



MEMORANDUM

Management Services Memo No. 14-004

DATE: JULY 11, 2013

TO: MAYOR AND COUNCIL

THRU: RICH DLUGAS, CITY MANAGER *RD*

FROM: DAWN LANG, *DL* MANAGEMENT SERVICES DIRECTOR AND CHANDLER FIRE FIGHTERS EMPLOYEE BENEFIT TRUST FUND BOARD TRUSTEE
DEBRA STAPLETON, DIRECTOR OF HUMAN RESOURCES *DS*

SUBJECT: RESOLUTION NO. 4701 AUTHORIZING AND APPROVING THE AMENDED AND RESTATED AGREEMENT AND DECLARATION OF TRUST FOR THE CHANDLER FIRE FIGHTERS EMPLOYEE BENEFIT TRUST FUND

RECOMMENDATION

Staff recommends adoption of Resolution No. 4701 authorizing and approving the Amended and Restated Agreement and Declaration of Trust for the Chandler Fire Fighters Employee Benefit Trust (CFEFT) Fund.

BACKGROUND/DISCUSSION

The CFEFT Fund was established July 9, 2006, as a result of the meet and confer process between the City and the United Phoenix Firefighters Association Local 493, I.A.F.F. (FFA), and the original Agreement and Declaration of Trust for the CFEFT Fund was executed on November 20, 2007. The CFEFT Fund was designed to mirror a program previously adopted by the City of Phoenix and was intended to provide a tax-preferred vehicle to fund retiree medical benefits for the City’s retired firefighters. The Memorandum of Understanding (MOU) states the City will contribute twenty-five dollars (\$25) per Unit member, per pay period, to the fund, and the contribution will be matched by each Unit member by the same amount.

The legal structure of the CFEFT Fund is referred to under the Internal Revenue Service (IRS) Code as a tax-exempt voluntary employees’ beneficiary association, or a “VEBA.” A VEBA is a tax-exempt entity that exists as a legally independent trust. The primary tax advantages associated with a VEBA are pre-tax employer contributions to the CFEFT Fund, tax-deferred earnings accumulations in the CFEFT Fund, and tax-exempt benefit payments to the retirees and their spouses. Because of these tax advantages, the IRS imposes several procedural and substantive restrictions on the operation of a VEBA.

With the help of outside counsel who was asked to review the taxability and structure of the CFFEFT Fund, it was determined that the IRS has not yet reviewed the CFFEFT Fund and issued a VEBA approval letter. Such approval may be obtained retroactively after the VEBA has been in place for some time. The CFFEFT Board, with the help of counsel, is currently preparing to submit the CFFEFT Fund to the IRS under that retroactive approval process.

The Trust Agreement is being amended to tailor its provisions to the parties' needs and to incorporate some of the provisions previously included in the MOU between the City and the FFA. The amendment to the MOU was recently approved by the City Council, and the attached CFFEFT Fund agreement is being amended to include the provisions transferred from the MOU to the trust, add IRS compliance provisions, and clarify the current administration of the Trust to assist future Fire Trust Board members as they transition into positions and responsibilities.

FINANCIAL IMPLICATIONS

None

PROPOSED MOTION

Move to adopt Resolution No. 4701 authorizing and approving the Amended and Restated Agreement and Declaration of Trust for the Chandler Fire Fighters Employee Benefit Trust (CFFEFT) Fund.

Attachments: Resolution No. 4701

Amended and Restated Agreement and Declaration of Trust for the Chandler Fire Fighters Employee Benefit Trust Fund

c: Rae Lynn Nielsen, Human Resources Supervisor and CFFEFT Board Trustee
Tom Carlson, Assistant Fire Chief and CFFEFT Board Trustee
Robert Isaacson, Fire Captain and CFFEFT Board Trustee
Richard McBlane, CFFEFT Board Chairman

RESOLUTION NO. 4701

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, AUTHORIZING AND APPROVING THE AMENDED AND RESTATED AGREEMENT AND DECLARATION OF TRUST FOR THE CHANDLER FIRE FIGHTERS EMPLOYEE BENEFIT TRUST FUND

WHEREAS, the City of Chandler (City) and the Chandler Chapter of the United Phoenix Fire Fighters Association, Local 493, I.A.F.F. through the meet and confer process authorized the formation of a trust, known as the Chandler Fire Fighters Employee Benefit Trust Fund, to receive and hold contributions made by the City and eligible participants for the purpose of providing a monthly health care stipend for retirees and such other employee welfare benefit program(s) as are from time to time designated to provide benefits through said trust fund; and

