

RESTATED DECLARATION AND AGREEMENT OF TRUST

THIS DECLARATION AND AGREEMENT, restating and re-implementing the TUSD Workers' Compensation Trust established in 1985 ("Agreement"), is made and entered into on this 10th day of December, 2013, by and between the TUCSON UNIFIED SCHOOL DISTRICT, acting by and through its Governing Board, and the TRUSTEES signatory hereto.

WITNESSETH:

WHEREAS, the Tucson Unified School District ("TUSD" or "District") is a public school district comprised of numerous schools, enrolling tens of thousands of students, and employing thousands of teachers, administrators, and other staff;

WHEREAS, TUSD desires to promote the health and safety of its employees by maintaining a well-funded workers' compensation program; and

WHEREAS, TUSD desires through the medium of the TUSD Workers' Compensation Trust established in 1985 ("Trust") to insure itself against the costs associated with a workers' compensation program, as and to the extent permitted by Arizona law;

NOW, THEREFORE, in consideration of the benefits to be derived by the District and the mutual promises and agreements hereinafter set forth, the parties agree as follows:

1. NAME OF TRUST: The Trust shall be known as the "TUSD Workers' Compensation Trust" and shall in all respects be governed by the laws of the State of Arizona and administered to accomplish the purposes expressly, and by necessary implication, contained herein.
2. PURPOSE OF THE TRUST: The express purposes and primary objectives of the trust are:
 - a. To establish and fund a workers' compensation self-insurance program for TUSD employees ("Program") within and according to the provisions of A.R.S. § 15-382;
 - b. To insure TUSD against losses associated with injuries to its employees incurred in the course and scope of their work for TUSD;
 - c. To ensure that TUSD employees receive appropriate and adequate reimbursement for medical payments and wage replacement in the event of and resulting from an injury incurred in the course and scope of their work for TUSD;
 - d. To pay for such expenses as are reasonably necessary for the proper administration of the Trust, including but not limited to administrative costs and fees, legal costs and fees, consulting costs and fees, and travel expenses;
 - e. To pay for such expenses as are reasonably designed to prevent future claims against the Trust, including but not limited to expenses for education of TUSD employees concerning workplace health and safety and workers' compensation claims; and
 - f. To reimburse the Trustees of the Trust, as designated in Paragraph 3, below, for any other expenses necessarily or properly incurred by them in the performance of their duties under this Agreement.

The foregoing expression of purposes is not exhaustive and, in addition to other related objectives reasonably inferred therefrom, the Trust shall have such other objectives as may be lawful under Arizona law.

3. DESIGNATION OF TRUSTEES:

- a. The Trust shall be administered by a Trust Committee consisting of the following members in accordance with A.R.S. § 15-382:
 - i. District Administration will be represented by the Deputy Superintendent of Operations, or his/her designee, who shall act as Chairperson of the Trust Committee;
 - ii. The Risk Manager for Pima County and the Risk Manager for the City of Tucson will be asked to serve a two-year term;
 - iii. Three non-employee members of the TUSD community at large, preferably with a working knowledge of workers' compensation programs, and/or financial /fiduciary experience shall be appointed by the Deputy Superintendent of Operations for two-year terms; however, in the event that the Risk Manager for Pima County or the Risk Manager for the City of Tucson declines or is unable to serve as a Trustee pursuant to subparagraph (ii) of this Paragraph 3, the Deputy Superintendent of Operations shall appoint an additional member of the TUSD community at large to serve in lieu of said Risk Manager;
 - iv. A representative of the current firm that has been awarded the claims administration contract for the Program shall act as a non-voting advisor to the Trust Committee; and
 - v. A representative of the current financial institution that maintains the account in which the funds of the Trust are deposited shall act as a non-voting advisor to the Trust Committee.
 - b. As a qualification for appointment and continued service, each appointed member of the Trust Committee must be bonded. Bond premiums for appointed members of the Trust Committee shall be paid for by the Trust.
 - c. To the extent practicable, the Trust Committee shall appoint a successor (including the incumbent, if so desired) prior to the expiration of the term of a member of the Trust Committee, which appointee shall assume the duties applicable upon appointment. The length and/or number of terms that a member may serve can be extended by the Chief Operations Officer, with the concurrence of the Trust Committee, if deemed necessary to provide continuity to the Committee.
 - d. Vacancies on the Trust Committee shall be filled by a majority vote of the Trust Committee. During the period of any vacancy or vacancies, the remaining members of the Trust Committee shall have full power to act.
 - e. No appointee may serve on the Trust Committee, and no appointment to the Trust Committee shall be effective, until the appointee acknowledges in writing full and unconditional acceptance of the terms of this Trust.
4. **POWERS OF TRUST COMMITTEE:** In furtherance of the purposes set forth in this Trust Agreement, the Trust Committee shall have the following powers:
- a. To engage and oversee, as the Trust Committee deems appropriate, the services of competent Program administrators and other staff to provide management and related services to the Trust;
 - b. To review and approve documents appropriate to the operation of the Trust, including, but not limited to, the funding of the Trust and the payment of claims, and to establish the limits of authority of the persons engaged under Paragraph 4(a), above;

