the "Trust"), which will be an entity separate from the Employer for the exclusive purpose of funding its obligations to provide separation allowance benefits to former qualified sworn law enforcement officers, with the intent that (i) the Trust qualify as an irrevocable tax-exempt trust performing an essential governmental function within the meaning of Section 115 of the Code and the Regulations issued thereunder and as a tax-exempt trust under the provisions of the applicable laws of the State of North Carolina, (ii) transfers to the Trust will not be taxable to LEOSSA Participants, and (iii) all assets of the Trust are and will be irrevocably dedicated to, and shall be used for the exclusive purpose of, providing separation allowance benefits and for paying expenses of administering the Trust, and will not be available to any creditors of the Employer; and

WHEREAS, this Trust, either in whole or in part, shall not be used for, nor shall any of the income or other assets held under the terms of this Agreement be used for, purposes other than the payment of separation allowance benefits to qualified participants or the expenses incident thereto or expenses of the Trust; and

WHEREAS, Employer has appointed the Trustees as trustee of the Trust, and the Trustees have accepted such appointment pursuant to the terms and conditions set forth in this Trust Agreement; and

NOW THEREFORE, for good and valuable consideration, the parties hereto agree as follows:

**ARTICLE I
DEFINITIONS**

- 1.1** “**Assets**” shall mean all contributions and transfers of assets received into the Trust on behalf of the Employer, together with the income and earnings from such contributions and transfers and any increments accruing to them, net of any investment losses, benefits, expenses or other costs.
- 1.2** “**Code**” shall mean the Internal Revenue Code of 1986, as amended from time to time.
- 1.3** “**Custodian**” shall mean the party holding LEOSSA Trust monies in a safekeeping arrangement.
- 1.4** “**Employer’s Agent**” shall mean an individual or entity appointed by the Employer to act in such matters as are specified in the appointment.
- 1.5** “**Effective Date**” shall mean the date as of which the Trust is established, as set forth above.
- 1.6** “**Employer**” shall mean the County of Guilford, North Carolina.
- 1.7** “**Fiduciary**” shall mean a party accepting responsibility for LEOSSA Trust monies and shall include, but not be limited to, Trustees and the Plan Administrator.
- 1.8** “**GASB**” shall mean the Governmental Accounting Standards Board.
- 1.9** “**GASB 67**” and “**GASB 68**” shall mean Statement Numbers 67 and 68 issued by GASB to improve financial reporting by state and local governmental pension plans for the activities of pension plans that are administered through trusts.
- “**GASB 34**” shall mean Statement Number 34 issued by GASB requiring fiduciary funds to report assets held in a trustee or agency capacity for others and that cannot be used to support the governments’ own programs.
- 1.10** “**LEOSSA Trust Investment Policy**” shall mean the written investment policy for the Trust which shall be adopted by the Employer and delivered to the Board.
- 1.11** “**LEOSSA**” shall mean “law enforcement officers’ special separation allowance” benefits provided to qualified law enforcement officers.
- 1.12** “**Pension Obligation**” shall mean an Employer’s obligation to provide separation benefits to its “eligible employees” as specified in such Employer’s written policies, the Plan and/or N.C.G.S. §143-166.42 Special Separation Allowance.
- 1.13** “**Plan**” shall mean the plan document adopted by the Employer for the purpose of documenting the Employer’s LEOSSA Obligations and governing the Employer’s satisfaction thereof, a copy of which is attached here as Exhibit A.
- 1.14** “**Plan Administrator**” shall mean the individual designated by position of employment at the Employer to act on its behalf in all matters relating to the Plan and Trust.

- 1.15** “**Qualified Investments**” shall mean all investments authorized under Section 159-30 of the North Carolina General Statutes including those specifically identified under Section 159-30(c) or deposited with the State Treasurer for investment pursuant to Section 147-69.2(b5) of the North Carolina General Statutes.
- 1.16** “**Registered Investment Advisor**” shall mean any Registered Investment Advisor as defined by Securities and Exchange Commission regulations appointed by the Board or Guilford County Finance Cash and Debt Manager who has entered into a consulting or management agreement with the Employer for investing the Assets of the Trust.
- 1.17** “**Board of Trustees**” means the body established by Article IV of this Agreement the membership of which, as so constituted from time to time, comprises the Board. Any subsequent reference to “**Board**” refers to Board of Trustees.
- 1.18** “**Trustee**” means an individual member of the Board. “**Trustees**” (plural) refers to Board members acting individually, not collectively as the Board.
- 1.19** “**Trust**” means the trust fund created by this agreement.

