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MEMORANDUM

Management Services Memo No. 14-071

DATE: MAY 8, 2014

TO: MAYOR AND COUNCIL

THRU: RICH DLUGAS, CITY MANAGER *RD*
NACHIE MARQUEZ, ASSISTANT CITY MANAGER *NM*

FROM: DAWN LANG, MANAGEMENT SERVICES DIRECTOR *DL*

SUBJECT: RESOLUTION NO. 4765 AMENDING RESOLUTION NO. 1917, PERTAINING TO THE ISSUANCE OF WATER AND SEWER REVENUE BONDS, CHANGING THE REQUIREMENTS FOR AND THE ADMINISTRATION OF RESERVE FUNDS

RECOMMENDATION

Staff recommends Council adopt Resolution No. 4765, prepared by City's bond counsel firm of Gust Rosenfeld, amending the City's Master Resolution No. 1917 of March 30, 1991 pertaining to the issuance of water and sewer revenue bonds, changing the requirements for and the administration of the reserve fund created to serve the City's water and sewer revenue bonds and water and sewer revenue refunding bonds.

BACKGROUND

The City's Master Resolution No. 1917 currently requires the City to cash fund a debt service reserve or purchase an insurance policy to guarantee the bonds. The City's Financial Advisor Bill Davis of Piper Jaffray worked with National Public Finance Guaranty (NPF) to revise the reserve requirements to a springing reserve. Mainly due to the City's strong credit, the insurance company has approved the use of a springing debt service reserve. This type of reserve requires the City maintain net Water & Wastewater revenues at a minimum of one hundred seventy-five percent (175%) of the principal and interest requirements on all outstanding bonds for the respective corresponding bond years. The City will only be required to purchase an insurance policy if the reserve falls below the minimum. Not only is this reserve structure less costly, but it is also more efficient.

Resolution No. 4765 amends the City's Master Resolution No. 1917, changing the requirements for and the administration of the reserve fund created to serve the City's water

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and sewer revenue bonds and water and sewer revenue refunding bonds, allowing for the use of a springing reserve.

PROPOSED MOTION

Move for the adoption of Resolution No. 4765, amending the City's Master Resolution No. 1917 of March 30, 1991 pertaining to the issuance of water and sewer revenue bonds, changing the requirements for and the administration of the reserve fund created to serve the City's water and sewer revenue bonds and water and sewer revenue refunding bonds.

Attachment: Resolution No. 4765

c: Marsha Reed, Assistant City Manager

RESOLUTION NO. 4765

RESOLUTION AMENDING RESOLUTION NO. 1917 AND CHANGING THE REQUIREMENTS FOR AND THE ADMINISTRATION OF THE RESERVE FUND CREATED TO SERVE THE CITY'S WATER AND SEWER REVENUE BONDS AND WATER AND SEWER REVENUE REFUNDING BONDS.

WHEREAS, on March 30, 1991, the Mayor and Council passed and adopted Resolution No. 1917 (the "*Master Resolution*") authorizing the issuance of City of Chandler, Arizona Water and Sewer Revenue Refunding Bonds, Series 1991 (the "*Bonds*") and providing for a reserve fund (the "*Reserve Fund*") to secure such bonds and bond thereafter issued on a parity with such bonds (collectively, the "*Bonds*"); and

WHEREAS, this Mayor and Council now wishes to amend the Master Resolution to change certain terms and conditions pertaining to the Reserve Fund; and

WHEREAS, such amendment shall be effective only if it is approved by the insurance company that issued municipal bond insurance policies pertaining to the outstanding Bonds and which has provided reserve fund guaranties pertaining to the Bonds; and

WHEREAS, National Public Financial Guarantee Corporation ("*National*" or the "*Insurance Company*"), a stock insurance corporation, duly organized and existing under the laws of the State of New York, as insurer of the Bonds, pursuant to the Novation Agreement (the "*Novation Agreement*") by and between Financial Guaranty Insurance Company ("*FGIC*") and National, effective as of August 19, 2013 pursuant to which FGIC has novated to National, and National has assumed, the financial guaranty insurance policy issued with respect to the Bonds (the "*Policy*"), as well as all of FGIC's rights, interests and obligations under the Policy and the Resolution, provided bond insurance with respect to the outstanding Bonds;

WHEREAS, National, pursuant to the Novation Agreement by and between FGIC and National, provides reserve fund guaranties pertaining to the Bonds (the "*Reserve Fund Guarantor*"); and

WHEREAS, the form of amendment and consent to amendment by National are set forth in substantially final form as *Exhibit A* and *Exhibit B* attached hereto.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF CHANDLER, ARIZONA, as follows:

Section 1. The amendments to the Master Resolution set forth on *Exhibit A* attached hereto and incorporated by reference herein are hereby authorized and approved and the City Manager or his authorized designee is ordered and directed to execute and deliver on behalf of the City of Chandler, Arizona the amendment to the Master Resolution as set forth in *Exhibit A*, attached hereto and deliver the same to the Insurance Company and Reserve Fund Guarantor.

