



## **BOARD OF SUPERVISORS AGENDA ITEM REPORT**

Requested Board Meeting Date: September 15, 2015

**Title:** Bequests to Pima Animal Care Center

### **Introduction/Background:**

Recently, Pima Animal Care Center's Development Program was informed that Pima Animal Care Center (PACC) was named as the beneficiary to portions of two estates. The value of the gifts of Ms. Ella Jane Burson and Ms. Marilyn Rasmussen is in excess of \$1.3 million.

### **Discussion:**

A major operational change that has occurred at the PACC over the last two years has been creation of a development officer position to facilitate fund raising that supports our mission. This effort has been very productive during its first year (yielding approximately \$579,252 in donations to PACC, and \$265,276 to our non-profit partners). These resources have been a critical supplement that have allowed us to meet unplanned operational challenges especially in our shelter and clinical programs. They have also allowed PACC to continue to implement industry-standard progressive life-saving policies, and to invest in moderate risk potentially high yield initiatives like the Community Cats Project (involving the trap, neuter and return of feral and free-roaming felines).

Our programmatic success has and will continue to attract significant donations and planned gifts from individuals and foundations. PACC has an obligation to manage these large gifts responsibly for the benefit of the County, and as such is developing a medium and long-term plan for future Board approval. Such a plan will articulate programmatic priorities and benchmarks by which to measure success, as well as estimate the economic benefit to each of the partner jurisdictions.

### **Conclusion:**

With the acceptance of these generous bequests, PACC sets a precedent that planned gifts will be used responsibly and strategically to meet critical lifesaving needs that cannot be met with our existing resources. By demonstrating competent stewardship PACC will continue to be an attractive investment to private and institutional donors.

### **Recommendation:**

PACC recommends that the Board accept the planned gifts from Ms. Ella Jane Burson and Ms. Marilyn Rasmussen.

### **Fiscal Impact:**

The gifts are projected to provide over \$1.3 million in new funding.

### **Board of Supervisor District:**

☐ 1      ☐ 2      ☐ 3      ☐ 4      ☐ 5      ☒ All

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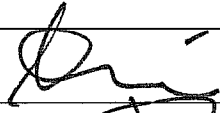
**Board of Supervisor District:**

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Department: Health

Telephone: 724-7776

Department Director Signature/Date: \_\_\_\_\_



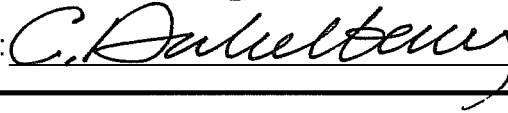
26 Aug 15

Deputy County Administrator Signature/Date: \_\_\_\_\_



8/27/15

County Administrator Signature/Date: \_\_\_\_\_



8/27/15

Burson 1992 Trust  
Under Agreement dated 9/24/1992  
Trust Account No.: 02-71248

**DISTRIBUTION AND REFUNDING AGREEMENT**

To: The Northern Trust Company, as Trustee of the Burson 1992 Trust Under Agreement Dated 9/24/1992

The Northern Trust Company ("Northern Trust") is the Trustee of the above-captioned trust ("Trust") which benefits me as beneficiary. Northern Trust is prepared to distribute to Pima County Animal Care Center ("Pima County") the partial distribution of one million three hundred ninety-one thousand eight hundred fifty-six and eighty-six one-hundredths dollars (\$1,391,856.86) (the "Trust Property"). In consideration of the distribution of the Trust Property to Pima County, the organization hereby covenants and agrees as follows

A. Sequence of Events. Pima County will sign and deliver this Distribution and Refunding Agreement ("Agreement") to Northern Trust, and then Northern Trust will distribute the Trust Property to it; *provided, however*, that this Agreement shall not become effective until Northern Trust has in fact distributed the Trust Property to it.

B. Partial Distribution. Pima County agrees that the distribution of the Trust Property is in partial satisfaction, distribution and settlement of all property, which is now due to the organization, as beneficiary, pursuant to the provisions of the Trust.

