

### **NOTICE OF REGULAR MEETING**

NOTICE OF SAN LUIS HEALTH BENEFIT TRUST MEETING IN ACCORDANCE WITH SECTION 38-431.01 OF THE ARIZONA REVISED STATUTES OF THE STATE OF ARIZONA, NOTICE IS HEREBY GIVEN TO THE TRUSTEES OF SAN LUIS EMPLOYEE HEALTH BENEFIT TRUST AND TO THE GENERAL PUBLIC THAT THE TRUSTEES OF THE SAN LUIS EMPLOYEE HEALTH BENEFIT TRUST WILL HOLD A BOARD MEETING AT 5:30 P.M., WEDNESDAY, FEBRUARY 13, 2019. THE MEETING WILL TAKE PLACE AT THE CITY HALL, COUNCIL CHAMBERS, LOCATED AT 1090 E. UNION STREET, SAN LUIS, ARIZONA, 85349. EVERYONE FROM THE PUBLIC IS INVITED TO ATTEND THE OPEN MEETING.

In accordance with the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973, the City of San Luis does not discriminate on the basis of disability in the admission of or access to, or treatment of employment in its programs, activities, or services. For information regarding rights and provisions of the ADA or Section 504, or to request reasonable accommodations for participation in City programs, activities or services contact: ADA/Section 504 Coordinator, City of San Luis Human Resources Department, 1090 East Union Street, San Luis, Arizona 85349; (928) 341-8579.

Notice is hereby given that pursuant to A.R.S. §1-602.A.9, subject to certain specified statutory exceptions, parents have a right to consent before the State or any of its political subdivisions make a video or audio recording of a minor child. Meetings of the City Council are audio and/or video recorded, and, as a result, proceedings in which children are present may be subject to such recording. Parents in order to exercise their rights may either file written consent with the City Clerk to such recording, or take personal action to ensure that their child or children are not present when a recording may be made. If a child is present at the time a recording is made, the City will assume that the rights afforded parents pursuant to A.R.S. §1-602.A.9 been waived.

THIS NOTICE IS APPROVED BY:

/s/ Maria Munoz, HR Benefits Coordinator

### **AVISO DE JUNTA REGULAR**

AVISO DE JUNTA DEL FONDO DE BENEFICIOS MEDICOS DE ACUERDO A LA SECCION 38-431.01 DE LOS ESTATUTOS REVISADOS DEL ESTADO DE ARIZONA. SE LE INFORMA A LOS MIEMBROS DE LA MESA DE PERSONAL DE SEGURIDAD PUBLICA Y PUBLICO EN GENERAL QUE EL PRESIDENTE Y MESA DIRECTIVA DE FONDO DE BENEFICIOS MEDICOS, SAN LUIS, ARIZONA TENDRAN UNA JUNTA REGULAR A LAS 5:30 P.M., EL DIA MIERCOLES, 13 DE FEBRERO DEL 2019. LA JUNTA SE LLEVARA A CABO EN LAS OFICINAS DE LA CIUDAD, EN LA SALA DEL CABILDO, UBICADA EN EL 1090 E. UNION STREET, SAN LUIS, ARIZONA, 85349. EL PUBLICO ESTA CORDIALMENTE INVITADO.

De acuerdo con el Acta de Americanos con discapacidades y la Sección 504 del Acta de Rehabilitación del 1973, la Ciudad de San Luis no discrimina por causa de discapacidad la admisión y acceso a sus programas, actividades, servicios o en el trato en cuanto a empleo. Para mas información referente a derechos y provisiones del Acta de Americanos con discapacidades o Sección 504, o para solicitar adaptaciones que sean razonables para la participación en programas, actividades o servicios de la ciudad, contactar al: Coordinador del Acta de Americanos con discapacidades/Sección 504, Departamento de Recursos Humanos de la Ciudad de San Luis, 1090 Este Calle Unión, San Luis, Arizona, 85349; (928) 341-8579.

Por medio de este aviso y de acuerdo con los Estatutos Revisados del Estado de Arizona, sujeto a ciertas excepciones reglamentarias, los padres de familia tienen el derecho de dar o no dar el consentimiento antes que el Estado o alguna subdivision política grabe a un menor de edad, ya sea en audio o video. Las juntas del Concilio se graban en audio y/o video y como resultado, el hecho de que haya menores presentes puede ser sujeto a que sean grabados. Para que los padres de familia puedan ejercer sus derechos pueden solicitar por escrito con la Secretaria de la Ciudad a tal grabación, o tomar acción personal para asegurarse que su hijo/hija menor no esté presente cuando la grabación se lleve a cabo. Si un menor de edad esta presente en el momento de la grabación, la Ciudad asumirá que los padres de familia están cediendo los derechos sobre una posible grabación de acuerdo con el Estatuto Revisado del Estado de Arizona §1-602.A.9.

ESTE AVISO ES APROBADO POR:

/f/ Maria Munoz, Cordinadora de Beneficios de Recursos Humanos

**AGENDA**  
**Regular Meeting**  
**City of San Luis Employee Benefit Trust**  
**Council Chambers – City Hall**  
**1090 E Union Street**  
**San Luis, AZ 85349**  
**Wednesday, February 13, 2019**  
**5:30 P.M**

**NOTE: Some members of the Board of Trustees of the City of San Luis Employee Benefit Trust may attend the meeting telephonically. If authorized by majority vote of the Board of Trustees, an executive session will be held immediately following the vote in accordance with A.R.S. §38-431.03(A) and the meeting will be temporarily recessed while the Board retires to executive session which will not be open to the public.**

- 1. CALL TO ORDER/ROLL CALL**
- 2. PRESENTATION**
  - 2. A.** Presentation-Introduction of new Executive Advisor, Maria Munoz, HR Benefits Coordinator.
- 3. CONSENT AGENDA**

All matters are considered to be routine by the Employee Benefit Trust Board and will be enacted by one motion. If discussion is desired, that item will be removed from the Consent Agenda and will be considered separately.
- 3. A. MINUTES OF**

Employee Benefits Trust Meeting held August 1, 2018
- 4. DISCUSSION AND POSSIBLE ACTION ITEMS:**
  - 4. A.** Discussion and possible action on any and all matters regarding including in the Trust the mandatory benefit under A.R.S. §38-673 for police and firefighters for counseling after exposure to traumatic events. **(Susan Posada, Benefits Consultant)**
  - 4. B.** Discussion and possible action on any and all matters regarding approval of the contract with Counseling & Family Resources, Ltd., for Employee Assistance Program Preferred (EAPP). **(Susan Posada, City of San Luis Benefits Consultant)**
  - 4. C.** Discussion and possible action on any and all matters regarding the Amendment between Counseling and Family Resources, Ltd., dba EAP Preferred, and the City of San Luis Employee Benefit Trust to extend the mental health plan for police and fire fighters to June 30, 2021. **(Kay Marion Macuil, City Attorney)**
  - 4. D.** Discussion and possible action on any and all matters regarding the terms of all Trust Board Members. **(Kay Marion Macuil, City Attorney)**
  - 4. E.** Discussion and possible action on any and all matters regarding the replacements of Trustee Jose Andrade, and the two Trustee terms expiring on March 14, 2019. **(Kay Marion Macuil, City Attorney)**

4. F. Discussion and possible action on any and all matters regarding establishing regular meetings four (4) times per year. **(Kay Marion Macuil, City Attorney)**
5. **ADJOURNMENT**

**Employee Benefit Trust Board Meeting**

**2.A.**

Meeting Date: 02/13/2019

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Summary

Presentation-Introduction of new Executive Advisor, Maria Munoz, HR Benefits Coordinator.

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**Employee Benefit Trust Board Meeting**

**3.A.**

Meeting Date: 02/13/2019

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Summary

**MINUTES OF**

Employee Benefits Trust Meeting held August 1, 2018

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Attachments

Minutes

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**MINUTES**  
**Special Meeting**  
**City of San Luis Employee Benefit Trust**  
**Council Chambers – City Hall**  
**1090 E. Union Street**  
**San Luis, AZ 85349**  
**Wednesday, August 1, 2018**  
**5:30 PM**

**NOTE:** Some members of the Board of Trustees of the City of San Luis Employee Benefit Trust may attend the meeting telephonically. If authorized by majority vote of the Board of Trustees, an executive session will be held immediately following the vote in accordance with A.R.S. §38-431.03(A) and the meeting will be temporarily recessed while the Board retires to executive session which will not be open to the public.

1. **CALL TO ORDER/ROLL CALL** Mayor Gerardo Sanchez called the meeting to order at approximately 5:30 PM.

**PRESENT:** Gerardo Sanchez, Chairman  
Maria Gonzalez, Board Member  
Emma Torres, Board Member – by phone

**ABSENT:** Jose Andrade, Board Member  
Maria Sabori, Secretary

**OTHERS PRESENT:** Tadeo De La Hoya, City Manager  
Kay Marion Macuil, City Attorney  
Janet Taylor, Acting Clerk  
Edgar Carbajal, HR  
Fausto Gonzalez, HR  
Axel Chayra, IT  
Susan Posada, Benefits Consultant – by phone  
Monica Castro, Finance Director

2. **CONSENT AGENDA**

- 2.1. **Discussion and possible action on any and all matters regarding the approval of minutes for the meeting held on April 11, 2018.**

**MOTION:** Chairman Sanchez and Board Member Maria Gonzalez to approve the Consent Agenda as presented. All present voted in favor.

3. **DISCUSSION AND POSSIBLE ACTION ITEMS:**

**3.A. Discussion and possible action on any and all matters regarding the Service Agreement for EBSO as the Third Party Administrator (Susan Posada Benefits Consultant, Kay Macuil City Attorney)**

Susan Posada Benefits Consultant stated that the service agreement requires signature and the April 11, 2018 meeting approved us going from Mayo over to EBSO and that all the rates that were presented are correct.

Kay Macuil City Attorney stated that claims were being held up from July, so we went ahead and requested that Maria Gonzalez sign this one and she did so the motion will include ratification.

Chairman Gerardo Sanchez asked if a motion to ratify was needed. Kay Macuil City Attorney responded: Yes

**MOTION:** Mayor Gerardo Sanchez/Emma Torres to approve and ratify the contract with EBSO effective July 1, 2018. All present voted in favor.

**3.B. Discussion and possible action on any and all matters regarding the Employee Benefit Plan for the fiscal year 2018-2019 as prepared and presented. (Susan Posada Benefits Consultant & Kay Macuil City Attorney)**

Ms.Posada, asked Kay if everyone has a copy of the grid that is in color?

Ms.Macuil: responded they should have it and explained what it looks like.

Ms. Posada stated that It says City of San Luis plan changes for 2018-2019, but it's actually pretty simple the first part of that particular document I outline all of the changes that took place for the plan. Everything in blue has already been approved, any of those changes have already been approved. But I wanted to outline it so everybody could see — the bottom part where it says other required changes. Because we moved over from Mayo to EBSO there were some things they caught that Mayo did not have in our plan documents even though it didn't really affect anything and so I'm going to go down the list.

Ms. Posada explained that the very first one where it says mental health Mexico plan. Mental parity is a regulation for the plan it is a federal regulation that we treat any mental health or substance abuse the same as any other illness. We have never had a claim from Mexico, but we needed to add it into the document. So we did add that to the document so that we follow all the regulations. So if someone went into the hospital in Mexico, they would pay the same thing the same co-pay, and it would be covered the same as if it were any other hospitalization if they had any other illness.

