CITY OF POQUOSON
FINANCE DEPARTMENT **500 CITY HALL AVENUE, POQUOSON, VIRGINIA 23662-1996**

November 14, 2016

TO: City Council

FROM: Theresa Owens, Director of Finance

THROUGH: Randy Wheeler, City Manager

SUBJECT: Virginia Pooled Other Post-Employment Benefits (OPEB) Trust

On September 12, 2016, City Council approved a change to the personnel policy pertaining to retiree health insurance coverage. The changed called for a portion of the cost of retiree health insurance to be paid by the City. Information, plan costs and a funding plan were made part of the discussion. The funding plan included establishing or joining a dedicated Trust Fund to fund the liability of the enhanced benefit.

After researching the requirements for establishing our own Trust Fund, staff recommends joining an already established Pooled Trust Fund. The only pooled trust fund offered in Virginia is the Virginia Pooled OPEB Trust (Trust) administrated by VML/VACo Finance. Attached is an executive summary of the Trust.

In order to join the Trust, Council must take two actions. The City must pass an ordinance agreeing to participate in the Trust and must appoint a Local Finance Board to execute a Trust Joinder Agreement and make investment decisions on behalf of the City. The Local Finance Board is a requirement of the enabling OPEB trust legislation passed by the General Assembly. Currently there are only two investment strategies available at this time through the Trust.

Staff recommends the Local Finance Board be comprised of the Commissioner of Revenue, the Treasurer and Finance Director of the City and be given the authority to act on behalf of the City for matters relating to the Trust.

While the City can use funds in the trust to pay for current OPEB expenses, it is not recommended since the investment portfolios available in the Trust are intended to be long term. Therefore staff recommends establishing a special revenue fund to account for the current receipts and disbursements of the OPEB benefits and at the end of each year, fund the Trust to the extent possible up to the Annual Required Contribution actuarially calculated from any residual special revenue fund balances. This would be essentially using the special revenue fund as a check book and the Trust as a savings account. The rating agencies look favorably on municipalities funding an ongoing liability.

As part of the funding discussions in September, staff recommended prefunding the ARC for the incremental difference in the enhanced benefit with unspent budgeted insurance funds from FY 2016 as long as it does not conflict with the City's financial policies relating to fund balance.

The City ended FY 2016 with $288,000 of undesignated fund balance in excess of 15% of general fund expenditures as required in the financial policies adopted by City Council. The incremental ARC for the enhanced benefit is $56,740. This would leave $231,300 in undesignated fund balance in excess of the fund balance policy.

Attached for consideration is an ordinance to establishing a trust for other post-employment benefits by participating in the Virginia Pooled OPEB Trust Fund, establishing a Local Finance Board, appointing the members of the Local Finance board and directing the Local Finance Board to execute and deliver the Trust Joinder Agreement.

Also attached for consideration is an ordinance establishing a special revenue fund and appropriating $56,740 in the fund for the purpose of OPEB costs for FY 2018 and beyond.

VIRGINIA ASSOCIATION OF COUNTIES/VIRGINIA MUNICIPAL LEAGUE
VIRGINIA POOLED OPEB TRUST FUND

EXECUTIVE SUMMARY

OVERVIEW:

Statement No. 45 of the Governmental Accounting Standards Board ("GASB") requires the recognition of expenses relating to post-employment benefits other than pension benefits. Post-employment benefits other than pension benefits ("OPEB") include post-employment health benefits, such as medical, dental, vision, hearing, and other health-related benefits and other types of post-employment benefits such as life insurance, disability, long-term care, and other benefits. Statement No. 45 permits assets to be set aside to offset the OPEB liability on the financial statements of the governing body.

Implementation of Statement No. 45 was required in three phases based on the government body's total annual revenues in the first fiscal year ending after June 15, 1999:

Phase 1 Government bodies	Total annual revenues of $100 million or more	Periods beginning after December 15, 2006
Phase 2 Government bodies	Total annual revenues of $10 million or more but less than $100 million	Periods beginning after December 15, 2007
Phase 3 Government bodies	Total annual revenues of less than $10 million	Periods beginning after December 15, 2008

In response to this change in accounting standards, the Virginia General Assembly passed legislation allowing the governing body of certain political subdivisions to establish a trust for the purpose of accumulating and investing assets to fund OPEB. Va. Code §§ 15.2-1544, *et seq.* The governing bodies empowered to establish an OPEB trust include:

- The governing body of any county, city, town;
- The governing body of any other political subdivision that is appointed in whole or in part by the governing body of such county, city, or town, if authorized to establish an OPEB trust by such county, city or town; and
- Any appointed or elected school board.

Plan assets for purposes of Statement No. 45 are usually in the form of stocks, bonds, and other classes of investments, that have been segregated and restricted in a trust, or equivalent arrangement, in which (a) contributions to the plan are irrevocable, (b) assets are dedicated to providing benefits to retirees and their beneficiaries, and (c) assets are legally protected from creditors of the employer or plan administrator, for the payment of benefits in accordance with the terms of the plan.

The Virginia Association of Counties (VACo) and Virginia Municipal League (VML) sponsor a pooled trust fund (the "Trust") to allow Virginia counties, cities, towns and school divisions and

other authorized political subdivisions to invest, manage and administer assets to provide for their OPEB liabilities in a cost effective manner in compliance with the requirements of the Virginia Code and Statement No. 45.

The Trust and its Board of Trustees are legally separate and distinct from VACo and VML; however, day-to-day administration of the Trust is provided by the Virginia Local Government Finance Corporation (the "VLGFC"), d/b/a VML/VACo Finance. Administration includes, but is not limited to, selection of investment advisor(s) and legal advisor(s), subject to review and approval of the Board of Trustees, oversight of investment results, review of documentation, processing of disbursements, education of prospective participants, and management of relationships to governing bodies that adopt the Trust. Agreements will be negotiated with third-party providers to offer related services on an optional basis to participating entities, including certain actuarial services to be provided by third-party providers at negotiated fee levels.

A. Purpose of Pooled OPEB Trust Fund

The Pooled OPEB Trust (the "Trust") has been established for the purpose of accumulating and investing assets to fund post-employment benefits other than pensions as defined in the Virginia Code. The Trust is open to counties, cities, towns, school divisions, and other authorized political subdivisions of Virginia for the sole purpose of providing for the funding of OPEB liabilities.

B. Authority and Organizational Structure

The governing body of any county, city, town, school division or other authorized political subdivision may establish a trust for the purpose of accumulating and investing assets to fund OPEB liabilities. Va. Code § 15.2-1544. The statute authorizing such a trust also requires the governing body to create a finance board to serve as trustee of such a trust. In lieu of establishing a local finance board, a governing body that has established a retirement board or deferred compensation board to manage pension benefits provided to or for its active and former employees may designate that retirement board or deferred compensation board to serve as trustee and to manage the assets of a trust or equivalent arrangement. Va. Code § 15.2-1547. The term "Local Finance Board," as used in the Trust, means the finance board, or any retirement board or deferred compensation board appointed to serve as trustee by the governing body.

The Trust contains all the customary provisions of a common trust. A common trust is a trust which consists of the assets of two or more participating entities and is maintained for the collective investment and reinvestment of assets contributed to such trust.

In addition, the Trust includes all terms necessary to comply with Virginia Code section 15.2-1544, including, at a minimum, the following:

- Deposits shall be irrevocable.

- Deposits and earnings shall be dedicated to providing post-employment benefits other than pensions to retirees and their beneficiaries in accordance with the terms of the participating employers' plans or programs.
- Investments in the Trust shall be exempt from the claims of creditors and taxation.

The Virginia Code provides that any power exercised or capable of exercise by any political subdivision of this Commonwealth may be jointly exercised with any other political subdivision of this Commonwealth having a similar power, privilege or authority. Va. Code § 15.2-1300.A. Based on this authority, the governing bodies described above may jointly exercise the power to establish a trust for the purpose of accumulating and investing assets to fund post-employment benefits other than pensions. Va. Code § 15.2-1544. In addition to approving the OPEB Trust as the vehicle for funding other post-employment benefits for its employees, each governing body of a locality participating in the OPEB Trust (a "Participating Employer") will appoint members to its Local Finance Board and direct the Local Finance Board, in its capacity as trustee for the locality, to execute the OPEB Trust Joinder Agreement and represent the beneficial interest of the locality in the OPEB Trust.

The counties of Fairfax and Henrico established the Trust by ordinance. Fairfax and Henrico Counties have the power to appoint one representative to the Board of Trustees for each of the first two three-year terms. The Board of Trustees will exercise the power to retain the services of investment advisors, managers and custodians.

