

# BUDGET COMMITTEE

## MEETING AGENDA

September 4, 2019

3:00 p.m.



**Location: Building 4, Conference Room #2460**

**Time: 3:00 p.m. – 4:30 p.m.**

### **Committee Members:**

|                        |                  |                                 |                         |
|------------------------|------------------|---------------------------------|-------------------------|
| Joan Sholars, Co-Chair | Rosa Royce       | Anthony Stanisci                | Michelle Sampat (Guest) |
| Doug Jenson, Co-Chair  | Gary Nellesen    | Brandon Gillett                 |                         |
| Mike Gregoryk          | Vicki Greco      | Lisa Romo                       |                         |
| Audrey Yamagata-Noji   | Tamra Horton     | Jaeseung "Andy" Shin (Student)  | Vivian Ruiz (Notes)     |
| Richard Mahon          | Vacant (Faculty) | Vacant (Student Representative) | Yadira Santiago (Notes) |

### **AGENDA ITEMS:**

1. **Agenda Check.**
2. **Review the Budget Committee Meeting Summary of June 12, 2019.**
3. **IEC Liaison update – Michelle Sampat.**
4. **Review the Proposed 2019-20 Adopted Budget.**
5. **Review Budget Committee Function and Purpose Statement.**
6. **Review OPEB, STRS, PERS Trust Resolutions.**

### **FUTURE BUDGET COMMITTEE MEETINGS (3:00 p.m. – 4:30 p.m.):**

**September 18, 2019**

**October 2, 2019**

**October 16, 2019**

**The committee does not meet during Summer or Winter Intersessions, unless needed.**

**Mt. San Antonio College  
Budget Committee Summary of  
September 4, 2019**

**Committee Members:**

- |  |  |   |   |
|--|--|---|---|
| <input type="checkbox"/> Mike Gregoryk                     | <input checked="" type="checkbox"/> Rosa Royce | <input checked="" type="checkbox"/> Anthony Stanisci      | <input type="checkbox"/> Michelle Sampat (Guest)            |
| <input checked="" type="checkbox"/> Joan Sholars, Co-Chair | <input type="checkbox"/> Gary Nellesen         | <input checked="" type="checkbox"/> Brandon Gillett       |   |
| <input checked="" type="checkbox"/> Doug Jenson, Co-Chair  | <input type="checkbox"/> Vicki Greco           | <input checked="" type="checkbox"/> Lisa Romo             |   |
| <input checked="" type="checkbox"/> Audrey Yamagata-Noji   | <input type="checkbox"/> Tamra Horton          | <input type="checkbox"/> Jaeseung "Andy" Shin (Student)   | <input checked="" type="checkbox"/> Vivian Ruiz (Notes)     |
| <input checked="" type="checkbox"/> Richard Mahon          | <input type="checkbox"/> Vacant (Faculty)      | <input checked="" type="checkbox"/> Kian Bidari (Student) | <input checked="" type="checkbox"/> Yadira Santiago (Notes) |

| ITEM   | DISCUSSION/COMMENTS   | ACTION/OUTCOME  |
|--|---|---|
| <b>1. Agenda check</b>   | Introductions by all and Agenda checked.  | <b>Agenda approved.</b>   |
| <b>2. Review the Budget Committee Meeting Summary of June 12, 2019</b> | The Budget Committee Meeting Summary of June 12, 2019, was reviewed and approved.   | <b>Meeting Summary approved.</b>  |
| <b>3. IEC Liaison update – Michelle Sampat</b>                         | Michelle was not able to attend today's meeting. Joan said IEC is scheduled to meet on Wednesday, September 11, 2019, first meeting of 2019-20.   | <b>Expanded PAC will meet on November 13, 2019, 2pm-5pm, Founders Hall.</b> |
| <b>4. Review Proposed 2019-20 Adopted Budget.</b>                      | <p>Rosa Royce and Doug Jenson presented the Mt. San Antonio College 2019-20 Adopted Budget. This presentation will be addressed at the September 11th Board of Trustees meeting. Highlights of the presentation were centered in the Changes to the Student Centered Funding Formula (SCFF) as follows:</p> <ul style="list-style-type: none"> <li>• \$265 million SCFF overall increase. This figure primarily consists of 3.26% COLA increase of \$230 million.</li> <li>• SCFF changes reduced apportionment in 2018-19, mainly by reducing transfer counts in the student success allocation worth \$48 million statewide. Reduction was not planned when the 2018-19 fiscal year started.</li> <li>• The funding rates will be recalculated in the base, supplemental, and student success allocations for 2019-20 as follows: <ul style="list-style-type: none"> <li>➤ 70 percent of the SCFF funds would be allocated for the base allocation,</li> <li>➤ 20 percent for the supplemental allocation, and</li> </ul> </li> </ul> | <b>III.D.</b>   |

