



MEMORANDUM

DATE: January 12, 2012
TO: MAYOR AND CITY COUNCIL
THROUGH: RICH DLUGAS, CITY MANAGER *RD*
DEBRA STAPLETON, HUMAN RESOURCES DIRECTOR *JAS*
FROM: VALERIE F. HERNANDEZ, BENEFIT PROGRAMS SUPERVISOR *VFA*
SUBJECT: ADOPTION OF RESOLUTION NO. 4571 OF THE CITY COUNCIL OF THE CITY OF CHANDLER, AMENDING THE CHANDLER HEALTH CARE BENEFITS TRUST AGREEMENT.

RECOMMENDATION: Staff recommends that City Council pass and adopt Resolution No. 4571 of the City Council of the City of Chandler, amending the Chandler Health Care Benefits Trust Agreement.

BACKGROUND/DISCUSSION: On August 16, 2010 the Mayor and Council approved Resolution No. 4447 – Health Care Benefits Trust Agreement which ensured legal compliance with State and Federal laws, the health and sustainability of the Trust Fund, Council direction regarding “Premium Subsidy and Premium Holiday” for employees, responsibilities and powers of the trustees, and contributions and distribution of funds from the Trust.

On December 31, 2011 we completed our first year as a fully self-funded health care program. At the closing of year end, I conducted a review of the Health Care Benefits Trust Agreement. The review brought to light that several housekeeping items along with the “Restricted-Plus-Six Reserve” needed to be addressed and evaluated in consultation with the City’s benefits Actuary, the City’s benefits consultant and members of the Chandler Health Care Trust Board as noted in Resolution No. 4571 (See Attached).

The housekeeping items such as correctly defining the City’s “plan year” from fiscal to calendar will better clarify the terms and intent of the trust agreement. The issue of more concern was the “Restricted-Plus- Six Reserve”. The initial six months of reserves was

based upon a very conservative position presented by outside council that was hired to craft the City's adopted trust agreement. The City's benefits actuary provided the most compelling reasoning for the "Restricted-Plus-Six Reserve" to be changed to "Restricted-Plus-One Reserve". The Actuary has stated that it does not make fiscal sense for the City to establish such an overly restrictive position regarding the reserves (there is currently \$11M in assets). It should be the position of the City to have incurred but not yet reported (IBNR) costs plus one month in reserves for this is what we used for investments. The trust agreement as it stands today is restricting the City's ability to provide for a premium holiday especially using any monies that have come into the reserve other than the planned deposits from Employee/Employer contributions. Any additional monies cannot be used now because of the "Restricted-Plus-Six" requirement in the Trust Agreement. Such additional monies would be the funds received from the Federal Government Early Retiree Reinsurance Program. As you may recall, these funds can only be used in the City's case to offset increases in the plan sponsor's health benefit premiums, such as a "Premium Holiday". To complicate matters, the Federal government has indicated that entities receiving program funds must utilize those funds in a timely manner or they are subject to be returned. At the time that the trust agreement was crafted the City could not have been aware the Federal government's intent to provide for the Early Retiree Reinsurance Program.

PROPOSED MOTION: Move to pass and adopt Resolution No. 4571 of the City Council of the City of Chandler, amending the Chandler Health Care Benefits Trust document.

RESOLUTION NO. 4571

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, AMENDING THE CHANDLER HEALTH CARE BENEFITS TRUST.

WHEREAS, on August 16, 2010, the City of Chandler approved Resolution No. 4447, which approved and authorized the City of Chandler Health Care Benefits Trust ("Trust Agreement"); and

WHEREAS, the City of Chandler wants to approve and authorize certain changes to that Trust Agreement; and

WHEREAS, the approval of this amendment to the Trust Agreement is in the best interests of the City of Chandler.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Chandler, Arizona hereby amends the Chandler Health Care Benefits Trust to read as follows:

Section 1: Article I, Definitions, is amended to read as follows:

ARTICLE I, DEFINITIONS:

"Plan Year" means the ~~calendar~~ fiscal year of the Plan.

"~~Restricted-Plus-One Reserve~~ ~~Restricted-Plus-Six Reserve~~" means the Restricted Reserve plus an amount equal to one month ~~six months~~ of premium payments for the Plan.