The second one where it says Amino Acid formula Mayo did not have that it was not covered before this would be for any illness that you have to be intravenously fed. We took a look at that, and the standard is 25 percent after the deductible. That can get very expensive, so we did at it at a minimum of 25 percent.

The third one is the definition of physical therapy in Mexico. The plan document shows physical therapy only, as therapy also includes speech therapy. We also included the wording that there is no chiropractic care in Mexico they just don't have chiropractors in Mexico they don't utilize them, so we just clarified the wording.

The last one where it says preauthorization the penalty for not obtaining preauthorization was very steep at 50 percent benefit that meant if they forgot to get it and they were ill their plan would only cover 50 percent. I discussed it with Olivia, and she agreed that it would be fair to the employees to have a penalty of 500 dollars and not the 50 percent. And the reason this all came about is because EBSO was going in and reviewing the plan documents in more detail. And that is all I have.

Ms. Macuil explained, that the blue changes she has there are costs that were approved back in April, but now they are in the plan. And this one we also had Ms. Gonzalez sign so we could get claims handled.

Ms. Gonzalez stated, so basically this is what I approved I mean what I signed.

Ms. Macuil replied, yes

Ms. Posada: the grey bottom portion.

Ms. Macuil explained that we did not have this portion of the grid when she signed that is why she is asking, is that what I signed?

Chairman Sanchez stated that one of the things he noticed is that there is a limit of 60 visits for the rehabilitation service for physical, speech and occupational therapy 60 visits is unheard of it really is.

Ms. Posada discussed that 60 visits is kind of high but that is very common, and it is not just for speech it will combine physical therapy speech therapy and chiropractic all of them would be 60 combined in a calendar year.

Chairman Sanchez stated that he sees on an average is 24.

Ms. Posada replied, yes it depends some plans have 20 some do 20/20/20. So what we did is combined it for the total 60.

Chairman Sanchez stated that is a perk, that is a very good perk. And asked the City Attorney Kay Macuil if we need to ratify this?

Ms. Macuil responded, yes, this is one of the documents Ms. Gonzalez signed for us so we could get our claims going.

**MOTION:** Chairman & Maria Gonzalez to approve and ratify the Employee Benefit Plan effective July 1, 2018, as presented. All present voted in favor.

**3.C. Discussion and possible action on any and all matters regarding the Amendment to Broker/Consultant Agreement dated May 22, 2013. (Susan Posada, Benefits Consultant)**

Ms. Posada discussed when she first came on board my contract amount was 5 percent, but about four years ago we had real major increase, and I didn't feel it was fair to increase my commission to 5 percent, so I left it at 3 percent. Back in 2016, you approved my commission increase so it would be 3 percent but what ended up happening is I remember the meeting, I remember sending the document for signature, the minutes were never found to show that this was done. So when we took a look at it, Kay realized that we need to have it ratified because there was no record of that approval. And asked the City Attorney Kay Macuil if that was correct.

Ms. Macuil responded, yes when Olivia came on board, she started reviewing everything, and we have the agenda that says it was talked about and I believe they found some minutes but I haven't seen them but the minutes didn't reflect what happened on her contract.

Ms. Posada explained that she gets paid 3 percent of whatever the expected fully funded rate is, and that rate is calculated by Mayo this year it was calculated by EBSO so for 2016-2017 the amount came out to be 3.1 percent for each employee it would equate to 33.5 percent I'm sorry thirty-three dollars and fifty cents. 2017 it remained the same but the percentage commission was 2.9 percent, and it stayed like that for two years. But for 2018-2019 it increased to 3.1 percent. The problem is what Kay is saying is that we never found where you approved the renewal of my contract for three years until July 1 of 2019.

City Manager Mr. De La Hoya stated that he remembered that meeting and remembered getting this approved and signed, and I asked staff to find it. We all remember the meeting we talked about this agreement I know the Trust talked about it we presented it, and it was approved and signed but for some odd reason it is MIA that is the reason we are bringing it forward, but it is the exact same agreement that we discussed back year of 14/13 so unless one of the board members recalled differently cause I remember it, we talked about it and presented it, and it was signed. However, we don't have a record of it.

Chairman Sanchez said, how can we have no record of it.

Mr. De La Hoya then stated that had been my question for the last 3-4 months I have had Olivia, Maria, and everyone and the clerk's office. I am guessing it is with some other agreement because I remember seeing an executed copy of this agreement and I remember presenting it because we had the meeting at the Fire Department back then.

Ms. Gonzalez stated that she too remembered that meeting.

Mr. De La Hoya discussed how all of us remember, and I remember the signed copies it's just the minutes and agreement is missing. It has to be in a file somewhere or here in City Hall because I know I have seen it, how I do not know.

Chairman Sanchez If no one can find it?

Ms. Posada said that basically my agreement was to continue my services for three years until the end of this coming plan year which will end 6-30. At that point, I will come back for a renewal if you still want me back.

Chairman Sanchez replied, yes Susan we do.

Ms. Posada replied, thank you, Mayor

Ms. Gonzalez stated to Ms. Posada, so basically what you are stating is that her fee is going to go up, right? So we need to compare it?

Mr. De La Hoya responded no, so it went from 3.1 to 2.9 then back at 3.1, but it is the same agreement the same amendment it has already been approved and will probably be brought up for re-approval next year. Correct me if I am wrong Susan, but it will be calculated by the number of employees and by EBSO. There are emails going back and forth saying to move forward; you have the agenda, I remember, I will always remember, we cannot find the actual executed copy.

Ms. Gonzalez asked if Ms. Posada had a copy?

Mr. De La Hoya responded, no.

Ms. Posada replied, I have a copy of the amendment that I sent to HR at that time, but I do not have the minutes of the meeting that it was approved. I have provided all the information for that particular meeting and have emails to that effect. But do not have a copy of the minutes that were generated from that meeting. But I do have all the documentation that was at that meeting.

Mr. De La Hoya said, and I have the same emails.

Ms. Posada discussed that the other thing that happened is that her contract called for 5 percent and I have kept it at three never exceeding 3.1 percent last year it was 2.9.

Chairman Sanchez asked, so what is the next step?

Ms. Macuil replied, so we are asking that you ratify it because we believe it there is all this documentation that it happened but not the actual recordings so rather than so ratification seems the best way to handle it since there are trails that thing happened but not the actual written document.

Ms. Gonzalez asked, are we going to have an agreement, I mean is someone going to do an agreement again?

Ms. Macuil responded that it is in the packet

Mr. De La Hoya stated that it is in the packet. It is the same one that is copied, and pdfd.

Ms. Macuil asked Ms. Taylor to click on the 2016 amendment because we do have the broker agreement signed but the amendment is unsigned.

Ms. Posada stated, but not the minutes right.

Ms. Macuil replied yes, not the minutes

Ms. Posada asked if the minutes are retained by the clerk's office is that how it works?

Mr. De La Hoya replied we changed that recently so they should be there, but again your contract was the one that HR was not able to locate and neither could the clerk's office.

Chairman Sanchez asked Ms. Posada if she was asking for any changes to it?

Ms. Posada replied, no, not at all I haven't asked for any changes for those three years which means that well the most important thing is that you renewed my contract for three years okay. And this coming year it did go up from 2.9 to 3.1 percent because it is based on the self-funded rate that is calculated. It goes up a little bit every time there is an increase.

Chairman Sanchez replied, okay

Ms. Posada stated that the only thing you really need to approve if I am not mistaken Kay would be the contract renewal for three years, but I could be wrong Kay you can correct me on that.

Ms. Macuil discussed that we have the amendment that was approved so I thought we would just ratify what was already done.

Ms. Posada responded, okay and so what you did at that meeting was approve my contract for three years, and yes we are at the end of the second year going into the third year.

Chairman Sanchez responded, so Kay this is an auto-renewal? Will it renew itself or do we have to renegotiate every time?

Ms. Macuil replied, no for July 2019 we will have a new agreement.

Mr. De La Hoya asked Ms. Posada when she was going to start the negotiations for the next year?

Ms. Posada responded that for the next year it probably wouldn't be until February, March of next year because we are all set for this year we just started July 1<sup>st</sup>. So we will not go into that until we get the renewal from EBSO and Semetra so February/March of next year. And I noticed that all of our meetings for the Trust have been in April. So I bring everything for approval for July 1<sup>st</sup> in April.

Chairman Sanchez asked if there were any questions – No one had questions

**MOTION:** Mayor Sanchez & Maria Gonzalez to approve and ratify the amendment to the broker consultant agreement effective July 16, 2016, as presented. All present voted in favor.

**3.D. Discussion on any and all matters regarding the Agreement and Declaration of Trust for the City of San Luis Employee Benefit Trust dated March 14, 2012. (City Attorney Kay Marion Macuil, Susan Posada Benefits Consultant)**

Ms. Macuil stated that the trustees have been serving for six years and if they had any suggestions for new members.

Chairman Sanchez stated that this is the time to say that they wish to continue.

Ms. Macuil stated that if you don't want to say it in open session, you can shoot Oliva and me an email, and we will ask these people if they are interested.

Chairman Sanchez asked if anyone had any suggestions, please feel free, and I will be making the recommendations to council.

Ms. Torres said, my question is do you still want us with very little participation.

Chairman Sanchez replied, yes we are not getting rid of anyone I can tell you right now. I myself prefer to work with people I have been working with. We have tried to minimize the time required because we all work, we are all very busy. Your names came up for a reason you are experts in your fields, and the Trust is very important to the City we have done a good job, and the Trust has done very well. Prior years the Trust was in jeopardy, and our benefits were not secured, but now it is doing very well.

Ms. Torres replied, I live in San Luis, so I will hold on.

Chairman Sanchez replied, gracias and like I said we are open to technology and telephone is fine.

Ms. Posada stated that she just want to thank all of you it is a pleasure to work with all of you. While I have the floor, I just want to report that in claims we have just over five hundred thousand. That is phenomenal. That means we are managing well and that we are doing well.

4.           **EXECUTIVE SESSION** – No Executive Session held during this meeting.

5.           **ADJOURNMENT**

**MOTION:** Chairman Gerardo Sanchez and Board Member Maria Gonzalez. All present voted in favor.

## Employee Benefit Trust Board Meeting

4.A.

Meeting Date: 02/13/2019

Department Head: Kay Macuil, City Attorney, Attorney's Office

Submitted By: Kay Macuil, City Attorney, Attorney's Office

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### ITEM:

Discussion and possible action on any and all matters regarding including in the Trust the mandatory benefit under A.R.S. §38-673 for police and firefighters for counseling after exposure to traumatic events. **(Susan Posada, Benefits Consultant)**

### SUMMARY:

#### Background of ARS §38-673 (The statute is attached)

According to the Governor's April 23, 2018 press release from the signing ceremony, the bill was drafted in response to the loss of Phoenix Officer Craig Tiger, who used deadly force on a subject in 2012 who was assaulting him and his partner. After this event, Officer Tiger attempted suicide one year after the shooting, and in 2014 he committed suicide. Officer Tiger's death was believed to be a result of undiagnosed and untreated Post Traumatic Stress Disorder (PTSD). It is intended to prevent and treat PTSD for police and firefighters.