ARTICLE II THE TRUST

2.1 Purpose

The purpose of the Trust is to hold assets from which to satisfy the Employer’s commitment to provide separation pay to its employees in accordance with the Employer’s policies, N.C.G.S. §143-166.41 - 42 and/or applicable agreements, either through disbursement of separation pay to qualifying participants or through payment of expenses of the Trust.

2.2 Trustee Accounting

The Board shall be responsible only for maintaining records and maintaining accounts for the Assets of the Trust. The Employer shall be responsible for Plan-level accounting for LEOSSA.

2.3 No Diversion of Assets

The Assets in the Trust shall be held in trust for the exclusive purpose of providing LEOSSA to eligible employees of the Employer and defraying the reasonable administrative and actuarial expenses of the Trust. The Assets in the Trust shall not be used for or diverted to any other purpose, except as expressly provided herein.

2.4 Type and Nature of Trust

Neither the full faith and credit nor the taxing power of the Employer is pledged to the distribution of benefits hereunder. Except for contributions and other amounts hereunder, no other amounts are pledged to the distribution of benefits hereunder. Distributions of benefits are neither general nor special obligations of any Employer, but are payable solely from the Assets of the Trust, as more fully described herein. No employee of any Employer or beneficiary may compel the exercise of the taxing power by any Employer. The existence of the Trust creates no obligation for the Employer to provide funding for it.

Distributions of Assets under the Trust are not debts of any Employer within the meaning of any constitutional or statutory limitation or restriction. Such distributions are not legal or equitable pledges, charges, liens or encumbrances, upon any of the Employer's property, or upon any of its income, receipts, or revenues, except amounts in the accounts which are, under the terms of the Plan and Trust set aside for distributions. Neither the members of the governing body of the Employer nor its officers, employees, agents or volunteers are liable hereunder.

2.5 Trust's Compliance

The Trust is intended to comply with and be a tax-exempt governmental trust under Section 115 of the Code. This Agreement shall be interpreted in a manner consistent with that intent and with the intention of the Employer that the Trust hereunder satisfies those requirements of GASB Statements 67 and 68 and GASB Statement 34.

2.6 Annual Audit

The Employer shall appoint a responsible accounting firm to conduct an annual audit of the Trust at the sole expense of the Employer. The results of such audit shall be provided to the Board. Unless directed otherwise by the Board, the annual independent audit of the Employer's financial statements shall be sufficient to meet the requirements of this provision.

ARTICLE III ADMINISTRATIVE MATTERS

3.1 Certification to Board

The governing body of the Employer, or other duly authorized official, shall certify in writing to the Board the names and specimen signatures of the Plan Administrator and Employer's Agent, if any, and all others authorized to act on behalf of the Employer whose names and specimen signatures shall be kept accurate by the Employer acting through a duly authorized official or governing body of the Employer. The Trustees shall have no liability if they act upon the direction of a Plan Administrator or the Employer's Agent that has been duly authorized hereunder even if that the Plan Administrator or the Employer's Agent is no longer authorized to act, unless the Employer has informed the Board of such change in writing.

3.2 Removal/Suspension of Trustee

The Employer may remove a Trustee. Such action must be in writing and delivered to the Trustee by giving at least ninety (90) days' prior written notice to the Trustee. In the case of malfeasance or expected malfeasance, a Trustee may be suspended immediately.

3.3 Resignation of Trustee

The Trustee may resign as trustee of the Trust at any time by giving at least ninety (90) days' prior written notice to the Employer and the Plan Administrator. The Employer's appointment of a successor trustee to the Trust will vest the successor trustees with title to the Assets of its Trust upon the successor trustee's acceptance of such appointment.

3.4 Plan Administrator

The governing body of the Employer shall have plenary authority for the administration and investment of the Trust pursuant to applicable state law and applicable federal laws and regulations. The Employer shall by resolution designate a Plan Administrator. Unless otherwise specified in the instrument the Plan Administrator shall be deemed to have authority to act on behalf of the Employer in all matters pertaining to the Trust. Such appointment of a Plan Administrator shall be effective upon receipt and acknowledgment by the Board and shall be effective until the Board is furnished with a resolution of the Employer that the appointment has been modified or terminated.