Section 2. The expenditure of all amounts necessary to achieve the consent of the Insurance Company and Reserve Fund Guarantor including any fees charged by such Insurance Company and Reserve Fund Guarantor or their attorneys, is hereby authorized, directed and approved.

Section 3. That the option to purchase a Reserve Fund Guaranty from Financial Guaranty Insurance Company for Bonds issued prior to January 1, 2014 in order to cover any future requirements for the Bonds is hereby authorized, directed and approved.

Section 4. The City Manager or his authorized designee is authorized to sign all agreements and do all things necessary to complete the transactions authorized herein.

PASSED AND ADOPTED this 8th day of May, 2014.

Mayor

ATTEST:

Clerk

APPROVED AS TO FORM:

**CITY ATTORNEY, CITY OF
CHANDLER ARIZONA**

City Attorney

GUST ROSENFELD P.L.C.


Bond Counsel

CERTIFICATION

I, Marla Paddock, the duly appointed and acting City Clerk for the City of Chandler, Arizona, hereby certify that the foregoing Resolution No. 4765 was duly passed and adopted by the Mayor and the Council of the City of Chandler, Arizona, at a meeting held on May 8, 2014, and the vote was ____ aye's and ____ nay's and that the Mayor and ____ Council members were present thereat.

Clerk, City of Chandler, Arizona

EXHIBIT A

**AMENDMENTS TO
CITY OF CHANDLER RESOLUTION NO. 1917**

Amendments to Definitions:

Definitions. Section 2 of the Master Resolution is amended by adding the following definitions:

"Post-2013 Reserve Fund" shall mean any Reserve Fund securing the Post-2013 Bonds or any portion thereof.

"Post-2013 Bonds" shall mean Bonds originally issued after January 1, 2014.

"Post-2013 Reserve Fund Guaranties" shall mean an irrevocable surety bond, letter of credit or line of credit or insurance policy executed and delivered to the City or a Paying Agent for the City as a Post-2013 Reserve Fund Guaranty for purposes of this Resolution.

"Post-2013 Reserve Fund Guarantor" shall mean as to Post-2013 Bonds, the issuer of a Post-2013 Reserve Fund Guaranties meeting the requirements of Exhibit C, whose policy of insurance, surety bonds, letters or lines of credit will not adversely affect the then-current rating of the Bonds if then rated by Moody's Investors Service or by Standard & Poors Corporation.

"Pre-2013 Bonds" shall mean the following Bonds:

Water and Sewer Revenue Bonds, Series 1994
Water and Sewer Revenue Bonds, Series 2001
Water and Sewer Revenue Refunding Bonds, Series 2003
Water and Sewer Revenue Refunding Bonds, Series 2005
Water and Sewer Revenue Bonds, Series 2005

"Pre-2013 Reserve Funds" shall mean a Reserve Fund containing the Pre-2013 Reserve Fund Guaranties that secures only the Pre-2013 Bonds.

"Pre-2013 Reserve Fund Guaranties" shall mean an irrevocable surety bond, letter of credit or line of credit or insurance policy executed and delivered to the City or a paying agent for the City that secures only the Pre-2013 Bonds.

"Pre-2013 Reserve Fund Guarantors" shall mean National Public Financial Guarantee Corporation pursuant to a Novation Agreement with Financial Guaranty Insurance Company.

The following definitions contained in Section 2 of the Master Resolution are amended to read as follows:

"Drawdown" shall mean any amount drawn by the Paying Agent on a Reserve Fund Guarantor in accordance with the Reserve Fund Guaranty.

"Drawdown Date" shall mean the date on which the Paying Agent draws down proceeds of the Reserve Fund Guaranty, which shall be a payment date on the Bonds.