- c. To establish methods and procedures for the collection, investment, and disbursement of monies of the Trust, and to establish actions to be taken with respect to delinquent accounts receivable;
- d. To provide for complete accounting and a plan for audit of the funds received, invested, kept, and/or disbursed by the Trust, and to establish such accounts with financial and investment institutions and brokerages as may be necessary and prudent for the proper management of the Trust's funds;
- e. To contract for administrative services and for such support services and facilities as the Trust Committee shall consider appropriate. The Trust Committee may pay for such services and facilities from the Trust's funds;
- f. To establish such advisory committees as the Trust Committee deems appropriate to assist in policy development and operations of the Trust, and to appoint qualified persons to such committees to serve at the pleasure of the Trust Committee;
- g. To reimburse the Trust Committee members for reasonable expenses incurred by them in connection with the performance of their duties as Trust Committee members. The Trust Committee members shall not be entitled to any other remuneration for their services;
- h. To delegate any of the Trust Committee's non-discretionary powers as deemed necessary and appropriate by the Trust Committee;
- i. To promulgate bylaws for the operation of the Trust Committee and to make reasonable rules and regulations for the fulfillment of the purposes of the Trust;
- j. To establish and maintain a bank account or bank accounts in such depositories as the Trust Committee may select, provided that they are located within Tucson, Arizona, and to empower any person or persons selected by the Committee to draw and sign checks against any funds deposited therein for purposes consistent with this Agreement. The Trust Committee shall at a minimum empower the Deputy Superintendent of Operations and the District's Chief Financial Officer to draw and sign checks against Trust accounts as set forth in this subparagraph. All checks written against an account of the Trust shall bear two authorized signatures;
- k. To engage and pay for such accounting, legal, or other professional advice or assistance as may be required in connection with the permissible purposes of the Trust and the powers and duties of the Trust Committee as set forth herein. The Trust Committee may pay for such services from the Trust's funds;
- l. To authorize and establish such programs as the Committee deems necessary or appropriate for the furtherance of the purposes of the Trust; and
- m. To exercise such other powers and to do and perform such other acts or things as may be reasonably required to carry out the purposes of the Trust.

The Chairperson of the Trust Committee shall execute on behalf of the Trust all Trust contracts, documents, and pleadings as may be approved by the Trust Committee, provided that the Committee may delegate to any person or firm engaged pursuant to this Paragraph a limited agency authority to bind the Trust in certain cases or kinds of transactions to be specified by the Trust Committee.

5. DUTIES OF TRUST COMMITTEE: The Trust Committee shall have the following duties and responsibilities:

- a. To ensure that the Trust's funds are administered in accordance with applicable rules and regulations, including appropriate sections of the Arizona Revised Statutes, the

Arizona Administrative Code, the Uniform System of Financial Records, and the Policies and Regulations of TUSD;

- b. To invest the Trust's funds and assets prudently and to properly disburse Trust Fund monies to satisfy approved claims and meet authorized expenses;
- c. To keep accurate account books and records reflecting all transactions of the Trust and to provide for such audits of the Trust's funds, accounts and operations, and financial reports by a certified public accountant as the Committee deems prudent, but in any case no less frequently than once per year. The cost of such audits may be paid from the Trust's funds. Copies of such audits and financial reports shall be kept on file for a period not less than five years, shall be furnished to each member of the Trust Committee, and shall be made available upon request to the Governing Board, the Superintendent, and the Chief Operations Officer of TUSD;
- d. To furnish the TUSD Governing Board with such additional special reports or information as it reasonably requires, provided that the Trust Committee may in its sound discretion make the payment of the expense of furnishing such additional reports or information a condition precedent to doing so; and
- e. To require all persons providing services to or performing services for the Trust to be bonded or insured in a form and amount set by the Trust Committee. The cost of such bonds may be paid from the Trust's funds.

This list is in addition to and with no limitation on the further duties and responsibilities of trustees required by law.

