

**STATE OF MARYLAND POSTRETIREMENT HEALTH  
BENEFITS TRUST AGREEMENT**

**Effective: July 1, 2007**  
**Proposed for adoption by the Board: August 21, 2007**

## TABLE OF CONTENTS

	<u>Page</u>
Article I DEFINITIONS AND RULES OF CONSTRUCTION .....	2
Section 1.01 Definitions .....	2
Section 1.02 Rules of Construction.....	3
Article II TRUST AND TRUST ADMINISTRATION .....	3
Section 2.01 Trust Fund.....	3
Article III DEPOSITS AND DISBURSEMENTS FROM THE TRUST FUND .....	4
Section 3.01 Trust Deposits .....	4
Section 3.02 Trust Payments.....	5
Article IV ACCOUNTS AND INVESTMENTS .....	5
Section 4.01 Accounts .....	5
Section 4.02 Investment of Trust Fund .....	5
Article V POWERS AND DUTIES OF THE TRUSTEES .....	6
Section 5.01 Appointment of Trustees .....	6
Section 5.02 Powers and Duties.....	6
Section 5.03 Fiduciary Liability Insurance.....	7
Section 5.04 Use of Counsel.....	7
Section 5.05 Delegation by Trustees.....	7
Article VI LIMITATIONS OF RESPONSIBILITY AND INDEMNIFICATION.....	7
Section 6.01 Limitations of Responsibility .....	7
Section 6.02 Indemnification .....	8
Article VII ACCOUNTS AND RECORDKEEPING .....	8
Section 7.01 Maintenance of Records.....	8
Section 7.02 Annual Report.....	8
Article VIII RELIANCE ON COMMUNICATIONS .....	8
Section 8.01 Certification of Trust Administrator .....	8
Section 8.02 Certification of Other Providers.....	9
Article IX AMENDMENT AND TERMINATION .....	9
Section 9.01 Amendment.....	9

## STATE OF MARYLAND POSTRETIREMENT HEALTH BENEFITS TRUST

**THIS TRUST AGREEMENT** is executed as of this \_\_\_ day of \_\_\_\_\_, 2007, by the Board of Trustees of the State Retirement System of Maryland (hereinafter referred to as "Trustees").

### WITNESSETH:

**WHEREAS**, pursuant to Governmental Accounting Standards Board Statements No. 43 ("GASB 43") and No. 45 ("GASB 45"), a non-federal governmental plan and employer must take steps to define and disclose the post-employment benefits, other than pension benefits, provided for former employees and retirees and to actuarially determine its liability for such benefits;

**WHEREAS**, a governmental plan or employer may reduce or eliminate its net OPEB obligation (as defined in GASB 43 or GASB 45) by making contributions to an irrevocable trust in relation to such anticipated benefits;

**WHEREAS**, pursuant to Chapter 355, Acts of 2007 (S.B. 780), codified at Annotated Code of Maryland, State Personnel and Pensions Article, §34-101, the State is authorized to establish an irrevocable trust to receive contributions for the purpose of providing certain post-employment benefits other than pension and to make distributions from the Trust for certain post-employment benefits other than pension, which trust shall be known as the State of Maryland Postretirement Health Benefits Trust (the "Trust");

**WHEREAS**, participation in and any coverage under the Trust shall not constitute nor be construed to constitute a specific, accrued or vested benefit for any specific employee or retiree unless otherwise specifically provided herein;

**WHEREAS**, the Trustees are authorized to receive, hold and manage the funds in the Trust, and such funds, when received by the Trustees (or its delegate), will constitute the trust fund (the "Trust Fund" or "Fund");

**WHEREAS**, the Trustees agree to accept this Trust and to perform the duties of the Trustees hereunder;

**WHEREAS**, the State intends that the earnings accruing to the Trust shall be excluded from income for tax purposes, as such trust earnings accrue to the State and as such trust earnings are derived from the exercise of an essential governmental function as provided for under section 115(1) of the Internal Revenue Code of 1986, as amended (the "Code"), Revenue Rulings 77-261 and 90-74, and other relevant guidance;

**NOW, THEREFORE**, the Board of Trustees of the State Retirement and Pension System of Maryland hereby adopts a Trust to provide as follows:

## ARTICLE I

### DEFINITIONS AND RULES OF CONSTRUCTION

**Section 1.01 Definitions.** When the initial letter of a word or phrase is capitalized, it shall have the following meaning:

