

RESOLUTION NO. 1020-0421

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING A DECLARATION OF TRUST AND NECESSARY ANCILLARY DOCUMENTS TO CREATE AND AUTHORIZE THE CITY'S CREATION OF A SINGLE-EMPLOYER MUNICIPAL EMPLOYEE BENEFIT TRUST.

WHEREAS, the Council of the City of Avondale (the "City Council") is empowered pursuant to ARIZ. REV. STAT. § 11-981(A) to procure health, accident, life or disability benefits for employees and officers of the City of Avondale (the "City") through either an insurer licensed by the State or a program of self-insurance; and

WHEREAS, the City desires to form and operate the City of Avondale Employee Benefit Trust (the "Trust") to provide employee benefits of the type generally described under the provisions of ARIZ. REV. STAT. §§ 11-952 and 11-952.01 to its eligible employees and their dependents; and

WHEREAS, creating the Trust requires action by the City through the City Council.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF AVONDALE as follows:

SECTION 1. The recitals above are hereby incorporated as if fully set forth herein.

SECTION 2. The City Council hereby authorizes the creation and operation of the Trust.

SECTION 3. The City Council hereby approves and agrees to be bound by the provisions of the City of Avondale Employee Benefit Trust Agreement and Declaration of Trust (the "Trust Agreement") in substantially the form attached hereto as Exhibit A and incorporated herein by reference.

SECTION 4. This approval is contingent upon the Trust Agreement reflecting compliance with ARIZ. REV. STAT. § 42-17106.

SECTION 5. The Mayor, the City Manager or authorized designee, the City Clerk, City Attorney and the City Budget and Finance Director are hereby authorized and directed to take all steps and execute all documents necessary to carry out the purpose and intent of this Resolution.

PASSED AND ADOPTED by the Council of the City of Avondale, Arizona,
April 19, 2021.

Kenneth N. Weise, Mayor

ATTEST:

Marcella Carrillo, City Clerk

APPROVED AS TO FORM:

Nicholle Harris, City Attorney

EXHIBIT A
TO
RESOLUTION 1020-0421

[Trust Agreement]

See following pages.

AGREEMENT AND DECLARATION OF THE CITY OF AVONDALE
EMPLOYEE BENEFIT TRUST

THIS AGREEMENT AND DECLARATION OF TRUST (“Trust Agreement” or “Agreement”) is made and entered into this 19th day of April, 2021 between City of Avondale (hereinafter referred to as “City”), acting by and through its Governing Board, and certain persons (hereinafter referred to collectively as the “Trustees” and individually as a “Trustee”) for the administration of the Trust known as the “City of Avondale Employee Benefit Trust” (hereinafter referred to as the “Trust”), in accordance with the terms and provisions of this instrument. A Trustee has no responsibility for actions or inaction relating to the Trust or the administration thereof prior to his or her acceptance of the role of Trustee. A Trustee’s acceptance may be in the form of his or her signature to this Agreement or by appointment as a successor Trustee.

W I T N E S S E T H:

WHEREAS, A.R.S. § 11-981 authorizes cities to provide for a self-insurance program; and

WHEREAS, pursuant to this Trust Agreement, City and certain employees of City (hereinafter referred to as “Employees”) seek to participate in a program (hereinafter referred to as “Health and Welfare Program” or “Program”) whereby City provides and maintains certain health and welfare benefits for Employees and for certain eligible members of Employees’ families who are covered by the Program, which has been administered by the Trustees through the Trust established in accordance with this Declaration; and

WHEREAS, City and Employees contribute monies to the Trust, and said monies constitute a trust fund (hereinafter referred to as the “Trust Fund”) that are held for the benefit of Employees and their eligible dependents in accordance with the Program and with this Trust Agreement; and

WHEREAS, City and Trustees desire to administer the Program through the Trust; and

WHEREAS, to effect the aforesaid purpose, it is mutually necessary or desirable and in the best interest of City to declare the Trust and establish the purpose of the Trust and use of the Trust Fund for and in the manner more particularly set forth herein.

NOW THEREFORE, in consideration of the promises, covenants, agreements, terms, obligations and duties herein set forth, it is understood and agreed as follows:

ARTICLE I – DEFINITIONS

It is mutually understood and agreed by and between the parties hereto that the following definitions apply to this Trust Agreement:

- 1.01 “Trust Agreement” means and refers to this Agreement and Declaration of Trust and any modifications or amendments thereto.
- 1.02 “City” means and refers to the City of Avondale, a municipal corporation organized and existing under the laws of the State of Arizona.
- 1.03 “Trustees” means and refers to the Trustees and their successors provided for in this Trust Agreement.
- 1.04 “Self-insurance Program” means insurance programs established, and wholly or partially funded, by the City Governing Board.
- 1.05 “Health and Welfare Program” means the program of benefits established or to be established by the Trustees pursuant to this Trust Agreement. This includes all benefits set forth in Exhibit A, attached hereto, and the administration thereof.
- 1.06 “Employee(s)” means and refers to all benefit-eligible persons who have been employed by the City on a regular basis, and their spouse, dependents or domestic partners, and with eligibility as defined in the Plan Document(s), as hereinafter defined. The term “Employee(s)” also includes those City Governing Board members, and their spouses and dependents authorized by the City and permitted by Arizona Revised Statutes, Section 11-981, as it may be amended from time-to-time, to participate in one or more benefits offered through the Trust.
- 1.07 “Third-Party Administrator” refers to the entity designated by the Trustees to administer the “Health and Welfare Program” consistent with the written agreement between the Trust and the Third-Party Administrator.
- 1.08 “Fund” means and refers to the Trust Fund created by this Declaration, and shall mean generally the monies, property, contracts, or things of value, tangible or intangible, received and held by the Trustees for the uses and purposes set forth herein.
- 1.09 “City Contributions” means contributions made by the City to the Fund for the Health and Welfare Program.
- 1.10 “Employee Contributions” means the contributions made by the Employees

of the City to the Fund.

1.11 “Plan Document(s)” means and refers to the document(s) containing certain information relating to self-funded and insured benefits available to Employees through the Program.

ARTICLE II – NAME OF TRUST

The name of this Trust is and shall be the “City of Avondale Employee Benefit Trust” or “Employee Benefit Trust” (“EBT” or “Trust”) and shall in all respects be governed by the laws of the State of Arizona and administered to accomplish the purposes expressly, and by necessary implication, contained herein.

ARTICLE III – PURPOSE OF TRUST

3.01 – Purpose

The purpose of this Agreement is to make the declaration of the Employee Benefit Trust and the Agreement and Declaration of the Trust for the purpose of continuing to maintain the Trust Fund and establish the health and welfare benefits that are encompassed within the Program and subject to the Trust.

The express purposes and primary objectives of the Trust are:

- a. To establish and maintain a program of providing and maintaining health and welfare benefits for Employees of the City, and their spouse, dependents and domestic partners;
- b. To serve as self-insurance within and according to the provisions of A.R.S. § 11-981;
- c. To pay for costs of training designed to reduce losses and claims;
- d. To pay for uninsured losses, claims, and defense costs related to the administration of the Trust;
- e. To pay for costs of administration and related expenses, whether through self-funded or insured programs or both;
- f. To reimburse the Trustees for any other expenses necessarily or properly incurred by them in the performance of their duties under this Trust Agreement in accordance with the City of Avondale administrative policies; and
- g. To empower the Trustees to enter into (or to authorize the City Procurement Agent to enter into) contracts, procure insurance policies, or provide such benefits through self-funding to place into effect and

maintain a desirable and fiduciary-responsible Schedule of Benefits, in accordance with statutory and regulatory requirements.

The foregoing expressions of purpose are not exhaustive and, in addition to other related objectives reasonably inferred from that list, the Trust shall have such other objectives as may be lawful under Arizona law.

3.02 – Principal Office

The Trust shall have its principal office at the City’s central administrative offices, in the City of Avondale, County of Maricopa, State of Arizona (hereinafter referred to as the “Principal Office”).

ARTICLE IV – TRUSTEES AND SUCCESSOR TRUSTEES

4.01 – Authority and Selection

The Trust shall be administered by the Trustees. The Trustees shall be appointed by the City Manager.

4.02 – Composition and Terms

The Trust shall be administered by not less than five (5) and not more than seven (7) Trustees, appointed by the City Manager. No more than one (1) of the Trustees may be a member of the City Governing Board and no more than one (1) of the Trustees may be an Employee of the City. Any Employee of the City serving as a Trustee shall have professional experience with finance and/or benefits. The Trustees shall serve two-year terms. The initial board of trustees shall serve staggered terms of either one-year, two-year or three-year terms as designated in their appointment. The Employee Trustee shall serve until his or her successor is appointed.

4.03 – Trustee Bonds

As a qualification of continued service, each Trustee must be bonded, pursuant to A.R.S § 11-981. The bond amount of \$1 million per Trustee will be provided for under the City’s current Crime Policy or in any other method determined by the City.

4.04 – Resignation/Removal

A Trustee may resign at any time. A Trustee may also be removed by the Trust Board upon motion and by majority vote of the Trust Board. In the event of the removal or resignation of a Trustee, City Manager shall designate a successor to such Trustee (hereinafter referred to as “Successor Trustee”) who, upon acceptance of his/her appointment in writing, shall succeed to the legal interest of his/her predecessor and have the same powers and duties. The City Manager may at any time designate an alternate Trustee, who shall

serve in the absence of a removed or resigned Trustee until such time as the City Manager appoints a Successor Trustee. A Trustee who has two or more unexcused absences during the fiscal year shall be removed from the Trust Board.

4.05 – Successor Liability

No Successor Trustee shall be liable or responsible for any acts or defaults of his/her predecessor, or for any losses or expenses resulting from or occasioned by anything done or neglected to be done in the administration of the Fund or Trust prior to his/her appointment as Trustee, nor shall he/she be required to inquire into or take any notice of the prior administration of the Fund or Trust. A Successor Trustee is solely responsible for his/her actions as set forth in Article VIII.

ARTICLE V - POWER AND DUTIES OF TRUSTEES

5.01 – Acceptance

By signing their signatures to this Trust Agreement, the Trustees hereby accept the Trust and Trusteeship and declare they will receive and hold the Fund by virtue of this Trust Agreement for the uses and purposes and with the powers and duties herein set forth and none other. The Trustees shall faithfully keep and hold any and all monies they receive as Trustees for the purpose of the Trust and keep adequate and proper records thereof.

5.02 – Duties

- a. The Trustees shall hold, manage, care for and keep the Fund and collect the income and increments thereof, and shall keep and maintain adequate and proper records to render an annual audit, accounting and reports as hereinafter mentioned. The Trustees may delegate these functions to appropriate City staff as they deem appropriate.
- b. The Trustees shall cause to be employed or hired, such agents, attorneys, accountants, actuaries, employees or other persons, and may lease premises and equipment, as may be necessary or desirable in assistance in administering the Fund and carrying out its purposes in accordance with the statutory and regulatory requirements. The fees or compensation of any and all such persons may be paid from the Fund.
- c. Any risk management consultant or Third-Party Administrator employed by the Trustees shall be licensed under Title 20 of the Arizona Revised Statutes and shall provide evidence of such license to the Trustees.
- d. When acting upon the advice of counsel for the Trust, the Trustees shall be relieved of all responsibility for actions undertaken in good faith.

- e. The Trustees shall cause to be paid, any and all taxes of whatsoever nature the Fund is or may be obligated to pay, and incur any reasonable expenses for supplies, rental of space, or other items or anything else believed to be necessary or desirable in administering the Fund and carrying out the objects and purposes of this Trust and Trust Agreement.
- f. The Trustees shall have all right, power and authority to do all those things which, in the opinion of the Trustees may be necessary or desirable for the administration and operation of the Trust and the Fund and to accomplish the objectives and purposes of this Trust Agreement. Further, the Trustees may delegate in writing, any functions required in the operation of the Program as they deem necessary and appropriate.

5.03 – Authority of Trustees

- a. The Trustees, in carrying out the purposes of this Trust Agreement, shall have the power and the right to provide the intended benefits under this Trust by means of direct or self-funding by the Trust and/or by the procurement of group insurance contracts (permissible under the laws of Arizona), including group insurance contracts issued to and in the name of the Trust, together with such other forms of contracts issued by qualified insurance companies authorized to do business in the State of Arizona as may be selected by the Trustees, for the purpose of providing for all or part of the benefits provided for under this Trust.
- b. The Trustees are hereby expressly authorized to pay to any insurance-related company as may be selected by the Trustees the required premiums in connection with such group insurance contracts issued to the Trust.
- c. Decisions concerning whether benefits are provided by means of direct or self-funding or by the procurement of group insurance are within the sole and exclusive discretion of the Trustees.

5.04 – Limited Liability of Trustees

Should the Trustees select or provide for a self-funded policy, plan or program, no claims for benefits or for liabilities under such policy, plan or program shall be brought against any of the Trustees in their individual capacities. The sole and exclusive responsibility of the Trustees in relation to the management and operation of any self-funded policy, plan or program shall be limited to the exercise of due care in the selection of administrators, claim representatives, actuaries, or other officials charged with the administration of the self-funded policy, plan or program. In the event that submitted claims of Employees exceed available Trust Funds, the claims shall be paid in the order received.

5.05 – Benefits to be Provided

The Trustees shall obtain for the beneficiaries of the Trust the forms of employee benefits generally described in Article III herein, and more specifically described in Exhibit A hereto, which benefits may be eliminated or modified from time to time, at the discretion of the Trustees.

5.06 – Deposits and Benefits

All corpus or portions of the Fund not expended under Article V may be deposited (or cause to be deposited) by the Trustees in the name of the Trust in such depository as utilized by the City, and any such deposit or deposits should carry or bear interest. The Trustees are empowered to receive for the benefit of the Fund such interest as might accrue on the above deposits. If not so deposited, any accumulated funds not currently required for the purposes of this Trust may be invested by the City's Budget and Finance Director, in reasonably secure, reasonably liquid investments permitted for investment of such funds pursuant to Arizona law and investment selections approved by the City Governing Board. The Trustees may accumulate dividends or experience rating refunds or other monies, if any accruing, from any insurance policy or policies, deposits, or investments. Such dividends, refunds, or other monies, or all of them, shall be held in the Fund, applied to the payment of self-funded claims and the payment of insurance premiums or held, used or applied as herein set forth.

5.07 – Compensation

The Trustees shall not receive compensation for their services rendered. The Trustees shall receive reimbursement for actual reasonable expenses incurred in connection with their duties as Trustees, including a per diem in accordance with the City of Avondale administrative policies.

5.08 – Other Persons and Interpretations

No person who is dealing with the Trustees shall be obligated to see to the application of any monies or property of the Fund, or to see that the terms of this Trust Agreement have been complied with, or to inquire as to the necessity or expediency of any act of the Trustees. Every instrument executed by the Trustees, or by their direction, shall be conclusive in favor of every person who in good faith relies upon it, that: (a) at the time of the delivery of the instrument this Trust Agreement was in full force and effect; (b) the instrument was executed in accordance with the terms and conditions of this Agreement; and (c) the Trustees were duly authorized to execute the instrument or direct its execution.

5.09 – Withdrawals

All checks, drafts, vouchers, or other withdrawals from the Fund or depositories for the transfer or liquidating of insurance policies or investments

shall be paid consistent with the requirements of this document. Checks for claims and monthly fee payments under the self-funded benefit provisions of this Trust may be signed by an authorized representative of the Third-Party Administrator responsible for administering the self-funded benefits.

5.10 – Disputes

In the event there shall be any disagreement between the Trustees and the Third-Party Administrator over exercise of powers granted herein, the Trustees shall prevail, and the Third-Party Administrator shall have no liability to any person with respect to such act or omission in the event it shall give notice in writing of its dissent from such act to each Trustee and to the City.

5.11 – Employee Booklet

The benefits to be provided hereunder, whether by self-funding or insurance contract, shall be set forth in an Employee Booklet/Plan Document which explains eligibility rules for coverage for Employees and their eligible dependents.

5.12 – Chairperson and Recording Secretary

The Trustees shall elect from among themselves a Chairperson of the Trustees, who shall preside at all meetings of the Trustees and who shall be empowered to perform ministerial duties of the Trustees as the Trustees may from time-to-time delegate to him/her. The Recording Secretary, shall be an employee from the City of Avondale Human Resources Department, who shall keep minutes of all meetings, proceedings, and acts of the Trustees, which records shall be available for inspection during normal business hours at the Principal Office of the Trust.

5.13 – Meetings

The Trustees shall hold regular meetings at least once each quarter. The Trustees shall determine the time of the regular meetings. Special meetings of the Trustees may be called by the Chairperson or two Trustees. At least seven (7) days' written notice designating the time and place of any regular or special meeting shall be given to the Trustees; however, any meeting at which all Trustees are present, or concerning which all Trustees have waived notice in writing, shall be a valid meeting without the giving of any notice. All meetings shall comply with Title 38, Chapter 3, Article 3.1 of the Arizona Revised Statutes. Trustees may attend meetings via teleconference or other electronic media.

5.14 – Alternate

Any Trustee, or any other person duly authorized in writing by an absent

Trustee, may cast a vote on behalf of such absent Trustee. Any such authorization must be given for each meeting.

5.15 – Voting

To constitute a quorum at any regular or special meeting of the Trustees, there must be present in person, or electronically, of more than one-half the Trustees.

5.16 – Meeting Place

All meetings of the Trustees shall be held at the Principal Office and may be held in person or electronically.

5.17 – Successors

Successor Trustees shall have all the rights, powers and duties of the original Trustees named herein. The Trust shall immediately notify the Third-Party Administrator(s) of the appointment of any successor Trustee.

5.18 – Fiscal Year and Audit

The accounting year of the Fund shall be on a fiscal year basis, commencing on the first day of July, and ending on the last day of June of the following year. Any report required by law shall be made by the Trustees. The Trustees shall have an annual audit and accounting of the Trust Fund conducted by an independent Certified Public Accountant in accordance with Generally Accepted Accounting Principles (GAAP), at the end of each fiscal year. The CPA shall issue a report consistent with the auditors' responsibility with respect to financial statement review and annual audits. A statement of the results of each audit shall be available for inspection by authorized persons at the Principal Office of the Trust and in the City office for a period of not less than five (5) years. Copies of the audit and generalized statements of the accounting and reports shall be delivered to each Trustee after each audit or at other times when necessary.

5.19 – Rules and Regulations

The Trustees shall have the power to adopt rules and regulations for the administration of the Fund and/or Trust, which shall be consistent with the covenants, terms, conditions, obligations, and duties set forth in this Trust Agreement, and such rules and regulations shall be binding upon all persons dealing with the Fund and upon any and all persons claiming any benefits hereunder.

5.20 – Trust Bonds

The Trustees may procure fidelity bonds for the Trust, each Trustee and

persons authorized to receive, handle, deal with or draw upon the monies in the Fund for any purpose whatsoever, said bonds to be in such amount to reasonably aid in reimbursing bondable loss of money, and in any event shall meet the requirements of applicable federal and state law. Such bonds shall be obtained from a reputable fidelity or surety company or companies as the Trustees shall determine. If convenient, and in conformity with applicable law, such bonds may be position bonds. The cost of the premiums on such bonds may be paid out of the corpus or income of the Fund. If any fidelity or surety company refuses to bond or write a bond for any Trustee, or other persons as described in this section, said Trustee or person shall not serve and shall immediately resign.

ARTICLE VI – CONTRIBUTIONS TO THE FUND

6.01 – City Contributions

In order to effectuate the purpose hereof, the City shall contribute to the Fund monies in an amount determined by the Trustees, subject to approval by the Governing Board, to be necessary to pay for the benefits provided through the Program. The City contributions shall be due and payable consistent with bi-weekly payroll. The City's contributions shall be subject to City budgetary requirements.

6.02 – City Contributions Are Not Wages

The City contributions to be paid into the Fund shall not constitute or be deemed wages due to Employees, nor shall the City contributions in any manner be liable for or subject to the debts, contracts, or liabilities of the City. Neither the City, nor any Employee or beneficiary under the Plan shall have any rights, title, or interest in the Fund, except as otherwise specifically provided herein.

6.03 – Employee Contributions

Employees will be required to contribute to the Fund the amount determined by the Trustees to be appropriate for the benefits to be provided hereunder. All Employee contributions shall be made each pay cycle.

6.04 – Payment in Lieu of Benefits

No Employee shall have any right to receive any part of his/her own or the City's contributions paid to the Employee directly in lieu of benefits.

6.05 – Payroll Deductions

All Employee contributions shall be paid by payroll deductions or by direct payment by the Employee to the City. The City shall remit to the Fund all monies obtained through payroll deductions in a lump sum each pay cycle.

6.06 – Payment

All contributions shall be payable to the name of the Trust and shall be paid in the manner and form determined by the Governing Board.

6.07 – Reports

The City shall make all reports required by the Trustees. The Trustees may have an audit made by an independent Certified Public Accountant of the wage records of the City in connection with contributions and/or reports. Any such audit shall be preceded by thirty (30) days written notice and such audits may be performed no more often than once annually.

6.08 – Irrevocability of Contribution

Subject to the provisions providing for termination of this Trust Agreement in Article XIII, all contributions to the Fund shall be irrevocable, and under no circumstances shall any monies properly paid into the Fund, or any part of the Fund, be recoverable by or payable to the City or any Employee, nor shall any of the same be used for or diverted to purposes other than for the exclusive program of benefits for Employees and beneficiaries provided hereunder. The Fund shall not lapse at the close of the City's fiscal year, except that any cash balance remaining after the termination of the Trust and settlement of all outstanding claims shall be used for any legal purpose as determined by the City.

ARTICLE VII - PAYMENT OF BENEFITS

7.01 – Method of Payment

The Trustees shall arrange for payment of Program benefits through appropriately licensed vendor(s) appointed by the Trustees under Section 3.01g.

7.02 – Protection of Employees

Prior to payment of benefits to an Employee or his/her beneficiary, all assets of the Trust shall be owned by the Trust and shall not be liable in any way for any debt or obligation of any Employee or the City. To the extent permitted by law, all Trust benefits subject to the Trust's possession and control at any time shall be exempt from attachment, garnishment, levy of execution, bankruptcy proceedings, or other legal process, but, in any event, any such assets shall be subject to such process only to the extent of such Employee's benefits hereunder as they fall due.

7.03 – Claim to Benefits

No Employee or other beneficiary shall have any right or claim to benefits under the Health and Welfare Plan except as specified in the policy or policies or contract or contracts or self-funded benefits procured or entered into pursuant to Articles II and III herein. Any disputes as to eligibility time, amount, or duration of benefits shall be resolved by the appropriate insurance carrier or Third-Party Administrator, under and pursuant to the policy or contract, and the Employees or other beneficiary shall not have any right or claim with respect to such determination against the Trust. In the case of self-funded benefits in the Program, any dispute as to eligibility, type, amount, time, or duration of such benefits shall be decided by the Third Party Administrator, and all disputes shall be finally settled pursuant to Article VIII of this Agreement.

7.04 – Failure to Pay Benefits

Neither the City nor the Trustees, in their individual capacities, shall be liable for the failure or omission, for any reason, to pay any benefits under the Health and Welfare Plan. If for any reason, including, but not limited to, epidemics, catastrophes, or normal depletion, the Trustees determine that self-insured funds are insufficient to pay the current claims, the amount of benefits payable to an Employee or dependent person shall, in all events, be limited to the extent that sufficient self-insured funds are available for the payment of all such claims, and in such event, benefit payments to Employees or dependents shall be limited to the extent that sufficient funds are available from the Trust Fund and shall be paid in the order received pursuant to Section 5.03. If any controversy or dispute exists concerning such matters, all disputes or controversies shall be settled by the dispute provision contained in Article VIII of this Agreement.

ARTICLE VIII – CONTROVERSIES AND DISPUTES

8.01 – Disputes

The Trustees shall have the power to construe, interpret and apply the provisions of this Agreement and any amendments, rules or regulations adopted in accordance herewith, and the terms used herein, and any construction, interpretation or application thereof adopted in good faith, shall be final and binding upon the Employees and their respective families, dependents, successors, assigns, executors, administrators, and/or legal representatives.

8.02 – Benefits Claims Settlement

The Trustees, or their contracted designee, may, compromise or settle any disputed benefits claim or benefits claim controversy. However, the Trustees, or their designee, shall not approve an appeal to compromise or settle a disputed claim or controversy for a benefit that is not covered in the policy, plan, or program (*i.e.*, weight loss surgery, cosmetic surgery, etc.). Any

decision made by the Trustees or their designee in compromise or settlement of a disputed benefits claim or benefits claim controversy, or any other compromise or settlement agreement entered into by the Trustees, shall be conclusive and binding upon all persons with an interest in the Trust and the Trust Fund.

ARTICLE IX – RESPONSIBILITY

The Trustees shall only be responsible for monies after such monies are received from the City and Employees in accordance herewith. The Trustees or Successor Trustees shall only be responsible for any liability arising from their respective gross negligence, bad faith, or willful misconduct in handling of the monies actually received in hand by them for execution and administration of the terms of the Trust and the Fund. The Trustees and Successors shall not be responsible for the actions or omissions of their Co-Trustees or Successors, nor for the actions or omissions of other agents, nor for any of the actions or omissions of any insurance company or its agents, servants, or representatives, including, but not limited to non-payment of claims by an insurance company or companies for any reason. No Trustee or Successor Trustee shall be entitled to any indemnification, court costs or attorney's fees for any liability arising from his/her own willful misconduct, bad faith, or gross negligence.

ARTICLE X – POWER TO AMEND

It is anticipated that in the administration of this Trust, conditions may arise that are not foreseen at the time of execution of this Trust Agreement, and it is the intention of the Trustees, and each and every party or person to this Trust Agreement that the power of amendment which is herein granted be exercised in order to carry out the spirit, object and purposes of this Trust. Therefore, the general power is granted by all parties to this Trust Agreement to the Trustees to amend this Trust Agreement by two-thirds vote of all Trustees, the recommendation of the City Manager, and approval of the City Governing Board. All parties to the Trust and all persons claiming any interest hereunder are and shall be bound thereby. Any such amendment shall be signed by each Trustee or his/her Successor Trustee.

The City Governing Board reserves the right to alter or amend this Trust and the terms under which it exists at any time by a memorandum in writing to the Trust Board.

ARTICLE XI – PARTICIPANTS' RIGHTS

Except as specifically provided for in this Trust Agreement or in the benefit plans administered in accordance therewith, no Employee, or his/her participating dependent or any beneficiary thereof shall have any right, title, or interest in or to the Trust Fund, or in or to the contributions or in or to the benefits provided hereunder. No Employee or participating defendant or beneficiary thereof shall be entitled to receive any part of the contributions in lieu of the benefits provided

through a benefit plan, nor shall a participant who does not qualify for benefits have any claim to the contributions which may have been paid on his/her behalf.

- a. No benefit, right or interest, if any, of the foregoing, is transferable or assignable by the Employee to another Employee or person, corporate or otherwise, except to physicians, hospitals, and any other person(s) or institution(s) furnishing medical services within the terms of this Trust Agreement.
- b. No monies, property, or equity, of whatsoever nature, in the Fund, nor insurance policies or benefits or monies payable there from, nor investments, nor deposits nor any part or portion of the Fund, shall be subject in any manner by any Employee, or person claiming through such Employee, to ownership, anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, garnishment, attachment, execution, mortgage, lien or charge of whatsoever nature or kind, and any attempt to cause the same is and shall be null and void.

ARTICLE XII – PROVISIONS RELATING TO INSURANCE-RELATED COMPANY

No insurance-related company that may issue any policies or contracts for the purpose of fulfilling the terms of this Agreement shall be deemed to be a party to this Trust Agreement, nor shall it be responsible for the validity of this Trust Agreement, nor is this Trust Agreement in any manner for the benefit of any insurance company or companies. No insurance-related company shall be required to look into the terms of this Agreement, or to question the authority of or action of the Trustees, or be responsible to verify that any action of the Trustees is authorized by the terms of this Agreement.

ARTICLE XIII - TERMINATION OF TRUST

13.01 – Termination on Recommendation of Trustees

Upon the recommendation of the Trustees, the City's Governing Board may terminate this Trust at any time by an instrument in writing executed by the City's Governing Board.

13.02 – Termination by the City

Except upon recommendation of the Trustees, which is governed by Paragraph 13.01, above, this Trust may be terminated at any time by the City's Governing Board upon 90 days' written notice to the Trustees by an instrument in writing duly executed by the Governing Board. If the Trust is in a deficit position, including the claims lag determined by the Trustees, the City shall share in the liability of the Trust by a guarantee premium.

13.03 – Notification of Termination

Upon termination of the Trust in accordance herewith, the Trustees, or their designee, shall forthwith notify all Employees and also all other necessary parties; and the Trustees shall continue as Trustees for the purpose of winding up the affairs of the Trust.

13.04 – Continue Until Wound Up

Notwithstanding any provisions herein concerning the duration and termination of this Trust, the Trust shall continue in existence for so long a period as may be necessary to wind up its affairs.

13.05 – Remaining Monies

Upon termination of this Trust, any and all monies remaining in the Fund after the payment of all unpaid claims and/or insurance premiums and other expenses and obligations of the Trust shall be paid or used for any legal purpose as determined by the City, until such monies have been exhausted.

13.06 – Final Accounting

At such time as the Trust is terminated, the Trustees, or their designee shall render a final accounting of the affairs of the Trust and the Trust Fund to the City's Governing Board, and thereafter there shall be no claim or action against the Trustees, and they shall have no further responsibility or duties and shall be discharged.