- 6. MEETINGS OF TRUST COMMITTEE: The Trust Committee shall meet semi-annually, or at the call of the Chairperson of the Trust Committee, to fulfill its responsibilities as outlined in this Agreement. The notice of any meeting shall state the time, place, and purpose or purposes of the meeting. It shall be in any form of communication that the Chairperson may designate, and shall be given no less than five (5) days in advance of the meeting. A majority of the members of the Trust Committee shall constitute a quorum for the transaction of business. All meetings shall be held in the city of Tucson, Arizona, unless the members of the Trust Committee unanimously agree otherwise. All decisions of the Trust Committee shall be made by a vote of a majority of the Trust Committee members present. All meetings of the Trust Committee shall be subject to the provisions of Arizona's Open Meeting Law.

7. USE OF TRUST FUNDS:

- a. Without further specific action of the Trust Committee, but subject to any limitations or conditions set by the Trust Committee, the administrators designated by the Trust Committee shall disburse or authorize disbursement of monies from the funds of the Trust for any of the following purposes:
 - i. Payment of monies due and certain under or by virtue of any contract, bond, or policy of insurance made or obtained by or on behalf of the Trust, including, without limitation, the costs of audits pursuant to Paragraph 5(c);
 - ii. Investment and reinvestment of Trust's funds under such standards and limitations as may be approved by the Trust Committee;
 - iii. Payment of premiums due on fidelity, performance, errors and omissions, or other bonds and insurance which the District's Governing Board may require to protect the Trust and Trustees;

- iv. Payment of expenses (including reasonable administrative expenses) incurred by the Trust in connection with such programs in furtherance of the purposes of the Trust as may be approved by the Trust Committee from time to time; and
 - v. Reimbursement of reasonable and necessary expenses incurred by members of the Trust Committee for such items as travel, meals, lodging, telephone calls, and other out-of-pocket expenses incurred in performing their duties as members of the Trust Committee, provided that the personal services and time devoted by members of the Trust Committee shall not be compensated by the Trust.
- b. Except as provided in Paragraph 7(a), the Trust's funds shall not be disbursed, expended, or indebted without express approval of the Trust Committee.
 - c. The Trust's funds shall not lapse at the close of the District's fiscal year.
 - d. Surplus funds, including the income from investments of the Trust, in excess of obligations payable under this Paragraph may, at the direction of the Trust Committee, be distributed in whole or in part, from time to time, to TUSD. Except as provided in this Paragraph, investment income shall remain with the Trust for reinvestment or satisfaction of the obligations of the Trust as provided in Paragraph 7(a).
8. TERMINATION OF TRUST:
- a. The Trust shall terminate upon either:
 - i. The giving of notice in writing by the TUSD Governing Board to the Trust Committee requesting termination; or
 - ii. The dissolution, adjudication of bankruptcy, or appointment of a receiver for TUSD.
 - b. Upon termination of the Trust, any excess funds held in the Trust after payment and settlement of all outstanding claims and expenses shall be paid to TUSD to be used for reduction of school district taxes for the budget year.
9. STOP-LOSS: The Trust Committee shall purchase appropriate stop-loss coverage, including, if appropriate, both individual and aggregate coverage.
10. NON-PROFIT: The Trust created hereby shall operate as a non-profit organization.
11. AMENDMENT: The TUSD Governing Board reserves the right to alter, amend, or terminate this Trust and the terms under which it exists at any time by a memorandum in writing to the Trust Committee.
12. SEVERABILITY: If any provision of this Agreement is adjudicated to be invalid, unenforceable, or unconstitutional, the remainder of the provisions not subject to such adjudication shall not be affected and shall continue in full force and effect.
13. INDEMNIFICATION: The Trust shall defend, hold harmless, and indemnify the individual members of the Trust Committee from any and all demands, claims, suits, actions, and/or legal proceedings brought against the Trust Committee members in their official capacity as agents of the Trust. The incident must have occurred while the Trust Committee member was acting within the scope of his or her official duties. This excludes criminal litigation and is limited to the amount of liability insurance coverage that is within the authority of the Trust to provide under state law.

IN WITNESS WHEREOF, by action of the TUSD Governing Board, this Restated Declaration and Agreement of Trust is approved, and the TUSD Governing Board, by and through its authorized officers, has caused this Agreement to be executed in its name and on its behalf this 10th day of December, 2013.

TUCSON UNIFIED SCHOOL DISTRICT GOVERNING BOARD

By _____
President

By _____
Clerk

We, the undersigned members of the Trust Committee, having been duly appointed to carry out the provisions of the above Restated Declaration and Agreement of Trust, do hereby approve, affirm, and accept such Trust.

DATE: _____

DATE: _____

DATE: _____

DATE: _____

DATE: _____