#### Summary of ARS §38-673 Regarding the Health Care Benefit

It went into effect August 3, 2018, and ends December 31, 2022, subject to change by the Arizona Legislature.

- Applies only to police and firefighters
- Employer-paid traumatic event counseling with Arizona licensed psychologist or psychologist o
- The police or firefighter's choice 12 sessions, then if recommended by the counselor and an additional 24 employer-paid sessions within 1 year of the first session for a total of 36 sessions.
- Costs of sessions are capped to the amount that would be paid under workers' compensation. This cap does **not** create a presumption that a claim is compensable under workers' compensation. **(Attached is the fee schedule)** (As low as \$47.83 for Group Psychotherapy to as high as \$274.04 for Psychiatric diagnostic evaluation with medical services)
- Telemedicine is allowed.
- List of qualifying traumatic events::

1. Visually witnessing the death or maiming or visually witnessing the immediate aftermath of such a death or maiming of one or more human beings.
2. Responding to or being directly involved in a criminal investigation of an offense involving a dangerous crime against children (as defined in section 13-705). **Note this one is investigation - not a single event.**
3. Requiring rescue in the line of duty where one's life was endangered.
4. Using deadly force or being subjected to deadly force in the line of duty, regardless of whether the peace officer or firefighter was physically injured.
5. Witnessing the death of another peace officer or firefighter while engaged in the line of duty.
6. Responding to or being directly involved in an investigation regarding the drowning or near drowning of a child. **Note this one lists investigation.**

#### Other requirements of ARS §38-673

The employer must pay the police officer or firefighter for the time off needed to attend treatment and must not deduct vacation, sick, or other leave benefits.

If the counselor determines that the police or firefighter is not fit for duty, the employer must pay up to 30 calendar days per incident after the date of the determination. There are extensive reporting requirements. If a counselor charges more than the cap, there will be staff time explaining to the police or firefighter that the additional cost will be on them.

### **Unknown Dollar Amount Cost of Mandated Benefit**

- No companies are selling insurance for this,
- The Stop Loss will not cover it.
- The benefit of the additional 13th through 36th visits expires 1 year after the first visit. However, there is no requirement as to when after the traumatic event the police or firefighter can use the benefit. The effects of PTSD may not be realized for years.
- There is no claims history for this type of benefit.

### **San Luis Experience with the General Employee Assistance Program (EAP)**

Benefits Consultant Susan Posada pulled the use history for the EAP for 2017 and 2018 (Utilization Reports attached)

These reports of the number of past claims and the number of past sessions. But these claims are not necessarily for traumatic event counseling since there was no requirement to track this until August of 2018.

- For 2017 there were 12 EAP files opened with a total of 18 hours of services
- For 2018 there were 4 EAP files opened with a total of 5 hours of service

### **San Luis Experience with Traumatic Events**

In 2018 the firefighters had 18 known traumatic events exposing about 10 firefighters. (Attached is the Fire Department's Report)

Since August of 2018, the San Luis Police Department had a total of 39 known traumatic events, exposing 51 PD members. (Attached is the Police Department's Report)

### **Another Arizona City with a Benefits Trust**

The large City of Scottsdale outsources the administration and has the Trust pay that contract. It has the Police and Fire Departments pay the claims.

The police and firefighters claims would have an effect on the whole of the Employee Benefit Trust fund which is for all employees.

### **Suggested Action**

Since this is a new requirement, alternative motions are provided for the Trustee's consideration.

### **RECOMMENDATION / SUGGESTED MOTION:**

**I MOVE TO APPROVE INCORPORATING THE THE TRAUMATIC EVENT MENTAL HEALTH BENEFIT FOR POLICE AND FIRE UNDER ARS §38-673 INTO THE TRUST.**

**Or, in the alternative:**

**I MOVE TO DENY INCORPORATING THE THE TRAUMATIC EVENT MENTAL HEALTH BENEFIT FOR POLICE AND FIRE FIGHTERS UNDER ARS §38-673 INTO THE TRUST.**

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## **Fiscal Impact**

### **Fiscal Impact:**

A one-time set up and program enrollment fee of \$500 plus \$10 Administration Fee per unknown number of counseling sessions, dependent upon participation in program .

All direct costs incurred by EAPP to be invoiced to the Employer on a monthly basis with payment due Net 30.

Budgeted Amount: Not Budgeted

General Ledger Number: 100-181-5016X, 100-182-5016X, 340-341-516X

Remaining Balance Before Purchase: N/A

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## **Attachments**

PD traumatic stats

ARS 38-673

Cap on Counseling Fees

2017 EAP History

2018 EAP History

2018 Fire Traumatic Events

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**San Luis Police Department**  
 Traumatic Event Information  
 August 1, 2018 - February 8, 2019

TYPE	AMOUNT OF CALLS	NUMBER OF OFFICERS RESPONDING
1. Visually witnessing death/aftermath	5	45**
2. Responding to investigation against children	22	49**
3. Requiring rescue in the line of duty	0	0
4. Using deadly force/regardless of injury	1	1
5. Witnessing death officer/firefighter in line of duty	0	0
6. Responding to investigation drowning/near of a child	0	0
7. Other - Near Death/OD	11	46**

\*\* Will contain duplicate officers (same officers) responding to the different cases.

<a href="#">Arizona Revised Statutes Annotated</a>
<a href="#">Title 38. Public Officers and Employees (Refs &amp; Annos)</a>
<a href="#">Chapter 4. Compensation and Insurance (Refs &amp; Annos)</a>
<a href="#">Article 5. Employee Benefits (Refs &amp; Annos)</a>

A.R.S. § 38-673

§ 38-673. Traumatic event counseling for peace officers and firefighters; report; exceptions; definitions

Effective: August 3, 2018

[Currentness](#)

**A.** Notwithstanding any other law, this state or a political subdivision of this state shall establish a program to provide peace officers and firefighters who are exposed to any one of the following events while in the course of duty up to twelve visits of licensed counseling, which may be provided via telemedicine, paid for by the employer:

1. Visually witnessing the death or maiming or visually witnessing the immediate aftermath of such a death or maiming of one or more human beings.
2. Responding to or being directly involved in a criminal investigation of an offense involving a dangerous crime against children as defined in [§ 13-705](#).
3. Requiring rescue in the line of duty where one's life was endangered.
4. Using deadly force or being subjected to deadly force in the line of duty, regardless of whether the peace officer or fire fighter was physically injured.
5. Witnessing the death of another peace officer or firefighter while engaged in the line of duty.
6. Responding to or being directly involved in an investigation regarding the drowning or near drowning of a child.

**B.** If the licensed mental health professional determines that the peace officer or firefighter needs additional visits of licensed counseling beyond that which the peace officer or firefighter is entitled to under subsection A of this section and that the additional visits are likely to improve the peace officer's or firefighter's condition, the employer shall pay for up to an additional twenty-four visits, if the visits occur within one year after the first visit pursuant to this section.

**C.** An employer may not require a peace officer or firefighter who is receiving treatment pursuant to this section to use the peace officer's or firefighter's accrued paid vacation, personal leave or sick leave if the peace officer or firefighter leaves work to attend a treatment visit pursuant to this section.

**D.** If the licensed mental health professional determines that the peace officer or firefighter is not fit for duty while the peace officer or firefighter is receiving treatment pursuant to this section, the employer shall ensure that the peace officer or firefighter has no loss of pay and benefits for up to thirty calendar days per incident after the date the licensed mental health professional determines that the employee is not fit for duty if all of the following apply:

1. The peace officer or firefighter is unable to work light duty or the employer does not offer a light duty option.
2. The peace officer or firefighter has exhausted the peace officer's or firefighter's sick leave, vacation leave or other leave that is provided as part of the peace officer's or firefighter's benefits package.
3. If the employer offers short-term disability benefits, the employer offered and the peace officer or firefighter elected short-term disability benefits, but the peace officer or firefighter is not eligible to receive short-term disability benefits.
4. The employer does not have a supplemental program that provides pay and benefits after the occurrence of an injury. For the purposes of this paragraph, supplemental program that provides pay and benefits after the occurrence of an injury does not include a supplemental benefits plan established pursuant to [§ 38-961](#).

**E.** An employer shall allow a peace officer or firefighter to select the peace officer's or firefighter's own licensed mental health professional, except that if a licensed mental health professional declines to provide counseling pursuant to this section, the employer is not required to secure the services of that licensed mental health professional. The employer shall pay the licensed mental health professional pursuant to the schedule of fees that is fixed by the industrial commission of Arizona pursuant to [§ 23-908](#).

**F.** Payment by the employer for licensed counseling pursuant to this section does not create a presumption that a claim is compensable under [§ 23-1043.01, subsection B](#).

**G.** For each program established pursuant to this section, this state and each political subdivision of this state shall compile the following data for peace officers and firefighters:

1. For each category of persons, the total number of persons who have participated in the program.

2. For each category of persons, the average number of visits per person.
3. For each category of persons, the average number of months that a person participated in the program.
4. For each category of persons, the average number of days that a person who participated in the program missed work.
5. For each category of persons, the total number of persons who participated in the program and who subsequently filed a workers' compensation claim and the number of those claims that were approved and the number of those claims that were denied.
6. For each category of persons, of the total number of persons who have participated in the program, the percentage of persons who received additional visits under subsection B of this section.
7. For each category of persons, the total number of persons who were deemed not fit for duty by a licensed mental health professional pursuant to subsection D of this section.
8. For each employer, the total amount of work missed by each category of persons who participated in the program and how missed work was provided for by the employer or through employee benefits.

**H.** On or before September 1, 2019 and September 1 of each year thereafter, this state and each political subdivision of this state shall submit the data collected pursuant to subsection G of this section to the department of administration. On or before October 1, 2019 and October 1 of each year thereafter, the department of administration shall compile the data into a report and submit the report to the governor, the president of the senate, the speaker of the house of representatives, the chairperson of the senate health and human services committee, or its successor committee, the chairperson of the house of representatives health committee, or its successor committee, the chairperson of the senate commerce and public safety committee, or its successor committee, and the chairperson of the house of representatives judiciary and public safety committee, or its successor committee, and shall provide a copy of this report to the secretary of state. Subsection G of this section and this subsection do not authorize this state or a political subdivision of this state to compile and report data that is protected under the health insurance portability and accountability act of 1996 (P.L. 104-191; 110 Stat. 1936).

**I.** This section does not apply to a state employer that provides a program to its peace officers and firefighters that is characterized by all of the following:

1. The program is paid for by the employer.

2. The program provides licensed counseling for any issue. For licensed counseling related to trauma experienced while in the line of duty, the licensed counseling is provided on the request of the peace officer or firefighter and is in person.

3. The program offers at least twelve visits per year and will offer additional visits if the licensed mental health professional determines that additional visits are necessary.

**J.** For the purposes of this section:

1. “Licensed counseling” means counseling provided by a licensed mental health professional.

2. “Licensed mental health professional” means a psychiatrist or psychologist who is licensed pursuant to title 32, chapter 13, 17 or 19.1.<sup>1</sup>

#### **Credits**

Added by [Laws 2018, Ch. 259, § 2.](#)

#### Footnotes

<sup>1</sup>

Section 32-1401 et seq., 32-1800 et seq., or 32-2061 et seq.

