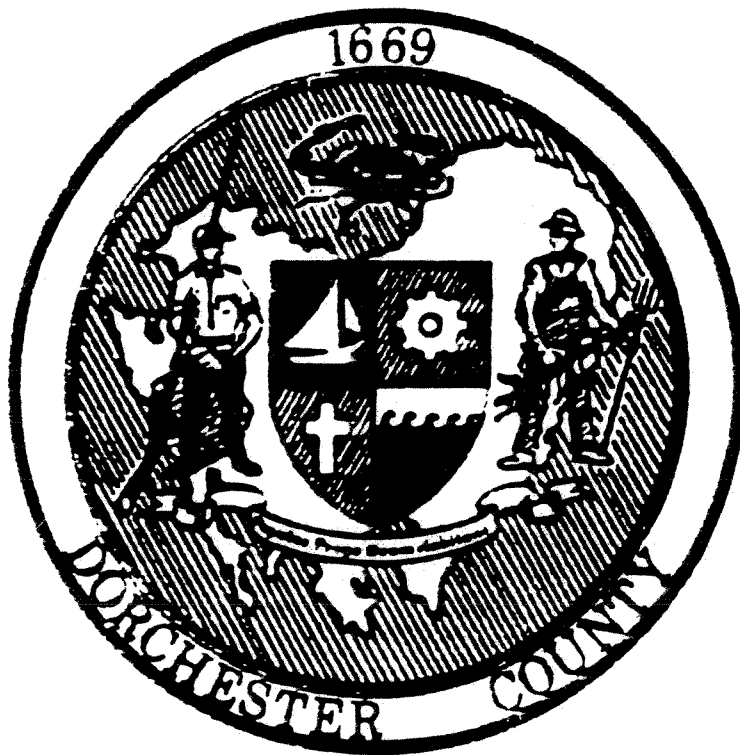


# Investment Policy



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**DORCHESTER COUNTY, MARYLAND  
INVESTMENT POLICY  
TUESDAY, JANUARY 23, 1996**

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## **I. POLICY**

It is the policy of Dorchester County, Maryland (hereinafter referred to as "the County") to invest public funds in a manner which will conform to all State of Maryland and County statutes governing the investment of public funds while meeting its daily cash flow demands and providing a return at least equal to the three month U.S. Treasury bill yield.

## **II. SCOPE**

This investment policy applies to all financial assets of the County. These funds are accounted for in the County's Annual Financial Statements and include:

- A. General Fund
- B. Special Revenue Funds
- C. Capital Project Funds (Including Bond Funds)
- D. Enterprise Funds
- E. Debt Service Funds
- F. Internal Service Funds
- G. Trust and Agency Funds
- H. Any new funds as provided by County ordinance.

## **III. PRUDENCE**

- A. The standard of prudence to be applied by the investment officer shall be the "prudent person" rule, which states, "Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived." The prudent person rule shall be applied in the context of managing the overall portfolio.
- B. Investment officers acting in accordance with written procedures and the investment policy and exercising due diligence shall not be held personally responsible for an individual security's credit risk or market price changes, provided deviations from expectations are reported in a timely fashion and appropriate action is taken to control adverse developments.

#### **IV. OBJECTIVE**

The primary objectives, in priority order, of the County's investment activities shall be:

- A. Safety: Safety of principal is the foremost objective of the investment program. Investments of the County shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio. To attain this objective, diversification, third party collateralization and safekeeping, and delivery versus payment will be required.
- B. Liquidity: The County's investment portfolio will remain sufficiently liquid to enable the County to meet all operating requirements which might be reasonably anticipated.
- C. Return on investment: The County's investment portfolio shall be designed with the objective of attaining a return at least equal to the three month U.S. Treasury bill yield. The three month Treasury benchmark was selected after considering the County's investment risk constraints and the cash flow characteristics of the portfolio.

#### **V. DELEGATION OF AUTHORITY**

- A. Authority to manage the County's investment program is derived from State law (Article 96 and Title 6 of the Finance and Procurement Article of the Annotated Code of Maryland).
- B. The Treasurer shall develop and maintain written administrative procedures for the operation of the investment program, consistent with this investment policy. Such procedures shall include:
  - 1. Explicit delegation of authority to persons responsible for investment transactions. No person may engage in an investment transaction except as provided under the terms of this policy and the procedures established by the Treasurer.
  - 2. Procedures should include reference to safekeeping, PSA repurchase agreements, wire transfer agreements, collateral/depository agreements and banking service agreements.
  - 3. The Treasurer shall be responsible for all transactions undertaken and shall establish a system of controls to regulate the activities of subordinate officials and employees.

## **VI. ETHICS AND CONFLICTS OF INTEREST**

The Treasurer, subordinate officials and employees involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment program, or which could impair their ability to make impartial investment decisions. The Treasurer shall disclose to the Board of County Commissioners any material financial interest in financial institutions that conduct business within this jurisdiction, and will further disclose any large personal financial/investment positions that could be related to the performance of the County's portfolio. Subordinate officials and employees shall disclose to the Treasurer any material financial interest in financial institutions that conduct business within this jurisdiction, and they shall further disclose any large personal financial/investment positions that could be related to the performance of the County's portfolio. The Treasurer, subordinate officials and employees shall subordinate their personal investment transaction to those of the County, particularly with regard to the time of purchases and sales.

## **VII. AUTHORIZED FINANCIAL DEALERS AND INSTITUTIONS**

The County shall maintain a list of approved security broker/dealers selected by creditworthiness who are authorized to provide investment services in the State. These may include "primary dealers" or regional dealers that qualify under Securities & Exchange Commission Rule 15C3-1 (Uniform Net Capital Rule). No deposit shall be made except in an institution which is a qualified public depository as established by the State of Maryland. All financial institutions and broker/dealers who desire to become qualified brokers for investment transactions must supply the Treasurer with the following: audited financial statements, proof of National Association of Security Dealers certification, trading resolution, proof of registration with the State of Maryland, and certification of having read the County's Investment Policy. An annual review of the financial condition and registrations of qualified bidders will be conducted by the Treasurer. A current audited financial statement is required to be on file for each financial institution or broker/dealer through which the County invests.

1. All dealers must agree to the County's policy of delivery-versus-payment as described in Section X of this policy.
2. The firm must provide copies of its audited financial statements, which are reviewed carefully to assure that the firm is on sound financial footing. The firm must also have adequate capital to fulfill its commitments under adverse market conditions.
3. The firm must be registered in the State of Maryland with a record for responsible business practices and professional integrity. The dealer must also provide adequate research facilities and market-related information.

4. The County will deal only through knowledgeable and experienced salespeople. To meet this criterion, the firm will send resume information on the salesperson with whom the County will be dealing. The Firm will also send a list of other Governments that buy and sell securities through their firm in order for the County to obtain references.
  5. All dealers, including primary government dealers, are required to send the County an annual report on a yearly basis.
- A. Commercial Banks: The County can only invest in banks located in Dorchester County (Certificates of Deposit) with the exception of Bankers Acceptances which are discussed in Section VIII of this policy. Commercial Banks must have a short-term rating of at least investment grade from the appropriate Bank rating agencies. All banks shall provide their most recent Consolidated Report of Condition ("call" report) at the request of the County. The County shall conduct an annual evaluation of each bank's credit worthiness to determine whether it should be on the "Qualified Institution" listing.
  - B. Money Market Treasure Funds: The fund must be comprised only of obligations issued or guaranteed as to principal and interest by the U.S. Government and to repurchase agreements fully collateralized by U.S. Government obligations. The management company of the fund must take delivery of the collateral either directly or through an authorized custodian. The County is also authorized to invest in the Maryland Local Government Investment Pool which functions as a U.S. Treasury Money Market Fund.

## VIII. DIVERSIFICATION IN AUTHORIZED & SUITABLE INVESTMENTS

The County will diversify, to extent possible, to avoid incurring unreasonable risks inherent in over-investing in specific instruments, individual financial institutions or maturities. Maryland State law pertaining to authorized instruments is attached.

A. <u>Diversification by Instrument</u>	<u>Maximum % of Portfolio</u>
1. U.S. Treasury Obligations	100%
2. U.S. Government Agency and U.S. Government-sponsored instrumentalities	50%
3. Repurchase Agreements (Master Repurchase Agreement required)**	70%
4. Collateralized Certificates of Deposit (Only Dorchester County Commercial Banks-page 4)	100%

5. Bankers' Acceptances - BA's from domestic banks which also include the U.S. affiliates of large international banks. Short term rating of A1 from Standard and Poor's Corporation and P1 from Moody's Investor Service 40%
6. Money Market Mutual Funds - Highest rating by at least one recognized rating agency. \*See default Risk and Liquidity Scales - Exhibit D. 60%
7. Commercial Paper - effective 07/01/95. Paper must have a minimum of an A1/P1 rating by at least one recognized rating agency. 5%

B. Diversification by Institution

1. Primary Government Dealers (repurchase agreements) 100%
2. Commercial banks (Certificates of Deposit) 100%
3. Money Market Treasury funds 100%
4. Banker's Acceptances by institution 25%

C. Diversification of Maturities

In order to meet the objectives of the County's investment activities as listed in Section IV of this policy, the majority of the investments of the County will be on a short-term basis. (Less than one year). However, a portion of the portfolio can contain investments with longer maturities (up to two years) without jeopardizing adequate safety and liquidity standard of the portfolio and at the same time increasing the overall yield of the portfolio.

