
**OPEB TRUST AGREEMENT
(IRREVOCABLE TRUST)**

by and between

**INDEPENDENT SCHOOL DISTRICT NO. 877
(BUFFALO-HANOVER-MONTROSE)
BUFFALO, MINNESOTA**

and

BREMER TRUST, NATIONAL ASSOCIATION

dated as of September 28, 2009

This Instrument Drafted By
Knutson, Flynn & Deans, P.A.
1155 Centre Pointe Drive, Suite 10
Mendota Heights, MN 55120

This **TRUST AGREEMENT** is entered into as of the ____ day of June, 2009, by and between INDEPENDENT SCHOOL DISTRICT NO. 877 (Buffalo-Hanover-Montrose), Buffalo, Minnesota (the “School District”) and BREMER TRUST, NATIONAL ASSOCIATION (the “Trustee”).

WHEREAS, the Governmental Accounting Standards Board has issued GASB 43 and GASB 45, which set forth standards on accounting and reporting for Postemployment Benefits (other than pensions) by governmental entities; and

WHEREAS, these new standards require or will require political subdivisions of the State of Minnesota to report such Postemployment Benefits on an actuarial basis during an employee’s career rather than on a pay-as-you-go basis during retirement; and

WHEREAS, the Minnesota Legislature in 2008 enacted Minnesota Statutes, Section 471.6175 which authorized a Minnesota political subdivision or public entity that creates or has created an actuarial liability to pay Postemployment Benefits to Employees or Officers after their termination of service to establish a trust to pay those benefits and to begin financing those Postemployment Benefits in advance; and

WHEREAS, the School District wishes to establish **an irrevocable** trust (hereinafter the “Trust”) for the purpose of funding its OPEB Obligations as required to be reported under GASB 45; and

WHEREAS, this Trust is established by The School District with the intention that it qualify as a tax-exempt trust performing an essential governmental function within the meaning of Section 115 of the Code and the Regulations issued thereunder and as a trust for Postemployment Benefits under Minnesota Statutes Section 471.6175; and

WHEREAS, it is further intended that this Trust constitute a qualified trust or equivalent arrangement within the meaning of GASB 43, and that amounts contributed to the Trust be treated as OPEB contributions in relation to the School District’s Annual Required Contribution (“ARC”); and

WHEREAS, the School District has appointed the Trustee as the Trust Administrator of the Trust, and the Trustee has accepted such appointment pursuant to the terms and conditions set forth in this Trust Agreement;

NOW THEREFORE, for good and valuable consideration, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS; INTERPRETATION

1.1 Definitions.

For purposes of this Trust Agreement, the terms defined in the Recitals section of this Trust Agreement and capitalized herein and the terms set forth below shall have the meanings ascribed to them.

“Assets” shall mean all contributions and transfers of assets received into the Trust on behalf of the School District, together with the income and earnings from such contributions and transfers and any increments accruing to them, net of any investment losses, benefits, expenses or other costs.

“Authorized Officer” shall mean, when used with respect to the School District, the Superintendent of the School District, the Chief Financial Officer, or any other person who is designated in writing as an Authorized Officer for purposes of this Trust Agreement.

“Beneficiary” shall mean the Spouse, Dependents, or the person or persons designated by a Participant pursuant to the terms of a Postemployment Benefits Plan to receive any benefits payable under the Plan.

“Code” shall mean the Internal Revenue Code of 1986, as amended from time to time. All references to sections of the Code shall include relevant regulations and proposed regulations thereunder and any applicable successor provisions to such sections, regulations or proposed regulations, including regulations proposed after the date hereof with a retroactive date including the date of this Trust Agreement.

“Dependent” means an individual who is a person described in Section 152(a) of the Code.

“Effective Date” shall mean the date the Trust is established as set forth above and herein.

“Employee” shall mean an individual who performs services for the School District, and who has been designated as eligible to participate in and receive benefits under a Postemployment Benefits Plan sponsored by the School District in accordance with that Plan.

“GASB” shall mean the Governmental Accounting Standards Board.

“GASB 43” shall mean Statement Number 43 issued by GASB establishing standards for financial reporting of assets that will be used to finance the payment of Postemployment Benefits as they come due.

“GASB 45” shall mean Statement Number 45 issued by GASB requiring public agencies to report OPEB Obligations on their balance sheets.

“GASB 45 Investment Policy” shall mean the written investment policy for the Trust which may be adopted by the School District and delivered to the Trustee.

“Officer” shall mean an officer of the School District who has been designated as eligible to participate in and receive benefits under a Postemployment Benefits Plan sponsored by the School District in accordance with that Plan.