Additional governing bodies may participate in the Trust by ordinance or resolution,[1] and by directing their Local Finance Boards to execute the Trust Joinder Agreement. Each adopting governing body will establish the Trust as a "trust or equivalent arrangement" under the statute. The Local Finance Board of each Participating Employer will fulfill its trustee duties under the statute by execution of the Trust Joinder Agreement, representing the interest of the Participating Employer under the Trust Agreement and by making investment elections, if available, from among the investment alternatives established by the Board of Trustees. Va. Code § 15.2-1547.

The Local Finance Board will act on behalf of the Participating Employer in monitoring investment results, exercising voting rights under the Trust, implementing local investment decisions, if any, managing cash flow and minimizing liabilities.

As required under Va. Code section 15.2-1548, the Trust has retained the services of an investment manager(s). The Trust Joinder Agreement ratifies the retention of the Trust's investment managers as the investment manager for each Participating Employer's beneficial interest in the Trust.

C. Governance and Management

The Board of Trustees govern the Trust. The Board of Trustees are comprised of a minimum of five but not more than nine members elected at an annual meeting of the then-current Participating Employers, represented by their Local Finance Boards. Participation in the annual

[1] Localities (*i.e.*, a county, city, or town) shall approve such agreements by ordinance. Other political subdivisions shall approve such agreements by resolution.

meeting is open to representatives of each Local Finance Board. The votes of the Local Finance Boards at the annual meeting will be weighted according to each Participating Employer's percentage of the total Trust fund assets; provided, however, that after the 5th Participating Employer joins the Trust, no one Local Finance Board may vote more than 45 percent of the total votes cast. A Local Finance Board may be represented at the annual meeting by its authorized representative.

No more than one member from the same Local Finance Board may serve on the Board of Trustees at the same time. Trustees serve for staggered three-year terms.

The Board of Trustees meet not fewer than four times per year (including the annual meeting). The Board of Trustees manage Trust fund assets through the appointment and oversight of investment managers and will utilize the services of an investment advisor as needed. The Board of Trustees will elect a Chair, a Vice Chair, and a Secretary. The Secretary, who will not be required to be a member of the Board of Trustees, shall have the power and authority to implement policy matters set by the Trustees relating to the operation and supervision of the Trust and applicable law.

Day-to-day administration of the Trust will be provided by VLGFC, including implementation of investment instructions and coordination of investment managers as directed by the Board of Trustees in consultation with its advisor(s). VLGFC will conduct its educational and promotional efforts on behalf of the Trust through VML/VACo Finance.

D. Funding

Statement No. 45 requires recognition of the current expense of OPEB based on each governing body's annual required contribution, but does not require funding of the related liability. Therefore, Participating Employers retain discretion in determining the amount that will be contributed to the Trust, if any.

Statement No. 45 further allows employers to count against their net OPEB obligation (1) payments made directly to or on behalf of a retiree or beneficiary, (2) premium payments made to insurers, or (3) assets irrevocably transferred to a trust.[2] Accordingly, the governing bodies are free to decide whether or not to make their contributions for employee benefits and premiums *through* the Pooled OPEB Trust or *directly* to beneficiaries and insurers. Contributions made *through* the Trust and intended to be paid out within a one-year period will require the selection of investment choices that are less volatile and appropriate for a short-term investment horizon. On the other hand, if a governing body contributes to the Trust only the amounts over and above its pay-as-you-go level, its investment choices should reflect a longer-term investment horizon with higher expected returns.

E. Investments

The Trust utilizes an investment manager selection process, with the assistance of the investment advisor, that may include, but not be limited to, a performance review and interviews with

[2] GASB, "Other Postemployment Benefits: A Plain-Language Summary of GASB Statements No. 43 and 45."

managers. Funds held by the investment managers are required to satisfy the prudent person standard.[3]

The Board of Trustees initially selected one asset allocation model that, in its judgment and based upon professional investment advice, offers a prudent balance between investment volatility and earnings potential (the standard portfolio). Since then, the Board of Trustees has established a second portfolio that targets a lower rate of return but also has a lower level of expected volatility. Subject to certain restrictions, the Board of Trustees may, in its discretion, develop a third alternative asset allocation model with a different targeted rate of return and expected level of volatility.

F. Accounting for Trust Investments, Income and Disbursements

All assets of the common trust will be commingled for investment purposes; however, contributions, investment gains and losses, and distributions for each participating Local Finance Board will be accounted for separately.

G. Distributions

While it is expected that most Local Finance Boards will initially be in an accumulation phase, funds will always be available for disbursement for the purpose of providing post-employment benefits under the terms of a post-employment benefit plan. Funds may be disbursed from the Trust upon certified direction by Local Finance Board(s) for insurance, self-insured costs or benefit payments. Upon request with 90 days written notice (180 days during the first year of participation), the Local Finance Board may transfer its investment out of the Trust to another investment which is permitted under state law for holding designated OPEB funds.

H. Investment Authority

The Board of Trustees of the Trust has primary authority and power and is charged with the duty of supervising the investment operations of the Trust. The Board of Trustees has established investment guidelines for the investment managers. The investment managers invest and manage that portion of the Trust for which the investment manager is responsible.

I. Public Oversight of Trust Fund

The Trust constitutes a "public body" for purposes of the Virginia Freedom of Information Act ("VFOIA"). Therefore, meetings and records of the Trust will be available to the public to the extent provided by the VFOIA and appropriate measures will be established to comply with the provisions of VFOIA.

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[3] The prudent person standard provides that funds shall be invested 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 like character and with the same aims. Such investments shall be diversified so as to minimize the risk of large losses unless under the circumstances it is clearly prudent not to do so. Va. Code § 51.1-803.A.

J. Public Procurement Act

The Trust constitutes a "public body" for purposes of the Virginia Public Procurement Act (the "Procurement Act"). The OPEB statute provides that the selection of services related to the management, purchase, or sale of authorized investments shall not be subject to the provisions of the Procurement Act. In addition, the Procurement Act provides that competitive sealed bidding is not necessary if only one source is practicably available for the services being procured. The contract between the Trust and the VLGFC has been structured to satisfy the Procurement Act.

K. Federal and State Income Tax Status

The Trust will be designed as an integral part of the state government to satisfy the requirements for exemption from federal income taxation under Code § 115(1). We are seeking a private letter ruling confirming the Trust's status as exempt from federal income tax as a governmental entity. The Trust is exempt from state or local taxation. Va. Code § 15.2-1547.

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ORDINANCE NO. ____

AN ORDINANCE TO ADOPT TRUST FOR OTHER POST-EMPLOYMENT BENEFITS

WHEREAS, the City of Poquoson wants to establish a trust, trusts, or equivalent arrangements for the purpose of accumulating and investing assets to fund post-employment benefits other than pensions in accordance with section 15.2-1544 of the Virginia Code.

WHEREAS, Section 15.2-1500 of the Virginia Code provides, in part, that every locality shall provide for all the governmental functions of the locality, including, without limitation, the organization of all departments, offices, boards, commissions and agencies of government, and the organizational structure thereof, which are necessary and the employment of the officers and other employees needed to carry out the functions of government; and

WHEREAS, in connection with the employment of the officers and other employees needed to carry out the functions of government, the City of Poquoson has established certain plans to provide post-employment benefits other than pensions (herein "Other Post-Employment Benefits"), as defined in Section 15.2-1545 of the Virginia Code, to individuals who have terminated their service to the City of Poquoson and to the beneficiaries of such individuals; and

WHEREAS, Article 8, Chapter 15, Subtitle II of Title 15.2 of the Virginia Code (§§ 15.2-1544 *et seq.*) provides that the governing body of a City may establish a trust for the purpose of accumulating and investing assets to fund Other Post-Employment Benefits; and

WHEREAS, Section 15.2-1300 of the Virginia Code provides that any power, privilege or authority exercised or capable of exercise by any political subdivision of the Commonwealth of Virginia may be exercised and enjoyed jointly with any other political subdivision of the Commonwealth having a similar power, privilege or authority pursuant to agreements with one another for joint action pursuant to the provisions of that section; and

WHEREAS, any two or more political subdivisions may enter into agreements with one another for joint action pursuant to the provisions of Section 15.2-1300 of the Virginia Code provided that the participating political subdivisions shall approve such agreement before the agreement may enter into force; and

WHEREAS, the County of Fairfax, Virginia and the County of Henrico, Virginia have determined to jointly establish and participate in the Virginia Pooled OPEB Trust Fund (the "Trust Fund") for each such county; and

WHEREAS, it appearing to the Council of the City of Poquoson that it is otherwise in the best interests of the City to become a participating employer in the Trust Fund.

