

**DRAFT**

TRUST AGREEMENT  
FOR  
SCOTTSDALE UNIFIED SCHOOL DISTRICT  
OF  
MARICOPA COUNTY, ARIZONA

THIS TRUST AGREEMENT is by and between the Governing Board of the Scottsdale Unified School District of Maricopa County, Arizona, a political subdivision of the State of Arizona (hereinafter referred to as the "District"), and the individuals hereinafter executing this Agreement as Trustees (hereinafter individually and collectively called the "Trustees"), and shall be effective as of the date of execution hereunder \_\_\_\_\_, 2019.

WHEREAS, the District may, pursuant to Arizona Revised Statutes ("A.R.S.") § 15-382 and § 15-387 provide self-insured and/or insurance programs;

WHEREAS, the District deems it to be in the best interest of its employees and the District to establish self-insured and/or insurance programs pursuant to A.R.S. § 15-382 and § 15-387 and other applicable law;

WHEREAS, the District and/or employees will contribute monies to the Trustees, which will constitute a Trust Fund (as further defined below) to be held for the benefit of the employees and the District, as applicable for the type of insurance, in accordance with this Trust Agreement;

WHEREAS, the District desires the Trustees to accept, hold, preserve, protect, invest, and make payments from the Trust Fund, and the Trustees are willing to accept, hold, preserve, protect, invest and make payments from such Trust Fund pursuant to the terms of this Trust Agreement; and

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the District and the Trustees hereby agree as follows:

**1. ESTABLISHMENT.**

1.1 **Definitions.** The following capitalized terms shall have the meanings stated below for all purposes of this Trust Agreement unless the context clearly requires otherwise:

- a. "Administrator" means the individual appointed by the Board to oversee the day to day operations of the Trust.
- b. "District" means the Scottsdale Unified School District of Maricopa County, Arizona.

- c. “District Board” or “Board” or “Board Members of the District” means the Governing Board of the Scottsdale Unified School District of Maricopa County, Arizona.
- d. “Employees” means all employees and Board Members of the District.
- e. “External Auditor” means the independent certified public accountant then retained by the District.
- f. “State” means the State of Arizona.
- g. “Trust Agreement” means this Agreement for the Scottsdale Unified School District of Maricopa County, Arizona.
- h. “Trust Fund” means the trust fund created by this instrument, and shall mean the monies, property, contracts, or things of value received and held by the Trustees for the uses and purposes set forth herein, and those things of value which comprise the corpus and additions to the trust.
- i. “Trustee” means each individual appointed by the District, through its Board, as provided herein and holding office, and “Trustees” means all of Trustees, the individuals appointed and then in office, and any successors individually collectively as provided for in this Trust Agreement.

- 1.2 **Purpose.** The purpose of this Trust is to provide for the establishment of a self-insured program and/or insurance programs by the District to cover property insurance, surety insurance, professional liability insurance, personal injury liability insurance, public liability insurance, vehicle insurance, worker’s compensation insurance as well as employee medical, dental, disability and/or life insurance programs, programs that allow for participation in a cafeteria plan that meets Federal Internal Revenue Code of 1986 requirements, related employee benefits programs including wellness programs and other fully and partially funded group insurance plan programs, and uninsured losses, claims, defense costs, costs of training designed to reduce losses and claims, costs of administration and other related expenses, as the District may elect to self-insure from time to time, and to authorize the management, funding and administration of the Trust for the purpose herein, including without limitation the payment of insurance premiums. The Trustees accept the Trust and declare they will receive and hold the Trust Fund by virtue of this Trust Agreement and for the uses and purposes and with the powers and duties set forth herein and none other.

