



410 South Commercial Street • Neenah, WI 54956 • Tel: (920) 751-6800 • Fax: (920) 751-6809

Memo To: Board of Education

Dr. Mary Pfeiffer, District Administrator

From: Paul Hauffe, Director of Business Services *PH*

Vicky Holt, Asst. District Administrator – Human Resources/Central Services *vh*

Date: September 12, 2013

RE: Resolution Authorizing the Restatement of the Wisconsin OPEB Trust

In May 2010, the Neenah Joint School District Board of Education authorized the adoption of the Wisconsin OPEB Trust (the “Trust”) for the purposes of providing an account to hold assets that would fund all or a portion of the District’s post-employment benefit obligations. At the time, the Trust was comprised of several business partners – CESA 6 (consultative services), Graystone Consulting (investment advisor), and Associated Trust N.A. (trustee).

At their meeting on August 13, Finance and Personnel Committee members were updated on a pending organizational change within the Wisconsin OPEB Trust. After soliciting bid requests, it was determined that Associated Trust N.A. would no longer serve in the capacity of trustee. Effective November 1, 2013, BMO Harris Bank N.A. will serve as the trustee for the Wisconsin OPEB Trust. Many of the benefits of selecting BMO to serve as trustee will occur on the administrative side. Among them are: 1. easier to read trust statements, 2. reduction in fees (from 1.05% to 0.73%), and 3. an electronic link between BMO, Graystone, and the District (more immediate communication, processing, and transparency).

As a result of this change, the District’s existing Trust agreement will need to be revised. Officially, the Board of Education will need to adopt a resolution approving the restatement of the Trust.

All changes associated with the restated Trust agreement are entirely related to the change of the trustee from Associated Trust N.A. to BMO Harris Bank.

Attached is a copy of the resolution that the Board will consider, the updated Trust agreement, and one page identifying specific changes to the trust language and the rationale behind the change. If you have any questions please contact us.

WISCONSIN OPEB TRUST

Agreement

THIS TRUST AGREEMENT is made as of September 17, 2013 by and between the Neenah Joint School District (the "District") and BMO Harris Bank N.A., as trustee (the "Trustee").

RECITALS

Each Participating District and the Trustee acknowledge the following:

A. The District is a political subdivision of the State of Wisconsin (the "State") and is exempt from federal income taxation under the United States Constitution and Section 115 of the Internal Revenue Code of 1986, as amended (the "Code"). The Trust performs an essential governmental function and is an integral part of the District and the State; the Trust is designated to be exempt from federal income taxation under the United States Constitution and Section 115 of the Code. This trust is not intended to serve as a trust described in Code Section 457(g) or an organization described in Code Section 501(a). Nor is it intended to serve as a custodial account described in Code Section 401(f) or 403(b)(7).

B. The District maintains one or more post-retirement welfare benefit plans, and may in the future establish new or additional post-retirement welfare benefit plans (collectively the "Plans"), which provide health and other benefits to its eligible retired employees and their dependents.

C. The District wishes to adopt this Trust Agreement to fund benefits under the Plan in accordance with requirements applicable to other post-employment benefits (OPEB).

D. The District desires Trustee to serve as Trustee of the Trust, and Trustee is willing to do so pursuant to the terms of this Trust Agreement.

AGREEMENTS

In consideration of the Recitals and the mutual agreements which follow, the District and the Trustee agree as follows:

1. **Definitions; Construction.**

(a) **Definitions.** The following words and phrases shall have the meanings stated below, unless otherwise expressly provided:

(i) ***“Account”*** means the segregated account maintained for each Participating District to record contributions to the Trust made by each Participating District and disbursements made by the Trust for the Participating District.

(ii) ***“Administrator”*** means the District. The District may contract with a third party to fulfill some or all of the responsibilities and obligations of the District under the Trust Agreement between the Trustee and the District.

(iii) ***“Code”*** means the Internal Revenue Code of 1986, as amended, and any successor thereto.

(iv) ***“Dependent”*** means an individual who is designated as a dependent under the terms of the Plans and is eligible for benefits under the Plans.

