

Item Title

PROPOSED AMENDMENTS TO REVISED RESTATED DECLARATION OF TRUST FOR MARICOPA COUNTY,
ARIZONA SELF-INSURED TRUST FUND

C Number: C-06-11-279-M-01

Action Requested:

Approve and adopt the Revised Restated Declaration of Trust for Maricopa County, Arizona Self-Insured Risk Trust Fund dated June 23, 2011 (the Declaration of Trust). The revisions to the Declaration of Trust amend the prior declaration of trust in the following areas: adds language to include Unemployment insurance; removes legacy language from when the County's Health Benefits were covered by the Trust; adds language to allow the Administrator to purchase insurance for financial responsibility for underground storage tank liability; and adds language that the County Attorney, in consultation with the Administrator on matters covered by the Trust, shall appoint counsel to provide for the legal representation of the County, its departments, employees and others for whom the Trust may provide representation.

This item was discussed in Executive Session on December 8, 2014.

Board Required Information:

Additional Information:

Expenditure Impact By FY:

None

Item Notes:

(12/8/2014 4:04:35 PM) - Step: CountyManager

User: Juanita Garza

Response: APPROVE

(12/8/2014 4:00:18 PM) - Step: ClrkOfBrd

User: JoAnn Rangel

Response: APPROVE

C-06-11-279-M-01

REVISED RESTATED

DECLARATION OF TRUST

FOR

MARICOPA COUNTY, ARIZONA

SELF-INSURED RISK TRUST FUND

DATED this 14th day of January 201~~4~~⁵

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REVISED RESTATED
DECLARATION OF TRUST
FOR
MARICOPA COUNTY, ARIZONA
SELF-INSURED RISK TRUST FUND

This Revised Restated Declaration of Trust for Maricopa County, Arizona Self-Insured Risk Trust Fund (the "Trust") dated and effective this _____ day of _____, 2014 is entered into by and between Maricopa County, a political subdivision of the State of Arizona (the "County"), and the individuals executing the Trust, as Trustees (hereafter, with their successors, referred to singularly and collectively as the "Trustees").

RECITALS:

A. Arizona Revised Statutes § 11-981(A) authorizes the County to establish a self-insurance program for the management and administration of a system for direct payment of benefits, losses or claims or any combination of insurance and direct payments, including risk management consultation, to provide (among other things that are not applicable to this Trust), "payment of any property loss sustained or lawful claim of liability or fortuitous loss made against the County if such elected or appointed officials, employees or officers are acting within the scope of employment or authority," or to procure insurance from any insurer authorized by the Director of the Department of Insurance, or both, for any of the types of insurance as defined in Title 20 of the Arizona Revised Statutes. The insurance or self-insurance provided by the County may be extended to include its departments and employees, as further outlined in this Declaration of Trust.

B. Arizona Revised Statutes § 11-981 (B) directs that, if the County establishes such a self-insurance program, it shall: (1) place all funds into a trust fund for these purposes in amounts determined by the County's Board of Supervisors; (2) designate a risk management consultant or insurance administrator; and (3) establish a board of trustees to administer the trust in accordance with that statutory section Insurance which may include:

1. General, Vehicle, and Environmental Liability insurance
2. Professional Liability (including medical malpractice) insurance
3. Workers Compensation and Employer's Liability Insurance
4. Public Entity Errors and Omissions
5. Unemployment

C. The County has previously established such a self-insurance program. This Declaration of Trust amends the "Revised Restated Declaration of Trust for Maricopa County, Arizona Self-Insured Trust Fund" dated June 23, 2011, in accordance with the action taken by the Maricopa County Board of Supervisors in a public meeting on

January 26, 2011. The County, in the exercise of the authority granted by A.R.S. § 11-981, hereby establishes and declares this self-insurance risk trust (hereinafter called the "Trust").

D Statutory references in this Declaration of Trust refer to those statutes as they may have been or may be amended.

Accordingly, the County agrees as follows:

AGREEMENT:

ARTICLE 1. GENERAL TERMS

1.1. Incorporation by Reference: Duration: Termination. The foregoing recitals are hereby incorporated by reference into this Declaration of Trust as though fully set forth herein. This Trust shall become effective upon the completion of the Authorizing Action described in Section 1.5 below, and shall continue until this Trust is terminated by the County, which termination shall be effective upon resolution of the County Board of Supervisors. However, the termination of this Trust shall have no effect upon the existence, powers or other obligations of the County.

1.2. Purposes. The purpose of this Declaration of Trust is to carry out the provisions of Arizona Revised Statutes § 11-981 and the foregoing Recitals. The County agrees to operate the Trust according to the terms and conditions set forth in this Declaration of Trust.

1.3. Manner of Financing. The Trust may be funded by allocation of funds from any lawful source or sources as authorized by the Trustees and the Board. The funds deposited to the Trust shall not be subject to the provisions of Title 42, Chapter 2, Article 4.

1.4. Conformity with Law. If any term or provision of this Declaration of Trust conflicts with or violates any state or federal law, as they now exist or are hereafter amended, this Declaration of Trust shall be automatically deemed amended to conform to such laws and statutes.

1.5. Authorizing Action. The Trust shall become effective only upon: (a) the determination of the County Attorney that this Declaration of Trust is in proper form and within the powers and authority of the Board, and (b) the approval of the Board of Supervisors.

1.6. Reservation of Authority. Nothing contained herein shall modify or restrict the legal obligations of the Board of Supervisors to administer and operate appropriate insurance programs for Maricopa County, Arizona, as those programs shall be modified from time to time hereafter by the Board.

1.7. Definitions.

1.7.1. "Administrator" means the risk manager or risk management consultant appointed by the Board.

1.7.2. "Board" or "Board of Supervisors" means the Maricopa County Board of Supervisors.

1.7.3. "Clerk" means the Clerk of the Board of Supervisors appointed under Arizona Revised Statutes § 11-241.

1.7.4. "County" means Maricopa County, Arizona.

1.7.5. "Department(s)" means any department, agency, authority, budgetary unit, board or commission of County.

1.7.6. "Department of Insurance" means the Arizona Department of Insurance.