3.5 Failure to Appoint Plan Administrator

If the Employer does not appoint a Plan Administrator, or if such appointment lapses, the Employer shall be deemed to be the Plan Administrator.

3.6 Employer's Agent

The Plan Administrator, acting on behalf of the Employer, may delegate certain authority, powers and duties to Employer's Agent to act in those matters specified in the delegation. Any such delegation must be in writing that names and identifies the Employer's Agent, states the effective date of the delegation, specifies the authority and duties delegated, is executed by the Plan Administrator and is acknowledged in writing by the Employer's Agent and certified as required in Section 3.1.

3.7 Notice

Effective notice hereunder shall be delivered via United States Mail or other reliable means of delivery, including via telecopy, electronic mail or overnight delivery service, to the following:

EMPLOYER:

The County of Guilford
P.O. Box 3427
Greensboro, North Carolina 27402-3427

Attention: _____, Finance Director

PLAN ADMINISTRATOR:

The County of Guilford
P.O. Box 3427
Greensboro, North Carolina 27402

TRUSTEE:

**ARTICLE IV
THE TRUSTEES/BOARD OF TRUSTEES**

4.1 Membership

The Board shall have three (3) members, as follows:

1. The Guilford County Manager (Trustee Position 1);
2. The Director of the Guilford County Finance Department, who shall also serve as ex-officio secretary to the Board (Trustee Position 2); and
3. The Director of the Guilford County Human Resources Department (Trustee Position 3).

4.2 Term

Except as provided below, members shall continue to serve on the Board so long as they hold the applicable position with the Employer.

4.3 Compensation

Except with respect to actual expenses incurred by Trustees as provided in Paragraph 5.2, Trustees shall not receive any compensation for their services rendered as Trustees.

4.4 Action of the Board

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

4.5 Powers and Duties of the Board

Except as otherwise provided in Article V, and subject to the provisions of Article VI, the Board shall have full power and authority with respect to property held in the Trust to perform all acts, take all proceedings, and exercise all rights and privileges, whether specifically referred to or not in this document, as could be done, taken or exercised by the absolute owner, including, without limitation, the following:

- (a) To invest and reinvest the Assets or any part hereof in Qualified Investments pursuant to this Trust and applicable state law.
- (b) To place uninvested cash and cash awaiting distribution in any type of interest-bearing account including, without limitation, time certificates of deposit or interest-bearing accounts

issued by a commercial bank or savings and loan association organized under the laws of the State of North Carolina or having its principal office in North Carolina;

(c) To borrow money for the purposes of the Trust from any source with or without giving security; to pay interest; to issue promissory notes and to secure the repayment thereof by pledging all or any part of the Assets;

(d) To take all of the following actions: to vote proxies of any stocks, bonds or other securities; to give general or special proxies or powers of attorney with or without power of substitution; to exercise any conversion privileges, subscription rights or other options, and to make any payments incidental thereto; to consent to or otherwise participate in corporate reorganizations or other changes affecting corporate securities and to delegate discretionary powers and to pay any assessments or charges in connection therewith; and generally to exercise any of the powers of an owner with respect to stocks, bonds, securities or other property held in the Trust;

(e) 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 herein granted;

(f) To exercise all the further rights, powers, options and privileges granted, provided for, or vested in trustees generally under applicable federal or state laws as amended from time to time, it being intended that, except as herein otherwise provided, the powers conferred upon the Trustee herein shall not be construed as being in limitation of any authority conferred by law, but shall be construed as consistent or in addition thereto.

4.6 Additional Trustee Powers

In addition to the other powers enumerated above, the Board in any and all events is authorized and empowered:

(a) To pay administrative fees as directed by the Plan Administrator;

(b) To invest funds pending required directions in a designated account or if there is no designated account, any type of interest-bearing account including without limitation, time certificates of deposit or interest-bearing accounts issued by a commercial bank or savings and loan association organized under the laws of the State of North Carolina or having its principal office in North Carolina Trustee or any affiliate thereof;

(c) To cause all or any part of the Trust to be held in the name of the Board (which in such instance need not disclose its fiduciary capacity) or, as permitted by law, in the name of any nominee, and to acquire for the Trust any investment in bearer form, but the books and records of the Trust shall at all times show that all such investments are a part of the Trust and the Trustee shall hold evidences of title to all such investments;

