

**RESTATEMENT OF
EVERETT SCHOOL EMPLOYEE
BENEFIT TRUST**

EFFECTIVE AS OF SEPTEMBER 1, 2005

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RESTATEMENT
EVERETT SCHOOL EMPLOYEE
BENEFIT TRUST

THIS AGREEMENT is made and entered into effective as of September 1, 2005, by and among Everett School District ("District"), Everett Education Association ("Association"), and the undersigned who have been appointed by the District and the Association as trustees (collectively referred to as "Trustees").

RECITALS

A. The original Everett School Employee Benefit Trust (the "Trust") document was adopted as of July 1, 1985.

B. On May 19, 1988, the Trust was approved by the Internal Revenue Service as a voluntary employees' beneficiary association ("VEBA") within the meaning of Section 501(c)(9) of the Internal Revenue Code of 1986, as amended (the "Code"), to provide for the payment of certain health, accident, disability, death and other benefits as described in Section 501(c)(9) of the Code.

C. On October 1, 1999, the Trust was approved as an individual self-insurance program under Title 48, Chapter 62 of the Revised Code of Washington ("RCW") by the state risk manager.

D. In order to effect certain changes and comply with applicable law, the District, Association, and Trustees wish to restate the trust document for the Everett School Employee Benefit Trust.

District, Association, and Trustees AGREE as follows:

1. ESTABLISHMENT OF TRUST

1.1 Name and Purpose: The Name of this Trust is the "Everett School Employee Benefit Trust". The purpose of the Trust is to provide payment for the benefits described in Section 1.4 to participating employees and their dependents.

1.2 Federal and State Law Compliance: The Trust is a VEBA trust within the meaning of Section 501(c)(9) of the Code and is intended to qualify for exemption from federal income taxation. The Trust is also an individual self-insurance program under Title 48, Chapter 62 RCW. The Trust shall be interpreted consistent with the intent of Section 501(c)(9) of the Code and Title 48, Chapter 62 RCW and administered for the exclusive benefit of participating employees and their dependents, in a non-discriminatory manner, solely to provide benefits in accordance with the Trust.

- 1.3 Trust Fund: The District delivered or caused to be delivered to the Trustees any assets required for 1984-85 school year pursuant to the collective bargaining agreement between the District and Association. These assets (if any) and contributions hereinafter made by the District and Participants to the Trust, together with the income therefrom, constitute the trust fund ("Fund"). The Trustees shall have exclusive authority and discretion to manage and control the Fund, except as hereinafter provided in Section 3.
- 1.4 Benefits: Any benefits designated by the Trustees may be funded through the Trust, provided the benefits are described in Section 501(c)(9) of the Code.

The Trust provides the following benefits:

- (a) Medical and prescription drug benefits funded by the Trust and administered by a third party administrator selected by the Trustees to administer such benefits. Benefit provisions are contained in the documents identified in Appendix I.
- (b) Medical benefits funded through insurance purchased by the Trust from an entity selected by the Trustees that is licensed or authorized by the State of Washington to transact insurance in the State of Washington. Benefit provisions are contained in the contract or contracts identified in Appendix I.
- (c) Employee assistance benefits funded through insurance purchased by the Trust from an entity selected by the Trustees that is licensed or authorized by the State of Washington to transact insurance in the State of Washington. Benefit provisions are contained in the contract or contracts identified in Appendix I.
- (d) Dental benefits funded through insurance purchased by the Trust from an entity selected by the Trustees that is licensed or authorized to transact insurance in the State of Washington. Benefit provisions are contained in the contract or contracts identified in Appendix I.
- (e) Basic life and accidental death and dismemberment benefits funded through insurance purchased by the Trust from an entity selected by the Trustees that is licensed or authorized by the State of Washington to transact insurance in the State of Washington. Benefit provisions are contained in the policy identified in Appendix I.
- (f) Long term disability benefits funded through insurance purchased by the Trust from an entity selected by the Trustees that is licensed or authorized by the State of Washington to transact insurance in the State of Washington. Benefit provisions are contained in the policy identified in Appendix I.

- (g) Voluntary short-term disability, supplemental life and long-term care benefits funded through insurance purchased by the Trust from an entity selected by the Trustees that is licensed or authorized by the State of Washington to transact insurance in the State of Washington. Benefit provisions are contained in the policy identified in Appendix I.

Trustees may change the benefits described above and revise Appendix I at any time without amendment to the Trust so long as the benefits are described in Section 501(c)(9) of the Code.