1.7.7. "Employees" means all persons who are paid a wage, or salary from public monies in accordance with official entries on the County payroll, officers, board members of the County, subject to the limitations set forth herein in Section 2.2.1.5. Additionally, agents of the County shall be deemed to be employees for purposes of this Trust if and to the extent coverage under the Trust is expressly promised to an agent (including contractors) by written agreement approved by the Board. Additionally, volunteers who provide services to or on behalf of the County shall be entitled to the benefits of and coverage under this Declaration of Trust (except for Employee benefits as authorized herein in Section 2.2.1.9) when acting pursuant to direction and under the control of authorized County Employees and if:

1.7.7.1. Said volunteers are deemed employees as provided in A.R.S. § 23-901.06; or

1.7.7.2. Said volunteers are participating in programs authorized or created pursuant to state or federal law and which the Board has approved by resolution; or

1.7.7.3. Said volunteers are participating in programs authorized or created pursuant to Board resolution; or Said volunteers are participating in programs authorized or created

1.7.7.4. Said volunteers are participating in a program designed and administered by any County agency or department and which has been reviewed and approved, in writing, by the Administrator.

1.7.7.5. All volunteers and agents, and/or the organizations, entities or corporations to which they belong, when requested by the Administrator, shall participate in and

shall cooperate fully with the Administrator and the Risk Management Department in an underwriting process designed by the Administrator to ensure that said volunteers and agents are qualified by competence and moral character to serve the County and its citizens and taxpayers in that capacity. This mandatory participation is further governed by the provisions of Section 2.2.6.3. In furtherance of the underwriting process, the Administrator is authorized to establish and enforce mandatory minimum reporting standards and liability and other insurance coverage limits for all volunteers, agents, and/or the organizations, entities or corporations to which they belong.

1.7.8. "Expenditures" means all disbursements made from the Trust created by this Declaration of Trust and authorized by Trustees for the management and administration of a self-insured retention program for those purposes as specified in Title 11, Article 5, Arizona Revised Statutes.

1.7.9. "Release" means any spilling, leaking, discharging, emitting, escaping or leaching of one or more contaminants or pollutants into groundwater, surface water, surface soils, subsurface soils, as well as any definition of "release" arising out of applicable federal or state statute or regulation:

1.7.10. "Toxic Tort" means any claim of bodily injury or property damage arising from the release, or discharge, of contaminants or pollutants.

1.7.11. "Trustees" or "Trustee" means individuals who are residents of Maricopa County, Arizona, appointed by the Board to administer the Trust, and the successors of the Trustees.

1.7.12. "Trust Member" is any person or entity covered under the provisions of this Trust.

1.8. General Provisions

1.8.1. The business affairs of the Trust shall be conducted by a Board of Trustees. The Trust shall comply with all federal, state and local laws, rules, regulations, standards and executive orders, without limitation to those designated within this Declaration of Trust. The laws and regulations of the State of Arizona shall govern the rights of the parties, the performance of this Trust and the resolution of any disputes thereunder. Any action relating to this Declaration of Trust shall be initiated in the Superior Court of the State of Arizona, in and for Maricopa County. Any changes in the governing laws, rules and regulations applicable to this Trust during the term of this Declaration of Trust shall apply to this Declaration of Trust but such changes shall not require an amendment to this Declaration of Trust.

1.8.2. The Trust shall not discriminate against any individual in any way on account of such individual's race, color, religion, sex, age, disability, or national origin.

1.8.3. The financial activities, management, and business affairs of the Trust shall be managed effectively and efficiently with reports submitted to the Board of Trustees at least quarterly, or as otherwise requested by the Chief Financial Officer of the County.

1.8.4. The Trust shall be audited annually by an external auditor and a copy of the audit report kept on file in the offices of the Clerk of the Board of Supervisors for a period of not less than ten (10) years.

1.8.5. This Declaration of Trust including any exhibits attached hereto shall constitute the entire Declaration of Trust and supersedes all other understandings, oral or written. This Declaration of Trust may be amended or modified only by the Board, with notice to and consultation with the Trustees.

1.9. Trustees, Number, Term of Office, Qualifications and Compensation.

1.9.1. The Trust shall be administered by no less than six (6) Trustees, each of whom shall be citizens of the United States of America and residents of Maricopa County, Arizona. Each supervisorial district shall be represented by one (1) Trustee appointed by the supervisor of that district and approved by the Board of Supervisors. The Trustees shall serve terms of three (3) years and shall not be employees of the County. In addition, the County Manager, or his or her designee, shall serve as Trustee. The County Manager's designee is subject to the approval of the Board, and shall possess the following qualifications: 1) the designee shall be a County Employee, 2) the designee shall report directly to the County Manager with respect to this appointment; and 3) the designee shall be reasonably familiar with the subject matter of the appointment. All Trustees shall be at least 21 years of age and no person shall qualify as Trustee until he or she has been approved by the Board by a written appointment, which shall be lodged with the Clerk and records of the Trust. The term of office for a Trustee shall be for three (3) years, except that the designee of the County Manager shall serve for an indefinite term, subject to removal and substitution by the Board with or without cause. Any Trustee may be reappointed by the Board upon expiration of his or her term, or upon the expiration of his or her term any Trustees may continue to serve until his or her replacement is appointed by the Board. Trustees shall not be entitled to receive compensation for their services as Trustees, except Trustees shall be entitled to reimbursement for any reasonable out-of-pocket cost and expenditures made by the Trustees in the performance of their duties as Trustees.

1.9.2. A Trustee may resign at any time by giving notice in writing to the remaining Trustees and to the Board. Such resignation shall take effect not later than sixty (60) days from the date it is received by the Trustees and Board. The Board may accept the resignation at any time within the sixty (60) day period and if not accepted within sixty (60) days, the resignation shall be deemed accepted as a matter of law. Appointment of a successor automatically accepts the tendered resignation by the resigning Trustee. No resignation, once submitted, may be withdrawn prior to its consideration and approval or rejection by the Board. The Board may remove any Trustee for cause at any time by written notice thereof delivered to the Trustee.

