

COUNTY COUNCIL
OF
TALBOT COUNTY, MARYLAND

2014 Legislative Session, Legislative Day No. : September 23, 2014

Bill No.: 1297

Expiration Date: November 27, 2014

Introduced by: Mr. Bartlett, Mr. Hollis, Mr. Pack, Ms. Price

A BILL TO AUTHORIZE THE ADOPTION AND ESTABLISHMENT OF A NON-PENSION POST EMPLOYMENT BENEFITS TRUST

By the Council: September 23, 2014

Introduced, read first time, ordered posted, and public hearing scheduled on Tuesday, October 14, 2014 at 2:00 p.m. at the Bradley Meeting Room, Talbot County Court House, South Wing, 11 North Washington Street, Easton, Maryland 21601.

By Order



Susan W. Moran, Secretary

A BILL TO AUTHORIZE THE ADOPTION AND ESTABLISHMENT OF A NON-PENSION POST EMPLOYMENT BENEFITS TRUST

KEY	
Boldface	Heading or defined term
<u>Underlining</u>	Added to existing law by original bill
Strikethrough	Deleted from existing law by original bill
<u>Double underlining</u>	Added to bill by amendment
Double strikethrough	Deleted from bill by amendment
* * *	Existing law unaffected

WHEREAS, Talbot County, Maryland (the “County”), provides other postretirement benefits under programs which provide non-pension benefits (“Other Post-Employment Benefits”) for retirees of the County who have satisfied certain age, service and other requirements and their beneficiaries; and,

WHEREAS, the County wishes to establish a reserve to pay Other Post-Employment Benefits (OPEB); and

WHEREAS, pursuant to Section 17-102 of the Local Government Article of the Annotated Code of Maryland (2013 Replacement Volume), the County is authorized to create pooled investments under the stewardship of a separate body under an agreement with a political subdivision of the State for the investment of money intended for other post-employment benefits; and

WHEREAS, the County desires to participate in the Maryland Association of Counties Pooled OPEB Trust Fund.

SECTION ONE: BE IT ENACTED BY THE COUNTY COUNCIL OF TALBOT COUNTY, MARYLAND, that

1. The County hereby adopts and establishes a trust (the “Trust”) for the purpose of accumulating and investing assets to fund Other Post-Employment Benefits, in the form set forth in the Maryland Association of Counties Pooled OPEB Trust Agreement attached hereto as Exhibit “A” (the “Trust Agreement”).

2. The County hereby agrees to become a “Member” in the “Maryland Association of Counties Pooled OPEB Trust Fund” (the “Trust Fund”), as further defined in the Trust Agreement. The County hereby approves the Adoption Agreement attached hereto as Exhibit

“B” and directs the appropriate officers of the County to execute and deliver the Trust Agreement and the Adoption Agreement.

3. The purpose of the Trust Fund is to assist the County in funding Other Post-Employment Benefits provided by the County under programs which provide non-pension benefits for retirees of the County who have satisfied certain age, service and other requirements and their beneficiaries (collectively, the “Plans”), from time to time.

4. The County hereby appoints its Finance Director, or his or her designee, to serve as the County’s designated Trustee (as defined in the Trust Agreement), pursuant to Section 3.01(b) of the Trust Agreement and agrees that such person shall have the power and authority to consent to and approve on behalf of the County any matters that require the County’s consent or approval under the Trust Agreement.

5. The adoption and establishment of the Trust by the County shall not create any obligation to provide benefits under the Plans and the County reserves the right, at any time and from time to time, to (i) decrease or discontinue contributions to the Trust Fund, and, (ii) decrease or terminate the benefits under the Plans.

SECTION TWO: BE IT FURTHER ENACTED, that the title and a summary of this Bill shall be published once on the first publication date after enactment of the Bill in accordance with County Charter § 213 (c). The title is not a substantive part of this Bill. If the Bill is amended, the title may be administratively revised if required to conform the title to the content of the Bill as finally enacted.

SECTION THREE: AND BE IT FURTHER ENACTED, that if any provision of this Bill or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of the Bill which can be given effect without the invalid provision or application, and for this purpose the provisions of this Bill are declared severable.

SECTION FOUR: AND BE IT FURTHER ENACTED, that the Publishers of the Talbot County Code or the Talbot County Office of Law, in consultation with and subject to the approval of the County Manager, may make non-substantive corrections to codification, style, capitalization, punctuation, grammar, spelling, and any internal or external reference or citation included in this Bill, as finally adopted, that are incorrect or obsolete, with no further action required by the County Council. All such corrections shall be adequately referenced and described in an editor's note following the section affected.

SECTION FIVE: AND BE IT FURTHER ENACTED, that this ordinance shall take effect sixty (60) days from the date of its passage.


PUBLIC HEARING

Having been posted and Notice of time, date, and place of hearing, and Title of Bill No. 1297 having been published, a public hearing was held on Tuesday, October 14, 2014 at 2:00 p.m. in the Bradley Meeting Room, South Wing, Talbot County Courthouse, 11 North Washington Street, Easton, Maryland.

BY THE COUNCIL

Read the third time.

ENACTED: October 14, 2014

By Order 
Susan W. Moran, Secretary

- Pack - Aye
- Hollis - Aye (via absentee ballot)
- Bartlett - Aye
- Price - Aye
- Duncan - Aye

EFFECTIVE DATE: December 13, 2014

Exhibit "A"

Trust Agreement

MARYLAND ASSOCIATION OF COUNTIES
POOLED OPEB TRUST AGREEMENT

Effective as of _____, 2014

MARYLAND ASSOCIATION OF COUNTIES
POOLED OPEB TRUST AGREEMENT

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**MARYLAND ASSOCIATION OF COUNTIES
POOLED OPEB TRUST AGREEMENT**

THIS MARYLAND ASSOCIATION OF COUNTIES POOLED OPEB TRUST AGREEMENT (this "Agreement") is made as of the ____ day of _____, 2014, by and among the Maryland Association of Counties, Inc. ("MACo"), the Maryland Municipal League, Inc. ("MML"), certain governmental entities of the State of Maryland who have executed an Adoption Agreement to participate in the Trust Fund ("Members") and the Initial Trustees and their successors (the "Trustees").

