

**DECLARATION OF TRUST OF THE
DUKES COUNTY POOLED OTHER POST-
EMPLOYMENT BENEFITS (OPEB) TRUST FUND**

INTEGRAL PART TRUST FOR OTHER POST-EMPLOYMENT BENEFITS

Declaration of Trust made as of the _____ day of _____, 2010, by and among the participating Employers who execute Trust Joinder Agreements to participate in the Dukes County Pooled Other Post-Employment Benefits (OPEB) Trust Fund (hereinafter referred to as the "Employer"). This Trust is authorized by Chapter 149 of the Acts of 2010 which is attached hereto as Exhibit A.

RECITALS

WHEREAS, the Governmental Accounting Standards Board (GASB) has issued Statements 43 and 45, which establishes standards on accounting and reporting for post-employment benefits (other than pensions) by governmental entities; and

WHEREAS, these new standards require political subdivisions of the County of Dukes County to report such Other Post-Employment Benefits, as that term is hereinafter defined, on an actuarial basis during an employee's career rather than on a pay-as-you-go basis during retirement; and

WHEREAS, the General Court of the Commonwealth of Massachusetts enacted Chapter 149 of the Acts of 2010, authorizing the government employers in the County of Dukes County that offer Other Post-Employment Benefits to create an investment trust whereby the government employers may begin financing benefits to retired

employees and eligible surviving spouses or dependents of deceased employees in advance; and

WHEREAS, the Employer is a government employer in the County of Dukes County that is exempt from federal income tax under the Internal Revenue Code of 1986, as amended from time to time, and whose Legislative Authority has passed a resolution authorizing establishment of this investment trust for the exclusive purpose of funding Other Post-Employment Benefits accrued by employees of the Employer, to be paid as they come due in accordance with the arrangements between the Employer, the Participants and their Beneficiaries, as such terms as defined in Section 1.1 below, and

WHEREAS, each of the Employers do hereby agree to become a member of a Trust to be known as the Dukes County Pooled Other Post-Employment Benefits (OPEB) Trust Fund by execution of a Trust Joinder Agreement in the form attached hereto as Exhibit A;

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

ARTICLE I

DEFINITIONS

1.1. Definitions. For purposes of this Declaration of Trust, the following terms shall have the respective meanings set forth below unless otherwise expressly provided.

(a) "Agreement" shall mean this Declaration of Trust, including all amendments thereto.

(b) “Beneficiary” means the Spouse, Dependents, or the person or persons designated by the Participant Employee pursuant to the terms of a post-employment benefits plan to receive any benefits under the Plan.

(c) “Board” means, as the context requires, an individual member or all of the then current membership of the board of trustees created pursuant to Section 5.1 of this Trust.

(d) “Code” means the Internal Revenue Code of 1986, as amended.

(e) “Dependent” means an individual who is a person described in Section 152(a) of the Internal Revenue Code of 1986, as may be amended from time to time.

(f) “Employee” means an individual who performs services for the Employer, and who has been designated as eligible to participate in, and receive benefits under a post-employment benefits plan, and where the context requires, includes former Employees who have terminated service with an Employer.

(g) “Employer” means the governing body of any political subdivision within the County of Dukes of the Commonwealth of Massachusetts which has received approval from the applicable Legislative Authority to participate in the Trust and has executed a Trust Joinder Agreement as provided in Article XVI, hereof.

(h) “Fiscal Year” shall mean that twelve month period commencing on July 1 of each year. The first Fiscal Year of the Trust may be a short fiscal year beginning on the effective date of this Agreement and ending on the June 30th following that effective date.

(i) “Legislative Authority” means the governing body of a governmental entity as determined in accordance with the laws of the Commonwealth of Massachusetts.

(j) “Member” or “Board Member” shall mean the Employee’s appointed representative to the Board of Trustees.

(k) “Other Post-Employment Benefits” or “OPEB” or “post-employment benefits” means any and all non-pension benefits paid on behalf of a former Employee or a former Employee’s Beneficiary after separation from service. Such benefits may include, but shall not be limited to: medical prescription drugs, dental, vision, hearing, Medicare Part B or Part D premiums, life insurance, long-term care and long-term disability which may be provided to Employees and Beneficiaries pursuant to Plans of Employers.

(l) “Participant” means an Employee of the Employer who satisfies the requirements for participation in a post-employment benefits plan sponsored by the Employer.

