



Montana Association of Counties

Health Care Trust

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MONTANA ASSOCIATION OF COUNTIES

HEALTH CARE TRUST

AGREEMENT AND DECLARATION OF TRUST

AMENDED AND RESTATED

EFFECTIVE AS OF

SEPTEMBER 22, 2015

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RECITALS

WHEREAS, Article XI, Section 7 of the Montana Constitution provides that a political subdivision may a) cooperate in the exercise of a function, power, or responsibility with, b) share the services of any officer or facilities with, and c) transfer or delegate any function, power, responsibility, or duty of any officer to one or more other local government units, school districts, the state or the United States; and

WHEREAS, Mont. Code Ann. § 2-18-702, authorizes counties to enter into group hospitalization, medical, health, including long-term disability, accident or group life insurance contracts or plans for the benefit of their officers and employees and their dependents; and

WHEREAS, Mont. Code Ann. §2-18-711, permits the establishment of group programs by local government entities to provide employee group benefits as defined in Mont. Code Anno. §2-9-212 (3) (a); and

WHEREAS, the Member Entities executing this Agreement desire to join together for the purposes of establishing a group benefit plan providing health, medical, dental, vision, life insurance and such other related benefits as may from time to time seem advantageous to their officers and employees; and

WHEREAS, the governing board of each Member Entity has determined that it is in its own best interest, and in the public interest that this Agreement be executed and that it participate as a member of the Trust created by this Agreement:

NOW, THEREFORE, in consideration of the mutual benefits, promises and agreements set forth below, the parties hereby agree as follows:

SECTION 1: DEFINITIONS

Affiliate Entity(ies) shall mean a political subdivision of the state which has chosen to participate in a program or programs offered by the MACoHCT, and a county who participates only in the standalone dental and/or vision program. and is bound to the conditions of participation specified in the Participation and Affiliation Agreement executed as a condition of participation in the Trust program

Agreement or Revised Agreement shall mean this Revised and Restated Agreement and Declaration of Trust.

Board of Trustees or Board shall mean the governing body of the Trust established by this agreement.

Bylaws shall mean the bylaws adopted by the Board of Trustees prescribing the rules for the operations of the Trust.

Chair shall mean the Chair of the Board of Trustees.

Coverage Year shall mean, with the exception of the initial coverage period, that period of twelve months beginning and ending as set forth in the Participation and Affiliation Agreement.

Eligible Participant: Shall mean Eligible Employees, Elected County Officials, Dependents and/or Retirees as defined in the Eligibility Provisions of the Master and Summary Plan Documents.

Fiscal year shall mean that period of twelve months which is established by the Board of Trustees as the Fiscal Year of the Trust.

Law shall mean those provisions of the Montana Constitution and Montana statutes, as amended, and such other laws of the state of Montana which authorize the Member Entities either jointly or severally to engage in activities in furtherance of the purposes for which this Trust was created.

MACo shall mean the Montana Association of Counties.

Member Entity(ies) shall mean any county participating in the medical program offered by the MACoHCT, which has executed the appropriate Agreements, has joined the Trust, and is a member in good standing of the Montana Association of Counties.

Montana Association of Counties Health Care Trust (MACoHCT) means the Trust existing under and governed by this Agreement.

Mont. Code Ann. shall mean the Montana Code Annotated.

Open Meeting Law shall mean Title 2, Chapter 3, Parts 1 and 2, Mont. Code. Ann., as amended.

Policies and Procedures shall mean the Policies and Procedures adopted by the Board specifying the policies and procedures to be followed by the Trust and Member Entities and Affiliated Entities participating in the Health Care Trust established by this Agreement.

Program shall mean arrangements to provide coverage with respect to employee health benefits, life, disability, vision and dental benefits.

Participation and Affiliation Agreement shall mean the agreement or agreements by and between the Trust and the Member Entities and Affiliate Entities which are participants in a Program setting forth the terms and conditions of participation.

Reinsurance shall mean stop loss, treaty reinsurance or facultative reinsurance purchased by the Trust as part of a Program.

Sub-Entity shall mean an Employer which can obtain health coverage for its Employees under a group health plan sponsored by a Member Entity as authorized by M.C.A. 2-18-705. A Sub-Entity does not include a medical facility, nursing home, long-term care facility,

economic development corporation or other employers as defined by M.C.A.2-18-705 whose Employees are W-2 Employees of a county under the county's employer identification number.

Trust shall mean the Montana Association of Counties Health Care Trust (MACoHCT) established by this agreement.

Trustee shall mean a member of the Board of Trustees of the MACoHCT.