Section 2: Article II, Section 3.05 is amended to read as follows:

ARTICLE II, ORGANIZATION AND OPERATION OF TRUSTEES

Section 3.05. Term. Each Trustee shall serve a three-year term, unless terminated as described in this Article. A Trustee may be reappointed to no more than one additional consecutive term. Notwithstanding the foregoing, the initial terms for the first five Trustees shall be as follows: one Trustee to serve an initial term of one year; two Trustees to serve an initial term of two years; and two Trustees to ~~serve~~ ~~service~~ an initial term of three years. The Council shall determine which of the first five Trustees shall serve the one-year, two-year, and three-year terms.

Section 3: Article IV, Section 4.03(e) is amended to read as follows:

ARTICLE IV, RESPONSIBILITIES AND POWERS OF THE TRUSTEES

Section 4.03. Management. The Trustees shall have the power to manage the Trust, including the acquisition and disposition of property that is in or part of the Trust, as follows:

...

(e) Premium Holidays and Premium Subsidies. No Premium Holiday or Premium subsidy shall be permitted unless it is recommended by the Trustees and approved by the Council. The use of Funds for a Premium Holiday or Premium Subsidy is subject to the following limitations:

(i) Premium Holiday. The Trustees may recommend to the Council that Funds in excess of the Restricted-Plus-One ~~Restricted-Plus-Six~~ Reserve be used to pay for a Premium Holiday. The Trustees shall not recommend a Premium Holiday, and the Council shall not approve a Premium Holiday, if the use of Funds for the Premium Holiday would cause the total funds to fall below the level of the Restricted-Plus-One ~~Restricted-Plus-Six~~ Reserve.

(ii) Premium Subsidy. In 2011, 2012 and 2013, the Trustees shall recommend to the Council that all Funds in excess of the Restricted-Plus-One ~~Restricted-Plus-Six~~ Reserve be used to pay for a Premium Subsidy, *provided however*, that the Premium Subsidy recommended by the Trustees shall not be greater than the following:

CALENDAR YEAR	PREMIUM SUBSIDY
2011	30%
2012	13%
2013	3%

Trustees shall not recommend a Premium Subsidy, and the Council shall not approve a Premium Subsidy, if the use of Funds for the Premium Subsidy would cause the total Funds to fall below the level of the Restricted-Plus-One ~~Restricted-Plus-Six~~ Reserve.

Section 4: Article V, Section 5.02(b)(i), is amended to read as follows:

ARTICLE V, CONTRIBUTIONS TO AND DISTRIBUTIONS FROM THE TRUST

Section 5.02. Distributions. Distributions from the Trust may be made for any of the following:

...

(b) Paying all reasonable expenses of operating, administering, or managing the Plan or Trust, including but not limited to:

(i) Where third parties are engaged to ~~provide~~ provides services to the Plan or Trust, as described above, compensating such third parties;

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona, this ____ day of _____, 2012.

ATTEST:

CITY CLERK

MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Resolution No. 4571 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the ____ day of _____, 2012, and that a quorum was present thereat.

City Clerk

APPROVED AS TO FORM:

City Attorney

CH for

CHANDLER HEALTH CARE BENEFITS TRUST

RECITALS

WHEREAS, the City of Chandler, Arizona (“Chandler”) currently provides certain welfare benefits for certain of its employees, former employees, elected officials, and their beneficiaries;

WHEREAS, Arizona law permits Chandler to establish a self-insurance program for the management and administration of health benefits;

WHEREAS, Arizona law requires that the funding for such self-insurance program be deposited in a trust;

WHEREAS, Chandler has established or will establish such a self-insurance program;

WHEREAS, Chandler intends the trust established by this document (this “Trust Document”) to satisfy the requirements of Section 11-981 of the Arizona Statutes;

WHEREAS, Chandler intends the trust established by this Trust Document to be exempt from taxation pursuant to Section 115 of the Internal Revenue Code; and

WHEREAS, Chandler wishes trustees to hold and administer the Funds (defined below), in trust, pursuant to the terms of this Trust Document;

NOW, THEREFORE, in consideration of the foregoing Chandler establishes the following Trust:

ARTICLE I DEFINITIONS

“Account” means the bank or investment account(s) established by the Board to hold some or all of the Funds.