(v) ***“Investment Manager”*** means a third party appointed to give investment directions with respect the Trust assets.

(vi) ***“Participating District”*** means any Wisconsin Public School District, Wisconsin Technical College, Wisconsin County, City or Village that has entered into a similar agreement that would allow the Trustee to hold assets to fund that district's OPEB liabilities. The District is a Participating District for purposes of this Trust Agreement.

(vii) ***“Participant”*** means an employee or former employee of the District who is or may become eligible for benefits as provided under the Plans.

(viii) ***“Trust”*** means the trust established by this Trust Agreement.

(b) Construction.

(i) ***Governing Law.*** This Trust Agreement and the Trust shall be governed by and construed in accordance with the laws of the State of Wisconsin.

(ii) ***Gender and Number.*** Words used in the masculine gender shall include the feminine gender, and words used in the singular shall include the plural where appropriate.

(iii) ***Severability.*** If any part of this Trust Agreement shall be determined to be illegal or unenforceable for any reason, such determination shall not affect the remaining provisions of the Trust Agreement. The remaining provisions shall be interpreted to effectuate the purpose of this Trust Agreement and of the Trust.

(iv) **Headings.** The Headings and subheadings of this Trust Agreement have been inserted for convenience of reference and are to be ignored in any construction of this Trust Agreement.

2. Establishment and Acceptance of Trust.

(a) **Establishment; Name; Purpose.** The Trust is established as of the date of this Trust Agreement. The name of the Trust shall be the "Wisconsin OPEB Trust." The purpose of the Trust is to provide a source of funds for the payment of the District's obligations under the Plans for the benefit of Participants and their Dependents.

(b) **Acceptance of Trust.** The Trustee accepts the Trust created by this Trust Agreement and agrees to perform its duties, responsibilities and obligations under this Trust Agreement. All contributions or other payments made by the District or any other person or entity to the Trust, together with the earnings thereon, shall be held, managed and administered in trust pursuant to the terms of this Trust Agreement. In the event of any conflict between the terms of this Trust Agreement and the documents governing the plans, this Agreement shall control, and nothing in the documents governing the Plans shall materially add to the duties or responsibilities of the Trustee.

(c) **Irrevocable.** The Trust established by this Trust Agreement is irrevocable and no assets of the Trust may be turned over to the District except (i) to reimburse the District for the payment of benefits under the Plans, (ii) to reimburse the Participating Districts for costs and expenses of administering the Trust and (iii) upon the termination of the Trust Agreement as provided in section 8(c) below.

(d) **Sub-Trust.** To the extent that the Trustee commingles the assets of this Trust with one or more other trust(s), the provisions set forth in sections 2(a)-(c) above shall continue to apply to the assets of this Trust.

3. Contributions.

(a) **District Contributions.** The District shall contribute funds to the Trust and its Account at such times and in such amounts as determined by the District in its sole discretion. The Trustee shall not be responsible for the calculation or collection of contributions by the District. The Trustee shall be responsible only for the property received pursuant to this Trust Agreement.

(b) **Other Contributions.** Unless otherwise directed by the District, the Trustee shall accept any contribution of cash or investment securities made by a third party to the Trust.

(c) **Trust Assets.** Contributions and investment earnings shall, if commingled with assets from other Participating Districts, be maintained in a segregated Account for each

Participating District. Trust assets shall be invested and reinvested by the Trustee pursuant to section 4 below. The Trust assets shall be held solely for the purpose of providing funds for the payment of the District's obligations under the Plans. The Trustee shall hold, invest, reinvest and administer all amounts in each Account without distinction between principal and income. The Trustee shall hold title to the Trust assets in the Trustee's name or as otherwise directed by the District.

(d) **Anti-Assignment.** No assets maintained under this Trust shall be subject to transfer, assignment or alienation, whether voluntary or involuntary, in favor of any creditor, transferee or assignee of the District, the Trustee, Investment Manager, Administrator or any Participant or Dependent. The Account of each Participating District shall be the sole property of that Participating District and of no other Participating District or any other individual or entity.