SECTION 2: PURPOSES

This Revised Agreement is entered into by the Member Entities for the following purposes:

- 2.01** To jointly develop and fund, as provided by applicable law employee group hospitalization, health, medical, surgical, life, and other similar and related group benefits as the Trustees may deem appropriate;
- 2.02** To develop or procure, as the Board of Trustees of the Trust may from time-to-time determine, administrative services in support of the group hospitalization, health, medical, surgical, life, and other similar and related group benefits provided to officers and employees of political subdivisions by the Trustees including but not limited to:
 - A. Wellness programs;
 - B. Disease management programs;
 - C. Trust administration;
 - D. Actuarial consulting;
 - E. Claims adjusting;
 - F. General legal services and legal defense;
 - G. Accounting and auditing services.
- 2.03.** To make available the programs and administrative services of the Trust to political subdivisions of the state on such terms and conditions as the Board of Trustees may establish, provided that the Trust must, at a minimum, recover the costs associated with each such program or service made available to such political subdivisions.

SECTION 3: PARTIES TO AGREEMENT

- 3.01** The Parties to this agreement are those Montana Counties which are currently members of the MACoHCT and those Montana Counties that subsequently choose to become and are accepted as Members. The Member Entities are bound by the terms of their current membership in the MACoHCT and will continue to be bound to this Amended and Restated Agreement of Trust until such time as their membership is terminated or cancelled in accordance with the terms of this Agreement. The Parties agree that the addition of Member or Affiliate Entities in accordance with terms of this Agreement and the removal of Members or Affiliate Members in accordance with the

terms of this Agreement shall not affect their rights and/or obligations under this Agreement.

SECTION 4: TERM

- 4.01** This Revised Agreement shall become effective as of January 1, 2012 as an amendment and restatement of the Agreement and Declaration of Trust dated April 6, 2005 after it has been duly approved by Trustees. This Revised Agreement shall continue in effect until terminated or amended as provided herein.

SECTION 5: CREATION AND CONTINUATION OF THE MACo HEALTH CARE TRUST

- 5.01** Pursuant to the laws of the State of Montana, there has heretofore been created a Trust separate and apart from the Member Entities signatory hereto, which Trust shall continue in existence and as of the effective date of this Revised Agreement be known as the "Montana Association of Counties Health Care Trust".
- 5.02** The Trust shall maintain in accordance with this Agreement and the laws of the State of Montana, a trust fund to be administered and used for the following purposes and none other:
- A. To provide stop-loss coverage for any Member Entities or Affiliated Entities who have elected to self-insure group hospitalization, health, medical, surgical, life, and other similar and related group benefits;
 - B. To provide health and welfare plan benefits directly to Enrolled Employees, elected officials, their families and dependents on a pooled basis; and may provide any or all of the following benefits: group hospitalization, health, medical, surgical, life, and other similar and related group benefits whether by insurance or otherwise as the Trustees shall specifically provide under a written plan or plans specifying in detail the basis under which payments will be made and specifying the conditions for membership and eligibility;
 - C. The Trustees may from time to time add, amend, alter, or discontinue plans to meet the best interests of the Trust;
 - D. To provide operational and administrative services as the Trustees may from time to time determine to be necessary to achieve the purposes of the Trust.
- 5.03** The Trust Fund shall be overseen by the Trustees and shall be managed according to their sole discretion, subject only to the limitations of this Agreement and the requirements of law.
- 5.04** The Trust Fund is for the exclusive benefit of Member Entities, Affiliate Entities and their Enrolled Employees. Under no circumstances shall the Member Entities or Affiliate Entities have any right, title, interest or claim to the fund except for the right to require application of the funds in accordance with this agreement and to require an accounting of the fund.

- 5.05** Each Member Entity and each Affiliate Entity shall pay to the Trust the amounts billed by the Trust per the terms of Section 7.01 (C). Rates for each Coverage Year will be established by the Trustees on or before April 1 of each year for coverage years beginning on July 1 and on or before October 1 for Coverage Years beginning on January 1 or as soon thereafter as is reasonably practical.
- 5.06** Because this is a self funded Trust, Member Entities and Affiliate Entities are responsible for any unfunded liability that may result for claims and administrative costs exceeding the aggregate payments to the Trust. If the Trustees determine that an assessment for unfunded liabilities is necessary, the assessment will be made proportionally on all participating entities based on enrollment.