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

“Chandler” means the City of Chandler, Arizona.

“Code” means the Internal Revenue Code of 1986, as amended.

“Council” means the Chandler City Council.

“Employee” means an individual that Chandler classifies and treats as an employee (not as an independent contractor) for payroll purposes, regardless of whether the individual is subsequently reclassified as an employee of Chandler in a court order, in a settlement of an administrative or judicial proceeding, or in a determination by the Internal Revenue Service, the Department of the Treasury, or the Department of Labor.

“Funds” means the assets of the Trust, in whatever form or location.

“Governmental Trust” means a trust that is exempt from taxation pursuant to Section 115 of the Internal Revenue Code.

“Investment Manager” means the individual or entity engaged by the Council to select, manage, and invest Chandler’s funds. The Investment Manager’s investment decisions shall be subject to the investment guidelines established by Chandler’s Management Services Department.

“Participant” means an Employee, former Employee, or Chandler elected official who is eligible to participate and is participating in the Plan.

“Plan” means the arrangement pursuant to which Chandler provides self-insured medical benefits to Participants and Beneficiaries.

“Plan Administrator” means the person or entity identified as the Plan Administrator in the Plan.

“Plan Year” means the calendar year of the Plan.

“Premium Holiday” means the Trust waives the total premium (the amount established by the Trustees pursuant to Section 5.01(a)) for a designated period of time.

“Premium Subsidy” means the Trust waives a percentage of the total premium (the amount established by the Trustees pursuant to Section 5.01(a)) for a designated period of time.

“Restricted Reserve” means the amount needed to pay Plan claims that are incurred but not reported and also Plan claims that are incurred but not paid. Such amount shall be as attested to by an actuary who has been engaged to provide services to the Trust and as approved by the Trustees.

“ Restricted-Plus-One Reserve” means the Restricted Reserve plus an amount equal to one month of premium payments for the Plan.

“Trust” means the legal entity established pursuant to this Trust Document.

“Trustees” means the Trustees described in this Trust Document.

**ARTICLE II
ESTABLISHMENT OF TRUST**

Section 2.01. Establishment. Chandler hereby establishes the Trust, consisting of such monies as Chandler may deposit from time to time in the Account; plus all other money or property as shall lawfully become a part of the Trust; plus all the earnings, income, gains, appreciation and all other increments of any nature from the foregoing; and less payments made pursuant to this Trust Document. The Trust shall become effective only upon the determination of Chandler's City Attorney that this document is in proper form and is within the power and authority of the Council, and upon the approval of the Council.

Section 2.02. Name. The Trust shall be known as the Chandler Health Care Benefits Trust.

Section 2.03. Purpose.

(a) The Funds shall be held, invested, reinvested, and administered by the Trustees in accordance with the terms of the Plan and the terms of this Trust Document, solely in the interest of Participants and Beneficiaries and for the purpose of providing benefits to the Participants and their Beneficiaries and defraying the reasonable expenses of administering the Plan and the Trust.

(b) The purpose of the Trust is to fund health, welfare and related benefits, consistent with the restrictions contained in Code Section 115 and other applicable law, for the benefit of Participants and Beneficiaries, in accordance with the Plan.

ORGANIZATION AND OPERATION OF TRUSTEES

Section 3.01. Appointment. The Mayor shall nominate individuals to serve as Trustees overseeing the management and administration of the Trust. The Council shall consider and may appoint any individual so recommended, *provided that* the number and identity of the appointed Trustees shall conform to the requirements of this Article. Each Trustee so appointed shall accept the appointment in writing and shall confirm in writing that the Trustee agrees to hold and administer the Funds, in trust, pursuant to the terms of this Trust Document.

Section 3.02. Number and Identity. There shall be five Trustees. No Trustee may be a member of the Council, and no more than one Trustee may be an employee of Chandler. No former member of the Council or former employee shall be a Trustee. With the exception of the employee Trustee, if any, a Trustee shall have expertise in the field of finance, employee benefit, or health care.

Section 3.03. Bonding. All Trustees shall be bonded in an amount to be approved by the City Manager. This requirement may be satisfied by a blanket performance bond or other coverage provided by Chandler.