(e) **Appointment of Custodian.** Morgan Stanley Wealth Management is appointed as Custodian of the Trust assets.

4. Investments.

(a) **Appointment of Investment Manager.** Graystone Consulting is appointed to serve as Investment Manager to supervise and direct the investment and reinvestment of the Trust assets in accordance with the provisions of this Trust Agreement.

(b) **Trustee Actions.** The Trustee shall not have any discretion or authority with respect to the investment of the Trust assets and shall act solely as a directed Trustee of the assets to which it holds title. The Trustee has the following powers, rights and duties which shall be exercised in a nondiscretionary manner:

(i) To follow the directions of the Investment Manager as to the investment of Trust assets.

(ii) To register stocks, bonds, securities or other investments in its name as Trustee or in the name of a nominee, or to take and keep such investments unregistered; to exercise any voting rights, conversion privileges and subscription rights; to make, execute, acknowledge and deliver transfer documents; and, in general, to exercise any of the powers of an owner with respect to investment securities or other property held as part of the Trust assets.

(iii) To endorse, in its own name or in the name of the Trust, any negotiable instruments payable to the Trust or to the Trustee.

(iv) At the direction of the Investment Manager, to sell, write options on, convey or transfer, invest and reinvest contributions and earnings in each and every

kind of property, whether real, personal or mixed, tangible or intangible, whether income or non-income producing and wherever situated.

(v) To employ such agents and legal counsel as it deems advisable in connection with its duties and to pay such agents and legal counsel a reasonable fee. Provided the Trustee has used reasonable care in selecting its agents and legal counsel, the Trustee shall not be liable for the acts done in good faith and in reliance upon the advice of such agents and legal counsel.

(c) **Title to Assets.** Notwithstanding anything within this Trust Agreement to the contrary, the Trustee shall hold Trust assets as titleholder only.

5. Disbursement of Account Assets.

(a) **Benefits.** The assets of the Account shall, at the direction of the District or the Administrator, if any, be disbursed to provide the benefits described in the Plans including, without limitation, reimbursing the District for the payment of benefits under the Plans and reimbursing the Participants or Dependents for benefits under the Plans initially paid for by such Participant or Dependent. Such disbursement direction shall be in writing and shall specify the amount to be disbursed and the recipient thereof. The Trustee shall cause the directed disbursement to be made promptly after receipt of such disbursement direction.

(b) **Expenses.** The District, Administrator, Trustee, Investment Manager or other service providers may be reimbursed for expenses reasonably incurred by them in the administration of the Account. All such expense, including reasonable fees of accountants and legal counsel, shall constitute a charge against and shall be paid from the Account of the District upon the direction of the District. Any taxes of any kind levied or assessed upon the assets or income of the Account shall be paid by the Trustee from the assets of the Account.

6. Administration of the Account.

(a) **General.** The administration of the Account, including the filing of all reports and tax returns, if any, shall be the responsibility of the Administrator. The Trustee shall follow the directions of the Administrator and provide such information and assistance as may reasonably be requested by the Administrator.

(b) **Valuation of Assets.** The Administrator and the Investment Manager, will be responsible for valuing all Account assets.

(c) **Recordkeeping.** The Trustee is not required to maintain records of the investments, receipts, disbursements and other transactions of the Account, except as necessary to perform its title-holding function under this Trust Agreement. All such records of the Account shall be maintained by the Administrator.

7. Trustee Liability; Indemnification.

(a) **Liability of Trustee.** The Trustee shall not incur any liability for any act or failure to act unless such act or failure to act is due to its own negligence, willful misconduct or lack of good faith. The Trustee may rely upon any direction from the District, the Administrator, the Investment Manager or any agent of any of the foregoing.

(b) **Indemnification of Trustee.** The District indemnifies and holds the Trustee harmless from any and all actions, claims, demands, liabilities, losses or damages in connection with or arising out of: (i) Any action taken or omission of the Trustee in accordance with the directions of the District, the Administrator, the Investment Manager or their agents; (ii) any disbursement of any part of the Trust directed by the District and (iii) any act or omission of, or provision inaccurate information by, a predecessor Trustee, or any other person charged under any agreement affecting the Plan or the Trust. However, the District shall have no responsibility to indemnify the Trustee if the Trustee negligently, intentionally or recklessly fails to perform any of its duties required by the provisions of this Trust Agreement.