SECTION 6: POWERS OF THE TRUST

- 6.01** The Trust shall have all of the powers of a trust under the law, and is hereby authorized to do all things necessary and proper for the exercise of said powers. Such powers include, but are not limited to, the following:
- A. To make and enter into contracts;
 - B. To incur debts, liabilities, and obligations;
 - C. To acquire, hold, or dispose of property, contributions and donations of property, funds, services, and other forms of assistance from persons, firms, corporations, and government entities;
 - D. To sue and be sued in its own name, and to settle any claim against it;
 - E. To receive contributions and donations of property, funds, services and other forms of assistance from any source;
 - F. Employ agents and employees;
 - G. Receive, collect, and disburse monies;
 - H. To invest any money in its treasury that is not required for its immediate necessities;
 - I. To make deposits of any money in its treasury to such accounts as the Trustees may from time to time establish;
 - J. To purchase other insurance, reinsurance, or excess insurance;
 - K. To carry out all provisions of this Agreement;

- L. To provide such administrative services through the Trust to political subdivisions of the state on such terms and conditions as the Board of Trustees of the Trust may establish;
- M. To purchase errors and omissions insurance for the Trustees collectively or individually and for any fiduciary employed by the Trustees to cover liability or losses incurred occurring because of an act or omission by the Trustee or fiduciary.

6.02 Said powers shall be exercised pursuant to the terms hereof and in the manner provided by law.

SECTION 7: MEMBER ENTITY RESPONSIBILITIES AND POWERS

7.01 Responsibilities. Each Member Entity and Affiliate Entity participating in the Trust shall have the following responsibilities:

- A. To provide the Trust with such statistical and loss experience data and other information as may be necessary or desirable for the Trust to carry out the purposes of this Agreement;
- B. To maintain a participation level of 75% of all eligible employees and elected officials for medical coverage. This percentage is determined after excluding all qualified waivers which are defined as employees who have presented proof of coverage in another employer or government sponsored group health plan including Medicare;
- C. To deliver to such agent or entity as the Trustees may direct an accounting of Eligible Employees and Enrolled Employees and payment of its contributions monthly. Payments are due as billed on the first day of the month. The Trustee's agent or agents are without authority to extend credit. Payments more than 10 days late shall bear interest at the rate of 10% per annum from the date due until the date paid unless interest is waived by the Trustees;
- D. To keep accurate records and cooperate with the Trustees and the Trustee's designated agents in making those records available for review;
- E. To cooperate with and assist the Trust and any insurer, claims adjuster, legal counsel or other service provider engaged or retained by the Trust, in all matters relating to this Agreement and the Participation and Affiliation agreement;
- F. To comply with and to perform its obligations under this Agreement, the Participation and Affiliation Agreement to which the Member Entity is a party or signatory thereto, the Bylaws, and all Policies and Procedures of the Trust not inconsistent with the provisions of this Agreement; and

- G. To execute a Participation and Affiliation Agreement in the form prescribed by the Trustees. The Participation and Affiliation Agreement shall incorporate this Agreement by reference and shall contain such other and further terms and conditions on participation in the programs offered by the Trust as the Trustees shall deem appropriate.

7.02 Powers. Member Entities shall have the following powers:

- A. To elect members of the Board of Trustees as set forth in Section 8;
- B. To access, in accordance with the terms and conditions of participation any plan or program offered by the Trust for the benefit of members;
- C. To approve amendments to this Agreement as set forth in Section 21;
- D. To require that copies of the minutes of the meetings of the Trustees be provided as required by Section 9 and that the Annual Report and Audit required by Section 14 be provided;
- E. To withdraw from membership subject to the terms and conditions set out in Section 15.

SECTION 8: BOARD OF TRUSTEES

8.01 Membership of Board: Procedure for Electing and Term in Office.

- A. **Membership.** The Board of Trustees shall consist of seven members selected as follows:

- (1) The MACo President, the MACo 1st Vice President and the MACo Executive Director or his/her designee shall be members of the Board of Trustees, subject to the requirement that the President and 1st Vice President are from Counties which are members of the Trust.

If the MACo President or 1st Vice President are from a County which is not a member of the Trust, the Trustee position will be immediately filled by a member of the MACo Executive Committee who is from a county that is a member of the Trust in the following order: 2nd Vice President, Fiscal Officer, Immediate Past President and Urban County Representative.

If the Trustee position cannot be filled as specified above, The Board of Directors of MACo may select an eligible MACo Past President, or one of the current twelve (12) MACo District Chairs to serve as Trustee. The person appointed must be a County Commissioner from a county that is a member of the Trust.

In the event a position cannot be filled by the process specified above, it may be filled by the MACo Board of Directors by appointment of a commissioner from any county that is a member of the Trust.