“OPEB” or **“Other Postemployment Benefits”** or **“Postemployment Benefits”** shall mean non-pension benefits that give rise to a liability under GASB 45 and that are paid to Employees or Officers or their Beneficiaries after their termination of service. Depending on the Plan, such benefits may include, but shall not be limited to, medical, dental, vision, hearing, Medicare Part B or Part D premiums, life insurance, long-term care, long-term disability and other similar benefits, provided to retirees, other than pension benefits.

“OPEB Obligation” shall mean the School District’s obligation to provide Postemployment Benefits to **“Eligible”** Employees or Officers as specified in the School District’s written employee benefit plan, an applicable collective bargaining agreement, a contract, or a personnel policy, as the same may be amended from time to time.

“Participant” shall mean an Officer or Employee of the School District or his or her Beneficiary who has become and remains a participant in a Postemployment Benefits Plan sponsored by the School District in accordance with that Plan.

“Plan” or **“Postemployment Benefits Plan”** shall mean the School District’s plan document documenting its OPEB Obligation and specifying how it will fulfill that obligation. It is intended that the Trust be used to finance and pay benefits under the Plan, but the Trust shall not modify the terms of the Plan, or expand or create any right or privilege to Postemployment Benefits under the Plan.

“Plan Administrator” shall mean the persons or entity responsible for the administration of the Plan. In the absence of the appointment of a Plan Administrator, the Chief Financial Officer of the School District shall be the Plan Administrator.

“School District” shall mean the Independent School District and political subdivision of the State of Minnesota specified above and herein, or any successor to its functions.

“School District’s Agent” shall mean an individual or entity appointed by the School District to act in such matters as are specified in the appointment. The School District’s Agent may include any investment advisor appointed by the School District to manage the investment of all or any specified portion of the Assets of the Trust.

“Trustee” or “Trust Administrator” shall mean the trustee specified above and herein. For purposes of this agreement and Minnesota law, the term “Trust Administrator” may be used interchangeably with the term “Trustee” The term includes the trustee originally named hereunder and its successor or successors in trust, where the context requires.

“Trust Year” shall be the twelve (12) month period beginning on July 1 of each year and ending on June 30.

1.2. Conditions Precedent Satisfied.

All acts, conditions and things required by law to exist, happen and be performed precedent to and in connection with the execution and entering into of this Trust Agreement have happened and have been performed in regular and due time, form and manner as required by law and the parties hereto are now duly empowered to execute and enter into this Trust Agreement.

ARTICLE II

THE TRUST

2.1 Purpose

The fundamental purpose of this Trust is to fund Postemployment Benefits (other than pension benefits) accrued by Employees and Officers of the School District, to be paid as they come due in accordance with the arrangements between the School District, the Participants and their Beneficiaries, as specified in the School District’s Plan.

2.2 Trustee Accounting

The Trustee shall be responsible only for maintaining records and maintaining accounts for the Assets of the Trust. The responsibility for Plan-level accounting for the Trust shall be that of the School District.

2.3 No Diversion of Assets

The Assets in the Trust shall be held in trust for the exclusive purpose of providing OPEB to eligible retirees and Dependents and defraying the reasonable trustee, administrative, legal, actuarial and other expenses of the Trust. The Assets in the Trust shall not be used for or diverted to any other purpose, except as expressly provided herein, in Minnesota Statutes, Section 471.6175, Subdivision 7(b), and in the Plan, prior to the satisfaction or defeasance of all OPEB liabilities.

2.4 Type and Nature of Trust

The Trust shall be irrevocable, and no amount shall revert to the School District until all OPEB owed to former Officers or Employees of the School District under the Plan has been satisfied or otherwise defeased.

Nothing in this agreement requires the School District to make contributions to the Trust to fund OPEB, and Postemployment Benefits under the Plan may be partially funded or financed on a pay-as-you-go basis. Nor shall this agreement constitute a pledge of the School District's full faith and credit or taxing power for the purpose of paying OPEB, and no retiree or beneficiary may compel the exercise of any taxing power by the School District. The obligation of the School District to pay or fund benefits, if any, shall be determined in accordance with the Plan and applicable law. Distributions of Assets under the Trust are not debts of the School District within the meaning of any constitutional or statutory limitation or restriction.

ARTICLE III

ADMINISTRATIVE MATTERS

3.1 Certification to Trustee

The School Board of the School District, or other duly authorized official, shall certify in writing to the Trustee in substantially the form specified in Exhibit A hereto the names of the Plan Administrator and the School District's Agent, if any, and all Authorized Officers authorized to act on behalf of the School District, which names shall be kept accurate by the School District acting through a duly authorized official or its School Board. The Trustee shall have no liability if it believes it is acting upon the direction of a Plan Administrator or School District's Agent or Authorized Officer that has been duly authorized hereunder even if that Plan Administrator or School District's Agent is no longer authorized to act, unless the School District has informed the Trustee of such change in writing.