RECITALS

WHEREAS, the Members provide post-retirement health and welfare benefit coverage for their retirees who have satisfied certain age, service and other requirements set forth in plans and policies of the Members (the "Plans"); and

WHEREAS, each Member is a political subdivision of the State of Maryland within the meaning of Section 115(1) of the Internal Revenue Code of 1986, as amended (the "Code"), whose income is exempt from federal income tax pursuant to Section 115(1) of the Code as long as said income is derived from the exercise of an essential governmental function; and

WHEREAS, to obtain greater diversification with respect to the investment of the contributions by the Members to fund benefits under the Plans, to reduce the investment management fees attendant to such investments, and to assist with the administration of the Plans, the Initial Members, together with the Maryland Association of Counties ("MACo"), wish to establish a pooled trust fund (the "Trust Fund") for the purpose of accumulating and investing assets to fund benefits under the Plans, on a diversified basis and in accordance with applicable law; and

WHEREAS, with respect to the administration and operation of the Trust Fund, the Initial Members desire to appoint the Trustees, and the Trustees desire to accept their appointment; and

WHEREAS, the Members desire the Trustees to collect, receive, hold, invest, reinvest, manage, dispose of, distribute and otherwise to administer the funds, and Trustees have indicated their willingness to do so, all pursuant to terms of this Agreement; and

WHEREAS, the parties intend that the Trust Fund, when taken together with the Plans, shall constitute a tax-exempt governmental trust under Section 115 of the Code.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein and for other good and valuable consideration, the receipt of which is hereby acknowledged by each party, one to the other, the Members do hereby give and assign in trust the sums contributed to the Trust Fund pursuant to this Agreement and all income and profits therefrom, and such other sums, income and profits as hereinbefore or hereinafter have been or are made part of the Trust Fund, to the Trustees, and the Trustees hereby accept the trusts herein contained and declare that they will administer manage, collect, receive, dispose of and distribute such trust property for the benefit of the Participants and Beneficiaries of the Plans as hereinafter

provided, all parties agreeing to abide by the terms and covenants contained in this Agreement, as follows:

ARTICLE I
DEFINITIONS

1.01 Definitions. The terms defined in this Section 1.01 and in the preambles hereto (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Agreement and of any amendment or supplement hereto shall have the respective meanings specified in this Section 1.01 and said Preambles.

“Administrator” means that person or firm employed or appointed by Trustees as the Administrator in accordance with this Agreement.

“Adoption Agreement” means the agreement to be approved and executed by a Member prior to participating in the Trust Fund, pursuant to which the Member joins the Trust Fund and agrees to be bound by the terms and provisions of this Agreement, in accordance with Section 4.01 hereof.

“Agreement” means the Maryland Association of Counties Pooled OPEB Investment Agreement, as set forth herein and as amended from time to time.

“Annual Meeting” means the meeting of the Members and Trustees held in June of each year.

“Authorized Member Representative” means the person appointed by a Member in writing to take actions on behalf of such Member under this Agreement.

“Beneficiary” means a person designated by a Participant, in accordance with the terms of a Plan, to be entitled to benefits under such Plan, and as applicable, includes the dependent of a Participant.

“Board of Trustees” means the Board of Trustees appointed pursuant to Section 3.01 of this Agreement, and any successors thereto, as may be acting as Trustees hereunder at the time in question.

“By-laws” means the by-laws that are adopted from time to time by the Trustees to implement this Agreement.

“Cancellation” or “Canceled” means the expulsion of Member from the Trust by action of the Trustees as provided in Section 4.03(a) hereof.

“Code” means the Internal Revenue Code of 1986, as amended from time to time.

“Combined Trust Assets” means the assets credited to the Separate Accounts of a Member, each Member that is a component unit of such Member and, in the case of a county or Baltimore City, the related board of education and community college.

“Custodian” means the bank or trust company designated by the Trustees as the custodian for the Trust Fund from time to time in accordance with this Agreement.

“Effective Date” means the date of this Agreement.

“Fees” means that sum of money determined by the Trustees and paid from the assets of each Member for its share of the reasonable costs and expenses of the Trust Fund.

“GASB” means the Governmental Accounting Standards Board and any successor entity.

“GASB Statement No. 45” means Statement No. 45, “Accounting and Financial Reporting by Employers for Postemployment Benefits Other Than Pensions” issued by GASB and any amendments or successor pronouncements made by GASB related thereto.

“Governmental Entity” means (i) a county, (ii) a county community college, (iii) a municipality, (iv) Baltimore City, (v) a bi-county agency, or (vi) any other public entity that is a component unit of a county, municipality or Baltimore City (including without limitation, an authority, a metropolitan commission or a library) and is a political subdivision within the meaning of Section 115(1) of the Code.

“Initial Member” means a Member which is an original party to this Agreement.

“Initial Trustees” means the Trustees appointed in accordance with Section 3.01(b).

“Investment Fund” means a separate investment account of the Trust Fund established pursuant to the provisions of Section 7.02 of this Agreement.

“Investment Consultant” means any person or firm selected by the Trustees in accordance with this Agreement. The Investment Consultant will be a fiduciary with respect to the Trust Fund.

“Investment Manager” means any investment manager appointed in accordance with Section 7.09 hereof to assist the Trustees in performing their obligations with respect to the investment and reinvestment of all or a portion of the assets of an Investment Fund.

“Investment Policy Statement” means the Investment Policy Statement adopted by the Trustees in accordance with this Agreement.

“Legal Counsel” means the attorney or firm of attorneys appointed by the Trustees from time to time in accordance with Section 6.02.

“MACo” means the Maryland Association of Counties, Inc. and any successor entity.

“Member” means any Governmental Entity of the State which is an original party to this Agreement or which becomes a Member pursuant to Article III of this Agreement and the membership of which has not terminated pursuant to Article III of this Agreement.

“MML” means the Maryland Municipal League, Inc. and any successor entity.

“Participant” means any person who (a) retired from employment with a Member and (b) satisfies the conditions set forth in the Member’s Plan for the receipt of health or welfare benefits after retirement. Anything herein to the contrary notwithstanding, coverage and eligibility for benefits of any Participant shall be subject in all respects to the terms and provisions of the Plans.

“Plan” or “Plans” means the policies and plans of Members through which the Members provide post-retirement health and welfare benefits to Participants and Beneficiaries.

“Securities” shall include but are not limited to the following types of investment and interest therein: any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, pre-organization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency or, in general, any interest or instrument commonly known as a “security” or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing.

“Separate Account” shall mean an accounting record established by the Trustees for the purpose of maintaining separate records with regard to a Member’s allocable share of the Trust Fund, consisting of the particular contributions that are intended to fund separately identifiable benefits provided under a Plan for a designated Member, as well as the earnings, gains, losses and expenses attributable to such contributions.

“State” means the State of Maryland.

“Termination” or “Terminated” means the voluntary withdrawal of a Member from the Fund in accordance with Section 4.03(b) hereof.

“Trust Fund” means the Maryland Association of Counties Pooled OPEB Trust Fund established by this Agreement. All contributions made by Members pursuant to this Agreement and received by the Trustees and all other money received by the Trustees pursuant to this Agreement, together with the income, gains and all other increments of any nature whatsoever, if any, therefrom shall be the corpus of the Trust Fund and shall be held, managed and administered by the Trustees in trust pursuant to the terms of this Agreement.

“Trust Fund Year” means the fiscal year of the Trust Fund beginning on July 1 of each year the Trust Fund is in operation and ending on June 30 of the following year; provided that the first Trust Fund Year will begin on the Effective Date and end on June 30, 2015.