Section 3.04. Officers. At the commencement of each Plan Year, the Trustees shall elect a Chairperson, Vice-Chair, and a Secretary from among themselves. The Chairperson shall preside over the work of the Trustees pursuant to this Trust Document. The Vice-Chair shall preside in the Chairperson's absence. The Secretary shall cause to be maintained accurate records of all actions of the Trustees, including minutes from all Trustees' meetings. A copy of the minutes shall be retained as a record of the Trust's activities.

Section 3.05. Term. Each Trustee shall serve a three-year term, unless terminated as described in this Article. A Trustee may be reappointed to no more than one additional consecutive term. Notwithstanding the foregoing, the initial terms for the first five Trustees shall be as follows: one Trustee to serve an initial term of one year; two Trustees to serve an initial term of two years; and two Trustees to serve an initial term of three years. The Council shall determine which of the first five Trustees shall serve the one-year, two-year, and three-year terms.

Section 3.06. Termination. The term of any Trustee shall automatically terminate upon the earliest of the following: death; resignation; removal; failure to attend three consecutive meetings; or, for a Trustee who is an employee of Chandler, the termination of such employment.

Section 3.07. Resignation of a Trustee. A Trustee may resign by giving 60 days' prior written notice to the Chairman. The Chairman may exercise discretion to waive or reduce the 60-day requirement, but shall not waive the written-notice requirement. The notice shall state the effective date of resignation. The resignation shall take effect on its stated effective date unless a new Trustee is appointed and accepts appointment prior to the stated effective date, in which case the date of acceptance shall constitute the effective date of the resignation. Upon the effective date of the resignation, the resigning Trustee shall be discharged from any further duty or responsibility under the Trust, and the resigning Trustee shall deliver to the Chairman (or to the Secretary, if the Chairman is resigning) any and all property in his or her possession or control which belongs to the Plan or Trust.

Section 3.08. Removal of a Trustee. A Trustee may be removed pursuant to Chandler City Code Section 2-6. Upon the effective date of the removal, the removed Trustee shall be discharged from any further duty or responsibility under the Trust, and the removed Trustee shall deliver to the Chairman (or to the Secretary, if the Chairman is being removed) any and all property in his or her possession or control which belongs to the Plan or Trust.

Section 3.09. Meetings. The Trustees shall meet whenever required to provide for the orderly and timely administration of the business of the Plan and the Trust at such location as may be acceptable to the Trustees, but no less than four times per Plan Year. In calling, providing notice of, and holding meetings, the Trustees shall conform to applicable law.

Section 3.10. Quorum. A quorum shall consist of three Trustees.

Section 3.11. Voting. Each Trustee shall have one vote. All actions by and decisions of the Trustees shall be the affirmative vote of a majority of the number of the Trustees attending a duly called meeting of the Trustees at which there is a quorum present.

Section 3.12. Exculpation and Indemnification of the Trustees.

(a) **Reliance.** A Trustee may act or rely upon any of the following:

(i) Any instrument, application, notice, request, signed letter, telegram or other paper or document believed by him to be genuine and to contain a true statement of facts and to be signed or sent by the proper person; or

(ii) The advice, opinion, records, reports or recommendations of any accountant, actuary, administrator, attorney, consultant, co-trustee, investment agent or investment manager or any other advisor selected by the Trustees with reasonable care.

(b) **Exculpation of Trustees.** No Trustee shall incur any liability individually or on behalf of other individuals for any action or omission, unless such action or omission is due to the Trustee's own gross negligence, criminal conduct, willful misconduct, or lack of good faith.

(c) **Indemnification of Trustees.** The Trustees shall cause any person who is or has served as a Trustee to be indemnified out of the Trust against all damages, liabilities and expenses incurred by or imposed on him in connection with any claim, suit, action or proceeding concerning the Trust or his acts or omissions as a Trustee, including, without limitation, legal fees and amounts paid in any compromise or settlement, unless such acts or omissions constitute gross negligence, criminal conduct, willful misconduct or lack of good faith. Any indemnification provided herein shall be limited to amounts not collected pursuant to valid and enforceable liability insurance policies.

