Board of Supervisors Memorandum

May 14, 2013

Pima County Healthcare Benefits Trust Board

Background

In response to concerns raised at the Board of Supervisors March 5, 2103 meeting regarding the Pima County Medical Trust Board, staff has researched the makeup of other trust boards throughout Arizona. These trust boards all have representation by an employee of the county or city; however, none of the documents designate a particular employee as a permanent trustee. Several jurisdictions indicate that one of the trustees will be a member of the governing body, the Board of Supervisors or the City Council of the respective jurisdiction, in addition to an employee of the jurisdiction.

Currently, in Pima County, the Risk Management Trust Fund document states that no more than one trustee may be an employee of the County. This is similar to Maricopa County. It should be noted that the Pima County Finance Director has been continuously designated as the County Employee Trustee. The Maricopa County Benefits Administrator is designated as the Employee Trustee for the Maricopa's Trust Board.

Recommendation

I recommend changing the current Pima Medical Benefits Trust language to be consistent with the Risk Management Trust Fund document as follows:

> 3.1 Number and Identity. There will be five Trustees. The County Administrator will recommend the Trustees for approval by the Board of Supervisors. No more than one Trustee may be a member of the Board of Supervisors or an employee of the County.
>
> 3.4 Term. Trustees will serve a three-year term, unless terminated as described in this Article, and except that the terms for the first four nonemployee Trustees will be as follows: one Trustee to serve an initial term of one year, two Trustees to serve an initial term of two years, and one Trustee to serve an initial term of three years. The Board will determine which of the first four Trustees will serve the one-year, two-year and three-year terms. Trustees may serve no more than two consecutive terms.

Additionally, I recommend the Human Resources Director be designated as the County Employee Trustee for the initial three-year term of the Trust.

Respectfully submitted,

C.H. Huckelberry
County Administrator

CHH/mjk – May 2, 2013

Attachment

c: Jan Lesher, Deputy County Administrator for Medical and Health Services
Robin Brigode, Clerk of the Board of Supervisors
Allyn Bulzomi, Director, Human Resources
Tom Burke, Director, Finance and Risk Management

PIMA COUNTY HEALTH CARE BENEFITS TRUST

RECITALS

A. Pima County, Arizona ("Pima") currently provides certain health and other benefits for certain of its employees, former employees through COBRA (Consolidated Omnibus Budget Reconciliation Act), elected officials, and their beneficiaries.

B. Arizona law authorizes Pima to establish a self-insurance program. Pima currently self-insures against liability, and has established a self-insurance trust for that purpose, the purpose and administration of which is governed by Chapter 3.04 of the Pima County Code.

C. Pima now intends to establish a program of self-insurance for the management and administration of health benefits.

D. Arizona law requires that the funding for such self-insurance program be deposited in a trust and the Pima County Board of Supervisors intends the trust established by this document (this "Trust Declaration") to satisfy the requirements of Section 11-981 of the Arizona Statutes with respect to such trust.

The Board of Supervisors of Pima County hereby declares as follows:

1. DEFINITIONS

1.1. "Beneficiary" means Participant or a person designated by a Participant who is or may become entitled to a benefit under the Plan.

1.2. "Board" means the Pima County Board of Supervisors

1.3. "Code" means the Pima County Code.

1.4. "Employee" means an individual that Pima classifies and treats as an employee (not as an independent contractor) for payroll purposes.

1.5. "Fund" means the assets of the Trust, in whatever form or location.

1.5.1. "Participant" means an Employee, former Employee, or Pima elected official who is eligible to participate and is participating in the Plan.

1.6. "Pima" or "County" means the County of Pima, Arizona.

1.7. "Plan" means the arrangement pursuant to which Pima provides self-insured medical benefits to Participants and Beneficiaries.

1.8. "Plan Administrator" means the Human Resources Director of the County (the "HR Director"), who has been directed by the Board to administer claims and services under the Plan. The Plan Administrator may act in reasonable reliance on the actions of one or more third-party administrator(s) under contract with the County to provide plan administration services.

1.9. "Plan Year" means the fiscal year of the Plan.

1.10. "Trust" means the trust established pursuant to the Trust Declaration.

