

**HAMILTON WENHAM REGIONAL SCHOOL DISTRICT  
OTHER POST-EMPLOYMENT BENEFITS LIABILITY TRUST FUND**

**DECLARATION OF TRUST**

**WITNESSETH**

**WHEREAS**, the Hamilton Wenham Regional School District (“HWRSD”) has duly adopted M.G.L. c.32B, §20, by a vote of the HWRSD School Committee on Wednesday, January 12, 2021, and has authorized the creation of a Health and Welfare Trust Fund which shall be known as the “Hamilton Wenham Regional School District Other Post-Employment Benefits Liability Trust Fund”;

**WHEREAS**, consistent with the provisions of GASB Statements 74 and 75, the funds which will be contributed to the Trust Fund, as and when received by the Trust Fund, and earnings and losses thereon shall constitute a trust fund which shall be irrevocable and shall be held for the benefit of Eligible Retirees in accordance with the HWRSD’s retiree health plan;

**WHEREAS**, consistent with the provisions of GASB 74 and GASB 75, the Trust Fund assets shall be legally protected from creditors of the HWRSD; and

**WHEREAS**, it is intended that this Trust Fund shall meet the requirements of Section 115 of the Internal Revenue Code of 1986, as amended;

**NOW, THEREFORE**, there is hereby established the following:

**ARTICLE I**  
**ESTABLISHMENT AND PURPOSE OF THE TRUST FUND**

1. There is established a “Trust Fund” to be known as the Hamilton Wenham Regional School District Other Post-Employment Benefits Liability Trust Fund.”

2. The purpose of this Trust Fund is to collect, hold, manage, preserve assets, properly appropriated by the HWRSD, to meet the current and future liabilities of the HWRSD for the group health insurance benefits for retirees and their dependents all in accordance with the requirements of M.G.L. c. 32B, § 20, as amended by Chapter 218 of the Acts of 2016 (“M.G.L. c. 32B, § 20”). In no event may any individual receive any benefit from this Trust Fund, unless such individual is specifically authorized by the HWRSD to be an “Eligible Retiree”.

3. "Eligible Retiree" under this Agreement is defined in Article VIII, Section 3.

ARTICLE II  
DESIGNATION OF TRUSTEE

1. The Trust Fund shall be administered by a Trustee who shall be the HWRSD's Treasurer.

2. A Successor Trustee, upon appointment or election as the HWRSD Treasurer, shall become vested with all the property, writings, powers, duties and immunities of a Trustee hereunder, and notice of the appointment of the Successor Trustee shall be given to any bank or banks used as a depository for the Trust Fund, as well as to any other institution or person holding any of the property and assets of the Trust Fund.

3. When an individual serving as Trustee no longer serves as the HWRSD's Treasurer such individual shall simultaneously be considered to have resigned his/her position as Trustee which shall fully discharge the individual from all further duty or responsibility hereunder.

4. Upon leaving office, a Trustee shall promptly and without unreasonable delay, deliver to the Trust Fund's principal office any and all records, documents, or other documents in his/her possession or under his control belonging to the Trust.

ARTICLE III  
ADMINISTRATION OF TRUST FUND

1. The Trustee shall keep records of account, and record of all the Trustee's transactions as Trustee. All such records of account and records of transactions shall be subject to inspection and audit as required by municipal finance laws, rules and regulations.

2. The Trustee shall provide reports to the HWRSD School Committee on at least a yearly basis and as otherwise requested by the School Committee regarding the status and investments of the Trust Fund and any actions taken with regard to the assets of the Trust Fund.

ARTICLE IV  
POWERS AND DUTIES OF THE TRUSTEE

1. In operating and administering the Trust Fund, the Trustee shall have the power and/or duty:

- a. To establish the policies and rules pursuant to which the Trust Fund is to be operated and administered which shall be consistent with M.G.L. c.32B, §20, as it may be amended from time to time.
- b. To make, adopt, or repeal rules and regulations not inconsistent with the terms of this Declaration of Trust, as amended, if the Trustee may deem it necessary or desirable for the conduct of their business and the government of themselves, their officers, agents and other representatives
- c. To pay or provide for the payment of all reasonable and necessary expenses of administering the affairs of the Trust Fund, including but without limitation to the matters herein set forth, all expenses which may be incurred in connection with the establishment of the Trust Fund, the employment of such administrative, investment, legal, accounting, expert, consultative, and clerical assistance, the purchase or leasing of such premises and the purchase for lease of such materials, supplies and equipment as the Trustee, in his/her discretion, finds necessary or appropriate in the performance of his/her duties; provided, however, that the Trustee shall not be required to incur any of the foregoing expenses unless monies are available in the Trust Fund for such purpose.
- d. To authorize, transfer and/or expand the corpus and related interest of the Trust in accordance with the requirements of M.G.L. c. 32B, § 20, including but not limited to the requirement in that section of a two thirds majority vote of the School Committee to use Trust Fund assets to pay the HWRSD's share of health insurance premiums for retirees and their dependents.
- e. To invest and reinvest any monies in the Trust Fund as the Trustee sees fit in his/her sole discretion, as long as such investments are made in accordance with applicable law, including but not limited to the Prudent Investor Rule pursuant to M.G.L. c. 203C or M.G.L. c. 32A, §§ 24 and 24A.
- f. To act in a fiduciary capacity, discharging his/her duties for the primary purpose of enhancing the value of the Trust Fund, acting with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person

acting in a like capacity and familiar with such matters would use in the conduct of an enterprise with like character and with like aims, and diversifying the investments in the Trust Fund to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