“Trustee” means each person serving as a trustee hereunder from time to time, collectively the “Trustees” or “Board of Trustees.”

1.02 Interpretation. The words “hereof”, “herein”, “hereunder,” and other words of similar import refer to this Agreement as a whole. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words

importing the singular number shall include the plural number and vice versa unless the context shall otherwise indicate. Headings or titles to Articles, Sections, and other subdivisions of this Agreement are for convenience only and shall be given no effect, meaning or construction whatsoever and shall not define or limit any provision of this Agreement.

ARTICLE II ESTABLISHMENT OF THE TRUST FUND

2.01 Establishment of the Trust Fund. There is hereby established the Trust Fund. The name of the Trust Fund shall be the “Maryland Association of Counties Pooled OPEB Trust Fund”. The Trust Fund shall hold all contributions made pursuant to Section 2.06, together with any income, gains or profits and taking into account any losses. All contributions so made, together with the income therefrom and any other increment thereunder shall be held, managed and administered by the Trustees pursuant to the terms of this Trust Agreement, without distinction between principal and interest.

2.02 Commingling Assets; Separate Accounts. Except to the extent prohibited by applicable law, the Trustees may commingle the assets of all Members held by the Trustees under this Agreement for investment purposes in the Trust Fund and shall hold the Trust Fund in trust and manage and administer the same in accordance with the terms and provisions of this Agreement. However, the assets of the Trust Fund allocable to each Member shall be accounted for separately through one or more Separate Accounts. Each Member’s Separate Account will be debited or credited, as applicable, (i) for the amount of every contribution received from that Member and every distribution made to that Member and (ii) for its proportionate share of every item of collected or accrued income, gain or loss, Fees, and any other transactions attributable to the Trust Fund.

2.03 Purpose; Interpretation. The Trust Fund is established exclusively for the purpose of funding benefits payable under the Plans. Nothing in this Trust Agreement shall be construed to define or grant to any Participant or Beneficiary any rights or privileges to any other benefits or to any assets in the Trust Fund. The rights and privileges of a Participant or Beneficiary, if any, shall be determined and governed by the terms of the respective Plan. No part of the Trust Fund shall be used for, or diverted to purposes other than for the exclusive benefit of the Participants and Beneficiaries except as expressly provided herein.

2.04 Exclusive Benefit; No Reversion. Except as expressly provided herein, no part of the Trust Fund, other than such part as is required to pay taxes and administrative expenses, may be returned to, or revert to, a Member, be recoverable by a Member, or be used for, or diverted to, purposes other than for the exclusive benefit of the Participants and Beneficiaries.

2.05 Reversion if Internal Revenue Service Issues an Unfavorable Tax Determination. All contributions to the Trust Fund are hereby expressly conditioned on the tax-exempt status of the Trust Fund. If the Internal Revenue Service determines that the Trust Fund is not tax-exempt, then all contributions, together with all earnings thereon, shall be returned to the Members within one year following such determination, in accordance with Section 9.03.

2.06 Contributions. Each Member shall contribute and pay over to the Trustees annually, or more often as such Member shall decide, such amounts as shall be determined by such Member to be contributed to the Trust Fund from time to time. The Trustees shall receive all such contributions and shall credit such contributions to the appropriate Separate Account. The Trustees shall not be responsible in any way for the administration of the Plans and shall be under no duty to determine whether the amount of any contribution is in accordance with the Plans or to collect or enforce payment of any contribution. The Trustees shall not be responsible for the collection or calculation of contributions under or required by the Plans but will be responsible only for contributions and any other property received by the Trustees pursuant to this Trust Agreement.

No Member assumes any contractual obligation to continue contributions to the Trust Fund and each Member reserves the right at any time and for any reason to discontinue contributions to the Trust Fund. Each Member reserves the right at any time and for any reason to discontinue its Plan. Failure by any Member to continue its Plan or failure by any Member to make contributions to the Trust Fund shall not give rise to any liability on its part whatsoever.

2.07 Distributions. (a) The Trust Fund shall be expended solely to (1) make payments for benefits pursuant to and in accordance with the terms of any Plan and (2) pay the costs associated with administering the Trust Fund.

(b) The Trustees shall, from time to time, on the written direction of an Authorized Member Representative, make distributions from the appropriate Separate Account of the Trust Fund to or for the benefit of such Member's Participants and Beneficiaries in such manner, at such times, in such amounts and for such purposes, as may be specified in such directions. The Trustees shall not be liable for any distributions made pursuant to written directions of an Authorized Member Representative as herein provided, and the Trustees shall be under no duty to make inquiries as to whether any distribution directed by an Authorized Member Representative is made pursuant to the provisions of a Plan or this Trust Agreement. The Trustees shall not be responsible for the adequacy of the Trust Fund or any Separate Account thereunder to meet and discharge any and all liabilities under any Plan.

(c) The By-laws may establish rules and regulations governing distributions from the Trust Fund. The Trustees may require that an Authorized Member Representative certify as to certain matters in connection with any requested distribution, including, without limitation, that such distribution is for the purpose of (1) paying benefits under a Plan, (2) paying premiums to an insurer for benefits provided under a Plan, (3) transferring funds to a trust or equivalent arrangement, for providing benefits under a Plan, or (4) for any other purpose permitted under GASB Statement No. 45 and the Code.

2.08 Administrator. The Board of Trustees shall appoint an Administrator pursuant to an administrative services agreement from time to time. The Administrator shall have the power and authority to implement policy and procedural matters as directed by the Board of Trustees as they relate to the ongoing operation and supervision of the Trust Fund and the provisions of this Agreement and applicable law. Davenport & Company, LLC is initially appointed as the Administrator.

ARTICLE III
TRUSTEES

3.01 Composition of Board of Trustees. (a) The Trust Fund shall be administered by a Board of Trustees.

(b) The Initial Trustees shall consist of the following: (i) one (1) individual appointed by each Initial Member, and (ii) one (1) or more individuals recommended by the individuals appointed pursuant to clause (i) and approved by a majority of the Initial Members.

(c) Thereafter, the Board of Trustees shall consist of not more than nine (9) individuals elected as follows:

(i) At least 90 days prior to each Annual Meeting, beginning with the Annual Meeting held in 2019, the Board of Trustees shall establish a nominating committee consisting of 3 Trustees.

(ii) At least 30 days prior to each Annual Meeting, the nominating committee shall nominate a slate of candidates for vacancies on the Board of Trustees consisting of (A) one (1) representative of each Member whose Combined Trust Assets represent at least ten percent (10%) of the assets in the Trust Fund and (B) other representatives of Members whose participation will best reflect the history, purpose and diverse participation in the Trust Fund.

(iii) At least 15 days prior to each Annual Meeting, notice of the candidates nominated by the nominating committee shall be sent to each Member.

(iv) At the Annual Meeting, the Members shall vote on each candidate nominated by the nominating committee and a candidate shall be elected as a Trustee upon the affirmative vote of a majority of all of the Members.