(m) “Plan” means the plan or plan established by any Employer pursuant to any applicable statute, regulation, ordinance, resolution, plan, program, policy, agreement, understanding or other arrangement, to provide Other Post-Employment Benefits for the benefit of Employees and their Beneficiaries.

(n) “Spouse” means the Participant’s lawful spouse as determined under the laws of the Commonwealth of Massachusetts.

(o) “Trust” or “Trust Fund” means the Dukes County Pooled Other Post-Employment Benefits (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" means the agreement in the form attached hereto as Exhibit A, pursuant to which the government employer joins in the Trust, as an Employer and as a member of the Board, and agrees to be bound by the terms and conditions of this Agreement, as provided in Article XVI, hereof.

ARTICLE II

PURPOSE AND SCOPE OF TRUST

2.1 This Trust is established for the purpose of holding, managing and administering the funding of the unfunded liability of Other Post-Employment Benefits accrued by Employees of the Employer and all amounts thereafter contributed by Employers pursuant to a Plan.

2.2 Nothing in this Trust shall be construed to define or otherwise grant any rights or privileges to post-employment benefits of any name or nature. Such rights and privileges, if any, shall be governed by the terms of the Employer's respective post employment benefit Plan.

ARTICLE III

TRUST ASSETS

3.1 This Trust shall consist of all contributions paid or otherwise delivered to the Board and all investment income realized and unrealized gains and losses thereon.

ARTICLE IV

TRUST CONDITIONS

4.1 The Trust shall be held, managed and administered by the Board in trust in accordance with the provisions of this Agreement. The principal of the Trust, together with any earnings thereon, shall be held by the Board separate and apart from any assets of any Employer hereunder. All Trust assets and all income thereon are irrevocably dedicated to, and shall be used for the exclusive purpose of, making payments of Other Post-Employment Benefits for the benefit of OPEB Participants and for paying expenses of administering the Trust. Except as provided under applicable law, no part of the corpus or income of the Trust may be used for, or diverted to, any purpose other than for the exclusive benefit of OPEB Participants under any Plan prior to the satisfaction of all liabilities of the Plan with respect to such OPEB Participants and payment of expenses of administering the Trust.

4.2 Except as otherwise provided in this Article IV, all assets transferred to this Trust shall be deemed irrevocably transferred to the Trust and neither the Employer nor the Board shall have any right, title, interest, claim, or demand whatsoever in or to the funds held by the Trust, other than the right to a proper application thereof and accounting therefor by the Board as provided herein, nor shall any funds revert to the Employer or the Board. Notwithstanding any other provisions of this Agreement, if and to the extent permitted by the Code and other applicable laws and regulations thereunder and by GASB Statements 43 and 45, upon an Employer's request, a contribution that is deposited into the Trust by a mistake in fact shall be returned by the Board to the Employer within 120 days of notice to the Board by the Employer of the mistake in fact; any accrued earnings or losses shall apply proportionately to the refund.

4.3 All assets, income and distributions of the Trust shall be protected against the claims of creditors of the Employer, Employees, Former Employees, Participants or their Beneficiaries, and shall not be subject to execution, attachment, garnishment, the operation of bankruptcy, the insolvency laws or other process whatsoever, nor shall any assignment thereof be enforceable in any court.

4.4 An Employer may withdraw from or terminate participation in this Agreement, with such withdrawal and/or termination to be effective only on July first of a year when an actuarial study is to be completed. Such withdrawal and/or termination shall not be effective unless the withdrawing or terminating Employer shall provide written notification to the Board of such intent to withdraw or terminate at least ninety (90) days prior to the effective date of such withdrawal or termination. Actuarial studies will be performed as of July 1, 2009, and every two years or as required by the Government Accounting Standards Board (GASB), as of July 1st, thereafter. The Employer agrees that the Board has the authority to determine which actuarial firm will complete any such study and such Employer will receive its proportionate share of the assets as determined by the actuarial firm within 30 days of the completion of the study. Notwithstanding the foregoing, the Board shall not be required to pay out any assets of the Trust to a withdrawing or terminating Employer, in whole or in part, until the Board is satisfied that all provisions of law with respect to such termination or withdrawal have been complied with. Further, the Board shall not be required to take any action with respect to a withdrawing Employer which would adversely affect the Trust's status as a qualified OPEB Trust under the Code, Sections 43 and 45 (if then in force and effect), and/or any applicable law or regulation. Accordingly, fund withdrawals from the Trust

due to Employer withdrawal shall only be directed to another qualified OPEB Trust under the Code, and in accordance with Ch. 479 of the Acts of 2008.