WHEREAS, the Chandler Fire Fighters Employee Benefit Trust Fund was established as set forth in the Agreement and Declaration of Trust for the Chandler Fire Fighters Employee Benefit Trust Fund executed on November 20, 2007; and

WHEREAS, changes to the original Agreement and Declaration of Trust for the Chandler Fire Fighters Employee Benefit Trust Fund are necessary to more clearly reflect the parties' intention to operate and administer the Trust as a voluntary employees' beneficiary association (VEBA) in accordance with the provisions of Section 501(c)(9) of the Internal Revenue Code; and

WHEREAS, adoption of the Amended and Restated Agreement and Declaration of Trust for the Chandler Fire Fighters Employee Benefit Trust Fund, attached hereto as Attachment A, is necessary to make and memorialize the necessary changes.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Chandler, Arizona, as follows:

1. That approval is granted for the Amended and Restated Agreement and Declaration of Trust for the Chandler Fire Fighters Employee Benefit Trust Fund attached hereto as Attachment A.
2. That the Mayor of the City of Chandler is hereby authorized to execute the Amended and Restated Agreement and Declaration of Trust for the Chandler Fire Fighters Employee Benefit Trust Fund on behalf of the City of Chandler.
3. That the various City officers and employees are hereby authorized and directed to perform all acts necessary to give effect to this Resolution

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona this ____ day of July, 2013.

ATTEST:

CITY CLERK

MAYOR

APPROVED AS TO FORM:

CITY ATTORNEY

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Resolution No. 4701 was duly passed and adopted by the City Council of the City of Chandler, Arizona at a regular meeting held on the ____ day of _____, 2013, and that a quorum was present thereat.

City Clerk

**AMENDED AND RESTATED
AGREEMENT AND DECLARATION OF TRUST
FOR THE CHANDLER FIRE FIGHTERS
EMPLOYEE BENEFIT TRUST FUND**

This Amended and Restated Agreement and Declaration of Trust for the Chandler Fire Fighters Employee Benefit Trust Fund (the "Amended Trust Agreement") is made by and between THE CITY OF CHANDLER, a municipal corporation (hereinafter called the "City"); THE CHANDLER CHAPTER of the UNITED PHOENIX FIRE FIGHTERS ASSOCIATION, Local 493, I.A.F.F. (hereinafter "FFA"); and the Board of Trustees, as identified herein, as Trustees of the Trust (hereinafter called "Trustees");

WITNESSETH

WHEREAS, the City and FFA through the meet and confer process authorized the formation and continuation of a trust, known as the Chandler Fire Fighters Employee Benefit Trust Fund (the Trust"), to receive and hold contributions made by the City and eligible participants for the purpose of providing a monthly health care stipend for retirees and to receive and such other employee welfare benefit program(s) as are from time to time designated to provide benefits through said trust fund; and

WHEREAS, the Trust was established as set forth in the Agreement and Declaration of Trust for the Chandler Fire Fighters Employee Benefit Trust Fund executed on November 20, 2007; and

WHEREAS, changes to the original Agreement and Declaration of Trust for the Chandler Fire Fighters Employee Benefit Trust Fund are necessary to more clearly reflect the parties' intention to operate and administer the Trust as a voluntary employees' beneficiary association in accordance with the provisions of Section 501(c)(9) of the Internal Revenue Code; and

NOW THEREFORE, for valuable consideration and mutual undertakings hereinafter appearing and in order to carry into effect the employee benefit purposes contemplated hereby, this Amended Trust Agreement is adopted effective July ____, 2013, and provides as follows:

ARTICLE 1. DEFINITIONS AND CONSTRUCTION

Section 1.01. Definitions. The following words and phrases when used in the Trust, unless the context clearly indicates otherwise, shall have the following respective meanings:

- (a) "Administrative Custodian" means any person, group of persons or other entity appointed and authorized hereunder by the Board of Trustees to process claims for benefit payments from the Trust and to provide any other administrative services as the Board may request and/or delegate.
- (b) "Beneficiary" means any person other than a Participant who, in accordance with the terms of Article III of this Amended Trust Agreement, is eligible to receive benefits from the Trust.
- (c) "Board of Trustees", "Board" or "Trustees" means the Board composed of five (5) individuals appointed to be the Trustees hereunder.
- (c) "Code" means the Internal Revenue Code and the Regulations and Rulings issued pursuant thereto, all as in effect and amended from time to time.
- (d) "City" means the City of Chandler, a municipal corporation.
- (e) "Participant" means any person employed by the City who is eligible in accordance with the terms of Article III of this Amended Trust Agreement and required to make contributions to the Trust in accordance with the terms of the MOU.
- (f) "FFA" means the Chandler Chapter of the United Phoenix Fire Fighters Association, Local 493, I.A.F.F, the authorized bargaining agent of the Participants.
- (g) "MOU" means the Memorandum of Understanding between the City of Chandler and the United Phoenix Fire Fighters Association, IAFF Local 493, Chandler Chapter, representing Chandler Fire Fighters, as such may be amended by appropriate bargaining action from time to time.
- (h) "Retiree" means any person who retired from service as a City of Chandler Fire Fighter who is eligible in accordance with the terms of Article III of this Amended Trust Agreement to receive benefits under the Trust.
- (i) "Trust" means the Employee Benefit Trust Fund as set forth in this Amended Trust Agreement and any amendments or supplements thereto which from time to time may be adopted by the Board of Trustees.
- (j) "Trust Fund" means all sums of money and other property as shall from time to time be contributed to the Trust by the City or Participants in accordance with the terms hereof and all