1.11. "Trustees" means the Trustees described in this Trust Declaration.

2. ESTABLISHMENT OF TRUST

2.1. **Establishment.** Pima hereby establishes the Trust, consisting of such monies as Pima may deposit from time to time in the Fund, and in such accounts as are used to hold and invest the monies of the Fund; plus all other money or property that lawfully becomes a part of the Trust; plus all the earnings, income, gains, appreciation and all other increments of any nature from the foregoing; and less payments made pursuant to this Trust Declaration.

2.2. **Name.** The Trust will be known as the Pima County Health Care Benefits Trust; it will be kept separate from the loss trust fund established by Section 3.04.050 of the Pima County Code.

2.3. **Purpose.** The Fund will be held, invested, reinvested, and administered solely in the interest of Participants and Beneficiaries and for the purpose of providing benefits to the Participants and their Beneficiaries and defraying the reasonable expenses of administering the Plan and the Trust.

3. ORGANIZATION AND OPERATION OF TRUSTEES

3.1. Number and Identity. There will be five Trustees. The County Administrator will recommend Trustees for approval by the Board of Supervisors. No more than one Trustee may be a member of the Board of Supervisors, or an employee of the County.

3.2. Bonding. All Trustees will be bonded in an amount to be approved by the County Administrator. This requirement may be satisfied by a blanket performance bond or other coverage provided by Pima.

3.3. Officers. At the commencement of each Plan Year, the Trustees will elect a Chairperson, Vice-Chair and a Secretary from among themselves. The Chairperson will preside over the work of the Trustees pursuant to this Trust Declaration. The Vice-Chair will preside in the Chairperson's absence. The Secretary will maintain accurate records of all actions of the Trustees, including minutes of all Trustees' meetings. In the initial year of the Trust the HR Director will serve as the Chairperson.

3.4. Term. Trustees will serve a three-year term, unless terminated as described in this Article, and except that the terms for the first four non-employee Trustees will be as follows: one Trustee to serve an initial term of one year, two Trustees to serve an initial term of two years and one Trustees to serve an initial term of three years. The Board will determine which of the first four Trustees will serve the one-year, two-year and three-year terms. Trustees may serve no more than two consecutive terms.

3.5. Termination. The term of any Trustee will automatically terminate upon the earliest of the following; death; resignation; removal; or, for a Trustee who is an employee of Pima, the termination of such employment. Upon the effective date of the end of such Trustee's term, the Trustee will be discharged from any further duty or responsibility under the Trust, and must

return any and all property in his or her possession or control that belongs to the Plan or Trust. The Board will appoint a successor to fill the vacancy for the unexpired portion of the term.

3.6. Resignation or Removal of a Trustee. A Trustee may resign or be removed by the Board of Supervisors. The resignation or removal will take effect on its stated effective date unless a new Trustee is appointed and accepts appointment prior to the stated effective date, in which case the resignation or removal will be effective on the new Trustee's date of acceptance.

3.7. Meetings. The Trustees will meet no less than four times per Plan Year. In calling, providing notice of, and holding meetings, the Trustees will conform to applicable law, including the Arizona Open Meeting Law.

3.8. Quorum. A majority of appointed Trustees constitutes a quorum.

3.9. Voting. Each Trustee will have one vote. All actions by and decisions of the Trustees will be by the affirmative vote of a majority of the number of Trustees attending a duly called meeting of the Trustees at which a quorum is present.

3.10. Exculpation of Trustees. No Trustee will be individually liable for any action or omission in the conduct of his duties with respect to the Trust, unless such action or omission is due to the Trustee's own gross negligence, criminal conduct, willful misconduct, or lack of good faith.

3.11. Indemnification of Trustees. Any person who is or has served as a Trustee will be indemnified (by the County's loss trust) against all damages, liabilities and expenses incurred by or imposed on him in connection with any claim, suit, action or proceeding concerning the Trust or his acts or omissions as a Trustee, including, without limitation, legal fees and amounts paid in any compromise or settlement, unless such acts or omissions constitute gross negligence, criminal conduct, willful misconduct or lack of good faith.

3.12. Compensation of Individual Trustees. An individual Trustee, other than the County employee member, will be paid $1,500 per year (paid from the County general fund) for participation as a Trustee.