NOW, THEREFORE, BE IT ORDAINED, by the Council of the City of Poquoson, Virginia:

Section 1: That the City of Poquoson does hereby establish a trust pursuant to Section 15.2-1544 of the Virginia Code for the purpose of accumulating and investing assets to fund Other Post-Employment Benefits, in the form set forth in the Virginia Pooled OPEB Trust Fund Agreement (the "Agreement"), a copy of which is attached here as Exhibit A.

Section 2: That the City of Poquoson does hereby agree to become a "Participating Employer" in the "Virginia Pooled OPEB Trust Fund" (hereinafter, the "Trust Fund"), as further defined in the Agreement.

Section 3: That the City of Poquoson does hereby appoint the following individuals to the local finance board pursuant to Section 15.2-1547 of the Virginia Code to serve as the trustee of the City of Poquoson with respect to the Trust Fund, and as the "Local Finance Board" as defined in the Agreement:

The finance board shall be composed of at least three members who shall include the chief financial officer of the locality, the treasurer of the locality, and at least one other additional person who shall be a citizen of the Commonwealth with proven integrity, business ability, and

demonstrated experience in cash management and in investments. The third member of the board shall be the Commissioner of the Revenue of the City of Poquoson for a term of two years expiring on October 31, 2018.

Section 4: That the City of Poquoson does hereby direct the Local Finance Board to execute and deliver the Trust Joinder Agreement for Participating Employers under Virginia Pooled OPEB Trust Fund ("Trust Joinder Agreement"), a copy of which is attached hereto as Exhibit B.

Section 5: That the City of Poquoson does hereby designate the following benefits provided to qualified individuals who have terminated their service to the City of Poquoson and to the dependents of such individuals as Other Post-Employment Benefits:

All benefits included in the City of Poquoson's personnel policy manual Section 43, Retiree Health Insurance Coverage.

Section 6: This ordinance shall be in force and effect immediately upon its adoption or passage.

ADOPTED: _____

TESTE: _____
City Clerk

Exhibit A

VIRGINIA POOLED OPEB TRUST FUND AGREEMENT

THIS AGREEMENT (the "Agreement"), made by and between the Participating Employers and their Local Finance Boards who execute Trust Joinder Agreements to participate in the Virginia Pooled OPEB Trust Fund, and the individuals named as Trustees pursuant to Section 106 hereof and their successors (the "Board of Trustees"). The Participating Employers and their Local Finance Boards hereby establish with the Board of Trustees, and the Board of Trustees hereby accept, under the terms of this Agreement, a trust for the purpose of accumulating and investing assets to fund post-employment benefits other than pensions as provided in Article 8, Chapter 15, Subtitle II of Title 15.2 of the Virginia Code (§§ 15.2-1544 *et seq.*) to be held for the purposes set forth herein.

WITNESSETH:

WHEREAS, Section 15.2-1500 of the Virginia Code provides, in part, that every locality shall provide for all the governmental functions of the locality, including, without limitation, the organization of all departments, offices, boards, commissions and agencies of government, and the organizational structure thereof, which are necessary and the employment of the officers and other employees needed to carry out the functions of government; and

WHEREAS, in connection with the employment of the officers and other employees needed to carry out the functions of government, a locality may establish certain plans to provide post-employment benefits other than pensions (referred to hereinafter as "Other Post-Employment Benefits"), as defined in Section 15.2-1545 of the Virginia Code, to individuals who have terminated their service to the locality and to the dependents of such individuals; and

WHEREAS, Article 8, Chapter 15, Subtitle II of Title 15.2 of the Virginia Code (§§ 15.2-1544 *et seq.*) provides that the governing body of a city, county, or town, school district or the governing body of any other political subdivision that is appointed by a city, county, or town, if so authorized, may establish a trust, trusts, or equivalent arrangements for the purpose of accumulating and investing assets to fund Other Post-Employment Benefits; and

WHEREAS, Section 15.2-1300 of the Virginia Code provides that any power, privilege or authority exercised or capable of exercise by any political subdivision of the Commonwealth of Virginia may be exercised and enjoyed jointly with any other political subdivision of the Commonwealth having a similar power, privilege or authority pursuant to agreements with one another for joint action pursuant to the provisions of that section; and

WHEREAS, the County of Fairfax and the County of Henrico have adopted ordinances approving participation in the Virginia Pooled OPEB Trust Fund for each such locality; and

WHEREAS, the Participating Employers and their Local Finance Boards and the Board of Trustees of the Virginia Pooled OPEB Trust Fund (herein referred to as the "Trust Fund")

hereby establish a trust for the purpose of accumulating and investing assets to fund Other Post-Employment Benefits for Participating Employers; and

WHEREAS, the parties intend that the Trust Fund hereby established, when taken together with the plans providing Other Post-Employment Benefits, shall constitute a tax-exempt governmental trust under Section 115 of the Internal Revenue Code of 1986, as amended;

NOW, THEREFORE, the parties hereto mutually agree as follows:

PART 1- GENERAL PROVISIONS

Section 100. APPLICATION.

The provisions of Part 1 are general administrative provisions applicable to each Part of this Agreement and provisions applicable to the Board of Trustees.

Section 101. DEFINITIONS.

The following definitions shall apply to this Agreement, unless the context of the term indicates otherwise, and shall govern the interpretation of this Agreement:

A. Administrator. The term "Administrator" means the Virginia Local Government Finance Corporation (d/b/a "VML/VACo Finance Program") or any successor designated by the Board of Trustees, with the consent of the Virginia Association of Counties and Virginia Municipal League, to administer the Trust Fund.

B. Beneficiary. The term "Beneficiary" means a person designated by an Employee, in accordance with the terms of a Plan, to be entitled to benefits under such Plan, and where the context requires, includes a dependent of the Employee.

C. Code. The term "Code" means the Internal Revenue Code of 1986, as amended, and, as relevant in context, the Internal Revenue Code of 1954, as amended.

D. Custodian. The term "Custodian" means the banks, mutual funds, insurance companies or other qualified entities selected by the Board of Trustees, under a separate written document with each, to hold the assets of the Trust Fund.

E. Effective Date. The term "Effective Date" means the date coinciding with the last to occur of each of the following events: (i) passage of an ordinance by each of the Counties of Fairfax and Henrico approving such Counties as Participating Employers in the Trust Fund; (ii) execution by the Local Finance Boards of the Counties of Fairfax and Henrico of the Trust Joinder Agreement; (iii) execution of this Agreement by all members of the initial Board of Trustees and the Administrator; and (iv) any contribution of cash to the Trust by a Participating Employer.

F. Employee. The term "Employee" means the employees and officials, if applicable, of an Employer, and where the context requires, includes former Employees who have terminated service with an Employer. The term may also include individuals who, though not employed by the political subdivision, are nonetheless eligible, as a result of their providing service to or on behalf of the political subdivision, to receive Other Post Employment Benefits under the Employer's Plan. Such individuals may include, but are not limited to, members of a volunteer fire company or rescue squad.

G. Employer. The term "Employer" means (i) the governing body of any county, city, or town within the State, (ii) the governing body of any other political subdivision within the State authorized to establish a trust under Section 15.2-1544 of the Virginia Code by the governing body of any county, city, or town that appointed in whole or in part such governing body, or (iii) any appointed or elected school board within the State.

H. Fiscal Year. The first fiscal year of the Trust Fund shall be a short fiscal year beginning on the Effective Date of this Agreement and ending on June 30, 2008. Each subsequent fiscal year of the Trust Fund shall begin on the first day of July and end on the thirtieth day of June.

I. Investment Policy. The term "Investment Policy" means the Virginia Pooled OPEB Trust Fund Investment Policy, as established by the Board of Trustees, as amended from time to time.

J. Local Finance Board. The term "Local Finance Board" means the finance board, or any retirement board or deferred compensation board appointed by the governing body of a Participating Employer to serve as the trustee of such Participating Employer with respect to the Trust Fund, in accordance with Section 15.2-1547 of the Virginia Code, by execution of the Trust Joinder Agreement. Each Local Finance Board shall be the trustee and representative of its Participating Employer for purposes of this Agreement and shall vote the beneficial interest of such Participating Employer in the Trust Fund, as prescribed in Part 3 of this Agreement.

K. Other Post-Employment Benefits. The term "Other Post-Employment Benefits" means any and all post-employment benefits other than pensions, including but not limited to medical, dental, vision, disability and life insurance which may be provided to Employees and Beneficiaries, as may be provided under Plans of Participating Employers.

L. Participating Employer. The term "Participating Employer" means an Employer whose governing body has passed an ordinance or resolution to participate in the Trust Fund, and whose Local Finance Board, serving as the trustee of such Employer in accordance with Section 15.2-1547 of the Virginia Code, executes a Trust Joinder Agreement, as provided in Section 301 hereof.