1.5 Participation: The individuals entitled to benefits hereunder shall be:

- (a) those employees of the District who are not covered by a collective bargaining agreement and who are employed on a full-time or part-time basis as determined by the District;
- (b) those employees of the District who are designated as eligible employees in the collective bargaining agreement between the District and the Association;
- (c) those employees of the District who are covered by a collective bargaining agreement between the District and a union, other than the Association, which provides for participation in Trust benefits; and

Any union or employee group which shall hereafter become parties to this Trust or receive benefits from same shall accept the terms of this Trust by written instrument, and shall agree to be represented by and be bound by the action of the Trust.

1.6 Administrator: The Administrator of the benefit provided hereunder shall be the Trustees.

1.7 Withdrawal from Trust; Forfeiture of Interest: In the event that any participating employee group, other than the District or Association, elects to terminate its participation in this trust and to withdraw from same, said withdrawing employee group shall forfeit its interest in any contingency reserves, initial deposits, refunds, surpluses, earnings, residual funds, dividends or other assets owned or held by the Trust and said property shall be used for the benefit of the remaining employees participating in the Trust for the purposes of this Trust.

2. CONTRIBUTIONS TO THE FUND

2.1 Time and Amount of Contributions: Contributions to the Fund by the District with respect to participants who are not covered by a collective bargaining agreement shall be made at such times and in such amounts as necessary to provide the benefits described herein. District contributions with respect to an association or union participant shall be determined by the collective bargaining agreement between the District and association or union which covers such participant, and

shall be made at such times as required by the collective bargaining agreement. The Trustees shall determine the amount of Participant contributions, if any, necessary to obtain each benefit. Participant contributions are voluntary.

- 2.2 Accountability of Trustees: The Trustees shall be accountable only for the contributions actually received. The Trustees shall be under no duty to see that the contribution made to the Fund comply with the provisions of the collective bargaining agreement or benefit contracts, and shall not be obligated to collect contributions from participants. The Trustees shall have all the authority necessary to take appropriate action for the purpose of collecting contributions to the Trust, including if necessary, the authority to institute legal proceedings for such purposes.
- 2.3 Return of Contributions: Contributions may be returned to a participant or the District as appropriate if the contribution is made by reason of a mistake of fact (or law if permitted by applicable federal law) and such contribution to the extent of the mistaken amount is returned within one year of its payment.

3. MANAGEMENT OF THE FUND

- 3.1 Investment of the Fund In Cash Equivalents: Such portion of the assets of the Fund as, in the opinion of the Trustees, are required for the payment of benefits shall be deposited in one or more bank accounts with such bank or banks as the Trustees shall designate. The remaining assets of the Fund shall be invested by the Trustees in accordance with section 4 below.
- 3.2 Distribution of Benefits: The Trustees shall distribute benefits under the Plan. The Trustees may delegate this duty to a third party administrator by authorizing such administrator to withdraw and distribute directly from the Trust's bank accounts, the benefits to which participants may be entitled. The Trustees need not see to the application of said distributions and shall not be liable for any payment made by them or a third party administrator in good faith, without actual notice or knowledge of a change in the condition or status of any person affecting his or her right to receive payments hereunder.
- 3.3 Correction of Errors: Any mistake in any direction, certificate, notice, or other document furnished or issued by the Trustees in connection herewith may be corrected when the mistake becomes known and the Trustees may direct any adjustment or action which they deem practicable under the circumstances to remedy the mistake.

4. POWERS AND DUTIES OF TRUSTEES

- 4.1 Investment: The Trustees shall invest and reinvest the portion of the assets of the Fund not designated under section 3.1 to be deposited in a bank account or accounts, and the income and earnings thereon. The Trustees are specifically authorized to invest a portion of the Fund in deposits which bear a reasonable interest rate in a bank or similar financial institution supervised by the United

States or a state, irrespective of whether such bank or similar financial institution is a fiduciary with respect to this Trust Agreement.

The Trustees may appoint an Investment Manager to manage, acquire and dispose of any asset in the Fund, provided that the party designated is either registered as an investment adviser under the Investment Advisers Act of 1940, or is a bank as defined in that Act, or is an insurance company qualified under the laws of more than one state of the United States to perform the duty of managing, acquiring and disposing of such assets. Such Investment Manager shall be required by the Trustees to acknowledge in writing that it is a Fiduciary with respect to this Benefit Trust. Neither the Trustees, District, Association nor any agent of any of them shall be liable for the acts or omissions of such Investment Manager so appointed or be under any obligation to invest or otherwise to manage any other of the assets of the Fund which are subject to the management of the Investment Manager. The Trustees shall have the power to remove and replace any Investment Manager whose performance they deem unsatisfactory.