3.13. Conflicts of Interest. No Trustee may have a direct or indirect financial interest in the actual or proposed award of any business, service or product administered or overseen by the Trust, including without limitation the Plan and the administration of the Plan. No Trustee, or member of any Trustee's immediate biological, adoptive or step-family (spouse, parent, sibling, child, grandchild, grandparent, aunt, uncle, first cousin or in-law) may receive any financial benefit, award or contract for products or services overseen or provided by or through the Trust, unless such interest is disclosed. A Trustee may request an opinion from the Pima County Attorney regarding whether he/she or any other Trustee has a conflict under this paragraph. The written opinion of the County Attorney in response to such an inquiry, which will be delivered to all the Trustees and to the Clerk of the Board, is binding.

4. MANAGEMENT OF THE TRUST

4.1. Trustees. The Trustees will provide general oversight of the Trust and serve in an advisory capacity to the Board of Supervisors. The Trustees will cooperate with County staff and

officials who provide the day-to-day management and administration of the Fund, and with any third-party administrators under contract with the County. The Trustees will submit an annual report to the Board through the County Administrator regarding the Fund, including its current status and value, operating results, claims experience and activity, investment income, and trends in benefit use. The Trustees will make recommendations as they deem appropriate regarding the management of the Fund, including such things levels of risk retention and transfer (reinsurance); funding levels; investment of the Fund; and reserve requirements and amounts. The Trustees do not have authority or responsibility to prosecute or defend actions, claims, or proceedings necessary or advisable for the protection of the Trust.

4.2. Risk Management Consultant or Insurance Administrator. The County Administrator will designate a risk management consultant or insurance administrator licensed pursuant to Title 20, Chapter 2 of the Arizona Statutes, and the Board will verify such licensure.

4.3. Auditor. The Board will engage an external auditor to perform an annual audit of the Trust. Each audit report will be kept on file for five years with the Clerk of the Board.

4.4. Stop-Loss. The Board will procure appropriate aggregate stop-loss and specific stop-loss reinsurance for benefits funded by the Trust from an insurer authorized to do business in Arizona.

4.5. Day-to-Day Management. The Fund will be administered on a day-to-day basis by the County's Director of Finance and Risk Management, the Plan Administrator, and the County Treasurer, who will submit reports as appropriate to the Trustees and the Board. The Fund will be held and invested by the County Treasurer pursuant to applicable law and County policies, separate from other County funds.

4.6. Plan Administration. The Plan will be administered by the Plan Administrator; the Trustees do not have the authority to engage third parties to provide services for the Plan, nor do they have authority or responsibility for the following, which will be done by the Board or the Plan Administrator as appropriate:

4.6.1. Designing, adopting, amending or terminating the Plan;

4.6.2. Ensuring that the Plan complies with state or federal laws mandating the terms of the Plan;

4.6.3. Selecting or engaging service providers for the Plan;

4.6.4. Determining what portion of Plan premiums should be paid by Participants or the County; or

4.6.5. Collecting premiums from Participants.

5. CONTRIBUTIONS TO AND DISTRIBUTIONS FROM THE TRUST

5.1. Contributions

5.1.1. ***Premiums.*** The Board will approve the total premium that will be required to participate in the Plan at each coverage level (e.g., individual coverage, family coverage). In determining total premiums, the Plan Administrator will consult with the Trustees, the insurance administrator engaged to assist the Trust, and the actuary familiar with the Trust and the Plan. In determining the total premiums, the Plan Administrator will consider all reasonable factors, including but not limited to the amount of reserves in the Trust, the claims experience of the Plan and Trust, market conditions, and cost trends. The Plan Administrator, in conjunction with the Trustees, will determine the total premiums no less frequently than annually, and make recommendations to the Board for approval

5.1.2. ***Payment by Participants.*** The Board will approve what portion of the premium should be paid by Participants and what portion by the County, and the Board will cause the County to collect premiums from Participants and deposit those premiums, and the amounts being contributed by the County, in the appropriate Trust Fund accounts. In the event that a Participant or Beneficiary fails to pay the appropriate portion of his or her premium, the Board will ensure that the total premium is nevertheless paid to the Trust.