(d) To appoint a custodian with respect to the Trust Assets;

(e) To employ such agents and counsel as may be reasonably necessary in managing and protecting the Assets and to pay them reasonable compensation from the Trust; to employ any broker-dealer, including a broker-dealer affiliated with the Board, and pay to such broker-dealer at the expense of the Trust, its standard commissions; to settle, compromise or abandon all claims

and demands in favor of or against the Trust; and to charge any premium on bonds purchased at par value to the principal of the Trust without amortization from the Trust, regardless of any law relating thereto;

(f) To abandon, compromise, contest, arbitrate or settle claims or demands; to prosecute, compromise and defend lawsuits, but without obligation to do so, all at the risk and expense of the Trust;

(g) To exercise and perform any and all of the other powers and duties specified in this Trust Agreement or the Plan;

(h) To permit such inspections of documents at the principal office of the Board as are required by law, subpoena or demand by a United States agency;

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

(j) To seek written instructions from the Plan Administrator or other fiduciary on any matter and await their written instructions without incurring any liability. If at any time the Plan Administrator or other fiduciary should fail to give directions to the Board, the Board may act in the manner that in its discretion seems advisable under the circumstances for carrying out the purposes of the Trust;

(k) To compensate such executive, consultant, actuarial, accounting, investment, appraisal, administrative, clerical, secretarial, medical, custodial, depository and legal firms, personnel and other employees or assistants as are engaged by the Plan Administrator in connection with the administration of the Plan and to pay from the Trust the necessary expenses of such firms, personnel and assistants, to the extent not paid by the Plan Administrator;

(l) To act upon proper written directions of the Employer, Plan Administrator or Employer's Agent;

(m) To pay from the Trust the expenses reasonably incurred in the administration thereof, as provided in the Plan;

(n) To hold uninvested reasonable amounts of cash whenever it is deemed advisable to do so to facilitate disbursements or for other operational reasons,

(o) To comply with provision of the Trust, this agreement and other agreements between the Trustees and Employer or applicable North Carolina or federal laws,

(p) To delegate any administrative duties assigned to the Board in this agreement, such as actuarial or third-party administrator services provided such delegation is documented in a written agreement with the delegate.

(q) To have and to exercise such other additional powers as may be advisable for the effective and economical administration of the Trust.

ARTICLE V INVESTMENTS

5.1 Trust Investments

Guilford County Finance Cash and Debt Manager, at the direction of the Board, shall have responsibility to invest Trust Assets in Qualified Investments as defined in Section 1.15. The Board and the Guilford County Finance Cash and Debt Manager, may appoint a Registered Investment Advisor to the Trust by executing a written consulting or management agreement with said Registered Investment Advisor.

5.2 Trustee Fees

As may be agreed upon, in writing, between the Employer and Board, the Trustees will be paid reasonable compensation for services rendered or reimbursed for expenses properly and actually incurred in the performance of duties with respect to the Trust. The Trustees shall be entitled to receive their fees and expenses when due directly from the Trust. Notwithstanding the foregoing, any Trustee who is an employee of the Employer shall receive no fee for service as a Trustee hereunder.

5.3 Contributions

The Plan Administrator shall, on behalf of the Employer, make all contributions to the Board. Such contributions shall be in cash, unless the Trustees agree to accept a contribution that is not in cash. All contributions shall be paid to the Board for investment and reinvestment pursuant to the terms of this Trust Agreement. The Trustees shall not have any duty to determine or inquire whether any contributions to the Trust made to the Board by the Plan Administrator are in compliance with the Employer's policies and/or collective bargaining agreements applicable state law, nor shall the Trustees have any duty or authority to compute any amount to be paid to the Board by the Plan Administrator; nor shall the Trustees be responsible for the collection or adequacy of the contributions to meet the Employer's LEOSSA Obligation. The contributions received by the Board from the Employer shall be held and administered pursuant to the terms hereof without distinction between income and principal.

5.4 Records

(a) The Board shall maintain accurate records and detailed accounts of all investments, receipts, disbursements and other transactions hereunder. Such records shall be available at all reasonable times for inspection by the Employer and Plan Administrator. The Board shall, at the direction of the Plan Administrator, submit such valuations, reports or other information as the Plan Administrator may reasonably require.