1.9.3. The resignation, incompetency, death or termination for cause of any or all of the Trustees shall not terminate the 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 a written appointment by the Board, and lodged with the Clerk and the records of the Trust. Any such appointment shall be for a term of three (3) years commencing with the date the written appointment is filed with the Clerk. The determination of a vacancy among the Trustees by reason of resignation, incompetency, or death, or for any other reason, when made by a majority of the remaining Trustees, set forth in writing and delivered to the Board of Supervisors, shall be final and conclusive for all purposes. If, at any time, by reason of resignation, incompetency or death, there shall be no remaining Trustees, the Board of Supervisors shall forthwith appoint the requisite number of successor Trustees.

1.9.4. The Trustees shall meet as frequently, but not less than quarterly, as they shall determine necessary and appropriate. Meetings may be conducted in video conferencing or by other electronic means of communication. The Chairman may call a meeting at any time upon two (2) days' notice, either written or verbal. Any two (2) Trustees may call a meeting upon two (2) days' notice to the other Trustees, either written or verbal. The Trustees may act only during a formal meeting of the Trustees, except in case of an emergency, as determined by the Chairman or a majority of the Trustees, during which the Trustees may act without a meeting subject to ratification and confirmation of the act at the next meeting of the Trustees. Any action by a majority of the Trustees in office shall be conclusive and binding as an action of the Trustees. All agreements, deeds, checks, documents, reports, and any and all other instruments executed by a majority of the Trustees or executed by one Trustee or an authorized agent of the Trust, pursuant to authorization of a majority of the Trustees given either at a meeting or in writing, shall be effective and binding as if executed by all of the Trustees.

1.9.5. The Trustees shall elect from their members a Chairman, who shall act as

Chairman until such time as his or her successor shall have been elected and qualify. The Chairman must be elected from neither those Trustees who are neither an elected County official nor an Employee of the County. The Chairman shall be elected by a majority of the Trustees serving the Trust.

1.9.6. The Chairman shall establish the date, time and place of the meetings of the Trustees, and shall, at, or prior to, the meeting, provide an agenda of subject matter to be covered during the meeting. All meetings shall take place in Maricopa County, Arizona, and shall be subject to all applicable statutes, rules and regulations otherwise pertaining to public meetings; provided, however, that a Trustee whether or not present within Maricopa County, may participate in a meeting via telephone or other means of electronic communication.

1.9.7. If a non-emergency meeting of the Trustees is conducted exclusively via electronic means with no Trustee physically present at the posted location of the meeting, the Administrator shall make available to the public an adequate means of listening to the deliberations and proceedings.

1.9.8. In case of an actual emergency, a meeting, including an executive session, may be held upon such notice as is appropriate to the circumstances, provided that within twenty-four (24) hours following the emergency meeting, a public notice is posted declaring that an emergency session has been held and setting forth the specific matters discussed, considered or decided. If the emergency meeting was conducted in executive session, the public notice shall include only a general description of the matters considered and shall not contain information that would defeat the purpose of the executive session.

1.9.9. In the case of an actual emergency, a matter may be discussed and considered and, at public meetings, decided, even though the matter was not listed on the agenda provided that a statement setting forth the reasons necessitating such discussion, consideration or decision is placed in the minutes of the meeting, and at the public meeting, is publicly announced. In the case of an executive session, the reason for consideration of the emergency measure shall be announced publicly immediately prior to the executive session.

1.9.10. The Chairman of the Trustees shall serve until such time as he or she resigns, or is removed by vote of the Trustees. An election of the Chairman may be called at the request of any non-county employee Trustee.

1.9.11. At all meetings of the Trustees, a majority of the Trustees then serving

shall constitute a quorum for the transaction of business. The act of a majority of the Trustees present at any meeting at which there is a quorum shall be the act of all Trustees, except as may be otherwise specifically provided by statute. If a quorum is not present at any meeting of the Trustees, the Trustees present may recess the meeting from time to time until a quorum is present. At such resumed meeting at which a quorum is eventually present, any business may be transacted which might have been transacted at the meeting originally noticed; provided that, to the extent applicable, the requirements of the Arizona open meeting laws (A.R.S. § 38-431 et seq.) are satisfied.

1.9.12. The Trustees shall be bonded or insured. This requirement may be satisfied by the blanket performance bond or other coverage provided by the County.

1.9.13. The Trustees shall comply with the provisions of Title 38, Chapter 3, Article 8 (A.R.S. §§ 38-50 1 through 511) (Conflict of interest of officers and employees and Relatives), as well as any other applicable law regarding conflict of interest.

1.10. Powers of Trustees. The Trustees shall establish necessary policies, rules, and procedures to enable the Trust to do all such lawful acts and things which are permitted by statute and by this Declaration of Trust. The Trustees may, without limitation, do all of the following:

1.10.1. The Trustees may adopt policies, rules and procedures for the administration of the Trust; provided, however, that such policies, rules and procedures may not be inconsistent with the provisions of this Declaration of Trust or applicable state and federal law and regulations.

1.10.2. The Trustees may engage the services of actuaries, auditors, engineers, private consultants, administrators and advisors as the Trustees deem necessary in order to carry out the business and purposes of the Trust. The Trustees shall obtain legal advice from or through the County Attorney (unless the County Attorney is prohibited from doing so by a conflict of interest described in Rule 42 of the Rules of the Supreme Court of Arizona).

1.10.3. The Trustees may authorize the payment of insurance premiums; costs of claim investigation, defense, and settlement (up to the limit established in Schedule A attached hereto); and such other costs as are necessary to carry out the conditions of the Trust.

1.10.4. The Trustees may purchase, lease or rent personal property they deem necessary, and shall comply with the provisions of the Maricopa County Procurement Code.

1.10.5. The Trustees may recommend modifications of the terms and conditions of this Trust document to the Board.

1.10.6. The Trustees shall maintain written minutes of their meetings.

1.10.7. The Trustees shall delineate in the written minutes of its meetings the areas of authority it delegates to the Administrator. The Administrator shall be an *ex officio* member of all committees of the Trustees.

1.10.8. The Trustees shall provide for the investment of Trust monies in a manner consistent with the provisions of A.R.S. § 35-321 et seq.