- (a) "Code" means the Internal Revenue Code of 1986, as amended.
- (b) "Custodian" means a bank, mutual fund, savings and loan association, insurance company or other qualified entity selected by the Trustees, to hold and administer the assets of the Trust Fund.
- (c) "Dependent" means a dependent, as defined in Section 152 of the Code, determined without regard to subsections (b)(1), (b)(2) and (d)(1)(B) thereof, of a Retiree.
- (d) "Health and Welfare Benefit" means a post-retirement medical (including hearing and vision, if applicable), prescription drug, or dental benefit. Such a benefit is limited to medical care as defined by Code Section 213(d).
- (e) "Investment Fund" means an investment fund that forms part of the Trust Fund as established by the Trustees.
- (f) "Investment Manager" means an investment manager selected by the Trustees.
- (g) "Property" refers to any property, real or personal, or partial interests therein, wherever situated, including, but without being limited to, preferred and common stocks, shares of investment companies, bonds, notes, debentures and mortgages, equipment trust certificates, investment trust certificates, interests in limited liability companies, in partnerships whether limited or general or in any insurance contract, policy, annuity, or other investment media offered by an insurance company, in which trust assets may be invested pursuant to Maryland law.
- (h) "Regulation" means a policy, procedure, rule or regulation adopted by the Trustees, establishing administrative procedures or interpretations affecting the Trust.
- (i) "Retiree" means:
  - (1) A retiree as defined in SPP § 2-508(a)(3);
  - (2) The surviving Spouse or Dependent child of a deceased employee or Retiree who is eligible under Maryland law for Health and Welfare Benefits coverage subsidized by the State; and
  - (3) Any other individual eligible for participation as provided in SPP §2-509.
- (j) "Spouse" means a spouse as defined by COMAR 17.04.13.01B(8).

(k) "SPP" means the State Personnel and Pensions Article of the Annotated Code of Maryland.

(l) "SRA" means the Maryland State Retirement Agency or any successor thereto.

(m) "State" means the State of Maryland.

(n) "System" means the State Retirement and Pension System of Maryland or any successor thereto.

(o) "Trust" means the trust created and established hereunder.

(p) "Trust Administrator" means SRA.

(q) "Trust Fund" means all such money, property, and all investments made therewith and proceeds thereof and all earnings and profits thereon, less payments made by the Trustees as authorized herein.

(r) "Trust Year" means the twelve (12) month period beginning each July 1 and ending the following June 30 on which the books and records of the Trust are maintained.

(s) "Trustees" means the Board of Trustees of this Trust.

**Section 1.02 Rules of Construction.** Words used herein in the masculine gender shall be construed to include the feminine gender where appropriate, and words used herein in the singular or plural shall be construed as being in the plural or singular where appropriate. Accounting terms and principles used herein or applicable hereto shall be as defined and described from time to time by pronouncements and other guidance of the Governmental Accounting Standards Board, or any successor organization.

## ARTICLE II

### TRUST AND TRUST ADMINISTRATION

#### **Section 2.01 Trust Fund.**

(a) The Trustees shall receive and accept for the purposes hereof all contributions described herein and shall hold, invest, reinvest, manage, and distribute property and the increments, proceeds, earnings, and income solely to assist in providing Health and Welfare Benefits as described herein, and in accordance with Code Sections 105 and 106.

(b) All assets held by the Trustees in the Trust are referred to herein as the "Trust Fund." The Trustees have the authority to invest and manage the assets of the Trust Fund.

(c) This Trust is created for the sole purpose of assisting in providing Health and Welfare Benefits as described herein. No portion of the principal or income of this Trust shall revert to the State or shall be used for or diverted to any purpose other than to assist in providing

Health and Welfare Benefits for Retirees, Spouses and the Dependents of Retirees as provided by Maryland law and to pay the reasonable expenses of the Trust.

(d) The contributions made by the State and all investments, receipts, disbursements, and other transactions thereunder may be maintained in a common account, which contributions shall be used solely for the payment of benefits, expenses and other charges properly allocable to the Trust.

(e) To the extent possible the assets of the Trust shall be invested in the same manner as those of the other System funds. The Trust Fund may be invested separately, or it may be pooled for investment purposes with assets of the State Retirement and Pension System of Maryland, as long as such assets are accounted for separately, as described in SPP § 21-123(e), and subject to any federal law restrictions. The Trust Fund shall continue to be held by the Trustees in trust and dealt with in accordance with the provisions of the Trust. At no time shall any part of the Trust Fund be used for, or diverted to, purposes other than for the exclusive benefit of Retirees and their eligible Spouses and Dependents, as applicable, as provided herein and for defraying the reasonable expenses of administering the Trust.