ARTICLE XIV – MISCELLANEOUS

14.01 – Lawsuits

In the event any suit, action or proceeding is brought against the Trust, Trustees, one or more of the Trustees, or the Fund, in connection with any matter arising out of the administration of the Trust or Fund or in connection with this Trust Agreement or in connection with any action or omission of the Trustees or any one or more of the Trustees, or in the event of any suit, action or proceeding commenced by the Trustees, including but not limited to a request for a judicial settlement of accounts, a suit for construction, a bill of interpleader, or any other matter relating to the Trust, the Trustees shall have the power and authority to employ legal counsel, as recommended by the City Attorney, to represent them or one or more of them in any such suit, action or proceeding. Counsel fees and all other costs shall be paid from the Fund as long as the Trustees have acted in good faith and not with gross negligence, bad faith, or willful misconduct, it being the intent to indemnify the Trustees against all honest mistakes in judgment and all acts or omissions that are not deliberate or willful violations of the duties of the Trustees. In addition, the Trustees shall have the right to commence and prosecute such suits, actions or proceedings as seem to them necessary and proper in order to protect the interest of the Trust and Fund, and, in this connection, the Trustees shall

have the same rights and reimbursements for costs concerning the prosecution of such suits as heretofore described in defending lawsuits.

14.02 – Worker’s Compensation

The insurance coverage contemplated by this Trust Agreement shall not apply in any case which is covered under Workers’ Compensation Laws.

14.03 – Fiduciary Liability

The fiduciary liability for and funding of all eligible benefits as determined by the Plan Document shall be the sole responsibility of the participating City in the Trust.

14.04 – Situs

The City of Avondale, County of Maricopa, State of Arizona shall be deemed the situs of the Fund created hereunder. All questions pertaining to validity, construction and administration shall be determined in accordance with the laws of such State and County. This Trust Agreement is deemed, made, executed, and delivered in such City, County, and State.

14.05 – Construction

Wherever any words are used in this Trust Agreement in the masculine gender, they shall be construed as though they were also in the feminine or neuter gender in all situations where they would so apply, and wherever any words are used in this Trust Agreement in the singular form, they shall be construed as though they were also used in the plural form in all situations where they would so apply, and wherever any words are used in this Agreement and Declaration of Trust in the plural form, they shall be construed as though they were also used in the singular form in all situations where they would so apply.

14.06 – Severability

Should any provision or term in this Trust Agreement be deemed or held to be unlawful or invalid for any reason, such fact shall not adversely affect the provisions herein contained unless such illegality shall make impossible or impractical the functioning of the Trust; in such case the City shall immediately adopt a new provision to take the place of the illegal or invalid provision.

14.07 – Internal Revenue Code

This Trust Agreement is being entered into and the City contributions are being made upon the condition and understanding of the City that all payments made by the City to this Fund are legally deductible as a business

expense of the City for tax purposes under State and Federal laws, and that the same are not taxable to the Employee as compensation. The parties hereto, individually and collectively, agree to take or cause to be taken any and all steps that may be necessary or advisable in order to obtain and maintain a tax-exempt status for this Trust. If any provisions of this Trust Agreement are held to render contributions by the City into the Trust non-deductible for tax purposes, or taxable to the Employee, or to render income received by the Trust non-exempt from taxation, the necessary steps to remedy such non-deductibility or taxability shall be taken immediately.

ARTICLE XV - STOP LOSS PROVISION

An integral part of the Trust will be a “specific” and “aggregate” stop loss reinsurance for the first year of operation under the self-insured model. The Trust Board, or its designee may discontinue the aggregate level in subsequent years upon review of the annual renewal and any actuarial recommendations from the City’s benefits consultant or Third-Party Administrator and the City’s Chief Financial Officer. Stop loss coverage will be provided by an authorized carrier licensed to execute contracts in the State of Arizona.

ARTICLE XVI – CAPTIONS

It is understood and agreed that the captioned headings are for convenience only and are not and shall not be a part of this Trust Agreement and in no manner whatsoever define, limit or expand any of the terms, obligations or conditions hereof.

ACCEPTANCE

IN WITNESS HEREOF, the City’s Governing Board members and the Trustees have affixed their signatures as of the day and year first above written.

**GOVERNING BOARD MEMBERS OF CITY AND TRUSTEES OF CITY EMPLOYEE
BENEFIT TRUST ACCEPTANCE.**

The undersigned hereby accepts the foregoing Trust Agreement and Declaration of Trust and agrees to be bound by the provisions thereof.

CITY GOVERNING BOARD

Date for all seven (7) signatures

TRUSTEES OF CITY EMPLOYEE BENEFIT TRUST

Date for all five (5) signatures

EXHIBIT A

City Employee Benefit Trust Self-Funded Preferred Provider Medical Plan

- Self-Funded Medical Plan
- Pharmacy Benefits
- Provider Network
- Stop Loss Insurance