4.5 The Trust is intended to comply with and be a tax-exempt governmental trust under Section 115 of the Code. This Agreement shall be interpreted in a manner consistent with that intent and with the intention of the Employers that the Trust hereunder satisfies those requirements of GASB Statements 43 and 45.

ARTICLE V

TRUSTEES

5.1 The general administrative authority and responsibility for the proper operation of this Trust shall be vested in and governed by a board of trustees (hereinafter the “Board”). The appropriate public authority, as defined in M.G.L. Chapter 32B, Section 2(a), of each Employer shall appoint one primary Member to the Board and shall designate one alternate Member who shall assume all of the responsibilities of the primary Member of the Board in the event of the primary member’s absence. Members of the Board shall have a weighted vote based upon each Employer’s proportional share of net cumulative contributions as determined at the beginning of each Fiscal Year and no later than August 1st of each year. Initial appointments of Board Members shall be made by the appropriate public authority of the Employers within thirty (30) days following the execution of this agreement. The Board Member appointed by any Employer shall serve for a **term** of three years, unless otherwise disqualified pursuant to the provisions of Section 5.6, except that when the Trust is first established, one-third of its Members shall

Comment [nc1]:

May wish to add: “A Member shall serve until his/her respective successor is appointed and accepts such appointment as provided herein.” This will insure that no Employers are without representation if an appointment or formal reappointment is overlooked or delayed for whatever reason. Also, this will ensure that actions by the Board are not called into question in the event that a Member who has not yet been replaced continues to serve after his/her term formally expires.

In addition, you may wish to consider adding a provision as follows: “A Member may serve successive terms if so appointed by his/her respective Employer.”

be appointed for a term of one year, one-third of its Members shall be appointed for a term of two years and one-third of its Members shall be appointed for a term of three years. A Member shall serve until his/her respective successor is appointed and accepts such appointment as provided herein. A Member may serve successive terms if so appointed by his/her respective Employer.”

Comment [nc2]: May wish to clarify the process for determining which Employers initially appoint for a one year term, which appoint for a two year term and which appoint for a three year term.

It is understood and agreed that the Dukes County Pooled OPEB Trust Board Members may rely on the authority of each Board Member to represent the respective Employer and any vote of any individual Board Member shall be deemed to be binding on the Employer represented by such Board Member.

5.2 The Board shall annually elect from its membership a chair and vice chair and any other officers that it deems appropriate and may elect to establish any committee for whatever purpose it deems appropriate and consistent with the terms of this Trust. The Board shall designate a secretary and a treasurer who need not be a member of the Board. Any treasurer designated by the Board shall be bonded and shall be entitled to compensation as the Board determines, notwithstanding the provisions of section 5.3. Written minutes covering all meetings and actions of the Board shall be prepared by the secretary and shall be kept on file, open to public inspection pursuant to the Freedom of Information Act, and may be relied upon as to actions of the Board.

5.3 Members of the Board shall serve without compensation but shall be entitled to receive reasonable reimbursement for actual and necessary off-island travel expenses in accordance with a travel policy to be developed by the Board.

5.4 The Board shall adopt a schedule of meeting dates and times for the conduct of ordinary business and shall establish reasonable procedures for notice to the members

of the Board and the Employers concerning meetings. Upon and after notice thereof, the Board may also meet at the call of the chair, or upon the call of a majority of the members, and as may be otherwise provided in any operating policies and procedures adopted by the Board. A majority of the voting members of the Board serving shall constitute a quorum for the transaction of business at a meeting of the Board, provided that the Board members making up such quorum represent at least fifty percent of the weighted votes of the Board. Action on all matters coming before the Board shall require a simple majority of the votes cast at the meeting of the Board calculated pursuant to the weighted voting system set forth herein.

5.5 The business of the Board shall be conducted at meetings of the Board held in compliance with M.G.L. Chapter 39, Sections 23A and 23B (“Massachusetts Open Meeting Law”).