\*\* See Master Repurchase Agreement which includes supplemental terms of the County in Annex I and Annex II--Exhibit E.

The investment in long-term maturities will be limited to direct federal government obligations and to securities issued by U.S. Government agencies. The length of maturity of the security will not exceed two years from the time of the County's purchase. The maximum level of long-term investments in the portfolio is determined by the following method:

Analyze the investment portfolio for the last five years. Determine the investment balance low point for each of those years and then compute the average for those five amounts. The maximum level of long-term investments will be approximately 30% of this average. This will be a rolling process to be performed at the end of each fiscal year. If the amount of long-term investments exceeds the 30% maximum, then no new investments can be purchased in the coming year.

## **IX. BORROWING**

The County may not borrow solely for the purpose of investment and may not invest in a manner inconsistent with the Investment Policy.

## **X. COLLATERALIZATION**

- A. Collateralization will be required on two types of investments: certificates of deposit and repurchase (and reverse) agreements. In order to anticipate market changes and provide a level of security for all funds, the collateralization level will be at least 102% of market value of principal and accrued interest.
- B. Collateral will always be held by an independent third party with whom the County has a current custodial agreement.
- C. Acceptable collateral is specified under Section 6-202 of Title 6 of the State Finance and Procurement Article of the Annotated Code of Maryland. However, the third party trust custodian, who holds the collateral, has the right to reject otherwise acceptable collateral based on their discretion concerning market conditions.
- D. The right of collateral substitution is granted, and all associated costs will be paid by the seller (financial institution).

## **XI. SAFEKEEPING AND CUSTODY**

All security transactions, including collateral for repurchase agreements, entered into by the County shall be conducted on a delivery-versus-payment (DVP) basis. Securities will be held by a third party custodian designated by the Treasurer. All repurchase agreements will be governed by a Master Repurchase Agreement signed by the appropriate officials of the County and the primary government dealer. (See Exhibit E).

## **XII. INTERNAL CONTROLS**

The Treasurer shall establish a system of internal controls, which shall be documented in writing. The controls shall be designed to prevent losses of public funds arising from fraud, employee error, misrepresentation by third parties, unanticipated changes in financial markets, or imprudent actions by employees and officials of the County. An audit of the internal controls of the investment operation is part of the annual financial audit conducted by an outside independent audit company.



### **XIII. PERFORMANCE STANDARDS**

The County's investment strategy in general is passive. However, the strategy is active under special extenuating circumstances. Given this strategy and taking into account the County's investment risk constraints and cash flow needs, the three month U.S. Treasury Bill yield was selected to gauge the County's investment portfolio performance. This comparison will be shown in the monthly reporting referred to in Section XIII.

### **XIV. REPORTING REQUIREMENTS**

The Treasurer shall generate monthly reports for management purposes. In addition, the County Administrator and County Board of Commissioners will be provided monthly reports which will include data on investment instruments being held, as well as any narrative necessary for clarification.

### **XV. INVESTMENT POLICY ADOPTION**

The Treasurer may propose changes in these policies for approval by Board of County Commissioners at any time as long as the changes are in compliance with the Annotated Code of Maryland. These changes should be written and distributed to the County Administrator and County Board of Commissioners. Exceptions to these policies may be made by securing the recommendation of the Treasurer and approval of the Board of County Commissioners and documented in writing.

## GLOSSARY

AGENCIES	Federal agency securities
BANKERS' ACCEPTANCE (BA)	A draft or bill or exchange accepted by a bank or trust company. The accepting institution guarantees payment of the bill, as well as the issuer.
BROKER	A broker brings buyers and sellers together for a commission paid by the initiator of the transaction or by both sides; he/she does not position. In the money market, brokers are active in markets in which banks buy and sell money and in interdealer markets.
COLLATERAL	Securities, evidence of deposits or other property which a borrower pledges to secure repayment of a loan. Also refers to securities pledged by a bank to secure deposits of public monies.
CERTIFICATE OF DEPOSIT (CD)	A time deposit with a specific maturity evidenced by a certificate. Large-denomination CD's are typically negotiable.
DEALER	A dealer, as opposed to a broker, acts as a principal in all transactions, buying and selling for his/her own account.
DELIVERY VS. PAYMENT	There are two methods of delivery of securities: delivery versus payment and delivery versus receipt (also called free). Delivery versus payment is delivery of securities with an exchange of money for the securities. Delivery versus receipt is delivery of securities with an exchange of a signed receipt for the securities.
DISCOUNT SECURITIES	Non-interest bearing money market instruments that are issued at a discount and redeemed at maturity for full face value, e.g., U.S. Treasury bills.
DIVERSIFICATION	Dividing investment funds among a variety of securities offering independent returns.

## FEDERAL CREDIT AGENCIES

Agencies of the Federal government set up to supply credit to various classes of institutions and individuals, e.g., S & L's, small business firms, students, farmers, farm cooperatives, and exporters.

## FEDERAL FUNDS RATE

The rate of interest at which Fed funds are traded. This rate is currently pegged by the Federal Reserve through open market operations.

## FEDERAL OPEN MARKET COMMITTEE (FOMC)

Consists of seven members of the Federal Reserve Board and five of the twelve Federal Reserve Bank Presidents. The President of the New York Federal Reserve Bank is a permanent member while the other Presidents serve on a rotating basis. The Committee periodically meets to set Federal Reserve guidelines regarding purchases and sales of Government Securities in the open market as a means of influencing the volume of bank credit and money.

## FEDERAL RESERVE SYSTEM

The central bank of the United States created by Congress and consisting of a seven member Board of Governors in Washington, D.C., 12 regional Banks and about 5,700 commercial banks that are members of the system.

## FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC)

A federal agency that insures bank deposits, currently up to \$100,000 per depositor.

## FEDERAL HOME LOAN BANKS (FHLB)

The institutions that regulate and lend to savings and loan associations. The Federal Home Loan Banks play a role analogous to that played by the Federal Reserve Banks vis-a-vis member commercial banks.

## FEDERAL NATIONAL MORTGAGE ASSOCIATION (FNMA)

FNMA, like GNMA, was chartered under the Federal National Mortgage Association Act in 1938. FNMA is a federal corporation working under the auspices of the Department of Housing & Urban Development, H.U.D. It is the largest single provider of residential mortgage funds in the United States. Fannie Mae, as the corporation is called, is a private stockholder-owned corporation. The corporation's purchases include a variety of

adjustable mortgages and second loans in addition to fixed-rate mortgages. FNMA's securities are also highly liquid and are widely accepted. FNMA assumes and guarantees that all security holders will receive timely payment of principal and interest.

#### GOVERNMENT NATIONAL MORTGAGE ASSOCIATION (GNMA)

Securities guaranteed by GNMA and issued by mortgage bankers, commercial banks, savings and loan associations and other institutions. Security holder is protected by full faith and credit of the U.S. Government. Ginnie Mae securities are backed by FHA, VA or FMHM mortgages. The term pass-throughs is often used to describe Ginnie Mae's.

#### LIQUIDITY

A liquid asset is one that can be converted easily and rapidly into cash without a substantial loss of value. In the money market, a security is said to be liquid if the spread between bid and asked prices is narrow and reasonable size can be done at those quotes.

#### LOCAL GOVERNMENT INVESTMENT POOL (LGIP)

The aggregate of all funds from political subdivisions that are placed in the custody of the State Treasurer for investment and reinvestment.

#### MARKET VALUE

The price at which a security is trading and could presumably be purchased or sold.

**MASTER REPURCHASE AGREEMENT** A written contract covering all future transactions between the parties to repurchase--reverse repurchase agreements that establishes each party's rights in the transactions. A master agreement will often specify, among other things, the right of the buyer-lender to liquidate the underlying securities in the event of default by the seller-borrower.

#### MATURITY

The date upon which the principal or stated value of an investment becomes due and payable.

#### MONEY MARKET

The market in which short-term debt instruments (bills, commercial paper, bankers' acceptances, etc.) are issued and traded.

## OPEN MARKET OPERATIONS

Purchases and sales of government and certain other securities in the open market by the New York Federal Reserve Bank as directed by the FOMC in order to influence the volume of money and credit in the economy. Purchases inject reserves into the bank system and stimulate growth of money and credit; sales have the opposite effect. Open market operations are the Federal Reserve's most important and most flexible monetary policy tool.

## PORTFOLIO

Collection of securities held by an investor.

## PRUDENT PERSON RULE

An investment standard. In some states the law requires that a fiduciary, such as a trustee, may invest money only in a list of securities selected by the State-the so-call legal list. In other states the trustee may invest in a security if it is one which would be bought by a prudent person of discretion and intelligence who is seeking a reasonable income and preservation of capital.