M. Plan. The term "Plan" means the plan or plans established to provide Other Post-Employment Benefits, which are maintained by Participating Employers pursuant to any applicable statute, regulation, ordinance, resolution, plan, program, policy, agreement, understanding or other arrangement for the benefit of Employees and their Beneficiaries.

N. State. The term "State" means the Commonwealth of Virginia.

O. Trust Fund. The term "Trust Fund" means the Virginia Pooled OPEB Trust Fund, comprised of all of the assets set aside hereunder for the purpose of accumulating and investing assets to fund Other Post-Employment Benefits.

P. Trust Joinder Agreement. The term "Trust Joinder Agreement" means the agreement, in the form attached hereto as Exhibit A, pursuant to which the Local Finance Board joins in the Trust Fund, as the trustee of such Participating Employer, and agrees to be bound by the terms and conditions of the Virginia Pooled OPEB Trust Fund Agreement, as provided in Section 301 hereof.

Q. Trustees. The term "Trustees" means the individuals who serve on the Board of Trustees of the Trust Fund pursuant to Section 106 hereof and their successors.

R. Virginia Code. The term "Virginia Code" means the laws embraced in the titles, chapters, articles and sections designated and cited as the "Code of Virginia," under the laws of the State.

Section 102. GENERAL DUTIES AND MEETINGS OF THE BOARD OF TRUSTEES.

A. General Duties. The Board of Trustees and each Investment Manager appointed pursuant to this Agreement shall discharge their respective duties under this Agreement solely in the interest of Employees and Beneficiaries of the Participating Employers and: (i) except as otherwise provided by any applicable provision of any statute, regulation, ordinance, or resolution, for the exclusive purpose of providing Other Post-Employment Benefits to Employees and Beneficiaries of Participating Employers and defraying the reasonable expenses of administering the Trust Fund; (ii) with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with the same aims; and (iii) by diversifying the investments of the Trust Fund so as to minimize the risk of large losses unless under the circumstances, it is clearly prudent not to do so. However, the duties and obligations of the Board of Trustees and each Investment Manager, respectively, as such, shall be limited to those expressly imposed upon them, respectively, by this Agreement notwithstanding any reference herein to the Plans. The Board of Trustees shall administer the Trust Fund in compliance with Code Section 503(b).

1. Authority of the Trustees. The Trustees shall have the power and authority and shall be charged with the duty of general supervision and operation of the Trust Fund, and shall conduct the business and activities of the Trust Fund in accordance with this Agreement, the Trust Joinder Agreements, bylaws, rules and regulations adopted by the Board of Trustees and applicable law.

2. Trustees' Liabilities. No Trustee shall be liable for any action taken pursuant to this Agreement in good faith or for an omission except bad faith or gross

negligence, or for any act of omission or commission by any other Trustee. The Trustees are hereby authorized and empowered to obtain, at the expense of the Trust Fund, liability insurance fully protecting the respective Trustees, the Administrator, and the Trust Fund from any loss or expense incurred, including reasonable attorney's fees, for all acts of the Trustees except bad faith or gross negligence. The Trust Fund shall save, hold harmless and indemnify the Trustees and Administrator from any loss, damage or expense incurred by said persons or entities while acting in their official capacity excepting bad faith or gross negligence.

3. Standard of Review. In evaluating the performance of the Trustees, compliance by the Trustees with this Agreement must be determined in light of the facts and circumstances existing at the time of the Trustees' decision or action and not by hindsight.

4. Limitations on Liabilities. The Trustees' responsibilities and liabilities shall be subject to the following limitations:

(a) The Trustees shall have no duties other than those expressly set forth in this Agreement and those imposed on the Trustees by applicable laws.

(b) The Trustees shall be responsible only for money actually received by the Trustees, and then to the extent described in this Agreement. The Trustees shall not be under any duty to require payment of any contribution to the Trust Fund or to see that any payment made to them is computed in accordance with the provisions of the Plans.

(c) The Trustees shall not be responsible for the correctness of any determination of payments or disbursements from the Trust Fund.

(d) The Trustees shall have no liability for the acts or omissions of any predecessor or successor in office.

(e) The Trustees shall have no liability for (i) the acts or omissions of any Investment Advisor or Advisors, or Investment Manager or Managers; (ii) the acts or omissions of any insurance company; (iii) the acts or omissions of any mutual fund; or (iv) following directions that are given to the Trustees by the Local Finance Board in accordance with this Agreement.

B. Reliance on Counsel. The Board of Trustees may employ, retain or consult with legal counsel, who may be counsel for the Administrator, concerning any questions which may arise with reference to the duties and powers or with reference to any other matter pertaining to this Agreement; and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Trustees in good faith in accordance with the opinion of such counsel, and the Trustees shall not be individually or collectively liable therefor.

C. Meetings. The Board of Trustees shall meet at least quarterly, and more frequently if called, at the principal office of the Trust Fund or at such other location as may be acceptable to a majority of the Trustees. One such quarterly meeting of the Board of Trustees shall be held as soon as practicable after the adjournment of the annual meeting of Local Finance Boards of Participating Employers at such time and place as the Board of Trustees may designate. Other meetings of the Board of Trustees shall be held at places within the Commonwealth of Virginia and at times fixed by resolution of the Board of Trustees, or upon call of the Chairperson of the Board or a majority of the Trustees, on not less than ten (10) days advance notice. Such notice shall be directed to the Trustees by mail to the respective addresses of the Trustees as recorded in the office of the Trust Fund. The notice of any special meetings of the Board of Trustees shall state the purpose of the meeting.

A majority of the number of Trustees elected and serving at the time of any meeting shall constitute a quorum for the transaction of business. The act of a majority of Trustees present at a meeting at which a quorum is present shall be the act of the Board of Trustees. Less than a quorum may adjourn any meeting.

D. Office of the Trust Fund. The Administrator shall establish, maintain and provide adequate funding for an office for the administration of the Trust Fund. The address of such office is to be made known to the parties interested in or participating in the Trust Fund and to the appropriate governmental agencies. The books and records pertaining to the Trust Fund and its administration shall be kept and maintained at the office of the Trust Fund.

E. Execution of Documents. A certificate signed by a person designated by the Board of Trustees to serve as Secretary shall be evidence of the action of the Trustees, and any such certificate or other instrument so signed shall be kept and maintained at the office of the Trust Fund and may be relied upon as an action of the Trustees.

F. Appointment and Removal of Administrator. The Virginia Local Government Finance Corporation is hereby initially designated the Administrator pursuant to an administrative services agreement between the parties. The Board of Trustees shall provide compensation for the Administrator to administer the affairs of the Trust Fund. Any three (3) Trustees may schedule a vote of the Board of Trustees to remove the Administrator by providing no less than 30 days' notice to the other Trustees and to the Administrator. Provided there is sufficient notice given, a vote will be scheduled at the next meeting of the Board of Trustees at which the Administrator may be removed on a three-fourths (¾) vote of the Trustees. Upon removal of the Administrator, the Board of Trustees may designate a successor Administrator.

G. Duty to Furnish Information. The Local Finance Boards and the Board of Trustees shall furnish to each other any document, report, return, statement or other information that the other reasonably deems necessary to perform duties imposed under this Agreement or otherwise imposed by law.

H. Reliance on Communications. The Board of Trustees may rely upon a certification of a Local Finance Board with respect to any instruction, direction, or approval of its Participating Employer and may continue to rely upon such certification until a subsequent

certification is filed with the Trustees. The Trustees shall have no duty to make any investigation or inquiry as to any statement contained in any such writing but may accept the same as fully authorized by the Local Finance Board and its Participating Employer.

Section 103. ADMINISTRATIVE POWERS AND DUTIES.

A. Trustees. The Board of Trustees, in addition to all powers and authorities under common law or statutory authority, including Article 8, Chapter 15, Subtitle II of Title 15.2 of the Virginia Code (§§ 15.2-1544 *et seq.*), shall have and in its sole and absolute discretion may exercise from time to time and at any time, either through its own actions, delegation to the Administrator, or through a Custodian selected by the Board of Trustees, the following administrative powers and authority with respect to the Trust Fund:

1. To receive for the purposes hereof all cash contributions paid to them by or at the direction of the Participating Employers or their Local Finance Boards.

2. To hold, invest, reinvest, manage, administer and distribute cash balances as shall be transferred to the Trustees from time to time by the Participating Employers or their Local Finance Boards and the increments, proceeds, earnings and income thereof for the exclusive benefit of Employees and Beneficiaries under the Plans of each Participating Employer.

3. To continue to hold any property of the Trust Fund that becomes otherwise unsuitable for investment for as long as the Board of Trustees in its discretion deem desirable; to reserve from investment and keep unproductive of income, without liability for interest, cash temporarily awaiting investment and such cash as it deems advisable, or as the Administrator from time to time may specify, in order to meet the administrative expenses of the Trust Fund or anticipated distributions therefrom.