(d) **Indemnification of Others.** To the extent permitted by law, the Trustees, in their discretion, may also cause the Trust to indemnify any person who is rendering services to the Trust or Plan against all damages, liabilities and expenses incurred by or imposed upon such a person in connection with any claim, suit, action or proceeding concerning the Plan or Trust or the acts or omissions of such a person, including, without limitation, legal fees and amounts paid in any compromise or settlement, unless such act or omission constitutes gross negligence, criminal conduct, willful misconduct or lack of good faith.

(e) **Limitation on Indemnification.** Notwithstanding the foregoing, no indemnification shall be provided unless and until:

(i) It is adjudicated that the action or omission did not constitute gross negligence, criminal conduct, willful misconduct, or lack of good faith; or

(ii) the Trust receives a written opinion from Chandler's City Attorney that any such adjudication would have determined that the action or omission did not constitute gross negligence, criminal conduct, willful misconduct, or lack of good faith.

Section 3.13. Compensation of Individual Trustees. An individual Trustee shall not be paid any compensation or reimbursement from the Trust for services provided to the Trust.

Section 3.14. Conflicts of Interest. Each Trustee shall comply with applicable state and federal law concerning conflicts of interest.

Section 3.15. Service in More Than One Fiduciary Capacity. Any individual, entity or group of persons may serve in more than one fiduciary capacity with respect to the Plan, the Trust or both to the extent such is permitted by law.

**ARTICLE IV
RESPONSIBILITIES AND POWERS OF THE TRUSTEES**

Section 4.01. In General. The Trustees shall have the power to perform all acts, to take all proceedings, and to exercise all rights and privileges, although not specifically mentioned herein, as the Trustees may deem necessary or advisable to administer and manage the Trust so as to carry out the purposes of this Trust Document and the Plan. The Trustees shall discharge their responsibilities under this Trust Document:

(a) For exclusively governmental purposes, namely providing benefits to Participants and Beneficiaries and defraying the reasonable expenses of administering the Plan and Trust;

(b) With the care, skill, prudence, and diligence under the circumstances 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;

(c) By diversifying the investments of the Fund so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(d) In accordance with the provisions of the Plan and this Trust Document.

Section 4.02. Statutory Requirements.

(a) ***Risk Management Consultant or Insurance Administrator.*** Prior to paying Plan expenses on a self-insured basis, the Trustees shall confirm that the City Manager has designated a risk management consultant or insurance administrator licensed pursuant to Title 20, Chapter 2 of the Arizona Statutes, and the Trustees shall further confirm that such license was verified by the Council prior to such designation.

(b) ***Auditor.*** The Council shall engage an external auditor to perform an annual audit of the Trust. Each audit report shall be kept on file for five years with the Council. The Trustees shall work and cooperate with such auditor.

(c) ***Stop-Loss.*** Prior to paying any Plan claims on a self-insured basis, the Trustees shall confirm that the Council has procured stop-loss insurance for the Trust from an insurer authorized to do business in Arizona.

Section 4.03. Management. The Trustees shall have the power to manage the Trust, including the acquisition and disposition of property that is in or part of the Trust, as follows:

(a) ***General Authority.*** The Trustees shall have exclusive authority and responsibility with respect to the custody and management of the Trust, except to the extent any such authority has been assigned elsewhere by this Trust Document or has been delegated by the Trustees pursuant to this Trust Document.

(b) **Separate Account; Delegation of Custody.** The Trustees have the exclusive responsibility and authority to maintain the Funds in Trust, separate from all other Chandler funds and accounts. If the Council selects one or more independent financial institutions for the Funds, the Trustees shall maintain the Funds at such financial institutions. Consistent with the Council’s selections, the Trustees may delegate custody of all or any portion of the Funds to a custodian; any such custodian shall hold the Funds in trust as directed in writing by the Trustee.

(c) **Contributions and Distributions.** The Trustees have the exclusive authority and responsibility to determine the required contributions to and appropriate distributions from the Trust, as more fully described in Article V.

(d) **Restricted Reserve.** The Trustees have the exclusive authority and responsibility to determine the appropriate amount of Funds that the Trust should hold as Restricted Reserve, *provided that* the Restricted Reserve shall be no less than the minimum amount recommended and attested by the actuary engaged by the Council to provide services to the Trust.