3.2 Appointment and Acceptance of Trustee

The School District appoints the Trustee to be the trustee of the Trust and Trust Administrator, and represents that all necessary action has been taken for the appointment of the Trustee as such and that this Trust constitutes a legal, valid and binding obligation of the School District. The Trustee accepts its appointment as such and agrees to perform its duties under this Trust Agreement.

3.3 Role of Trustee

The Trustee is responsible for maintaining custody of the Assets held in the trust, for investing those Assets as directed by the School District, the Plan Administrator, or the School District's Agent, and for making distributions to the School District as directed by the Plan Administrator. If the duty to invest the Assets held in Trust is delegated to another party by the

Plan Administrator or is retained by the School District, the Trustee will not in that case be an investment fiduciary of the Trust or have fiduciary responsibility for investments under Section 7.1(b) hereof.

The Trustee will have no duty to take any action unless the School District, the Plan Administrator, or the School District's Agent provides the Trustee with instructions in a form and manner required by the Trustee, except to the extent expressly provided in this Trust.

The Trustee may conclusively rely upon and be protected in acting in good faith upon any written representation or direction from the School District, Plan Administrator, or School District's Agent, or any other notice, request, consent, certificate, or other instrument or paper believed by the Trustee to be genuine and properly executed, or any instrument or paper if the Trustee believes the signature thereon to be genuine. The Trustee may require that any direction be in writing or in an electronic format, and may recognize standing requests, directions, requisitions, or instructions. However, each direction is contingent upon the determination by the Trustee that the direction can be administered by the Trustee.

3.4 Resignation or Removal of Trustee

The Trustee may resign as trustee of the Trust at any time by giving at least ninety (90) days prior written notice to the School District and the Plan Administrator, and the School District may remove the Trustee at any time by giving at least ninety (90) days prior written notice to the Trustee (in either event, a shorter period may be agreed upon by the School District and the Trustee). If the Trustee resigns or is removed, the School District will promptly appoint a successor, and if no successor is appointed within a reasonable period of time after the Trustee resigns or is removed, the Trustee may, after written notice to the School District, apply to a court of competent jurisdiction to appoint a successor. The School District will furnish the Trustee with written notice of the appointment of a successor and written evidence of the acceptance by the successor of such appointment, and the Trustee will cease to be Trustee only upon receipt of such notice and evidence. The School District's appointment of a successor Trustee to the Trust will vest the successor Trustee with title to the Assets of the Trust upon the successor Trustee's acceptance of the appointment. The resigning or removed Trustee will have no duties, responsibilities or liability with respect to the acts or omissions of any successor Trustee.

3.5 The Plan Administrator

The School Board of the School District shall have plenary authority for the administration of the Plan pursuant to Minnesota law and applicable federal laws and regulations. The School District may designate a Plan Administrator by resolution of the School Board. Unless otherwise specified in the instrument the Plan Administrator shall be deemed to have authority to act on behalf of the School District in all matters pertaining to the Trust. Such appointment of a Plan Administrator shall be effective upon receipt by the Trustee and shall be effective until the Trustee is furnished with a resolution of the School District that the appointment has been modified or terminated. If a Plan Administrator is not appointed, or such appointment lapses, the Chief Financial Officer of the School District shall be deemed to be the Plan Administrator.

The Plan Administrator may appoint an advisory committee to meet with and make recommendations to him or her relating to the Plan Administrator's duties under this Agreement or the implementation and administration of the Plan and the Trust.

3.6 School District's Agent

The Plan Administrator, acting on behalf of the School District, may delegate certain authority, powers and duties, including the power to invest and reinvest the Assets or any part thereof, to the School District's Agent to act in those matters specified in the delegation. Any such delegation must be in a writing that names and identifies the School District's Agent, states the effective date of the delegation, specifies the authority and duties delegated, is executed by the Plan Administrator and is acknowledged in writing by the School District's Agent and certified as required in Section 3.1.

3.7 Notice

Effective notice hereunder shall be delivered via US mail or other reliable means of delivery to the following:

SCHOOL DISTRICT:

Independent School District No. 877 (Buffalo-Hanover-Montrose)
214 NE 1st Avenue
Buffalo, MN 55313-1697
Attn: Superintendent

PLAN ADMINISTRATOR:

Independent School District No. 877 (Buffalo-Hanover-Montrose)
214 NE 1st Avenue
Buffalo, MN 55313-1697
Attn: Business Manager

TRUSTEE:

Bremer Trust, National Association
225 South Sixth Street, Suite 200
Minneapolis, MN 55402
Attn: Mary C. Thompson, Trust Officer