A. R. S. § 38-673, AZ ST § 38-673

Current through the First Special and Second Regular Session of the Fifty-Third Legislature (2018), and includes Election Results from the November 6, 2018 General Election

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End of Document

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### Editor's and Revisor's Notes (3)

#### HISTORICAL AND STATUTORY NOTES

[Laws 2018, Ch. 259, § 4](#) , provides:

**“ Sec. 4. Short title**

“This act may be cited as the “Officer Craig Tiger Act”. ”

**Citing References**

There are no Citing References for this citation.

**Bill Drafts**

There are no Bill Drafts for this citation.

**Notes of Decisions**

There are no Notes of Decisions for this citation.

**From:** Nick Ponder [mailto:nponder@azleague.org]

**Sent:** Wednesday, February 6, 2019 2:40 PM

**To:** Kay Macuil <kmacuil@cityofsanluis.org>

**Subject:** RE: Statutory Traumatic Event Counseling for Peace Officers and Firefighters - Question on Hourly Cost of Counselors

Kay,

I reached out to the Industrial Commission of Arizona and the information below was provided:

The fee schedule is based on Current Procedural Terminology (CPT) Codes published by the American Medical Association (AMA) each year. Psychiatric services may be billed under Evaluation and Management Codes (E & M) 99201-99285, 99304-99337, 99341-99350) may be reported for treatment of psychiatric conditions, rather than using Psychiatry codes, when appropriate.

Psychiatric Codes : 90785 (add-on code) for interactive complexity to be reported in conjunction with codes for psychiatric evaluation \$26.50

90791 Psychiatric Diagnostic Evaluation \$244.96

90792 Psychiatric diagnostic evaluation with medical services \$274.04

Psychotherapy Codes: 90832 Psychotherapy, 30 minutes \$118.92

90833 Psychotherapy, 30 minutes when listed with an Evaluation &

Management Codes 99201-99255, 99304-99337, 99341-99350 \$124.10

90834 Psychotherapy, 45 minutes \$159

90836 Psychotherapy, 45 minutes in conjunction with 99201-99255, 99304-99337, 99341-99350 \$156.41

90837 Psychotherapy, 60 minutes

90838 Psychotherapy, 60 minutes in conjunction with 99201-99255, 99304-99337, 99341-99350 \$206.83

90839 Psychotherapy for crisis, first 60 minutes \$248.84

90840 Psychotherapy \$118.92

90845 Psychoanalysis \$170.63

90846 Family psychotherapy, 50 minutes \$191.96

90847 Family Psychotherapy, 50 minutes \$199.72

90849 Multi-family group psychotherapy \$67.22

90853 Group Psychotherapy \$47.83

90863 Pharmacologic management \$47.83

There are some more psychiatric and psychotherapy codes but the codes above cover some of the more common services.

If you need any further rates I would encourage you to contact in Industrial Commission of Arizona at 602-542-4661.

Thanks

**Nick Ponder**

Legislative Director

League of Arizona Cities and Towns

O: 602-258-5786

# UTILIZATION REPORT

FOR

**City of San Luis**

January 01, 2017 - December 31, 2017

UTILIZATION REPORT

**City of San Luis**

January 01, 2017 - December 31, 2017 on New and Open Files

**UTILIZATION RATE SUMMARY**

Type	Count	%	Serviced	%	Activities	%	Hours
EAP Files	7	58.3%	8	07.9%	16	94.1%	16
Information Calls	0	00.0%	0	00.0%	0	00.0%	0
Organizational Service/CISD	5	41.7%	93	92.1%	0	00.0%	0
Program Management	N/A	N/A	N/A	N/A	1	05.9%	2
Supervisor Referral	0	00.0%	0	00.0%	0	00.0%	0
Organization Consultation	0	00.0%	0	00.0%	0	00.0%	0
<b>Total</b>	<b>12</b>	<b>100%</b>	<b>101</b>	<b>100%</b>	<b>17</b>	<b>100%</b>	<b>18</b>

Population / Utilization Rate	Weighted Population Of:	68
Total Current Period Rate		10.29%
Total Annualized Utilization Rate		10.29%
Clients Serviced Current Period Rate		11.76%
Total Clients Serviced Annualized Utilization Rate		11.76%

New/Ongoing Files Summary		Referral/Closed Files Count	
Total New Files	7	Total Files Closed	7
Total Open Files At 1/1/2017	0		
Total Open Files At 12/31/2017	0		

Activity / Session Summary	
Total File Activity / Session Hours	16.00

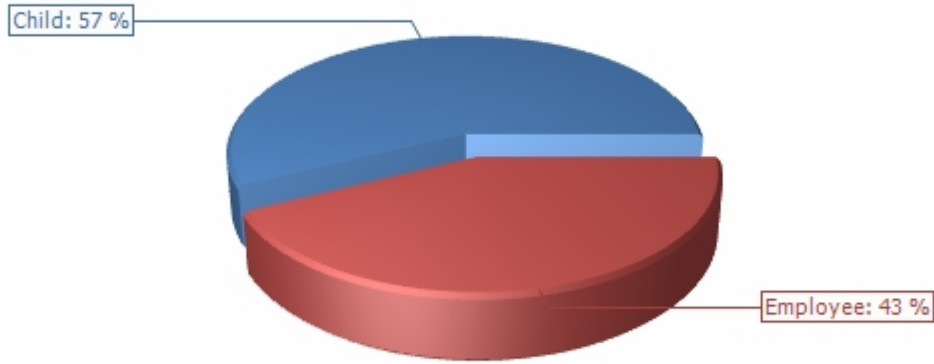
Historical Utilization				
1/1/2012-12/31/2012	1/1/2013-12/31/2013	1/1/2014-12/31/2014	1/1/2015-12/31/2015	1/1/2016-12/31/2016
No Data	No Data	No Data	No Data	No Data

UTILIZATION REPORT

**City of San Luis**

January 01, 2017 - December 31, 2017

**Client Type (Primary User)**



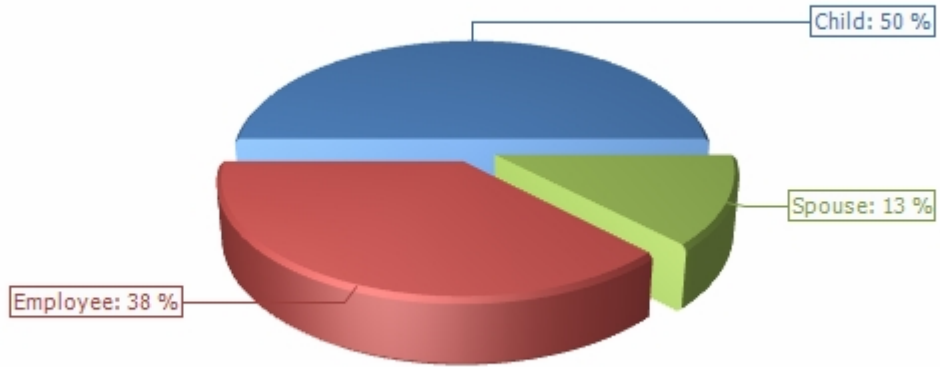
Client Type (Primary User)	1/1 - 3/31		4/1 - 6/30		7/1 - 9/30		10/1 - 12/31		1/2017 - 12/2017		1/2016 - 12/2016	
	#	%	#	%	#	%	#	%	#	%	#	%
Child	1	33.33%	3	50.00%	3	60.00%	3	75.00%	4	57.14%	0	0.00%
Employee	2	66.67%	3	50.00%	2	40.00%	1	25.00%	3	42.86%	0	0.00%
<b>Total</b>	<b>3</b>	<b>100 %</b>	<b>6</b>	<b>100 %</b>	<b>5</b>	<b>100 %</b>	<b>4</b>	<b>100 %</b>	<b>7</b>	<b>100 %</b>	<b>0</b>	<b>0 %</b>

UTILIZATION REPORT

**City of San Luis**

January 01, 2017 - December 31, 2017

**Client Type (Serviced-Attending with Primary)**



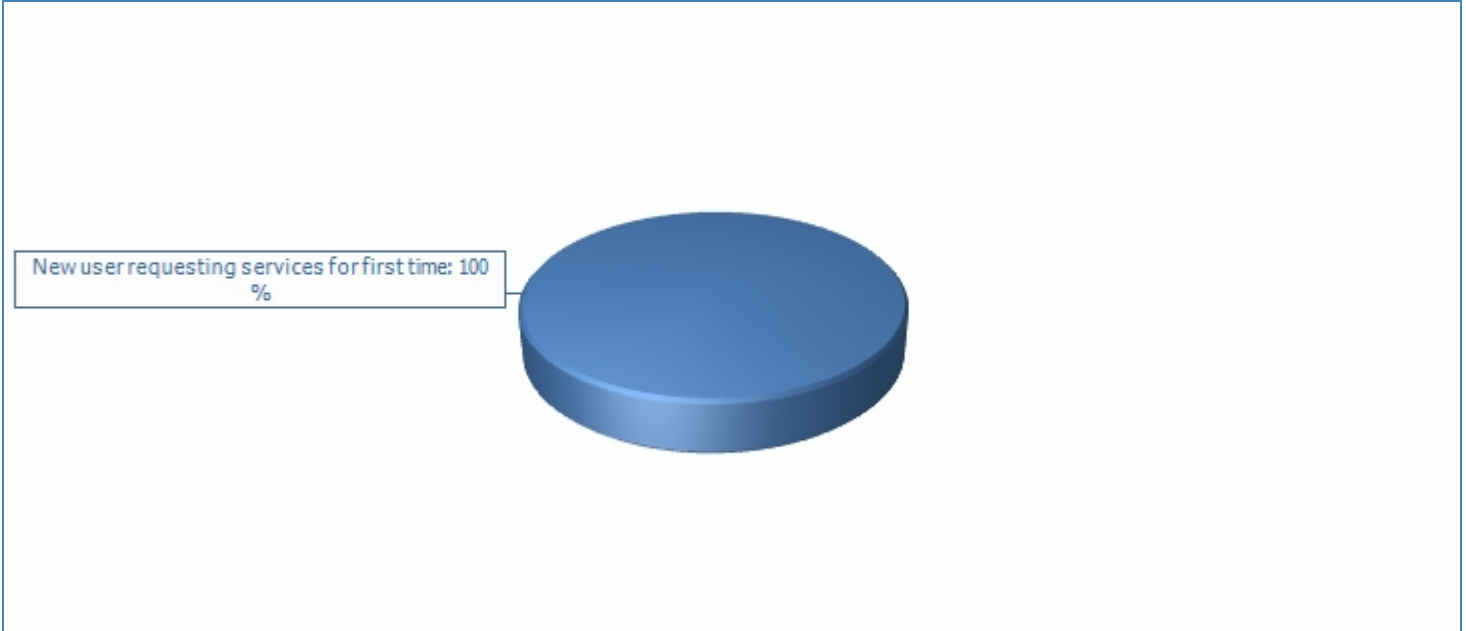
Client Type (Serviced-Attending with Primary)	1/1 - 3/31		4/1 - 6/30		7/1 - 9/30		10/1 - 12/31		1/2017 - 12/2017		1/2016 - 12/2016	
	#	%	#	%	#	%	#	%	#	%	#	%
Child	1	33.33%	3	42.86%	3	50.00%	3	60.00%	4	50.00%	0	0.00%
Employee	2	66.67%	3	42.86%	2	33.33%	1	20.00%	3	37.50%	0	0.00%
Spouse	0	0.00%	1	14.29%	1	16.67%	1	20.00%	1	12.50%	0	0.00%
<b>Total</b>	<b>3</b>	<b>100 %</b>	<b>7</b>	<b>100 %</b>	<b>6</b>	<b>100 %</b>	<b>5</b>	<b>100 %</b>	<b>8</b>	<b>100 %</b>	<b>0</b>	<b>0 %</b>