(c) **Indemnification of the District.** The Trustee shall indemnify and hold harmless the District from any and all actions, claims, demands, liabilities, losses, damages and reasonable expenses of whatsoever kind and nature in connection with or arising out of: (i) the Trustee's failure to follow the directions of the District, the Administrator, the Investment Manager or such parties' agents; (ii) any disbursements made without the direction of the District; and (iii) Trustee's negligence, willful misconduct or recklessness with respect to the Trustee's duties under this Trust Agreement.

8. Amendment and Termination.

(a) **Amendment.** This Trust Agreement may be amended at any time for any reason, by an instrument in writing approved by the governing body of the District, executed by the duly authorized officers of the District and the Trustee. The Trustee may amend this Trust Agreement for administrative or technical changes that do not materially alter the rights and obligations of the District following 30 days written notice to the District.

(b) **Termination.** This Trust Agreement and the Account created hereby for the District shall terminate at such time as all liabilities of the District under the Plans have been satisfied or in the event of a transfer of all Account assets to another trust or entity maintained by the District whose assets are exempt from federal taxation under section 115 of the Code as specified by the District. From the date of termination of the Trust until the final disbursement of Account assets the Trustee shall continue to have the powers and duties provided for in this Trust Agreement which are necessary for the

orderly liquidation and distribution of Trust property. The District shall cease to be a Participating District when the segregated Account for the District is fully distributed upon termination.

(c) **Reversion on Termination.** Upon termination of this Trust Agreement, all Account assets shall be paid to a trust or entity whose income is exempt from federal income taxation under section 115 of the Code, as specified by the District.

9. Successor Trustee.

(a) **Dismissal.** Following written approval by District, the Trustee may be dismissed at any time by giving a 30-day written notice to the Trustee.

(b) **Resignation.** The Trustee may resign at any time by giving a 30-day written notice to the District.

(c) **Successor Trustee.** In the event of the removal or resignation of the Trustee, the District shall appoint a successor Trustee that shall succeed to all rights, duties and responsibilities of the former Trustee under this Trust Agreement. The terminated Trustee shall be discharged of all duties under this Trust Agreement and responsibilities for the Trust as of the date that the successor Trustee undertakes its duties with respect to the Plans and the Trust.

10. Miscellaneous.

(a) **Bonding.** The Trustee shall not be required to provide any bond in the exercise of its powers under this Trust Agreement.

(b) **Audit.** The District shall, at all reasonable times during the term of this Trust Agreement and for three years after the termination of this Trust Agreement, have the right to examine, audit, inspect, review, extract information from and copy all books, records, accounts and other documents of the Trustee relating to this Trust Agreement and the Trustee's performance of its duties.

(c) **Limitation.** This Trust Agreement does not give any Participant, Dependent or any other person any legal right against the Trustee, the Administrator, the District, the Investment Manager or any Participating District, except as expressly provided in this Trust Agreement.

(d) **Counterparts.** This Trust Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and such counterparts shall constitute one and the same instrument

IN WITNESS WHEREOF, the parties have executed this Trust Agreement effective as of the date first written above.

Dated this 17th day of September, 2013.

Neenah Joint School District

By _____
Scott W. Thompson
Its: School Board President

Attest:

Jeff Spoehr
Its School Board Clerk

BMO HARRIS BANK N.A.