|   |   |   |
|---|---|---|
|   | <ul style="list-style-type: none"> <li>➤ 10 percent for the student success allocation.</li> </ul> <p>The Chancellor’s office announced that these rates will be released in February 2020.</p> <ul style="list-style-type: none"> <li>• Counts only the highest of all awards a student earned in the same year. Counts an award only if the student was enrolled in the district in the year the award was granted.</li> <li>• Amends the definition of a transfer student. A student who transferred to a four-year university would be included in the district’s count only if the student completed 12 or more units in the district in the year prior to transfer.</li> <li>• Calculates the student success allocation based on three-year average of each of the measures in the allocation.</li> <li>• Extends the existing Hold Harmless (minimum revenue) guarantee provision, specifying that districts will receive at least the 2017-18 total computational revenue (TCR), adjusted by COLA each year, through 2021-22.</li> </ul> <p>The precise impact on the community college and on Mt. SAC cannot yet be determined. The rates will be released eight months after the fiscal year has started, and the SCFF metrics are still in flux with more changes expected.</p> <ul style="list-style-type: none"> <li>• The Unrestricted General Fund Balance is estimated at 11.65% or \$27,418,422, which is over the 10% Board policy.</li> </ul> |   |
| <p><b>5. Review Budget Committee Function and Purpose Statement</b></p> | <p>Reviewed current Function and Purpose Statement handout showing all corrections that were previously approved by the Committee.</p>  | <p><b>Approved and ready to go to PAC.</b></p>            |
| <p><b>6. Review OPEB, STRS, PERS Trust Resolutions.</b></p>             |   | <p><b>Tabled to next meeting, September 18, 2019.</b></p> |

Accreditation Standard - IIID. Financial Resources—Plans and manages financial affairs with integrity and in support of all institutional planning.

**FUTURE AGENDA ITEMS**

- **Budget Review and Development Guide – last updated September 2016.**

**FUTURE MEETING DATES**

- **September 18, 2019**
- **October 2, 2019**
- **October 16, 2019**
- **November 6, 2019**
- **November 20, 2019**
- **December 4, 2019**



## **BUDGET COMMITTEE**

(Governance Committee – Reports to President’s Advisory Council)

### Purpose

The Budget Committee is the primary governance body for developing, recommending, and evaluating policies and procedures relating to **for institutional** planning and its **as it relates to its integration of the budget process and** link to **in** all aspects of College finances.

### Function

1. ~~Develop~~ **Evaluate** and recommend **appropriate changes to** policies and procedures relating to overall resource generation and allocation.
2. Develop, **evaluate**, and recommend **appropriate** policies and procedures for budget development and review the current budget process for effectiveness.
3. ~~Develop~~ **Evaluate** and recommend **appropriate changes to** policies and procedures for allocating discretionary revenue.
4. ~~Evaluate effectiveness of policies and procedures relating to all aspects of College finances.~~
5. Evaluate the College budget models using an ongoing and systematic cycle of evaluation, integrated planning, resource allocation, implementation, and re-evaluation (ACCJC Standard I.B.3).
6. Reports to President’s Advisory Council on the evaluation of the College budget models and informs the campus about budget-related matters.

### Membership (15)

|     | Position Represented   | Name   | Term                                 |
|-----|--|--|--------------------------------------|
| 1.  | Vice President, Administrative Services ( <del>Co-Chair</del> )  | Mike Gregoryk                                    | ongoing                              |
| 2.  | Chief Compliance and College Budget Officer  | Rosa Royce                                       | ongoing                              |
| 3.  | Associate Vice President, Fiscal Services  | <del>Vacant</del> <b>(Co-Chair) Doug Jensen</b>  | ongoing                              |
| 4.  | Management, one from Instruction (appointed by the Vice President, Instruction)                                  | <del>Irene Malmgren</del> <b>Richard Mahon</b>   | ongoing                              |
| 5.  | Management, one from Facilities Planning & Management (appointed by the Vice President, Administrative Services) | Gary Nellesen                                    | ongoing                              |
| 6.  | Management, one from Student Services (appointed by the Vice President, Student Services)                        | Audrey Yamagata-Noji                             | ongoing                              |
| 7.  | Faculty (appointed by the Academic Senate)   | (Co-Chair) Joan Sholars                          | 2019-22                              |
| 8.  |  | Vicki Greco                                      | 2017-20                              |
| 9.  |  | <del>Lance Heard</del> <b>Vacant</b>             | <del>2016-19</del><br><b>2019-22</b> |
| 10. |  | <del>Bobby Bates</del> <b>Tamra Horton</b>       | <del>2015-18</del><br><b>2018-21</b> |
| 11. |  | <del>Justin Ott</del> <b>Anthony Stanisci</b>    | <del>2016-19</del><br><b>2019-22</b> |
| 12. | Classified (appointed by CSEA 252)   | <del>Mark Fernandez</del> <b>Brandon Gillett</b> | <del>2016-19</del><br><b>2019-22</b> |
| 13. | Confidential (appointed by the Confidentals)   | Lisa Romo  | <del>2016-19</del><br><b>2019-22</b> |

~~2017-18~~ **2019-20**

|     |   |  |                           |
|-----|---|--|---------------------------|
| 14. | Students (appointed by the Associated Students) | Moshin Moosa <b>Jaeseung</b><br><b>"Andy" Shin</b> | 2017-18<br><b>2019-20</b> |
| 15. |   | Matthew McBride                                    | 2017-18<br><b>2019-20</b> |