"Reserve Fund" collectively shall mean the Pre-2013 Reserve Fund and the Post-2013 Reserve Fund; provided, however, that the Pre-2013 Reserve Fund shall secure only the Pre-2013 Bonds and the Post-2013 Reserve Fund shall only secure Post-2013 Bonds.

"Reserve Fund Guarantor" shall mean the Pre-2013 Reserve Fund Guarantors and the Post-2013 Reserve Fund Guarantors.

"Reserve Fund Value" shall mean as to the Pre-2013 Bonds the Reserve Fund Value provided by the Pre-2013 Reserve Fund Guaranties and "Reserve Fund Value" shall mean as to the Post-2013 Bonds the value of moneys, investments and Reserve Fund Guaranties deposited to the Post-2013 Reserve Fund.

"Reserve Requirement" shall mean as to the Pre-2013 Bonds the aggregate face value of the Pre-2013 Reserve Fund Guaranties at any time contained in the Pre-2013 Reserve Fund, which shall be not less than the Average Annual Debt Service of the Pre-2013 Bonds, and "Reserve Requirement" shall mean as to the Post-2013 Bonds an amount equal to Average Annual Debt Service of all outstanding Post-2013 Bonds, which amount shall be adjusted upon the issuance of Post-2013 Parity Bonds to equal Average Annual Debt Service immediately after issuance, or the maximum amount of the Post-2013 Reserve Fund is then permitted to increase under Section 148 of the Internal Revenue Code of 1986, as amended, or any comparable statutory provision limiting the amount of a reasonably required Reserve and Replacement Fund.

Amendment to Flow of Funds.

Section 10(B)(4) of the Master Resolution is amended to read as follows:

(4) Post-2013 Reserve Fund. Third, on or before the tenth (10th) day of each month to the Reserve Fund an amount equal to one sixtieth (1/60th) of the amount required to restore the Post-2013 Reserve Value to the Post-2013 Reserve Requirement within an eight-year period, or such amount as is required hereunder to restore the Post-2013 Reserve Fund Value to the Post-2013 Reserve Requirement after a Reserve Fund withdrawal occurs as to the Post-2013 Reserve Fund.

If, on any principal or interest payment date, a deficiency exists, then:

(a) if there are investments or cash in the Post-2013 Reserve Fund, such investments shall be liquidated and the cash and investment proceeds transferred to the Bond Fund; and

(b) if the deficiency is not then cured the Paying Agent shall deliver a request for drawdown to the Reserve Fund Guarantor(s).

With respect to any Pre-2013 Bonds, all Drawdown and Reserve Fund proceeds securing the Pre-2013 Bonds shall be applied to the payment of the interest on, or principal of, the respective Pre-2013 Bonds then due.

If Post-2013 Bonds are hereafter originally issued, the proceedings for such Post-2013 Bonds shall not require a deposit to the Post-2013 Reserve Fund unless the City is then required to fund a Reserve Fund pursuant to Section 33 hereof; if the respective Post-2013 Bonds are originally issued during a period when the City is then required to maintain the Post-2013 Reserve Fund pursuant to Section 33 hereof, the proceedings for such Post-2013 Bonds shall provide for an increase in the Post-2013 Reserve Fund Value sufficient to meet the Post-2013 Reserve Fund Requirement immediately after the issuance of such respective Post-2013 Bonds.

Drawdowns upon Reserve Fund Guaranties required to pay principal and interest will be replaced therein from the first money in the Revenue Fund thereafter received which is not required for current transfers into the Bond Fund pursuant to subparagraphs (1) or (2) of this Subsection.

The Post-2013 Reserve Fund shall contain two accounts, the Contributed Reserve Account and the Capitalized Reserve Account. The two accounts are created to segregate Post-2013 Reserve Fund Moneys and Investments to provide a means of tracking Post-2013 Reserve Fund deposits and investment income thereon for purposes of the Internal Revenue Code of 1986, as amended, or any comparable provision requiring such tracking.

All Post-2013 Reserve Fund deposits made from Net Revenues or other available moneys of the City shall be deposited to the Contributed Reserve Account. All Bond proceeds deposited to the Post-2013 Reserve Fund shall be deposited into the Capitalized Reserve Account. Any proceedings hereinafter taken with respect to the issuance of Post-2013 Bonds may satisfy the amount to be deposited in either account, so long as the minimum amount required by this Resolution to be deposited to the Post-2013 Reserve Fund shall be so deposited. All Post-2013 Reserve Fund Guaranties shall be deemed to be deposited to, and a part of the Post-2013 Reserve Fund Capitalized Reserve Account.