earnings, increment and income thereon, less the payments which shall have been made by the Trustees as authorized to carry out the purpose of the Trust.

Section 1.02. Construction of Terms. Wherever used herein, any words used in the masculine shall be construed as though they were used in the feminine in all cases where they would so apply and any words used in the singular or the plural shall be construed as though they were used in the plural or the singular, as the case may be, in all cases where they would so apply.

Section 1.03. Arizona Law Applies. The Trust shall be construed and its validity determined according to the laws of the State of Arizona. In case any provision of the Trust shall be held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining parts of the Trust, as the case may be, which shall instead be construed and enforced as if said illegal and invalid provision had never been included herein.

ARTICLE II. ESTABLISHMENT AND PURPOSE OF TRUST

Section 2.01. Establishment and Purpose. The Trust was created and established, and is hereby continued, by the City and FFA for the sole purpose of accumulating and distributing the Trust Fund to provide benefits in accordance with the terms of this Amended Trust Agreement and the MOU. Contributions by the City or Participants shall be made to the Trust at such times and in such amounts as may be specified in an MOU or other written agreement between the City and FFA. Subject to timely remission of such contributions in accordance with the MOU, the City shall have no obligation for funding or paying any benefits provided under the Trust or any other obligations with regard to the Trust. The Trust Fund shall be held by the Trustees in trust distinguishing between principal and income and shall be dealt with in accordance with this Amended Trust Agreement.

Section 2.02. No Diversion of Trust Fund. At no time prior to the satisfaction of all Trust liabilities with respect to the Participants and their Beneficiaries shall any part of the corpus or income of the Trust Fund be used for or diverted to purposes other than for the exclusive benefit of such Participants and their Beneficiaries.

Section 2.03. Limitation of Liability. No liability whatever shall attach to or be incurred by either the City, or FFA, or officers or directors, as such, of the City or FFA, under or by reason of the terms and

conditions contained in or implied from this Trust Agreement. At no time shall the benefit obligations of the Trust exceed such obligations as the assets of the Trust Fund will support.

ARTICLE III. TRUST FUND ELIGIBILITY

Section 3.01. Eligible Retirees. Individuals who retire from service as a City of Chandler Fire Fighter or Chief Officer shall be eligible to receive benefits from the Trust. Such individuals shall be referred to herein as Retirees.

Section 3.02. Covered Participants. Individuals who are employed by the City of Chandler as Fire Fighters and Chief Officers on or after July 9, 2006 shall be considered Participants under the Trust and shall be required to make contributions to the Trust Fund via mandatory salary reductions, in accordance with the applicable MOU.

Section 3.03. Returning Participants. A Participant who separates from employment with the City and then returns as an FFA member may apply to the Trustees for membership as a Participant. To become eligible, the returning Participant must pay to the Trust Fund an amount calculated to equal the total of the contributions the individual and the City would have made to the Trust Fund during the period that the Participant was not employed by the City as an FFA member, provided, however, that no period of time prior to July 9, 2006 shall be considered. The make-up contribution shall be required and collected in addition to the Participant contributions required pursuant to Section 3.03. If a returning FFA member fails to comply with the provisions of this Section 3.03, such individual shall not be eligible to participate in the Trust or receive benefits from the Trust.

ARTICLE IV. BENEFITS AVAILABLE FROM TRUST AND PAYMENT OF TRUST BENEFITS

Section 4.01. Trust Fund Benefits. It shall be the duty of the Trustees to devise a plan for paying monthly retiree health care stipends and related welfare benefits hereunder, consistent with the assets of the Trust Fund and based on actuarial analysis of the Trust Fund. The identification herein of specific benefits to be paid from the Trust Fund shall not be construed as a limitation on the power and authority of the Trustees to administer and pay additional related welfare benefits under this Amended Trust Agreement. The Trustees

may establish, increase, decrease or otherwise modify the amount and/or timing of benefit payments from the Trust Fund, in their uniform and nondiscriminatory discretion and consistent with the assets of the Trust Fund.