Membership Meeting Times:

| COMMITTEE TYPE | CO-CHAIRS  | MEETING SCHEDULE  | LOCATION | TIME           |
|----------------|--|---|----------|----------------|
| Governance     | <del>Mike Gregoryk</del><br><b>Doug Jenson</b> /Joan Sholars | 1 <sup>st</sup> and 3 <sup>rd</sup> Wednesdays of the month | 4-2460   | 3:00-4:30 p.m. |

Person Responsible to Maintain Committee Website:

Yadira Santiago **Vivian Ruiz**

[Ysantiago2@mtsac.edu](mailto:Ysantiago2@mtsac.edu) [vrui3@mtsac.edu](mailto:vrui3@mtsac.edu) x5504

College Website Link and Last Time Website Was Updated:

[www.mtsac.edu/governance/committees/budget](http://www.mtsac.edu/governance/committees/budget)

09/05/2017 **Current**

**RESOLUTION NO. 07-07**  
**MT. SAN ANTONIO COMMUNITY COLLEGE DISTRICT**  
**REGARDING ESTABLISHMENT OF AN OPEB TRUST**

**WHEREAS**, Mt. San Antonio College has made conditional promises to certain of its employees and former employees to provide certain post-employment benefits other than pensions, commonly referred to as "OPEB benefits";

**WHEREAS**, the Government Accounting Standards Board ("GASB") has issued new accounting standards regarding the accounting of such OPEB benefits;

**WHEREAS**, Mt. San Antonio College desires to establish an irrevocable governmental trust pursuant to section 115 of the Internal Revenue Code of 1986, as amended, in which funds will be deposited to fund such promised OPEB benefits;

**NOW, THEREFORE BE IT RESOLVED THAT**, Mt. San Antonio College establish an irrevocable governmental trust or trusts pursuant to section 115 of the Internal Revenue Code of 1986, as amended, in which funds will be deposited to fund OPEB benefits which have been conditionally promised to certain of its employees and former employees;

**THEREFORE BE IT FURTHER RESOLVED THAT**, an Administrative Committee composed of the Vice President, Administrative Services, and a representative from the Faculty Association, CSEA 262 and CSEA 651 be established to oversee the administration of the trust or trusts established pursuant to this Resolution;

**THEREFORE BE IT FURTHER RESOLVED THAT**, an Investment Committee composed of the Vice President, Administrative Services; Director, Fiscal Services; and a Manager appointed by the President/CEO be established to direct the trustee or trustees with respect to the investments of the trust or trusts established pursuant to this Resolution;

**THEREFORE BE IT FURTHER RESOLVED THAT**, the Vice President, Administrative Services be, and hereby is, authorized to determine the number of trusts to be established hereunder and to execute any and all such documents necessary in order to effectuate the establishment of the trust or trusts;

**THEREFORE BE IT FURTHER RESOLVED THAT**, the Vice President, Administrative Services be, and hereby is, authorized to seek a Private Letter Ruling from the federal Internal Revenue Service with respect to whether such trust(s) meet the criteria necessary for the trust(s) to be considered established pursuant to section 115 of the Internal Revenue Code of 1986, as amended.

**I HEREBY CERTIFY THAT** the foregoing is a full, true, and correct copy of a resolution adopted by the Governing Board of the Mt. San Antonio Community College District of Los Angeles County, California, at its regular meeting on February 27, 2008.

AYES, and in favor of, Board Members: Baca, Bader, Chen Haggerty, Chyr, Hall

NOES, Board Members:

ABSENT, Board Members:



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John S. Nixon  
Interim President/CEO and  
Secretary, Governing Board  
Mt. San Antonio Community College District

**RESOLUTION NO. 15-11  
MT. SAN ANTONIO COMMUNITY COLLEGE DISTRICT  
REGARDING ESTABLISHMENT OF A SECTION 115 MT. SAN ANTONIO COLLEGE  
STRS/PERS PENSION TRUST**

WHEREAS, Mt. San Antonio College needs to have a plan to meet its employer pension obligation with CalSTRS and CalPERS as a result of rate increases in the coming years;

WHEREAS, Mt. San Antonio College desires to establish an irrevocable governmental trust pursuant to Section 115 of the Internal Revenue Code of 1986, as amended, in which funds will be deposited to fund employer's pension obligations and reasonable administrative fees and expenses of the trust;

WHEREAS, Mt. San Antonio College (The College) intends that the Trust hereby established shall be a governmental trust created under the law of the State of California and that all Trust income shall be excluded from the College's gross income and shall not be subject to federal income tax under Section 115 of the Internal Revenue Code of 1986, as amended; and

NOW, THEREFORE, BE IT RESOLVED THAT, Mt. San Antonio College establish an irrevocable governmental trust pursuant to Section 115 of the Internal Revenue Code of 1986, as amended, in which funds will be deposited to fund employer's pension obligations and reasonable administrative fees and expenses of the trust;

THEREFORE, BE IT FURTHER RESOLVED THAT, the Vice President, Administrative Services be, and hereby is, authorized to be the "Administrator" and to execute any and all such documents necessary in order to effectuate the establishment of the trust;

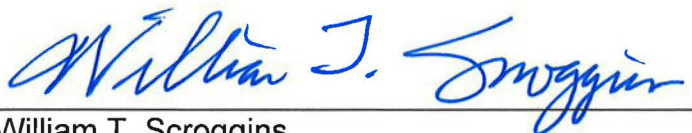
I HEREBY CERTIFY THAT the foregoing is a full, true, and correct copy of a Resolution adopted by the Governing Board of the Mt. San Antonio Community College District of Los Angeles County, California, at its regular meeting on June 22, 2016.