## PRIMARY DEALER

A group of government securities dealers that submit daily reports of market activity and positions and monthly financial statements to the Federal Reserve Bank of New York and are subject to its informal oversight. Primary dealers include Securities & Exchange Commission (SEC) registered securities broker' dealers, banks, and a few unregulated firms.

## RATE OF RETURN

The yield obtainable on a security based on its purchase price or its current market price. This may be the amortized yield to maturity on a bond of the current income return.

## QUALIFIED PUBLIC DEPOSITORIES

A financial institution which does not claim exemption from the payment of any sales or compensating use or ad valorem taxes under the laws of this state, which has segregated for the benefit of the commission eligible collateral having a value of not less than its maximum liability and which has been approved by the Public Deposit Protection Commission to hold public deposits.

## REPURCHASE AGREEMENT

A holder of securities sells these securities to an investor with an agreement to repurchase them at a fixed price on a fixed date. The security "buyer" in effect lends the "seller" money for the period of the agreement, and terms of the agreement are structured to compensate him/her for this. Dealers use Repos extensively to finance their positions. Exception: When the Fed is said to be doing Repo, it is lending money, that is, increasing bank reserves.

## SAFEKEEPING

A service to customers rendered by banks for a fee whereby securities and valuables of all types and descriptions are held in the bank's vaults for protection.

## SECONDARY MARKET

A market made for the purchase and sale of outstanding issues following the initial distribution.

## SEC RULE 15C3-1

See uniform net capital rule.

## SECURITIES & EXCHANGE COMMISSION

Agency created by Congress to protect investors in securities transactions by administering securities legislation.

## TREASURY BILLS

A non-interest bearing discount security issued by the U.S. Treasury to finance the national debt. Most bills are issued to mature in three months, six months, or one year.

## TREASURY BOND

Long-term U.S. Treasury securities having initial maturities of more than ten years.

## TREASURY NOTES

Intermediate term coupon bearing U.S. Treasury securities having initial maturities of from one to ten years.

## YIELD

The rate of annual income return on an investment, expressed as a percentage. (a) **INCOME YIELD** is obtained by dividing the current dollar income by the current market price for the security. (b) **NET YIELD** or **YIELD TO MATURITY** is the current income yield minus any premium above par or plus any discount from par in purchase price, with the adjustment spread over the period

from the date of purchase to the date of maturity of the bond.

## UNIFORM NET CAPITAL RULE

Securities & Exchange Commission requirement that member firms as well as non-member broker-dealers in securities maintain a maximum ratio of indebtedness to liquid capital of 15 to 1; also called net capital rule and net capital ratio. Indebtedness covers all money owed to a firm, including margin loans and commitments to purchase securities, one reason new public issues are spread among members of underwriting syndicates. Liquid capital includes cash and assets easily converted into cash.

§ 22. Investment by county commissioners and others in United States government bonds, obligations of federal government or agencies or savings accounts in Maryland banks.

Notwithstanding any provision of law or ordinance to the contrary or any limitation or restriction contained in any other law or ordinance, the county commissioners of each county of the State, and the chief fiscal or administrative officer or officers or governing body of each municipality, town, body politic, public body corporate, school, road, drainage, improvement, construction or soil conservation district or commission in the State, including, by way of enumeration and not in limitation, the Upper Potomac River Commission, county school boards and other political subdivisions and bodies politic of the State and any agency of any political subdivision of the State, and the trustees or other officers in charge of any pension or retirement system or fund of the State or any political subdivision thereof or any agency or department of either are hereby severally directed, authorized and empowered to invest, redeem, sell, exchange and reinvest all unexpended or surplus moneys in any fund or account of which they have custody or control in obligations or repurchase agreements of the type in which the Treasurer may reinvest under § 6-222 of the State Finance and Procurement Article, or to deposit said moneys in any bank or banks in the State of Maryland or in any savings and loan association or savings and loan associations or in any building and loan association or building and loan associations in interest-bearing time deposit and/or savings accounts, or in the local government investment pool created in this article. In Prince George's County the chief fiscal officer is hereby authorized and empowered to invest, redeem, sell, exchange, and reinvest unexpended or surplus moneys in any fund or account of which he has custody or control, in addition to all those items previously listed herein, and with the approval of the county council, in any enterprise fund operated by and for the benefit of Prince George's County and its residents. Such deposits in banks or in savings and loan associations or building and loan associations shall only be made if the bank or savings and loan associations or building and loan associations has deposited a like amount of bonds in escrow, as now prescribed by law, covering bank deposits, savings and loan deposits, building and loan deposits, or if the bank, savings and loan association or building and loan association has given as security for these deposits any of the types of collateral set forth in § 6-202 of the State Finance and Procurement Article. The interest or income from any such investment or deposit shall be and become a part of the fund from which the investment or deposit was made and may itself be so invested or deposited, provided, however, that where the fund so invested, or deposited constitutes the proceeds of the issue of bonds or other obligations, the principal of and/or interest on which the issuer is obligated to repay to the holders thereof, the interest or income from such investments may be used to pay the principal and/or interest on the same by the issuer. Investments or deposits made pursuant to this section may be withdrawn or



altered from time to time by the investing or depositing officer or governing body either to meet the requirements for which such funds are held or for reinvestment pursuant to the terms hereof.

All such investments made prior to March 2, 1943, are hereby legalized, validated, ratified and confirmed, notwithstanding the absence of statutory authority therefor or any inconsistent provision of law. (An. Code, 1951, § 22; 1943, ch. 78; 1954, ch. 74; 1968, ch. 127; 1971, ch. 240; 1974, ch. 731, § 2; 1975, ch. 634; 1976, ch. 329; 1977, ch. 377; 1981, chs. 604, 735; 1984, ch. 482; 1985, ch. 717, § 1.)

**Effect of amendments.** — The 1984 amendment, approved May 15, 1984, and effective from date of passage, inserted "or a repurchase agreement that is secured by any bond or other obligation of the type in which the Treasurer may reinvest under § 22F (a) (1) of this article" near the middle of the first sentence.

The 1985 amendment, effective Oct. 1, 1985,

rewrote the first sentence, and substituted "§ 6-202 of the State Finance and Procurement Article" for "§ 21A of this article" at the end of the third sentence.

University of Baltimore Law Review. — For article, "Contemporary Fiduciary Investments: Why Maryland Needs the Prudent Man Rule," see 12 U. Balt. L. Rev. 207 (1983).

## § 22G. Local government investment pool.

(a) *Established; Treasurer's responsibilities.* — (1) There is a local government investment pool. The local government investment pool consists of the aggregate of all funds from local governments that are placed in the custody of the State for investment and reinvestment.

(2) The investment policies for the local government investment pool shall be established by the Treasurer.

(3) The Treasurer shall administer the local government investment pool on behalf of the participating local governments.

(4) The Treasurer shall develop such procedures necessary for the efficient administration of the pool, including:

(i) Specification of minimum amounts which may be deposited in the pool and minimum periods of time for which deposits shall be retained in the pool;

(ii) Payment of amounts equivalent to administrative expenses from the earnings of the pool; and

(iii) Distribution of the earnings in excess of expenses, or allocation of losses, to the several participants in a manner which equitably reflects the differing amount of their respective investments and the differing periods of time for which the amounts were in the custody of the pool.

(i) *Investment of State funds prohibited.* — (1) Except as provided in this subsection, the Treasurer may not invest State funds in the local government investment pool.

(2) If the Treasurer determines that certain funds must, for investment purposes, be segregated from the State treasury, the Treasurer may authorize clerks of court, registers of wills, and other State agencies to deposit funds in the local government investment pool.

(1986, ch. 7; 1989, ch. 5, § 1.)

**Effect of amendments.**

The 1986 amendment, approved March 12, 1986, and effective from date of passage, reenacted subsection (a) without change, and in subsection (i), designated the provisions as paragraph (1) and added the exception at the beginning thereof, and added paragraph (2).

The 1989 amendment, approved Mar. 9, 1989, and effective from date of passage, added "and" in (a) (4) (iii).

As the remainder of the section was not affected by the amendment, it is not set forth above.

(b) *Treasurer to invest moneys.* — (1) The Treasurer shall invest moneys in the local government investment pool in accordance with the provisions set forth in §§ 6-222 and 6-223 of the State Finance and Procurement Article.

(2) Notwithstanding any provisions of law to the contrary or any limitation or restriction contained in any other law, the Treasurer may invest, redeem, sell, exchange, and reinvest moneys in the local government investment pool in bankers' acceptances guaranteed by banking institutions.

(c) *Procedure for participation by local governing authority.* — (1) The governing authority of any local government having funds which are available for investment and which are not required by law or by any covenant or agreement with bondholders or others to be segregated and invested in a different manner may direct its financial officer to remit funds to the Treasurer for investment as part of the local government investment pool.

(2) Upon determination by the local governing authority that it is in the best interest of the local government to deposit funds in the investment pool, it shall adopt and file with the Treasurer a certified copy of a resolution or ordinance authorizing investment of its funds in the investment pool. The resolution or ordinance shall name the local government official or officials responsible for deposit and withdrawal of such funds.