ARTICLE IV

THE TRUSTEE

4.1 Powers and Duties of the Trustee

The Trustee shall perform such duties as are specifically set forth in this Trust Agreement, and no implied covenants or obligations shall be read into this Trust Agreement against the Trustee. The specific powers and duties of the Trustee shall be as follows:

(a) Unless another party is appointed as investment advisor pursuant to Section 5.1 hereof, to invest and reinvest the Assets or any part thereof in accordance with Section 5.1 hereof;

(b) To employ the services of other departments or divisions of the Trustee or of any affiliate of the Trustee in connection with the performance of its duties hereunder, including, but not limited to, effecting securities transactions through an affiliated broker and purchasing insurance through an affiliated agency. The School District understands that the Trustee or its affiliate may have an underwriter's stake in such transaction or may charge fees or commissions for services rendered which include a profit and the School District specifically authorizes the Trustee to undertake such transactions on behalf of the Trust and to pay such fees for commissions from the Trust so long as the transactions are on terms and under circumstances comparable to those generally available through nonaffiliated entities.

(c) To invest in any kind of investment trust or any beneficial participation units in any common trust fund maintained and operated by the Trustee acting hereunder;

(d) To invest in mutual funds for which the Trustee or one of its affiliates serves as investment advisor, custodian, recordkeeper or transfer agent;

(e) To retain cash funds uninvested for such reasonable period of time as it shall determine; to deposit cash funds as a general deposit in a special account in the deposit department of the Trustee acting hereunder without liability for interest thereon.

(f) To take all of the following actions: to vote proxies of any stocks, bonds or other securities; to give general or special proxies or powers of attorney with or without power of substitution; to exercise any conversion privileges, subscription rights or other options, and to make any payments incidental thereto; to consent to or otherwise participate in corporate reorganizations or other changes affecting corporate securities and to delegate discretionary powers and to pay any assessments or charges in connection therewith; and generally to exercise any of the powers of an owner with respect to stocks, bonds, securities or other property held in the Trust;

(g) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

The Trustee shall be entitled to rely on, and shall be under no duty to question, information provided by the School District, Plan Administrator or School District's Agent regarding applicable investment restrictions under Minnesota law. The Trustee shall not have any duty to determine or inquire whether investments authorized by the School District, Plan Administrator or School District's Agent are in compliance with the provisions of Minnesota law.

4.2 Additional Trustee Powers

In addition to the other powers enumerated above, the Trustee in any and all events is authorized and empowered:

(a) To employ such agents, experts and counsel as it shall deem advisable, and to delegate discretionary powers to and rely upon such information or advice furnished by such agents, experts or counsel; to receive in its own behalf and to pay such agents, experts or counsel as it may employ for the protection or conservation of the Assets reasonable compensation for services hereunder, and to deduct the same, as well as all other expenses and cost of administration, from the Assets;

(b) To invest funds pending required directions in a designated sweep account as directed by the Plan Administrator or if no designated sweep account, any type of interest-bearing account including without limitation, time certificates of deposit or interest-bearing accounts issued by the Trustee or any affiliate thereof, or any mutual fund or short term investment fund ("Fund"), whether sponsored or advised by the Trustee or any affiliate thereof; the Trustee or its affiliates may be compensated for providing such investment advice and other service to such Fund as disclosed in the Fund's current prospectus, in addition to any Trustee's fees received pursuant to this Trust Agreement;

(c) To cause all or any part of the Trust to be held in the name of the Trustee (which in such instance need not disclose its fiduciary capacity) or, as permitted by law, in the name of any nominee, and to acquire for the Trust any investment in bearer form, but the books and records of the Trust shall at all times show that all such investments are a part of the Trust and the Trustee shall hold evidences of title to all such investments;

(d) To serve as custodian with respect to the Trust Assets;

(e) To execute and deliver this Trust Agreement and all agreements necessary to register securities or to complete sales or deliveries of them and appoint such agents or subagents (including subsidiaries or affiliates as may be necessary and to do all other acts necessary to carry out the general purposes of this Trust Agreement);

(f) To abandon, compromise, contest, arbitrate or settle claims or demands; to prosecute, compromise and defend lawsuits, but without obligation to do so, all at the risk and expense of the Trust;

(g) To exercise and perform any and all of the other powers and duties specified in this Trust Agreement;

(h) To comply with all requirements imposed by applicable provisions of law;

(i) To seek written instructions from the School District, Plan Administrator or the School District's Agent on any matter and await their written instructions without incurring any liability. If at any time the School District, Plan Administrator or School District's Agent should fail to give directions to the Trustee, the Trustee may act in the manner that in its discretion seems advisable under the circumstances for carrying out the purposes of the Trust;