C. Refunding.

a. Pima County agrees to assume and pay all taxes and claims, debts and liabilities of whatever nature (in excess of any amount retained by Northern Trust that can be used for such purposes) for which Northern Trust may hereafter be personally liable, to the extent that Northern Trust would have been entitled to be reimbursed or exonerated from the Trust Property had such property remained in the possession of Northern Trust.

b. If it is determined at a later date that a part or all of this distribution should have been paid to someone else rather than to Pima County, or the amount of the distribution represents an overdistribution for whatever reason, Pima County agrees to refund that property (including the earnings and appreciation on it) to Northern Trust within thirty (30) days of Northern Trust's demand.

c. Pima County agrees to reimburse Northern Trust for its expenses of recovery, including reasonable attorneys' fees, and any additional expenses of administration, which may arise out of or in connection with this Paragraph C.

D. Benefit. This Agreement shall benefit not only Northern Trust but also any co-trustees at any time acting under the Trust. This Agreement is binding upon Pima County and its personal representative, heirs, successors and assigns.

E. Voluntary Execution of Agreement. Pima County acknowledges that it is under no obligation to sign this Agreement and that it is freely and voluntarily signing this Agreement.

F. Legal Advice. Pima County acknowledges and confirms that in signing this Agreement, Northern Trust has recommended that it seek legal advice and that it has obtained such legal advice as it deems appropriate and that it fully understands the terms and ramifications of this Agreement.

G. Severability. If any term, condition or provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remaining terms, conditions and provisions shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

K. Binding Effect. This Agreement shall bind and inure to the benefit of Pima County and its successors and assigns. This Agreement shall further bind and inure to the benefit of Northern Trust and any co-trustees at any time acting under the Trust and their respective predecessors, successors and assigns.

L. Attorneys' Fees. In the event of any claims, disputes or controversy arising out of or relating to this Agreement, including an action for declaratory relief, the prevailing party in such action or proceeding shall be entitled to recover reasonable attorneys' fees and costs.

M. Governing Law. This Agreement shall be governed by the laws of the State of Arizona, provided that this Agreement shall not be construed against the drafter of the Agreement.

N. Execution in Counterparts. This Agreement may be executed in counterparts, with the same effect as if each party had executed the same document, and when each party has signed at least one counterpart and Northern Trust is in receipt of all the original counterparts, this Agreement shall become binding and effective.

O. Representation. The person signing this Agreement on behalf of an entity represents and warrants that such person has the authority to execute this Agreement on behalf of the entity and to bind the entity to this Agreement.

Dated this 30<sup>th</sup> day of July, 2015.

Pima County Animal Care Center, Beneficiary

ATTEST:

*Robin Brugode*  
Clerk, Board of Supervisors  
Pima County, Arizona

By: *[Signature]*

Vice Chair  
Its: Pima County Board of Supervisors

THIS CONTRACT IS SUBJECT TO  
THE PIMA COUNTY A.P.C. § 32-511<sup>2</sup>

APPROVED AS TO FORM

*[Signature]*  
Deputy County Attorney  
TOBIN ROSEN

The Northern Trust Company  
2398 East Camelback Road, Suite 1100  
Phoenix, AZ 85016  
(602) 468-1650



**Northern Trust**

August 17, 2015

Pima County Government  
Pima County Animal Care Center  
Attn: Michelle Hamilton  
130 W. Congress Street, 6<sup>th</sup> Floor  
Tucson, AZ 85701-1317

Re: *Burson 1992 Trust UAD 9/24/1992*  
*Account No. 02-71248*

Dear Ms. Hamilton:

I have enclosed a check in the amount of \$1,391,856.86 payable to Pima County Government, Pima County Animal Care Center, representing said entity's pro-rata share of a partial cash distribution from the above-referenced Trust in the amount of \$2,783,713.72.

As a government agency it is our understanding that you are tax-exempt. We do not intend to send you a tax report as a result of the filing of this Trust's fiduciary income tax return. However, if your organization's status should change prior to the closure of this Trust, we will rely on you to advise us of that fact.