AYES: Baca, Bader, Chen, Chen Haggerty, Hall, Hidalgo, Santos

NOES: None

ABSENT: None

ABSTAINED: None



William T. Scroggins  
President & CEO and  
Secretary, Governing Board  
Mt. San Antonio Community College District

MT. SAN ANTONIO COLLEGE  
SECTION 115 TRUST AGREEMENT

This Section 115 Trust Agreement ("Trust Agreement") is made this 23rd day of June, 2016, by and between Mt. San Antonio College ("Employer") and Citizens Business Bank ("Trustee").

PREAMBLE

WHEREAS, the funds which will be contributed to the Trust, as and when received by the Trustee, will constitute the trust fund (the "Trust Fund") to be used solely to fund the Employer's Pension Obligations and for the payment of reasonable administrative fees and expenses of the Trust; and

WHEREAS, the Employer intends that the Trust hereby established shall be a governmental trust created under the law of the state of California and that all Trust income shall be excluded from the Employer's gross income and shall not be subject to federal income tax under Section 115 of the Internal Revenue Code of 1986 (the "Code"), as amended; and

WHEREAS, the Employer desires the Trustee to hold and administer the Trust, and the Trustee is willing to hold and administer such Trust, pursuant to the terms of this Trust Agreement.

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements herein contained, the Employer and the Trustee do hereby agree as follows:

**ARTICLE 1**  
**DEFINITIONS**

For the purposes of this Trust Agreement, the following words shall have the meanings respectively ascribed to them by this Article:

- 1.1 Administrator. "Administrator" shall mean the individual designated by position of employment at the Employer to act on its behalf in all matters relating to the Trust.
- 1.2 Board. "Board" shall mean the Board of Trustees of the Employer.
- 1.3 CalPERS. "CalPERS" shall mean the California Public Employees' Retirement System.
- 1.4 CalSTRS. "CalSTRS" shall mean the California State Teachers' Retirement System.
- 1.5 Code. "Code" shall mean the Internal Revenue Code of 1986, as may be amended from time to time.
- 1.6 Effective Date. "Effective Date" shall mean June 23, 2016.



- 1.7 Eligible Beneficiary. "Eligible Beneficiary" shall mean any person, who due to his or her relationship to an Eligible Employee, is entitled to post-employment benefits pursuant to the Pension Plan, including but not limited to the Eligible Employee's current or former spouse or domestic partner, child or dependent.
- 1.8 Eligible Employee. "Eligible Employee" shall mean any employee of the Employer as defined in Section 1.9 of this article, who is entitled to benefits from an employer defined benefit pension plan pursuant to the definition of Pension Plan in Section 1.12 of this article. Unless the context otherwise requires, the term "Eligible Employee" as used herein shall include any Eligible Beneficiaries.
- 1.9 Employer. "Employer" shall mean Mt. San Antonio College, or any affiliate or successor thereof that subsequently adopts this Trust Agreement.
- 1.10 Investment Manager. "Investment Manager" shall mean the person or persons, other than the Trustee, appointed pursuant to Section 5.4 hereof to manage all or a portion of the assets in the Trust Fund.
- 1.11 Pension Obligations. "Pension Obligations" shall mean an Employer's obligation to contribute to a Pension Plan's Qualified Trust and shall not, for example, mean an Employer's obligation to provide retirement benefits under a Pension Plan to the Employer's Eligible Employees.
- 1.12 Pension Plan. "Pension Plan" shall mean the Employer's defined benefit pension plan or plans, each of which is (i) qualified under Section 401(a) of the Code, (ii) sponsored by the Employer in order to provide retirement benefits of its Eligible Employees, and (iii) partly or wholly funded by the Employer's contributions to a Qualified Trust. The term "Pension Plan" shall include the defined benefit plans maintained by CalPERS and CalSTRS, respectively.
- 1.13 Qualified Trust. "Qualified Trust" shall mean a trust which (1) is separate and apart from the Trust; (ii) constitutes a qualified trust under Code Section 401(a), and (iii) funds retirement benefits provided under a Pension Plan to Eligible Employees.
- 1.14 Trust. "Trust" shall mean the trust known as the Mt. San College STRS/PERS Pension Section 115 Trust established hereunder to which contributions will be made to fund Pension Obligations.
- 1.15 Trustee. "Trustee" shall mean Citizens Business Bank, or any successor trustee appointed by the Employer as provided herein. The Trustee shall serve as trustee of the Trust established pursuant to the provisions of this Trust Agreement until such Trustee resigns or is removed as provided in Article 3.

## **ARTICLE 2 TRUST**

- 2.1 Purpose. The Trust is established 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 any regulations issued thereunder and as a tax-exempt trust under California law. This Trust Agreement shall be construed and the Trust shall be administered in a manner consistent with such intention. The fundamental purpose of the Trust is to fund the Pension Obligations.