UTILIZATION REPORT

**City of San Luis**

January 01, 2017 - December 31, 2017

**Case Status**



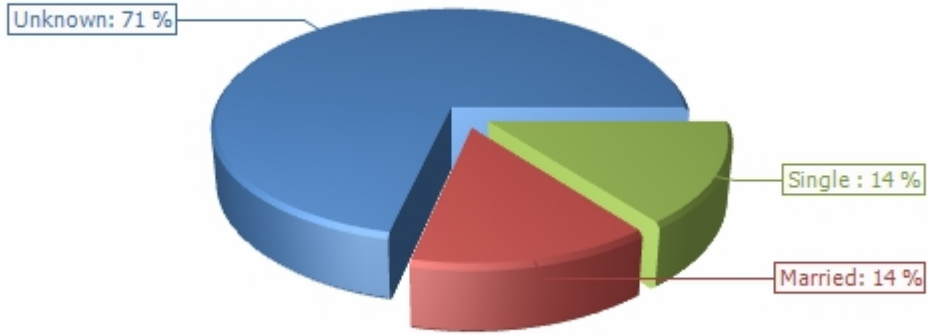
Case Status	1/1 - 3/31		4/1 - 6/30		7/1 - 9/30		10/1 - 12/31		1/2017 - 12/2017		1/2016 - 12/2016	
	#	%	#	%	#	%	#	%	#	%	#	%
New user requesting services for first time	3	100.00%	6	100.00%	5	100.00%	4	100.00%	7	100.00%	0	0.00%

UTILIZATION REPORT

**City of San Luis**

January 01, 2017 - December 31, 2017

**Marital Status (Primary)**



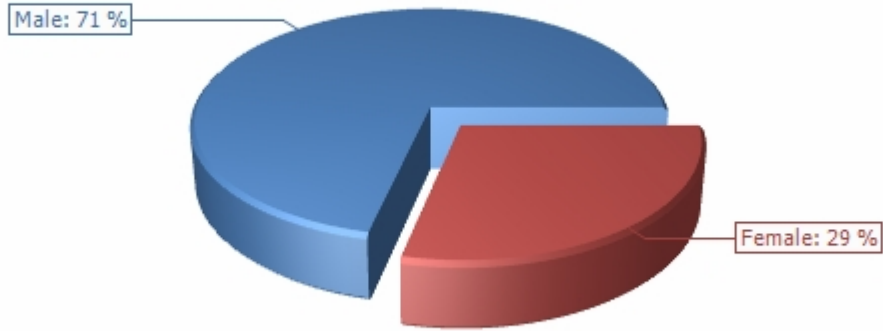
Marital Status (Primary)	1/1 - 3/31		4/1 - 6/30		7/1 - 9/30		10/1 - 12/31		1/2017 - 12/2017		1/2016 - 12/2016	
	#	%	#	%	#	%	#	%	#	%	#	%
Married	1	33.33%	1	16.67%	1	20.00%	0	0.00%	1	14.29%	0	0.00%
Single	0	0.00%	1	16.67%	1	20.00%	1	25.00%	1	14.29%	0	0.00%
Unknown	2	66.67%	4	66.67%	3	60.00%	3	75.00%	5	71.43%	0	0.00%
<b>Total</b>	<b>3</b>	<b>100 %</b>	<b>6</b>	<b>100 %</b>	<b>5</b>	<b>100 %</b>	<b>4</b>	<b>100 %</b>	<b>7</b>	<b>100 %</b>	<b>0</b>	<b>0 %</b>

UTILIZATION REPORT

**City of San Luis**

January 01, 2017 - December 31, 2017

**Gender (Primary)**



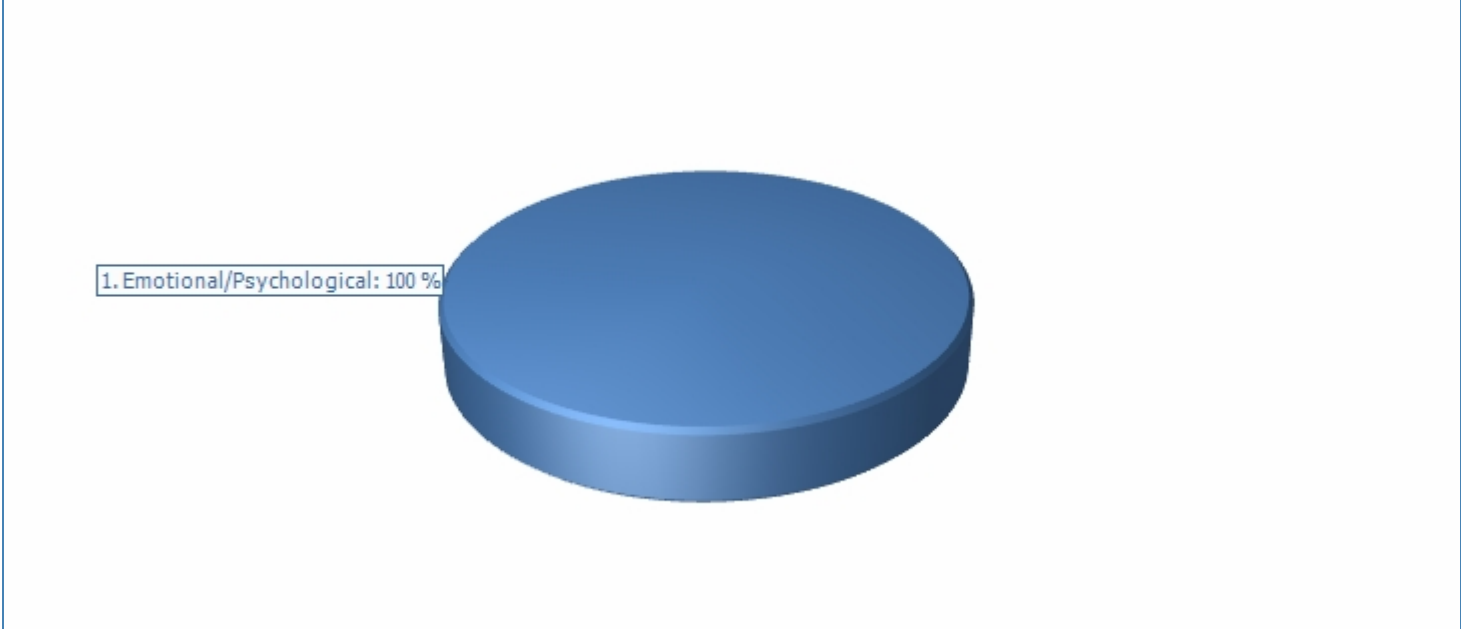
Gender (Primary)	1/1 - 3/31		4/1 - 6/30		7/1 - 9/30		10/1 - 12/31		1/2017 - 12/2017		1/2016 - 12/2016	
	#	%	#	%	#	%	#	%	#	%	#	%
Female	1	33.33%	2	33.33%	0	0.00%	0	0.00%	2	28.57%	0	0.00%
Male	2	66.67%	4	66.67%	5	100.00%	4	100.00%	5	71.43%	0	0.00%
<b>Total</b>	<b>3</b>	<b>100 %</b>	<b>6</b>	<b>100 %</b>	<b>5</b>	<b>100 %</b>	<b>4</b>	<b>100 %</b>	<b>7</b>	<b>100 %</b>	<b>0</b>	<b>0 %</b>

UTILIZATION REPORT

**City of San Luis**

January 01, 2017 - December 31, 2017

**Presenting Problem**



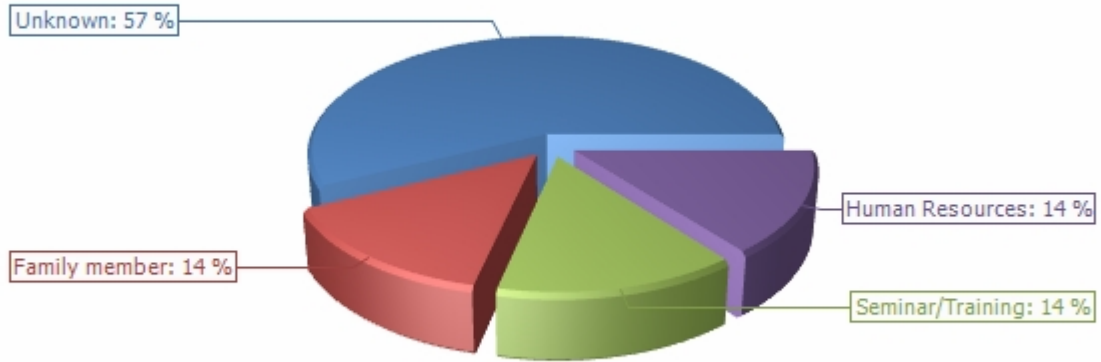
Presenting Problem	1/1 - 3/31		4/1 - 6/30		7/1 - 9/30		10/1 - 12/31		1/2017 - 12/2017		1/2016 - 12/2016	
	#	%	#	%	#	%	#	%	#	%	#	%
1. Emotional/Psychological	3	100.00%	6	100.00%	5	100.00%	4	100.00%	7	100.00%	0	0.00%
2. Family Related	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
3. Marital/Relationship	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
4. Mandated-Supervisor Referral	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
5. Substance Abuse	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
6. Work Related	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
<b>Total</b>	<b>3</b>	<b>100 %</b>	<b>6</b>	<b>100 %</b>	<b>5</b>	<b>100 %</b>	<b>4</b>	<b>100 %</b>	<b>7</b>	<b>100 %</b>	<b>0</b>	<b>0 %</b>

UTILIZATION REPORT

**City of San Luis**

January 01, 2017 - December 31, 2017

**How did you hear about EAP Preferred**



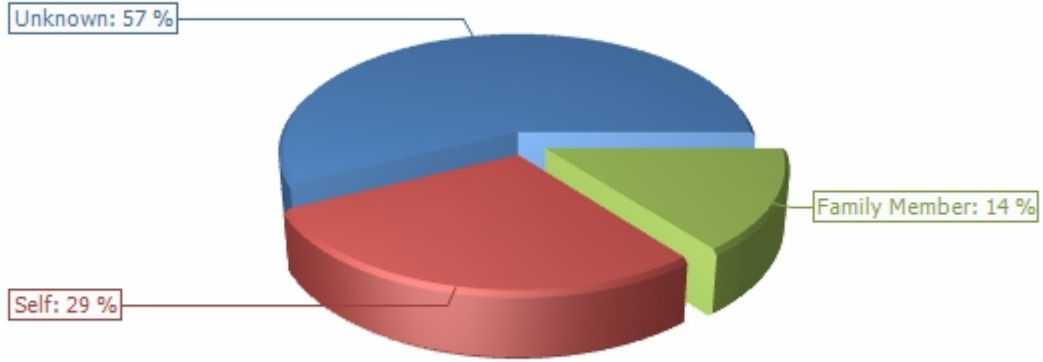
How did you hear about EAP Preferred	1/1 - 3/31		4/1 - 6/30		7/1 - 9/30		10/1 - 12/31		1/2017 - 12/2017		1/2016 - 12/2016	
	#	%	#	%	#	%	#	%	#	%	#	%
Family member	0	0.00%	1	16.67%	1	20.00%	1	25.00%	1	14.29%	0	0.00%
Human Resources	1	33.33%	1	16.67%	1	20.00%	1	25.00%	1	14.29%	0	0.00%
Seminar/Training	1	33.33%	1	16.67%	1	20.00%	0	0.00%	1	14.29%	0	0.00%
Unknown	1	33.33%	3	50.00%	2	40.00%	2	50.00%	4	57.14%	0	0.00%
<b>Total</b>	<b>3</b>	<b>100 %</b>	<b>6</b>	<b>100 %</b>	<b>5</b>	<b>100 %</b>	<b>4</b>	<b>100 %</b>	<b>7</b>	<b>100 %</b>	<b>0</b>	<b>0 %</b>