1.11. Non-Liability of Trustees. Except 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 Trust or for negligence, error in judgment, or any act or omission, except his or her own bad faith, gross negligence, criminal, punitive damage, intentionally wrongful and/or willful and wanton misconduct in the conduct of his or her duties. Every act or thing done or omitted, and any power exercised or obligation incurred by the Trustees, or any of them, in the administration of the Trust, or in connection with any business or property of the Trust, in their Trustee capacity, shall be deemed done, omitted, exercised, or incurred by the Trustees, as Trustees, and not as individuals; and, upon any debt, claim, demand judgment, decree, or obligation of any nature whatsoever against or incurred by the Trustees in their capacity as such, whether founded upon contract or tort, recourse shall be had solely to the property of the Trust. Nothing contained in this Trust shall protect a Trustee or agent or representative of the Trust against liability to the Trust, or to the beneficiaries thereof for gross negligence, bad faith, criminal, punitive damage, intentionally wrongful and/or willful and wanton misconduct in the conduct of his or her duty.

1.12. Indemnification. Subject to Section 2.2.4, the Trust shall indemnify, defend and hold harmless each Trustee from and against all claims and liabilities, whether they proceed to judgment or are settled, to which such Trustee may become subject, by reason of his or her being or having been a Trustee, or by reason of any action alleged to have been taken or omitted by him or her, as Trustee, and shall reimburse him or her for all legal and other expenses reasonably incurred by him or her in connection with any such claim or liability; provided, however, that no Trustee shall be indemnified or reimbursed under the foregoing provisions in relation to any matter, if it has been adjudicated that his or her action or omission constituted bad faith, gross negligence, and/or willful and wanton misconduct, or other excluded conduct or circumstances as set forth in Section 2.2.4, in the conduct of his or her duties, or, if in the absence of such an adjudication, the Trust has received a written

opinion from the County Attorney, or in case of conflict, from a private outside counsel, to the effect that if the matter of bad faith, gross negligence, and/or willful and wanton misconduct, or other excluded conduct or circumstances as set forth in Section 2.2.4, in the conduct of duties had been adjudicated, it would have been adjudicated adverse to such Trustee. The rights accruing to a Trustee under these provisions shall not exclude any other right to which he may be lawfully entitled, nor shall anything herein contained restrict the right of the Trust to indemnify or reimburse such Trustee in any proper cause, even though not specifically provided for herein; provided, that no Trustee may satisfy any right of indemnity or reimbursement granted herein, or to which he may be otherwise entitled, except as provided by law.

1.13. Disclaimer of Third Party Beneficiaries. Nothing in this Declaration of Trust is intended to confer the status of third-party beneficiary on any person or entity.

ARTICLE 2. PUBLIC LIABILITY AND ENVIRONMENTAL LIABILITY

2.1. Insurance. A.R.S. § 11-981 authorizes the County to self-insure or procure insurance from any insurer authorized by the Director of the Department of Insurance, or both, for any of the following types of insurance as defined in Title 20 of the Arizona Revised Statutes. The insurance or self-insurance provided by the County may be extended to include its Department(s) and Employees, as further outlined in this Declaration of Trust, which may include, but is not necessarily limited to, the following:

- 2.1.1. Property insurance,
- 2.1.2. Performance bonds,
- 2.1.3. Professional liability insurance (including medical malpractice),
- 2.1.4. Public entity liability insurance,
- 2.1.5. Motor Vehicle liability insurance,
- 2.1.6. Workers' Compensation Insurance

2.2. Powers and Duties of Administrator. The Administrator may appoint one or more deputies to perform specified portions of the Administrator's duties or responsibilities on behalf of, and under the authority of, the Administrator. Any Administrator or deputy must be licensed as required by A.R.S. § 20-281, et seq. or certified as an insurance administrator under Title 20, Chapter 2, Article 9 (A.R.S. § 20-485, et seq.).

2.2.1. The Administrator shall establish, manage and administer a program to finance the risk of loss arising from (a) public liability losses, claims, costs and expenses, and (b) environmental impairment liability and associated losses, claims, costs and expenses, which are the obligation of the County, its Department(s) and Employees. The Administrator shall exercise his or her judgment to recommend to the Trustees and the Board that the County procure insurance from any insurer authorized to do business in the State by the Director of the Department of Insurance or otherwise approved by the Board; to establish self-insured retention programs; to combine self-insured retention programs and procurement of insurance; or any combination of the foregoing. If a self-insured retention is maintained, the Administrator shall establish adequate and appropriate reserves, which may include an allowance for claims incurred but not reported, for any claims made against the County and which are covered by this Trust. Any program established by the Administrator shall conform to the provision of this Trust and applicable law to insure:

2.2.1.1. All County-owned buildings or structures financed in whole or in part by County monies or in which the County has an insurable interest as determined by the Trustees.

2.2.1.2. The contents of any buildings or structures owned, leased or rented, in whole or in part, by or to the County, and reported to the Trust.

2.2.1.3. Expenses incurred for restoration of operations, loss of revenue from interruption of County business due to direct physical loss or damage to real or personal property, loss of rental proceeds, or loss resulting from the inability of the County to effect collection of revenue as a result of the direct loss or damage to records of revenue accounts receivable.

2.2.1.4. The County, and its Departments, and Employees thereof and such others as may be necessary to accomplish functions or business of the County and its Departments, against liability for acts or omissions of any nature while acting in authorized County governmental or proprietary capacities and in the course and scope of employment or authorization except as otherwise prohibited by this Declaration of Trust. For purposes of third-party liability claims only, an Employee shall be considered to be acting within the course and scope of his or her employment whenever operating a County-owned vehicle in accordance with applicable County and departmental policies and procedures, including the operation of County-owned vehicles while commuting between the Employee's work station and residence, or other location authorized under County policy and by the Employee's department head.