The Employer hereby represents and warrants that the assets held hereunder are not assets of any qualified plan under Code Section 401(a), regardless of the character of such assets once distributed. The Employer hereby acknowledges that the Trust does not constitute a qualified trust under Code Section 401(a) but, rather, is a tax-exempt trust performing an essential governmental function within the meaning of Section 115 of the Code and any regulations issued thereunder.

- 2.2 No Diversion of Assets. The Trust assets shall be held in trust for the exclusive purpose of funding the Pension Obligations and defraying the reasonable expenses associated with the same. The Trust assets shall not be used for or diverted to any other purpose.

- 2.3 Type and Nature of Trust. Neither the full faith and credit nor the taxing power of the Employer is pledged to the distribution of amounts hereunder. Except for contributions and other amounts hereunder, no other amounts are pledged to the distribution of assets for the purpose of paying Pension Obligations. Pension Obligations are neither general nor special obligations of the Employer, but are payable solely from the assets held in the Trust. No employee or beneficiary may compel the exercise of the taxing power by the Employer.

Distribution of assets from the Trust are not debts of the Employer within the meaning of any constitutional or statutory limitation or restriction. Such distributions are not legal or equitable pledges, charges, liens or encumbrances, upon any of the Employer's property, or upon any of its income, receipts or revenues, except amounts in the Trust which are set aside for distributions. Neither members of the Board nor its officers, employees, agents or volunteers are liable hereunder.

## **ARTICLE 3 ADMINISTRATIVE MATTERS**

- 3.1 Appointment of Trustee. The Employer, through action of the Board, may act to appoint a bank, trust company, retirement board, insurer, committee or such other entity as permitted by law, to serve as trustee of this Trust. Such action must be in writing. Upon the written acceptance of such entity it shall become the Trustee of the Trust. If the Trustee is removed or resigns pursuant to Section 3.2, the Employer shall appoint a successor Trustee.



- 3.2 Resignation or Removal of Trustee. The Trustee may resign at any time by giving 30 days' notice in writing to the Employer. The Employer, by action of the Board, may also remove the Trustee at any time. Within 60 days after the resignation or removal of the Trustee, the Trustee shall furnish to the Board a written statement of account with respect to the portion of the year for which the Trustee served.
- 3.3 Successor Trustee. Upon the resignation or removal of the Trustee, the Employer shall appoint a successor trustee who shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon acceptance of such appointment by the successor trustee, the Trustee shall assign, transfer, and pay over to such successor trustee the funds and properties then constituting the Trust Fund. The Trustee is authorized, however, to reserve such reasonable sum of money, as it may deem advisable, for payment of its fees and expenses in connection with the settlement of its account or otherwise, and any balance of such reserve remaining after the payment of such fees and expenses shall be paid over to the successor trustee.
- 3.4 Waiver of Notice. In the event of any resignation or removal of the Trustee, the Trustee and the Employer may in writing waive any notice of resignation or removal as may be provided hereunder.
- 3.5 Administrator. The Employer shall have the plenary authority for the administration and investment of the Trust Fund pursuant to any applicable federal, state or local laws and regulations, including, but not limited, to the designation of an employee to act on its behalf as the Administrator. Unless otherwise specified in the appointment instrument, the Administrator shall be deemed to have authority to act on behalf of the Employer in all matters pertaining to the Trust. Such appointment of an Administrator shall be effective upon receipt and acknowledgment by the Trustee and shall be effective until the Trustee is furnished with a resolution that the appointment has been modified or terminated.
- 3.6 Certification to Trustee. The Board, or other duly authorized official, shall certify in writing to the Trustee the names and specimen signatures of the Administrator and all others authorized to act on behalf of the Employer whose names and specimen signatures shall be kept accurate by the Employer acting through a duly authorized officer or the Board. The Trustee shall have no liability if it acts upon the direction of an Administrator or other official that has been duly authorized to act, unless the Employer has informed the Trustee of a change.
- 3.7 Directions to Trustee. All directions to the Trustee from the Employer or Administrator must be in writing and must be signed by an authorized official. For all purposes of this Trust Agreement, direction shall include any certification, notice, authorization, application or instruction of the Employer or Administrator appropriately communicated. The Trustee may not act without express written direction from the Employer or Administrator.

The Trustee shall have the power and duty to comply promptly with all proper direction of the Board or Administrator. In the case of any direction deemed by the Trustee to be unclear or ambiguous, the Trustee may seek written instructions from the Employer or Administrator on such matter and await their written instructions without incurring any liability. If at any time the Employer or Administrator should fail to give direction 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 which may include not taking any action. The Trustee may request directions or clarification of directions received and may delay acting until clarification is received. In the absence of timely direction or clarification, or if the Trustee reasonably considers any direction to be a violation of the Trust Agreement or any applicable law, the Trustee shall in its sole discretion take appropriate action, or refuse to act upon a direction.

#### **ARTICLE 4**

#### **CONTRIBUTIONS AND DISTRIBUTIONS**

Contributions. Contributions to the Trust shall be made solely by the Employer and shall be irrevocable except as provided hereunder. The Trustee shall receive any contributions paid to it in cash or in the form of such other property as it may from time to time deem acceptable and which shall have been delivered to it. All contributions so received, together with the income therefrom and any other increment thereon shall be held, invested, reinvested and administered by the Trustee pursuant to the terms of this Trust Agreement without distinction between principal and income. The Trustee shall not have any duty to determine or inquire whether any contributions to the Trust made to the Trustee are in compliance with a Pension Plan, nor shall the Trustee have any duty or authority to compute any amount to be paid to the Trustee by the Employer, nor shall the Trustee be responsible for the collection or adequacy of the contributions to meet the Employer's Pension Obligations. The Trustee shall be responsible only for cash or other property received by it pursuant to this Trust Agreement.