4. To hold property of the Trust Fund in the name of the Trust Fund or in the name of a nominee or nominees, without disclosure of the trust, or in bearer form so that it will pass by delivery, but no such holding shall relieve the Board of Trustees of its responsibility for the safe custody and disposition of the Trust Fund in accordance with the provisions of this Agreement; the books and records of the Board of Trustees shall show at all times that such property is part of the Trust Fund and the Board of Trustees shall be absolutely liable for any loss occasioned by the acts of its nominee or nominees with respect to securities registered in the name of the nominee or nominees.

5. To employ in the management of the Trust Fund suitable agents, without liability for any loss occasioned by any such agents, selected 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 the same aims.

6. To make, execute and deliver, as trustee, any deeds, conveyances, leases, mortgages, contracts, waivers or other instruments in writing that it may deem necessary or desirable in the exercise of its powers under this Agreement.

7. To do all other acts that it may deem necessary or proper to carry out any of the powers set forth in this Section 103 or Section 202, to administer or carry out the purposes of the Trust Fund, or as otherwise is in the best interests of the Trust Fund; provided, however, the Board of Trustees need not take any action unless in its opinion there are sufficient Trust Fund assets available for the expense thereof.

8. To adopt bylaws governing the Trustees' operations and procedures.

9. To contract with municipal corporations, political subdivisions and other public entities of State or of local government and private entities for the provision of Trust Fund services and for the use or furnishing of services and facilities necessary, useful, or incident to providing Trust Fund services.

10. To advise the Administrator on the establishment of expectations with regard to the provision of administrative services and the establishment of appropriate fee levels.

11. To establish and charge fees for participation in the Trust Fund and for additional administrative services provided to a Participating Employer in addition to any fees charged by other administrative service providers.

12. To collect and disburse all funds due or payable from the Trust Fund, under the terms of this Agreement.

13. To provide for and promulgate all rules, regulations, and forms deemed necessary or desirable in contracting with Local Finance Boards and their Participating Employers, in fulfilling the Trustees' purposes of providing Other Post-Employment Benefits through the Trust Fund, and in maintaining proper records and accounts.

14. To employ insurance companies, banks, trust companies, investment brokers, investment advisors, or others as agents for the receipt and disbursement of funds held in trust for Participating Employers.

15. To determine, consistent with the applicable law and the procedures under the Trust Fund, all questions of law or fact that may arise as to investments and the rights of any Participating Employer to assets of the Trust Fund.

16. Subject to and consistent with the Code and the Virginia Code, to construe and interpret the Trust Agreement and to correct any defect, supply any omissions, or reconcile any inconsistency in the Agreement.

17. To contract for, purchase or otherwise procure insurance and investment products.

B. Administrator. Pursuant to an administrative services agreement between the Board of Trustees and the Administrator, 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.

Section 104. TAXES, EXPENSES AND COMPENSATION OF TRUSTEES.

A. Taxes. The Administrator, without direction from the Board of Trustees, shall pay out of the Trust Fund all taxes, if any, imposed or levied with respect to the Trust Fund, or any part thereof, under applicable law, and, in its discretion, may contest the validity or amount of any tax, assessment, claim or demand respecting the Trust Fund or any part thereof.

B. Expenses and Compensation. The Board of Trustees is authorized to set aside from Participating Employer contributions received and the investment income earned thereon a reasonable sum for the operating expenses and administrative expenses of the Trust Fund. All remaining funds coming into the Trust shall be set aside, managed and used only for the payment of Other Post-Employment Benefits.

By resolution of the Board of Trustees, Trustees may be provided a reasonable per diem fee and/or reimbursement for expenses for attendance at all meetings. Notwithstanding the preceding sentence, any person employed by a public body, including elected officials or appointed members of governing bodies of a county, city or town or other political subdivision, shall not be eligible to receive fees for services as Trustee from the Trust Fund other than reimbursement for reasonable expenses incurred in connection with his or her responsibilities as a Trustee.

C. Payment of Expenses. The Board of Trustees may use and apply assets in the Trust Fund to pay or provide for the payment of all reasonable and necessary expenses which may be incurred in connection with the establishment and maintenance of the Trust Fund, including but not limited to, the employment of such administrative, legal, accounting, and other expert and clerical assistance, and the purchase or lease of such materials, supplies and equipment as the Trustees, in its discretion, may deem necessary or appropriate in the performance of its duties, or the duties of the agents or employees of the Trust Fund or the Trustees.

Section 105. COMMUNICATIONS.

Until notice is given to the contrary, communication to the Trustees or to the Administrator shall be sent to them at the Trust Fund's office in care of the Administrator. The Administrator's address is VML/VACo Finance at 919 E. Main Street, Suite 1100 Richmond, VA 23219.

Section 106. APPOINTMENT, RESIGNATION OR REMOVAL OF TRUSTEES.

A. Trustees. Except as otherwise provided for the initial group of Trustees and in subsections B.2 and E of this section, the Trustees shall be selected from the members of Local Finance Boards. Notwithstanding any other provision of this Agreement, no more than one member of the Local Finance Board of any particular Participating Employer shall be eligible to sit on the Board of Trustees at one time unless an individual seeking election to the Board of Trustees is, and upon election continues to serve as, a member of a Local Finance Board not otherwise represented on the Board of Trustees.

B. Appointment of Trustees and Length of Appointment. The number of Trustees serving on the Board of Trustees shall be between five (5) and nine (9). The actual number of Trustees may be increased or decreased from time to time within this range by the Board of Trustees by resolution of the Board of Trustees. Only the Local Finance Boards, by vote taken in accordance with Section 307 hereof, may increase or decrease the range in the number of Trustees. No decrease in number shall have the effect of shortening the term of any incumbent Trustee.

1. The initial group of Trustees shall be an interim group of five (5) Trustees to establish the Trust Fund as follows: (a) one (1) individual selected by the Local Finance Board of the County of Fairfax from among its members, (b) one (1) individual selected by the Local Finance Board of the County of Henrico from among its members, and (c) three (3) individuals designated by agreement of the Virginia Association of Counties ("VACo") and the Virginia Municipal League ("VML").

With the first annual meeting of the Local Finance Boards, the Board of Trustees shall be divided into no fewer than two classes, Class A (which includes representatives of the Local Finance Boards of the two founding Participating Employers until the annual meeting of the Local Finance Boards for the Fiscal Year ending June 30, 2015 (the "Fiscal Year 2015 annual meeting")) and Class B (which includes the Trustees selected by VML and VACo until the first annual meeting of Local Finance Boards for the Fiscal Year ending June 30, 2009 (the "Fiscal Year 2009 annual meeting")). An additional Class C with two seats may be created by the Board of Trustees prior to any annual meeting, but only if there are at least seven total Participating Employers. Provided there are at least nine total Participating Employers, the Board of Trustees may create a nine-member Board of Trustees, in which case one additional seat shall be allocated to Class A and one additional seat to Class C.

2. On or after July 1, 2008, the Trustees shall solicit nominations from the Local Finance Boards for open Trusteeships and such nominees shall constitute the candidates for the election of Trustees by vote at the Fiscal Year 2009 annual meeting of the Local Finance Boards as provided in Section 307. In the event that there are not a sufficient number of eligible nominees, nominations will be provided by the Executive Directors of the Virginia Association of Counties and the Virginia Municipal League from among the members of any Local Finance Board, local government officials or local government employees.

The initial group of Trustees described in B.1(a) and (b) above shall be classified as Class A Trustees and shall serve until the Fiscal Year 2012 annual meeting of the Local Finance Boards and for one three-year term thereafter until successor Trustees are elected at the Fiscal Year 2015 annual meeting of the Local Finance Boards, in accordance with Section 106E below, from the pool of nominees selected by all Local Finance Boards. If an additional Class A Trustee seat is created for a non-founding Participating Employer's Local Finance Board before the Fiscal Year 2011 annual meeting, that seat will expire at the Fiscal Year 2012 annual meeting. If such an additional Class A board seat is created subsequent to the Fiscal Year 2011 annual meeting, then it will expire at the annual meeting when the founding Participating Employers' board seats expires beginning at the annual meeting held in Fiscal Year 2015, if appropriate, and every third succeeding year thereafter.

The initial group of Trustees described in B.1(c) above shall be classified as Class B Trustees and shall serve until successor Trustees are elected at the Fiscal Year 2009 annual meeting of Local Finance Boards. At the Fiscal Year 2009 annual meeting of Local Finance Boards, Trustees of Class B shall be elected to hold office for a one-year term expiring at the Fiscal Year 2010 annual meeting of Local Finance Boards until successor Trustees are elected at the Fiscal Year 2010 annual meeting of the Local Finance Boards, in accordance with Section 106E below, from the pool of nominees selected by all Local Finance Boards.