Please have the appropriate person sign where indicated on the enclosed copy of the check indicating your organization's receipt of this check and return same to my attention in the enclosed envelope.

If you have any questions, please feel free to call me at (602) 468-2542 or Tammy Taraba at (602) 468-2587.

Very truly yours,

Jennifer L. Butler  
Vice President

Enclosures



Northern Trust

2-15  
710

COPY

BURSON 1992 TRUST UAD 9/24/92

August 17, 2015

Pay \$\*\*1,391,856.86

\*\* One Million Three Hundred Ninety-One Thousand Eight Hundred Fifty-Six and 86/100 Dollars \*\*

To The  
Order Of

PIMA COUNTY GOVERNMENT  
PIMA COUNTY ANIMAL CARE CENTER  
130 W. CONGRESS STREET  
FLOOR 6  
TUCSON, AZ 85701-1317

The Northern Trust Company  
Not Individually but Solely in  
its Representative Capacity

4040127010271248019TSK

COPY

Authorized Signature

⑈ 7223239 ⑈ ⑆ 071000152⑆ 0030132123 ⑈

Please Detach Before Cashing

PAID PIMA COUNTY GOVERNMENT  
FOR THE PIMA COUNTY ANIMAL CARE CENTER  
VIA CHECK REPRESENTING PARTIAL  
DISTRIBUTION PER ARTICLE VI(C)(1)-(2)  
OF THE TRUST AGREEMENT

**Receipt Acknowledged:**

*Please sign and return in the enclosed postage paid envelope*

Signature

8-18-15

Date

**Restatement of the  
MARILYNN LOUISE RASMUSSEN REVOCABLE TRUST**

**ARTICLE ONE**

The trust agreement executed April 23, 2013 between MARILYNN LOUISE RASMUSSEN, as the Settlor and MARILYNN LOUISE RASMUSSEN as the Trustee is hereby restates pursuant to the power reserved in the Settlor to amend the trust. The Settlor has also been known as Marilyn Rasmussen. The Settlor has transferred property to the Trustee, which shall be held, in trust, on the terms set forth in this restated agreement.

**ARTICLE TWO**

A. Property subject to this instrument is referred to as the Trust Estate and shall be held, administered, and distributed in accordance with this trust instrument.

B. Other property acceptable to the Trustee may be added to the Trust Estate by any person, by the Will of the Settlor, by the proceeds of any life insurance, or otherwise.

C. All the property in this trust is the separate property of the Settlor and there is no community, marital, or domestic partner's property interest in the Trust Estate.



### ARTICLE THREE

A. The Settlor reserves the right to amend or revoke this trust, in whole or in part, or to withdraw property from it, at any time during the Settlor's lifetime.

B. On the death of the Settlor the trust created by this Declaration shall become irrevocable and not subject to amendment.

C. In this instrument the terms "incompetent" and "disabled" shall refer to a physical or mental inability to carry out one's usual business affairs, or to resist undue influence or fraud, whether or not such person is legally determined to be incompetent or in need of a Conservator. To prove a change of Trustee based on incapacity, the Successor Trustee may rely upon a written declaration as to the Settlor's incapacity made by, in order of priority, 1) MILLY GENE McCLAIN, or 2) MARK ALLEN McCLAIN.

Any action taken by a Successor Trustee pursuant to such declaration shall be binding on all persons interested in the trust. No statement of incapacity from a physician shall be required as it is the Settlor's precise intention that physicians not be involved in any determination of incapacity. No third party shall incur any liability for relying on such declaration to prove a change of Trustee.

### ARTICLE FOUR

During the Life of the Settlor, the Trustee shall pay to or apply for the benefit of the Settlor all of the net income of the Trust Estate. If the Trustee considers the net income insufficient, the Trustee shall pay to the Settlor as much of the principal of the Trust Estate as is necessary in the Trustee's

discretion for the Settlor's proper health, support, maintenance, comfort and welfare.