(3) The resolution or ordinance filed with the Treasurer shall be accompanied by a statement as to the approximate cash flow requirements of the local government for the invested funds. Subsequent deposits into the investment pool shall be accompanied by a statement as to the intended duration of the investment or the anticipated date of withdrawal of the funds from the pool.

(d) *Participants to have separate accounts; monthly report.* — A separate account designated by name or number for each participant in the fund shall be kept to record individual transactions and totals of all investments belonging to each participant. A monthly report showing the changes in investments made during the preceding month shall be furnished to each participant in the investment pool. Details of any investment transaction shall be furnished to any participant upon request.

(e) *Payment of principal and credited income to participant.* — The principal and credited income of each account maintained for a participant in the investment pool shall be subject to payment from the pool upon request, provided that the request for payment is made in accordance with the terms of the deposit. Accumulated income shall be credited to each participant account at least monthly.

(f) *Treasurer to retain custody of instruments of title and to collect interest.* — Except as provided in this section, all instruments of title of all investments of the investment pool shall remain in the custody of the Treasurer. The Treasurer may deposit with one or more fiscal agents or banks those instruments of title he considers advisable, to be held in safekeeping by the agents or banks for collection of the principal and interest or other income, or of the proceeds of sale. The Treasurer shall collect the principal and interest or other income from investments of the investment pool, the instruments of title to which are in his custody, when due and payable.

(g) *Amount of payments.* — A payment may not be issued upon any account in an amount greater than the sum total of the particular account to which it applies. If such payment is issued, it shall be refunded by the distributee.

(h) *Investment procedures; employment of fiscal agent.* — (1) Subject to the objectives and requirements of this section, the Treasurer shall formulate procedures for the investment and reinvestment of funds in the investment pool and the acquisition, retention, management, and disposition of investments of the investment pool.

(2) (i) The Treasurer may enter into a contractual agreement with a qualified Maryland fiscal agent and may compensate the agent for services rendered.

(ii) The agent may perform investment and administrative services which the Treasurer is authorized by this section to perform.

(i) *Investment of State funds prohibited.* — The Treasurer may not invest State funds in the local government investment pool.

(j) *When section to become effective.* — The provisions of this section shall become effective either:

(1) When funds are appropriated by the General Assembly or otherwise become available to defray the initial costs in establishing the pool authorized by this section; or

(2) At a time designated by the fiscal agent provided for in subsection (h) of this section.

(k) *Investments not considered treasury funds.* — Funds placed in the local government investment pool may not be considered to be treasury funds.

(l) *"Local government".* — For the purposes of this section, "local government" includes all of the legal entities, bodies, and agencies set out in § 22 of this article, except the State and agencies of the State. (1981, ch. 735; 1983, ch. 55, § 1; 1984, ch. 255; 1985, ch. 10, § 3; ch. 183; ch. 717, § 1.)

*Effect of amendments.* — The 1964 amendment, approved May 8, 1984, and effective from date of passage, substituted "§ 22F" for "§ 22" in subsection (b).

Chapter 10, Acts 1985, effective July 1, 1985, inserted a colon following "either" in the introductory language of subsection (j) and designated (1) and the language following as paragraph (1) therein.

Chapter 183, Acts 1985, effective July 1, 1985, designated the provisions of subsection (b) as paragraph (1) and inserted paragraph (2).

Chapter 717, Acts 1985, effective Oct. 1, 1985, substituted "§§ 6-222 and 6-223 of the State Finance and Procurement Article" for "§ 22F of this article" at the end of present paragraph (1) of subsection (b).

*Editor's note.* — Section 4, ch. 10, Acts 1985, provides that "the provisions of this act are intended solely to correct technical errors in the law and that there is no intent to revive or otherwise affect law that is the subject of other acts, whether those acts were signed by the Governor prior to or after the signing of this act."

### § 22J. Investments by Anne Arundel County Controller and Howard County Finance Director.

Notwithstanding any provisions of law to the contrary or any limitation or restriction contained in any other law, the Controller of Anne Arundel County and the Director of Finance of Howard County may invest, redeem, sell, exchange, and reinvest unexpended or surplus moneys in any fund or account of which he has custody or control in banker's acceptances. (1984, ch. 126.)

### § 22K. Investments in bankers' acceptances.

Notwithstanding any provision of law to the contrary or any limitation or restriction contained in any other law, the chief fiscal or administrative officer or governing body of each municipal corporation in the State may invest, redeem, sell, exchange, and reinvest up to 50 percent of unexpended or surplus moneys in any fund or account of which they have custody or control in bankers' acceptances guaranteed by banking institutions. (1985, ch. 183.)

Editor's note. — Section 2, ch. 183, Acts 1985, provides that the act shall take effect July 1, 1985.

### § 22M. Investments, redemptions, sales, etc., of certain bond proceeds.

Notwithstanding any other provision of law and in addition to any other authority provided by law, the Controller, Director of Finance, or similar official of a chartered county or Baltimore City may invest, redeem, sell, exchange, and reinvest unexpended bond sale proceeds and other funds which are subject to arbitrage, rebate, or similar limitations under federal tax law, of which the Controller, Director of Finance, or similar official has custody or control in bonds, notes, or other obligations of investment grade quality, as established by a nationally recognized rating agency, issued by or on behalf of this State or any other state or any agency, department, county, municipal or public corporation, special district, authority, or political subdivision of this State or any other state, either directly or through a trust or fund that restricts investments of the trust or fund to obligations of investment grade quality. (1986, ch. 277.)

Editor's note. — Chapter 277, Acts 1986, designated this section as § 22L, but since a § 22L had previously been added by ch. 231, Acts 1986, the section added by ch. 277 has been designated as § 22M herein.

Chapter 277, Acts 1986, approved April 29, 1986, was effective from date of passage.

§ 22N. Investment by local governmental bodies in investment companies or trusts.

(a) *Authority.* — Notwithstanding any provision of law to the contrary or any limitation or restriction contained in any other law, whenever the county commissioners of any county of the State, or the chief fiscal or administrative officer or officers or governing body of any municipality, town, body politic, public body corporate, school, road, drainage, improvement, construction, or soil conservation district or commission in the State, including, by way of enumeration and not in limitation, the Upper Potomac River Commission, or any county school board or other political subdivision or bodies politic of the State, or any agency of any political subdivision of the State, or the trustees or other officers in charge of any pension or retirement system or fund of the State or any political subdivision thereof or any agency or department of either are directed, authorized, empowered, or permitted to invest in, purchase, or take as collateral a bond, obligation, or other evidence of indebted-

ness of the United States of America, they are directed, authorized, empowered, and permitted to invest in, purchase, or take as collateral an obligation or security of, or other interest in, any open-end or closed-end management type investment company or investment trust registered under the provisions of the Federal Investment Company Act of 1940, 15 U.S.C. § 80A-1 et seq., if:

(1) The portfolio of the open-end or closed-end management type investment company or investment trust is limited to direct obligations of the United States government and to repurchased agreements fully collateralized by United States government obligations; and

(2) The open-end or closed-end management type investment company or investment trust takes delivery of that collateral, either directly or through an authorized custodian.

(b) *Reports by local government entities, bodies and agencies.* — Each of the local government entities, bodies, and agencies set out in subsection (a) of this section shall report annually to the Treasurer, in accordance with procedures established by the Treasurer, on any investments made under this section.

(c) *Report by Treasurer.* — (1) Subject to § 2-1312 of the State Government Article, the Treasurer shall report by January 3 of each year to the General Assembly on any investments made by local government entities under this section during the preceding fiscal year.

(2) The report shall include a detailed review of:

- (i) The amount and duration of each investment;
- (ii) The net interest or net income earned on the investment;
- (iii) Any management fee or other fees or expenses paid directly by the local government entity in connection with the investment; and
- (iv) A comparison between the investment and a comparable investment in the local government investment pool established under § 22G of this article.

(1988, ch. 611.)

*Editor's note.* — Section 2, ch. 611, Acts 1988, provides that the act shall take effect July 1, 1988.

## EXHIBIT C

### ANNOTATED CODE OF MARYLAND

§ 6-202

#### STATE FINANCE AND PROCUREMENT

##### § 6-202. Collateral.

Collateral that may be used under this subtitle shall be:

- (1) an obligation of the United States or any of its agencies;
- (2) an obligation guaranteed by the United States or by any of its agencies;
- (3) an obligation insured by the United States;
- (4) an obligation of the State or any of its units or instrumentalities;
- (5) an obligation of a county of the State or any of its agencies;
- (6) an obligation of a municipal corporation in the State or any of its agencies;
- (7) an obligation of any other governmental authority in the State;
- (8) an obligation of the Inter-America Development Bank;
- (9) an obligation of the World Bank; or
- (10) an obligation or security of, or other interest in, any open-end or closed-end management type investment company or investment trust registered under the provisions of the federal Investment Company Act of 1940, 15 U.S.C. § 80a-1 et seq., if:
  - (i) the portfolio of the open-end or closed-end management type investment company or investment trust is limited to direct obligations of the United States government and to repurchase agreements fully collateralized by United States government obligations; and
  - (ii) the open-end or closed-end management type investment company or investment trust takes delivery of that collateral, either directly or through an authorized custodian. (An. Code 1957, art. 95, §§ 21A, 23; 1985, ch. 11, § 2; ch. 718; 1988, ch. 612.)