Trustees of the third class (Class C), if such a class is created, shall be elected to hold office for a two-year term expiring at the Fiscal Year 2011 annual meeting of Local Finance Boards until successor Trustees are elected at the Fiscal Year 2011 annual meeting of the Local Finance Boards, in accordance with Section 106E below, from the pool of nominees selected by all Local Finance Boards.

At each annual meeting of Local Finance Boards after the annual meetings of Local Finance Boards described above, the successors to the class of Trustees whose terms shall then expire shall be identified as being of the same class as the trustees they succeed and elected to hold office for a term expiring at the third succeeding annual meeting of Local Finance Boards. If a Class C is created at a subsequent annual meeting, its seats will expire one year following the year in which the Class B seats expire. Trustees shall hold their offices until the next annual meeting of Local Finance Boards for such Trustee's respective Class and until their successors are elected and qualify.

3. At each annual meeting of the Local Finance Boards, the incumbent Trustees will present all nominations received for each class of Trustees (A, B, or C) for which an election is to be held. If a Local Finance Board does not designate a particular class for its nominee(s), such names will be included on the lists of eligible nominees for each class for which an election is to be held unless the individual named is elected to another seat.

4. No individual Trustee may be elected or continue to serve as a Trustee after becoming an owner, officer or employee of the Administrator, an Investment Advisor, an Investment Manager or a Custodian. Except as otherwise provided in B.2 above, following the first election for Trustees, no Trustee may be elected or continue to serve as a Trustee unless he or she is a member of a Local Finance Board.

5. Each Trustee and each successor Trustee shall acknowledge and consent to his or her election as a Trustee by giving written notice of acceptance of such election to the Chairperson of the Trustees.

C. Resignation of a Trustee.

1. A Trustee may resign from all duties and responsibilities under this Agreement by giving written notice to the Chairperson of the Trustees. The Chairperson may resign from all duties and responsibilities under this Agreement by giving written notice to all of the other Trustees. Such notice shall state the date such resignation shall take effect and such resignation shall take effect on such date but not later than sixty (60) days after the date such written notice is given.

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

D. Removal of a Trustee. Each Trustee, unless due to the resignation, death, incapacity, removal, or conviction of a felony or any offense for which registration is required as defined in Virginia Code § 9.1-902 and for whom all rights of appeal under Virginia law have expired, shall serve and shall continue to serve as Trustee hereunder, subject to the provisions of this Agreement.

A Trustee shall relinquish his or her office or may be removed by a majority vote of the Trustees or *ipso facto* when the Employer which he represents is no longer a Participating Employer in the Trust Fund. Notice of removal of a Trustee shall be furnished to the other Trustees by the Chairperson of the Trustees and shall set forth the effective date of such removal. Notice of removal of the Chairperson shall be furnished to the other Trustees by the Administrator and shall set forth the effective date of such removal.

E. Appointment of a Successor Trustee. Except as otherwise provided in part B.1 of this Section with respect to the initial two terms of Class A Trustees, in the event a Trustee shall die, resign, become incapacitated, be removed from office, or convicted of a felony or any offense for which registration is required as defined in Virginia Code § 9.1-902 and for whom all rights of appeal under Virginia law have expired, a successor Trustee shall be elected forthwith by the affirmative vote of the majority of the remaining Trustees though less than a quorum of

the Board of Trustees. The notice of the election of a successor Trustee shall be furnished to the other Trustees by the Chairperson. In case of the removal, death, resignation, etc. of the Chairperson, notice of the election of a successor Trustee, and the new Chairperson, shall be furnished to the other Trustees by the Administrator. Eligible nominees will be provided by the members of the Local Finance Board of the Trustee being replaced; however, no more than one member of such board may serve as Trustee at one time. If such nominees do not receive the affirmative vote of a majority of the remaining Trustees, additional eligible nominees will be provided by the Executive Directors of the Virginia Association of Counties and the Virginia Municipal League from among the members of any Local Finance Board, and, if there are an insufficient number of nominees to fill available positions, local government officials or local government employees. The term of office of any Trustee so elected shall expire at the next Annual Meeting of Local Finance Boards at which Trustees are elected where a successor shall be elected to complete the term for the Class to which such Trustee has been assigned. Any successor Trustee for a Class A Trustee from a founding Participating Employer with respect to the initial two terms shall be appointed by that Trustee's Local Finance Board.

F. Trustees' Rights. In case of the death, resignation or removal of any one or more of the Trustees, the remaining Trustees shall have the powers, rights, estates and interests of this Agreement as Trustees and shall be charged with the duties of this Agreement; provided in such cases, no action may be taken unless it is concurred in by a majority of the remaining Trustees.

Section 107. Bonding. All Trustees shall immediately make application for a fidelity bond, to any company designated by the Board of Trustees, in such amount as may be specified by the Board of Trustees. Premiums on such bonds shall be paid from the Trust Fund, which bonds shall be continued in force in such amount as the Board of Trustees may from time to time require. If a Trustee's bond is refused, or is ever cancelled, except with the Board of Trustee's approval, such Trustee may be removed from office by majority vote of the Board of Trustees and such Trustee shall be entitled to compensation, if any, to the date of such removal only. A bond for a Trustee is not required under this section if a bond is obtained for such Trustee pursuant to Section 408.

PART 2 – PROVISIONS APPLICABLE TO INVESTMENTS

Section 200. APPLICATION.

The provisions of Part 2 apply to the investments of the Trust Fund.

Section 201. ADMINISTRATION OF TRUST.

A. General. All such assets shall be held by the Trustees in the Trust Fund.

B. Contributions. The Board of Trustees hereby delegates to the Administrator the responsibility for accepting cash contributions to the Trust Fund and the Administrator shall have the responsibility for accepting cash contributions by Participating Employers. Contributions of a Participating Employer to fund Other Post-Employment Benefits are irrevocable. Assets held in the Trust Fund shall be dedicated to providing Other Post-Employment Benefits or to

defraying reasonable expenses of the Trust Fund. Neither the Trustees nor the Administrator shall be under any duty to determine whether the amount of any contribution is in accordance with the Participating Employer's Plan or Plans or to collect or enforce payment of any contribution. All contributions by a Participating Employer shall be transferred to the Trust Fund to be held, managed, invested and distributed as part of the Trust Fund by the Trustees in accordance with the provisions of this Agreement and applicable law.

C. Applicable Laws and Regulations, The Board of Trustees shall be authorized to take the steps it deems necessary or appropriate to comply with any laws or regulations applicable to the Trust Fund.

D. Accumulated Share. No Participating Employer shall have any 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; however, there shall be a specific accounting of assets allocable to each Participating Employer.

Section 202. MANAGEMENT OF INVESTMENTS OF THE TRUST FUND.

A. Authority of Trustees. Except as set forth in subsections C, D, E, G or H of this Section, and except as otherwise provided by law, the Board of Trustees shall have exclusive authority and discretion to manage and control the assets of the Trust Fund held by them pursuant to the guidelines established by the Board of Trustees in the Investment Policy.

B. Investment Policy. The Board of Trustees, as its primary responsibility under this Agreement, shall develop a written Investment Policy establishing guidelines applicable to the investment of the assets of the Trust Fund, and from time to time shall modify such Investment Policy, in light of the short and long-term financial needs of the Plans. The Investment Policy shall serve as the description of the funding policy and method for the Trust Fund.

C. Investment Advisor. The Board of Trustees, from time to time, may direct the Administrator to appoint one (1) or more independent Investment Advisors ("Investment Advisor"), pursuant to a written investment advisory agreement with each, describing the powers and duties of the Investment Advisor with regard to the management of all or any portion of any investment or trading account of the Trust Fund. The Investment Advisor shall review, a minimum of every calendar quarter, the suitability of the Trust Fund's investments, the performance of the Investment Managers and their consistency with the objectives of the Investment Policy with assets in the portion of the Trust Fund for which the Investment Manager has responsibility for management, acquisition or disposition.

If the Administrator contracted with a lead Investment Advisor prior to the establishment of this Agreement, the Board of Trustees may ratify such contract. The lead Investment Advisor will serve at the pleasure of the Board of Trustees and will be compensated for its recurring, usual and customary services as part of the fee schedule established with the Administrator.

D. Investment Advisor Duties. Subject to the approval of the Board of Trustees, the Investment Advisor shall recommend an asset allocation for the Trust Fund that is consistent with the objectives of the Investment Policy. If the Board of Trustees shall approve a separate Investment Policy with respect to assets in a segregated portion of the Trust Fund, the Investment Advisor shall recommend an asset allocation for such segregated portion of the Trust Fund that is consistent with the objectives of such Investment Policy. At least annually, the Investment Advisor shall review the Investment Policy and asset allocation with the Board of Trustees. The Investment Advisor shall also advise the Board of Trustees with regard to investing in a manner that is consistent with applicable law, and, as advised by the Administrator, the expected distribution requirements of the Plans.