5.6 A member of the Board may resign from all duties and responsibilities under this Agreement by giving written notice to the Chairman of the Board and to the appropriate public authority of the Employer who appointed such member. A Member of the Board shall relinquish his or her office when the Employer which he or she represents is no longer a participating Employer in the Trust. A Member of the Board may be removed as a Board Member at any time by the appropriate public authority of the Employer which he or she represents, whereupon such Employer shall immediately so notify the Chairman of the Board. A Member of the Board shall be removed as a Board Member by the appropriate public authority of the Employer which he or she represents in the event that such Board Member is in violation of Section 7.4, hereinafter. Every member of the Board, upon leaving office, shall forthwith turn over and deliver to

his or her successor 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. Upon the death, removal or resignation of any Board Member, the appropriate public authority of the Employer who appointed such Member shall appoint a successor and shall deliver to the Chairman of the Board a written notice evidencing such selection. Each Member of the Board and each successor Member of the Board shall acknowledge and consent to his or her appointment by giving written notice of acceptance of such appointment to the Chairman of the Board.

ARTICLE VI

POWERS AND DUTIES OF THE BOARD

6.1 In addition to the powers granted by any other provision of this Trust, the Board shall have the powers necessary, incidental or convenient to carry out the purpose and objectives of this Trust including, but not limited to, the following express powers to be exercised in each case in the Board's sole discretion without order or license of court:

(a) Accept and receive contributions transferred to the Trust from time to time by Employers and the incremental proceeds, earnings, and income thereof for the exclusive benefit of the Employees and Beneficiaries under the Plans of each Employer, and hold, invest, reinvest, manage, administer and distribute any funds of the Trust in any instrument, obligation, security, or property that constitutes a legally permitted investment for assets of the Dukes County Contributory Retirement System pursuant to all applicable laws and regulations and further provided that any such investment is

authorized pursuant to the Investment Policy adopted by the Employer's Investment Committee established pursuant to Article VII of this Agreement;

(b) Contract for the provision of all or any part of the services necessary for the management and operation of the Trust, including, but not limited to, investment management services;

(c) Contract with financial consultants, auditors, and other consultants as necessary to carry out its responsibilities and the provisions of this Trust;

(d) At the Board's sole discretion, contract with an actuary or actuaries for the benefit of the Employer in determining the level of funding necessary by the Employer to fund the Other Post-Employment Benefits offered by the post-employment benefit plan;

(e) Prepare annual financial reports, including audited financial statements, following the close of each fiscal year relative to the activities of the Trust. Such statements and reports shall contain such information as shall be prescribed by the Board and be prepared in accordance with the standards established by the Governmental Accounting Standards Board;

(f) Sell, exchange, convey, transfer or otherwise dispose of any property held in the Trust, by private contract or at public auction. No person dealing with the Board shall be bound to see the application of the purchase money or other property delivered to the Board or to inquire into the validity, expediency or propriety of any such sale or other disposition;

(g) To purchase or subscribe for any authorized investment and to retain the same in the Trust, to hold cash without interest in such amounts as may be in its opinion reasonable for the proper operation of the Trust;

(h) To give general or special proxies or powers of attorney with or without power or substitution with respect to any corporate stock or other security; to exercise any conversion privileges, subscription rights or other options, and to make any payments incidental thereto; to oppose, consent to, or otherwise participate in reorganizations or other changes affecting any stock, bond, note or other property, and to delegate discretionary powers and pay any assessments or charges in connection therewith, and generally to exercise any of the powers of an owner, including voting rights, with respect to any stock, bond, note or other property held as part of the Trust;

(i) To make disbursements for the payment of Other Post-Employment Benefits under the Plans and for the payment of reasonable and proper expenses of this Trust or of the Plans as related to OPEBs;

(j) To retain any funds or property subject to any dispute without liability for the payment of interest; and to decline to make payment or delivery of the funds or property until final adjudication is made by a court of competent jurisdiction;

(k) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments, which may be necessary or appropriate to carry out the powers herein granted;

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

(m) To employ and to act or refrain from acting on the advice or opinion of suitable agents, actuaries, accountants, investment advisors, brokers and counsel, and to pay their reasonable expenses and compensations;

(n) To adopt bylaws governing the Board's operations and procedures and to provide for and promulgate all rules, regulations, and forms deemed necessary or desirable in contracting with Employers;

(o) To establish and charge fees for participation in the Trust and for additional administrative services provided to an Employer in addition to any fees charged by other administrative service providers;