(j) To compensate such executive, consultant, actuarial, accounting, investment, appraisal, administrative, clerical, secretarial, medical, custodial, depository and legal firms, personnel and other employees or assistants as are engaged by the Plan Administrator in connection with the administration of the Plan and, as directed by the Plan Administrator, to pay from the Trust the necessary expenses of such firms, personnel and assistants, to the extent not paid by the Plan Administrator;

(k) To act upon written directions believed by the Trustee to be issued by the School District, Plan Administrator, or the School District's Agent;

(l) To hold uninvested reasonable amounts of cash whenever it is deemed advisable to do so to facilitate disbursements or for other operational reasons, and to deposit the same, with or without interest, in the commercial or savings departments of the Trustee or any affiliate thereof, notwithstanding the Trustee's or its affiliate's receipt of "float" from such uninvested cash; and

(m) To have and to exercise such other additional powers as may be advisable for the effective and economical administration of the Trust.

ARTICLE V

INVESTMENTS

5.1 Trust Investments

(a) Trust investments are limited to investments authorized under Minnesota Statutes Chapter 118A or Section 356A.06, subdivision 7, or as further prescribed by the GASB 45 Investment Policy. The School District, Plan Administrator or School District's Agent shall have responsibility to select investments for the Trust Assets from among one or more permitted investments. The School District or the Plan Administrator may appoint an investment advisor

other than the Trustee to serve as the School District's Agent by executing a written consulting or management agreement with said investment advisor. Unless there is an appointment of another party to act as investment advisor, the investment advisor shall be the Trustee. If a party other than the Trustee is appointed as investment advisor for the Trust, the Trustee shall have no obligation for investment of the Trust Assets.

(b) Unless provided otherwise in a writing appointing an investment advisor other than the Trustee, that investment advisor shall be solely responsible for setting investment objectives for the trust and making all investment decisions consistent with this Trust Agreement. The Trustee shall have no duty to evaluate the competency or skill of that investment advisor, to monitor the activities of that investment advisor, to review the investment decisions made by that investment advisor or to notify the School District or the Plan Administrator regarding any investment action taken pursuant to that investment advisor's direction. The Trustee shall be relieved from all liability when acting pursuant to that investment advisor's direction in accordance with this Section, even if such actions shall constitute a breach of fiduciary duty, absent bad faith or reckless indifference by the Trustee. The appointment of an investment advisor other than the Trustee pursuant to this Section shall remain in effect until the Trustee is notified in writing that the appointment of that investment advisor no longer is in effect. Upon receipt of appropriate notification of such an event, the Trustee shall assume responsibility for the investment of the applicable Assets of the Trust and shall have no responsibility for the previous actions of that investment advisor.

5.2 Trustee Fees and Expenses

The Trustee will be paid reasonable compensation for services rendered or reimbursed for expenses properly and actually incurred in the performance of duties with respect to the Trust. The Trustee shall be entitled to receive its fees and expenses when due directly from the Trust.

5.3 Records

(a) The Trustee shall maintain accurate records and detailed accounts of investments, receipts, disbursements and other transactions hereunder. Such records shall be available at all reasonable times for inspection by the School District and Plan Administrator. The Trustee shall, at the direction of the Plan Administrator, submit to the School District such valuations, reports or other information as the Plan Administrator may reasonably request in writing.

(b) The Assets of the Trust shall be valued at their fair market value on the date of valuation, as determined by the Trustee based upon such sources of information as it may deem reliable; provided, however, that the Plan Administrator shall instruct the Trustee as to valuation of assets which are not readily determinable on an established market. The Trustee may rely conclusively on such valuations provided by the Plan Administrator and shall be indemnified and held harmless by the School District with respect to such reliance. If the Plan Administrator fails to provide such values, the Trustee may take whatever action it deems reasonable to obtain values, including employment of attorneys, appraisers or other professionals, the expense of which will be an expense of administration of the Trust. Transactions in the Trust involving such hard

to value assets may be postponed until appropriate valuations have been received and Trustee shall have no liability therefore.

5.4 Statements

(a) Monthly, and within sixty (60) days after June 30, or the end of the Trust's fiscal year if different, Trustee shall render to the Plan Administrator as directed, a written account showing in reasonable summary the investments, receipts, disbursements, investment and administrative fees and costs for the Trust, and other transactions engaged in by the Trustee during the preceding fiscal year or period with respect to the Trust. Such account shall set forth the assets and liabilities of the Trust valued as of the end of the accounting period. The reporting of the annual rates of return and administrative fees must be presented in a format that will allow the School District to make the disclosures in its annual financial audit in the manner prescribed by the Minnesota State Auditor.

(b) The Plan Administrator may approve such statements either by written notice or by failure to express objections to such statements by written notice delivered to the Trustee within ninety (90) days from the date the statement is delivered to the Plan Administrator. Upon approval, the Trustee shall be released and discharged as to all matters and items set forth in such statement as if such account had been settled and allowed by a decree from a court of competent jurisdiction.