(e) **Premium Holidays and Premium Subsidies.** No Premium Holiday or Premium subsidy shall be permitted unless it is recommend by the Trustees and approved by the Council. The use of Funds for a Premium Holiday or a Premium Subsidy is subject to the following limitations:

(i) **Premium Holiday.** The Trustees may recommend to the Council that Funds in excess of the Restricted-Plus-One Reserve be used to pay for a Premium Holiday. The Trustees shall not recommend a Premium Holiday, and the Council shall not approve a Premium Holiday, if the use of Funds for the Premium Holiday would cause the total Funds to fall below the level of the Restricted-Plus-One Reserve.

(ii) **Premium Subsidy.** In 2011, 2012, and 2013, the Trustees shall recommend to the Council that all Funds in excess of the Restricted-Plus-One Reserve be used to pay for a Premium Subsidy, *provided however* that the Premium Subsidy recommended by the Trustees shall not be greater than the following:

CALENDAR YEAR	PREMIUM SUBSIDY
2011	30%
2012	13%
2013	3%

The Trustees shall not recommend a Premium Subsidy, and the Council shall not approve a Premium Subsidy, if the use of Funds for the Premium Subsidy would cause the total Funds to fall below the level of the Restricted-Plus-One Reserve.

(f) **Plan Claims.** The Trustees have the exclusive authority and responsibility to decide the final-level appeal for any claim for benefits under the Plan. The Trustees may delegate this authority and responsibility to a third party, *provided that* such delegation must be in writing and accepted by the third party.

(g) **Service Providers.**

(i) **For the Trust.** The Trustees have the authority to request that appropriate Chandler employees provide services to the Trust. In addition, the Trustees have the authority to engage suitable third parties to provide services for the Trust, with the consent of the Council, which consent will not be unreasonably withheld. Such authority is exclusive to the Trustees, with the following exceptions: the Council has the authority to select and engage the Investment Manager and an external auditor for the Trust; and the Council has the authority to select and purchase stop-loss coverage for the Trust.

(ii) **For the Plan.** The Trustees do not have the authority to engage third parties to provide services for the Plan.

(iii) **Payment.** The Trustees have the authority to pay reasonable compensation and expenses for any parties engaged to provide services for the Trust or for the Plan as set forth above.

(iv) **Compliance.** All engagements and payments pursuant to this Section shall comply with applicable procurement laws, policies, and procedures.

(h) **Accounts, Books, and Records.** The Trustees have the authority and responsibility to keep full and accurate accounts, books, and records concerning the Fund. All such accounts, books, and records shall be open to inspection in accordance with applicable law.

(i) **Valuation.** The Trustees shall cause the Fund to be valued no less than annually and shall forward notice of such value to Chandler and the Plan Administrator.

(ii) **Accounting.** Within a reasonable time after the end of each Plan Year, the Trustees shall provide Chandler and the Plan Administrator an accounting of the administration of the Trust since the previous accounting. The accounting shall include all transactions of the Trust during the relevant period, as well as all property in the Trust and its fair market value at the end of the relevant period.

Section 4.04. Investments.

(a) **Control.** The Trustees have the authority and responsibility to determine what portion of the Funds shall be invested. The Trustees have the authority and responsibility to invest and reinvest all or part of Funds, without distinction between principal and income as the Trustees determine, in such securities or in such property, real or personal, or share or part thereof, or part interest therein, wherever situated. All such investment decisions shall conform and be subject to the investment guidelines established by Chandler's Management Services Department.

(b) **Delegation.** The Trustees retain the authority and responsibility to determine what portion of the Funds shall be invested. The Trustees hereby delegate to the Investment Manager all other authority and responsibility described in the previous paragraph, *provided that* the Investment Manager agrees (i) to act in the same manner and with the obligations and limitations as would apply to the Trustees under this Trust Document and (ii) to provide investment reports to the Trustees no less than quarterly and, in addition, as may be reasonably requested by the Chairperson.

Section 4.05. Merger of the Trust. The Trustee is authorized to merge or consolidate the Trust with another Governmental Trust, or to be party to a transfer of assets or liabilities with another Governmental Trust, *provided that* such merger, consolidation or transfer of assets or liabilities complies with all applicable laws and *further provided that* such merger, consolidation or transfer of assets or liabilities does not affect the Trust's status as a Governmental Trust.