(p) To construe and interpret the Agreement and to correct and defect, supply any omissions or reconcile any inconsistency in the Agreement;

(q) Upon the request of any Employer, to file the Trust's annual report and financial statements with the Employer, such report and statement to be filed with the requesting Employer within ninety (90) calendar days from the date of the request, unless such time is extended in writing;

(r) To borrow money only for such periods of time and upon such terms and conditions as the Board deems necessary and proper to cover any temporary, short-term cash flow needs, and to secure such loans by mortgaging, pledging or conveying any property of the Trust;

(s) With the consent of the Employers and subject to all applicable laws and regulations, to designate an Administrator and successor Administrators, to enter into an administrative services agreement with such Administrator providing, inter alia, delegating certain powers of the Board to the Administrator, including, without limitation the power and authority to implement policy and procedural matters as directed by the Board with respect to the ongoing operation and supervision of the Trust and the provisions of this Agreement and applicable law, and to provide compensation

for the Administrator to administer the affairs of the Trust, all subject to such terms and conditions as the Board shall deem advisable;

(t) To require the Employers to furnish any document, report, return, statement or other information that the Board reasonably deems necessary to perform duties imposed under this Agreement or otherwise imposed by law; and, the Employers, by entering into the Trust Joinder Agreement, hereby agree to furnish such documents, reports, returns, statements and information to the Board; and

(u) To do all acts which the Board may deem necessary or proper to exercise any and all powers of the Board under the Plans and this Agreement upon such terms and conditions as it may deem in the best interests of the Trust.

6.2 It is understood and agreed that nothing contained in the Agreement shall in any way limit the authority of an Employer to determine the eligibility or ineligibility of any individual for participation in post-employment benefits in accordance with the provisions of M.G.L. Chapter 32B. In addition, all notifications of eligibility and employee direct billing, including without limitation notifications to and from affected parties of eligibility rights under M.G.L. Chapter 32B, the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), and any and all other applicable Federal and State statutes, law and regulation, and all determinations as to whether or not such notifications are required or advisable, shall be the sole and exclusive responsibility of the Employer.

6.3 The duties and obligations of the Board shall be limited to those expressly imposed upon them by this Agreement and those imposed by applicable laws. Notwithstanding any reference herein to the Plans, the Board shall not be responsible for

the proper interpretation or administration of the Plans. The Board shall be responsible only for money actually received by the Board, and then, only to the extent described in this Agreement.

ARTICLE VII

INVESTMENTS

7.1 The Board shall be responsible for investing the assets of the Trust funds in accordance with Section 6.1(a) above.

7.2 Subject to the limitations in Section 6.1(a) above, the Board, or its nominee has full power to hold, purchase, sell, assign, transfer, or dispose of any of the securities or investments in which the assets of the Trust have been invested, as well as of the proceeds of such investments and any moneys belonging to the Trust.

7.3 All of the Board's business shall be transacted, all of the Trust funds invested, all warrants for money drawn, any payments made, and all of the cash and securities and other property of the Trust shall be held:

(a) In the name of the Board as title holder only, or as Trustee;

(b) In the name of its nominee; provided that the nominee is authorized by Board resolution solely for the purpose of facilitating the transfer of securities and further provided that individuals so nominated shall be restricted to Members of the Board, or a partnership composed of any such Members; or

(c) For the account of the Board or its nominee in such forms as are standard in the investment community for the timely transaction of business or ownership identification, such as book entry accounts.

7.4 Except as otherwise provided, no Board Member nor employee of the Board shall have any personal interest in the gains or profits of any investment made by the Board; nor shall any Board Member or employee of the Board, directly or indirectly, for such Member or employee or as an agent, in any manner for such Member or employee or as an agent, in any manner use the same except to make such current and necessary payments as are authorized by the Board.

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

7.6 The Board shall establish an Investment Committee, the composition and additional powers and duties of the Board to be established by the Board in its sole discretion. The Investment Committee shall recommend an Investment Policy regarding funding and investment of contributions to the Trust, which Policy may be reviewed and amended by the Board at any time and from time to time as appropriate, consistent with the requirements of applicable law. The Investment Committee shall coordinate its investment and funding policies with the Trust's financial needs.