E. Investment Managers. The Board of Trustees, from time to time, may appoint one (1) or more independent Investment Managers ("Investment Manager"), pursuant to a written investment management agreement with each, describing the powers and duties of the Investment Manager to invest and manage all or a portion of the Trust Fund. The Investment Manager shall have the power to direct the management, acquisition or disposition of that portion of the Trust Fund for which the Investment Manager is responsible.

The Board of Trustees shall be responsible for ascertaining that each Investment Manager, while acting in that capacity, satisfies the following requirements:

1. 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 herein under the laws of more than one state; and

2. The Investment Manager has acknowledged in writing to the Board of Trustees that it is a fiduciary with respect to the assets in the portion of the Trust Fund for which the Investment Manager has responsibility for management, acquisition or disposition.

F. Custodians. The Custodian(s) shall no less frequently than annually or at the request of the Board of Trustees certify the value of any property of the Trust Fund managed by the Investment Manager(s). The Trustees shall be entitled to rely conclusively upon such valuation for all purposes under the Trust Fund.

G. Investment in Insurance Contracts. The Trustees may offer one (1) or more investment options pursuant to one (1) or more agreements with insurance companies qualified to do business in the Commonwealth of Virginia. Any asset invested pursuant to such an agreement shall be held by the insurance company. Each insurance company so selected shall certify the value of the Trust Fund's interest in the property held by it at least annually. The Trustees shall be entitled to rely conclusively on such valuation for all purposes under this Agreement.

H. Investment in Mutual Funds. The Trustees may offer one (1) or more investment options pursuant to one (1) or more agreements with companies offering mutual fund products.

Any asset invested pursuant to such an agreement shall be held by the Trustees. Each mutual fund so selected shall certify the value of the Trust Fund's interest in that fund at least annually. The Trustees shall be entitled to rely conclusively on such valuation for all purposes under the Trust Fund.

I. Absence of Trustees' Responsibility for Investment Advisor and Manager. Except to the extent provided in paragraph A of Section 102 above, the Board of Trustees, collectively and individually, shall not be liable for any act or omission of any Investment Manager and shall not be under any obligation to invest or otherwise manage the assets of the Trust Fund that are subject to the management of any Investment Manager. Without limiting the generality of the foregoing, the Board of Trustees shall be under no duty at any time to make any recommendation with respect to disposing of or continuing to retain any such asset. Furthermore, the Board of Trustees, collectively and individually, shall not be liable by reason of its taking or refraining from taking the advice of the Investment Advisor any action pursuant to this Section, nor shall the Board of Trustees be liable by reason of its refraining from taking any action to remove or replace any Investment Manager on advice of the Investment Advisor; and the Trustees shall be under no duty to make any review of an asset acquired at the direction or order of an Investment Manager.

J. Reporting. The Board of Trustees shall be responsible for and shall cause to be filed periodic audits, valuations, reports and disclosures of the Trust Fund as are required by law or agreements. Notwithstanding anything herein to the contrary, the Board of Trustees shall cause the Trust Fund to be audited by a certified public accounting firm retained for this purpose at least once each year.

The Board of Trustees may employ professional advisors to prepare such audits, valuations, reports and disclosures and the cost of such professional advisors shall be borne by the Trust Fund.

K. Commingling Assets. Except to the extent prohibited by applicable law, the Board of Trustees may commingle the assets of all Participating Employers held by the Board of 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 each Participating Employer shall be accounted for separately. The Board of Trustees and the Administrator 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, or distribution to Plan participants.

Section 203. ACCOUNTS.

The Trustees shall keep or cause to be kept at the expense of the Trust Fund accurate and detailed accounts of all its receipts, investments and disbursements under this Agreement, with the Trustees accounting separately for each Investment Manager's portion of the Trust Fund.

Section 204. DISBURSEMENTS FROM THE TRUST.

A. Trust Payments. The Board of Trustees hereby delegates to the Administrator the responsibility for making payments from the Trust Fund. In accordance with rules and regulations established by the Board of Trustees, the Administrator shall make payments from the Trust Fund for Other Post-Employment Benefits, as directed by the Local Finance Board of each Participating Employer. Such rules and regulations shall include procedures for certification by the Local Finance Board that payments from the Trust Fund are for the purpose of: (i) paying Other Post-Employment Benefits to or on behalf of Employees or Beneficiaries, (ii) paying premiums to an insurer for Other Post-Employment Benefits, (iii) an irrevocable transfer of assets to a trust, or equivalent arrangement, for providing Other Post-Employment Benefits to Employees and Beneficiaries, which trust assets are legally protected from creditors of the Participating Employer, or (iv) for any purpose permitted under Governmental Accounting Standards Board (GASB) Statement No. 45, *Accounting and Financial Reporting by Employers for Postemployment Benefits Other Than Pensions* or applicable Virginia law. Payments shall be made in such manner, in such amounts and for such purposes, including the payment of Other Post-Employment Benefits under participating Plans, as may be directed by the Local Finance Board. Payments from the Trust Fund shall be made by electronic transfer or check (or the check of an agent) for deposit to the order of the payee. Payments or other distributions hereunder may be mailed to the payee at the address last furnished to the Administrator. The Trustees shall not incur any liability on account of any payment or other distribution made by the Trust Fund in accordance with this Section. Such payment shall be in full satisfaction of claims hereunder against the Trustee, Administrator or Participating Employer.

B. Allocation of Expenses. The Trustees shall pay all expenses of the Trust Fund from the assets in the Trust Fund. All expenses of the Trust Fund, which are allocable to a particular investment option or account, may be allocated and charged to such investment option or account as determined by the Trustees. All expenses of the Trust Fund which are not allocable to a particular investment option or account shall be charged to each such investment option or account in the manner established by the Trustees.

Section 205. INVESTMENT OPTIONS.

The Trustees shall initially establish one (1) investment option within the Trust Fund pursuant to the Investment Policy, for communication to, and acceptance by, Local Finance Boards. Following development of the initial "investment option" pursuant to the Investment Policy, the Board of Trustees may develop up to two (2) additional investment options, reflecting different risk/return objectives and corresponding asset mixes, for selection by Local Finance Boards, as alternatives to the initial investment option. The determination to add alternative investment options to the Investment Policy, and the development of each such investment option, are within the sole and absolute discretion of the Board of Trustees. The Trustees shall transfer to any deemed investment option developed hereunder such portion of the assets of the Trust Fund as appropriate. The Trustees shall manage, acquire or dispose of the assets in an investment option in accordance with the directions given by each Local Finance Board. All income received with respect to, and all proceeds received from, the disposition of property held in an investment option shall be credited to, and reinvested in, such investment option. If multiple investment options are developed, the Board of Trustees shall establish one (1) default investment option in the absence of valid Local Finance Board investment direction.

If multiple investment options are developed, from time to time, the Board of Trustees may eliminate an investment option, and the proceeds thereof shall be reinvested in the default investment option unless another investment option is selected in accordance with directions given by the Local Finance Board.

Notwithstanding anything hereinabove to the contrary, the Board of Trustees, in its sole discretion, may establish a separate, short-term investment option or fund, to facilitate contributions, disbursements or other short-term liquidity needs of the Trust or of particular Participating Employers. Separate investment funds within the Trust Fund and varying percentages of investment in any such separate investment fund by the Participating Employers, to the extent so determined by the Board of Trustees, are expressly permitted.

PART 3 – PROVISIONS APPLICABLE TO PARTICIPATING EMPLOYERS

Section 300. APPLICATION.

The provisions of Part 3 set forth the rights of Participating Employers.

Section 301. PARTICIPATING EMPLOYERS.

A. Approval. The Board of Trustees or its designee shall receive applications from Employers for membership in the Trust Fund and shall approve or disapprove such applications for membership in accordance with the terms of this Agreement, the Trust Joinder Agreement, bylaws and the rules and regulations established by the Board of Trustees for admission of new Participating Employers. Before approving the participation of any Employer that has established a Plan, the Board of Trustees or its designee shall determine and affirm that such Employer is permitted to establish a trust pursuant to Article 8, Chapter 15, Subtitle II of Title 15.2 of the Virginia Code (§§ 15.2-1544 *et seq.*). The Board of Trustees shall have total discretion in determining whether to accept a new member. The Board of Trustees may delegate the authority for membership approval to the Administrator.