### ARTICLE III

#### DEPOSITS AND DISBURSEMENTS FROM THE TRUST FUND

##### Section 3.01 Trust Deposits.

(a) The Trustees hereby delegate to the Trust Administrator the responsibility for accepting contributions to the Trust and remitting said contributions to the Custodian. In all cases, deposits of contributions shall be treated as actually made only as of the date the funds are accepted as in good order by the Trust Administrator.

(b) The Trustees shall: (i) invest and reinvest the Trust Fund, and (ii) transfer assets of the Trust to the Department of Budget and Management solely to pay Health and Welfare Benefits as described herein. The Trustees shall account for contributions, income, and payments made to or from the Trust. The Trustees, Custodian and Trust Administrator shall not be responsible for the adequacy of the Trust Fund to meet and discharge any liabilities of the State.

(c) Contributions to fund the benefits under the Trust may consist of:

(1) any subsidy received on or after July 1, 2007 by the State that is provided to employers as a result of the federal Medicare Prescription Drug, Improvement, and Modernization Act of 2003, or similar federal subsidy received as a result of the State's prescription drug program;

(2) any funds appropriated to the Postretirement Health Benefits Trust Fund, whether directly or through the budgets of any State agency; and

(3) after June 1, 2008, any funds deposited into the Dedicated Purpose Account in fiscal year 2007 and fiscal year 2008 that were appropriated in Chapter 216 of the Acts of 2006 or Chapter 487 of the Acts of 2007 (H.B. 50) for the purpose of defraying the future costs associated with postretirement benefits for State employees.

(d) Employee contributions shall not be permitted or accepted.

**Section 3.02 Trust Payments.**

(a) Prior to fiscal year 2009, no payments may be made from this Trust Fund.

(b) Beginning July 1, 2008, the Trustees may transfer an amount from the Trust to the Department of Budget and Management, subject to appropriation in the State budget, for the sole purpose of assisting in the payment of the State's postretirement health insurance subsidy for Health and Welfare Benefits.

(c) If for any reason the State discontinues the postretirement health insurance subsidy specified in SPP §§ 2-508 and 2-509 or a successor subsidy, the assets of the Trust shall be transferred to the General Fund, to the extent consistent with Code Section 115 and GASB 45. However, such a transfer may only occur when the State no longer has a liability for its retirees for a postretirement health insurance subsidy for Health and Welfare Benefits.

(d) **Trust Expenses.** The Trustees may incur reasonable administrative expenses, which shall be payable from the assets of the Trust Fund. Administrative expenses may not exceed One Hundred Thousand Dollars (\$100,000.00) per year. Investment expenses shall be paid from the assets of the Trust Fund and in accordance with SPP § 21-315(d).

**ARTICLE IV**

**ACCOUNTS AND INVESTMENTS**

**Section 4.01 Accounts.** Trust assets shall be held in a common account. The Trustees and Custodian shall be under no duty to determine the amount of contributions paid to the Trust, whether such contributions are adequate to meet the State's obligations for Health and Welfare Benefits, or to collect or enforce payment of any contribution.

**Section 4.02 Investment of Trust Fund.**

(a) Except as otherwise provided by Regulation or as delegated to the Custodian or an Investment Manager, the Trustees shall have complete control of the management and investment of the Trust Fund and shall have all powers necessary or convenient to enable it to exercise such control.

(b) The Trustees may invest and reinvest funds held by the Fund in any investments which are legal investments under Maryland law, and shall have the discretion to decide the allocation of funds among such investments. The Trustees may purchase, acquire, hold, lease, sell, and convey real and personal property, and place funds held herein with banks or trust

companies which have corporate trust powers, with insurance companies authorized to do business within the State, and do all such other acts as are permitted by law.

## ARTICLE V

### POWERS AND DUTIES OF THE TRUSTEES

**Section 5.01 Appointment of Trustees.** The Board of Trustees of the System shall serve, ex officio, as the Board of Trustees of this Trust. Therefore, the appointment and term of members of the Board of Trustees shall be made pursuant to SPP § 21-104.