(c) Effective for fiscal years beginning after December 31, 2009, the Trustee shall report electronically to the Minnesota State Auditor the portfolio and performance information specified in Minnesota Statutes Section 356.219, subdivision 3, as amended, in the manner prescribed by the Minnesota State Auditor. A copy of such report shall also be provided to the Plan Administrator and the School District.

5.5 Wire Transfers

The Trustee shall comply with its internal wire transfer policies and procedures. The Plan Administrator assumes the risk of delay of transfer if Trustee is unable to reach the Plan Administrator to confirm or seek direction regarding any wire transfer to or from the Trust.

5.6 Delegation of Duties

If, and to the extent, agreed in writing by the Trustee in a separate agreement, the Plan Administrator may retain the Trustee as its agent to perform any act, keep any records or accounts and make any computations that are required of the Plan Administrator by this Trust Agreement or by the Plan. In this case, statements shall be provided to the School District. The Trustee shall be compensated for any such retention and such retention shall not be deemed to be contrary to this Trust Agreement.

ARTICLE VI

ACCEPTANCE OF CONTRIBUTIONS; DISTRIBUTIONS FROM TRUST

6.1 Contributions

The Plan Administrator shall, on behalf of the School District, make all contributions to the Trustee. Such contributions shall be in cash, unless the Trustee agrees to accept a contribution that is not in cash. All contributions shall be paid to the Trustee for investment and reinvestment pursuant to the terms of this Trust Agreement. The Trustee shall not have any duty to determine or inquire whether any contributions to the Trust made to the Trustee by the Plan Administrator are in compliance with the Plan or applicable state law, nor shall the Trustee have any duty or authority to compute any amount to be paid to the Trustee by the Plan Administrator; nor shall the Trustee be responsible for the collection or adequacy of the contributions to meet the School District's OPEB Obligation, as may be determined under GASB 45. The contributions received by the Trustee from the School District shall be held and administered pursuant to the terms hereof without distinction between income and principal. Participants may be permitted to make contributions to the Trust if provided for under the Plan, and subject to approval of the Plan Administrator.

6.2 Distributions

(a) Upon receipt of instructions from the Plan Administrator, the Trustee shall make payments from the Trust Fund in such manner, amounts and times, for the payment or reimbursement of a) the explicit liability for employee postemployment health premium and other Postemployment Benefit expenses as actually incurred by the School District during each Trust Year, b) the implicit rate subsidy for retiree health benefit premiums as calculated by the actuary employed by the School District for calculating the OPEB liability and c) for the payment of fees and expenses as described herein. For this purpose, OPEB includes (but is not limited to) the difference between (a) claims costs (or age-adjusted premiums approximating claims costs) for Participants under the Plan, and (b) the amounts required to be contributed by the Participants under the Plan. The School District may rely on actuarial valuations prepared in accordance with GASB 43 and GASB 45 to determine the amount of OPEB that may be reimbursed from the Trust Fund.

(b) The Plan Administrator, on behalf of the School District, shall have the responsibility for making benefit payments under the Plans. The Plan Administrator or School District may open a benefit account, including through a commercial checking account in a federally insured banking institution or offered through a joint powers investment trust, and the Trustee shall make transfers of funds to the benefit account at such time and in such amounts as the Plan Administrator may from time to time direct. The owner of the benefit account shall identify those individuals who are authorized to sign manually or by facsimile signature any and all checks, drafts and orders against the benefit account, and the depository bank is authorized to honor any and all checks, drafts

and orders so signed, regardless of by whom or by what the actual or purported facsimile signature or signatures may have been affixed thereto, if such signature or signatures resemble those duly filed. The Plan Administrator shall have full responsibility with respect to all matters relating to the benefit account, including the power to direct stop payment on any check, draft or order, and to reissue and deposit checks. In addition, or in the alternative, the Plan Administrator or the School District may direct the Trustee to reimburse the School District directly for OPEB costs in such amounts as the Plan Administrator or School District may from time to time direct. The Trustee shall have no duty to question the propriety of any direction of the Plan Administrator or the School District to make transfers from the Trust to the benefit account or to the School District, to account for funds retained in or disbursed from the benefit account, or to pay any tax arising by reason of any benefit payment or reimbursement of OPEB costs.

(c) The Trustee shall not be liable for any distribution made by it pursuant to instructions received from the School District or the Plan Administrator on behalf of the School District, and shall be under no duty to make inquiry as to whether any distribution directed by the School District or the Plan Administrator is made pursuant to the provisions of the Plan or any applicable law, or as to the effect of any instruction for tax purposes or otherwise. Likewise, the Trustee need not see to the application of any distribution made to or for the benefit of a former Employee or Officer pursuant to the instructions of the School District.