Section 4.02. Retiree Stipend. The Trust Fund shall provide a monthly stipend to each Retiree to apply to the costs of the Retiree's health and dental expenses, including health insurance premiums, co-pays for doctor visits and hospital stays, dental expenses, prescriptions, eye care and other deductible medical expenses under Section 213(d) of the Code.

Section 4.03. Survivor Benefit. Upon the death of a Retiree, the monthly health care stipend paid to the Retiree prior to the death of the Retiree shall continue to the surviving spouse of the Retiree, for the remainder of the life of the surviving spouse. The survivor benefit set forth in this Section 4.03 shall inure to the surviving spouse only and neither the estate of the Retiree nor any other individual or entity shall have any claim against the Trust Fund for survivor benefits.

Section 4.04. Funeral Allowance. Upon the death of a Retiree, the Trust Fund shall provide a funeral benefit allowance to the Beneficiary of the Retiree. For purposes of this Section 4.04, the Beneficiary of the Retiree need not be the surviving spouse of the Retiree.

Section 4.05. Trust Reserve. In performing the duties set forth in Section 4.01 above, the Trustees shall maintain an appropriate reserve in the Trust Fund, based on the benefits available to Participants and the most recent actuarial analysis of the Trust. When establishing the Trust reserve, the Trustees also may take into consideration the value and liabilities of benefits under consideration but not yet agreed to by the City and FFA. Notwithstanding the foregoing, no reserve shall be maintained which shall trigger income taxes to be owed by, or penalties to be assessed on, the Trust Fund by reason of Code Section 419A or other similar Code restrictions.

Section 4.06. Payment of Trust Benefits. It shall be the duty of the Trustees to make payments out of the Trust Fund to such persons, in such manner, at such time and in such amounts as may be specified by the Trustees pursuant to the Amended Trust Agreement. All directions of the Trustees for payments out of the Trust Fund shall be in writing and signed by a duly authorized agent of the Trustees or the Administrative Custodian, as the case may be. The Trustees shall be fully protected in making payments

out of the Trust Fund in accordance with such directions and shall have no responsibility whatsoever respecting the application of such payments. A duly authorized agent of the Trustees or the Administrative Custodian, as the case may be, may be given check-writing authority over certain assets of the Trust Fund for the administrative convenience of the Trustees, pursuant to Section 5.03 hereof. In any such case, the Trustees shall retain ultimate control of and responsibility of the Trust Fund.

Section 4.07. Unclaimed Payments. In the event any payments made by the Trustees out of the Trust Fund are unclaimed, the Trustees shall determine the dispositions of such payments.

ARTICLE V. INVESTMENT OF TRUST FUND

Section 5.01. General Investment Rule.

The Trustees shall invest the Trust Fund as a prudent investor would, by considering the purposes, distribution and liquidity requirements and other demands on the Trust. In performing its investment duties, the Trustees shall exercise reasonable care, skill and caution. The prudent investor rule shall be interpreted and applied as a test of investment related conduct and not of resulting investment performance. The Trustees may seek the advice and counsel of outside service providers, as the Trustees deem appropriate.

Section 5.02. Types of Investments. The entire Trust Fund, except those amounts as are needed to meet current payments owed from the Trust and expenses incurred by the Trust, shall be invested and reinvested by the Trustees without distinction between principal and income in any personal property, or share or part thereof, or part interest therein, including but not limited to, common stocks, preferred stocks, bonds, notes, debentures, mortgages, equipment trust certificates, mutual funds, common trust funds, certificates of deposit, time deposit and passbook savings accounts and individual or group insurance or annuity or deposit administration contracts. The Trustees may delegate the investment duties to a custodian of assets or an investment advisor. Such delegation shall be in writing.

Section 5.03. Cash Balances and Checking Accounts. The Trustees may keep such portion of the Trust Fund in cash or cash balances as the Trustees may deem from time to time to be in the best interests of the Trust Fund, without liability for interest. All or any portion of the Trust Fund may be deposited in such account or accounts with bank or similar financial institution supervised under federal or state law

that the Trustees in their discretion may from time to time establish and maintain to carry out the purposes of the Trust. Any withdrawals from such account or accounts shall be made by any person or persons duly authorized by the Trustees to act on their behalf for that purpose.