- 4.1 Tax Treatment. The Employer intends that contributions, and any income and earnings therefrom, to the Trust shall not be included in the taxable income of Eligible Employees as the Trust consists of funds set aside to prefund the Employer's Pension Obligations and Eligible Employees have no legal interest in specific Trust assets or contributions.
- 4.2 Distributions. The Trustee, shall from time to time, upon the written direction of the Employer or Administrator, make distributions from the Trust directly to (i) the Qualified Trust as employer contributions; (ii) any insurers, third party administrators, service providers or other entities providing services in connection with determining the Employer's Pension Obligations, or (iii) the Employer as reimbursement for the Employer's payment of amounts described in this Section 4.3. In no event shall the Trustee have any responsibility respecting the application of distributions from the Trust, or for determining or inquiring into whether such distributions are in accordance with any of the Employer's Pension Plans, policies or applicable collective bargaining agreements.

## ARTICLE 5 INVESTMENTS

- 5.1 General. The Trustee shall invest and reinvest the principal and income of the Trust Fund and keep the Trust Fund invested, without distinction between principal and income, in such securities or in such property, real or personal, tangible or intangible, as the Trustee shall deem advisable, and in compliance with any investment policy adopted by the Employer, and applicable law; provided, however, that investments shall be so diversified as to minimize the risk of large losses unless under the circumstances it is clearly prudent not to do so in the sole judgment of the Trustee provided such judgment is consistent with the investment policy. The Trustee shall discharge its duties hereunder with the care, skill, prudence and diligence under the circumstances that a prudent man acting in a like capacity and familiar with such matters would use in such circumstances. The duties and obligations of the Trustee shall be limited to those expressly imposed upon it by this Trust Agreement. The Trustee shall have no authority or duty to determine or enforce payment of any contribution to the Trust or to determine the existence, nature or extent of any individual's rights in the Trust or question any determination made by the Employer regarding the same.
- 5.2 Establishment of Funding and Investment Policies. The Employer shall establish funding and investment policies consistent with the purposes of this Trust and the requirements of applicable law, as may be appropriate from time to time. The Board shall provide the Trustee with information concerning projected future funding requirements so that the Trustee may invest the assets of the Trust in such a manner so as to provide sufficient cash assets in an amount determined by the Board to be necessary to meet the liquidity requirements for the funding of the Pension Obligations. All investments of Trust assets made by the Trustee shall be in accordance with such funding and investment policies and the terms of this Trust Agreement. The Trustee's discretion in investing and reinvesting the principal and income of the Trust Fund shall be subject to the funding and investment policies, and any changes thereof as the Board may adopt from time to time and communicate to the Trustee in writing.
- 5.3 Authorization to Participate in Pooled Investments. Notwithstanding any contrary provision in the Trust, the Trustee may, unless restricted in writing by the Board, transfer Trust assets to a group trust that is operated or maintained exclusively for the commingling and collective investment of monies provided that the funds in the group trust consist exclusively of trust assets held under qualified plans deemed permissible pursuant to Revenue Ruling 81-100, as clarified and modified by Revenue Ruling 2004-67, and modified by Revenue Ruling 2011-1, and which has met the requirements of the foregoing rulings ("Investment Funds"). The assets of the Trust shall be invested in Investment Funds which are maintained by a bank or trust company supervised by a state or federal agency, notwithstanding that the bank or trust company is Citizens Business Bank, or is otherwise a party in interest of the Trust, including an affiliate of Citizens Business Bank. The assets invested in the Investment Funds shall be subject to all the provisions of the instruments establishing such funds as they may be amended from time to time.

#### 5.4 Investment Manager.

- (a) Appointment and Qualifications. The Board shall have the power to appoint, and may from time to time appoint, one or more Investment Managers to direct the Trustee in the investment of, or to assume complete investment responsibility over, all or any portion of the Trust assets. An Investment Manager may be any person or firm (a) which is either (1) registered as an investment adviser under the Investment Advisers Act of 1940, (2) a bank, or (3) an insurance company which is qualified to perform the services of an Investment Manager under the laws of more than one state; and (b) which acknowledges in writing that it is a fiduciary with respect to the Trust. The conditions prescribed in the preceding sentence shall apply to the issuer of any group annuity contract hereunder only if, and to the extent that, such issuer would otherwise be considered a fiduciary with respect to the Trust, within the meaning of applicable law.
- (b) Investment Objective. The Board, with the advice of the Investment Manager(s), shall determine the general investment characteristics and objectives of the Trust. The Investment Manager or the Board, as the case may be, shall have complete investment discretion over all of the Trust assets or to the portion to which it has been assigned investment discretion, subject only to the general investment characteristics and objectives established for the Trust.
- (c) Removal, Resignation and Successor. The Board may remove any such Investment Manager and shall have the power to appoint a successor or successors from time to time in succession to any Investment Manager who shall be removed, resign or otherwise cease to serve hereunder.
- (d) Fees and Expenses. The fees and expenses of any Investment Manager as agreed upon from time to time between the Investment Manager and Board, shall be charged to and paid from the Trust as directed by the Board, except to the extent that the Employer, in its discretion, may pay such fees and expenses directly to the Investment Manager.