(d) The Trustee shall neither be responsible for the adequacy of the Trust to discharge any payments and liabilities under the Plan, nor be required to make any distributions under the Plan in excess of the net realizable value of the assets of the Trust allocable to such Plan at the time of the distribution. The Trustee shall not be required to make any distribution in cash unless the Plan Administrator or School District has provided instructions as to the assets to be converted to cash for the purpose of making such distribution.

ARTICLE VII

FIDUCIARY RESPONSIBILITIES

7.1 Fiduciary Discharge of Duties

Except as otherwise provided by applicable law or this Agreement, each fiduciary shall discharge such fiduciary's duties with respect to the Trust Agreement and the Trust:

- (a) for the sole purpose of providing and financing Postemployment Benefits in accordance with the terms of the Plan; and
- (b) with respect to the investments of the Trust, to act in accordance with the Minnesota Prudent Investor Act, Minnesota Statutes, Sections 501B.151 et. seq.

7.2 Limitations on Fiduciary Responsibility

No fiduciary shall be liable with respect to a breach of fiduciary duty by any other fiduciary except as provided by law.

No fiduciary shall be liable for carrying out a direction from another fiduciary which direction the fiduciary in good faith believes to be authorized and appropriate.

No fiduciary shall be liable for refraining from taking an action in the absence of a proper direction from another fiduciary possessing the authority and responsibility to make such a direction.

7.3 Indemnification of Trustee by School District

The Trustee shall not be liable for any claims, demands, loss, costs, expense or liability (hereinafter, "Liability" except as such Liability arises as a result of Trustee's gross negligence or willful misconduct) in connection with this Trust Agreement, including reasonable attorneys' fees and costs incurred by the Trustee.

The School District shall indemnify and hold the Trustee (including its officers, agents, employees and attorneys) harmless from and against any and all Liability arising out of or in connection with this Trust Agreement, including reasonable attorneys' fees and costs incurred by the Trustee, to the extent permitted by law.

This section shall survive the termination of this Trust Agreement.

ARTICLE VIII

AMENDMENT, TERMINATION AND MERGER

8.1 No Obligation to Continue Trust

Continuance of the Trust and continuation of the Plan are not assumed as contractual obligations of the School District. A termination of the School District's obligation to provide Postemployment Benefits pursuant to the Plan shall not, in itself, effect a termination of the Trust.

8.2 Amendments

(a) The Trust Agreement may only be amended or terminated as provided herein. The School District shall have the right to amend this Trust Agreement from time to time, and to similarly amend or cancel any amendments. A copy of all amendments shall be delivered to the Trustee and Plan Administrator promptly as each is made.

(b) Such amendments shall be set forth in an instrument in writing executed by the School District and the Trustee. Any amendment may be current, retroactive or prospective, provided, however, that no amendment shall:

(1) Cause the Assets of the Trust to be used for or diverted any other purposes prior to satisfaction of the unfunded actuarial accrued liability for the School District's OPEB Obligations as determined under the Plan, along with reasonable expenses of administering the Trust;

(2) Vest, modify, improve, expand, or reduce any right to Postemployment Benefits beyond the rights provided in the Plan, except that such changes may be made as may be required to permit this Trust Agreement to meet the requirements of applicable law;

(3) Change or modify the duties, powers or liabilities of the Trustee hereunder without its consent.

(c) The School District may amend the Trust at any time as may be necessary to meet the requirements for tax exemption under Section 115 of the Code, to conform the Trust to the laws of the State of Minnesota, and to meet the standards set forth in GASB 43 and GASB 45 for the OPEB Plan to be treated as funded through a qualifying trust or equivalent arrangement.

8.3 Separate Accounts

The School District may establish a single trust to hold Assets for Postemployment Benefits provided to separate groups of Participants, including obligations that arise under both collectively bargained and non-collectively bargained agreements. The School District may direct the Trustee to establish subtrusts for each separate group of Participants with different benefits, coverage levels, or other rights with respect to the Plan. Although Trust Assets may be pooled for investment purposes, the Assets of each subtrust established hereunder will be separately accounted for.

8.4 Trustee-to-Trustee Transfers

The School District may, in its sole discretion, direct the Trustee to transfer Assets constituting the entire unfunded actuarial accrued liability of the Plan and the normal cost for the valuation year to a separate or successor irrevocable trust that meets the standards under paragraph 4 of GASB Statement No. 43 and qualifies as a trust for Postemployment Benefits under Minnesota Statutes Section 471.6175, as amended.

The School District may also direct the Trustee to transfer Assets constituting the unfunded actuarial accrued liability and normal cost for the valuation year of any separate group of Participants or subtrust.