(v) The Trustees elected at the Annual Meeting shall take office immediately after such election and their execution of an acceptance of office as required by Section 5.02.

(d) (i) In each Trust Fiscal Year in which the Combined Trust Assets of all county Members equals or exceeds 20% of the assets in the Trust Fund, the Executive Director of MACo shall serve *ex-officio* as a Trustee and shall be entitled to attend and participate (including the making of motions) in all meetings of the Trustees, except he or she shall not be entitled to vote at any such meetings and shall not be considered for purposes of determining a quorum.

(ii) In each Trust Fiscal Year in which the Combined Trust Assets of all municipality Members equals or exceeds 20% of the assets in the Trust Fund, the Executive Director of MML shall serve *ex-officio* as a Trustee and shall be entitled to attend and participate (including the making of motions) in all meetings of the Trustees, except he or she shall not be

entitled to vote at any such meetings and shall not be considered for purposes of determining a quorum.

(e) In the event a Trustee resigns, is removed or is otherwise unable to serve, the Board of Trustees shall appoint a substitute Trustee to fulfill his or her term of office, and such substitute Trustee shall meet the same eligibility requirements of Section 3.01(c)(ii) as the Trustee being replaced.

3.02 Term of Office. The term of office of each Initial Trustee shall begin on the date of appointment and end on the date on which their successors are elected at the Annual Meeting held in 2019 and execute an acceptance of office as required by Section 5.02. The term of office of all other Trustees shall begin on the date of their election and acceptance of office as required by Section 5.02 and end on the date on which their successor is elected and executes an acceptance of office as required by Section 5.02.

The Trustees who will succeed the Initial Trustees shall be elected to staggered terms. To implement the staggered terms, when the nominating committee announces the slate of candidates to succeed the Initial Trustees, the nominating committee shall designate up to three candidates to stand for election for a one-year term, up to three candidates to stand for election for a two-year term and up to three candidates to stand for election for a three-year term. Thereafter the term of office of all Trustees shall be three years.

3.03 Resignation of a Trustee. A Trustee may resign by giving at least thirty (30) days prior notice in writing sent by certified mail to the Chairman of the Trustees. Such notice shall state the date said resignation shall take effect, and such resignation shall take effect on such date.

Any Trustee, upon leaving office, shall turn over and deliver to the principal office of the Trust Fund, any and all records, books, documents or other property in his possession or under his control which belong to the Trust Fund.

3.04 Qualifications of a Trustee.

(a) Trustees elected in accordance with Section 3.01(c) shall meet the applicable requirement set forth in Section 3.01(c)(ii)(A) or (B).

(b) No Trustee shall be an employee or agent of an Investment Manager, the Investment Consultant, the Custodian or the Administrator.

(c) Any Trustee who ceases to meet the requirements of Section 3.04(a) or who fails to attend three consecutive Board meetings shall be considered to have surrendered and terminated his or her position as Trustee and such position shall be filled in accordance with Section 3.01(e).

3.05 Officers. At the first meeting of the Board of Trustees, the Initial Trustees shall elect, by majority vote of a quorum of the Board of Trustees, a Chair and Vice-Chair. Thereafter, at each Annual Meeting after the election of the new Trustees in accordance with Section 3.01(c), the Trustees shall elect, by majority vote of a quorum of the Board of Trustees, a

Chair and a Vice-Chair. Each Chair and Vice-Chair shall be a Trustee. The term of the Chair and Vice-Chair shall begin on the date of the Annual Meeting at which they are elected and end on the date of the next Annual Meeting at which a successor is elected. The Chair and Vice-Chair shall serve at the pleasure of the Trustees. The Chair shall preside at all meetings of the Trustees, and shall perform all such other acts and duties as are incident to his or her executive office. In the absence or disability of the Chair, his or her duties shall be performed by the Vice-Chair. In addition, the Trustees may provide for such additional officers of the Board of Trustees as they deem advisable.

3.06 Trustees' Duties and Obligations. The Trustees shall discharge their duties and obligations under this Agreement solely in the interests of the Members, and to defray reasonable expenses of administering the Trust Fund, with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

3.07 Liability of Trustees.

(a) The Trustees shall not be liable for errors of judgment in the performance of their duties hereunder, nor for any act or omission to act, performed or omitted by them, in the execution of the trusts created hereunder.

(b) Every act done, power exercised or obligation assumed by the Trustees, pursuant to the provisions of this Agreement, or in carrying out the trusts herein contained, shall be held to be done, exercised or assumed by them as Trustees and not as individuals, and every person or corporation contracting with the Trustees, shall look only to the Trust Fund and property of the Trust Fund for payment under such contract, or for the payment of any debt, mortgage, judgment or decree or the payment of any money that may otherwise become due or payable on account of the trusts herein provided for, and any other obligation arising out of this Agreement in whole or in part, and neither the Trustees, the Members, nor the Members' employees present or future, shall be personally liable therefor.

(c) A Trustee shall be liable in connection with the performance of his duties hereunder for his own willful misconduct or gross negligence.

ARTICLE IV
MEMBERSHIP

4.01 Eligibility Requirements.

(a) In order to participate as a Member of the Trust Fund, each prospective Member shall submit evidence satisfactory to the Trustees that the Member is authorized to participate in the Trust Fund.

(b) The Trustees may establish other criteria for membership in the Trust Fund.

4.02 Approval of Membership.

(a) The prospective Member shall approve and execute an Adoption Agreement, the form of which has been approved by the Board of Trustees.

(b) The executed Adoption Agreement shall be submitted to the Trustees by the prospective Member and must be approved by a majority vote of the Trustees.

(c) Upon approval of the Adoption Agreement by the Trustees, the prospective Member shall become a Member and be bound by all terms and condition's hereof, including the payment of Fees. It will not be necessary for the Member to execute the original or any amended Agreement.

4.03 Cancellation and Termination of Membership. Membership of a Member shall continue until it ceases pursuant to one of the following provisions:

(a) Cancellation. The Trustees shall have the authority by an affirmative vote of two-thirds (2/3) of all Trustees to cancel the membership of any Member for any action or omission which may be detrimental to the fiscal soundness or efficiency of the Trust Fund. Such Cancellation shall become effective after thirty (30) days written notice to the Member.

Each Member agrees that regardless of any attempt to submit to arbitration its termination under this Section 4.03(a), as provided in Section 10.06 hereof, the Member, upon notification of such Cancellation by the Trustees, will secure adequate provision for the investment of its assets in the Trust Fund.

If the Member prevails in the arbitration process, it shall be reinstated in the Trust Fund within 30 days of the arbitration award, and the Trust Fund shall have no liability for any losses incurred by the Member from the date of Cancellation until the date reinstated.

(b) Termination by Member. Any Member may terminate its membership in the Trust Fund by giving at least six (6) months' notice in writing to the Trustees unless the Trustees agree to shorter notice. Such termination shall be considered a withdrawal subject to the provisions of Section 9.04.