- (2) Four Trustees shall be elected by the Trust members at the Trust's Annual meeting to four (4) year staggered terms. In the event that an elected Trustee position becomes vacant before the expiration of the term, the members shall elect a person to fill the remaining term at the first Annual meeting following the vacancy.
- (3) Only County Commissioners from a Member Entity shall be eligible to be elected or appointed Trustees.
- (4) Only one County Commissioner per Member County may serve on the Board of Trustees. When the MACo President, 1st Vice President or a designated successor would result in more than one County Commissioner from a member county serving on the Board of Trustees, the MACo President, 1st Vice President or designated successor shall be deemed ineligible and same selection process followed as would occur if the MACo President, 1st Vice President or designated successor were from a non-member county.

- B. **Retention of elected trustee position.** A trustee serving in an elected Trustee position who becomes eligible to serve as a MACo Board-designated Trustee, may choose to retain their elected trustee position.
- C. **Procedure.** The nomination and election of members of the Board of Trustees will be conducted at the regular annual meeting of the Trust.

8.02 Resignation of a Trustee. A Trustee may resign by giving notice of the resignation in writing to the Trust. A resignation becomes irrevocable 72 hours after its receipt at the Trust's principal office.

8.03 Removal of a Trustee. Any Trustee may be removed from office at any time by a majority vote of the Board for neglect of duty or malfeasance in office. Notification of such removal and the appointment of a successor shall be by instrument in writing by the Board and delivered to all Member Entities.

8.04 Compensation of Trustees. The Trustees shall receive no salary but may be compensated for any reasonable and necessary expenses incurred in connection with the performance of their duties.

8.05 Vacancies. Vacancies on the Board elected by Member Entities pursuant to Section 8.01(A) (2) may be filled by a majority of the remaining Trustees, and each Trustee so appointed shall hold office until the next Annual Meeting of Member Entities and until that Trustee's successor has been elected and qualified. Vacancies on the Board for positions filled pursuant to Section 8.01(A) (1) shall be filled as provided in that Section.

SECTION 9: MEETINGS AND RECORDS

9.01 Member Entity Meetings. Member Entities shall hold at least one regular meeting each year which will be designated the “Annual Meeting”, and the Board shall fix the date, hour and place at which the Annual Meeting or other meetings of the Member Entities are to be held. Member Entities may vote by absentee ballots or by proxy as provided in Section 9.06. The Chair shall preside at all meetings of the Member Entities. Special meetings may be called upon written request by the Chair, by one-third or more of the Trustees, or by one-third or more of the Member Entities. Notice of all Member Entity meetings shall be provided to the Member Entities at least ten (10) days prior to the meeting.

9.02 Member Entity Voting. Each Member Entity shall have one (1) vote on each matter presented to Member Entities, and the in election of Trustees, shall have one (1) vote for each Trustee to be elected and may not cumulate votes.

9.03 Board Meetings.

A. The Board shall hold at least four (4) regular meetings each year.

B. Notification of all regular meetings of the Board shall be mailed to all members of the Board at least ten (10) days prior to the time fixed for the meeting.

C. All notices shall state the purpose therefore.

D. Special meetings may be called upon written request by the Chair or one-third or more of the Trustees.

E. Trustees unable to attend a regular or special Board Meeting in person may participate in the meeting telephonically. A trustee who wishes to participate in a meeting telephonically shall give notice that they wish to participate in the meeting telephonically to the Trust Secretary.

F. The Board of Trustees may conduct meetings by means of a telephone conference call or other electronic means, of which all persons participating in the meeting shall have an equal opportunity to hear and participate in the entire meeting. Participation by such means shall constitute presence in person at a meeting.

G. Each Trustee shall have one (1) vote.

9.04 Meeting Minutes. The Board shall have minutes of all regular, adjourned regular, special and adjourned special meetings of the Member Entities, and of the Board kept and available for inspection at any reasonable time. As soon as possible after each meeting, a copy of the minutes of each Member Entity meeting and each Board meeting shall be made available to each member of the Board.

9.05 Open Meeting Law. All meetings of the Member Entities and the Board shall be called, noticed, held and conducted in accordance with the provisions of the Open Meeting Law.