(b) The Assets of the Trust shall be valued at their fair market value on the date of valuation, as determined by the Board based upon such sources of information as it may deem reliable; provided, however, that the Plan Administrator shall instruct the Board as to valuation of assets which are not readily determinable on an established market. The Board may rely conclusively on such valuations provided by the Plan Administrator and Trustees shall be indemnified and held harmless by the Employer with respect to such reliance. If the Plan Administrator fails to provide such values, the Board may take whatever action it deems reasonable, including employment of attorneys, appraisers or other professionals, the expense of which will be an expense of administration of the Trust. Transactions in the account involving such hard to value assets may be postponed until appropriate valuations have been received and Trustees shall have no liability therefore.

5.5 Statements

(a) Periodically as specified, and within sixty (60) days after December 31, or the end of the Trust's fiscal year if different, Board shall render to the Plan Administrator as directed, a written account showing in reasonable summary the investments, receipts, disbursements and other transactions engaged in by the Board during the preceding fiscal year or period with respect to the Trust. Such account shall set forth the assets and liabilities of the Trust valued as of the end of the accounting period.

(b) The Plan Administrator may approve such statements either by written notice or by failure to express objections to such statements by written notice delivered to the Board within ninety (90) days from the date the statement is delivered to the Plan Administrator. Upon approval, the Board shall be released and discharged as to all matters and items set forth in such statement as if such account had been settled and allowed by a decree from a court of competent jurisdiction.

5.6 Exclusive Benefit

The Assets of the Trust shall be held in trust for the exclusive purpose of providing LEOSSA to the Eligible Employees of the Employer pursuant to the Employer's policies and/or applicable collective bargaining agreements, and defraying the reasonable expenses associated with the providing of such benefits, and shall not be used for or diverted to any other purpose.

5.7 Segregation of Assets

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

5.8 Investments Protected

All assets, income and distribution of the Trust shall be protected against the claims of creditors of the Employer and LEOSSA participants, and shall not be subject to execution, attachment, garnishment, the operation of bankruptcy, the insolvency laws or other process whatsoever, not shall any assignment thereof be enforceable in any court.

ARTICLE VI FIDUCIARY RESPONSIBILITIES

6.1 More Than One Fiduciary Capacity

Any one or more of the fiduciaries with respect to the Trust Agreement or the Trust may, to the extent required thereby or as directed by the Plan Administrator pursuant to this Trust Agreement, serve in more than one fiduciary capacity with respect to the Trust Agreement and the Trust.

6.2 Fiduciary Discharge of Duties

Except as otherwise provided by applicable law, each fiduciary shall discharge such fiduciary's duties with respect to the Trust Agreement and the Trust:

(a) solely in the interest of the Eligible Employees and for the exclusive purpose of providing LEOSSA to Eligible Employees, and defraying reasonable administrative and actuarial expenses associated with providing such benefits; and

(b) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims.

6.3 Limitations on Fiduciary Responsibility

To the extent allowed by the state law applicable to this Trust Agreement:

(a) No fiduciary shall be liable with respect to a breach of fiduciary duty by any other fiduciary if such breach was committed before such party became a fiduciary or after such party ceased to be a fiduciary.

(b) No fiduciary shall be liable for a breach by another fiduciary except as provided by law.

(c) No fiduciary shall be liable for carrying out a proper direction from another fiduciary, including refraining from taking an action in the absence of a proper direction from the other fiduciary possessing the authority and responsibility to make such a direction, which direction the fiduciary in good faith believes to be authorized and appropriate.

6.4 Indemnification

The Trustees shall not be liable for, and the Employer shall indemnify, defend and hold Trustees harmless from and against any claims, demands, loss, costs, expense or liability in connection with this Trust Agreement, including reasonable attorneys' fees and costs incurred by Trustees, arising as a result of Employer's active or passive negligent act or omission or willful misconduct in the execution or performance of the Employer's duties under this Trust Agreement, to the extent allowed by North Carolina law.

In addition, the Trustees shall not be liable for, and Employer shall indemnify and hold Trustees harmless from and against any claims, demands, loss, costs, expense or liability arising out of or in connection with this Trust Agreement, including reasonable attorneys' fees and costs incurred by the Trustees, in the event that the Trust loses or fails to qualify for tax exempt status under Section 115 of the Code and the Regulations issued or as a tax-exempt trust under the provisions of North Carolina law, unless such results directly or indirectly from the active or passive negligent act or omission of the Trustees or an employee or agent thereof.

This section shall survive the termination of this Trust Agreement.

**ARTICLE VII
AMENDMENT, TERMINATION AND MERGER**

7.1 No Obligation to Continue Trust

Continuance of the Trust and continuation of the Employer's policies and/or applicable collective bargaining agreements that provide separation benefits are not assumed as a contractual obligation of the Employer.

7.2 Amendments

(a) The Trust Agreement may only be amended or terminated as provided herein. The Employer shall have the right to amend this Trust Agreement from time to time, and to similarly amend or cancel any amendments. A copy of all amendments shall be delivered to the Board and Plan Administrators promptly as each is made.

(b) Such amendments shall be set forth in an instrument in writing executed by the Employer and the Board. Any amendment may be current, retroactive or prospective, provided, however, that no amendment shall:

(1) Cause the Assets of any Trust to be used for or diverted to purposes other than for the exclusive benefit of Eligible Employees of the Employer or for the purpose of defraying the reasonable expenses of administering such Trust.

(2) Have any retroactive effect so as to reduce the benefits of any Eligible Employees as of the date the amendment is adopted, except that such changes may be made as may be required to permit this Trust Agreement to meet the requirements of applicable law.

(3) Change or modify the duties, powers or liabilities of the Board hereunder without its consent.

7.3 Termination of the Plan

A termination of the Employer's obligation to provide separation benefits pursuant to the Employer's policies, N.C.G.S. §143-166.42 Special Separation Allowance, and/or applicable collective bargaining agreements for which the Trust was established shall not, in itself, effect a termination of the Trust. Upon any termination of the Employer's obligation to provide separation benefits pursuant to the Employer's policies and/or applicable collective bargaining agreements, the Assets of the Trust shall be distributed by the Board when directed by the Plan Administrator. From and after the date of such termination and until final distribution of the Assets the Trustees shall continue to have all the powers provided herein as are necessary or expedient for the orderly liquidation and distribution of such assets and the Trust shall continue until the Assets have been completely distributed in accordance with the Employer's policies and/or applicable collective bargaining agreements.

7.4 Fund Recovery Based on Mistake of Fact

Except as hereinafter provided, the Assets of the Trust shall never inure to the benefit of the Employer. The Assets shall be held for the exclusive purposes of providing post-employment separation benefits to Eligible Employees and defraying reasonable expenses of administering the

Trust. However, in the case of a contribution which is made by an Employer because of a mistake of fact, that portion of the contribution relating to the mistake of fact (exclusive of any earnings or losses attributable thereto) may be returned to the Employer, provided such return occurs within two (2) years after discovery by the Employer of the mistake. If any repayment is payable to the Employer, then, as a condition precedent to such repayment, the Employer shall execute, acknowledge and deliver to the Board its written undertaking, in a form satisfactory to the Board, to indemnify, defend and hold the Trustees harmless from all claims, actions, demands or liabilities arising in connection with such repayment.

7.5 Termination

The Trust may be terminated only by the Employer. Such action must be in writing and delivered to the Board in accordance with the terms of this Trust Agreement.

ARTICLE VIII MISCELLANEOUS PROVISIONS

8.1 Nonalienation

Eligible Employees do not have an interest in the Trust. Accordingly, the Trust shall not in any way be liable to attachment, garnishment, assignment or other process, or be seized, taken, appropriated or applied by any legal or equitable process, to pay any debt or liability of an Eligible Employee or any other party. Trust Assets shall not be subject to the claims of the Employer or the claims of its creditors.

8.2 Saving Clause

In the event any provision of this Trust Agreement and each Trust are held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining parts of the Trust Agreement and/or Trust, but this instrument shall be construed and enforced as if said provision had never been included.

8.3 Applicable Law

This Trust Agreement shall be construed, administered and governed under the Code and the law of the State of North Carolina. To the extent any of the provisions of this Trust Agreement are inconsistent with the Code or applicable state law, the provisions of the Code or state law shall control. In the event, however, that any provision is susceptible to more than one interpretation, such interpretation shall be given thereto as is consistent with the Trust Agreement being a tax-exempt trust within the meaning of the Code.

8.4 Employment of Counsel

The Trustees may consult with legal counsel (who may be counsel for the Trustees or the Employer) and charge the Trust. The Trustees shall be fully protected in relying on advice of such counsel.

8.5 Gender and Number

Words used in the masculine, feminine or neuter gender shall each be deemed to refer to the other whenever the context so requires; and words used in the singular or plural number shall each be deemed to refer to the other whenever the context so requires.

8.6 Headings

Headings used in this Trust Agreement are inserted for convenience of reference only and any conflict between such headings and the text shall be resolved in favor of the text.

8.7 Counterparts

This Trust Agreement may be executed in an original and any number of counterparts by the Employer and Board, each of which shall be deemed to be an original of the one and the same instrument.

IN WITNESS WHEREOF, Guilford County and the Board have caused this Agreement to be signed by their duly authorized officers or representatives on this ____ day of _____, 2012.

GUILFORD COUNTY, NORTH CAROLINA

By: _____
Jeff Phillips, Chairman
Guilford County Board of Commissioners

ATTEST:

APPROVED AS TO FORM

Robin Keller, Clerk to the Board

Mark Payne, County Attorney

BOARD OF TRUSTEES

Marty K. Lawing, Guilford County Manager
Guilford County LEOSSA Trust Board

N. Reid Baker III, Guilford County Finance Director
Guilford County LEOSSA Trust Board

John Dean, Guilford County Human Resources Director
Guilford County LEOSSA Trust Board

**AGREEMENT ESTABLISHING SECTION 115 TRUST UNDER GUILFORD COUNTY
LAW ENFORCEMENT OFFICERS' SEPARATION ALLOWANCE**

EXHIBIT A

Article 12D.

Separation Allowances for Law-Enforcement Officers.

North Carolina General Statute § 143-166.41 through § 143-166.42

§ 143-166.41. Special separation allowance.

(a) Notwithstanding any other provision of law, every sworn law-enforcement officer as defined by G.S. 135-1(11b) or G.S. 143-166.30(a)(4) employed by a State department, agency, or institution prior to August 1, 2011, and who qualifies under this section shall receive, beginning in the month in which he retires on a basic service retirement under the provisions of G.S. 135-5(a), an annual separation allowance equal to eighty-five hundredths percent (0.85%) of the annual equivalent of the base rate of compensation most recently applicable to him for each year of creditable service. The allowance shall be paid in equal installments on the payroll frequency used by the employer. To qualify for the allowance the officer shall:

- (1) Have (i) completed 30 or more years of creditable service or, (ii) have attained 55 years of age and completed five or more years of creditable service; and
- (2) Not have attained 62 years of age; and
- (3) Have completed at least five years of continuous service as a law enforcement officer as herein defined immediately preceding a service retirement. Any break in the continuous service required by this subsection because of disability retirement or disability salary continuation benefits shall not adversely affect an officer's qualification to receive the allowance, provided the officer returns to service within 45 days after the disability benefits cease and is otherwise qualified to receive the allowance.

(a1) Notwithstanding any other provision of law, every sworn law-enforcement officer as defined by G.S. 135-1(11b) or G.S. 143-166.30(a)(4) employed by a State department, agency, or institution on or after August 1, 2011, and who qualifies under this section shall receive, beginning in the month in which the member retires on a basic service retirement under the provisions of G.S. 135-5(a), an annual separation allowance equal to eighty-five hundredths percent (0.85%) of the annual equivalent of the base rate of compensation most recently applicable to him for each year of creditable service. The allowance shall be paid in equal installments on the payroll frequency used by the employer. To qualify for the allowance, the officer shall:

- (1) Have (i) completed 30 or more years of creditable service or (ii) attained 55 years of age and completed 10 or more years of creditable service; and
- (2) Not have attained 62 years of age; and
- (3) Have completed at least 10 years of continuous service as a law enforcement officer as herein defined immediately preceding a service retirement. Any break in the continuous service required by this subsection because of disability retirement or disability salary continuation benefits shall not adversely affect an officer's qualification to receive the allowance, provided

the officer returns to service within 45 days after the disability benefits cease and is otherwise qualified to receive the allowance.

(b) As used in this section, "creditable service" means the service for which credit is allowed under the retirement system of which the officer is a member, provided that at least fifty percent (50%) of the service is as a law enforcement officer as herein defined.