Effect of amendment. — The 1988 amendment, effective July 1, 1988, added paragraph (10).

Part IV. Investments.

§ 6-222. Federal obligations.

(a) *Investment and reinvestment.* — The Treasurer may invest or reinvest unexpended or surplus money over which the Treasurer has custody:

(1) in any obligation for which the United States has pledged its faith and credit for the payment of the principal and interest;

(2) in any obligation that a federal agency issues in accordance with an act of Congress;

(3) in a repurchase agreement that any of these obligations secures;

(4) banker's acceptances guaranteed by banking institutions which are rated above average in a uniform investment grading system by a recognized rating service;

(5) with respect to bond sale proceeds only, in bonds, notes, or other obligations of investment grade quality (as established by a nationally recognized rating agency) issued by or on behalf of this or any other state or any agency, department, county, municipal or public corporation, special district, authority, or political subdivision thereof, or in any fund or trust that invests only in securities of the type described in this paragraph; or

(6) in securities of, or other interests in, any open-end or closed-end management type investment company or investment trust registered under the provisions of the federal Investment Company Act of 1940, 15 U.S.C. § 80a-1 et seq., if:

(i) the portfolio of the open-end or closed-end management type investment company or investment trust is limited to direct obligations of the United States government and to repurchase agreements fully collateralized by United States government obligations; and

(ii) the open-end or closed-end management type investment company or investment trust takes delivery of that collateral, either directly or through an authorized custodian.

(b) *Sale, redemption, and exchange.* — The Treasurer may sell, redeem, or exchange an investment or reinvestment made under this section.

(c) *Report.* — (1) Subject to § 2-1312 of the State Government Article, the Treasurer shall report by January 3 of each year to the General Assembly on any investments made under subsection (a) (5) of this section.

(2) The report shall include a detailed review of:

(i) the amount and duration of each investment;

(ii) the net interest or net income earned on the investment; and

(iii) any management fee or other fees or expenses paid directly by the Treasurer in connection with the investment. (An. Code 1957, art. 95, § 22F; 1985, ch. 11, § 2; 1986, ch. 7; 1988, chs. 512, 612.)

STATE FINANCE AND PROCUREMENT

Effect of amendments. — Chapter 512, Acts 1955, inserted present subsection (a) (4) and redesignated former subsection (a) (4) as present subsection (a) (5).

Chapter 612, Acts 1955, effective July 1, 1955, added the subsection designated herein

as subsection (a) (6) and subsection (c).

University of Baltimore Law Review. — For article, "Contemporary Fiduciary Investments: Why Maryland Needs the Prudent Man Rule," see 12 U. Balt. L. Rev. 297 (1953).

§ 6-223. Deposits.

(a) *Investment and reinvestment.* — Except as otherwise prohibited by law, the Treasurer may invest or reinvest, in a deposit with a financial institution in the State, unexpended or surplus money over which the Treasurer has custody if:

(1) the deposit is interest bearing; and

(2) as provided for a depository for State money:

(i) the financial institution provides collateral that has a market value that equals or exceeds the amount by which a deposit exceeds the deposit insurance; and

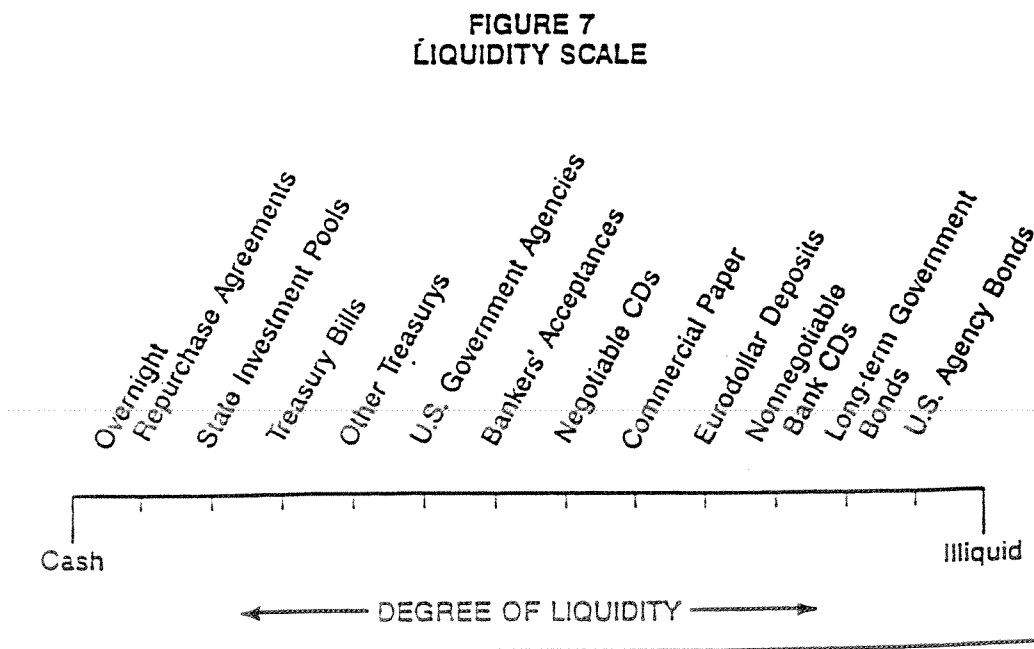
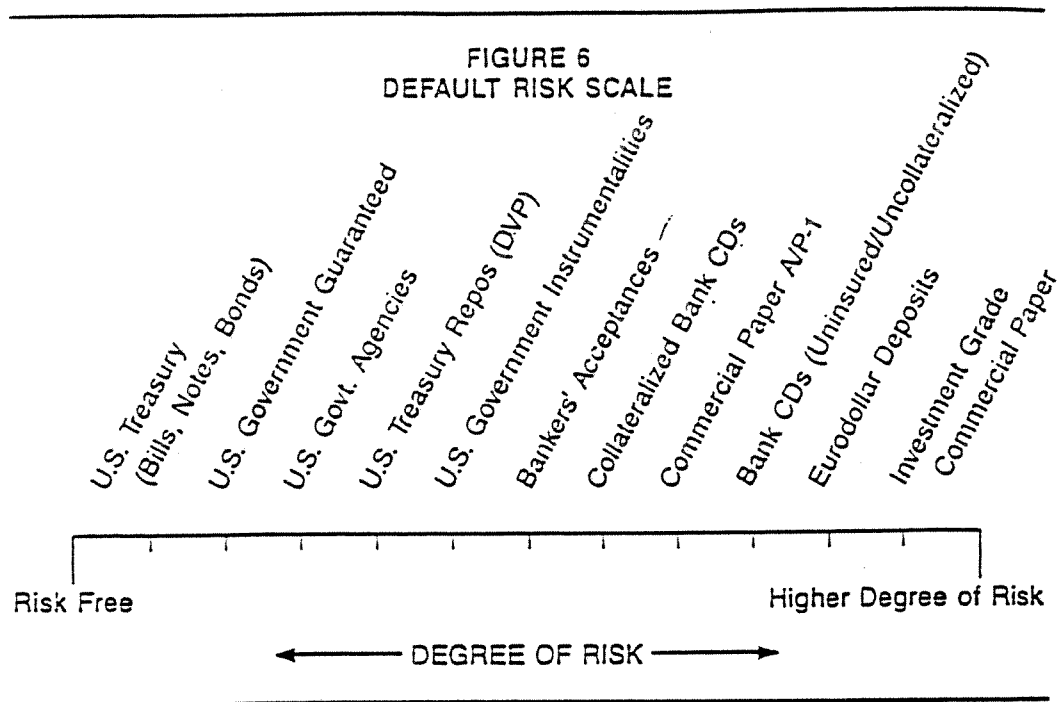
(ii) a custodian holds the collateral.

(b) *Sale, redemption, and exchange.* — The Treasurer may sell, redeem, or exchange an investment or reinvestment made under this section. (An. Code 1957, art. 95, § 22F; 1985, ch. 11, § 2.)

University of Baltimore Law Review. — For article, "Contemporary Fiduciary Invest-

ments: Why Maryland Needs the Prudent Man Rule," see 12 U. Balt. L. Rev. 207 (1953).





# MASTER REPURCHASE AGREEMENT

Dated as of \_\_\_\_\_,

Between:

Board of County Commissioners  
and

\_\_\_\_\_  
Name of Customer

## 1. Applicability

From time to time the parties hereto may enter into transactions in which one party ("Seller") agrees to transfer to the other ("Buyer") securities or financial instruments ("Securities") against the transfer of funds by Buyer, with a simultaneous agreement by Buyer to transfer to Seller such Securities at a date certain or on demand, against the transfer of funds by Seller. Each such transaction shall be referred to herein as a "Transaction" and shall be governed by this Agreement, including any supplemental terms or conditions contained in Annex I hereto, unless otherwise agreed in writing.