4.04 Obligations, Duties and Liabilities of Members.

(a) Each Member hereby agrees to fulfill all obligations and duties established by this Agreement.

(b) A Member is liable under this Agreement for (i) the payment of Fees; (ii) the payment of any sum assessed by the Trustees in accordance with this Agreement and the By-laws; and (iii) the posting of any bond required by the Trustees in accordance with this Agreement and the By-laws.

(c) Each Member hereby agrees to use its best efforts to secure appropriations for the payment of any sum assessed by the Trustees in accordance with this Agreement and the By-laws.

(d) Each Member agrees that its Authorized Member Representative shall be responsible for all contacts with the Trust Fund. The Trustees shall not be required to contact any other individual except the Authorized Member Representative. Any notice to or any agreements with the Authorized Member Representative shall be binding upon the Member.

ARTICLE V ACCEPTANCE OF TRUST

5.01 Acceptance. The Trustees hereby accept the trusts imposed upon them by this Agreement and agree to perform said trusts in accordance with the terms and conditions of this Agreement. The Trustees shall hold legal title to all property of the Trust Fund and shall have absolute and exclusive power and control over the management and conduct of the business of the Trust Fund.

5.02 Future Trustees. Whenever any change shall occur in the Board of Trustees, the legal title to the property hereby created by this trust shall pass to those duly appointed Trustees. Each future Trustee, appointed in accordance with this Agreement shall accept the office of trustee and the terms and conditions of this Agreement in writing.

5.03 Receipt of Assets. The Trustees shall receive and accept for the purposes hereof all sums of money paid to them by or at the direction of the Member, and pursuant to the terms of this Agreement shall hold, invest, reinvest, manage, administer and distribute such monies and other property and the increments, proceeds, earnings and income thereof. The Trustees need not inquire into the source of any money transferred to it nor into the authority or right of the transferor of such money to transfer such money to the Trustees.

ARTICLE VI POWERS OF TRUSTEES

6.01 Powers of the Trustees. In addition to the powers set forth elsewhere in this Agreement, the Trustees shall have the following powers and authority, to be exercised in their sole discretion, with respect to the Trust Fund:

(a) To employ suitable agents, custodians and counsel and to pay their reasonable expenses and compensation.

(b) To register any Securities held by it hereunder in its own name or in the name of a nominee with or without the addition of words indicating that such Securities are held in a fiduciary capacity and to hold any Securities in bearer form and to deposit any Securities or other property in a depository or clearing corporation.

(c) To make, execute and deliver, as Trustees, any and all deeds, leases, mortgages, conveyances, waivers, releases or other instruments in writing necessary or desirable for the accomplishment of any of the foregoing powers.

(d) To settle, compromise or submit to arbitration any claims, debts, or damages, due or owing to or from the trust, to commence or defend suits or legal proceedings

and to represent the Trust Fund in all suits or legal proceedings in any court of law or before any other body or tribunal.

(e) To manage, administer, operate, lease for any number of years, develop, improve, repair, alter, demolish, mortgage, pledge, grant options with respect to, or otherwise deal with any real property or interest therein at any time held by it, and to hold any such real property in its own name or in the name of a nominee, with or without the addition of words indicating that such property is held in a fiduciary capacity, all upon such terms and conditions as may be deemed advisable by the Trustees.

(f) To renew, extend or participate in the renewal or extension of any mortgage, upon such terms as may be deemed advisable by an Investment Manager or the Trustees, and to agree to a reduction in the rate of interest on any mortgage or of any guarantee pertaining thereto in any manner and to any extent that may be deemed advisable by the Trustees for the protection of the Trust Fund or the preservation of the value of the investment; to waive any default, whether in the performance of any covenant or condition of any mortgage or in the performance of any guarantee, or to enforce any such default in such manner and to such extent as may be deemed advisable by the Trustees; to exercise and enforce any and all rights of foreclosure, to bid on property on foreclosure, to take a deed in lieu of foreclosure with or without paying consideration therefor, and in connection therewith to release the obligation on the bond secured by such mortgage, and to exercise and enforce in any action, suit or proceeding at law or in equity any rights or remedies in respect to any such mortgage or guarantee.

(g) To form corporations and to create trusts to hold title to any Securities or other property, all upon such terms and conditions as may be deemed advisable by the Trustees.

(h) To establish and charge Fees for participation in the Trust Fund and for any additional administrative services provided to a Member in addition to any fees charged by other administrative service providers.

(i) To construe and interpret this Agreement and to determine all questions of law or fact that may arise under this Agreement.

(j) Generally to do all acts, whether or not expressly authorized, which the Trustees may deem necessary or desirable in carrying out their duties under this Agreement.

6.02 Appointment and Consultation with Legal Counsel. The Trustees may appoint Legal Counsel from time to time as they deem necessary or desirable in connection with the administration of the Trust Fund. McGuireWoods LLP is initially appointed as Legal Counsel.

Any Trustee may consult with Legal Counsel or any other counsel concerning any question which may arise with reference to this Agreement and his powers and duties hereunder. The advice or opinion of Legal Counsel or such other counsel shall be full and complete protection of the Trustee in respect to any action taken or suffered by the Trustee hereunder in good faith reliance on said advice or opinion.

6.03 Bonds. The Trustees shall require that a fidelity bond be furnished, as an expense of the Trust Fund, as to all persons handling money for or on behalf of the Trustees.

6.04 Insurance. The Trustees shall purchase insurance (including fiduciary liability insurance), as an expense of the Trust Fund, covering MACo, the Board of Trustees and individual Trustees, in such amounts as the Trustees determine from time to time to be necessary and appropriate.

6.05 Compensation. No compensation shall be paid to the Trustees for services provided under this Trust Agreement. The Trustees shall be paid such expenses that are agreed to, from time to time, by the Trustees.

6.06 Conflicts of Interest. (a) Except as otherwise provided in this Section, the Trustees must not:

- (i) be a party to any transaction involving the assets of the Trust Fund;
- (ii) use the gains or profits of the Trust Fund for any purpose except to make investments or payments that are authorized by the Plans;
- (iii) deal with the assets of the Trust Fund for their own interest or account; or
- (iv) act in any transaction involving the Trust Fund on behalf of a party whose interests are adverse to the interests of the Trust Fund or the Participants and Beneficiaries.

(b) This Section does not prohibit a Trustee from being a Participant or Beneficiary or receiving a benefit from the Plan as a Participant or Beneficiary.

(c) The Trustees shall keep all information regarding Participants and Beneficiaries confidential except to the extent necessary to fulfill their duties and obligations under this Trust Agreement or as otherwise required by law.

ARTICLE VII INVESTMENTS

7.01 Investment Powers of the Trustees. The Trustees shall have and exercise the following powers and authority over the Securities of the Trust Fund:

(a) To purchase, receive, or subscribe for any Securities and to retain in trust such Securities.