Section 5.04. Restrictions on Investments. Investments and reinvestments hereunder shall be restricted in character or type and shall be limited to any amount or type in relation to the amount or type of the Trust Fund as a whole, as to be in compliance with applicable state and federal laws and the prudent investor rule set forth in Section 5.01 above.

Section 5.05. Responsibility for investment Policy and Board Review Thereof. The investment policy and objectives for the Trust Fund shall be established and carried out by the Trustees for the purposes of providing the benefits under the Trust and defraying the reasonable expenses of administering the Trust Fund. Such policy and objectives may be changed from time to time, as the Trustees in their discretion shall determine. The Trustees may secure a custodian for Trust assets, and any such custodian shall furnish the Trustees a quarterly analysis of the holdings of the Trust Fund, and when requested by the Trustees, shall review with the Trustees the investment status of the Trust Fund and the policies and objectives in respect thereof.

ARTICLE VI. POWERS OF TRUSTEES

Section 6.01. General Statement of Authority. The Trustees have been granted and shall continue to exercise broad discretionary authority to control and manage the operation and administration of the Trust, as well as the determination and administration of Trust Fund benefits, except such authority as is specifically allocated otherwise by or under the terms of this Amended Trust Agreement or the applicable MOU.

Section 6.02. Enumeration of General Powers Regarding the Trust Fund. The Trustees are authorized and empowered with respect to the Trust Fund:

- (a) To sell, exchange, convey, transfer or otherwise dispose of and also to grant options with respect to, any personal property at any time held by them, and any sale may be made by private contract

or by public auction, and no person dealing with the Trustees shall be bound to see to the application of the purchase money or to inquire into the validity, expediency or propriety of any such sale or other disposition;

- (b) To make commitments either alone or in company with others to purchase at any future date any property;
- (c) To compromise, compound and settle any debt obligation due from third persons to the Trust Fund or to the third persons from the Trust Fund and to reduce the rate of interest on, to extend or otherwise modify, or to foreclose upon default or otherwise enforce any such obligation;
- (d) To vote in person or by proxy on any stocks, bonds or other securities held by them; to give general or special proxies or powers of attorney with or without power of substitution; to exercise any options appurtenant to any stocks, bonds or other securities, including but not limited to the conversion thereof into other stocks, bonds or securities, or to exercise any rights to subscribe for additional stocks, bonds, or other securities and to make any and all necessary payments incidental thereto; to join in, dissent from or oppose the reorganization, recapitalization, consolidation, sale, merger or other changes affecting securities of corporations or properties in which the Trust Fund may be interested, upon such terms and conditions as they may deem wise, and to accept any securities which may be issued upon any such reorganization, recapitalization, consolidation, sale or merger, and thereafter to hold the same; and generally to exercise any of the power of any owner with respect to stocks, bonds, securities or other property held in the Trust Fund;
- (e) To make, execute, acknowledge and deliver any and all assignments, documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (f) To enforce any right, obligation or claim in their discretion and in general to protect in any way the interest of the Trust Fund, either before or after default, and, in case they shall consider such action for the best interest of the Trust Fund, in their discretion to abstain from the enforcement of any

right, obligation or claim or to abandon any property, whether real or personal, which at any time may be held by them;

- (g) To borrow or raise monies for the purposes of the Trust in such amount and upon such terms and conditions as they in their discretion may deem advisable; and for any sums so borrowed to issue their promissory note and to secure the repayment thereof by pledging all or any part of the Trust Funds; and no person loaning money to the Trust Fund shall be bound to see to the application of the money loaned or to inquire into the validity, expedience or propriety of such any borrowing;
- (h) To do all acts which it may deem necessary or proper and to exercise any and all powers of the Trustees under this Trust Agreement upon such terms and conditions as the may deem for the best interests of the Trust Fund;
- (i) To own any contract with an insurance company held as an investment in the Trust Fund, and to exercise any option, privilege or benefit in connection therewith, including, without limitation, the right to collect and receive the proceeds and all dividends or other distributions thereon; to surrender any such contract for cash; to change the persons to whom and the manner in which the proceeds of any such contract shall be paid; to convert any such contract from one form to another; to sell or assign any such contract; to execute all necessary receipts and releases to any insurance company; and to compromise or adjust any claim arising out of any such contract.

Section 6.03. Responsibility and Authority With Respect to the Trust.