## 2. Definitions

(a) "Act of Insolvency", with respect to any party, (i) the commencement by such party as debtor of any case or proceeding under any bankruptcy, insolvency, reorganization, liquidation, dissolution or similar law, or such party seeking the appointment of a receiver, trustee, custodian or similar official for such party or any substantial part of its property, or (ii) the commencement of any such case or proceeding against such party, or another seeking such an appointment, or the filing against a party of an application for a protective decree under the provisions of the Securities Investor Protection Act of 1970, which (A) is consented to or not timely contested by such party, (B) results in the entry of an order for relief, such an appointment, the issuance of such a protective decree or the entry of an order having a similar effect, or (C) is not dismissed within 15 days, (iii) the making by a party of a general assignment for the benefit of creditors, or (iv) the admission in writing by a party of such party's inability to pay such party's debts as they become due;

(b) "Additional Purchased Securities", Securities provided by Seller to Buyer pursuant to Paragraph 4(a) hereof;

(c) "Buyer's Margin Amount", with respect to any Transaction as of any date, the amount obtained by application of a percentage (which may be equal to the percentage that is agreed to as the Seller's Margin Amount under subparagraph (q) of this Paragraph), agreed to by Buyer and Seller prior to entering into the Transaction, to the Repurchase Price for such Transaction as of such date;

(d) "Confirmation", the meaning specified in Paragraph 3(b) hereof;

(e) "Income", with respect to any Security at any time, any principal thereof then payable and all interest, dividends or other distributions thereon;

(f) "Margin Deficit", the meaning specified in Paragraph 4(a) hereof;

(g) "Margin Excess", the meaning specified in Paragraph 4(b) hereof;

(h) "Market Value", with respect to any Securities as of any date, the price for such Securities on such date obtained from a generally recognized source agreed to by the parties or the most recent closing bid quotation from such a source, plus accrued Income to the extent not included therein (other than any Income credited or transferred to, or applied to the obligations of, Seller pursuant to Paragraph 5 hereof) as of such date (unless contrary to market practice for such Securities);

(i) "Price Differential", with respect to any Transaction hereunder as of any date, the aggregate amount obtained by daily application of the Pricing Rate for such Transaction to the Purchase Price for such Transaction on a 360 day per year basis for the actual number of days during the period commencing on (and including) the Purchase Date for such Transaction and ending on (but excluding) the date of determination (reduced by any amount of such Price Differential previously paid by Seller to Buyer with respect to such Transaction);

(j) "Pricing Rate", the per annum percentage rate for determination of the Price Differential;  
(k) "Prime Rate", the prime rate of U.S. money center commercial banks as published in *The Wall Street Journal*;

(l) "Purchase Date", the date on which Purchased Securities are transferred by Seller to Buyer;

(m) "Purchase Price", (i) on the Purchase Date, the price at which Purchased Securities are transferred by Seller to Buyer, and (ii) thereafter, such price increased by the amount of any cash transferred by Buyer to Seller pursuant to paragraph 4(b) hereof and decreased by the amount of any cash transferred by Seller to Buyer pursuant to Paragraph 4(a) hereof or applied to reduce Seller's obligations under clause (ii) of Paragraph 5 hereof;

(n) "Purchased Securities", the Securities transferred by Seller to Buyer in a Transaction hereunder, and any Securities substituted therefor in accordance with Paragraph 9 hereof. The term "Purchased Securities" with respect to any Transaction at any time also shall include Additional Purchased Securities delivered pursuant to Paragraph 4(a) and shall exclude Securities returned pursuant to Paragraph 4(b);

(o) "Repurchase Date", the date on which Seller is to repurchase the Purchased Securities from Buyer, including any date determined by application of the provisions of Paragraphs 3(c) or 11 hereof;

(p) "Repurchase Price", the price at which Purchased Securities are to be transferred from Buyer to Seller upon termination of a Transaction, which will be determined in each case (including Transactions terminable upon demand) as the sum of the Purchase Price and the Price Differential as of the date of such determination, increased by any amount determined by the application of the provisions of Paragraph 11 hereof;

(q) "Seller's Margin Amount", with respect to any Transaction as of any date, the amount obtained by application of a percentage (which may be equal to the percentage that is agreed to as the Buyer's Margin Amount under subparagraph (c) of this Paragraph), agreed to by Buyer and Seller prior to entering into the Transaction, to the Repurchase Price for such Transaction as of such date.

### **3. Initiation; Confirmation; Termination**

(a) An agreement to enter into a Transaction may be made orally or in writing at the initiation of either Buyer or Seller. On the Purchase Date for the Transaction, the Purchased Securities shall be transferred to Buyer or its agent against the transfer of the Purchase Price to an account of Seller.

(b) Upon agreeing to enter into a Transaction hereunder, Buyer or Seller (or both), as shall be agreed, shall promptly deliver to the other party a written confirmation of each Transaction (a "Confirmation"). The Confirmation shall describe the Purchased Securities (including CUSIP number, if any), identify Buyer and Seller and set forth (i) the Purchase Date, (ii) the Purchase Price, (iii) the Repurchase Date, unless the Transaction is to be terminable on demand, (iv) the Pricing Rate or Repurchase Price applicable to the Transaction, and (v) any additional terms or conditions of the Transaction not inconsistent with this Agreement. The Confirmation, together with this Agreement, shall constitute conclusive evidence of the terms agreed between Buyer and Seller with respect to the Transaction to which the Confirmation relates, unless with respect to the Confirmation specific objection is made promptly after receipt thereof. In the event of any conflict between the terms of such Confirmation and this Agreement, this Agreement shall prevail.

(c) In the case of Transactions terminable upon demand, such demand shall be made by Buyer or Seller, no later than such time as is customary in accordance with market practice, by telephone or otherwise on or prior to the business day on which such termination will be effective. On the date specified in such demand, or on the date fixed for termination in the case of Transactions having a fixed term, termination of the Transaction will be effected by transfer to Seller or its agent of the Purchased Securities and any income in respect thereof received by Buyer (and not previously credited or transferred to, or applied to the obligations of, Seller pursuant to Paragraph 5 hereof) against the transfer of the Repurchase Price to an account of Buyer.

### **4. Margin Maintenance**

(a) If at any time the aggregate Market Value of all Purchased Securities subject to all Transactions in which a particular party hereto is acting as Buyer is less than the aggregate Buyer's Margin Amount for all such Transactions (a "Margin Deficit"), then Buyer may by notice to Seller require Seller in such Transactions, at Seller's option, to transfer to Buyer cash or additional Securities reasonably acceptable to Buyer ("Additional Purchased Securities"), so that the cash and aggregate Market Value of the Purchased Securities, including any such Additional Purchased Securities, will thereupon equal or exceed such aggregate Buyer's Margin Amount (decreased by the amount of any Margin Deficit as of such date arising from any Transactions in which such Buyer is acting as Seller).

(b) If at any time the aggregate Market Value of all Purchased Securities subject to all Transactions in which a particular party hereto is acting as Seller exceeds the aggregate Seller's Margin Amount for all such Transactions at such time (a "Margin Excess"), then Seller may by notice to Buyer require Buyer in such Transactions, at Buyer's option, to transfer cash or Purchased Securities to Seller, so that the aggregate Market Value of the Purchased Securities, after deduction of any such cash or any Purchased Securities so transferred, will thereupon not exceed such aggregate Seller's Margin Amount (increased by the amount of any Margin Excess as of such date arising from any Transactions in which such Seller is acting as Buyer).

(c) Any cash transferred pursuant to this Paragraph shall be attributed to such Transactions as shall be agreed upon by Buyer and Seller.

(d) Seller and Buyer may agree, with respect to any or all Transactions hereunder, that the respective rights of Buyer or Seller (or both) under subparagraphs (a) and (b) of this Paragraph may be exercised only where a Margin Deficit or Margin Excess exceeds a specified dollar amount or a specified percentage of the Repurchase Prices for such Transactions (which amount or percentage shall be agreed to by Buyer and Seller prior to entering into any such Transactions).

(e) Seller and Buyer may agree, with respect to any or all Transactions hereunder, that the respective rights of Buyer and Seller under subparagraphs (a) and (b) of this Paragraph to require the elimination of a Margin Deficit or a Margin Excess, as the case may be, may be exercised whenever such a Margin Deficit or Margin Excess exists with respect to any single Transaction hereunder (calculated without regard to any other Transaction outstanding under this Agreement).

#### **5. Income Payments**

Where a particular Transaction's term extends over an Income payment date on the Securities subject to that Transaction, Buyer shall, as the parties may agree with respect to such Transaction (or, in the absence of any agreement, as Buyer shall reasonably determine in its discretion), on the date such Income is payable either (i) transfer to or credit to the account of Seller an amount equal to such Income payment or payments with respect to any Purchased Securities subject to such Transaction or (ii) apply the Income payment or payments to reduce the amount to be transferred to Buyer by Seller upon termination of the Transaction. Buyer shall not be obligated to take any action pursuant to the preceding sentence to the extent that such action would result in the creation of a Margin Deficit, unless prior thereto or simultaneously therewith Seller transfers to Buyer cash or Additional Purchased Securities sufficient to eliminate such Margin Deficit.