ARTICLE VIII

EMPLOYER CONTRIBUTIONS TO TRUST

8.1 Notwithstanding Section 6.1(d) above, it shall be the sole and exclusive responsibility of the Employer to determine the level of contributions the Employer will make to the Trust for the purpose of financing the post-employment benefits accrued by its respective Employees. Neither the Trust, nor the Board shall be responsible for collecting or otherwise determining the level of the contributions needed by the Employer to finance any post-employment benefits offered by the Employer. The Employer shall make contributions to the Trust from time to time as it may, in its sole discretion, deem appropriate. The Board shall have no duty or authority to ascertain whether contributions should be made by the Employer or to bring an action to enforce the Employer to make such contributions. Employee contributions, to the extent required or permitted under any Plan, shall be deposited to the Trust as soon as administratively possible.

ARTICLE IX

WITHDRAWALS FOR PAYMENT OF OTHER POST-EMPLOYMENT BENEFITS

9.1 The Board shall, upon the request of the Employer and only after the Board's receipt of certified documentation evidencing such payment by the Employer, reimburse the Employer for payments made to Participants for Other Post-Employment Benefits. Such payments shall be made by the Board on no more than a quarterly basis. The Board may from time to time make payments or disbursements out of the Trust fund to persons or other entities in such amounts as are necessary for the payment of other post-

employment benefits pursuant to and in accordance with the terms of the Plans and for the payment of reasonable and proper expenses of the Trust.

9.2 Notwithstanding any provision in this Article IX to the contrary, the Board shall not honor a request for reimbursement made by the Employer or other request for payment or withdrawal under this Article if assets credited to the Trust are not equal to or greater than the amount requested. Retroactive payments shall be paid by the Board upon accumulation of sufficient assets. The Board shall neither be responsible for the adequacy of the Trust funds to discharge any payments and liabilities under any Plan, nor be required to make any distributions of any name or nature in excess of the net realizable value of the assets of the Trust allocable to such Plan at the time of distribution.

9.3 In the event that the Employer wishes to withdraw funds to pay its Other Post-Employment Benefits, it must give a minimum of 90 days written notice to the Trust and such withdrawals shall be deducted from the Employer's net asset value in the Trust.

9.4 The Board may, at any time and from time to time, establish reasonable rules, regulations and procedures governing payments and withdrawals from the Trust funds.

9.5 The Board shall be under no liability for any payment or distribution made pursuant to a direction by or instructions of an Employer and shall be under no duty to make inquiry as to whether any distribution directed or instructed by an Employer is made pursuant to the provisions of the applicable Plan or any applicable law or regulations, nor shall the Board be under any duty to make inquiry as to the effect of any

instruction for tax purposes or otherwise. The Board shall not have any duty to see to the application of any distribution made to or for the benefit of a Participant pursuant to the instructions of an Employer.

ARTICLE X
BOOKS AND RECORDS

10.1 The Board shall maintain records and accounts of investments, receipts, disbursements and all other transactions made hereunder. The books and records of the Trust shall be maintained in accordance with generally accepted accounting principles and shall be open to public inspection. The annual report, including financial statements, all books, accounts and financial records of the Trust shall be subject to audit.

10.2 The Board shall engage a licensed certified public accountant annually to perform any required audit. Any such audit contract between the Board and a licensed certified public accountant shall be in a form and substance that is in accordance with generally accepted accounting principles. All expenses, payments, and other costs of audits prepared by a licensed certified public accountant shall be the responsibility of the Board and may be paid from the assets of the Trust.

ARTICLE XI
AMENDMENT

11.1 With the approval of the Employers as described hereinafter, and subject to the terms and provisions set forth herein, the Board shall have the right at any time and from time to time to amend, in whole and in part, any or all of the provisions of this

Trust, provided however, that no such amendment shall authorize or permit the assets of the Trust (other than such part as may be used to pay the expenses of administering the Trust) to be used for or diverted to purposes other than those expressed in this Declaration of Trust. Proposals for any amendment to this Trust shall be subject to a first, second and third reading at separate, duly posted meetings of the Board, where the proposal is identified on the agenda. A vote to amend this Trust may be taken only at a duly called meeting of the Board at which at least two-thirds of the members of the Board are present and at which the Board members attending such meeting shall represent at least two-thirds of the weighted votes of the Board. Action on any proposed amendment to the Declaration of Trust shall require a simple majority of the votes cast at the meeting calculated pursuant to the weighted voting system set forth in this Agreement.