- (a) The Trustees shall be the administrator of the Trust, subject to the terms of this Amended Trust Agreement and the applicable MOU. At no time shall the Trustees have authority to obligate the Trust Fund for benefits and/or the reasonable costs of administration thereof over and above such benefits/costs as the assets of the Trust Fund will support. Without limiting the foregoing, the Trustees shall have exclusive authority and power with respect to the Trust:
 - (i) To carry out the duties assigned by this Amended Trust Agreement;
 - (ii) To interpret and apply all provisions of the Trust, including without limitation the power to determine who is eligible to participate therein and to receive benefits thereunder;

- (iii) To formulate, issue and apply rules and regulations, which are consistent with the terms and provisions of the Trust and any underlying welfare benefit programs and the requirements of applicable law;
- (iv) To make appropriate determinations and calculations and to direct the payment of benefits accordingly;
- (v) To prescribe and require the use of appropriate forms;
- (vi) To prepare all reports that may be required by law;
- (vii) To contract for and to pay premiums on any insurance which is purchased in furtherance of the goals of the Trust, including but not limited to general and specific stop loss insurance;
- (viii) To appoint a custodian of the Trust Fund and direct the custodian in its activities as custodian of the Trust Fund; and
- (ix) To amend, modify or terminate any or all of the benefits offered under the Trust, in accordance with any agreement reached by the City and FFA by appropriate bargaining action.

(b) The Trustees may appoint one or more of the Board members to act as an Administrative Custodian for the Trust, or may engage a third party to so serve, and delegate such duties and functions relating to the operation and administration of the Trust as it in its discretion shall from time to time direct and set forth in writing. However, in any such case, the Trustees shall retain exclusive discretionary authority and control over the management of the Trust assets, except as such authority and control may be delegated hereunder.

ARTICLE VII. ACCOUNTING

Section 7.01. Maintenance and Submission of Accounting Statements. With respect to the Trust Fund, the Trustees shall cause to be kept accurate and detailed accounts of all investments, and the Trustees, or their appointee for this purpose, shall keep accurate and detailed accounts of all receipts and disbursements and other transactions hereunder, and all accounts, books and records relating thereto shall be open to inspection and audit at all reasonable times by any person or persons designated by the Trustees. Accounting statements reflecting the current status of the Trust Fund and its most recent operations shall be supplied to the Trustees at least monthly. Periodic fiscal year financial statements, certified by a certified public accountant, shall be prepared and supplied to the Trustees, to the City and FFA. Effective July 1, 2011, such financial statements shall be prepared and supplied annually, as soon as administratively feasible following the close of each fiscal year. Effective July 1, 2012 and within ninety (90) days following the close of each fiscal year, the Trustees shall file with the City and FFA a written report setting forth all investments, receipts and

disbursements, and other transactions effected by them during each fiscal year, including a description of all securities and investments purchased and sold with the cost or net proceeds of such purchases or sales (accrued interest paid or received being shown separately), and showing all cash securities and other property held at the end of such period.

Section 7.02. Audit and Correction of Accounting Statements. In case of any disapproval thereof, an audit of such statement shall be made by an independent public accountant or accountants appointed by the City and FFA (the expense of any such audit to be paid by the Trust Fund), unless a corrected statement shall have been rendered to the City and FFA and approved in writing. Upon completion of such audit, the inaccuracies in such statement so audited, if any, shall be corrected to conform to such audit and a corrected statement shall be delivered by the Trustees to the City and FFA. Any such corrected statement shall stand approved as the statement of account of the Trustees as to all matters embraced therein, without further approval. An approved statement or corrected statement of account shall constitute an account stated between the Trustees and the City and FFA as to all matters embraced in said statement, and shall be binding upon all persons and other entities having an interest in the Trust Fund to the same extent as if the account of the Trustees had been settled and allowed in a proceeding for judicial settlement of their accounts in any court of competent jurisdiction, and to which all such persons and corporations had been made parties.

Anything hereinabove to the contrary notwithstanding, an approved or corrected statement shall not be deemed to relieve either the Trustees of any liability which may be imposed upon them for violation of a specific provision of law or to preclude either the City or FFA from commencing an action against the Trustees within such period as may be otherwise permitted by law in connection with such a violation.

Section 7.03. Information for Auditors and Actuaries. The Trustees shall submit to the auditors and/or actuaries for the Trust Fund, if there be any, such valuations, reports or other information as they may reasonably require.

ARTICLE VIII. PAYMENT OF EXPENSES

Section 8.01. Compensation and Expenses. The Trustees shall serve as fiduciaries of the Trust without compensation. Board members shall be reimbursed for all reasonable expenses incurred in their capacity as administrators of the Trust, which shall be paid or reimbursed from the Trust Fund.

Section 8.02. Payment of All Other Expenses. The Trustees shall pay from the Trust Fund all reasonable expenses incurred in administering the Trust, which are properly chargeable under applicable law, including any compensation of a custodian of assets which was agreed upon in writing between the Trustees and such custodian and including the fees and costs for the services of any actuary, legal counsel, accountant, Administrative Custodian or any other person engaged and/or consulted by the Trustees as provided in this Amended Trust Agreement. The Trustees shall review and approve fees and other costs for such services related to the Trust, which shall be charged against the assets of the Trust Fund.