- g. To hold sums uninvested, without liability on the Trustee to pay any interest thereon, as part of the Trust Fund, in such amounts and for such periods of time as the Trustee in his/her sole discretion deems desirable.
- h. To purchase as a general administrative expense of the Trust so-called director's liability insurance and other insurance for the benefit of the Trust and/or the protection of the Trustee, Trust officers, employees, or agents against any losses by reason of errors or omissions or breach of fiduciary duty or negligence.
- i. To purchase fidelity bonds covering the Trustee, the Custodian, and any other fiduciary to the Trust Fund to protect the Trust Fund against losses by reason of theft by fiduciaries.
- j. To verify the occurrence of statements and information submitted on contribution forms, claim forms and other forms.
- k. To keep true and accurate books and account and records of all the transactions of the Trust Fund and to have an audit made of the Trust Fund, its books, accounts, by a certified public accountant, annually or when necessary, in the opinion of the Trustee.
- l. To issue such financial statements as the Trustee may deem proper, and to determine when and how frequently such statements shall be issued and the method for the distribution thereof.
- m. To construe the provisions of this Declaration of Trust and terms used herein, and any construction adopted by the Trustee in good faith shall be binding upon the Employer, the Union and all other persons who may be involved or affected.
- n. To delegate any of their ministerial powers and duties, including but not limited to the investment and reinvestment of any monies in the Trust Fund, to any agent or employee engaged by the Trustee.
- o. To perform and do any and all acts, whether or not expressly authorized herein, which the Trustee may deem expedient for the protection of the property held

hereunder and for the administration of the Trust Fund, although the power to do such acts is not specifically set forth within.

- p. To withdraw monies from the Trust Fund account(s) by checks and to allow designation and authorization of an employee to sign checks or make wire or electronic payments upon such specific bank accounts as the Trustee may designate or establish.

#### ARTICLE V

#### LIABILITY OF TRUSTEE, INDEMNIFICATION OF TRUSTEE, TRUSTEE'S REIMBURSEMENT FOR EXPENSES, NOTICE TO OTHER PERSONS REGARDING THEIR DEALING WITH TRUSTEE

1. The Trustee shall incur no liability in acting in good faith upon any instrument, application, notice, request, signed letter, telegram or other paper or document believed by the Trustee to be genuine and to contain a true statement of facts and believed to have been made, executed and delivered by the parties purporting to have made, executed, or delivered same.

2. So long as the Trustee commit no acts of willful misconduct, bad faith, or gross negligence, the Trustee shall not be held personally answerable or personally liable for (1) any liabilities or debts contracted by the Trustee as Trustee, or for the non-fulfillment of contracts, or (2) for any error or judgment or for any loss arising out of any act or omission in the execution of the trust or (3) for the acts or omissions, whether or not performed of the Trustee, or at the request of the Trustee, of any other Trustee or any employee, agent, advisor, or attorney elected or appointed by or working for the Trustee.

3. The Trustee shall not be liable for the application of any part of the Trust Fund or for any other liability arising in connection with the administration or operation of the Trust Fund, except as provided herein.

4. The Trustee shall be protected from personal civil liability to the extent provided for in M.G.L. c. 32B, § 20(f) and M.G.L. c.258, and shall be indemnified by the HWRSB against any civil claim, action, award, compromise, settlement or judgment by reason of an intentional tort to the full extent and condition allowed by these statutes.

5. The Trust Fund shall pay as a general expense of administration, the costs and expenses including legal fees, for any action, suit or proceeding related to the Trust Fund brought against the Trustee; provided, however, that the Trust Fund shall not pay costs or

expenses if it is adjudged in the action, suit or proceeding that the Trustee were guilty of breach of fiduciary duty, gross negligence, willful misconduct, or bad faith.

6. The Trustee may rely upon, and shall be protected for any action taken upon the advice, opinion, records, reports or recommendation of legal counsel or certified public accountant selected by the Trustee with reasonable care, in connection with any matter pertaining to the administration or application of the Trust Fund. No successor Trustee shall be responsible for any acts or defaults of any other Trustee, or for any losses or expenses resulting from or occasioned by anything done or neglected to be done in the administration of the Trust Fund prior to his/her becoming a Trustee, nor be required to inquire into or take any notice of the prior administration of the Trust Fund.