**Section 5.02 Powers and Duties.** The Trustees, in administering the Trust, shall have such power and authority (including discretion with respect to the exercise of that power and authority) as may be necessary, advisable, desirable, or convenient to the Trustees, in their sole discretion as Trustees and investment fiduciaries subject to the provisions of this Trust Agreement, and consistent with SPP § 21-108, et. seq., including the power and authority:

- (a) To make Regulations with respect to the Trust not inconsistent with the Trust, GASB 43 or 45, Code Section 115 or applicable law, and to amend or rescind such Regulations;
- (b) To determine, consistent with the applicable laws, rules or regulations, all questions of law or fact that may arise as to any person or entity claiming rights under the Trust;
- (c) Subject to and consistent with GASB 43 and 45, Code Section 115 and applicable law, to construe and interpret the Trust and to correct any defect, supply any omission, or reconcile any inconsistency in the Trust;
- (d) To adopt and amend bylaws governing its operations and procedures;
- (e) To provide funds for the provision of a subsidy for Health and Welfare Benefits in accordance with this Agreement, for Retirees and Dependents who are eligible under Maryland law for a State subsidy as determined by the Maryland Department of Budget and Management;
- (f) To provide for termination of trusteeship and transfer of assets to successor trustees as permitted by law;
- (g) To employ and contract with actuaries, auditors, accountants, investment advisers, investment brokers, consultants, medical personnel, and other agents and employees;
- (h) Subject to Section 4.01, to collect and disburse all funds due and payable under the Trust;
- (i) To provide for and promulgate all the rules, regulations, and forms that are deemed as necessary or desirable in fulfilling its purposes of assisting in providing Health and Welfare Benefits and in maintaining proper records and accountings;
- (j) To adopt an Investment Policy and asset allocation;



- (k) To bring and defend actions, sue and be sued, and plead and be impleaded;
- (l) To expend funds for the purchase of fidelity and surety bonds and liability insurance for the protection and indemnification of Trustees in the performance of their duties;
- (m) To expend funds for the reasonable expenses of the Trustees while engaged in the performance of their duties;
- (n) To employ insurance companies, banks, trust companies, and investment brokers as agents for the keeping of records and the receipt and disbursement of funds held by or due the Trustees;
- (o) To exercise generally any of the powers of an owner with respect to all or any part of the Trust Fund; and
- (p) To take all actions consistent with this Trust Agreement necessary or appropriate to administer or carry out the purposes of the Trust; provided, however, the Trustees need not take any action unless in their opinion there are sufficient Trust assets available for the expense thereof.

**Section 5.03 Fiduciary Liability Insurance.** The Trustees may buy fiduciary liability insurance or errors and omissions insurance, as described above. However, all such insurance shall provide that proceeds shall be payable to the Trust and shall contain express provisions reserving to the insurer executing the same the full right of recourse against all parties or other individuals whose errors, acts, omissions, or breaches may obligate such insurer to make payments to the Trust. System may buy fiduciary liability insurance covering any fiduciary of the Trust, including any member of the Board of Trustees, and System shall pay the premiums therefore from the Trust

**Section 5.04 Use of Counsel.** The Office of the Attorney General of the State of Maryland shall serve as counsel to the Trustees.

**Section 5.05 Delegation by Trustees.** In addition to the powers stated in Section 5.02, the Trustees may from time to time delegate to an individual, committee, or organization certain of its fiduciary responsibilities under the Trust. Any such individual, committee, or organization shall remain a fiduciary until such delegation is revoked by the Trustees, which revocation may be without cause and without advance notice. Such individual, committee, or organization shall have such power and authority with respect to such delegated fiduciary responsibilities as the Trustees have under the Trust.

## ARTICLE VI

### **LIMITATIONS OF RESPONSIBILITY AND INDEMNIFICATION**

**Section 6.01 Limitations of Responsibility.** 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 Trust Agreement and those imposed on the Trustees by applicable laws.

(b) The Trustees and the Trust Administrator shall not be responsible for any particular federal, state or local income, payroll or other tax consequence to the State or a Retiree, Spouse, or Dependent.

(c) The Trustees shall be responsible only for money and property actually received by the Trust, and then to the extent described in this Trust Agreement.

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

(e) No member of the Board of Trustees shall have any liability for the acts or omissions of any predecessor or successor in office.

(f) The Trustees shall have no liability for (i) the acts or omissions of any Investment Manager or Managers; (ii) the acts or omissions of any insurance company; (iii) the acts or omissions of any Investment Fund; (iv) the acts or omissions of any Custodian; (v) the acts or omissions of the Trust Administrator; or (vi) the acts or omissions of any contractor.

**Section 6.02 Indemnification.** Indemnification of the Trustees shall be by the State, in accordance with SPP §§ 34-101(e) and 21-207.

## ARTICLE VII

### ACCOUNTS AND RECORDKEEPING

**Section 7.01 Maintenance of Records.** The Trustees shall maintain or cause to be maintained suitable records, data, and information relating to its responsibilities hereunder. The Trust's books and records relating thereto shall be open to inspection and audit at reasonable times, subject to applicable law.

**Section 7.02 Annual Report.** On or before October 1, 2009, and on or before each October 1 thereafter, the Trustees shall publish an annual consolidated report that includes:

- (a) The fiscal transactions of the Trust Fund for the preceding fiscal year; and
- (b) The amount of the accumulated cash, securities, and other assets of the Trust Fund.