ARTICLE XII

HOLD HARMLESS PROTECTION

In executing this Trust and the Trust Joinder Agreement attached hereto, each Employer agrees that the Employer shall indemnify and hold harmless the treasurer and each representative designated by the appropriate public authority of the Employer to serve as primary, alternate and/or successor Member of the Board and each representative designated by the Employer to serve on any committee established by the Board (together, the "Designated Representative"), from personal financial loss and expense, including all reasonable legal fees and costs, if any, to the full extent permitted by all applicable statutes, including M.G.L. Chapter 258 Sections 8, 9, and 13. Indemnification shall be provided by each Employer for liability arising from any and all

activities directly related to the establishment, operation and/or management of this Trust. Indemnification shall be provided for liability arising from all activities directly related to the Agreement and all related activities commencing on or after the effective date of this Agreement and through and including the date on which such treasurer ceases to serve in his or her position, or such Designated Representative ceases to serve in his or her position as a Member or alternate Member to the Board and/or the Board's committees. This hold harmless protection shall include indemnification for any claim, demand, suit, or judgment relating to any act or omission, except for intentional violation of the civil rights of any person, arising out of or as a result of the treasurer or Designated Representative's service to the Dukes County Pooled OPEB Trust Board. This hold harmless protection and agreement shall include any and all activities relating to the responsibilities of the office of the treasurer, and/or such Board participation, respectively, including, but not limited to, serving on any related committee, holding an office as a Member of the Board or Committee established by the Board, traveling to and from meetings relating to the Designated Representative's service, communications, and all other acts related to the Designated Representative's appointment hereunder by the appropriate public authority of the Employer. Each Designated Representative's acceptance of said appointment shall be deemed to have been made in reliance upon the Employer's agreements set forth in this Article XII.

ARTICLE XIII

PLAN TERMINATION OR MODIFICATION

13.1 In the event any one or more of the OPEB Plans are terminated or substantially modified rendering the assets of this Trust to be unnecessary to fund the respective Plan, the assets attributable to such Plan (hereinafter, the “Affected Assets”) shall be distributed pursuant to Section 13.3 below.

13.2 (a) If a Plan is terminated, the Employees and former Employees (including any deceased Employee or former Employee’s surviving Beneficiaries) who have met all of the conditions for other post-employment benefits as set out in the plan document in existence immediately preceding plan termination, shall be vested in a proportionate share of the accumulated assets in the Trust attributable to such Plan based on the present value of the Plan benefit in existence immediately preceding the termination of the Plan as determined by an independent consulting actuary.

(b) If a substantial modification to a Plan is adopted which, because of a reduction of the benefits or eligibility, results in the Plan moving from a funded status of less than seventy-five percent (75%) to an over-funded level for two (2) consecutive actuarial valuations, then such action shall be considered a termination of such Plan and the excess assets shall be vested in the same manner as set forth in subsection (a) above.

13.3 Upon termination or modification of a Plan as described in Sections 13.1 and/or 13.2 hereinabove, the Affected Assets held by the Trust shall be paid out by the Board as and when directed by the applicable Employer in accordance with the provisions of this Trust, applicable laws and regulations, and the terms and provisions of the Plan. Affected Assets shall be applied to pay any and all remaining debts, liabilities, vested shares and approved claims of the Plan and shall be so managed and paid until all obligations under the Plan have been discharged. Any Affected Assets remaining in the

Trust after making all such payments and meeting all of the Employer's obligations under the Plan shall be distributed to the Employer.

13.4 Actuarial valuations contemplated by this Article shall be performed by the Plan's independent consulting actuary in accordance with actuarial methods recognized by the Government Accounting Standards Board for other post-employment benefits.

13.5 Notwithstanding the foregoing, the Board shall not be required to make any payments to any Employer or take any action with respect to a terminating or withdrawing Employer and or any Affected Assets which would adversely affect the Trust's status as a qualified OPEB Trust under the Code, Sections 43 and 45 (if then in force and effect), and/or any applicable law or regulation.

ARTICLE XIV

PARTICIPANT OR BENEFICIARY

CONTRIBUTIONS TO THE TRUST

14.1 If Participant or Beneficiary contributions are required or permitted under the terms of an Other Post-Employment Benefits Plan, such contributions shall be assets of this Trust and subject to all the provisions of this Trust. Provided, however, the Employer or its designee shall establish a record-keeping account for each Participant or Beneficiary, showing the amounts of contributions made by such Participant or Beneficiary, and to the extent authorized under the Plan, any earnings or interest thereon. At least annually, the Board shall publish an allocation of the net annual yield of the Trust to each Employer. Notwithstanding Article XIII or any other provision of this

Trust to the contrary, a Participant or Beneficiary shall be vested in the amount recorded to that Participant's or Beneficiary's account.