(b) To sell for cash or on credit, to grant options, convert, redeem, exchange for other Securities, to enter into standby agreements for future investment, either with or without a standby fee, or otherwise to dispose of any Securities or other property at any time held by it.

(c) To trade in financial options and futures, including index options and options on futures and to execute in connection therewith such account agreements and other agreements in such form and upon such terms as the Investment Manager shall direct.

(d) To exercise all voting rights, tender or exchange rights, any conversion privileges, subscription rights and other rights and powers available in connection with any Securities or other property at any time, held by it; to oppose or to consent to the reorganization, consolidation, merger, or readjustment of the finances of any corporation or association, or to the sale, mortgage, pledge or lease of the property of any corporation or association any of the Securities which may at any time be held by it and to do any act with reference thereto, including the exercise of options, the making of agreements or subscriptions and the payment of expenses, assessments or subscriptions, which may be deemed necessary or advisable by the Investment Manager in connection therewith, and to hold and retain any Securities or other property which it may so acquire; and to deposit any property with any protective, reorganization or similar committee, and to pay and agree to pay part of the expenses and compensation of any such committee and any assessments levied with respect to property so deposited.

(e) To invest all or a portion of the Trust Fund in contracts issued by insurance companies, including contracts under which the insurance company holds plan assets in a separate account or commingled separate account managed by the insurance company.

(f) To hold part or all of the Trust Fund uninvested.

(g) To purchase and sell foreign exchange and contracts for foreign exchange.

(h) To invest (i) in any type of interest bearing investments (including, but not limited to savings accounts, money market accounts, certificates of deposit and repurchase agreements) and (ii) in non-interest bearing accounts (including, but not limited to, checking accounts).

(i) To invest in open-end and closed-end investment companies, regardless of the purposes for which such fund or funds were created; and in any partnership, limited or unlimited, joint venture and other forms of joint enterprise created for any lawful purpose.

7.02 Establishment of Investment Funds. The Trustees, on the advice of the Investment Consultant, will establish one or more separate Investment Funds within the Trust Fund. The Trustees shall transfer to each such Investment Fund a proportionate share of the assets of each Separate Account.

7.03 Trustees' Duties. The Trustees shall be under no duty to question, and shall not incur any liability on account of following any direction of the Authorized Member Representative. The Trustees shall be under no duty to review the investment guidelines, objectives and restrictions established for any Member or to make suggestions to the Member in connection therewith.

7.04 Interest, Dividends, Proceeds, Expenses of Investment Fund. All interest, dividends and other income received with respect to, and any proceeds received from the sale or other disposition of, Securities or other property held in an Investment Fund shall be credited to and reinvested in such Investment Fund. All expenses of the Trust Fund which are allocable to a particular Investment Fund shall be so allocated and charged.

7.05 Elimination of Investment Fund. The Trustees may eliminate an Investment Fund, and the Trustees shall thereupon dispose of the assets of such Investment Fund and reinvest the proceeds thereof as determined by the Trustees.

7.06 Custodian. The Trustees shall appoint a Custodian for the Trust Fund. The Custodian shall have custody of all cash, assets and securities of the Trust Fund. The Investment Managers are authorized to give instructions to the Custodian as to deliveries of securities and payments of cash for the payment of securities and as otherwise provided in the Investment Management Agreement. The Investment Managers shall not take possession of or act as custodian for the cash, securities or other assets of the Trust Fund and shall have no responsibility in connection therewith. The Trustees may terminate the Custodian Agreement, and the Custodian may resign (in either case in accordance with the Custodian Agreement) and the Trustees may enter into a new agreement with a new custodian.

7.07 Investment Consultant. The Trustees may appoint one or more Investment Consultants pursuant to a written investment consultant agreement to assist them in developing an Investment Policy Statement, selecting Investment Managers and otherwise oversee and administer the Trust Fund's investments.

7.08 Investment Policy Statement. The Trustees shall approve and continuously maintain an Investment Policy Statement for use in the investment of Trust Fund assets. Within the scope of the Investment Policy Statement, the Trustees may make reasonable restrictions relating to the investment or reinvestment of assets.

7.09 Investment Manager Appointment. The Trustees, upon the advice of the Investment Consultant, may appoint one or more Investment Managers pursuant to a written investment management agreement describing the powers and duties of the Investment Manager to direct the investment and reinvestment of all or a portion of the Trust Fund or an Investment Fund.

7.10 Requirements of Investment Manager. The Trustees shall be responsible for ascertaining that while each Investment Manager is acting in that capacity hereunder, the following requirements are satisfied:

(a) The Investment Manager is either (i) registered as an investment adviser under the Investment Advisers Act of 1940, as amended, (ii) a bank as defined in that Act, or (iii) an insurance company qualified to perform the services described in (b) below under the laws of more than one state; and

(b) The Investment Manager has the power to manage, acquire or dispose of any assets of the Trust Fund for which it is responsible hereunder.

7.11 Trustees' Liability for Acts or Omissions of an Investment Manager. No Trustee shall have liability (i) for the acts or omissions of any Investment Manager; or (ii) for any loss of any kind which may result by reason of the manner of division of the Trust Fund into one or more Investment Funds.

7.12 Valuation Rules. The Trustees shall determine the fair market value of assets of the Trust Fund based upon valuations provided by the Custodian and the Investment Managers, information and financial publications of general circulation, statistical and valuation services, records of security exchanges, appraisals by qualified persons, transactions and bona fide offers in assets of the type in question and other information customarily used in the valuation of property. In the absence of a market, an Investment Manager shall certify, at the request of the Trustees, the value of any Securities or other property held in any Investment Fund managed by such Investment Manager, and such certification shall be regarded as a direction with regard to such valuation. The Trustees shall be entitled to rely conclusively upon such valuation for all purposes under this Agreement.

ARTICLE VIII OPERATION OF THE TRUSTEES

8.01 Office. The Trustees shall designate a principal office of the Trust Fund. Such principal office shall be in the State of Maryland. At such principal office there shall be maintained the books, reports and records pertaining to the Trust Fund and its administration.

8.02 Meetings. There shall be an Annual Meeting of the Members and the Trustees in June of each year on a date and at a place designated by the Trustees. At the Annual Meeting, the Members shall elect Trustees, the Trustees shall elect a Chair and Vice-Chair and such other officers as provided in this Agreement and the By-laws and the Trustees shall transact such other business as may come before them.

The Trustees shall hold such other meetings and shall establish such procedures for the conduct of those meetings as they shall provide in the By-laws.

8.03 By-laws. At its first meeting, the Board of Trustees shall adopt By-laws by a majority vote of the Trustees. Thereafter, the By-laws may be amended from time to time by a majority vote of the Trustees.

8.04 Quorum; Actions by the Trustees. (a) Each Trustee shall be entitled to one vote.

(b) A majority of all Trustees shall constitute a quorum for purposes of transacting any business, executing any power or performing any act or duty.