All investment earnings and other passive income of the Fund shall be set aside as realized solely for the purpose of providing the benefits described herein and for payment of administrative costs of so providing such benefits. No part of the net earnings of the Fund shall inure, other than by payment of benefits, to the benefit of any private shareholder or individual.

4.2 Trustees' Powers: The powers and authority of the Trustees shall be exercised solely in a fiduciary capacity consistent with and in the furtherance of the purpose of this Trust and not otherwise. With respect to the assets of the Trust held hereunder, Trustees shall have the following powers and authority:

- (a) To manage, acquire and dispose of such assets;
- (b) To acquire securities or other property by purchase or subscription;
- (c) To sell, exchange, convey, transfer or otherwise dispose of any securities or other property held by it by private contract or at public auction;
- (d) To collect and reinvest the income of such assets;
- (e) To cause any securities or other property unregistered to be registered in their own name or in the name of one or more of their nominees, and to hold any investment in bearer form, but the books and records of Trustees shall at all times show that all such investments are part of the Fund;
- (f) 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 their powers and duties hereunder;
- (g) To vote any securities held in the Fund;

- (h) To institute any legal action or to appear or participate in any legal action to which they may be made a party, but only on the undertaking of the Fund, or the District and Association to defray all expenses or losses incident thereto;
- (i) To borrow money for purposes of the Trust and to execute and deliver notes, mortgages, pledges or other instruments as may be necessary in connection therewith;
- (j) To do all such acts and exercise all such rights and privileges, although not specifically mentioned herein as Trustees deem necessary to administer the Fund and carry out the purposes of the Trust;
- (k) To delegate and allocate by resolution specific responsibilities, obligations and duties imposed by the Trust to one or more Trustees or to committees composed of any number of Trustees;
- (l) To review, adjust, and settle, in their discretion, any claims brought by or against them as Trustees.

No person dealing with Trustees shall be bound to see to the application of any money, or property paid or delivered to Trustees or to inquire into the validity or propriety of any transaction.

- 4.3 Expenses: Trustees shall be reimbursed from the Fund for expenses reasonably incurred but shall not be entitled to compensation for the performance of their duties as Trustees. All reasonable expenses which are necessary to operate and administer the Fund, including fees paid to persons employed pursuant to section 4.5 shall be paid from Trust assets.
- 4.4 Accounting: The Trustees, within a reasonable period following the close of the Trust Accounting Period and such other times as the Trustees may designate, shall render to the District and Association an account of its administration of the Trust Fund during the preceding Accounting Period or the period elapsed since their last accounting. The records of the Trustees and their designated administrators shall be open to inspection by representatives of the District and Association at all reasonable times.
- 4.5 Employment of Other: The Trustees are authorized to delegate and allocate ministerial duties to others, to engage such persons, counsel and agents, and to obtain such administrative, clerical, medical, legal, audit and actuarial services, as it may deem necessary in carrying out the provisions of the Trust.
- 4.6 Interpretation and Employment of Counsel: The interpretations placed on this agreement and its terms by the Trustees shall, in the absence of fraud, be conclusive, and in case any dispute or doubt arises as to the construction of this instrument or the rights, liabilities, or duties of the Trustees under it, the Trustees may employ counsel, who may not be counsel for the District or Association, and

take advice of such counsel as they may select and shall be fully protected in acting upon and following such advice. The Trustees shall be entitled to be reimbursed from the Fund for the expense so incurred.