2.2.1.5. Professional medical liability insurance coverage, which shall extend as follows:

2.2.1.5.1. Physician employees, nurse employees, and other health care provider employees who provide health care services at any County owned or operated, or Trust Member owned or operated, health care facility;

2.2.1.5.2. Any medical student, resident or individual enrolled and participating in an Accreditation Council for Graduate Medical Education (A.C.G.M.E.) approved County or Trust Member training program which is operating at a County-owned or operated, or Trust Member health care facility, or in an A.C.G.M.E. approved County or Trust Member residency program which as part of its curriculum conducts rotations to a non-County or non-Trust Member health care facility that has been approved by the County or Trust Member; however, if such non-County or non-Trust Member health care facility maintains liability insurance, including but not limited to professional liability insurance coverage, the insurance maintained by the non-County or non-Trust Member health care facility shall be primary coverage, and the insurance provided by the terms of this Trust shall be excess liability coverage only;

2.2.1.5.3. Attending physicians and other health care providers who, by the terms of a contract with Maricopa County are to be provided professional medical liability insurance coverage for their professional health care services to patients in a County-owned or operated, or Trust Member-owned or operated facility; however, if such attending physicians and other health care providers, maintain liability insurance, including professional liability insurance coverage, such insurance shall be considered primary coverage, and the insurance provided by the terms of this Trust shall be considered excess liability coverage only;

2.2.1.5.4. Attending physicians and other health care providers who, by the terms of a contract with Maricopa County provide direct supervision and training to a medical student, resident or individual enrolled in an A.C.G.M.E. approved County training program at a County-owned or operated, or Trust Member-owned or operated facility, or at a non-County or non-Trust Member health care facility which has been approved by the County or a Trust Member; however, if such attending physicians and other health care providers maintain liability insurance, including professional liability insurance coverage, such insurance shall be considered primary coverage, and the insurance coverage provided by the terms of this Trust shall be considered excess coverage only;

2.2.1.5.5. Any contract, agreement, or provision that attempts to provide for or enlarge the scope of the professional medical liability insurance coverage as set forth above,

without the prior written approval of the Board of Supervisors, shall be null and void.

2.2.1.6. All personal property reported to the Administrator, including vehicles and aircraft owned by the County and its Department(s), and all non-owned personal property which is the responsibility of the County because of written leases or other written agreements, or policies and procedures adopted by the County.

2.2.1.7. Workers' compensation and employer's liability as prescribed by Title 23 of the Arizona Revised Statutes

2.2.1.8. Commutation coverage if specifically authorized and approved by the Board of Trustees, except that no coverage may be provided to any employee who is a peace officer or firefighter as defined in A.R.S. § 1-215.

2.2.1.9. Other exposures to loss where insurance may be required to protect this County and its Department(s) and Employees acting in the course and scope of employment or authorization except as otherwise prohibited by this Declaration of Trust.

2.2.1.10. For purposes of Sections 2.2.1.4, 2.2.1.7 and 2.2.1.8 above, the term "employee" shall not include agents of the County where the terms of such agency preclude coverage and/or County liability for Employee benefits or acts or omissions of such agents, or where such agents are independent contractors.

2.2.1.11. For environmental impairment liabilities:

2.2.1.11.1. Any action necessary in the investigation, response, abatement, removal, and other corrective activities, as legally required by applicable federal or state statutes, rules or regulations governing the release of contaminants or pollutants into groundwater, surface water, surface soils, subsurface soils or air;

2.2.1.11.2. The cleanup of contaminants or pollutants pursuant to a written order from a court of competent jurisdiction, or a federal or state agency having jurisdiction over rules, regulations or statutes requiring corrective action from the County;

2.2.1.11.3. Of contaminants or pollutants; and payment of the costs incurred in the removal or remediation

2.2.1.11.4. Monetary awards or settlements of compensatory damages arising from claims the County is legally obligated to pay as a result of the release of

contaminants including the investigation and defense of any claim or lawsuit. A claim or lawsuit includes a notice or lawsuit from a federal or state agency having jurisdiction over the release of contaminants or pollutants into groundwater, surface water, surface soils, subsurface soils or air.

2.2.1.12. The reasonable attorneys' fees and reasonable costs, not to exceed a cumulative \$50,000, of a licensed professional arising out of a disciplinary or licensure proceeding before a professional regulatory body. If after consultation with the County Attorney the Administrator determines that to do so would be in the best interest of the County or the Risk Trust and that the licensed professional is the materially prevailing party at the conclusion of the disciplinary or licensure proceeding, then the Administrator may reimburse the licensed professional for reasonable attorneys' fees and reasonable costs in excess of the cumulative \$50,000 limit.

If after consultation with the County Attorney the Administrator determines that to do so would be in the best interest of the County or the Risk Trust and that the licensed professional is not the materially prevailing party at the conclusion of the disciplinary or licensure proceeding, then the Administrator may seek reimbursement from the licensed professional of all reasonable attorneys' fees and reasonable costs paid by the Risk Trust on behalf of the licensed professional

2.2.2. The Administrator shall establish a program for approving and paying disbursements for and on behalf of the County for payment of reasonable expenditures necessary to establish and to operate and administer the Trust including but not limited to the following:

2.2.2.1. To pay any and all valid claims made against the County for the risks of casualty loss, including workers compensation or disability loss provided under the terms of this Declaration of Trust;

2.2.2.2. To pay, upon such terms and conditions as are deemed appropriate and proper, the cost arising from claims for the restoration or replacement of property, the removal of any debris resulting from the loss of property, and the loss of County income arising from the damage to property;

2.2.2.3. To pay, upon such terms and conditions as are deemed appropriate and proper, the legal claims, settlements or judgments, including pre-judgment and/or post-judgment interests, arising from lawful claims of liability that are the obligation of the County;

2.2.2.4. To pay, upon such terms and conditions as are deemed appropriate and proper, the claims resulting from injuries to County workers that would be covered under the terms of Title 23, Chapter 6;

2.2.2.5. To pay all reasonable costs and expenses of Trust administration;

2.2.2.6. To pay all reasonable legal fees, expenses and costs incurred in connection with the administration of the Trust;

2.2.2.7. To pay all reasonable actuary expenses and costs incurred in connection with the administration of the Trust;

2.2.2.8. To pay all reasonable consultant expenses and costs incurred in connection with the administration of the Trust;

2.2.2.9. To pay all reasonable audit expenses and costs incurred in connection with the administration of the Trust;

2.2.2.10. To pay all reasonable insurance broker's fees and costs incurred in connection with the administration of the Trust;

2.2.2.11. To pay such other reasonable and appropriate expenses including third party administration fees as may be necessary in connection with the administration of the Trust;

2.2.2.12. To settle lawful claims of liability, when such claims are justly due and owing and are covered by this Trust, in an amount up to the limits established in Schedule A attached hereto.