#### **6. Security Interest**

Although the parties intend that all Transactions hereunder be sales and purchases and not loans, in the event any such Transactions are deemed to be loans, Seller shall be deemed to have pledged to Buyer as security for the performance by Seller of its obligations under each such Transaction, and shall be deemed to have granted to Buyer a security interest in, all of the Purchased Securities with respect to all Transactions hereunder and all proceeds thereof.

#### **7. Payment and Transfer**

Unless otherwise mutually agreed, all transfers of funds hereunder shall be in immediately available funds. All Securities transferred by one party hereto to the other party (i) shall be in suitable form for transfer or shall be accompanied by duly executed instruments of transfer or assignment in blank and such other documentation as the party receiving possession may reasonably request, (ii) shall be transferred on the book-entry system of a Federal Reserve Bank, or (iii) shall be transferred by any other method mutually acceptable to Seller and Buyer. As used herein with respect to Securities, "transfer" is intended to have the same meaning as when used in Section 8-313 of the Commercial Law Article of the Annotated Code of Maryland or, where applicable, in any federal regulation governing transfers of the Securities.

#### **8. Segregation of Purchased Securities**

To the extent required by applicable law, all Purchased Securities in the possession of Seller shall be segregated from other securities in its possession and shall be identified as subject to this Agreement. Segregation may be accomplished by appropriate identification on the books and records of the holder, including a financial intermediary or a clearing corporation. Title to all Purchased Securities shall pass to Buyer and, unless otherwise agreed by Buyer and Seller, nothing in this Agreement shall preclude Buyer from engaging in repurchase transactions with the Purchased Securities or otherwise pledging or hypothecating the Purchased Securities, but no such transaction shall relieve Buyer of its obligations to transfer Purchased Securities to Seller pursuant to Paragraphs 3, 4 or 11 hereof, or of Buyer's obligation to credit or pay Income to, or apply Income to the obligations of, Seller pursuant to Paragraph 5 hereof.

#### **Required Disclosure for Transactions in Which the Seller Retains Custody of the Purchased Securities**

Seller is not permitted to substitute other securities for those subject to this Agreement and therefore must keep Buyer's securities segregated at all times, unless in this Agreement Buyer grants Seller the right to substitute other securities. If Buyer grants the right to substitute, this means that Buyer's securities will likely be commingled with Seller's own securities during the trading day. Buyer is advised that, during any trading day that Buyer's securities are commingled with Seller's securities, they [will]\* [may]\*\* be subject to liens granted by Seller to [its clearing bank]\* [third parties]\*\* and may be used by Seller for deliveries on other securities transactions. Whenever the securities are commingled, Seller's ability to resegment substitute securities for Buyer will be subject to Seller's ability to satisfy [the clearing]\* [any]\*\* lien or to obtain substitute securities.

\* Language to be used under 17 C.F.R. §403.4(e) if Seller is a government securities broker or dealer other than a financial institution.

## 9. Substitution

(a) Seller may, subject to agreement with and acceptance by Buyer, substitute other Securities for any Purchased Securities. Such substitution shall be made by transfer to Buyer of such other Securities and transfer to Seller of such Purchased Securities. After substitution, the substituted Securities shall be deemed to be Purchased Securities.

(b) In Transactions in which the Seller retains custody of Purchased Securities, the parties expressly agree that Buyer shall be deemed, for purposes of subparagraph (a) of this Paragraph, to have agreed to and accepted in this Agreement substitution by Seller of other Securities for Purchased Securities; *provided, however*, that such other Securities shall have a Market Value at least equal to the Market Value of the Purchased Securities for which they are substituted.

## 10. Representations

Each of Buyer and Seller represents and warrants to the other that (i) it is duly authorized to execute and deliver this Agreement, to enter into the Transactions contemplated hereunder and to perform its obligations hereunder and has taken all necessary action to authorize such execution, delivery and performance, (ii) it will engage in such Transactions as principal (or, if agreed in writing in advance of any Transaction by the other party hereto, as agent for a disclosed principal), (iii) the person signing this Agreement on its behalf is duly authorized to do so on its behalf (or on behalf of any such disclosed principal), (iv) it has obtained all authorizations of any governmental body required in connection with this Agreement and the Transactions hereunder and such authorizations are in full force and effect and (v) the execution, delivery and performance of this Agreement and the Transactions hereunder will not violate any law, ordinance, charter, by-law or rule applicable to it or any agreement by which it is bound or by which any of its assets are affected. On the Purchase Date for any Transaction Buyer and Seller shall each be deemed to repeat all the foregoing representations made by it.

## 11. Events of Default

In the event that (i) Seller fails to repurchase or Buyer fails to transfer Purchased Securities upon the applicable Repurchase Date, (ii) Seller or Buyer fails, after one business day's notice, to comply with Paragraph 4 hereof, (iii) Buyer fails to comply with Paragraph 5 hereof, (iv) an Act of Insolvency occurs with respect to Seller or Buyer, (v) any representation made by Seller or Buyer shall have been incorrect or untrue in any material respect when made or repeated or deemed to have been made or repeated, or (vi) Seller or Buyer shall admit to the other its inability to, or its intention not to, perform any of its obligations hereunder (each an "Event of Default"):

(a) At the option of the nondefaulting party, exercised by written notice to the defaulting party (which option shall be deemed to have been exercised, even if no notice is given, immediately upon the occurrence of an Act of Insolvency), the Repurchase Date for each Transaction hereunder shall be deemed immediately to occur.

(b) In all Transactions in which the defaulting party is acting as Seller, if the nondefaulting party exercises or is deemed to have exercised the option referred to in subparagraph (a) of this Paragraph, (i) the defaulting party's obligations hereunder to repurchase all Purchased Securities in such Transactions shall thereupon become immediately due and payable, (ii) to the extent permitted by applicable law, the Repurchase Price with respect to each such Transaction shall be increased by the aggregate amount obtained by daily application of (x) the greater of the Pricing Rate for such Transaction or the Prime Rate to (y) the Repurchase Price for such Transaction as of the Repurchase Date as determined pursuant to subparagraph (a) of this Paragraph (decreased as of any day by (A) any amounts retained by the nondefaulting party with respect to such Repurchase Price pursuant to clause (iii) of this subparagraph, (B) any proceeds from the sale of Purchased Securities pursuant to subparagraph (d)(i) of this Paragraph, and (C) any amounts credited to the account of the defaulting party pursuant to subparagraph (e) of this Paragraph) on a 360 day per year basis for the actual number of days during the period from and including the date of the Event of Default giving rise to such option to but excluding the date of payment of the Repurchase Price as so increased, (iii) all income paid after such exercise or deemed exercise shall be retained by the nondefaulting party and applied to the aggregate unpaid Repurchase Prices owed by the defaulting party, and (iv) the defaulting party shall immediately deliver to the nondefaulting party any Purchased Securities subject to such Transactions then in the defaulting party's possession.

(c) In all Transactions in which the defaulting party is acting as Buyer, upon tender by the nondefaulting party of payment of the aggregate Repurchase Prices for all such Transactions, the defaulting party's right, title and interest in all Purchased Securities subject to such Transactions shall be deemed transferred to the nondefaulting party, and the defaulting party shall deliver all such Purchased Securities to the nondefaulting party.

(d) After one business day's notice to the defaulting party (which notice need not be given if an Act of Insolvency shall have occurred, and which may be the notice given under subparagraph (a) of this Paragraph or the notice referred to in clause (ii) of the first sentence of this Paragraph), the nondefaulting party may:

(i) as to Transactions in which the defaulting party is acting as Seller, (A) immediately sell, in a recognized market at such price or prices as the nondefaulting party may reasonably deem satisfactory, any or all Purchased Securities subject to such Transactions and apply the proceeds thereof to the aggregate unpaid Repurchase Prices and any other amounts owing by the defaulting party hereunder

or (B) in its sole discretion elect, in lieu of selling all or a portion of such Purchased Securities, to give the defaulting party credit for such Purchased Securities in an amount equal to the price therefor on such date, obtained from a generally recognized source or the most recent closing bid quotation from such a source, against the aggregate unpaid Repurchase Prices and any other amounts owing by the defaulting party hereunder; and

(ii) as to Transactions in which the defaulting party is acting as Buyer, (A) purchase securities ("Replacement Securities") of the same class and amount as any Purchased Securities that are not delivered by the defaulting party to the nondefaulting party as required hereunder or (B) in its sole discretion elect, in lieu of purchasing Replacement Securities, to be deemed to have purchased Replacement Securities at the price therefor on such date, obtained from a generally recognized source or the most recent closing bid quotation from such a source.

(e) As to Transactions in which the defaulting party is acting as Buyer, the defaulting party shall be liable to the nondefaulting party (i) with respect to Purchased Securities (other than Additional Purchased Securities), for any excess of the price paid (or deemed paid) by the nondefaulting party for Replacement Securities therefor over the Repurchase Price for such Purchased Securities and (ii) with respect to Additional Purchased Securities, for the price paid (or deemed paid) by the nondefaulting party for the Replacement Securities therefor. In addition, the defaulting party shall be liable to the nondefaulting party for interest on such remaining liability with respect to each such purchase (or deemed purchase) of Replacement Securities from the date of such purchase (or deemed purchase) until paid in full by Buyer. Such interest shall be at a rate equal to the greater of the Pricing Rate for such Transaction or the Prime Rate.