- 1.3 **Trust Fund.** The District hereby establishes the Scottsdale Unified School District, Maricopa County, Arizona Self-Insurance Trust. All appropriations from the District, and all other funds, earnings and assets of the Trust, shall be placed in the Trust Fund in a separately maintained bank account designated as a trust account, immediately upon receipt, shall be held in trust and used solely for the purposes permitted herein, shall not be co-mingled with other funds of the District nor used to secure any obligations of the District other than is expressly provided herein, and shall not lapse at the close of the fiscal year, except that any cash balance remaining after termination of the self-insurance program and settlement of all outstanding claims shall be used for reduction of District taxes for the budget year. The Trustees shall properly account for the amounts contributed by the District Employees and the District for the different types of self-insurance but may jointly invest the Trust Fund if the Trustees and any investment advisor deems it a prudent investment strategy. Any income from any joint investments shall be allocated between the insurance funds in a reasonable and prudent manner. Any monies recovered by the District pursuant to litigation, recovery, salvage value of damaged property, proportionate share monies from any other existing District funds or otherwise, or for damages related to either a liability or property loss for which monies from the Trust have been paid, shall be returned to the Trust Fund.
- 1.4 **Reservation of Authority.** Nothing herein shall modify or restrict the legal obligations of the District to administer and operate appropriate risk management and insurance programs for the District. The District shall retain the sole and absolute right and authority to direct and authorize the establishment, management and administration of an overall insurance program for the District, and shall determine from time to time whether it is in the best interests of the District to procure insurance from any insurer authorized to do business in the State, to establish self-insured programs, to combine self-insured programs and procurement of insurance from third parties, or any combination of the foregoing for various types and dollar amounts of risks, including without limitation deductibles, reinsurance, and joint or participation insurance. Specifically, without limitation, the District may from time to time, for any period, elect to purchase insurance for any or all of the risks otherwise covered by this Trust, and Trust Funds may be used to purchase such insurance. The District shall provide stop-loss coverage and determine the amounts thereof, provided that the excess liability coverage for liability losses may include an annual aggregate limit of no more than three million dollars, and the maximum retention per occurrence shall be one-half of one percent of the District's maintenance and operations budget as may be amended by law.

**2. TRUST MANAGEMENT**

- 2.1 **Appropriations.** The District shall appropriate all funds in amounts it determines to be necessary to pay the benefits, losses, claims, and expenses described in Section 1.2, subject to District budgetary requirements, including that the funds shall be budgeted within the maintenance and operation section and the budget limitation on increases as prescribed in A.R.S. § 15-905. Should monies in the Trust Fund be deemed inadequate at any time to meet current expenditures, a special appropriation may be requested by the Trustees from the District for the remainder of the year or any part thereof.
- 2.2 **Management and Disbursement of Funds.** Subject to limitations prescribed in the Arizona Revised Statutes and this Agreement, the Trustees agree to manage and disburse Trust assets as follows:
- a. To invest and reinvest Trust monies as provided by law and consistent with prudent investment practices and the need for funds in the amounts and at the times reasonably anticipated for the purposes of this Trust;
  - b. To evaluate current and potential insurance plans and coverage, to establish adequate and appropriate reserves for any and all claims against the District covered by this Trust, to recommend the types of plans, programs, deductible amounts, premiums and other insurance provisions for District Employees based on actuarial reports, any District committee recommendations or other consultants that the Trust Board determines are necessary in order to meet the level of recommended reserves, all subject to District **Board** approval;
  - c. To pay upon such terms and conditions as deemed appropriate and proper, the legal claims, settlements or judgments (including interest thereon required by law) against the District covered by the self-insured retention program and this Trust;
  - d. To reject, in whole or in part, settle or compromise any claims made by an Employee or third party against the District;
  - e. To pay all reasonable costs and expenses of claims administration;
  - f. To pay all reasonable legal fees, expenses and costs incurred in connection with the administration of the Trust and the defense of any claims that may arise thereunder or related thereto against the District and the Employees;

- g. To pay all reasonable costs of investigations of claims;
- h. To procure all necessary and appropriate bonds required of the Trustees and otherwise, whether fidelity, surety, performance, legal or other;
- i. To pay all reasonable actuary expenses and costs incurred in connection with the administration of this Trust;
- j. To pay all reasonable consultant expenses and costs incurred in connection with the administration of this Trust;
- k. To pay all reasonable audit expenses and costs incurred in connection with the administration of this Trust;
- l. To pay all other reasonable expenses and costs of approved agents and advisors retained by the Trustees;
- m. To pay the expenses of organization and establishment of this Trust, including without limitation all legal and other expenses in connection with its formation, establishment and initial funding; and
- n. To pay such other reasonable and appropriate Trust expenses as may be necessary in connection with the administration and management of this Trust, including without limitation insurance premiums, risk management consultation and the costs of preventative programs designed to reduce claims.