B. Execution of Trust Joinder Agreement by Local Finance Board. Each Employer will make its election to become a Participating Employer by directing its Local Finance Board to execute a Trust Joinder Agreement in such form and content as prescribed by the Board of Trustees. By the Local Finance Board's execution of the Trust Joinder Agreement, the Participating Employer agrees to be bound by all the terms and provisions of this Agreement, the Trust Joinder Agreement, the bylaws and any other rules and regulations adopted by the Trustees under this Agreement. The Local Finance Board of each Participating Employer, serving as such Employer's Trustee, in accordance with Virginia Code § 15.2-1547, shall represent such Participating Employer's interest in all meetings, votes, and any other actions to be taken by a Participating Employer hereunder. A Local Finance Board may designate one or more, but less than all, of its members to serve as the authorized representative of such Local Finance Board for purposes of this Agreement.

C. Continuing as a Participating Employer. Application for participation in this Agreement, when approved in writing by the Board of Trustees or its designee, shall constitute a continuing contract for each succeeding fiscal year unless terminated by the Trustees or unless the Participating Employer resigns or withdraws from this Agreement by written notice of its Local Finance Board. The Board of Trustees may terminate a Participating Employer's participation in this Agreement for any reason by vote of three-fourths (¾) of the Board of Trustees. If the participation of a Participating Employer is terminated, the Board of Trustees and the Administrator shall effect the withdrawal of such Participating Employer's beneficial interest in the Trust within one hundred eighty (180) days, by transfer of such assets to a trust, trusts or equivalent arrangement for the purpose of accumulating and investing assets to fund Other Post-Employment Benefits, established for this purpose by such Participating Employer. If withdrawal is not completed within this time period, the Board of Trustees, in its discretion, may make reasonable alternative arrangements for the distribution of the Participating Employer's beneficial interest.

Section 302. Places of Meetings. All meetings of the Local Finance Boards shall be held at such place, within the Commonwealth of Virginia, as from time to time may be fixed by the Trustees.

Section 303. Annual Meetings. The annual meeting of the Local Finance Boards, for the election of Trustees and for the transaction of such other business as may come before the annual meeting, shall be held at such time on such business day between September 1st and October 31st as shall be designated by resolution of the Board of Trustees.

Section 304. Special Meetings. Special meetings of the Local Finance Boards for any purpose or purposes may be called at any time by the Chairperson of the Board of Trustees, by the Board of Trustees, or if Local Finance Boards together holding at least twenty percent (20%) of all votes entitled to be cast on any issue proposed to be considered at the special meeting sign, date and deliver to the Trust Fund's Secretary one or more written demands for the meeting describing the purpose or purposes for which it is to be held. At a special meeting no business shall be transacted and no action shall be taken other than that stated in the notice of the meeting.

Section 305. Notice of Meetings. Written notice stating the place, day and hour of every meeting of the Local Finance Boards and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each Participating Employer's Local Finance Board of record entitled to vote at such meeting, at the address which appears on the books of the Trust Fund.

Section 306. Quorum. Any number of Local Finance Boards together holding at least a majority of the outstanding beneficial interests entitled to vote with respect to the business to be transacted, who shall be physically present in person at any meeting duly called, shall constitute a quorum of such group for the transaction of business. If less than a quorum shall be in attendance at the time for which a meeting shall have been called, the meeting may be adjourned from time to time by a majority of the Local Finance Boards present. Once a beneficial interest is represented for any purpose at a meeting of Local Finance Boards, it shall be deemed present

for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is, or shall be, set for that adjourned meeting.

Section 307. Voting. At any meeting of the Local Finance Boards, each Local Finance Board entitled to vote on any matter coming before the meeting shall, as to such matter, have one vote, in person, for each whole dollar invested in the Trust Fund standing in its name on the books of the Trust Fund on the date, not more than seventy (70) days prior to such meeting, fixed by the Board of Trustees, for the purpose of determining Local Finance Boards entitled to vote, as the date on which the books of the Trust Fund are to be closed or as the record date. Notwithstanding the preceding sentence, at any meeting held after the date the fifth (5th) Participating Employer joins the Trust, no one Local Finance Board may vote more than forty-five percent (45%) of the total votes cast. In the event that more than one member of a Local Finance Board attends a meeting, the Local Finance Board will designate one member authorized to cast its votes.

If a quorum is present at a meeting of the Local Finance Boards, action on a matter other than election of Trustees shall be approved if the votes cast favoring the action exceed the votes cast opposing the action, unless a vote of a greater number is required by this Agreement. If a quorum is present at a meeting of the Local Finance Boards, Trustees for all open seats for each class of Trustees on the Board of Trustees shall be elected by a plurality of the votes cast by the beneficial interests entitled to vote in such election.

Local Finance Boards at the annual meeting will vote at one time to fill all open positions within a single class of Trustees. Elections will be held by class, in the order of the length of the terms to be filled, beginning with the longest term. The designated representative of each Local Finance Board will cast up to the full number of its votes for each open position within a class of Trustees, but it may not cast votes for more than the number of open positions in such class. Those nominees receiving the largest plurality of votes, up to the number of positions to be filled, will be declared elected. Subsequent votes may be held to break any ties, if necessary, in order to elect the correct number of Trustees.

PART 4 – PROVISIONS APPLICABLE TO OFFICERS

Section 401. Election of Officers; Terms. The Board of Trustees shall appoint the officers of the Trust Fund. The officers of the Trust Fund shall consist of a Chairperson of the Board, a Vice-Chairperson, and a Secretary. The Secretary need not be a member of the Board of Trustees and may be the Administrator. Other officers, including assistant and subordinate officers, may from time to time be elected by the Board of Trustees, and they shall hold office for such terms as the Board of Trustees may prescribe. All officers shall hold office until the next annual meeting of the Board of Trustees and until their successors are elected.

Section 402. Removal of Officers; Vacancies. Any officer of the Trust Fund may be removed summarily with or without cause, at any time, on a three-fourths (¾) vote of the Board of Trustees. Vacancies may be filled by the Board of Trustees.

Section 403. Duties. The officers of the Trust Fund shall have such duties as generally pertain to their offices, respectively, as well as such powers and duties as are prescribed by law or are hereinafter provided or as from time to time shall be conferred by the Board of Trustees. The Board of Trustees may require any officer to give such bond for the faithful performance of such officer's duties as the Board of Trustees may see fit.

Section 404. Duties of the Chairperson. The Chairperson shall be selected from among the Trustees. Except as otherwise provided in this Agreement or in the resolutions establishing such committees, the Chairperson shall be ex officio a member of all Committees of the Board of Trustees. The Chairperson shall preside at all Board meetings. The Chairperson may sign and execute in the name of the Trust Fund stock certificates, deeds, mortgages, bonds, contracts or other instruments except in cases where the signing and the execution thereof shall be expressly delegated by the Board of Trustees or by this Agreement to some other officer or agent of the Trust Fund or as otherwise required by law. In addition, he shall perform all duties incident to the office of the Chairperson and such other duties as from time to time may be assigned to the Chairperson by the Board of Trustees. In the event of any vacancy in the office of the Chairperson, the Vice-Chairperson shall serve as Chairperson on an interim basis until such vacancy is filled by subsequent action of the Board of Trustees.

Section 405. Duties of the Vice-Chairperson. The Vice-Chairperson, if any, shall be selected from among the Trustees and shall have such powers and duties as may from time to time be assigned to the Vice-Chairperson.

Section 406. Duties of the Secretary. The Secretary shall act as secretary of all meetings of the Board of Trustees and the Local Finance Boards in the Trust Fund. When requested, the Secretary shall also act as secretary of the meetings of the Committees of the Board of Trustees. The Secretary shall keep and preserve the minutes of all such meetings in permanent books. The Secretary shall see that all notices required to be given by the Trust Fund are duly given and served. The Secretary may sign and execute in the name of the Trust Fund stock certificates, deeds, mortgages, bonds, contracts or other instruments, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Trustees or by this Agreement. The Secretary shall have custody of all deeds, leases, contracts and other important Trust Fund documents; shall have charge of the books, records and papers of the Trust Fund relating to its organization and management as a trust; and shall see that all reports, statements and other documents required by law (except tax returns) are properly filed.

Section 407. Compensation. The Board of Trustees shall have authority to fix the compensation, if any, of all officers of the Trust Fund. Notwithstanding the preceding sentence, any person employed by a public body, including elected officials or appointed members of governing bodies, shall not be eligible to receive compensation for services as an officer of the Trust Fund other than reimbursement for reasonable expenses.

Section 408. Bonding. All officers shall immediately make application for a fidelity bond, to any company designated by the Board of Trustees, in such amount as may be specified by the Board of Trustees. Premiums on such bonds shall be paid from the Trust Fund, which bonds shall be continued in force in such amount as the Board of Trustees may from time to time