8.5 Termination of Trust

The Trust will terminate only upon satisfaction or defeasance of the School District's Postemployment benefit liability under the Plan. Any excess Assets remaining after all Postemployment Benefit liability owed to former Officers or Employees of the School District under the Plan has been satisfied or otherwise defeased, and after repayment to the holders of any obligation issued to fund Postemployment Benefits, shall be returned to the School District. Postemployment benefit liability under the Plan shall be deemed to be satisfied or defeased if it is (a) assumed by a health insurance company authorized to do business in Minnesota in exchange for a transfer of some or all of the Assets, (b) assumed by a voluntary employees beneficiaries association under Section 501(c)(9) of the Code that qualifies as an irrevocable trust under Minnesota Statutes, Section 471.6175 in exchange for a transfer of some or all of the Assets, (c) assumed by another plan of the School District or a successor School District in exchange for a transfer of some or all of the Assets to a irrevocable trust under Minnesota Statutes Section 471.6175.

From and after the date of such termination and until final distribution of the Assets the Trustee shall continue to have all the powers provided herein as are necessary or expedient for the orderly liquidation and distribution of such Assets and the Trust shall continue until the Assets have been completely distributed in accordance with the Plan.

Unless expressly agreed to in the Plan, no Participants shall have any rights to excess or surplus Assets held in the Trust or in any subtrust, and no excess Assets shall be applied towards additional or improved benefits. The doctrine of *cy pres* shall not be applied to permit any court to direct the application of excess Assets to any purpose other than reversion to the School District, nor shall any creditor or third party have any right or interest in excess Assets unless and until they revert to the School District as provided hereunder.

8.6 Fund Recovery Based on Mistake of Fact

In the case of a contribution which is made by an School District because of a mistake of fact, that portion of the contribution relating to the mistake of fact (exclusive of any earnings or losses attributable thereto) shall be returned to the School District upon its direction, provided such return occurs within two (2) years after discovery by the School District of the mistake. If any repayment is payable to the School District, then, as a condition precedent to such repayment, the School District shall execute, acknowledge and deliver to the Trustee its written undertaking, in a form satisfactory to the Trustee, to indemnify, defend and hold the Trustee harmless from all claims, actions, demands or liabilities arising in connection with such repayment.

ARTICLE IX

MISCELLANEOUS PROVISIONS

9.1 Nonalienation

Participants and their Beneficiaries do not have an interest in the Trust. The Trust shall not in any way be liable to attachment, garnishment, assignment or other process, or be seized, taken, appropriated or applied by any legal or equitable process, to pay any debt or liability of a Participant, a Beneficiary, or any other party. Trust Assets shall be protected against the claims of creditors of the School District, current or former Officers or Employees of the School District, Participants or their Beneficiaries, the State of Minnesota, or the Trustee.

9.2 Saving Clause

In the event any provision of this Trust Agreement is held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining parts of the Trust Agreement and/or Trust, but this instrument shall be construed and enforced as if said provision had never been included.

9.3 Applicable Law

This Trust Agreement shall be construed, administered and governed under the Code and the laws of the State of Minnesota. Any reference in this Trust Agreement to a statute or regulation shall be considered also to mean and refer to any subsequent amendment or replacement of that statute or regulation. To the extent any of the provisions of this Trust Agreement are inconsistent with the Code or Minnesota law, the provisions of the Code or Minnesota law shall control. In the event, however, that any provision is susceptible to more than one interpretation, such interpretation shall be given thereto as is consistent with the Trust Agreement being a tax-exempt trust under the Code.

9.4 Headings

Headings used in this Trust Agreement are inserted for convenience of reference only and any conflict between such headings and the text shall be resolved in favor of the text.

9.5 Rules of Interpretation

Whenever appropriate, words used herein in the singular may be read in the plural, or words used herein in the plural may be read in the singular; the masculine may include the feminine; and the words “hereof,” “herein” or “hereunder” or other similar compounds of the word “here” shall mean and refer to this entire Trust Agreement and not to any particular paragraph or section of this Trust Agreement unless the context clearly indicates to the contrary.

9.6 Counterparts

This Trust Agreement may be executed in an original and any number of counterparts by the School District and Trustee, each of which shall be deemed to be an original of the one and the same instrument.

[Remainder of this page intentionally left blank]

EXHIBIT A

AUTHORIZED OFFICERS

The following persons are appointed as Authorized Officers for purposes of the OPEB Trust Agreement between the School District and the Trustee:

<u>NAME</u>	<u>TITLE</u>	<u>SAMPLE SIGNATURE</u>
James Bauck	Superintendent	
Charles Klaassen	Chief Financial Officer	
Tina Burkholder	Plan Administrator	

IN WITNESS WHEREOF, I have set my hand this 28th day of September, 2009.

Superintendent