(c) Payment to a retired officer under the provisions of this section shall cease at the first of:

- (1) The death of the officer;
- (2) The last day of the month in which the officer attains 62 years of age; or
- (3) The first day of reemployment by any State department, agency, or institution, except that this subdivision does not apply to an officer returning to State employment in a position exempt from the State Personnel Act in an agency other than the agency from which that officer retired.

(d) This section does not affect the benefits to which an individual may be entitled from State, federal, or private retirement systems. The benefits payable under this section shall not be subject to any increases in salary or retirement allowances that may be authorized by the General Assembly for employees of the State or retired employees of the State.

(e) The head of each State department, agency, or institution shall determine the eligibility of employees for the benefits provided herein.

(f) The Director of the Budget may authorize from time to time the transfer of funds within the budgets of each State department, agency, or institution necessary to carry out the purposes of this Article. These funds shall be taken from those appropriated to the department, agency, or institution for salaries and related fringe benefits.

(g) The head of each State department, agency, or institution shall make the payments set forth in subsection (a) to those persons certified under subsection (e) from funds available under subsection (f). (1983 (Reg. Sess., 1984), c. 1034, s. 104; 1985, c. 479, s. 143; 1985 (Reg. Sess., 1986), c. 1014, ss. 51, 52; 2002-126, s. 28.14; 2007-69, s. 1; 2011-232, s. 9.)

§ 143-166.42. Special separation allowances for local officers.

(a) On and after January 1, 1987, every sworn law enforcement officer as defined by G.S. 128-21(11b) or G.S. 143-166.50(a)(3) employed by a local government employer who qualifies under this section shall receive, beginning in the month in which the officer retires on a basic service retirement under the provisions of G.S. 128-27(a), an annual separation allowance equal to eighty-five hundredths percent (0.85%) of the annual equivalent of the base rate of compensation most recently applicable to the officer for each year of creditable service. The allowance shall be paid in equal installments on the payroll frequency used by the employer. To qualify for the allowance, the officer shall:

- (1) Have (i) completed 30 or more years of creditable service or (ii) have attained 55 years of age and completed five or more years of creditable service; and
- (2) Not have attained 62 years of age; and
- (3) Have completed at least five years of continuous service as a law enforcement officer as herein defined immediately preceding a service retirement. Any break in the continuous service required by this subsection because of disability retirement or disability salary continuation benefits shall not adversely affect an officer's qualification to receive the allowance, provided

the officer returns to service within 45 days after the disability benefits cease and is otherwise qualified to receive the allowance.

(b) As used in this section, "creditable service" means the service for which credit is allowed under the retirement system of which the officer is a member, provided that at least fifty percent (50%) of the service is as a law enforcement officer as herein defined.

(c) Payment to a retired officer under the provisions of this section shall cease at the first of:

- (1) The death of the officer;
- (2) The last day of the month in which the officer attains 62 years of age; or
- (3) The first day of reemployment by a local government employer in any capacity.

Notwithstanding the provisions of subdivision (3) of this subsection, a local government employer may employ retired officers in a public safety position in a capacity not requiring participation in the Local Governmental Employees' Retirement System, and doing so shall not cause payment to cease to those officers under the provisions of this section.

(d) This section does not affect the benefits to which an individual may be entitled from State, local, federal, or private retirement systems. The benefits payable under this section shall not be subject to any increases in salary or retirement allowances that may be authorized by local government employers or for retired employees of local governments.

(e) The governing body of each local employer shall determine the eligibility of employees for the benefits provided herein.

(f) The governing body of each local employer shall make the payments set forth in subsection (a) of this section to those persons certified under subsection (e) of this section from funds available. (1985 (Reg. Sess., 1986), c. 1019, s. 2; 2009-396, s. 1.)

EXHIBIT B

Guilford County LEOSSA Trust Investment Policy

Solely for purposes of investing County contributions in the Guilford County LEOSSA Trust, the County's investment policy shall allow placement of assets in the LEOSSA investment fund managed by the State Treasurer's office as per NC General Statute 147-69.2(b5), once established, and in addition to investments authorized by NC General Statute 159-30. Placement of County contributions in the State Treasurer's LEOSSA investment fund shall be at the discretion of the Board of Trustees, as shall be the allocation of assets within that fund. The Board may at its discretion hold contributions in cash or cash equivalents accounts for a time prior to investing the funds as authorized above.