**2.3 Limitations on Expenditures.**

- a. **Illegal Acts.** No expenditures shall be made from the Trust Fund except for authorized purposes as permitted under applicable law and this Agreement. Expenditures from the Trust Fund shall not, under any circumstances, be made for uninsured losses that arise out of, and are directly attributable to an act or omission determined by any court to be a criminal act committed by an Employee.
- b. **Claims Not Covered.** Claims which are not covered by the self-insured program established hereunder shall not be paid from this Trust. All questions relating to the nature, scope and amount of losses and risks covered by this Trust shall be determined by the Trustees, but, in the event of a dispute, shall be determined by the Board of the District.

## 2.4 **Claims Procedure.**

- a. **Notification.** The Trustees shall establish the reporting procedures for accidents and incidents for which claims could be made under this Trust. The Trustees shall establish the claims procedure, including requiring the investigation of all reported claims and the notification of the appropriate insurance carrier(s), if applicable.
- b. **Disputed Benefits Claim.** The Trustees and the Administrator are hereby authorized to compromise or settle any disputed benefits claim covered by this Trust in the following amounts other than for Administrative Practices Liability Claims, subject to any limitations set forth in this Agreement, the claims procedures established by the Trustees and the District Board: Trust Administrator up to \$10,000; Trustees (by majority vote, not individually) \$10,000 to \$150,000; above \$150,000 shall be subject to District Board approval. Settlement of any amount of Administrative Practices Liability claims shall be subject to District Board approval. Claim payments are not subject to State or District procurement requirements, but shall conform to statutory and industry claim adjusting standards.

- 2.5 **Records and Audit.** The Trustees shall keep or cause to be kept accurate accounts of all investments, receipts, disbursements and other transactions, and all accounts, books and records relating thereto shall be open at all reasonable times to inspection and audit by the District or persons designated by the District Board. The Clerk of the Board (or such designee as the District Board determines) shall review the expenditures of the Trust. The accounting and reporting system adopted by the Trustees shall conform to and be integrated with the existing accounting procedures of the District. An annual audit of the Trust Fund shall be performed as an administrative expense of the Trust by the External Auditor each year in connection with the District's audit and copies provided to the Trustees and the District Board. The audit report on the Trust Fund shall be open for public inspection during normal business hours, and a copy of the report shall be kept on file in the District office for a period of not less than five years from the date of receipt.

## 2.6 **Reports.**

- a. **Annual Reports.** Within 90 days following the close of each fiscal year of the District, the Trustees shall file with the District, and provide to the District Board copies of, a written report setting forth a report and account of the operation of the Trust during the past fiscal year. The report shall include the amount of monies held in the Trust Fund as of the fiscal year end; the value of all investments held in the Trust; all receipts and disbursements of funds and other material

transactions during such year; a report on the reserves held by the Trust; an itemized list and description of the litigation involving the Trust as of the end of the fiscal year; and all other relevant matters as of the close of the fiscal year. The report shall establish the applicable losses sustained by the District during the period of the report, and the expenses and costs incurred in connection with the administration of the Trust.

- b. **Actuarial Reports.** Whenever desired by the Trustees or requested by the District, the Trustees shall retain an actuary at the expense of the Trust to report to the Trustees and the District Board upon the adequacy of the reserves held hereunder and any other appropriate matters.