UTILIZATION REPORT

**City of San Luis**

January 01, 2017 - December 31, 2017

**Who suggested you to come to counseling**



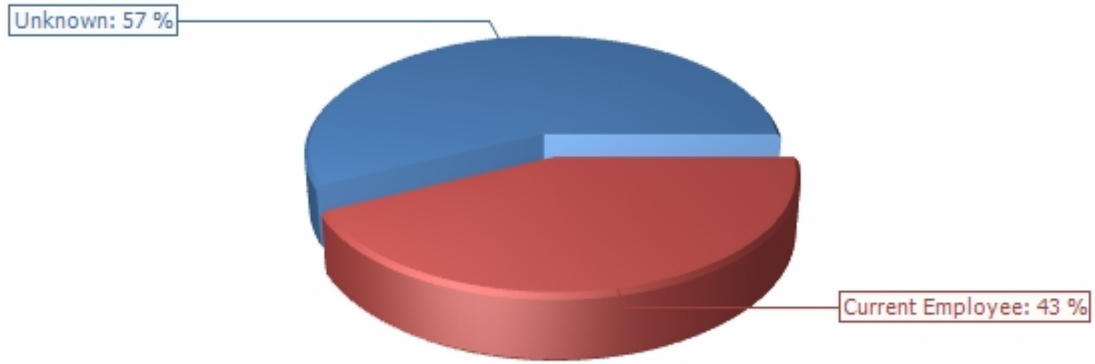
Who suggested you to come to counseling	1/1 - 3/31		4/1 - 6/30		7/1 - 9/30		10/1 - 12/31		1/2017 - 12/2017		1/2016 - 12/2016	
	#	%	#	%	#	%	#	%	#	%	#	%
Family Member	0	0.00%	1	16.67%	1	20.00%	1	25.00%	1	14.29%	0	0.00%
Self	2	66.67%	2	33.33%	2	40.00%	1	25.00%	2	28.57%	0	0.00%
Unknown	1	33.33%	3	50.00%	2	40.00%	2	50.00%	4	57.14%	0	0.00%
<b>Total</b>	<b>3</b>	<b>100 %</b>	<b>6</b>	<b>100 %</b>	<b>5</b>	<b>100 %</b>	<b>4</b>	<b>100 %</b>	<b>7</b>	<b>100 %</b>	<b>0</b>	<b>0 %</b>

UTILIZATION REPORT

**City of San Luis**

January 01, 2017 - December 31, 2017

**Employee's Present Job Status**



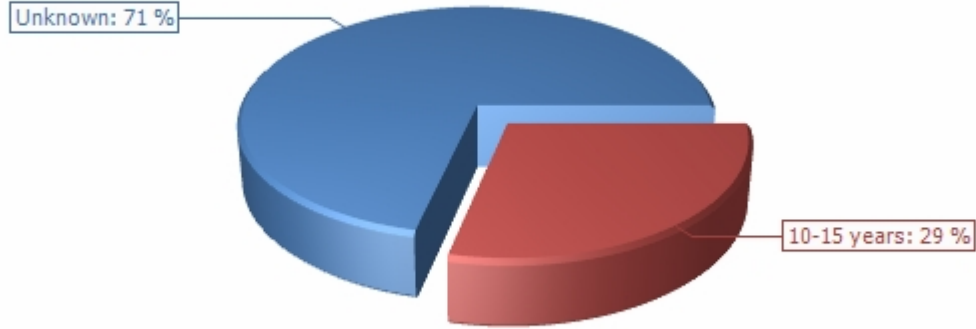
Employee's Present Job Status	1/1 - 3/31		4/1 - 6/30		7/1 - 9/30		10/1 - 12/31		1/2017 - 12/2017		1/2016 - 12/2016	
	#	%	#	%	#	%	#	%	#	%	#	%
Current Employee	2	66.67%	3	50.00%	3	60.00%	2	50.00%	3	42.86%	0	0.00%
Unknown	1	33.33%	3	50.00%	2	40.00%	2	50.00%	4	57.14%	0	0.00%
<b>Total</b>	<b>3</b>	<b>100 %</b>	<b>6</b>	<b>100 %</b>	<b>5</b>	<b>100 %</b>	<b>4</b>	<b>100 %</b>	<b>7</b>	<b>100 %</b>	<b>0</b>	<b>0 %</b>

UTILIZATION REPORT

**City of San Luis**

January 01, 2017 - December 31, 2017

**Employee's Length of Employment**



Employee's Length of Employment	1/1 - 3/31		4/1 - 6/30		7/1 - 9/30		10/1 - 12/31		1/2017 - 12/2017		1/2016 - 12/2016	
	#	%	#	%	#	%	#	%	#	%	#	%
10-15 years	2	66.67%	2	33.33%	2	40.00%	1	25.00%	2	28.57%	0	0.00%
Unknown	1	33.33%	4	66.67%	3	60.00%	3	75.00%	5	71.43%	0	0.00%
<b>Total</b>	<b>3</b>	<b>100 %</b>	<b>6</b>	<b>100 %</b>	<b>5</b>	<b>100 %</b>	<b>4</b>	<b>100 %</b>	<b>7</b>	<b>100 %</b>	<b>0</b>	<b>0 %</b>

UTILIZATION REPORT

**City of San Luis**

January 01, 2017 - December 31, 2017

**Information Call Type**

--

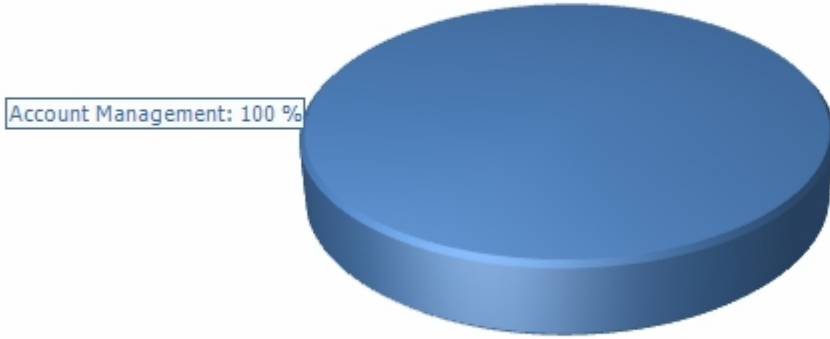
Information Call Type	1/1 - 3/31		4/1 - 6/30		7/1 - 9/30		10/1 - 12/31		1/2017 - 12/2017		1/2016 - 12/2016	
	#	%	#	%	#	%	#	%	#	%	#	%
No Data To Report	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%

UTILIZATION REPORT

**City of San Luis**

January 01, 2017 - December 31, 2017

**Account Management**



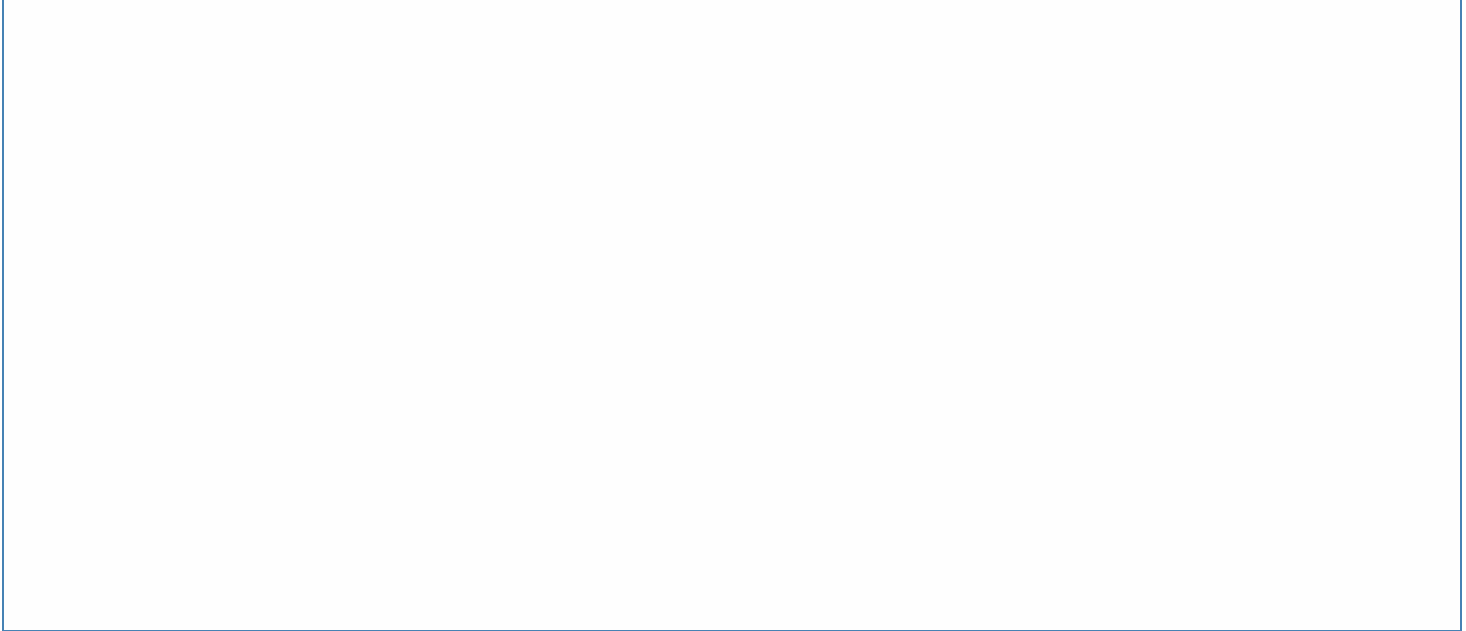
Account Management	1/1 - 3/31		4/1 - 6/30		7/1 - 9/30		10/1 - 12/31		1/2017 - 12/2017		1/2016 - 12/2016	
	#	%	#	%	#	%	#	%	#	%	#	%
Account Management	1	100.00%	0	0.00%	0	0.00%	0	0.00%	1	100.00%	2	100.00%

UTILIZATION REPORT

**City of San Luis**

January 01, 2017 - December 31, 2017

**Trauma Summary**



Trauma Summary	1/1 - 3/31		4/1 - 6/30		7/1 - 9/30		10/1 - 12/31		1/2017 - 12/2017		1/2016 - 12/2016	
	#	%	#	%	#	%	#	%	#	%	#	%
No Data To Report	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%