ARTICLE IX. LIABILITY OF TRUSTEES

Section 9.01. Scope of Liability. The Trustees shall not be liable for the making, retention or sale of any investment or reinvestment made by them as herein provided or for any loss to or diminution of the Trust Fund, or for anything done or omitted to be done by them with respect to the Trust, except as and only to the extent that such actions constitutes a violation of a specific provision of law. In no event shall the Trustees be obliged to collect any contribution from the City or a Participant, which may be required under the MOU.

Section 9.02. Purchase of Fiduciary Liability Insurance. The Trustees in their discretion may purchase as an expense of the Trust Fund such fidelity bonding and liability insurance for the Board members, any other fiduciary selected by it, as is permitted under law. The City or FFA, each in its own separate discretion, may also purchase liability insurance for the Trustees and, as the City or FFA may select, for any other person or persons who serve in a fiduciary capacity with respect to the Trust as is permitted under law.

ARTICLE X. APPOINTMENT AND OPERATION OF TRUSTEES

Section 10.01. Appointment of Trustees. The Trust Fund shall be managed and administered by a Board of five (5) individuals who shall act as Trustees selected as follows:

- (a) Two (2) individuals shall be appointed by the City Manager (appointing authority);
- (b) Two (2) individuals shall be appointed by the Chandler Chapter of the United Phoenix Fire Fighters Association, Local 493 (appointing authority); and
- (c) One (1) individual, who shall serve as Chairman, shall be selected by the four appointees (appointing authority) specified above, which Chairman shall be appointed for a one-year term; subject, however, to reappointment for additional terms of office as selected by the four appointees.

Any vacancy in a Board position, whether caused by death, removal, resignation or other cause, shall be filled by the appointing authority, which appointed the Board position thus vacated, but shall not affect the authority or responsibility of the Board to act until such vacancy is filled. The Board shall serve in a fiduciary capacity. A Board member may resign upon thirty (30) days written notice to the appointing authority, which was appointed him.

If the Board believes, or any member of the Board believes, that a Board member is not performing his duties as provided herein, the Board or Board member so concerned may make application to the appointing authority that such alleged inactive or neglectful Board member be removed and a replacement appointment be made. Only the appointing authority, which appointed a Board member, may remove or appoint a replacement Board member. The Board, by rule or regulation, may establish its own procedure for dispute resolution.

Section 10.02. Organization and Procedure.

- (a) The Board of Trustees may adopt such procedures, bylaws and operating rules, as it deems appropriate. Board action may be taken on a vote of at least four (4) Trustees present at any meeting, or upon unanimous written consent of all Board members without a meeting. Minutes of Board meetings shall be kept by a secretary who need not be a Board member and all action of the Board shall be recorded in appropriate written form.

(b) The Board may allocate to any Board members the authority to execute documents on their behalf and to represent the Board in any matters or dealings involving it. All such allocation of authority or responsibility shall be set forth in writing.

Section 10.03. Professional Service. The Trustees may engage and/or consult with legal counsel, independent qualified public accountant, enrolled actuary or such other persons, as they may deem appropriate. Such persons may be employed for the purpose of rendering advice to the Trustees concerning assigned responsibilities under this Amended Trust Agreement, and may be persons who render services to either the City or FFA or any fiduciary with regard to the Trust. In case, the Trustees shall retain the exclusive discretionary authority and control delegated to them under the terms of this Amended Trust Agreement.

Section 10.04. Delegation of Authority and Responsibility. The Trustees may appoint personnel of the City or FFA and/or any Administrative Custodian to perform such duties and functions relating to the operation and administration of the Trust Fund as the Trustees shall from time to time direct and supervise. It is expressly provided, however, that in any such case the Trustees will retain the full an exclusive discretionary authority and control delegated to them under the terms of this Amended Trust Agreement, and nothing contained in this Section 10.04 shall be construed to confer upon any personnel appointed hereunder any discretionary authority and control for and respecting the management and administration of the Trust Fund.

Section 10.05. Multiple Duties. Any person, group of persons or other entity may serve in more than one fiduciary capacity with respect to the Trust Fund.

Section 10.06. Claims Procedure.