## ARTICLE VIII

### RELIANCE ON COMMUNICATIONS

**Section 8.01 Certification of Trust Administrator.** The Trustees may rely upon a certification of the Trust Administrator with respect to any instruction, direction, or approval of such Trust Administrator 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 Trust Administrator.

**Section 8.02 Certification of Other Providers.** The Trustees shall be protected further in relying upon a written certification that purports to be from any Custodian, Investment Manager, insurance company, or mutual fund as to the person or persons authorized to give instructions or directions on behalf of such Custodian, Investment Manager or insurance company and continue to rely upon such certification until a subsequent written certification is filed with the Trustees.

## ARTICLE IX

### AMENDMENT AND TERMINATION

**Section 9.01 Amendment.** This Trust Agreement may be amended by the Trustees at any time and in any manner permitted by applicable State law and not inconsistent with GASB 43 and 45 or Code Section 115. Notice of such Amendment shall be promptly provided to the Trust Administrator and Custodian.

**Section 9.02 Termination.** This Trust Agreement and the Trust created hereby is irrevocable.

## ARTICLE X

### MISCELLANEOUS

**Section 10.01 Construction and Governing Law.**

(a) This Trust Agreement shall be construed, enforced and administered and the validity thereof determined in accordance with the Code and the laws of the State of Maryland. If any provision of the Trust Agreement is held to violate the Code or Maryland law, or to be illegal or invalid for any other reason, that provision shall be deemed to be null and void, but the invalidation of that provision shall not otherwise affect the Trust.

(b) The headings and subheadings in this Trust Agreement are inserted for convenience of reference only and are not to be considered in the construction of any provision of the Trust Agreement.

(c) In resolving any conflict among provisions of this Trust Agreement and in resolving any other uncertainty as to the meaning or intention of any provision of this Trust Agreement, the interpretation that (i) causes the Trust to be exempt from tax as a governmental instrumentality under Code Section 115, and (ii) causes the Trust to comply with all applicable requirements of the Code and the laws of the State of Maryland, shall prevail over any different interpretation.

**Section 10.02 Parties Bound.** This Trust Agreement shall be binding upon the Trustees, the State and, as the case may be, the delegates, successors, and assigns of each of them.

**Section 10.03 Necessary Parties to Disputes.** Necessary parties to any accounting, litigation, or other proceedings relating to the Trust Agreement shall include only the Trustees. The settlement or judgment in any such case in which the Trustees are duly served or cited shall be binding upon all persons claiming by, through, or under this Trust.

**Section 10.04 Severability.** If any provisions of the Trust Agreement shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of the Trust Agreement shall continue to be fully effective.

**Section 10.05 Supersession.** The terms of the Trust Agreement shall supersede any previous oral or written agreement between the parties to this Trust pertaining to matters that are the subject of the Trust.

**Section 10.06 Nonassignment.** The State may not commute, sell, assign, transfer, or otherwise convey any right it may have under the Trust. The assets held under this Trust shall not be subject to the rights of the creditors of the State, the Trustees or the Trust Administrator, and shall be exempt from execution, attachment, prior assignment or any other judicial relief or order for the benefit of creditors or other third person.

**Section 10.07 Erroneous Payments.** If the Trustees or the Trust Administrator make any payment that according to the terms of the Trust and the benefits provided hereunder should not have been made, the Trustees or Trust Administrator may recover that incorrect payment, by whatever means necessary, whether or not it was made due to the error of the Trustees or Trust Administrator, from the person to whom it was made or from any other appropriate party. For example, the Trustees or Trust Administrator may deduct the amount of the incorrect payment when making any future payments to the recipient of the incorrect payment.

**Section 10.08 Release.** Any payment to any State agency or insurance company, or its designee, shall, to the extent thereof, be in full satisfaction of the claim of such entity being paid thereby and the Trustees or Trust Administrator may condition payment thereof on the delivery by the State agency or insurance company, or its designee, of the duly executed receipt and release in such form as may be determined by the Trustees or Trust Administrator.

**Section 10.09 Limitation of Rights.** Nothing in this Trust shall be construed to provide any individual a contract right or any entitlement to the State subsidy for health benefits.

IN WITNESS WHEREOF, this Trust has been executed by the undersigned on the date indicated.

STATE RETIREMENT AND PENSION SYSTEM  
OF MARYLAND

A handwritten signature in black ink, appearing to be "J. E. ...", written over a horizontal line.

Executive Director

Title

9/24/07

Date