The Settlor wishes the Trustee, to the extent practical, to exercise discretion to enable the Settlor to live at home and in familiar circumstances if she wishes and is reasonably able to do so with nursing, household and other assistance even if the costs may exceed the cost of care at a health care institution, or the like.

#### ARTICLE FIVE

On the death of the Settlor, the Trustee, in the Trustee's discretion, shall pay out of the Trust Estate debts of the Settlor, and estate and inheritance taxes, including interest and penalties arising because of the Settlor's death; the last illness and funeral expenses of the Settlor, attorney's fees; and other costs incurred in administering the Settlor's Trust or probate estate. No retirement funds shall be used for any payments under this paragraph.

#### ARTICLE SIX

A. Upon the death of the Settlor, MARILYNN LOUISE RASMUSSEN, the Successor Trustee, after making any payments set forth in Article Five, shall distribute the Trust Estate as follows:

1. The real property located at 6608 E. David Drive, Tucson, Arizona shall be distributed, free of trust, to the Pima Animal Care Center, 4000 N. Silverbell Road, Tucson, Arizona, a 501c3 tax exempt organization.

2. The residue of the Trust Estate shall be distributed to the Settlor's sister, MILLY GENE McCLAIN. If she does not survive the

Settlor then the residue shall be distributed to the Settlor's nephew MARK A. McCLAIN.

B. If there are any beneficiaries, who are under the age of 30 at the time they become entitled to a share of the Trust Estate, the Trustees shall retain their share in trust for their benefit. From that share, the Trustee shall pay to or apply for the benefit of the beneficiary, as much of the net income and principal of the trust as the Trustees in the Trustees' discretion considers necessary for the beneficiary's proper support, health, maintenance, and education at an accredited academic institution. The Trustee is encouraged to exercise the discretion under this section to provide the beneficiary with the best educational opportunities.

When the beneficiary has attained the age of 30, the Trustees shall distribute the remaining assets free of trust to the beneficiary.

## ARTICLE SEVEN

A. If the individual Trustee named in Article One, MARILYNN LOUISE RASMUSSEN, shall for any reason cease to act, resign, or become incompetent to act, the successor Trustee shall be, in order of priority, 1) MILLIE GENE McCLAIN, or 2) MARK ALLEN McCLAIN.

B. Any successor Trustee appointed as provided in this Declaration shall on appointment being made, immediately succeed to all title of the Trustee to the Trust Estate and to all powers, rights, discretions, obligations, and immunities of the Trustee under this Declaration with the same effect as though such successor were originally named as Trustee in this Declaration.

C. Any Trustee may resign without need of prior court approval by giving written notice to a successor Trustee who accepts the trust. A

successor Trustee may be selected by a resigning Trustee if the Settlor has not provided for one in this declaration.

D. No bond shall be required of any person named in this instrument as Trustee, or of any person appointed as the Trustee in the manner specified here, for the faithful performance of his or her duties as Trustee.

## ARTICLE EIGHT

In order to carry out the provisions of the Trusts created by this instrument, the Trustee shall have these powers in addition to those now or hereafter conferred by the laws of the State of California:

(a) The Trustee may, in the Trustee's discretion, invest and reinvest trust funds in every kind of property (real, personal, or mixed) and every kind of investment, specifically including, but not limited to, corporate obligations of every kind; preferred or common stocks; shares of investment trusts, investment companies, and mutual funds; life insurance policies; notes, real estate, bonds, debentures, mortgages, deeds of trust, mortgage participations, market funds and index funds appropriate under the then prevailing circumstances (specifically including, but not limited to, the factors set out in Probate Code section 16047(c)):

1. General economic conditions.
2. The possible effect of inflation or deflation.
3. The expected tax consequences of investment decisions or strategies
4. The role that each investment or course of action plays within the overall trust portfolio.
5. The expected total return from income and the appreciation of capital.
6. Other resources of the beneficiaries known to the Trustee as determined from information provided by the beneficiaries.
7. Needs for liquidity, regularity of income, and preservation or appreciation of capital.

8. An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

In so doing, the Trustee shall exercise care, skill, and caution to attain the Settlor's goals under this instrument.