- 4.7 Action by the Trustees: The decision or act of a majority of the Trustees upon any matters, whether with or without a meeting shall be controlling; provided, all such Trustees were given the opportunity to vote on such decision or act. The Trustees may by written instrument designate any one or more of them to execute on behalf of the Trustees any document to effectuate their actions and may, by written instruments, revoke or change any such designations. The following shall govern the decision making processes of the Trustees:
- (a) Trustees shall meet as often as necessary to carry out the purpose and objectives of this Trust; provided, there shall be at least one meeting of the Trustees in each calendar year.
 - (b) The Chairperson may schedule meetings with seventy-two (72) hours notice. In cases of emergency, the seventy-two (72) hour notice is not required. Further, any two (2) Trustees may call a meeting of the Trustees at any time by giving at least ten (10) days written notice of the time and place of the meeting to each of the other Trustees. Meetings of the Trustees may also be hold at any time without notice if all of the Trustees consent thereto.
 - (c) Decisions or actions of the Trustees taken at any meeting shall be determined by majority vote of the Trustees present at the meeting, provided that a quorum is present. A quorum shall require four (4) Trustees be present with at least 50 percent of those Trustees present representing District. No proxy voting shall be allowed. In the event of a deadlock among the Trustees, no decision or action shall be taken by the Trustees.
 - (d) The Trustees shall select among themselves a Chairperson and Secretary who shall serve for terms of one fiscal year and until their successors are selected. For the first year of existence of this Trust the Chairperson position shall be filled from the District appointed Trustees and the Secretary position shall be filled from the Association appointed Trustees. For the second and all succeeding years, the position of Chairperson and Secretary shall alternate between the respective Trustee groups. Each Trustee group shall select the individual who will serve in the appropriate capacity from among its own members by majority vote.
- 4.8 Bonding: The Trustees shall be bonded as required by applicable law. The costs of premiums for such bonds shall be paid out of the Fund.
- 4.9 Determination of Rights: The Trustees shall have complete authority to determine, in accordance with the provisions of the Appendices the existence or

nonexistence, nature and amount of the rights and interest of all persons in the Fund and under the Appendices. The Trustees shall have authority to enforce the agreement on behalf of any and all, persons having or claiming any interest in the Fund. In any action or proceeding affecting the Fund the Trustees shall be the only necessary parties, and no employee or former employee of the District or any other person having or claiming to have an interest in the Fund shall be entitled to any notice or process. Any judgment which may be entered in any such action or proceeding shall be binding and conclusive on all persons having or claiming to have any interest in the Fund.

- 4.10 Evidence of District or Association Action: Any action by the District or Association pursuant to any of the provisions of this Trust shall be evidenced by a written instrument executed by the District or Association respectively or by any person or persons authorized from time to time by the District or Association respectively to take such action as its representative or representatives. The Trustees shall be fully protected in taking or omitting any action in accordance with written directions reasonably appearing to conform with the foregoing provision.
- 4.11 Records: The Trustees shall maintain records of participant contributions, District contributions, and benefits paid to or on behalf of participants. The exact nature of medical disabilities giving rise to claims shall be confidential to the provider and participant, unless disclosure is otherwise allowed by law.
- 4.12 Reports: The Trustees shall file or cause to be filed all annual reports, returns, and financial and other statements as required by any federal or state statute, including RCW 48.62.091, agency, or authority, within the time prescribed by law or regulation for filing said documents; and to furnish such reports, statements, or other documents to such participants and beneficiaries as required by federal or state statute or regulations, within the time prescribed for furnishing such documents.
- 4.16 Claims Procedures: Any person claiming a benefit, requesting an interpretation or ruling under a benefit plan offered through or by the Trust or requesting information under a benefit plan offered through or by the Trust shall follow the claims procedure established by the Trustees. The claims procedure shall conform with the requirements of applicable Washington law.

5. RESIGNATION, REMOVAL, AND SUCCESSION OF TRUSTEE

- 5.1 Removal of Trustee: The District may remove any Trustee appointed by the District at any time by delivery to such Trustee, and to the other Trustees then acting, an instrument signed by the District. Likewise, the Association may remove any Trustee appointed by the Association at any time by delivery to such Trustee and to the other Trustees then acting, an instrument signed by the Association.

- 5.2 Resignation of Trustee: Any Trustee may resign, without the permission of any court or judge and without first accounting for his actions as Trustee, by giving written notice to the District, Association and to the other Trustees then acting, but the foregoing shall not relieve any Trustee so resigning of the obligation ultimately to account for his or her actions as such Trustee.
- 5.3 Appointment of Successor Trustees: In the event of the death, resignation or removal for any reason of any Trustee, a successor Trustee may be appointed by an instrument signed by the District or Association, accepted in writing by such successor Trustee, copies of which shall be delivered by the District or Association to the other Trustees then acting. The District shall appoint the successor of a District Trustee and the Association shall appoint the successor of an Association Trustee. No vacancy or vacancies in the position of Trustee shall impair the power of the remaining Trustees to act in the manner herein provided for the purpose of administering the affairs of this Trust.
- 5.4 Change In number of Trustees: The number of Trustees may be changed from time to time by the District and Association; provided, however, that the number thereof (except for temporary vacancy periods created by death, resignation or removal from office) shall not be less than three District Trustees and three Association Trustees.