5.5 Employer Directed Investments. To the extent that the Employer, through the authority of the Board, is responsible for investing assets of the Trust, the Trustee shall be subject to the properly given directions of the Employer with respect to the management, control and investment of the Trust. The Trustee shall not make any investment or dispose of any investments in the Trust except upon written direction of the Employer. The Trustee shall be under no duty to question any investment direction of the Employer, to review or monitor any securities or property held in the Trust, or to give advice to the Employer with respect to the investment, retention or disposition of any assets in the Trust. The Trustee in acting pursuant to and in reliance on such directions shall be fully and completely indemnified and held harmless by the Employer from any liability, loss or expense (including, but not by way of limitation, legal or other professional fees) arising out of its actions so directed notwithstanding that such directions, and the Trustee's conduct pursuant thereto, may constitute a breach of fiduciary obligations.

**ARTICLE 6**  
**POWERS AND DUTIES OF TRUSTEE**

- 6.1 Powers. The Trustee, in addition to all powers and authorities under common law, statutory authority, and other provisions of this Trust Agreement, shall have the following powers and authorities, to be exercised in the Trustee's sole discretion, or as directed by an Investment Manager:
- (a) invest and reinvest the Trust's assets in bonds, mortgages, debentures, preferred or common stock, mutual funds, a common trust fund maintained by a fiduciary which is a bank or an insurance company, or any other form of real or personal property having a ready market value, or deposit the assets in an interest bearing account in a banking or savings institution, including the Trustee's own banking department, if applicable;
  - (b) sell, exchange, convey, transfer or dispose of any property, real or personal, at any time held in the Trust;
  - (c) vote in person or by general or limited proxy with respect to any bonds, stocks or other securities held by the Trustee; exercise any options applicable to any bonds, stocks or other securities for the conversion thereof into other securities; exercise any rights to subscribe for additional bonds, stocks or other securities, and to make any and all necessary payments therefor; join in or dissent from or oppose the reorganization, recapitalization, consolidation, liquidation, sale or merger of corporations or properties in which the Trustee may be interested as Trustee, upon such terms and conditions as it may deem prudent;
  - (d) accept any securities or other property received by the Trustee under the provisions of this Trust Agreement;
  - (e) make, execute, acknowledge and deliver any and all appropriate deeds, leases, assignments and other instruments;
  - (f) cause any investments to be registered in or transferred into its name as Trustee, or the name of the Trustee's nominee or nominees, or retain the investment in unregistered form or in a form permitting transfer by delivery only; provided, however, the books and records of the Trustee shall at all times show that all investments are part of the Trust assets;
  - (g) require indemnity from the Employer to the Trustee's satisfaction before taking any action with respect to which the Trustee may have reasonable ground for requesting such indemnification;
  - (h) perform all acts, whether or not expressly described or referred to above, which the Trustee may deem necessary, proper and desirable for the protection or enhancement of the Trust assets, and to carry out the purposes of this Trust.



- 6.2 Fees and Expenses. The Trustee shall be paid a reasonable compensation for services under this Trust Agreement, as may be agreed upon from time to time by the Employer and the Trustee. In performing duties under this Trust Agreement, the Trustee may employ counsel, accountants, investment advisors, custodians, record keepers and other agents as the Trustee deems advisable. All compensation and expenses earned or incurred by the Trustee in the performance of duties under this Trust Agreement shall be charged against and paid out of the Trust assets, to the extent such expenses are not paid directly by the Employer, unless the payment would contravene applicable law.
- 6.3 Trustee's Duties in General. The Trustee shall discharge its duties under this Trust Agreement for the exclusive purpose of funding Pension Obligations and defraying reasonable expenses of administering the Trust, with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, and by diversifying the investments of the Trust so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so, all in accordance with the provisions of this Trust Agreement; but the duties and obligations of the Trustee as such shall be limited to those expressly imposed upon it by this Trust Agreement.
- 6.4 Consultation and Indemnification. The Trustee may consult with counsel and the Trustee shall not be deemed imprudent by reason of its taking or refraining from taking any action in accordance with the opinion of counsel. The Employer agrees, to the extent permitted by law, to indemnify and hold harmless the Trustee against any and all claims, losses, damages, expenses and liabilities the Trustee may incur in the exercise and performance of the Trustee's power and duties hereunder, unless the same are determined to be due to gross negligence or willful misconduct. The Trustee agrees, to the extent permitted by law, to indemnify and hold harmless the Employer and the members of the Board from and against liability that the Employer or members of the Board may incur, including without limitation attorneys' fees, as a result of the Trustee's recklessness, negligence or willful breach of the provisions of this Agreement.
- 6.5 Accounts and Records. The Trustee shall keep accurate and detailed accounts and records of all investments, receipts, disbursements and other transactions. For purposes of accounting and administration, the records of the Trust shall be maintained on a cash basis method. The Employer shall have the right to review and inspect all such accounts and other records relating thereto at all reasonable times. The Trustee shall furnish to the Employer a written statement of account within 60 days after the end of the Trust's year end setting forth all receipts and disbursements.
- 6.6 Statements. Periodically as specified, and within sixty (60) days after June 30, Trustee shall render to the Employer as directed, a written account showing in reasonable summary the investments, receipts, disbursements and other transactions engaged in by the Trustee during the preceding fiscal year 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 Employer 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 Employer. 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.