### 3. **TRUSTEES**

3.1 **Powers.** In addition to the rights and powers described elsewhere in the Agreement, the Trustees shall also have the following powers:

- a. **Trust Fund Management.** Subject only to the express limitations set forth elsewhere in this Agreement, the Trustees are authorized to enter into contracts, procure insurance policies, manage the Trust, and provide for stop-loss insurance. The Trustees are authorized to pay any insurance company the required insurance premiums in connection with such group insurance. The Administrator appointed by the Board of the District shall be responsible for the day to day operations of the Trust, subject to the provisions of this Trust Agreement and policies implemented by the Trustees and shall report to the Trustee on actions taken by the Administrator.
- b. **Advisors.** The Trustees shall administer the Trust. The Trustees, subject to the approval of the Board, may engage, contract or employ agents, representatives, employees, and independent contractors, including attorneys, actuaries, appraisers, investment advisors, financial institutions, claims managers, experts and investigators, to provide assistance to them in administering, investing and operating the Trust. All agents, representatives, employees, advisors and independent contractors must be free of any conflicts of interest in the performance of their services. Any risk management consultant or insurance administrator employed by the District and offering services to the Trust must be licensed under Title 20, Chapter 2, Article 3 or 9 of the Arizona Revised Statutes and such license shall be verified by the District's Board prior to employment.

- c. **Trust Fund Investment.** In order to coordinate the investment of the Trust Funds with District policies, the Trustees shall delegate the handling of the day to day investment of the Trust Funds to the Chief Financial Officer of the District to act as investment manager of the Trust Fund in conjunction with the third party financial institution holding the Trust Funds or such other third party investment advisors as the Trustee may hire. Any investment shall be managed in a manner consistent with A.R.S. § 35-313. The investment manager shall report to the Trustees on a regular basis regarding the investments and holdings of the Trust Fund and shall provide the monthly reports from the third party financial institution to the Trustees. In the event of a question or dispute between the investment manager and the Trustees, the ~~Trustee~~**Trustees, through due action at a meeting at which there is a quorum,** shall seek guidance from the District Board, whose decision shall be final.
- d. **Other Powers.** The Trustees shall have all of the powers necessary, convenient or appropriate, unless restricted hereunder or by law, to effectuate the purposes of this Trust, and may take any action which they deem reasonably necessary to administer the Trust, carry out the purpose of this Trust; or desirable to fulfill the terms, conditions and intent of this Agreement. The Trustees agree to discharge their responsibilities with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, all in accordance with the provisions of this Trust Agreement and law.

### 3.2 **Trustees.**

- a. **Number.** The District shall appoint all Trustees and determine the number of Trustees, which shall be at least three. If a member of the Governing Board of the District or employee of the District is acting as Trustee, the Trust shall be administrated by at least five joint trustees, of whom no more than one may be a member of the Board of the District and no more than one shall be an employee of the District. The individuals executing this Agreement as Trustees are the original Trustees appointed by the District's Board.
- b. **Qualification.** Trustees shall be at least eighteen (18) years of age, and bonded in an amount determined appropriate by the District. No person shall qualify as a Trustee until s/he shall have signed this Agreement.

- c. **Compensation.** Trustees shall not be entitled to receive compensation for their services except, to the extent permitted by law, reimbursement for reasonable out-of-pocket costs and expenditures made in the performance of their duties upon written approval by the District's **Board or in accordance with District policies.**

**3.3 Term and Removal.**

- a. **Term.** The term of office for the District employee and the District's Board member serving as Trustees shall continue at the pleasure of the District's Board. The term of office for the other Trustees shall be for three years except that appointments for the remaining Trustees shall be staggered for two, three-and four year terms, as determined by the Trust Board, so that the terms of approximately one-third of the independent Trustees shall expire each year. Trustees may be reappointed for successive terms at the sole discretion of the District's Board.
- b. **Removal.** All Trustees serve at the pleasure of the District's Board and may be removed by the Board at any time, with or without cause, upon written notice thereof delivered to that Trustee removed. Trustees may be reappointed at the sole discretion of the District's Board and all other Trustees.

- 3.4 **Chairman.** The Trustees shall elect a Chairman of the Trustees, who must also be a Trustee. The Chairman shall establish the date, time and place of the meetings of the Trustees, and shall provide each Trustee and the public, at least twenty-four (24) hours prior to the meeting, an agenda of the matters to be covered during the meeting; and shall preside at all meetings of the Trustees.

- 3.5 **Resignation.** A Trustee may resign at any time by giving 30 days' notice in writing to the Board. The District's **Board** may waive the 30 days' notice at its sole discretion. The resignation shall be effective upon the earlier of the date stated in the notice of resignation or the appointment of a successor. Appointment of a successor automatically accepts the resignation of the resigning Trustee.