(c) Any action of the Trustees may be taken by the affirmative vote of a majority of all of the Trustees. Action by the Trustees may also be taken by them without a meeting, by written action, conference call, or electronic or other means; provided, however, that in such cases, there shall be unanimous concurrence by all of the Trustees. Notwithstanding the foregoing, an affirmative vote of two-thirds (2/3) of all Trustees shall be required to terminate a Member or to amend this Agreement.

8.05 Execution of Documents. The Trustees may authorize in writing one or more Trustees to execute instruments on their behalf, provided that such authorization specifically describes the type of instrument that may be so executed, and the manner of such execution. All persons may rely thereupon that such notice or instrument has been duly authorized and is binding on the Trust Fund and on the Trustees.

8.06 Indemnification.

(a) The Trust Fund shall indemnify and defend (i) each member of the Board of Trustees and the estate, executor, administrator, personal representatives, heirs, legatees and devisees of any such person; (ii) every officer and employee of the Trust Fund and the estate, executor, administrator, personal representatives, heirs, legatees or devisees of such person and (iii) MACo, every officer and employee of MACo and the estate, executor, administrator, personal representatives, heirs, legatees, devisees, successors and assigns of such person against all judgments including interest, fines, amounts paid or agreed upon in settlement, reasonable costs and expenses including attorneys' fees and any other liability that may be incurred as a result of any claim, action, suit or proceeding, whether civil, criminal, administrative, or other, prosecuted or threatened to be prosecuted, for or on account of any act performed or omitted or obligation entered into, if done or omitted in good faith without intent to defraud and within what he reasonably believed to be the scope of his employment or authority and for a purpose which he reasonably believed to be in the best interest of, and in connection with, the administration, management, conduct or affairs of the Trust Fund, and, with respect to any criminal actions or proceedings, in addition, had no reasonable cause to believe that his or its conduct was unlawful. Provided, however, that if any such claim, action, suit, or proceeding is compromised or settled, it must be done with the prior and express approval of the Board of Trustees or such other persons as may be authorized to make determinations with respect to indemnification pursuant to sub-paragraph (d) of this Section.

(b) Such indemnification shall not depend upon whether or not such person is a member of the Board of Trustees at the time such claim, action, suit or proceeding is begun, prosecuted or threatened.

(c) The right of indemnification hereunder shall not be exclusive of other rights such person may have as a matter of law or otherwise.

(d) In each instance in which a question of indemnification hereunder arises, determination in the first instance of the right to indemnification hereunder, and of the time, manner and amount of payment thereof, shall be made by a majority vote of a quorum of the Board of Trustees provided, however, that no member of the Board of Trustees seeking indemnification hereunder as a result of the same occurrence shall participate in the determination. In the event that a majority of the members of the Board of Trustees are seeking indemnification hereunder as a result of the same occurrence or the number of Board of Trustees members eligible to vote does not constitute a quorum, such determination in the first instance shall be made by independent legal counsel retained by the Trust Fund for the purpose of making the determination. Nothing in this paragraph is intended to make an adverse determination finally binding upon the person seeking indemnity under this Section, or to preclude any such person from appealing an adverse determination against him or it, or from instituting legal proceedings to enforce a right of indemnification under this Section.

(e) The indemnification provided for in this Section shall be deemed to be an expense of the Trust Fund to which all of the Members of the Trust Fund shall contribute.

(f) The indemnification provided by this Section shall be secondary to any benefits to which the person may be entitled to receive from any applicable insurance policy providing directors and officers, errors and omissions or other applicable insurance coverage which has been procured by the Trust Fund or for which the Trust Fund paid the required premium. The indemnification provided by this Section shall be primary over any indemnification provided by a Trustee at his or its own expense.

(g) (i) Notwithstanding any other provision of this Section to the contrary, a person may seek, and the Trust Fund may pay, advance indemnification prior to the rendering of a final determination of entitlement to indemnification pursuant to the provisions of subparagraph (d) of this Section. Any award of such advance indemnification by the Trust Fund shall be discretionary and subject to the provisions of this Section.

(ii) In each instance where a question of advance indemnification hereunder arises, determination of the right to indemnification and of any conditions or restrictions attached thereto shall be made by a majority vote of a quorum of the Board of Trustees provided, however, that no member of the Board of Trustees seeking indemnification hereunder as a result of the same occurrence shall participate in the determination. In the event that a majority of the members of the Board of Trustees are seeking indemnification as a result of the same occurrence or the number of members of the Board of Trustees eligible to vote does not constitute a quorum, such determination shall be made by independent legal counsel retained by the Trust Fund for the purpose of making the determination.

(iii) Any determination of advance indemnification shall be discretionary and may provide for the time, manner and amounts advanced hereunder and shall include such limitations as may be deemed appropriate in the particular circumstances on rate of payment, the total amount to be advanced and the security, if required, for repayment of such advances.

(iv) Any advance authorized hereunder shall be repaid to the Trust Fund if the person on whose behalf the advance was made is not entitled to indemnification of his costs and expenses under the provisions and in accordance with the standards for indemnification provided in this Section.

ARTICLE IX AMENDMENT, TERMINATION AND WITHDRAWAL

9.01 Method of Amendment. The terms and provisions of this Agreement may be amended at any time, except as provided in Section 9.02 hereof, by an instrument in writing approved and signed by at least two-thirds (2/3) of the Trustees. Such instrument shall be attached to the original of this Agreement.

9.02 Limitation on Amendments. No amendment shall be adopted which alters the basic purpose of the Trust Fund, causes the use or diversion of any part of the Trust Fund for

purposes other than those authorized herein, or retroactively deprives any Member of a vested right or interest.

9.03 Termination. The Trustees reserve the right to terminate this Agreement for any reason, at any time, upon written notice to the Members. Upon such termination, the assets of the Trust Fund allocable to each Member shall be distributed to such Member or transferred to one or more trust funds provided such trust funds are for the purpose of providing health and welfare benefits consistent with the purposes of the Plans. In no event will the assets be transferred to an entity that is not a state, a political subdivision of a state or an entity the income of which is excluded from taxation under Section 115 of the Code.

9.04 Withdrawal of Member. Any Member Trust, by action of the Member, may withdraw from the Trust Fund without affecting the remainder of the Trust Fund or any other Members. Members who wish to withdraw their assets from the Trust Fund must do so by written notification to the Trustees. The withdrawing Member must give at least six (6) months' prior written notice of their intention to withdraw from the Trust Fund, unless the Trustees agree to shorter notice.

A Member that elects to withdraw from this Trust Fund will direct the Trustees to transfer the assets allocable to the Member to a trust or equivalent arrangement established by the Member for the purpose of funding benefits under the Member's Plan or will make other suitable arrangements for the transfer of such assets. The determination of the value of the assets allocable to a Member in connection with a withdrawal, and the decision whether to transfer some or all of the assets allocable to the Member in kind or to liquidate the assets and transfer the proceeds shall be determined by the Trustees in their absolute discretion.