7. The Trustee may seek protection by any act or proceeding that the Trustee may deem necessary in order to settle his/her accounts; the Trustee may obtain a judicial determination or declaratory judgment as to any question of construction of the Agreement and Declaration of Trust or as to any act thereunder. The cost and expenses of any action, suit, or proceeding brought by the Trustee, which costs and expenses shall include counsel fees, shall be paid from the Trust Fund.

8. A Trustee may require any other parties to this Agreement, to execute a release after an audit of the Trust Fund by a certified public account discloses that all affairs are in proper order, thus entitling the Trustee to a release in favor of the Trustee, his/her heirs, executors, administrators and assigns.

9. The Trustee shall not be bound by any notice, declaration, regulations, advise or request unless and until it shall have been received by the Trustee at the principal place of the business of the Trust Fund.

10. The individual Trustee shall receive no compensation as such for their services hereunder. However, the Trustee may authorize that the Trustee shall be reimbursed from the Trust Fund for all reasonable and necessary expenses incurred on behalf of the Trust Fund or in connection with their duties hereunder.

ARTICLE VI  
CUSTODY OF TRUST FUNDS

1. HWRSD's Treasurer shall serve as Custodian of the Trust Fund. All funds in the Trust Fund shall be accounted for separately from all other funds of the HWRSD.

2. The Custodian, with the authorization of the Trustee, shall establish one or more checking accounts, which may be interest bearing or non-interest bearing accounts. Such checking account or accounts shall be funded solely from the Trust Funds, and the Trustee may authorize the Custodian to draw on such checking accounts for the payment of OPEB, in accordance with the requirements of M.G.L. c. 32B, § 20, and for the payment administrative expenses of the Trust Fund.

ARTICLE VII  
AMENDMENTS; TERMINATION OF TRUST FUND

1. This Declaration of Trust may be amended by the Trustee, with notice to the HWRSD School Committee, in writing at any time, effective as of any date. No amendment shall be adopted which alters the Trust Fund as then constituted or any part thereof, to a purpose or use other than those authorized herein; conflicts with any applicable law or government regulation; increases the burdens or obligations of the HWRSD; conflicts in any way with any term or provision of any agreement which authorizes the creation of the Trust Fund between the parties or affect the tax exempt status of the Trust Fund.

2. This Trust Fund shall terminate at the discretion of the Trustee, with the approval of the HWRSD's School Committee, by a written execution by the Trustee. In no event, however, shall this Trust extend beyond the date when the corpus of the Trust Fund is exhausted.

ARTICLE VIII  
GENERAL

1. Title to the Trust Fund shall be vested in and remain exclusively in the Trustee and no Employer, Union, Retiree, or any dependent shall have any right, title or interest in the Trust Fund nor any right to contributions to be made thereto, nor any claim against any party on account thereof, except only as provided from time to time by this Trust Agreement. No contributions to be made hereunder shall be deemed wages due to Eligible Retirees.

2. The Trust Fund shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge by any person other than the Trustee and his/her duly authorized representatives, and by such Trustee or representatives, only to the extent and for the purposes as herein specifically provided, or as otherwise specifically authorized.

3. The Trust Fund shall be held and maintained for the exclusive benefit of the otherwise eligible retirees. Eligible Retirees are those who are properly enrolled in a Retirees' Health Insurance Plan or other OPEB benefit offered by the HWRSD, and who qualify as eligible under eligibility rules and guidelines adopted by the HWRSD.

4. The Trustee is authorized to execute any notice, certificate or other instrument in writing and all persons, partnerships, corporations or associations may rely thereupon that the execution of any such notice or instrument has been duly authorized and is binding on the Trust Fund and the Trustee.

5. The provisions of this Declaration of Trust shall be liberally construed in order to promote and effectuate the establishment and operation of the Trust Fund herein mentioned. The Trustee shall have the power to interpret, apply and construe the provision of this Declaration of Trust and Trust Fund, and any construction, interpretation and application adopted by the Trustee in good faith shall be binding upon the HWRSD and all other persons who may be involved or affected.

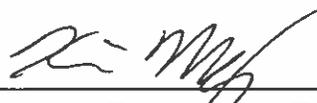
6. In the event that any provision of the Declaration of Trust shall be held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining provision of the Declaration of Trust; the provision of provisions held illegal or invalid shall be fully severable, and the Declaration of Trust shall be construed and enforced as if said illegal or invalid provisions had never been inserted hereto.

7. This Declaration of Trust is created and accepted in the Commonwealth of Massachusetts. All questions pertaining to its validity, construction, and administration shall be determined in accordance with the laws of the Commonwealth of Massachusetts. Further, venue for any action arising out this Declaration of Trust will lie exclusively in the state and federal courts of the Commonwealth of Massachusetts.

8. This Declaration of Trust and any amendments hereto may be executed in one or more counterparts. The signature of a party on any counterpart shall be sufficient evidence of

his/her execution hereof. Each counterpart shall be deemed an original, but all of which shall constitute one and the same Agreement.

IN WITNESS WHEREOF, The undersigned does hereby set her hand and seal this 17<sup>th</sup> day of February, 2022.

  
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Kevin Merz, as Treasurer and Trustee