The Trustee shall consider individual investments as part of an overall investment strategy having risk and return objectives reasonably suited to the purposes of the trust. The Trustee's investments may include stock in any entity owned by the Trustee or membership in any limited liability company or limited liability partnership of which the Trustee is a member or partner.

The Trustee shall also have the power to establish and maintain margin accounts and to buy or sell options but only if the Settlor is acting as Trustee.

(b) To continue to hold any property and to operate at the risk of the Trust Estate any business that the Trustee receives or acquires under the Trust as long as the Trustee deems advisable.

(c) To have all the rights, powers, and privileges of an owner with respect to the securities held in trust, including, but not limited to, the powers to vote, give proxies, and pay assessments; to participate in voting trusts, pooling agreements, foreclosures, reorganizations, consolidations, mergers, and liquidations, and incident to such participation to deposit securities with and transfer title to any protective or other committee on such terms as the Trustee may deem advisable; and to exercise or sell stock subscription or conversion rights.

(d) To hold securities or other property in the Trustee's name as Trustee under this Trust.

(e) To manage, control, grant options on, sell (for cash or on deferred payments), convey, exchange, partition, divide, improve, and repair Trust property.

(f) To rent and or lease Trust property for terms within or beyond the term of the Trust for any purpose, including exploration for and removal of gas, oil, and other minerals; and to enter into community oil leases, pooling, and unitization agreements.

(g) To lend money to the probate estate of the Settlor, provided that any such loan shall be adequately secured and shall bear a reasonable rate of interest.

(h) To purchase property at its fair market value as determined by the Trustee in the Trustee's discretion, from the probate estate of the Settlor.

(i) To loan or advance the Trustee's own funds to the Trust for any Trust purpose, with interest at current rates; to receive security for such loans in the form of a mortgage, pledge, deed of trust, or other encumbrance of any assets of the Trust; to purchase assets of the Trust at their fair market value as determined by an independent appraisal.

(j) The Trustee shall have the power to release or to restrict the scope of any power that he or she may hold in connection with the Trust created under this instrument, whether said power is expressly granted in this instrument or implied by law.

(k) To take any action and to make any election, in the Trustee's discretion, to minimize the tax liabilities of this Trust and its beneficiaries, and it shall have the power to allocate the benefits among the various beneficiaries, and the Trustee shall have the power to make adjustments in the rights of any beneficiaries, or between the income and principal accounts, to compensate for the consequences of any tax election or any investment or administrative decision that the Trustee believes has had the effect of directly or indirectly preferring one beneficiary or group of beneficiaries over others.

(l) To borrow money, and to encumber Trust property by mortgage, deed of trust, pledge, or otherwise of the debts of the Trust or the joint debts of the Trust and a co-owner of Trust property.

(m) To commence or defend, at the expense of the Trust, such litigation with respect to the Trust or any property of the Trust Estate as the Trustee may deem advisable, and to compromise or otherwise adjust any claims or litigation against or in favor of the Trust.

(n) To carry insurance of such kinds and in such amounts as the Trustee deems advisable, at the expense of the Trust, to protect the Trust Estate and the Trustee personally against any hazard.

(o) To withhold from distribution, in the Trustee's discretion, at the time for distribution of any property in this Trust, without the payment of interest, all or any part of the property, as long as the Trustee shall determine, in the Trustee's discretion, that such property may be subject to conflicting claims, to tax deficiencies, or to liabilities, contingent or otherwise properly incurred in the administration of the estate.

(p) To partition, allot, and distribute the Trust Estate, on any division or partial distribution or final distribution of the Trust Estate, in undivided interests or in kind, or partly in money and partly in kind, at valuations determined by the Trustee, and to sell such property as the Trustee may deem necessary to make division or distribution. In making any division or distribution of the Trust Estate, the Trustee shall be under no

obligation to make a prorata division, or to distribute the same assets to beneficiaries similarly situated. The Trustee may, in the Trustee's discretion, make a nonprorata division between Trusts or shares and nonprorata distributions to such beneficiaries, as long as the respective assets allocated to separate trusts or shares, or distributed to such beneficiaries, have equivalent or proportionate fair market value and income tax basis.