2.2.2.13. To establish adequate and appropriate reserves for any and all valid claims for corrective action necessary in the response, abatement, investigation, remediation and removal activities resulting from the release of contaminants or pollutants that are the obligation of the County;

2.2.2.14. To establish adequate and appropriate reserves for any and all valid claims for legal liability arising from the release of contaminants or pollutants that are the obligation of the County;

2.2.2.15. To pay, upon such terms and conditions as deemed appropriate and proper, the costs arising from claims for corrective action necessary in the response, abatement, investigation, or remediation and removal activities resulting from release of contaminants or pollutants that are the obligation of the County;

2.2.2.16. To pay, upon such terms and conditions as deemed appropriate and proper the legal claims, settlements or judgments, including pre-judgment and/or post-judgment interest, arising from the release of contaminants or pollutants that are the obligation of the County;

2.2.2.17. To pay for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks;

2.2.2.18. To pay all reasonable and appropriate insurance premiums and costs incurred as the result of the purchase of insurance, surety bonds, or other programs and plans which insures the County, its departments, and its employees against costs for lawful environmental impairment claims that are the obligation of the County;

2.2.3. The Board does further direct and authorize the Administrator to establish a program for the defense of claims for liability and for environmental impairment liability against the County.

2.2.3.1. The County Attorney, in consultation with the Administrator on matters covered by this Trust, shall appoint counsel to provide for the representation of the County, its Departments, its Employees, and such others for whom this Trust may provide representation, defense and/or indemnification

2.2.3.2. Within the settlement authority provided in Schedule A, the Administrator has the discretion to consult with the County Attorney or attorney of record and the authority to make an Offer of Judgment in any lawsuit.

2.2.3.3. The Administrator has the discretion to consult with the County Attorney or attorney of record and authority to enter into a Tolling Agreement in any lawsuit.

2.2.3.4. The Administrator has the discretion and authority to consult with the County Attorney and counsel of record in determining whether to make a recommendation to the Board and/or Trustees for compromise and settlement of a claim.

2.2.3.5. The Administrator has the discretion to consult with counsel and the authority to issue a reservation of rights letter or a denial of coverage letter in any claim or lawsuit.

2.2.4. The coverage provided under the provisions of the Declaration of Trust does not apply to loss, costs, claims, litigation expenses, or expenses listed below:

2.2.4.1. Arising from any expenditure for any purpose not specified in Title 11, Article 5, Arizona Revised Statutes, A.R.S. § 11-981).

2.2.4.2. Arising from fines, assessments, penalties, punitive, exemplary, or treble damages, unless written approval has been obtained from the Board prior to payment. In determining whether to pay such losses, costs, claims, litigation expenses, damages or other expenses, the Board may consider whether any factor or group of factors suggests that payment of the adverse judgment or settlement would be in the best interest of the County or Trust. The Board's consideration under this sub-paragraph is independent of whether a reservation of rights letter has been issued.

2.2.4.3. Arising from an act or omission determined by a court having jurisdiction to be a violation of Arizona Revised Statutes Titles 13 or 28, or a violation of any other federal, state or local law or ordinance which allows the imposition of criminal penalties. Any acts or omissions which may reasonably be characterized as a violation of the above-referenced laws are also excluded from coverage under the Trust, provided however, that the Trust may pay for the costs, including reasonable attorneys' fees, of investigating and defending against any such claims upon the following conditions: (1) upon approval of the Trustees in open session; and (2) when incurred prior to entry of judgment of guilt or entry of a guilty plea or entry of a no contest plea to a violation of the above-referenced laws, which ever shall first occur; provided however that the County shall have the right to recover all costs and fees expended upon investigation and defense of any claims which result in a conviction or plea of guilty or no contest.

2.2.4.4. Arising from a default or breach of contract or agreement entered into with third parties by the County, its Departments, or Employees unless the default or breach is related to conduct or matters covered by the Trust.

2.2.4.5. Arising from any routine maintenance costs necessary for the reconstruction, repair, restoration, replacement, upgrading, or rebuilding of any County-owned (a) storage facility necessary for the storage of materials that may be considered as contaminants or pollutants, (b) buildings or structures, whether financed in whole or in part by County monies, or buildings or structures in which the County has an insurable interest as determined by the Trustees, as set forth in Section 2.2.1.1, (c) contents in any buildings or structures owned, leased or rented, in whole or in part, by or to the County, and reported to the Trust, as set forth in Section 2.2.1.2, (d) property, for which a claim has been submitted for restoration or replacement thereof, as set forth in Section 2.2.2.2. The intent of these exclusionary clauses is to exclude from Trust coverage the routine maintenance costs arising from (1) ordinary wear and tear or depletion; (2) rust, corrosion, erosion, wet or dry rot; (3)

settling, cracking, shrinking, bulging or expansion; (4) routine maintenance and upkeep; and (5) use of equipment or property specifically designed for hazardous operations and/or reasonably likely or foreseeable to incur damage or destruction.

2.2.4.6. Arising out of Merit Commission and/or Whistle Blower proceedings, pursuant to A.R.S. § 38-531 et. seq., except that non-coverage is limited to: 1) compensation of any hearing officer; 2) compensation of any court reporter(s) and costs of transcripts; 3) compensation of any persons who administer or provide administrative support service to the Merit Commission/Whistle Blower Board; 4) costs of reinstatement, including back pay and benefits, of any Employee, as ordered by the Merit Commission/Whistle Blower Board; and 5) payment of any civil penalties imposed pursuant to A.R.S. § 38-532 against an Employee.

2.2.4.7. Arising from intentional and willful/wrongful act(s) of a Trust Member.

2.2.4.8. Any costs of mandated or remedial programs, services and/or the alteration or construction of facilities necessary to comply with or fulfill the requirements of federal, state or local laws, regulations, or judgments/decrees arising out of any court of competent jurisdiction.

2.2.4.9. Arising from judicially or administratively imposed or mandated costs for wages, benefits or penalties arising out of employment or agency relationships with the County.