14.2.1 Government employers in Dukes County which are not members of the Trust may elect to contribute to the Trust for the purpose of participating in the bi-annual actuarial study only.

ARTICLE XV

PROTECTIVE CLAUSE

15.1 Neither the Employer, the Board, nor the Trust shall be responsible for the validity of any contract of insurance or other arrangement maintained in connection with the post employments benefits plan, or for the failure on the part of the insurer or provider to make payments provided by such contract, or for the action of any person which may delay payment or render a contract void or unenforceable in whole or in part.

ARTICLE XVI

ADDITIONAL EMPLOYERS

16.1 Upon application, additional governmental employers may be accepted for membership in the Trust commencing annually on each July 1st, provided that such action is approved by vote of no less than two-thirds of the votes cast, calculated pursuant to the weighted voting system set forth in this Agreement, at a duly called meeting of the Board. The Board shall have sole and exclusive discretion in determining

whether to accept a new member. All new members shall be required to execute a Trust Joinder Agreement in the form attached hereto as Exhibit A.

16.2 In making an application for membership and participation in the Trust, such additional governmental employers acknowledge and agree to be bound by all the terms and provisions of this Agreement, the Trust Joinder Agreement, the by-laws, rules and regulations adopted by the Board pursuant to this Agreement and all applicable laws and regulations. Application for participation and membership in the Trust by any additional governmental employer, when approved in writing by the Board, shall constitute a continuing contract between such additional governmental employer and the Board.

ARTICLE XVII

MISCELLANEOUS; RULES OF CONSTRUCTION

16.1 The Trust created herein shall be enforced, governed by and construed in accordance with the laws of the Commonwealth of Massachusetts and the situs of the trust created hereby shall be the Commonwealth of Massachusetts.

15.2 If any terms and conditions of this Trust are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Trust shall not be affected thereby and shall be construed in such a way as to effectuate the purpose of this Trust. If any provision of the Agreement is held to violate the Code, including but not limited to Section 115 of the Code and/or GASB Statements 43 and 45, or to be illegal or invalid for any other reason, that provision shall be deemed null and void, but the invalidation of that provision shall not otherwise affect the Trust created by this Agreement. In resolving any conflict among the provisions of this Agreement and in

resolving any other uncertainty as to the meaning or intention of the Agreement, the interpretation that causes the Trust to be exempt from tax under Code Section 115 and causes the participating Plans and Trust to comply with all applicable requirements of law shall prevail over any different interpretations.

15.3 This Agreement and the Trust Joinder Agreements shall be binding upon and shall inure to the benefit of the respective parties hereto and their successors and assigns. This Agreement and the Trust Joinder Agreements shall be binding only upon the parties hereto: the Board and the Employers and their respective successors and assigns. Neither the establishment of the Trust nor any modification thereof, nor the creation of any fund or account, nor the payment of any Other Post-Employment Benefits, shall be construed as giving to any person covered under any Plan or any other person any legal or equitable right against the Trustees or any officer or employee thereof, except as may be otherwise explicitly set forth in this Agreement. Under no circumstance shall the term of employment of any Employee be modified or in any way affected by this Agreement.

15.4 No waiver by any party of any failure or refusal to comply with an obligation hereunder shall be deemed a waiver of any other or subsequent failure or refusal to so comply.

15.5 The headings of the various sections and subsections of this Agreement have been inserted only for the purposes of convenience, are not part of this Agreement and shall not be deemed in any manner to modify, explain, expand or restrict any of the provisions of this Agreement. This Agreement may be executed in any number of

counterparts, each of which shall be deemed an original, and said counterparts shall constitute but one and the same instrument.

EXECUTED as an instrument under seal as of this _____ day of _____, 2010.

EMPLOYER: _____	EMPLOYER: _____
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

COMMONWEALTH OF MASSACHUSETTS

On this _____ day of _____, 20____, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which was a Massachusetts Driver's License, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his/her knowledge and belief.

Notary Public
My commission expires: