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**MEMORANDUM**

**DATE:** February 26, 2015

**TO:** Mayor and City Council

**THRU:** Rich Dlugas, City Manager *RD*  
 Debra Stapleton, Human Resources Director *DAS*

**FROM:** Rae Lynn Nielsen, Benefits and Labor Relations Administrator *RN*

**SUBJECT:** Resolution No. 4835 - Authorizing and Adopting the Amended and Restated City of Chandler Worker's Compensation and Employer Liability Trust Agreement ("Trust Agreement")

**RECOMMENDATION:**

Approve Resolution No. 4835 authorizing and adopting the amended and restated City of Chandler Worker's Compensation and Employer Liability Trust Agreement ("Trust Agreement") which amends quorum requirements, adds provisions to allow telephonic attendance and voting, clarifies termination of office, and provides for an extension of the time frame for the Worker's Compensation and Employer Liability Trust Board to provide a recommendation to City Council regarding City funding of the worker's compensation program.

**BACKGROUND DISCUSSION:**

The City of Chandler established a Trust for the purposes of management and administration of the City's worker's compensation self-insured program on December 13, 2012.

The City of Chandler adopted the Trust Agreement on January 24, 2013, to set forth requirements of the program as well as roles and responsibilities of the Board of Trustees.

The proposed amendment and restatement of the Trust Agreement amends section 3.09 to clarify that in order for a quorum to exist; three Trustees must attend the meeting in person. Section 3.05 points to City Code §2-6 regarding grounds for removal and forfeiture of office. This change allows for excused absences and does not require removal from office to be automatic. Sections 3.08 and 3.10 allow for attendance and telephonic voting by Trustees unable to attend the meeting in person as long as there is a quorum. Section 5.01 extends the timeframe in which the Board is required to recommend funding needs to City Council from January 1<sup>st</sup> to March 15<sup>th</sup>. The extension enables City staff to examine the needs of the program, provide additional information to the Trust Board for consideration on future expenses, and still adhere to the City's budget time frames.

City Staff met with The Chandler Workers' Compensation and Employer Liability Trust Board on January 29, 2015, and the Board concurred with the recommended changes.

**PROPOSED MOTION:**

Move to approve Resolution No. 4835 authorizing and adopting the amended and restated City of Chandler Worker's Compensation and Employer Liability Trust Agreement ("Trust Agreement") which amends quorum requirements, adds provisions to allow telephonic attendance and voting, clarifies termination of office, and provides for an extension of the time frame for the Worker's Compensation and Employer Liability Trust Board to provide a recommendation to City Council regarding City funding of the worker's compensation program.

## RESOLUTION NO. 4835

**A RESOLUTION OF THE CITY OF CHANDLER, ARIZONA, AUTHORIZING AND ADOPTING THE AMENDED AND RESTATED CITY OF CHANDLER WORKER'S COMPENSATION AND EMPLOYER LIABILITY TRUST ("TRUST AGREEMENT"), WHICH AMENDS QUORUM REQUIREMENTS, ADDS PROVISIONS ALLOWING FOR TELEPHONIC ATTENDANCE AND VOTING, AND EXTENDS THE TIMEFRAME FOR THE WORKER'S COMPENSATION AND LIABILITY TRUST BOARD TO PROVIDE A RECOMMENDATION TO CITY COUNCIL REGARDING CITY FUNDING OF THE WORKERS' COMPENSATION PROGRAM**

WHEREAS, the City of Chandler ("the City") established a self-funded program for workers' compensation for its employees through its approval on December 13, 2012 of Ordinance No. 4415, *An Ordinance Of The City Council Of The City Of Chandler, Arizona, Amending Chapter 2, Code of the City of Chandler, by Adding Section 16; Creating the City of Chandler Worker's Compensation And Employer Liability Trust Fund; And Creating The City Of Chandler Worker's Compensation And Employer Liability Trust Board To Administer The Fund*; and

WHEREAS, Section 2-16.1(c) of the Chandler City Code requires that the City adopt a Trust Agreement as defined therein that sets forth the specific terms of the Chandler Worker's Compensation and Employer Liability Trust; and

WHEREAS, the City adopted the "Chandler Worker's Compensation and Employer Liability Trust Agreement" on January 24, 2013; and

WHEREAS, the City has determined that additional amendments are required to clarify quorum requirements, allow for Trustee telephonic attendance and voting, add clarifying language regarding termination of office, and to extend the timeframe in which the Trustees make recommendations to City Council regarding City funding of the program;

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

SECTION 1. The Mayor and City Council hereby approve and adopt the Amended and Restated City of Chandler Worker's Compensation and Employer Liability Trust Agreement effective February 26, 2015, attached hereto as Exhibit A.

SECTION 2. The Mayor is authorized to execute, on behalf of the City, the Amended and Restated City of Chandler Worker's Compensation and Employer Liability Trust Agreement effective February 26, 2015.

SECTION 3. The City's officers and employees are authorized and directed to take such actions as are deemed necessary and proper to give effect to this Resolution and implement the Plan.

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona, this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Resolution No. 4835 was duly passed and approved by the City Council of the City of Chandler, Arizona, at a regular meeting held on the \_\_\_\_ day of \_\_\_\_\_, 2015, and that a quorum was present thereat.

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY *Prof*

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**CHANDLER WORKER'S COMPENSATION & EMPLOYER LIABILITY TRUST**

Effective as of January 24, 2013

Amended and Restated as of February 26, 2015

## **RECITALS**

WHEREAS, the City of Chandler, Arizona (“Chandler”) currently employs various persons in various positions to provide services to or on behalf of the City; and

WHEREAS, Arizona law permits Chandler to establish a self-insurance program for the management and administration of worker’s compensation and employer liability benefits;

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 intends that the trustees 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 an employee, former employee, or any other person entitled to receive compensation from the City of Chandler pursuant to the provisions of Title 23, Chapters 5 and 6 of the Arizona Revised Statutes and/or pursuant to Rule 4, Section 5 or Rule 15, Section 11 of the Chandler Personnel Rules or any other compensation due to a former or current City of Chandler employee which is in the nature of worker’s compensation. “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 individuals or entities 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.

“Plan” means the arrangement pursuant to which Chandler provides self-insurance for obligations arising pursuant to the provisions of Title 23, Chapters 5 and 6 of the Arizona Revised Statutes and/or pursuant to Rule 4, Section 5 or Rule 15, Section 11 of the Chandler Personnel Rules or any other compensation due to a former or current City of Chandler employee which is in the nature of worker’s compensation.

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

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

“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.

“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 funds 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 Worker’s Compensation and Employer Liability 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 Beneficiaries and defraying the reasonable expenses of administering the Plan and the Trust.

(b) The purpose of the Trust is to fund the obligations of the City arising under the Plan as well as provide for the reasonable expenses or administering the Plan and this Trust.

### **ARTICLE III ORGANIZATION AND OPERATION OF TRUSTEES**

**Section 3.01. Appointment.** The Trustees of the Chandler Health Care Benefits Trust shall also serve as the Trustees of this Trust to oversee management and administration of this Trust. The term of the office of the Trustees for this Trust shall run concurrently with the terms of office for the Health Care Benefits Trust. Provided, however, in the event that a Trustee of the Health Care Benefits Trust is unable or unwilling to serve as a Trustee of this Trust, the Mayor of Chandler shall nominate one or more individuals to serve as a Trustee in his or her stead. The Council shall consider and may appoint any individual so recommended to serve in the stead of the Health Care Benefits Trustee unable or unwilling to serve as Trustee of this Trust. Provided, however *that* the number and identity of the appointed Trustees shall conform to the requirements of this Article. The term of a Trustee who is appointed by the Council shall run concurrent with the term of the Health Care Benefits Trustee whom the Trustee is appointed to replace. Each Trustee of this Trust 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, worker's compensation, employee benefits, 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. Trustees serving as a Trustee of this Trust and the Health Care Benefits Trust may hold a single bond.

**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. Termination.** The term of any Trustee shall terminate upon the following: death; resignation; removal or forfeiture of office as provided under City Code §2-6; or, for a Trustee who is an employee of Chandler, the termination of such employment.

**Section 3.06. 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 3.07. 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 3.08. 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. A Trustee must notify the Board Secretary at least five (5) working days in advance of a scheduled meeting if he or she wishes to attend the meeting by telephone conference, unless advance notice is impractical.

**Section 3.09. Quorum.** A quorum shall consist of three Trustees present in person at a duly called meeting.

**Section 3.10. 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 in attendance, either in person or telephonically, at a duly called meeting of the Trustees at which there is a quorum present.

**Section 3.11. 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 3.12. 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 3.13. Conflicts of Interest.** Each Trustee shall comply with applicable state and federal law concerning conflicts of interest.

**Section 3.14. 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 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.
- (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.*** 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 appropriate distributions from the Trust, as more fully described in Article V.

(d) ***Restricted Reserve.*** The Trustees have the 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) ***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 City, which consent will not be unreasonably withheld. Such authority is exclusive to the Trustees, with the following exceptions: the City has the authority to select and engage the Investment Manager and an external auditor for the Trust; and the City 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.

(f) ***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 may 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; or
- (d) 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 City, which may delegate this authority and responsibility to a third party.

**ARTICLE V**  
**CONTRIBUTIONS TO AND DISTRIBUTIONS FROM THE TRUST**

**Section 5.01. Contributions**

(i) **City Funding Amount.** The primary source of funding for the Trust shall be through contributions from the City of Chandler. Thereafter, no later than March 15 of each year, the Trustees shall provide a recommendation to the Council of the amount of funds anticipated to be needed for the following fiscal year to fulfill the needs and purposes of this Trust. The Council shall make an appropriation of funds to this Trust as part of the annual City Budget. The Council shall also make such interim contributions to the Trust as may be necessary to insure that the Trust has adequate funding.

(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 Beneficiaries, in accordance with the terms, provisions and conditions of the Plan, as determined and directed by the Plan Administrator; 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, 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. Non-alienation 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 Trustees so direct, *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.

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