By _____

Its _____

By _____

Its _____

**RESOLUTION AUTHORIZING THE ADOPTION OF THE
WISCONSIN OPEB TRUST**

WHEREAS, the Neenah Joint School District (the "District") provides for the welfare of its eligible employees, former employees and their dependents by maintaining one or more post-employment welfare benefits plans including, without limitation, plans to provide health care benefits (collectively, the "Plans");

WHEREAS, such post-employment benefits provided by the District represent compensation resulting from contractual agreements between the District and its eligible employees and former employees for services rendered to the District;

WHEREAS, the District's obligation to provide such post-employment benefits and its liability with respect to the cost of funding such benefits accrues and has accrued during the period of employment of such eligible employees and former employees;

WHEREAS, in guidance it has provided, the Wisconsin Department of Public Instruction (the "Department") has acknowledged that it is fiscally appropriate to have the cost of funding such post-employment benefits recognized and provided for as such benefits accrue;

WHEREAS, the District has created a segregated, irrevocable trust fund (the "Trust") pursuant to a trust agreement (the "Trust Agreement") and Wisconsin law in order to establish a trust which will hold assets to fund all or a portion of the District's accrued liability with respect to the cost of funding such post-employment benefits;

WHEREAS, the Wisconsin Uniform Financial Accounting Requirements ("WUFAR") for school districts provide for a separate accounting fund, the "Employee Benefit Trust Fund (Fund 73)" for reporting resources set aside and held in trust to pay such post-employment benefits;

WHEREAS, the District intends for the Trust to qualify as a Fund 73 employee benefits trust fund within the meaning of WUFAR and in compliance with applicable requirements promulgated by the Department;

WHEREAS, the Trust is separate and independent from any other segregated account of the District which may hold or be used to account for assets used to pay post-employment benefits or fund accrued liability associated with such benefits and under no circumstances may any assets in any such other account be commingled with assets of the Trust;

NOW, THEREFORE, BE IT RESOLVED by the School Board of the District that:

1. Approval of Restatement of Trust and Trust Agreement. The restatement of the Wisconsin OPEB Trust (the "Trust") is hereby approved. Effective as of November 1, 2013, the restated Trust shall be adopted by the Trust Agreement in the form of Exhibit A attached hereto and incorporated herein by reference. The Trust Agreement is hereby approved. The District Administrator and the Director of Business Services are hereby authorized and directed to execute the Trust Agreement on behalf of the District. Terms that are defined in the Trust Agreement shall have the same meaning in this adoption resolution.

2. Appointment of Trustee. Effective as of November 1, 2013, Associated Trust N.A. shall be removed as the trustee of the Trust and BMO Harris Bank N.A. shall be appointed as the trustee (the "Trustee") under the Trust Agreement.

3. Appointment of Investment Manager. Graystone Consulting shall continue to serve as the Investment Manager of the Trust.

4. Provisions of Plans to Govern. The terms of the Plans shall govern the ultimate payment and disbursement of the funds accumulated in the Trust. Payments shall be made from the Trust only to provide benefits provided in the Plans in accordance with the terms of the Plans. Funds held in the Trust may not be used for any purpose other than to (a) pay operating and administrative expenses of the Trust, (b) make investments permitted under applicable Wisconsin law, (c) pay benefits in accordance with the terms of the Plans and (d) make a distribution to a trust or entity whose income is exempt from federal income taxation under section 115 of the Internal Revenue Code of 1986, as amended, as specified by the District upon the termination of the Trust Agreement as provided in Section 8(c) of the Trust Agreement. No assets of the Trust may revert to the District.

5. Opinion of Counsel. As required by the Department, the District shall obtain from legal counsel to the District an opinion in substantially the form attached hereto as Exhibit B (the "Opinion").

6. Required Documentation to be provided to the Department. As required by the Department, the Director of Business Services is hereby authorized and directed to provide or cause to be provided to the Department executed copies of the following documents as soon as the same are available:

(a) the Valuation Report;

(b) this Resolution;

(c) the minutes (or excerpts of minutes) from the meeting at which this Resolution is adopted;

(d) the Trust Agreement,

(e) the Opinion; and

(f) such other documents and instruments as the Department may request.

7. Required Notice to Eligible Employees and Former Employees. As required by the Department, the Director of Business Services is hereby directed to provide, or cause to be provided, a notice to District employees and former employees that are eligible to receive benefits to be paid indirectly through the Trust that such employees and former employees may obtain a copy of the Trust Agreement upon request.