9.06 Quorum and Conduct of Business.

- A. A majority of the Trustees then in office constitutes a quorum for meetings of the Board. Member Entities representing a majority of the Member Entities constitutes a quorum for meetings of the Member Entities. Every act done or decision made by a majority of Member Entities, present in person or by proxy at a Member Entity Meeting, or Trustees present in person or by proxy at a Board meeting duly held at which a quorum is present shall be the act of that body, unless a vote by a greater number is required by law, this Agreement, or the Bylaws.
- B. No business may be transacted by the Board or by the Member Entities without a quorum of their respective members being present; provided however, less than a quorum may adjourn from time to time. Meetings of the Board and the Member Entities shall be conducted in accordance with Roberts Rules of Order, except when in conflict with applicable law, this Agreement or the Bylaws.
- C. A Trustee or Member may vote by proxy only if the proxy is in writing, is limited to particular matters or motions specified in the written proxy and the written proxy gives direction to the member or Trustee holding the proxy regarding how the absent Trustee's or Member's vote is to be cast. Written proxies shall be delivered to the Trust Secretary at or prior to the convening of the meeting.
- D. Proxies shall be in substantially the following form:

GRANT OF PROXY

In accordance with Section 9.06(C) of the Amended and Restated Agreement and Declaration of Trust of the Montana Association of Counties Health Care Trust we/I hereby grant our/my proxy to (insert name of individual **and** member entity county) for the purpose of voting on (specify the matter(s) for which the proxy is granted) for the meeting of the Member Entities or Trustees to be held on (insert date of meeting) and direct that our/my vote be cast as follows:

_____.

(Signature of Member Entity Representative or Trustee)

Dated this _____ day of _____, 20_____.

- E. A written proxy may establish a quorum only for purposes of acting on the matters specified in the proxy.

SECTION 10: POWERS OF THE BOARD OF TRUSTEES

10.01 The Board of Trustees shall have the following powers and functions:

- A. The Board shall exercise all powers and conduct all business of the Trust, either directly or by delegation of authority to other bodies or persons unless otherwise prohibited elsewhere in this Agreement or by applicable law.
- B. The Board may delegate to MACo staff, a service agent or an administrator, the authority to act on all claim matters between full Board meetings.
- C. The Board shall have the power and authority to review applications for membership and may admit new Member or Affiliate Members to participate in the Trust upon such terms and subject to such conditions as the Trustees in their sole judgment determine to be appropriate. The Trustees may elect to not accept applications by prospective Members or Affiliate Members, if in their sole judgment membership by the prospective Member or Affiliate Member is not in the best interest of the Trust.
- D. The Board may form, as provided in Section 12, such other committees as it deems appropriate in conducting the business of the Trust. The membership of any such other committee may consist in whole or in part of non-Board members. Any committee may function only in an advisory capacity and shall make recommendations to the Board, unless the Board specifically grants authority to act on behalf of the Board.
- E. The Board shall elect the officers of the Trust, contract for the services required for Trust operations, and shall provide such other services as may be necessary for the administration of the Trust.
- F. The Board shall develop, or cause to be developed, and shall review, modify as necessary, and adopt each Program of the Trust including all provisions for reinsurance and administrative services necessary to carry out such Program.
- G. The Board shall provide for necessary services to the Trust and to Member and Affiliate Entities, by contract or otherwise, which may include, but shall not be limited to, administrative service, wellness programs, program consulting, actuarial consulting, claims adjusting, accounting and auditing services, and legal services.
- H. The Board shall provide general supervision and policy direction to all aspects of Trust operations.
- I. The Board shall receive, review and act upon periodic reports and audits of the funds of the Trust.
- J. The Board shall have such other powers and functions as are provided for in this Agreement and in applicable law that are not specifically reserved to the Members.

- K. The Trustees shall appoint an investment advisor to hold and invest the Trust's funds. The investment advisor shall have discretion as to the securities in which the monies of the Trust are invested or reinvested, provided that all such investments shall be limited to investments which are permissible under law and which meet the criteria established by adoption of an investment policy for Trust investments by the Trustees. The Trustees may, in their discretion, from time to time change the investment advisor or investment policy.

10.02 Bylaws and Policies and Procedures. The Board may cause Bylaws to govern the day-to-day operations of the Trust, and Policies and Procedures to govern the day-to-day operations of the programs administered by the Trust to be developed, which shall not be inconsistent either with applicable law or with this Agreement. Each Trustee shall receive a copy of the Bylaws and Policies and Procedures Manual developed under this Section. Each Member Entity and each Affiliate Entity shall receive a copy of the Bylaws and Policies and Procedures developed under this Section upon request made to the Secretary of the Trust. The Board may adopt additional Bylaws and Policies and Procedures or change existing ones so long as the additions or changes shall be, and remain consistent with both applicable law and with this Agreement. The Secretary of the Trust shall send, or cause to be sent, each Bylaw amendment and Policy and Procedure change to each Trustee promptly after its adoption by the Board.

