

## **SETTLEMENT AGREEMENT**

This Settlement Agreement (this “Agreement”) is entered into between the Arizona Department of Education (the “Department”) and the Tucson Unified School District No. 1 (“TUSD”).

### **RECITALS**

A. Whereas, the Department has the general authority to conduct limited scope average daily membership (“ADM”) audits pursuant to A.R.S. §§ 15-231(C), 15-239.

B. Whereas, on or about July 21, 2011, the Department issued an ADM audit report of TUSD for fiscal years 2008, 2009, and 2010 (the “Audit Report”).

C. Whereas, the Audit Report concluded that TUSD failed to provide the minimum required instructional hours to seventh and eighth grade students at a number of schools, resulting in TUSD being overpaid basic state aid in an amount equal to \$1,908,234.72.

D. Whereas, on or about August 19, 2011, TUSD filed a Notice of Appeal of the Audit Report appealing to the Office of Administrative Hearings the determination that TUSD had failed to provide sufficient instructional hours to seventh and eighth grade students.

E. Whereas, in an effort to mitigate the costs and efforts involved with this matter, the parties believe that it is in their respective best interests to resolve the disputes between them by compromising and settling such disputed claims upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the covenants, conditions, representations, and releases contained herein, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties agree as follows:

### **AGREEMENT**

1. The parties acknowledge and agree that the foregoing recitals are true and correct and are hereby incorporated as a material part of this Agreement.

2. Pursuant to A.R.S. § 15-915, the Department will recover \$1,065,000.00 (the “Settlement Amount”) from TUSD to settle TUSD’s pending appeal through the reduction of state aid as set forth in Paragraph 3 of this Agreement. In accordance with historical practice and for purposes of the resolution of this matter, the Settlement Amount will not result in a reduction to TUSD’s budget capacity. However, effective for audits initiated in fiscal year 2013 or in subsequent years, the Department may make adjustments to budget capacity and nothing in this Agreement shall be deemed to limit the Department’s authority to require such adjustments.

3. Pursuant to A.R.S. § 15-915(A)(1), the Superintendent of Public Instruction will allow the reduction of state aid for TUSD to occur over a two-year period by reducing the apportionment of state aid pursuant to A.R.S. § 15-973 in equal monthly apportionment amounts of \$46,304.35 (representing 1/23<sup>th</sup> of the Settlement Amount) beginning September 1, 2012.

4. TUSD may prepay any or all of the Settlement Amount without penalty.

5. This Agreement is not binding upon either party until TUSD accepts it by a majority vote of its governing board at a public meeting.

6. Upon execution of this Agreement, TUSD will file a withdrawal of its appeal in order to vacate any potential hearings pending at the Office of Administrative Hearings.

7. The parties release and forever discharge each other, their employees, agents, representative, successors, assigns, insurers, directors, affiliates, and attorneys from any and all liability, rights, actions, claims, obligations, demands, fees, and costs, as they relate to the Audit Report and/or the appeal, which could have been made in any forum whatsoever including, but not limited to, any claims for attorneys' fees and/or costs with the sole exception being an action to enforce the terms of this Agreement.

8. The parties have read this Agreement carefully, know and understand its contents, and have made such investigation as they deem necessary or desirable. The parties acknowledge that they have consulted independent legal counsel and have received ample time within which to consider this Agreement and its terms. No promise, inducement, or agreement not herein expressed has been made or entered into between the parties. This Agreement constitutes and embodies the full and complete understanding and agreement of the parties hereto with respect to the matters addressed herein and supersedes all prior understandings and agreements.

9. The parties understand and agree that this is a compromise settlement and satisfaction of disputed claims, and that the consideration hereunder is not to be construed as an admission of liability by either party, each party expressly denying any liability to the other party.

10. The parties represent that they have full authority to settle all claims associated with this Agreement.

11. Neither this Agreement nor any of its provisions will be deemed prepared or drafted by any one party or its attorneys and will not be construed more strongly against either party.

12. If any part of this Agreement is held to be invalid, void, or unenforceable for whatever reason, that provision will be severed, with all remaining provisions to continue in full force and effect.

13. This Agreement will be construed, interpreted, and enforced in accordance with the laws of the State of Arizona. The proper venue for any proceeding at law or in equity or under

the provisions for arbitration will be Maricopa County, Arizona, and the parties waive any right to object to the venue.

14. If any proceeding or action is brought for or on account of any breach of, or to enforce or interpret any of the terms, covenants, or conditions of this Agreement, the prevailing party will be entitled to recover from the other party, as part of the prevailing party's costs, reasonable attorneys' fees, the amount of which will be fixed by the court, and will be made a part of any award or judgment rendered.

15. Notwithstanding Paragraph 14, each party will be responsible for its own attorneys' fees and costs in this matter.

16. Both parties understand that this Agreement, once approved and signed, will constitute a public record.

17. The parties may sign this Agreement at different times for the sake of convenience. This Agreement will not be effective until both parties have signed this Agreement, after which the effective date will be the date of the last signature.

**TUCSON UNIFIED SCHOOL  
DISTRICT No. 1**

**ARIZONA DEPARTMENT OF  
EDUCATION**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

John J. Pedicone, Ph.D.

Print Name: \_\_\_\_\_

Superintendent

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_