8. Filing and Reporting Requirements. The District has determined and hereby declares that the Trust has met applicable filing and reporting requirements, if any, required by the Internal Revenue Service or other regulatory agencies in connection with the establishment of the Trust, and covenants that the Trust will meet any applicable filing and reporting requirements which may be required to keep it in good standing going forward.

9. Further Authorizations. The officers, employees and agents of the District are hereby authorized and directed to do any and all things reasonably necessary to accomplish the purposes of this Resolution.

10. Conflicting Actions Rescinded; Severability; Effective Date. All prior resolutions, rules or other actions of the District or any parts thereof in conflict with the provisions hereof shall be, and the same are, hereby rescinded insofar as the same conflict. In the event that any one or more provisions hereof shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions hereof. The foregoing shall take effect immediately upon adoption and approval in the manner provided by law.

Adopted and recorded this 17th day of September, 2013.

ATTEST: _____,

Board President

_____, Board Clerk

Wisconsin OPEB Trust Agreement – Detailed List of Changes

Page 1:

THIS TRUST AGREEMENT is made as of _____, 2013 by and between the _____ School District (the "District") and BMO Harris Bank N.A., as trustee (the "Trustee").

Summary: BMO Harris Bank N.A. is now listed as trustee of this agreement

Page 4, Section 2:

(b) Acceptance of Trust. The Trustee accepts the Trust created by this Trust Agreement and agrees to perform its duties, responsibilities and obligations under this Trust Agreement. All contributions or other payments made by the District or any other person or entity to the Trust, together with the earnings thereon, shall be held, managed and administered in trust pursuant to the terms of this Trust Agreement. In the event of any conflict between the terms of this Trust Agreement and the documents governing the plans, this Agreement shall control, and nothing in the documents governing the Plans shall materially add to the duties or responsibilities of the Trustee.

Summary: Added “*In the event of...or responsibilities of the Trustee.*” The School District and Trustee have agreed to the terms set forth in this Trust Agreement. In the event that the School District has other plan documents or policies not included in this Trust Agreement, the duties and responsibilities of the Trustee are governed by the Trust Agreement.

Page 5, Section 3:

(e) Appointment of Custodian. [NAME OF SUB-CUSTODIAN] is appointed as Custodian of the Trust assets.

Summary: The company Citigroup Global Markets, Inc. has been updated to their new formal entity : [insert]

Page 6, Section 7:

(b) Indemnification of Trustee. ...and (iii) any act or omission of, or provision of inaccurate information by, a predecessor Trustee, or any other person charged under any agreement affecting the Plan or the Trust.

Summary: Provides that the Trustee does not have control over the prior Trustee or other accountable parties as charged by the trust.

WI OPEB Resolution – Detailed List of Changes

Page 1:

WHEREAS, ~~it is necessary and desirable that the District has created a...~~

Summary: The Trust is already in existence by the School District, and the Resolution is simply to approve restating the trust, remove Associated Trust as trustee and appoint BMO Harris Bank as successor trustee.

WHEREAS, the Trust ~~shall be~~ is separate and independent from... and under no circumstances shall may any assets in any such other...

Summary: The Trust is already in existence by the School District, and statements have been updated to refer to the present.

Page 2:

1. Approval of ~~Creation~~ Restatement of Trust and Trust Agreement. The ~~adoption~~ restatement of the Wisconsin OPEB Trust (the "Trust") is hereby approved. Effective as of _____, 2013, the restated Trust shall be adopted by the Trust Agreement in the form of Exhibit A attached hereto and incorporated...

Summary: The Trust is already in existence by the School District, and this provision is to approve the restatement effective when executed.

2. Appointment of Trustee. Effective as of _____, 2013, Associated Trust N.A. shall be removed as the trustee of the Trust and BMO Harris Bank N.A. shall ~~serve~~ be appointed as the trustee (the "Trustee") under the Trust Agreement.

Summary: Resolves that Associated Trust N.A. is being removed as Trustee and that BMO Harris Bank N.A. is being appointed as Trustee.

3. Appointment of Investment Manager. Graystone Consulting shall continue to serve as the Investment Manager of the Trust.

Summary: Graystone Consulting is currently investment manager and this wording confirms that they will continue to serve in the same capacity.