(f) For purposes of this Paragraph 11, the Repurchase Price for each Transaction hereunder in respect of which the defaulting party is acting as Buyer shall not increase above the amount of such Repurchase Price for such Transaction determined as of the date of the exercise or deemed exercise by the nondefaulting party of its option under subparagraph (a) of this Paragraph.

(g) The defaulting party shall be liable to the nondefaulting party for the amount of all reasonable legal or other expenses incurred by the nondefaulting party in connection with or as a consequence of an Event of Default, together with interest thereon at a rate equal to the greater of the Pricing Rate for the relevant Transaction or the Prime Rate.

(h) The nondefaulting party shall have, in addition to its rights hereunder, any rights otherwise available to it under any other agreement or applicable law.

## **12. Single Agreement**

Buyer and Seller acknowledge that, and have entered hereinto and will enter into each Transaction hereunder in consideration of and in reliance upon the fact that, all Transactions hereunder constitute a single business and contractual relationship and have been made in consideration of each other. Accordingly, each of Buyer and Seller agrees (i) to perform all of its obligations in respect to each Transaction hereunder, and that a default in the performance of any such obligations shall constitute a default by it in respect of all Transactions hereunder, (ii) that each of them shall be entitled to set off claims and apply property held by them in respect of any Transaction against obligations owing to them in respect of any other Transactions hereunder and (iii) that payments, deliveries and other transfers made by either of them in respect of any Transaction shall be deemed to have been made in consideration of payments, deliveries and other transfers in respect of any other Transactions hereunder, and the obligations to make any such payments, deliveries and other transfers may be applied against each other and netted.

## **13. Notices and Other Communications**

Unless another address is specified in writing by the respective party to whom any notice or other communication is to be given hereunder, all such notices or communications shall be in writing or confirmed in writing and delivered at the respective addresses set forth in Annex II attached hereto.

## **14. Entire Agreement; Severability**

This Agreement shall supersede any existing agreements between the parties containing general terms and conditions for repurchase transactions. Each provision and agreement herein shall be treated as separate and independent from any other provision or agreement herein and shall be enforceable notwithstanding the unenforceability of any such other provision or agreement.

## **15. Non-assignability; Termination**

The rights and obligations of the parties under this Agreement and under any Transaction shall not be assigned by either party without the prior written consent of the other party. Subject to the foregoing, this Agreement and any Transactions shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns. This Agreement may be cancelled by either party upon giving written notice to the other, except that this Agreement shall, notwithstanding such notice, remain applicable to any Transactions then outstanding.



**16. Governing Law**

This Agreement shall be governed by the laws of the State of Maryland without giving effect to the conflict of law principles thereof.

**17. No Waivers, Etc.**

No express or implied waiver of any Event of Default by either party shall constitute a waiver of any other Event of Default and no exercise of any remedy hereunder by any party shall constitute a waiver of its right to exercise any other remedy hereunder. No modification or waiver of any provision of this Agreement and no consent by any party to a departure herefrom shall be effective unless and until such shall be in writing and duly executed by both of the parties hereto. Without limitation on any of the foregoing, the failure to give a notice pursuant to subparagraphs 4(a) or 4(b) hereof will not constitute a waiver of any right to do so at a later date.

**18. Use of Employee Plan Assets**

(a) If assets of an employee benefit plan subject to any provision of the Employee Retirement Income Security Act of 1974 ("ERISA") are intended to be used by either party hereto (the "Plan Party") in a Transaction, the Plan Party shall so notify the other party prior to the Transaction. The Plan Party shall represent in writing to the other party that the Transaction does not constitute a prohibited transaction under ERISA or is otherwise exempt therefrom, and the other party may proceed in reliance thereon but shall not be required so to proceed.

(b) Subject to the last sentence of subparagraph (a) of this Paragraph, any such Transaction shall proceed only if Seller furnishes or has furnished to Buyer its most recent available audited statement of its financial condition and its most recent subsequent unaudited statement of its financial condition.

(c) By entering into a Transaction pursuant to this Paragraph, Seller shall be deemed (i) to represent to Buyer that since the date of Seller's latest such financial statements, there has been no material adverse change in Seller's financial condition which Seller has not disclosed to Buyer, and (ii) to agree to provide Buyer with future audited and unaudited statements of its financial condition as they are issued, so long as it is a Seller in any outstanding Transaction involving a Plan Party.

**19. Intent**

(a) The parties recognize that each Transaction is a "repurchase agreement" as that term is defined in Section 101 of Title 11 of the United States Code, as amended (except insofar as the type of Securities subject to such Transaction or the term of such Transaction would render such definition inapplicable), and a "securities contract" as that term is defined in Section 741 of Title 11 of the United States Code, as amended.

(b) It is understood that either party's right to liquidate Securities delivered to it in connection with Transactions hereunder or to exercise any other remedies pursuant to Paragraph 11 hereof, is a contractual right to liquidate such Transaction as described in Sections 555 and 559 of Title 11 of the United States Code, as amended.

**20. Disclosure Relating to Certain Federal Protections**

The parties acknowledge that they have been advised that:

(a) in the case of Transactions in which one of the parties is a broker or dealer registered with the Securities and Exchange Commission ("SEC") under Section 15 of the Securities Exchange Act of 1934 ("1934 Act"), the Securities Investor Protection Corporation has taken the position that the provisions of the Securities Investor Protection Act of 1970 ("SIPA") do not protect the other party with respect to any Transaction hereunder;

(b) in the case of Transactions in which one of the parties is a government securities broker or a government securities dealer registered with the SEC under Section 15C of the 1934 Act, SIPA will not provide protection to the other party with respect to any Transaction hereunder; and

(c) in the case of Transactions in which one of the parties is a financial institution, funds held by the financial institution pursuant to a Transaction hereunder are not a deposit and therefore are not insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation or the National Credit Union Share Insurance Fund, as applicable.

Board of County Commissioners

\_\_\_\_\_  
Name of Customer

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

## ANNEX I

### Supplemental Terms and Conditions

1. Buy-sell interpretation. Because the buyer is a governmental entity, both parties agree that all transactions conducted pursuant to this agreement must be interpreted as purchases and sales of securities.
2. Governing law. The laws of the State of Maryland govern the investments of public entities and all transactions pursuant to this agreement. All Purchase Securities shall be lawful for purposes of governmental investments in the State of Maryland (State Finance and Procurement article, section 6-222).
3. Seller's financial condition.
  - a) Seller shall maintain continuous compliance with applicable federal regulatory standards and guidelines regarding capital adequacy and net capitalization.
  - b) Any Transaction undertaken pursuant to this agreement shall proceed only if Seller furnishes or has furnished to Buyer its most recent available audited statement of financial condition and its most recent subsequent unaudited statements of financial condition.
  - c) By entering into a transaction pursuant to this agreement, Seller shall be deemed to represent to Buyer that since the date of Seller's latest financial statements, there has been no material adverse change in Seller's financial condition which Seller has not disclosed in writing to Buyer, and Seller further agrees to provide Buyer with future audited and unaudited statements of financial condition as they are issued.
4. Delivery. Notwithstanding the provisions of Paragraph 7 (Payment and Transfer), all transactions shall be accomplished through "delivery vs. payment," unless the parties otherwise agree prior to the transfer of funds.
5. Substitution. If Buyer consents to substitution of Purchased Securities, such substituted securities shall consist exclusively of U. S. Treasury bills, and the Seller shall absorb all costs associated with accomplishing such substitutions.
6. Margin ratios. For purposes of calculating the margin amount, the following ratios shall be applied to the market value of Purchased Securities, depending upon their maturity:

Maturity of purchased securities	U. S. Treasury securities	U.S. agency discount and coupon securities*	Mortgage-backed or other securities
Under 1 year	101%	101%	102%
1—5 years	102%	102%	103%
Over 5 years	103%	104%	105%

\*Securities issued by FNMA, FFCB, FHLB; quoted daily in the financial press.

Zero-coupon instruments with maturities exceeding seven years are not acceptable due to excessive volatility.

Market value. In determining market value, dealers' bid prices shall be used and accrued interest shall be included.

7. Margin maintenance. For term repurchase agreements, a custodian or the Seller shall automatically maintain the required margin amount, or the required margin ratios shall be increased as mutually agreed to compensate for possible market price losses.
8. Purchased securities. Unless the parties shall agree to the use of a third-party custodian responsible for margin maintenance, all Purchased Securities must be marketable instruments for which price information is available on regular business days in financial newspapers of national circulation or other media suitable to the Buyer. In the event that such price information is not available, Buyer may require the Seller to deliver different securities, or may increase the margin ratio to 105%, at Buyer's option.
9. Authorized personnel. Only those persons identified below may execute transactions pursuant to this agreement.

Seller

Buyer

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## ANNEX II

### Names and Addresses for Communications Between Parties

Dorchester County Commissioners  
501 Court Lane  
Cambridge, Maryland 21613  
(410) 228-1700

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