- 3.6 **Vacancies.** The resignation, incompetency, death or removal of any or all of the Trustees shall not terminate this Trust or affect its continuity. During a vacancy, the remaining Trustee or Trustees may exercise the power of the Trustees hereunder. Vacancies among the Trustees shall be filled by appointment by the District's Board and reflected in the minutes of the District's Board meeting. The determination of a vacancy among the Trustees

shall be made by a majority of the remaining Trustees, and shall be stated, together with the basis for the determination, in a written document delivered to the District's Board. If, at any time, for any reason, there shall be no remaining Trustees, the District's Board shall forthwith appoint the requisite number of successor Trustees.

- 3.7 **Successor Trustees.** Legal authority held pursuant hereto shall vest automatically in each successor Trustee, upon appointment by the District's Board. Any successor Trustee shall have the same powers, duties and exemptions as though originally named as a Trustee in this Agreement.
- 3.8 **Meetings.** The Trustees shall meet at least quarterly and are authorized to meet as frequently as they shall determine necessary and appropriate. The Chairman or any three Trustees may call a meeting at any time upon no less than twenty-four (24) hour written notice to all other Trustees and the public. Notice and conduct of meetings must comply with all applicable statutes, rules and regulations otherwise pertaining to public meetings and proceedings as further described in A.R.S. § 15-382(B)(2) and in Title 38, Chapter 3, Article 3.1. All meetings shall take place in the District.
- 3.9 **Conduct of Business.** The Trustees may act only during a legally convened meeting of the Trustees except in case of an emergency, as determined by the Chairman or a majority of the Trustees, the Trustees may act with the notice appropriate under the circumstances, subject to subsequent compliance with the notice requirements of A.R.S. § 38-431.02.D. and ratification and confirmation of their action at the next meeting of the Trustees. The presence of both (a) a majority of all Trustees appointed and serving and (b) one Trustee who is either a District employee or a member of the Governing Board (provided either has been appointed by the District), who will be counted as part of the majority required in (a), shall constitute a quorum for purposes of conducting business. Any action by a majority of the Trustees in office during any meeting at which a quorum is present shall be conclusive and binding as an action of the Trustees. All agreements, deeds, checks documents, instruments, reports and any and all other instruments approved at a lawfully convened meeting and executed by the Chairman and witnessed by another Trustee present at the meeting, shall be effective and binding on all of the Trustees.
- 3.10 **Limitation of Duties.** The duties and responsibilities of the Trustees shall be only those which are expressly imposed upon them by the provisions of this Agreement. The Trustees shall have no duty to enforce the payment of any appropriation to the Trust. The funding of the insurance programs and all benefits shall be the sole responsibility of the District and/or its eligible employees. The fiduciary operation of the Trust shall be the sole responsibility of the Trustees.

- 3.11 **Reliance upon Documents.** The Trustees may act upon any written notice, resolution, request, consent, order, certificate, report, opinion or document reasonably believed by them to be genuine and to have been signed and presented by the proper party or parties.
- 3.12 **Limitation of Liability.** Except as provided below or as otherwise provided by law, no Trustee shall be liable individually for any act or omission of any Trustee or agent or representative of the Trustees, or for negligence, error in judgment, or any act or omission, except his/her own willful breach of the provisions of this Trust Agreement, and/or gross negligence, and/or bad faith in the performance of his/her duties. Every act or thing done or omitted, and every power exercised or obligation incurred by the Trustees, or any of them, required by law, resort shall be had solely to the property of the Trust, and not against the Trustees, jointly or individually, for any debt, claim, demand, judgment, decree or obligation. The act of any Trustee in the administration of this Trust, or in connection with its business or property, in their capacity as Trustees, shall be deemed done, omitted, exercised or incurred by the Trustees, as Trustees, and not as individuals. No Trustee shall be liable individually for any act or omission of any Trustee, including himself, or agent or representative of the Trustees, constituting negligence, error in judgment or mistake. Nothing contained in this Agreement, however, shall protect the Trustees or their agents or representatives against liability for his/her own willful breach of the provisions of this Trust Agreement, and/or gross negligence, and/or bad faith or intentional misconduct in the performance of his/her duties.
- 3.13 **Indemnification.** The District agrees, to the extent permitted by law, to defend and indemnify and hold the Trustees harmless from and against any liability, including but not limited to legal fees, judgments, penalties and amounts paid in settlement or compromise, that the Trustees may incur while acting in good faith and in the proper conduct and scope of their office in the administration of the Trust Fund, unless arising from the Trustee's own willful breach of the provisions of this Trust Agreement, and/or gross negligence, and/or bad faith. Notwithstanding any other provision of this Trust Agreement to the contrary, any agreement by the District to indemnify the Trustees shall be limited to, and be payable only from the District's contractually assume liability insurance coverage, if any, available as part of its general liability insurance policy.