2.2.4.10. For claims or damages arising out of:

a. Any actual or alleged intentional taking of property, condemnation, inverse condemnation, enforcement; or

b. Interpretation of a land use, zoning or subdivision ordinance or regulation, and for the regulatory approval or disapproval of any development or redevelopment project.

2.2.4.11. For third party liability claims arising from an Employee's use of a County-owned vehicle contrary to County policy or procedure.

2.2.5. This self-insurance trust shall constitute the local government funding mechanism for purposes of demonstrating financial responsibility for the County's operation of underground petroleum storage tanks by one of the following alternative means:

2.2.5.1. The Board hereby directs the Administrator to insure or establish a dedicated fund in the amount of \$1,000,000.00 to be used to pay for corrective actions and

for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks, which may be used to satisfy the financial responsibility requirements imposed by 40 Code of Federal Regulations, Title 40, part 280, subpart h (40 C.F.R. Sections 280.93, 280.107), Arizona Revised Statutes, Title 9, Chapter 6, Article (A.R.S. § 49-1006). This underground storage tank liability fund shall be separately designated, accountable and managed within the trust, and is dedicated exclusively to the payment of corrective actions and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks; or

2.2.6. The coverage provided under the provisions of this Declaration of Trust shall be subject to the following conditions:

2.2.6.1. In the event of a claim covered under the terms of this Declaration of Trust, written notice containing particulars sufficient to identify the type of claim must be filed as required by A.R.S. § 12-821.01 or shall be submitted in a manner otherwise allowed by law.

2.2.6.2. If a claim is made or suit is brought against a Trust Member, Department(s), employee, agent, volunteer or other person or entity covered by the terms of this Declaration of Trust, the Trust Member, Department(s), employee, agent, volunteer or other person or entity shall promptly forward to the Administrator every demand, notice, summons, complaint, claim or other process received by the covered party or its representative. Failure to promptly forward to the Administrator every demand, notice, summons, complaint, claim or other process received may result in denial of coverage by the Trust. All claims of any kind made by or suits brought by a Trust Member, Department(s), employee, agent, volunteer or other person or entity covered by the terms of this Declaration of Trust likewise shall be promptly forwarded to the Administrator. Failure to promptly forward to the Administrator every such demand, notice, summons, complaint, claim or other process may result in denial of coverage by the Trust.

2.2.6.3. The Administrator and the County Attorney (unless the County Attorney is prohibited from doing so by a conflict of interest described in Rule 42 of the Rules of the Supreme Court of Arizona) shall oversee the investigation, settlement or defense of any claim made or suit brought or proceeding instituted against a party covered by the terms of this Declaration of Trust. Any party covered by the terms of this Declaration of Trust shall cooperate fully in the defense of claims or suits or other proceedings covered under this Trust.

2.2.6.4. In the case of a County employee or elected official operating his or her

private vehicle on County business, if valid and collectible commercial insurance is available to a party covered by the terms of this Declaration of Trust that covers a loss also covered by this Declaration of Trust, other than insurance that is written specifically in excess of coverage afforded by the Trust, the coverage afforded by this Declaration of Trust shall be excess of and shall not contribute with such other insurance. Nothing contained in the terms of this Declaration of Trust shall be construed to make the Declaration of Trust subject to the terms, conditions and limitations of any other insurance.

2.2.6.5. No Department, the County, or any Employee thereof may purchase insurance as a County charge that is primary, contributing, or excess of coverage provided by this Declaration of Trust without the express written approval of the Administrator.

2.2.6.6. Any loss payable for damage to property or contents of the County will only be payable upon the restoration or replacement of the property. The Trust shall not be obligated to compensate any Department, of the County, or any Employee of the County if property covered by the terms of this Declaration of Trust is damaged but is not restored or replaced.

2.2.6.7. The Board does further direct and authorize the Administrator to establish a program for Safety and Loss Prevention to reduce or eliminate the frequency and severity of loss and claims to County physical and financial assets and human resources. The Safety and Loss Prevention program may:

2.2.6.7.1. Conduct surveys of County facilities and operations to assist in hazard identification, analysis and mitigation;

2.2.6.7.2. Provide specific training in life safety, OSHA and EPA compliance and corresponding training requirements;

2.2.6.7.3. Assist in the formation of Safety and Loss Prevention committees as a deterrent to loss;

2.2.6.7.4. Assist in identification of the causes of loss frequency and severity and implement techniques to mitigate such losses;

2.2.6.7.5. Continuously monitor the County Safety and Loss Prevention programs to assure compliance with federal and state standards, regulations, and statutes; and

2.2.6.7.6. Implement any additional programs which will foster Safety and Loss

Prevention.

2.2.6.7.7. Subsequent Remedial Measures Program: all Department(s), Employees, volunteers and other individuals whose conduct causes the County to establish an indemnity reserve of \$100,000 or more, or to pay \$100,000 or more by settlement or judgment, shall participate in and shall cooperate fully in the Subsequent Remedial Measures Program implemented by the Administrator and the Risk Management Department, which are authorized to conduct all reasonably necessary audits for compliance and related safety/loss control/risk management programs, and to enforce compliance with the Subsequent Remedial Measures Program. This mandatory participation is further governed by the provisions of Section 2.2.6.3. The Administrator may include in the Subsequent Remedial Measures Program matters valued below the \$100,000 threshold if such inclusion is in the best interests of the County or the Trust.

2.3. Non-Liability of Administrator. Except as otherwise provided by law, the Administrator shall not be liable individually for any act or omission of the Administrator or agent or representative of the Administrator or for negligence, error in judgment, or any act or omission, except his or her own bad faith, gross negligence, criminal, punitive damage, intentionally wrongful and/or willful and wanton misconduct in the conduct of his or her duties. Every act or thing done or omitted, and power exercised or obligation incurred by the Administrator in the administration of the Trust, or in connection with any business or property of the Trust, in his or her capacity as Administrator hereunder, shall be deemed done, omitted, exercised, or incurred by the Administrator acting under the powers and duties imposed on the Administrator under the provisions of this Declaration of Trust; and, upon any debt, claim, demand judgment, decree, or obligation of any nature whatsoever against or incurred by the Administrator in his or her capacity as such, whether founded upon contract or tort, recourse shall be had solely to the property of the Trust. Nothing contained in this Trust shall protect the Administrator or agent or representative of the Trust against liability to the Trust, or to the beneficiaries thereof for gross negligence, bad faith, criminal, punitive damage, intentionally wrongful and/or willful and wanton misconduct in the conduct of his or her duty.