- 6.7 Limitation on Trustee's Liability. The Trustee shall not be responsible for the adequacy of contributions to the Trust Fund to meet or discharge any Pension Obligations of the Employer. The Trustee shall have no duty to withhold or report to the Internal Revenue Service on any payments made by the Trustee hereunder. To the extent that the Trust is required to file a federal income tax return, the Board shall prepare, or cause the preparation of, such return and provide it to the Trustee for its signature. The Trustee shall be entitled conclusively to rely upon any notice, instruction, direction or other communication of the Board.

## **ARTICLE 7**

### **CORRECTION OF ERRORS**

- 7.1 Mistake. Any mistake in any payment or in any direction, certificate, notice or other document furnished or issued by the Employer or by the Trustee in connection herewith may be corrected when the mistake becomes known, and the Employer may direct any adjustment or action which it deems practicable under the circumstances to remedy the mistake.
- 7.2 Refund of Contribution. No contribution made to the Trust may be refunded to the Employer unless a contribution was made because of a mistake of fact. Any refund must be made within one (1) year from the date the contribution was made.

## **ARTICLE 8**

### **AMENDMENT AND TERMINATION OF AGREEMENT**

- 8.1 Amendment. The Employer may amend any or all of the provisions of this Trust Agreement at any time and from time to time, in whole or in part, by an instrument in writing. No such amendment shall authorize or permit any part of the Trust Fund to revert to or be used by the Employer prior to the payment of all Pension Obligations, and no amendment which affects the rights or duties of the Trustee may be made without the Trustee's written consent.
- 8.2 Termination. The Employer may terminate this Agreement at any time and upon such termination, assets in the Trust Fund shall be used solely to fund the Employer's Pension Obligations, and to satisfy any other debts or liabilities of the Trust. Any assets remaining in the Trust Fund after meeting the obligations of the Plan and satisfying any other liabilities of the Trust shall revert solely to the Employer to the extent permitted by law and consistent with the requirements of Code Section 115.

**ARTICLE 9**  
**GENERAL**

- 9.1 Fiscal Year. The fiscal year of the Trust shall be July 1<sup>st</sup> through June 30<sup>th</sup>.
- 9.2 Source of Funds. This Trust shall consist solely of funds contributed by the Employer.
- 9.3 Limited Effect of Plan and Trust. Neither the establishment of the Trust nor any modification thereof, nor the creation of any fund or account, nor the payment of any Pension Obligations, shall be construed as giving to any person any legal or equitable right against the Trustee, the Employer, or any officer or employee thereof, except as may otherwise be provided in the Trust. Under no circumstances shall the term of employment of any employee be modified or in any way affected by this Trust.
- 9.4 Construction of Trust. This Trust shall be construed and enforced according to the laws of the State of California. If any provision of this Trust shall be held illegal or invalid for any reason, such determination shall not affect the remaining provisions of the Trust.
- 9.5 No Alienation or Anticipation of Trust Assets. Except as otherwise specifically permitted by law, no payment or reimbursement from the Trust shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution or levy of any kind, either voluntary or involuntary, except as expressly required by applicable law. Any attempt to so anticipate, alienate, sell, transfer, assign, pledge, encumber, charge, garnish, execute or levy shall be void.
- 9.6 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, but this instrument shall be construed and enforced as if said provision had never been included.
- 9.7 No Right to Trust Assets. Nothing contained in the Trust shall constitute a guarantee that the liquid assets of the Trust will be sufficient to pay any benefit to any person or make any other payment. No employee, former employee, or retiree shall have any right to, or interest in, any Trust assets upon termination of employment or otherwise.
- 9.8 Gender and Number. Wherever any words are used herein in the masculine, feminine or neuter, they shall be construed as though they were also used in another gender in all cases where they would so apply, and whenever any words are used herein in the singular or plural form, they shall be construed as though they were also used in the other form in all cases where they would so apply.
- 9.9 Headings. The headings and sub-headings of this Trust have been inserted for convenience of reference and are to be ignored in any construction of the provisions hereof.



9.10 Counterparts. This Trust Agreement may be executed in any number of counterparts, any of which may be executed and transmitted by facsimile or other electronic means mutually acceptable to the parties hereto, and each of which will be deemed to be an original of this Trust Agreement and all of which, when taken together, will be deemed to constitute one and the same instrument.

IN WITNESS WHEREOF, the Employer and the Trustee have executed this document on the day and year first above written.

MT. SAN ANTONIO COLLEGE

By: \_\_\_\_\_  
Michael D. Gregoryk  
Vice President, Administrative Services

Date: \_\_\_\_\_

CITIZENS BUSINESS BANK

By: \_\_\_\_\_  
Thomas L. Trine  
Senior Vice President, Trust Services Manager

Date: \_\_\_\_\_