SECTION 11: OFFICERS

- 11.01** The Board of Trustees shall elect from its membership a Chair and Vice Chair to serve for one-year terms. There shall be no restriction on serving as Chair or Vice Chair in successive years.
- 11.02** The Chair, or in his or her absence, the Vice Chair, shall preside at and conduct all meetings of the Board and Member Entities, and shall chair the Executive Committee. In the event that the Chair and Vice-Chair are not present at a meeting where a quorum is present as established by Section 9.06, the Board members present shall appoint a temporary chair.
- 11.03** The Executive Director of MACo or his/her designee shall serve as Trust Secretary and shall have those duties normally associated with such office.

SECTION 12: STANDING AND SPECIAL COMMITTEES

12.01 Standing Committees. The Board may establish Standing Committees as it deems appropriate to conduct the business of the Trust. Members of the Standing Committees shall be appointed by the Chair with approval of the Board and such members of Standing Committees may include one or more individuals who are not Board Members, provided that they are representatives of a Member Entity. Employees of or consultants to the Trust may be designated as *ex officio* members of

a Standing Committee. Members of Standing Committees shall serve two year terms, subject to reappointment by the Chair with the approval of the Board. The members of each Standing Committee shall annually select one of its members to chair the Committee.

12.02 Special Committees. The Board may also establish Special Committees, as it deems appropriate. Members of such Special Committees shall be appointed by the Chair with the approval of the Board for terms as specified by the Board, and such members of Special Committees may include one or more individuals who are not Board Members, provided that they are representatives of a Member Entity. Employees of or consultants to the Trust may be designated as *ex officio* members of a Special Committee. The Chair of Special Committees shall be designated by the Chair of the Board.

12.03 Duties. Each committee shall have those duties as determined by the Board.

12.04 Meetings. Each Committee shall meet on the call of its Chair and report as directed by the Board.

SECTION 13: STAFF AND CONTRACTED SERVICES

13.01 Staff. The Trustees shall contract with the Montana Association of Counties for the staff required for the administrative services of the Trust including but not limited to marketing, member services, billing and accounting. The level of staffing shall be determined by the Trustees annually through the contracting process.

13.02 Other Contracted Services. The Trustees may contract for such other services including but not limited to legal services, actuarial services, consulting services, pharmacy benefit management, claims processing, disease and case management and wellness programs as they deem appropriate.

SECTION 14: ACCOUNTS AND RECORDS

14.01 Annual Budget. The Trust shall annually adopt an operating budget.

14.02 Funds and Accounts. The Finance Officer of the Montana Association of Counties, as requested by the Trustees, shall establish and maintain such funds and accounts as may be required by good accounting practices and by the Board. Books and records of the Trust shall be open to inspection at all reasonable times by authorized representatives of Member Entities.

14.03 Annual Audit. The Trust shall contract with a certified public accountant to make an annual fiscal year audit of all accounts and records of the Trust. A report of the audit shall be made available to each Member Entity within six months of the end of the fiscal year under examination or as soon thereafter as complete. Costs of the audit shall be considered a general expense of the Trust.

SECTION 15: MEMBERSHIP WITHDRAWAL

- 15.01 Required Membership Term.** A Member Entity or an Affiliate Entity may withdraw from membership only after three years as a member.
- 15.02 Withdrawal Only at the End of a Coverage Year.** A Member Entity or an Affiliate Entity that has completed three years as a member may withdraw only at the end of a Coverage Year.
- 15.03 Notice Required for Withdrawal.** A Member Entity or an Affiliate Entity that wishes to withdraw from membership must give notice of withdrawal no later than March 1 for July renewal groups and September 1 for January renewal groups. This notice is necessary to allow the MACoHCT to accurately determine pricing for all groups which will be renewing.
- 15.04 Effect of Failure to Give Required Notice of Withdrawal.** A Member or Affiliate Entity that fails to give timely notice of withdrawal as required by Section 15.03 shall be deemed to have renewed and will be contractually obligated to pay twelve (12) months of premium at the rate established for the subsequent Coverage Year. The premium charged may purchase coverage for those employees who wish to continue coverage with the MACoHCT and who are properly enrolled, but in no event shall the amount charged to the withdrawing entity be less than the total premiums billed based on enrollment in the proceeding coverage year or the amount that would be billed for those employees opting for coverage under the MACoHCT if the Member or Affiliate Entity had not withdrawn.
- 15.05 No Refund or Return of Funds Paid.** All funds paid to the Trust by a withdrawing Member shall remain with the Trust and no refunds or credits of any kind shall be made. Provided however, any overpayment of contributions made in error shall be refunded. Any underpayment of contributions based on underreporting of the number of enrolled employees by the withdrawing Member or Affiliate Entity shall be due and payable immediately upon notice.
- 15.06** A Member or Affiliate Entity that withdraws from the Trust shall not be eligible to re-join the Trust for a period of three (3) years, subject to the Board's discretion.
- 15.07** A Member or Affiliate Entity who is allowed to rejoin the Trust prior to the terms established in Section 15.06 shall be considered a new Member or Affiliate Entity and subject to the requirement for Membership Withdrawal in Section 15.01 and all other provisions of this agreement.