6. AMENDMENT OR TERMINATION

- 6.1 Amendment: The District and Association shall have the right at any, time, and from time to time, to amend this Trust, in whole or in part, retroactively or otherwise. In no event shall any such amendment cause this Trust to be used for any purpose other than the payment of benefits to participants and their dependents and beneficiaries or permit the net earnings of the Fund to inure other than by payment of benefits, to the benefit of any private shareholder or individual.
- 6.2 Termination: This agreement and the Trust hereunder may be terminated at any time by the District, Association, or both, upon written notice delivered to the Trustees and the other party. Upon termination of the Trust for any reason, the Trustees shall make such distributions as they deem appropriate, after reserving from the assets of the Fund such amount as they reasonably shall deem necessary to provide for any sums chargeable against the Fund for which the Trustees may be liable, or for payment of expenses in connection with the settlement of their accounts or otherwise, except the assets of the Fund upon such termination shall be used solely for providing benefits to participants and their dependents and beneficiaries and no part of the net earnings of the Fund shall inure, other than by payment of benefits, to the benefit of any private shareholder or individual. The Trustees, upon receipt of any direction from the District and Association upon termination, shall be under no duty to inquire into the propriety or validity thereof.

6.3 Continuation of Powers and Duties of Trustees: From and after the date of the termination of the Trust and until the final distribution of the assets of the Fund, the Trustees shall continue to have all the powers and duties provided under this agreement which are necessary and expedient for the orderly liquidation and distribution of the assets of the Fund.

6.4 Duration of the Trust: Unless sooner terminated in accordance with section 6.2, this agreement and the Trust created hereby, shall continue for such time as the benefits hereunder are to be provided and as long thereafter as may be necessary for liquidation and distribution of the assets of the Fund.

7. MISCELLANEOUS

7.1 Accounting Period: The annual accounting period for the Trust shall be the twelve month period commencing July 1 and ending June 30.

7.2 Applicable Law: This agreement shall be construed in accordance with applicable federal law and, to the extent otherwise applicable, the laws of the State of Washington.

7.3 Benefits Not Assignable: The Trust and the benefits provided through or by the Trust are for the personal protection of the covered employees and their dependents and beneficiaries. No vested or unvested interest of any covered employee, dependent or beneficiary may be assigned, seized by legal process, transferred or subjected to the claims of creditors in any way.

7.4 Nondiscrimination: The Trustees shall, to the fullest extent possible, treat alike all persons who are similarly situated.

IN WITNESS WHEREOF, the parties hereto have executed this agreement this 23 day of August, 2005.

EVERETT SCHOOL DISTRICT

By: Carol Whitthead
Its: Superintendent of Schools

EVERETT EDUCATION ASSOCIATION

By: [Signature]
Its: President

DISTRICT TRUSTEES

[Signature]
Mary Ring
Michael J. Lums

ASSOCIATION TRUSTEES

Kay Nickel
Betsy Selders
John W. Morrill

APPENDIX I

The terms conditions and limitations of the benefits described in 1.4 are contained in the written instruments listed from time to time in this Appendix I.

- A. Medical and prescription drug funded by the trust and administered by Health Management Administrators, Inc. ("HMA") in accordance with Everett School Employee Benefit Trust PPO Plan prepared by HMA, effective January 1, 2004.
- B. Insured medical benefits provided through the following insurance contracts/policies:
 - 1. Group Medical Coverage Agreement, Group Number 0026100, between Group Health Cooperative and the Trust.
 - 2. Employer Group Subscriber Agreement, Group Code 804139, between PacifiCare of Washington and the Trust.
- C. Insured dental benefits provided by the following insurance carriers through Washington Education Association (the documents governing these benefits are the contracts between WEA and the below-listed insurance carriers):
 - 1. Washington Dental Service.
 - 2. Willamette Dental Service.
- D. Insured basic and voluntary term life and accidental death and dismemberment benefits provided through Metropolitan Life Insurance Company, Policy Number 74323-G.
- E. Insured long term disability and employee assistance benefits provided through Standard Insurance Company, Policy Number 135033-B.
- F. Voluntary insured short term disability benefits provided through Standard Insurance Company, Policy Number 135033-A.
- G. Voluntary insured long term care insurance provided by UNUM Life Insurance Company of America. Under this policy UNUM insures the employees of Everett School District (the Sponsoring Organization) under the Select Group Insurance Trust Policy Number 292000.