Section 4.06. Responsibilities Not Assigned to the Trustees. The Trustees shall have no authority or responsibility for:

- (a) Designing, adopting, amending, or terminating the Plan;
- (b) Ensuring that the Plan complies with state or federal laws mandating the terms of the Plan;
- (c) Selecting or engaging service providers for the Plan;
- (d) Determining what portion of Plan premiums should be paid by Participants and Beneficiaries;
- (e) Collecting premiums from Participants or Beneficiaries; or
- (f) Prosecuting or defending actions, claims, or proceedings necessary or advisable for the protection of the Trust.

Authority and responsibility for the foregoing items in this Section are assigned to the Council, which may delegate this authority and responsibility to a third party.

ARTICLE V
CONTRIBUTIONS TO AND DISTRIBUTIONS FROM THE TRUST

Section 5.01. Contributions

(a) ***Premiums.***

(i) ***Amount.*** The Trustees shall determine the total premium that shall be required to participate in the Plan at each coverage level (e.g., individual coverage, family coverage). In determining premiums, the Trustees shall consult with the risk management consultant or insurance administrator engaged to assist the Trust and shall also consult with an actuary familiar with the Trust and the Plan. In determining the total premium, the Trustees shall consider all reasonable factors, including but not limited to the amount of reserves in the Trust, the claims experience of the Plan and Trust, market conditions, and cost trends. The Trustees shall determine the total premium no less frequently than annually, but the Trustees have the authority to increase premiums more frequently if reasonably necessary to protect the financial stability of the Trust. The Trustees may recommend Premium Holidays and Premium Subsidies, subject to Section 4.03(e).

(ii) ***Administration.*** At its discretion, the Trustees may establish a contribution schedule, adopting a funding policy, or using any similar mechanism to arrange for the orderly contribution of funds to the Trust. Chandler shall forward the premiums to the Trust no less frequently than monthly, in accordance with the arrangement adopted by the Trustees. Upon the Trustees' knowledge that Chandler is delinquent in its contributions, the Trustees shall promptly provide written notice of the delinquency to the Council, the City Manager, and the City Attorney.

(iii) ***Payment By Participants and Beneficiaries.*** The Council may determine that a portion of the premium should be paid by Participants and Beneficiaries. In such event, the Council shall be responsible for collecting such portion from Participants and Beneficiaries and forwarding those monies to the Trust for deposit. In the event that a Participant or Beneficiary fails to pay the appropriate portion of his or her premium, the Council shall ensure that the total premium shall nevertheless be paid to the Trust.

(b) ***Other Funding.*** The Trustees may permit the Trust to receive additional funding, including but not limited to any one or more of the following: interest, dividends, rebates, gifts, grants, special taxes levied to satisfy judgments, recovery from insurers, subrogation, or reimbursement.

Section 5.02. Distributions. Distributions from the Trust may be made for any of the following:

(a) Paying for or providing benefits to Participants or Beneficiaries, in accordance with the terms, provisions and conditions of the Plan, as determined and directed by the Plan Administrator; except upon final appeal, the Trustees shall have no obligation to evaluate whether the Plan Administrator's directions are correct.

(b) Paying all reasonable expenses of operating, administering, or managing the Plan or Trust, including but not limited to:

(i) Where third parties are engaged to provide services to the Plan or Trust, as described above, compensating such third parties;

(ii) Where Chandler employees render services to the Trust or Plan, compensating Chandler for such services;

(iii) Where taxes or assessments are levied or imposed upon the Trust or the Plan, paying such taxes or assessments.

(c) Upon termination, pursuant to Section 6.03.

Section 5.03. No Inurement to Private Interests. Except as specified in Section 5.02, at no time shall any part of the principal or income of the Trust inure to the benefit of a private individual or entity.

**ARTICLE VI
AMENDMENT AND TERMINATION**

Section 6.01. Amendment of Trust. This Trust Document may be amended in writing at any time by the Council. The Trustees may recommend amendments to the Council. Notwithstanding the foregoing, no amendment shall be adopted which alters the basic purpose of the Trust, causes the Trust to lose its status as a Governmental Trust, conflicts with any applicable law or government regulation, causes the use or diversion of any part of the Trust for purposes other than those authorized herein, or retroactively deprives anyone of a vested right or interest.