UTILIZATION REPORT

**City of San Luis**

January 01, 2017 - December 31, 2017

**Organizational Service/CISD Summary**

<b>Date</b>	<b>Type</b>	<b>Duration</b>	<b>Attendees</b>
<b>3/22/2017</b>	<b>Training</b>	<b>San Luis, Arizona</b>	<b>33</b>
<b>3/22/2017</b>	<b>Training</b>	<b>San Luis, Arizona</b>	<b>8</b>
<b>3/23/2017</b>	<b>Training</b>	<b>San Luis, Arizona</b>	<b>10</b>
<b>3/23/2017</b>	<b>Training</b>	<b>San Luis, Arizona</b>	<b>21</b>
<b>3/27/2017</b>	<b>Training</b>	<b>San Luis, Arizona</b>	<b>21</b>
<b>TOTAL</b>		<b>0.00</b>	<b>93</b>

# UTILIZATION REPORT

FOR

**City of San Luis**

January 01, 2018 - December 31, 2018

UTILIZATION REPORT

**City of San Luis**

January 01, 2018 - December 31, 2018 on New and Open Files

**UTILIZATION RATE SUMMARY**

Type	Count	%	Serviced	%	Activities	%	Hours
EAP Files	4	100.0%	4	100.0%	5	100.0%	5
Information Calls	0	00.0%	0	00.0%	0	00.0%	0
Organizational Service/CISD	0	00.0%	0	00.0%	0	00.0%	0
Program Management	N/A	N/A	N/A	N/A	0	00.0%	0
Supervisor Referral	0	00.0%	0	00.0%	0	00.0%	0
Organization Consultation	0	00.0%	0	00.0%	0	00.0%	0
<b>Total</b>	<b>4</b>	<b>100%</b>	<b>4</b>	<b>100%</b>	<b>5</b>	<b>100%</b>	<b>5</b>

Population / Utilization Rate	Weighted Population Of:	71
Total Current Period Rate		5.63%
Total Annualized Utilization Rate		5.63%
Clients Serviced Current Period Rate		5.63%
Total Clients Serviced Annualized Utilization Rate		5.63%

New/Ongoing Files Summary		Referral/Closed Files Count	
Total New Files	4	Total Files Closed	3
Total Open Files At 1/1/2018	0		
Total Open Files At 12/31/2018	1		

Activity / Session Summary	
Total File Activity / Session Hours	5.00

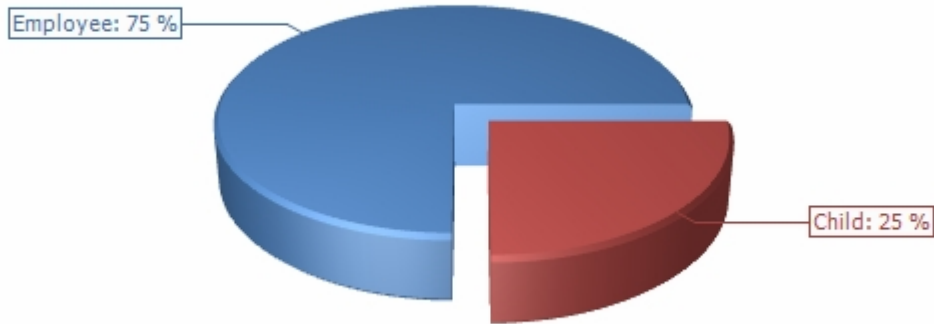
Historical Utilization				
1/1/2013-12/31/2013	1/1/2014-12/31/2014	1/1/2015-12/31/2015	1/1/2016-12/31/2016	1/1/2017-12/31/2017
No Data	No Data	No Data	No Data	10.29%

UTILIZATION REPORT

**City of San Luis**

January 01, 2018 - December 31, 2018

**Client Type (Primary User)**



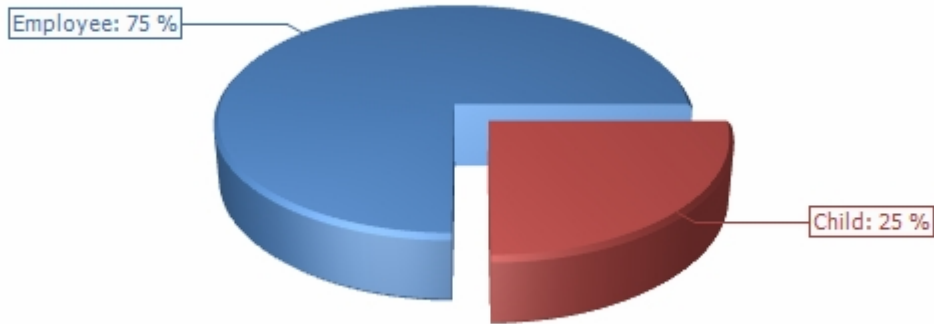
Client Type (Primary User)	1/1 - 3/31		4/1 - 6/30		7/1 - 9/30		10/1 - 12/31		1/2018 - 12/2018		1/2017 - 12/2017	
	#	%	#	%	#	%	#	%	#	%	#	%
Child	0	0.00%	0	0.00%	0	0.00%	1	33.33%	1	25.00%	4	57.14%
Employee	2	100.00%	2	100.00%	2	100.00%	2	66.67%	3	75.00%	3	42.86%
<b>Total</b>	<b>2</b>	<b>100 %</b>	<b>2</b>	<b>100 %</b>	<b>2</b>	<b>100 %</b>	<b>3</b>	<b>100 %</b>	<b>4</b>	<b>100 %</b>	<b>7</b>	<b>100 %</b>

UTILIZATION REPORT

**City of San Luis**

January 01, 2018 - December 31, 2018

**Client Type (Serviced-Attending with Primary)**



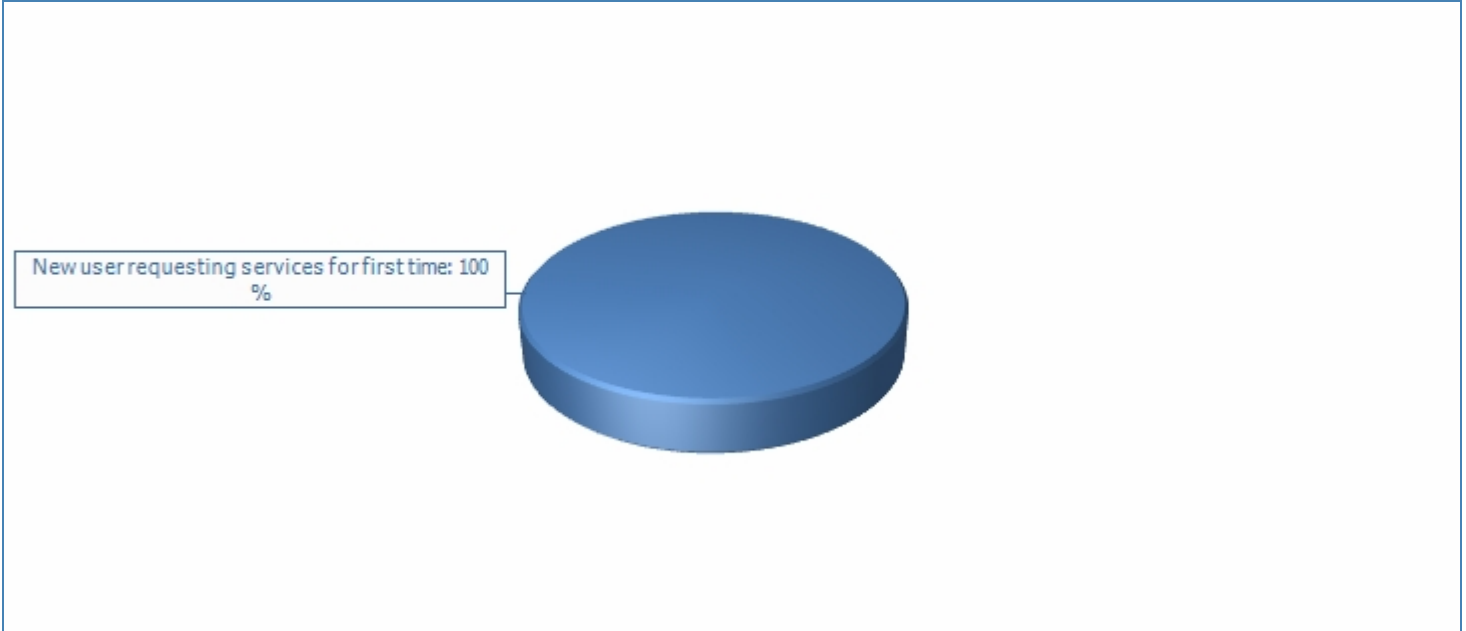
Client Type (Serviced-Attending with Primary)	1/1 - 3/31		4/1 - 6/30		7/1 - 9/30		10/1 - 12/31		1/2018 - 12/2018		1/2017 - 12/2017	
	#	%	#	%	#	%	#	%	#	%	#	%
Child	0	0.00%	0	0.00%	0	0.00%	1	33.33%	1	25.00%	4	50.00%
Employee	2	100.00%	2	100.00%	2	100.00%	2	66.67%	3	75.00%	3	37.50%
Spouse	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	1	12.50%
<b>Total</b>	<b>2</b>	<b>100 %</b>	<b>2</b>	<b>100 %</b>	<b>2</b>	<b>100 %</b>	<b>3</b>	<b>100 %</b>	<b>4</b>	<b>100 %</b>	<b>8</b>	<b>100 %</b>

UTILIZATION REPORT

**City of San Luis**

January 01, 2018 - December 31, 2018

**Case Status**



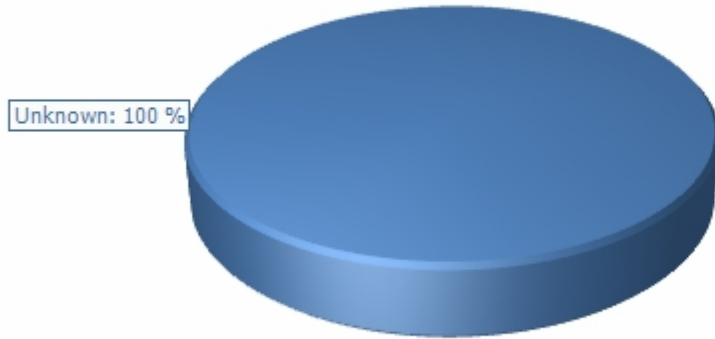
Case Status	1/1 - 3/31		4/1 - 6/30		7/1 - 9/30		10/1 - 12/31		1/2018 - 12/2018		1/2017 - 12/2017	
	#	%	#	%	#	%	#	%	#	%	#	%
New user requesting services for first time	2	100.00%	2	100.00%	2	100.00%	3	100.00%	4	100.00%	7	100.00%