SECTION 16: MEMBERSHIP TERMINATION

- 16.01 Termination by the Board.** Subject to the terms of the Program Agreements, the Board of Trustees may, by majority vote, terminate the membership of any Member Entity or any Affiliate Entity and expel the Member or Affiliate Entity from the Trust or limit the availability of specific trust programs upon the occurrence of any of the following:

- A. If the Member or Affiliate Entity submits required contributions late on a regular basis, the Trust will provide notice of such late contributions. If the Member or Affiliate Entity continues to make late contributions after notice, such late payment will provide grounds for termination and expulsion from the Trust;
- B. If the Member or Affiliate Entity fails for a period of more than one year to meet the required participation levels established by Section 7.01(B);
- C. If the Trust ceases operations;
- D. If the Member or Affiliate Entity fails to provide accurate and complete information sought by the Trust for the purpose of complying with State or Federal law;
- E. If the Member or Affiliate Entity falsifies, misrepresents or otherwise fails to provide accurate information regarding health, loss or demographic information relied on by the Trust to establish premium rates;
- F. If the Member or Affiliate Entity breaches the terms of this Agreement or its participation agreement with the Trust.

16.02 Right to Cure Breach. A Member or Affiliate Entity shall be given thirty (30) days written notice of any grounds alleged, to provide a basis for termination of membership and expulsion from the Trust or of the limitation on the availability of specific Trust programs, during which time the Member or Affiliate Entity shall be given the opportunity to correct the alleged deficiencies and remain a Member or Affiliate Entity in good standing.

The Trustees may extend the compliance period either on their own motion or on the request of Member or Affiliate Entity. The Trustees are not obligated to grant an extension and will do so only for good cause.

16.03 Notice of Termination. Notice of Termination shall be given by the Trustees. Notice of Termination shall be sent to the Member or Affiliate Entity by registered or certified mail, return receipt requested, at the Member of Affiliated Entity's address of record with the Trust.

16.04 Obligations of Terminated Member. A Member or Affiliated Entity whose membership is terminated under this section shall continue to be obligated to the Trust for unpaid contributions which were due and payable prior to the termination and is obligated to the Trust in the amount that claims and administrative expense in the Coverage Year incurred prior to the termination exceed contributions in the Coverage Year in which termination occurs. Unpaid contributions are due and payable within thirty (30) days of termination. The amount by which claims and administrative expenses incurred prior to termination exceed contributions in the coverage year of termination will be calculated after twelve (12) months have elapsed after termination and billed to the terminated entity. Payment of this amount is due thirty (30) days after billing.

SECTION 17: TERMINATION OF AGREEMENT AND DISTRIBUTION OF ASSETS

- 17.01 Termination of Agreement.** This Agreement may be terminated at any time upon the election to terminate of three-fourths of the Member Entities, acting through their governing bodies; provided, however, that this Agreement and the Trust shall continue to exist after such election for the purpose of retiring any debt, disposing of all claims, distributing all assets, and performing all other functions necessary to conclude the affairs of the Trust.
- 17.02 Distribution of Assets.** Upon termination of this Agreement, all assets of the Trust remaining after the payment of all Trust obligations shall be distributed among Member Entities at the time of termination based on their pro rata share of contributions made during the coverage year immediately preceding the termination of this Agreement .
- 17.03 Future Assessments.** Following termination of this Agreement, Member and Affiliate Entities may be required to pay an additional amount of Assessment, determined by the Trustees as required to fully discharge the Trust's obligations. Any additional assessment shall be made proportionally on all participating Member and Affiliate Entities based on enrollment in the month immediately preceding termination.