(a) A participant or beneficiary who believes that he is then entitled to benefits under the Trust in an amount greater than he is receiving or has received may file a claim for such benefits by writing directly to the Trustees. The Trustees may prescribe a form for filing such claims, and if they do so, a claim shall not be deemed properly filed unless such form is used, but the Trustees shall provide a copy of such form to any person who claims for benefits is improper solely for this reason. If there is a Administrative Custodian for the Trust, the claim shall be referred to such Administrative Custodian for

written response; and in the absence of such Administrative Custodian, the Trustees shall prepare the appropriate written response.

- (b) Every claim, which properly filed shall be answered in writing within ninety (90) days (or one hundred eighty (180) days if special circumstances require an extension of time for processing the claim (of receipt stating whether the claim is granted or denied. If the claim is denied, the specific reasons for denial shall be set forth in a written notice to the claimant. Such notice shall also describe any information necessary for the claimant to perfect an appeal and an explanation of the Plan's claim appeal procedure.
- (c) Within sixty (60) days after notice that a claim is denied, the claimant may file a written appeal to the Trustees, which shall include any comments, statements or documents the claimant may wish to provide. Appeals shall be considered by at least four (4) members of the Board, acting as the Board, who shall render a written response to the appeal within sixty (60) days of its receipt (or one hundred twenty (120) days if special circumstances require an extension of time for processing the appeal). In the event the claim is denied upon appeal, the Board shall set forth the reasons for denial and the pertinent provisions of the plan in the written response. The Board shall comply with any reasonable request from a claimant for documents or information relevant to his claim prior to his filing an appeal.

Section 10.07. Agent for Service of Process. The Chairman of the Board is hereby designated as the Agent for service of legal process with respect to all matters pertaining to the Trust.

ARTICLE XI. AMENDMENT OR TERMINATION

Section 11.01. Authority to Amend or Terminate.

- (a) The City and FFA reserve the right at any time and from time to time (i) to modify or amend in whole or in part any or all of the provisions of this Amended Trust Agreement with notice thereof in writing delivered to the Trustees or (ii) to terminate this Amended Trust Agreement upon such notice as they may agree with notice in writing delivered to the Trustees; provided further that at no time may any part of the corpus or income thereof be used for, or diverted to, purposes other than for the exclusive benefit of the Participants and their Beneficiaries, it being understood that this provision is not to be

construed to enlarge the obligations of either the City, FFA or a Participant under the MOU beyond those assumed by it under the MOU.

- (b) The City and FFA shall supply to the Trustees copies of the authority by which the City and FFA adopt this Amended Trust Agreement if the Amended Trust Agreement is amended or modified, copies of the authority by which the City and FFA adopted such amendments or modifications.

Section 11.02. Distribution upon Termination. In the event of termination of the Trust, the Trustees shall apply and distribute all cash, securities and other property then constituting the Trust Fund, less any amounts constituting charges against the Trust Fund, in such manner as permitted under Code Section 501(c)(9).

ARTICLE XII. GENERAL ADMINISTRATION

Section 12.01. Spendthrift Clause. No interest in, and no rights or claims to, any of the assets of the Trust Fund shall be assignable in anticipation of payment either by voluntary or involuntary act or by operation of law, or be liable in any way for the debts, obligations or defaults of any Participant or Beneficiary; and any attempt at assignments, alienation or other disposition of such assets shall be void.

Section 12.02. Waiver or Claims. Neither the establishment of the Trust, nor any modification thereof, nor the payment of any benefits, shall be construed as giving the Participant, or any other person any legal or equitable right against the City, FFA, the Trustees, any Administrative Custodian, or any other officer or personnel of the City, FFA or the Trustees or a Administrative Custodian, unless the same shall be specifically provided for in the Amended Trust Agreement or conferred by the applicable MOU, nor shall anything in the Amended Trust Agreement be construed as giving any Participant the right to be retained in the service of the City.

ARTICLE XIII. TRUSTEE ACCEPTANCE

Section 13.01. Acceptance. The Trustees accept the Trust hereby created and agree to be bound by all the terms of this Trust Agreement.

Section 13.02. Successors and Assigns. This Trust Agreement shall be binding upon successors of the City and FFA and the Trustees.

IN WITNESS WHEREOF, the City and FFA have caused this Amended Trust Agreement to be executed and attested in duplicate originals by its respective officers thereunto duly authorized, and its corporate seal be hereunto affixed, and the members of the Board of Trustees have hereunto fixed their several hands and seals, all as of the day and year first above written.

THE CITY OF CHANDLER

By: _____
Its: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney *mw*

CHANDLER CHAPTER UNITED PHOENIX
FIREFIGHTERS ASSOCIATION
Local 493, I.A.F.F.

By: *[Signature]*
Its: *Chandler Reg 493*

THE BOARD OF TRUSTEES

Tom Carlson