ARTICLE X MISCELLANEOUS

10.01 Title to the Trust Fund. Title to the Trust Fund shall be vested in and remain exclusively in the Trustees to carry out the purposes hereunder and no Member or employee of any Member (including any Participant) or any other individual (including any Beneficiary) shall have any right, title or interest in the Trust Fund or any right to contributions made or to be made thereto, nor any claim against any Member on account thereof, except to the extent of the right of Members to their pro rata share of any excess funds as provided hereunder.

10.02 Anti-Alienation. No right or claim to, or interest in, any part of the Trust Fund's assets, or any payment from the Trust Fund shall be subject to anticipation, alienation, sale, transfer, assignment, mortgage, pledge, encumbrance, hypothecation, commutation, garnishment, charge, or any other process of any court except as specifically permitted under this Trust Agreement or required by law. No benefit payable from the Plans or the Trust Fund to any person shall in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements, or torts of any such person, nor shall it be subject to attachment or legal process for or against such person, except to such extent required by law. Any attempt to anticipate, alienate, sell, transfer, assign, mortgage, pledge, garnish, encumber, charge or levy against any benefit under the Plans or the Trust Fund shall be void, except as required by law. No portion of

the benefits under the Plans or the funds held in the Trust Fund shall be subject to the bankruptcy estate of any Member, Participant or Beneficiary, except as required by law.

10.03 Notice. All notices, requests, demands and other communications related to this Agreement, unless otherwise so provided herein, shall be in writing and shall be deemed to be duly given when sent by first-class, registered or certified mail, postage paid, return receipt requested, when personally delivered by hand, or when transmitted by electronic mail, at such addresses as have been last provided by the Member to the Trust Fund. The address for such notices, requests, demands or other communications to the Trustees is: 169 Conduit Street, Annapolis, Maryland 21401. The parties shall notify each other in writing as to any change in address.

10.04 Construction. This Agreement shall be governed by the laws of the State without regard to any conflicts of laws provisions.

10.05 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all such counterpart pages, together with this Agreement, shall constitute the complete Agreement among all the parties hereto.

10.06 Arbitration. Any controversy or claim arising out of or relating to this Agreement or the breach thereof shall be settled by arbitration in accordance with the law of the State and no suit at law or in equity based on such controversy or claim shall be instituted by either party hereto, other than to enforce the award of the arbitrators.

10.07 Severability of Invalid Provisions. If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Agreement and such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and the remaining parts of this Agreement shall be construed so as to give practical realization to the purposes intended to be achieved by the parties as if such invalid or illegal or unenforceable provision had never been contained herein.

[signatures appear on next page]

IN WITNESS WHEREOF, the Maryland Association of Counties, Inc., the Maryland Municipal League, Inc., the Initial Members and the Initial Trustees have executed this Agreement.

WITNESS:

MARYLAND ASSOCIATION OF COUNTIES, INC.

By: _____

MARYLAND MUNICIPAL LEAGUE, INC.

By: _____

_____ COUNTY, MARYLAND, as Initial Member

By: _____

_____ COUNTY, MARYLAND, as Initial Member

By: _____

INITIAL TRUSTEES:

Name: _____

Name: _____

Name: _____

Exhibit "B"

Adoption Agreement

**MARYLAND ASSOCIATION OF COUNTIES
POOLED OPEB TRUST FUND**

ADOPTION AGREEMENT

THIS ADOPTION AGREEMENT is made by and between [Name of County] (herein referred to as the “Member”), and the Board of Trustees (herein collectively referred to as the “Trustees”) of the Maryland Association of Counties Pooled OPEB Trust Fund (herein referred to as the “Trust Fund”).

WITNESSETH:

WHEREAS, the Member provides other postretirement benefits under programs (collectively, the “Plans”) which provide non-pension benefits (“Other Post-Employment Benefits”) for retirees of the Member who have satisfied certain age, service and other requirements and their beneficiaries; and

WHEREAS, the governing body of the Member desires to participate in the Trust Fund for the purpose of accumulating and investing assets to fund Other Post-Employment Benefits as it may determine to be appropriate from time to time; and

WHEREAS, the governing body of the Member has adopted an ordinance to authorize participation in the Trust Fund and to enter into this Adoption Agreement; and

WHEREAS, the Trust Fund, in accordance with the terms of the Maryland Association of Counties Pooled OPEB Trust Agreement (the “Trust Agreement”), provides administrative, custodial and investment services to the Members in the Trust Fund; and

WHEREAS, the Member desires to submit this Adoption Agreement to the Trustees to enable it to participate in the Trust Fund and become a party to the Trust Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements made by each of the parties hereto, it is agreed as follows:

1. Upon the acceptance of this Adoption Agreement by the Trust Fund, [Name of County] is a Member in the Trust Fund, as provided in the Trust Agreement.
2. Capitalized terms not otherwise defined in this Adoption Agreement have the meaning given to them under the Trust Agreement.
3. The Trust Fund will provide administrative, custodial and investment services to the Member in accordance with the Trust Agreement.
4. The Member shall have no right, title or interest in or to any specific assets of the Trust Fund, but shall have an undivided beneficial interest in the Trust Fund and

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there shall be a specific accounting of assets allocable to the Member, all as provided in the Trust Agreement.

5. The Member shall provide to the Trustees and the Administrator all relevant information reasonably requested by the Trustees or the Administrator, and shall promptly update all such information. The Trustees and the Administrator shall have the right to rely on the accuracy of said information in performing their responsibilities under the Trust Agreement.

6. The Trustees and the Administrator, in accordance with the Trust Agreement and the policies and procedures established by the Trustees, shall periodically report Trust Fund activities to the Member on a timely basis.

7. The Member agrees to abide by and be bound by the terms, duties, rights and obligations as set forth in the Trust Agreement, as may be amended in accordance therewith, which is attached hereto as Exhibit A and is made a part of this Adoption Agreement.

8. The Member shall timely remit, or timely approve the remittance of, any fees as may be due and payable by the Member under the Trust Agreement.

9. The Member does not assume any contractual obligation to continue contributions to the Trust Fund and reserves the right at any time and for any reason to discontinue contributions to the Trust Fund. The Member reserves the right at any time and for any reason to discontinue its Plan. Failure by the Member to continue its Plans or to make contributions to the Trust Fund shall not give rise to any liability on its part whatsoever.

10. The term of this Adoption Agreement shall commence on the date set forth herein and shall end on the earlier to occur of (1) the withdrawal of the Member from the Trust Fund or (2) the termination of the Trust Fund. The Member may withdraw from the Trust Fund solely in accordance with the Trust Agreement.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Talbot County, Maryland has caused this Adoption Agreement to be executed this 14th day of October, 2014.

TALBOT COUNTY, MARYLAND

By: _____

Name:

Title:

ACCEPTED:

MARYLAND ASSOCIATION OF COUNTIES
POOLED OPEB TRUST FUND

By: _____

Name:

Title: Trustee