Section 6.02. Termination of Trust. The Trust shall continue until terminated by the Council in writing. The Council shall supply a copy of the writing to all the Trustees and to the Plan Administrator.

Section 6.03. Distribution Upon Termination.

(a) Upon termination of the Trust, the Trustees shall use the Funds to pay or to provide for the payment of any and all obligations of the Trust and the Plan, and the Trustees shall distribute and allocate the Funds in accordance with the then-current provisions of the Trust and the Plan; *provided that*, notwithstanding any Plan provision to the contrary, the Funds shall be allocated and distributed in the priorities and according to the categories required by applicable law.

(b) Upon termination of the Trust, after all obligations of the Trust and Plan have been satisfied, any remaining Funds shall revert and be distributed to Chandler's general fund.

Section 6.04. Amendment and Termination of Plan. Nothing in this Trust Document shall affect Chandler's ability to amend or terminate the Plan.

ARTICLE VII GENERAL PROVISIONS

Section 7.01. No Right, Title, or Interest. No Employer, Employee, Participant, or Beneficiary shall have any right, title or interest in the Trust or any right to contributions to be made thereto, or any claim against the Trust on account thereof, except as may be provided from time to time by this Trust Document or the Plan, and then only to the extent of the benefits payable to such person under the Plan.

Section 7.02. Nonalienation of Benefits. The Trust shall not 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, including any such liability which is for alimony or other payments for the support of a spouse, former spouse or any relative, until such payment has been actually received by the person entitled to it. Any attempt to anticipate, alienate, settle, transfer, assign, pledge, encumber, charge or otherwise dispose of the same shall be void. The Trust shall not in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to benefits under the Plan.

Section 7.03. Prohibition of Diversion.

(a) It shall be impossible by operation of the Trust or by its natural termination, by power of revocation or amendment, by the happening of any contingency, by collateral arrangement or by any other means, for any part of the corpus or income of the Trust or any funds contributed thereto to be used for or diverted to purposes other than as described herein.

(b) Notwithstanding the foregoing, a contribution made by Chandler as the result of a mistake may be returned to Chandler if the Trustee so directs, *provided that* the repayment is not prohibited by applicable law.

Section 7.04. Incompetency. In the event it is determined that any person entitled to receive benefits is unable to care for his or her affairs because of mental or physical incapacity, the benefits due such person may be paid to his or her legal guardian or conservator, or to any relative by blood or by marriage to be used and applied for the benefit of such person. Payment to such legal representative or relative of the person on whose account benefits are payable shall operate to discharge the payor from any liability to such person or to anyone representing him or her (or his or her interest), and the Trustees shall have no duty or obligation to see that the funds are used or applied for the benefit of such person.

Section 7.05. Notice and Delivery of Documents. Any notice required to be given under this Trust Document may be given in person or by first-class mail. When notice is given by mail, it shall be deemed to have been given as of the date of posting to the last-known address of the addressee available from the Trust records.

Section 7.06. Headings. Titles of articles and headings of sections and subsections are inserted for convenience of reference. They constitute no part of this Trust Document and are not to be considered in the construction hereof.

Section 7.07. Construction. This Trust Document is created and accepted in the State of Arizona. All questions pertaining to its validity or construction not otherwise preempted by federal law shall be determined in accordance with the laws of the State of Arizona. If any provision contained in this Trust Document or in any collective bargaining agreement pursuant to which this Trust Document is created should be held unlawful, such provision shall be of no force and effect and this Trust Document or any such collective bargaining agreement shall be treated as if such provision had not been contained therein.

IN WITNESS HEREOF, the City of Chandler hereby establishes the Chandler Healthcare Benefits Trust.

DATED this ____ day of

CITY OF CHANDLER, ARIZONA
A Municipal Corporation

Jay Tibshraeny, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM

Mary Wade, City Attorney

CH for

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, by _____, the _____ of the CITY OF CHANDLER, ARIZONA, a municipal corporation, on its behalf.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires: _____