#### **4. AMENDMENT AND TERMINATION**

- 4.1 **Amendments.** This Agreement may be supplemented or amended, in whole or in part, at any time by the District, **through due action by the District**

**Board.** All such supplements and amendments must be in writing, and approved and executed by the District.

- 4.2 **Termination.** This Trust may be terminated at any time, upon thirty (30) days prior notice, by an instrument in writing executed by the District, **through due action by the District Board.** Upon termination of this Trust, the District shall notify all employees, the Trustees, and any other necessary parties. The Trustees shall continue as Trustees for the purpose of winding up the affairs of the Trust. Upon termination of this or a successor Trust, after all outstanding claims and expenses are paid, any balance remaining shall be used for reduction of District taxes for the applicable budget year.
- 4.3 **Final Accounting.** At such time as the Trust is terminated, the Trustees shall render a final accounting of the Trust Fund balance to the District, and thereafter the Trustees shall have no further responsibility or duties and shall be discharged.

5. **GENERAL PROVISIONS.**

- 5.1 **Applicable Law.** This Agreement is executed and delivered in Arizona, and the laws of Arizona shall govern the construction, validity and effect of this Agreement and the administration of the Trust hereby created.
- 5.2 **Headings.** Headings have been inserted solely for convenience and reference, and shall not affect the meaning, construction or effect of this Agreement.
- 5.3 **Severability.** Should any provision or term in this Trust Agreement be deemed or held to be unlawful or invalid for any reason, such fact shall not adversely affect the other provisions herein contained unless such invalidity or illegality shall make impossible or impractical the functioning of the Trust. In such case, the appropriate parties shall immediately adopt a new provision to take the place of the illegal or invalid provision.
- 5.4 **Counterparts.** This Trust Agreement may be executed in counterparts, each of which shall constitute an original but all of which shall constitute one and the same agreement.

[SIGNATURES ON FOLLOWING PAGE]

**DRAFT**

Approved at a lawfully convened meeting this \_\_\_\_ day of \_\_\_\_\_, 2019.

GOVERNING BOARD OF SCOTTSDALE UNIFIED  
SCHOOL DISTRICT OF MARICOPA COUNTY,  
ARIZONA

By: \_\_\_\_\_  
Patty Beckman, President

\_\_\_\_\_  
Allyson Beckham, Vice President

\_\_\_\_\_  
Jann-Michael Greenburg, Member

\_\_\_\_\_  
Sandy Kravetz, Member

\_\_\_\_\_  
Barbara Perleberg, Member

**DRAFT**

IN WITNESS WHEREOF, the undersigned hereby accept the foregoing Agreement and agree to be bound by the provisions thereof.

TRUSTEES OF THE SCOTTSDALE  
UNIFIED SCHOOL DISTRICT OF  
MARICOPA COUNTY, ARIZONA  
SELF-INSURANCE TRUST

\_\_\_\_\_  
Mary Jeanne Fincher, Trustee

Date\_\_\_\_\_

\_\_\_\_\_  
Sandy Kravetz, Trustee

Date\_\_\_\_\_

\_\_\_\_\_  
Jay Rosenthal, Trustee

Date\_\_\_\_\_

\_\_\_\_\_  
Dave Collins, Trustee

Date\_\_\_\_\_

\_\_\_\_\_  
Jennifer Peterson, Trustee

Date\_\_\_\_\_