2.4. Indemnification of Administrator. Subject to Section 2.2.4, the Trust shall indemnify, defend and hold harmless the Administrator from and against all claims and liabilities, whether they proceed to judgment or are settled, to which the Administrator may become subject, by reason of his or her being or having been the Administrator, or by reason of any action alleged to have been taken or omitted by him or her, as Administrator, and shall reimburse him or her for all legal and other expenses reasonably incurred by him or her in connection with any such claim or liability; provided, however, that the Administrator shall not be indemnified or reimbursed under the foregoing provisions in relation to any matter if it has been adjudicated that his or her action or omission constituted bad faith, gross

negligence, and/or willful and wanton misconduct, or other excluded conduct or circumstances as set forth in Section 2.2.4, in the conduct of his or her duties, or, if in the absence of such an adjudication, the Trust shall have received a written opinion from the County Attorney, or in case of conflict, from a private outside counsel, to the effect that if the matter of bad faith, gross negligence, and/or willful and wanton misconduct, or other excluded conduct or circumstances as set forth in Section 2.2.4, in the conduct of duties had been adjudicated, it would have been adjudicated adverse to the Administrator. The rights accruing to the Administrator under these provisions shall not exclude any other right to which he or she may be lawfully entitled, nor shall anything herein contained, restrict the right of the Trust to indemnify or reimburse the Administrator in any proper cause, even though not specifically provided for herein; provided, that the Administrator may not satisfy any right of indemnity or reimbursement granted herein, or to which he or she may be otherwise entitled, except as provided by law.

2.5. Designation of Administrator. The Board designates and appoints the Risk Management Director as the Administrator of the Trust. The Administrator shall be in charge of and responsible for the operation of the Trust.

2.6. Procurement Provisions. All purchases of the "Trust," except for purchases of commercial liability insurance, fidelity insurance, surety insurance, appeal or other types of bonds, single premium immediate or deferred annuities and structured settlement annuities, and any other insurance listed in Recitals A, B, and C of this Declaration of Trust acquired by a broker of record for the County, shall comply with County rules and regulations pertaining to competitive bidding or requests for proposals. Bids and specifications shall be issued in sufficient time and sufficient detail to permit free competition. The Administrator, or his designee, shall be designated as a procurement officer authorized to purchase all materials and services required for the operations of the Trust pursuant to authority delegated by the Board. Payment for materials and services contracted for by the Trust shall be the exclusive obligation of the Trust.

2.7. Counterparts. This Declaration of Trust may be executed in several counterparts, all of which together shall be considered an original.

2.8. Stop Loss. For each County self-insured liability (including casualty loss liabilities) the stop loss terms and amount shall be as provided in the intergovernmental agreements then in place (and as subsequently amended) between the County and the Flood Control District for Maricopa County, the Maricopa County Library District and Maricopa County Stadium District. The stop loss amount shall be the same for each person or entity for which this Trust exists as the source for payment of the self-insured liabilities allowed under


which this Trust exists as the source for payment of the self-insured liabilities allowed under A.R.S. § 11-981. The Maricopa County Board of Supervisors may establish by resolution a separate stop loss for any liabilities for which a stop loss is not provided by intergovernmental agreement, and any such stop loss shall apply equally in terms and amount to each person or entity for which this Trust exists as the source for payment of self-insured liabilities.

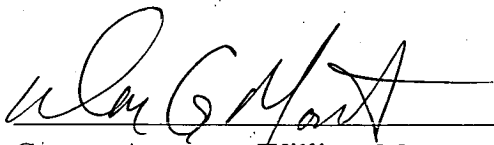
IN WITNESS WHEREOF, the parties hereto have executed this Declaration of Trust as of the date hereof.

MARICOPA COUNTY, STATE OF ARIZONA

By 
Chairman, Board of Supervisors

ATTEST:



Clerk of the Board 12/014


County Attorney, William Montgomery

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SELF-INSURED RISK TRUST FUND BOARD OF TRUSTEES

Joel Sterrett




Chairman of the Board of Trustees

Steven Beeghley



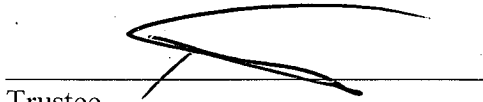
Trustee

Les Clark



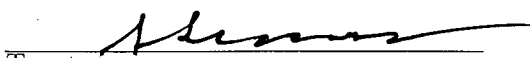
Trustee

Tom Katsenes



Trustee

Shelby Scharbach



Trustee

LEGAL COUNSEL DETERMINATION

Counsel has reviewed this Declaration of Trust and has determined that it is in proper form and is within the powers, authority, and discretion granted to the County and/or the Board of Supervisors under the laws of the State of Arizona.

DATED this 12th day of December 2014


Deputy County Attorney

December

1871

John C. Smith

SCHEDULE A
Public Liability Settlement and Recovery Authority

[NOTE: For purposes of this Schedule A, a "claim" means the demand or demands for compensation made by an individual person or other legal entity which (a) arise(s) from a single incident or related set of circumstances, and (b) is/are compensable under the provisions of this Trust. The provisions of A.R.S. §12-612 notwithstanding, each statutory beneficiary in a wrongful death action shall be considered as having an individual "claim" for compensation for damages.)

a. Risk Manager: (1) Any claims covered by this Declaration of Trust up to and including \$100,000.00; (2) any property damage and vehicle physical damage claims up to and including the amount of the deductible of any County-purchased property or vehicle insurance policy in effect when the loss occurs; (3) prosecution, compromise and recovery of all subrogation, restitution, salvage, worker's compensation and related medical lien claims up to and including \$100,000.00; and (4) implementation and enforcement of loss of use policy for recovery of vehicle-related losses from third parties up to and including \$100,000.00.

b. Board of Trustees: Any claims covered by this Declaration of Trust in excess of \$100,000.00 and up to and including \$200,000.00.

c. Board of Supervisors: Any claims covered by this Declaration of Trust in excess of \$200,000.00.