(q) Each Trustee shall have the power to employ any custodian, attorney, accountant, financial planner, investment advisor or any other agent to assist the Trustee in the administration of this Trust and to rely on the advice given by these agents.

(r) Subject to any limitations expressly set forth in this Declaration and the faithful performance of its fiduciary obligations, to do all such acts, take all such proceedings, and exercise all such rights and privileges as could be done, taken, or exercised by an absolute owner of the Trust property.

(s) The Trustee shall have the power to deal with governmental agencies. To make applications for, receive and administer Social Security, Medicare, Medicaid, and any other benefits to which the Settlor or a beneficiary might be entitled.

(t) The Trustee shall have the power to make elections and direct distributions of principal and interest from the Settlor's retirement accounts, pension plans, or annuities that name the trust as a beneficiary. This power shall be construed as and is intended to be a valid power of attorney in which the Trustee may act as the agent of the Settlor for these purposes. This power shall survive the incapacity of the Settlor.

(u) The Trustee shall have the authority to exercise any options held by the Settlor at the time of her death.

(v) The Trustee shall be entitled to reasonable compensation for services rendered to the Trust not to exceed 1.3% percent per year of the asset value of the trust without prior court approval.

## ARTICLE NINE

A. The validity of this trust for real property shall be governed by the law of the state of its situs. The construction, interpretation and administration of this trust shall be governed by the laws of the state of

California regardless of its situs or the domicile of the Trustee with regard to all other matters. This choice of law provision is intended to be exclusive and is based in part on the legal authority stated in the Restatement Second of Conflict of Laws section 268(1).

B. The Settlor specifically waive the annual accounting requirements of California Probate Code Section 16062 so long as a Settlor is acting as a Trustee. In all other cases, the Trustee shall provide an annual accounting at the request of any current, remainder, or contingent beneficiary and any named potential successor trustee. Upon receiving an accounting, a party shall have no more than 180 days to file any objection to such accounting or it shall be deemed approved.

C. A contestant shall be considered to have predeceased both Settlor without surviving issue. In this instrument, "contestant" means any person other than the Settlor who participates in any proceeding or action which seeks to set aside any provision of the trust or any provision of either Settlor's will. The term contest shall include, but not be limited to, the filing of a creditor's claim or prosecution of an action based upon it, an action or proceeding to determine the character, title or ownership of property held in the trust, to challenge the choice of law provision of the trust, or a challenge to the validity of an instrument, contract, agreement, or beneficiary designation, to which a Settlor was a party.

D. The interests of the beneficiaries under this instrument are not transferable by voluntary or involuntary assignment or by operation of law, and shall be free from the claims of creditors and from attachments, execution, bankruptcy, and other legal process, to the maximum extent permitted by law. . If any such transfer is made or attempted by or against



any beneficiary, all further trust payments of income or principal or both to that beneficiary (and any right of that beneficiary to such payments) shall be suspended for a period of time or indefinitely (but not longer than the term of the trust) as the trustee determines. In lieu of payments to that beneficiary, the Trustee may apply so much of the trust income or principal or both to which the beneficiary would otherwise be entitled as the Trustee deems necessary for the beneficiary's education and support. All trust income (to which the beneficiary would otherwise be entitled) not so applied shall in the discretion of the Trustee be accumulated and added to trust principal at such time or times as the Trustee deems proper.

Executed at Tucson, AZ, Arizona on Aug. 6, 2013.

Marilynn Louise Rasmussen

MARILYNN LOUISE RASMUSSEN

State of Arizona  
County of Pima

} SS.

On this 6<sup>th</sup> day of August, 2013 before me personally appeared MARILYNN Louise Rasmussen whose identity was proven to me on the basis of satisfactory evidence to be the person who he or she claimed to be, and acknowledged that he or she signed the above/attached document.

(SEAL)

Edith J. Goetz  
NOTARY PUBLIC

(notary signature)