SECTION 18: LIABILITY OF BOARD, OFFICERS AND COMMITTEE MEMBERS

- 18.01 Standard of Care.** The Trustees, Officers and committee members of the Trust shall use ordinary care and reasonable diligence in the exercise of their power and in the performance of their duties pursuant to this Agreement. They shall not be liable for any mistake of judgment or any other action made, taken or omitted by them in good faith, nor for any action taken or omitted by any agent, employee or independent contractor selected with reasonable care, nor for loss incurred through investment of Trust funds, or failure to invest.
- 18.02 Not Liable for Action of Others.** No Trustee, Officer or committee member shall be responsible for any action taken or omitted by any other Trustee, Officer or committee member. No Trustee, Officer or committee member shall be required to give a bond or other security to guarantee the faithful performance of their duties pursuant to this Agreement.
- 18.03 Indemnification.** Any person who at any time shall serve, or shall have served as a Trustee, Committee Member, or Officer of the Trust, shall be indemnified, held harmless and defended by the Trust against all costs and expenses (including but not limited to attorney's fees of an attorney approved by the Trust), amounts of judgments, and settlements reasonably incurred in connection with the defense of any claim, action, suit, or proceeding, whether civil, criminal, administrative, or other, in which he, she, or they may be involved by virtue of such person's being or having been a Trustee, Committee Member, or Officer; provided however, that such indemnity shall not be operative with respect to: (1) the, Committee Member, or Officer gaining any personal profit or advantage in his or her capacity as Trustee, Committee Member, or Officer, (2) the dishonesty of trustee, Committee, or Officer, (3) a trustee's, Committee

Member's, or Officer's conflict of interest, (4) willful violation of a statute or ordinance committed by a Trustee, Committee Member, or Officer or with the Trustee's, Committee Member's, or Officer's knowledge or consent, or (5) any matter as to which the Trustee, Committee Member, or Officer shall have been finally adjudged in such action, suit or proceeding to be liable for misconduct in the performance of his or her duties as Trustee, Committee Member, or Officer. The indemnification will not be operative for any settlement unless the settlement is approved by a majority of the Trustees.

SECTION 19: BYLAWS

19.01 The Bylaws of the Trust or any subsequent amendment thereto, shall be in conformity with the provisions of this Agreement.

SECTION 20: NOTICES

20.01 The Trust shall address notices, billings and other communications to a Member or Affiliate Entity at the address and to the attention of the individual set forth on each Member Entities' signature page hereto or as otherwise directed by the Member Entity. Member and Affiliate Entities shall address notices and other communications to the Trust to the Secretary of the Trust, at the office address of the Trust which shall be, until otherwise notified, 2715 Skyway Drive, Helena MT 59602-1213.

SECTION 21: AMENDMENT

21.01 This Agreement may be amended at any time by approval of any amendments by majority of the Member Entities, acting through their governing bodies, either at a meeting in person, by proxy, or by mail ballot: provided however, that no amendment may be made which would have the effect of altering or amending any then outstanding Participation Agreement or altering or limiting any obligations of the Trust or Member Entities there under.

SECTION 22: PROHIBITION AGAINST ASSIGNMENT

22.01 No Member Entity may assign any right, claim or interest it may have under this Agreement, and no creditor, assignee or third party beneficiary of any Member Entity shall have any right, claim or title to any part, share, interest, fund, assessment or asset of the Trust.

SECTION 23: AGREEMENT COMPLETE

23.01 The foregoing constitutes the full and complete Agreement of the parties with respect to the Trust. There are no oral understandings or agreements not set forth in writing herein, provided, however, that participation is subject to the terms and conditions of separate Participation Agreements not inconsistent herewith.

SECTION 24: EFFECTIVE DATE OF AMENDMENTS

24.01 Any amendment of this Agreement shall become effective in accordance with its terms upon passage and approval.

Section 25: ORIGINAL ADOPTION AND AMENDMENTS

ORIGINALLY ADOPTED BY THE MEMBERSHIP OF THE MACo HEALTH CARE TRUST: SEPTEMBER 27, 2011

APPROVED BY THE BOARD OF TRUSTEES OF THE MACo HEALTH CARE TRUST: SEPTEMBER 28, 2011

AMENDED BY THE MEMBERSHIP OF THE MACo HEALTH CARE TRUST:

SEPTEMBER 26, 2012;

SEPTEMBER 24, 2013:

SEPTEMBER 22, 2015.

THIS AGREEMENT AND DECLARATION OF TRUST amends and supersedes the Agreement and Declaration of Trust dated prior to the effective date of this document, by and among Montana Counties organized and existing under the laws of the State of Montana (the State), hereinafter referred to as “Member Entities” which are members of the Trust created by the Agreement and Declaration of Trust dated April 6 2005. Member Entity(ies) are sometimes referred to in this Agreement as “party(ies).”

THIS AGREEMENT AND DECLARATION OF TRUST incorporates and supersedes the Bylaws of the MACo Health Care Trust adopted September 26, 2006, and amended September 23, 2008 and September 22, 2009.