5.1.3. ***Other Funding.*** The Trust may also receive additional funding, including but not limited to any one or more of the following: interest, dividends, rebates, gifts, grants, recovery from insurers, subrogation, or reimbursement.

5.2. Distributions. Distributions from the Trust may be made for any of the following:

5.2.1. ***Benefits***. Paying for or providing benefits to Beneficiaries, in accordance with the terms, provisions and conditions of the Plan, as determined and directed by the Plan Administrator. The Trustees have no obligation or authority to evaluate whether the Plan Administrator's directions are correct.

5.2.2. ***Expenses***. Paying all reasonable expenses of operating, administering or managing the Plan or Trust, including but not limited to:

5.2.2.1. Where third parties are engaged to provide services to the Plan or Trust, compensating such third parties.

5.2.2.2. Where Pima employees render services to the Trust or Plan, compensating Pima for such services.

5.2.2.3. Where taxes or assessments are levied or imposed upon the Trust or the Plan, paying such taxes or assessments.

5.2.3. ***Return of Mistaken Contributions***. A contribution made by Pima as the result of a mistake may be returned to Pima, *provided that* the repayment is not prohibited by applicable law

5.2.4. ***Upon Termination***. Upon termination of the Trust, after all obligations of the Trust and Plan have been satisfied, any remaining Funds will revert and be distributed to Pima's general fund.

6. AMENDMENT AND TERMINATION

6.1. Amendment of Trust. This Trust Declaration may be amended in writing at any time by the Board. The Trustees may recommend amendments to the Board. Notwithstanding the foregoing, no amendment may be adopted that alters the basic purpose of the Trust, causes the Trust to lose its tax-exempt status, conflicts with any applicable law or government regulation, or retroactively deprives anyone of a vested right or interest.

6.2. Termination of Trust. The Trust will continue until terminated by the Board in writing.

6.3. Amendment and Termination of Plan. Nothing in this Trust Declaration limits Pima's ability to amend or terminate the Plan.

7. GENERAL PROVISIONS

7.1. No Right, Title or Interest. No Employee, Participant, or Beneficiary has any right, title or interest in the Trust except as provided from time to time by this Trust Declaration or the Plan, and then only to the extent of the benefits payable to such person under the Plan.

7.2. Non-alienation of Benefits. The Trust will not be subject to any manner of anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution or levy of any kind, either voluntary or involuntary, including any such liability for alimony or other payments for the support of a spouse, former spouse or any relative. Any attempt to anticipate, alienate, settle, transfer, assign, pledge, encumber, charge or otherwise dispose of the same is void. The Trust will not in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to benefits under the Plan.

7.3. Incompetency. In the event it is determined that any person entitled to receive benefits is unable to care for his or her affairs because of mental or physical incapacity, the benefits due such person may be paid to his or her legal guardian or conservator, or to any relative by blood or by marriage to be used and applied for the benefit of such person. Payment to such legal representative or relative of the person on whose account benefits are payable will operate to discharge Pima and the Trustees from any liability to such person or to anyone representing him or her (or his or her interest), without any duty or obligation to see that the funds are used or applied for the benefit of such person.

7.4. Notice and Delivery of Documents. Any notice required to be given under this Trust Declaration may be given in person or by first-class mail. When notice is given by mail, it will be deemed to have been given as of the date of posting to the last-known address of the addressee available from the Trust records.

7.5. Construction. This Trust Declaration is created and accepted in the State of Arizona. All questions pertaining to its validity or construction not otherwise preempted by federal law will be determined in accordance with the laws of the State of Arizona. If any provision contained in this Trust Declaration is held unlawful, that provision will be of no force and effect and this Trust Declaration will be treated as if such provision was not been contained therein.

IN WITNESS HEREOF, Pima County hereby establishes the Pima County Healthcare Benefits Trust.

DATED this ___ day of _____, 2013.

PIMA COUNTY, ARIZONA
A Political Subdivision of the State of Arizona

_____
Ramón Valadez, Chairman of the Board of Supervisors

ATTEST:

_____
Robin Brigode, Clerk of the Board

APPROVED AT TO FORM:

_____
Deputy Pima County Attorney