Amendment of Parity Bond Provisions.

Section 14(A)(4) of the Master Resolution shall be amended to read as follows:

(4) If on the date of issuance of any Post-2013 Bond the Reserve Fund is required to be maintained pursuant to Section 33 hereof, the City Council shall increase the Post-2013 Reserve Fund Value shall be increased in order that the Post-2013 Reserve Fund Value equal or exceed the Post-2013 Reserve Requirement immediately after issuance of such Post-2013 Bonds either by: (i) the deposit of Post-2013 Bond proceeds or available moneys of the City to the applicable Post-2013 Reserve Fund or take such action as necessary to provide for the immediate delivery of a Post-2013 Reserve Fund Guaranty to the Paying Agent, or any combination thereof.

Addition of a New Section Pertaining to the Reserve Fund.

The Master Resolution is amended by the addition of a new Section 33 to read as follows:

Section 33. Provisions relating to the Reserve Fund.

"Any provision of this Resolution No. 1917 to the contrary notwithstanding, if Net Revenues during any Fiscal Year ending on or after June 30, 2014 do not equal or exceed one hundred seventy-five percent (175%) of the principal and interest requirements on all Outstanding Bonds for the corresponding Bond Year, then the City will deposit, or cause to be deposited, to the Post-2013 Reserve Fund, moneys, investments, Reserve Fund Guaranties or any combination thereof, equal to the Post-2013 Reserve Requirement. If the City does not provide a Post-2013 Reserve Fund Guaranty and elects to deposit cash, the City shall cause the cash to be deposited, on or before the 10th day of the month, one sixtieth (1/60th) of the amount required to fund the Reserve Fund. If, thereafter, Net Revenues for two consecutive Fiscal Years equal or exceed one hundred seventy-five percent (175%) of the principal and

interest requirements on all Outstanding Bonds for the respective corresponding Bond Years, any moneys, investments or Post-2013 Reserve Fund Guaranties in the Post- 2002 Reserve Fund may be released and (except as otherwise limited by the terms of such Reserve Fund Guaranties or the related Reserve Fund Guaranty Agreements) used by the City for any lawful purpose, and the City's obligation to maintain the Post-2013 Reserve Fund at the Reserve Requirement will terminate, subject, however, to the provisions described in the preceding sentence for re-funding the Reserve Fund for Post-2013 Bonds."

EXHIBIT B

CONSENT TO AMENDMENT

WHEREAS, Resolution No. 1917 (the "*Master Resolution*") pertaining to the issuance of City of Chandler Utility Systems Revenue Bonds permits amendments to such Master Resolution; and

WHEREAS, Section 17 of the Master Resolution reads in part:

... all issuers of Municipal Bond Insurance Policies, and all Reserve Fund Guarantors or the Owners of two-thirds (2/3) in aggregate principal amount of all such Bonds Outstanding shall have the right from time to time to consent to and approve the adoption by the Council of a resolution or resolutions modifying or amending any of the terms or provisions contained in this resolution;

and;

WHEREAS, Section 17 of the Master Resolution further reads in part:

If all Reserve Fund Guarantors and all issuers of Municipal Bond Insurance Policies or the Owners of at least two-thirds (2/3) in aggregate principal amount of the Bonds Outstanding as in this Section defined, at the time of the adoption of such amendment or the predecessors in title of such Owners, shall have consented to and approved the adoption thereof as herein provided, no Owner whether or not such Owner shall have consented to or shall have revoked any consent as in this Section provided, shall have any right or interest to object to the adoption of such amendment or to object to any of the terms or provisions therein contained or to the operation thereof or to enjoin or restrain the City or the Council from taking any action pursuant thereto.

and;

WHEREAS, the City of Chandler (the "*City*") has requested that the below named insurer and reserve fund guarantor (the "*Insurer*"), consent to the Master Resolution amendments as set forth on the attached *Exhibit A*; and

WHEREAS, the Insurer consents to such amendment.

NOW, THEREFORE, the Insurer and the City hereby agree to amend the Master Resolution as set forth on the attached Exhibit A.

DATED as of _____, 2014.

**NATIONAL PUBLIC FINANCE
GUARANTEE CORP,** as successor to
Financial Guaranty Insurance Company

By: _____
Its: _____

CITY OF CHANDLER, ARIZONA

By: _____
Jay Tibshraeny, Mayor