UTILIZATION REPORT

**City of San Luis**

January 01, 2018 - December 31, 2018

**Marital Status (Primary)**



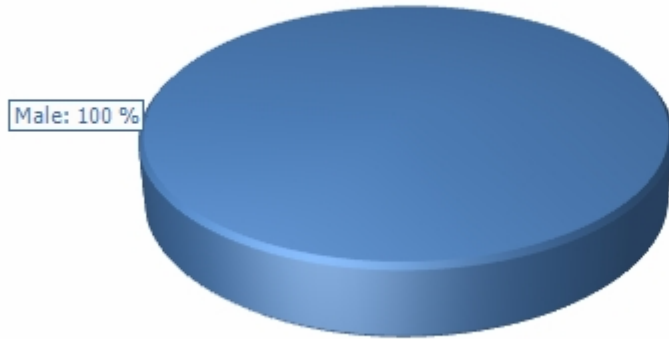
Marital Status (Primary)	1/1 - 3/31		4/1 - 6/30		7/1 - 9/30		10/1 - 12/31		1/2018 - 12/2018		1/2017 - 12/2017	
	#	%	#	%	#	%	#	%	#	%	#	%
Married	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	1	14.29%
Single	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	1	14.29%
Unknown	2	100.00%	2	100.00%	2	100.00%	3	100.00%	4	100.00%	5	71.43%
<b>Total</b>	<b>2</b>	<b>100 %</b>	<b>2</b>	<b>100 %</b>	<b>2</b>	<b>100 %</b>	<b>3</b>	<b>100 %</b>	<b>4</b>	<b>100 %</b>	<b>7</b>	<b>100 %</b>

UTILIZATION REPORT

**City of San Luis**

January 01, 2018 - December 31, 2018

**Gender (Primary)**



Gender (Primary)	1/1 - 3/31		4/1 - 6/30		7/1 - 9/30		10/1 - 12/31		1/2018 - 12/2018		1/2017 - 12/2017	
	#	%	#	%	#	%	#	%	#	%	#	%
Female	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	2	28.57%
Male	2	100.00%	2	100.00%	2	100.00%	3	100.00%	4	100.00%	5	71.43%
<b>Total</b>	<b>2</b>	<b>100 %</b>	<b>2</b>	<b>100 %</b>	<b>2</b>	<b>100 %</b>	<b>3</b>	<b>100 %</b>	<b>4</b>	<b>100 %</b>	<b>7</b>	<b>100 %</b>

UTILIZATION REPORT

**City of San Luis**

January 01, 2018 - December 31, 2018

**Presenting Problem**



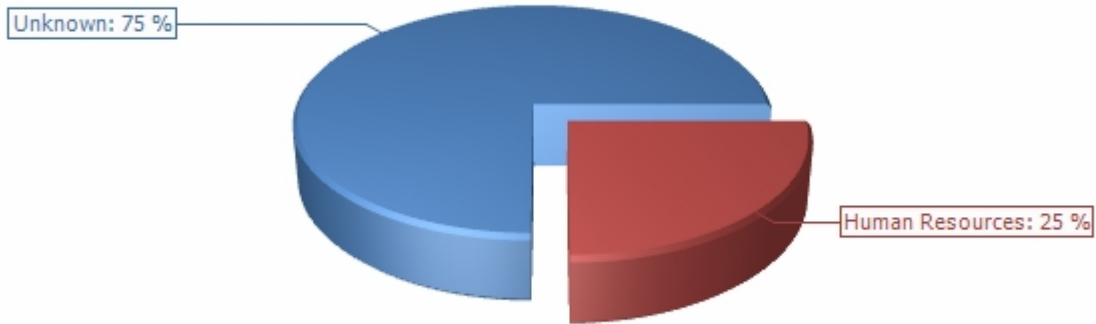
Presenting Problem	1/1 - 3/31		4/1 - 6/30		7/1 - 9/30		10/1 - 12/31		1/2018 - 12/2018		1/2017 - 12/2017	
	#	%	#	%	#	%	#	%	#	%	#	%
1. Emotional/Psychological	1	50.00%	1	50.00%	0	0.00%	0	0.00%	1	25.00%	7	100.00%
2. Family Related	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
3. Marital/Relationship	0	0.00%	0	0.00%	1	50.00%	1	33.33%	1	25.00%	0	0.00%
4. Mandated-Supervisor Referral	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
5. Substance Abuse	0	0.00%	0	0.00%	0	0.00%	1	33.33%	1	25.00%	0	0.00%
6. Work Related	1	50.00%	1	50.00%	1	50.00%	1	33.33%	1	25.00%	0	0.00%
<b>Total</b>	<b>2</b>	<b>100 %</b>	<b>2</b>	<b>100 %</b>	<b>2</b>	<b>100 %</b>	<b>3</b>	<b>100 %</b>	<b>4</b>	<b>100 %</b>	<b>7</b>	<b>100 %</b>

UTILIZATION REPORT

**City of San Luis**

January 01, 2018 - December 31, 2018

**How did you hear about EAP Preferred**



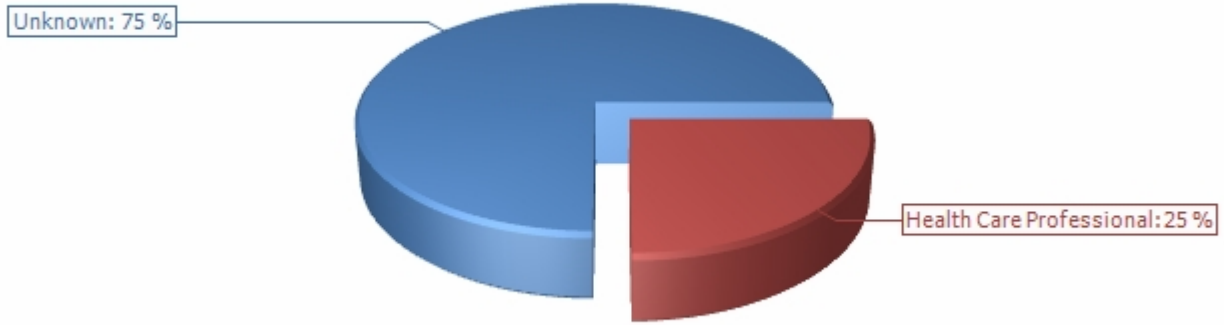
How did you hear about EAP Preferred	1/1 - 3/31		4/1 - 6/30		7/1 - 9/30		10/1 - 12/31		1/2018 - 12/2018		1/2017 - 12/2017	
	#	%	#	%	#	%	#	%	#	%	#	%
Family member	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	1	14.29%
Human Resources	1	50.00%	1	50.00%	1	50.00%	1	33.33%	1	25.00%	1	14.29%
Seminar/Training	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	1	14.29%
Unknown	1	50.00%	1	50.00%	1	50.00%	2	66.67%	3	75.00%	4	57.14%
<b>Total</b>	<b>2</b>	<b>100 %</b>	<b>2</b>	<b>100 %</b>	<b>2</b>	<b>100 %</b>	<b>3</b>	<b>100 %</b>	<b>4</b>	<b>100 %</b>	<b>7</b>	<b>100 %</b>

UTILIZATION REPORT

**City of San Luis**

January 01, 2018 - December 31, 2018

**Who suggested you to come to counseling**



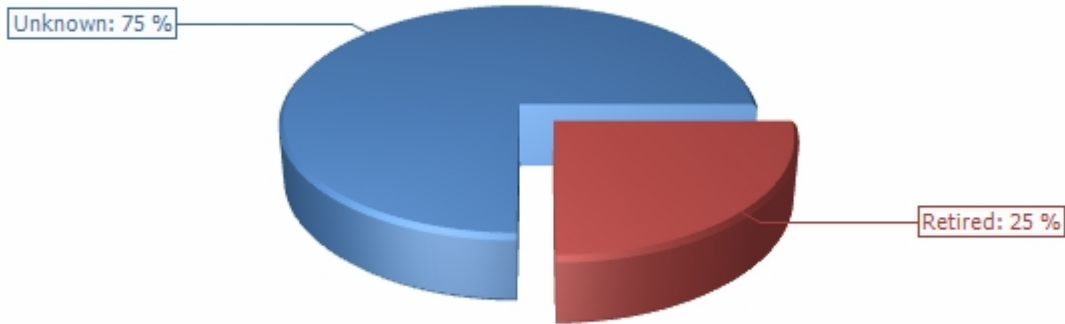
Who suggested you to come to counseling	1/1 - 3/31		4/1 - 6/30		7/1 - 9/30		10/1 - 12/31		1/2018 - 12/2018		1/2017 - 12/2017	
	#	%	#	%	#	%	#	%	#	%	#	%
Family Member	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	1	14.29%
Health Care Professional	1	50.00%	1	50.00%	1	50.00%	1	33.33%	1	25.00%	0	0.00%
Self	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	2	28.57%
Unknown	1	50.00%	1	50.00%	1	50.00%	2	66.67%	3	75.00%	4	57.14%
<b>Total</b>	<b>2</b>	<b>100 %</b>	<b>2</b>	<b>100 %</b>	<b>2</b>	<b>100 %</b>	<b>3</b>	<b>100 %</b>	<b>4</b>	<b>100 %</b>	<b>7</b>	<b>100 %</b>

UTILIZATION REPORT

**City of San Luis**

January 01, 2018 - December 31, 2018

**Employee's Present Job Status**



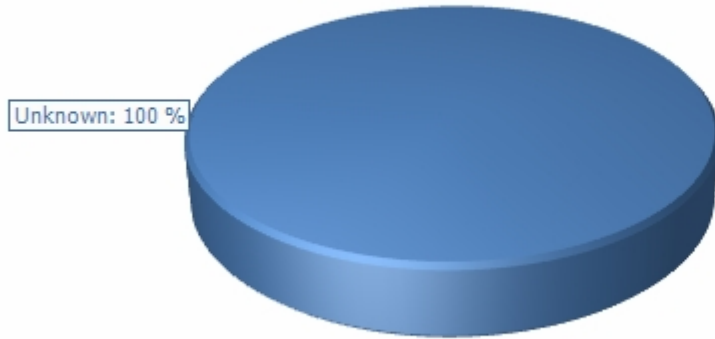
Employee's Present Job Status	1/1 - 3/31		4/1 - 6/30		7/1 - 9/30		10/1 - 12/31		1/2018 - 12/2018		1/2017 - 12/2017	
	#	%	#	%	#	%	#	%	#	%	#	%
Retired	1	50.00%	1	50.00%	1	50.00%	1	33.33%	1	25.00%	0	0.00%
Current Employee	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	3	42.86%
Unknown	1	50.00%	1	50.00%	1	50.00%	2	66.67%	3	75.00%	4	57.14%
<b>Total</b>	<b>2</b>	<b>100 %</b>	<b>2</b>	<b>100 %</b>	<b>2</b>	<b>100 %</b>	<b>3</b>	<b>100 %</b>	<b>4</b>	<b>100 %</b>	<b>7</b>	<b>100 %</b>

UTILIZATION REPORT

**City of San Luis**

January 01, 2018 - December 31, 2018

**Employee's Length of Employment**



Employee's Length of Employment	1/1 - 3/31		4/1 - 6/30		7/1 - 9/30		10/1 - 12/31		1/2018 - 12/2018		1/2017 - 12/2017	
	#	%	#	%	#	%	#	%	#	%	#	%
10-15 years	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	2	28.57%
Unknown	2	100.00%	2	100.00%	2	100.00%	3	100.00%	4	100.00%	5	71.43%
<b>Total</b>	<b>2</b>	<b>100 %</b>	<b>2</b>	<b>100 %</b>	<b>2</b>	<b>100 %</b>	<b>3</b>	<b>100 %</b>	<b>4</b>	<b>100 %</b>	<b>7</b>	<b>100 %</b>

UTILIZATION REPORT

**City of San Luis**

January 01, 2018 - December 31, 2018

**Information Call Type**

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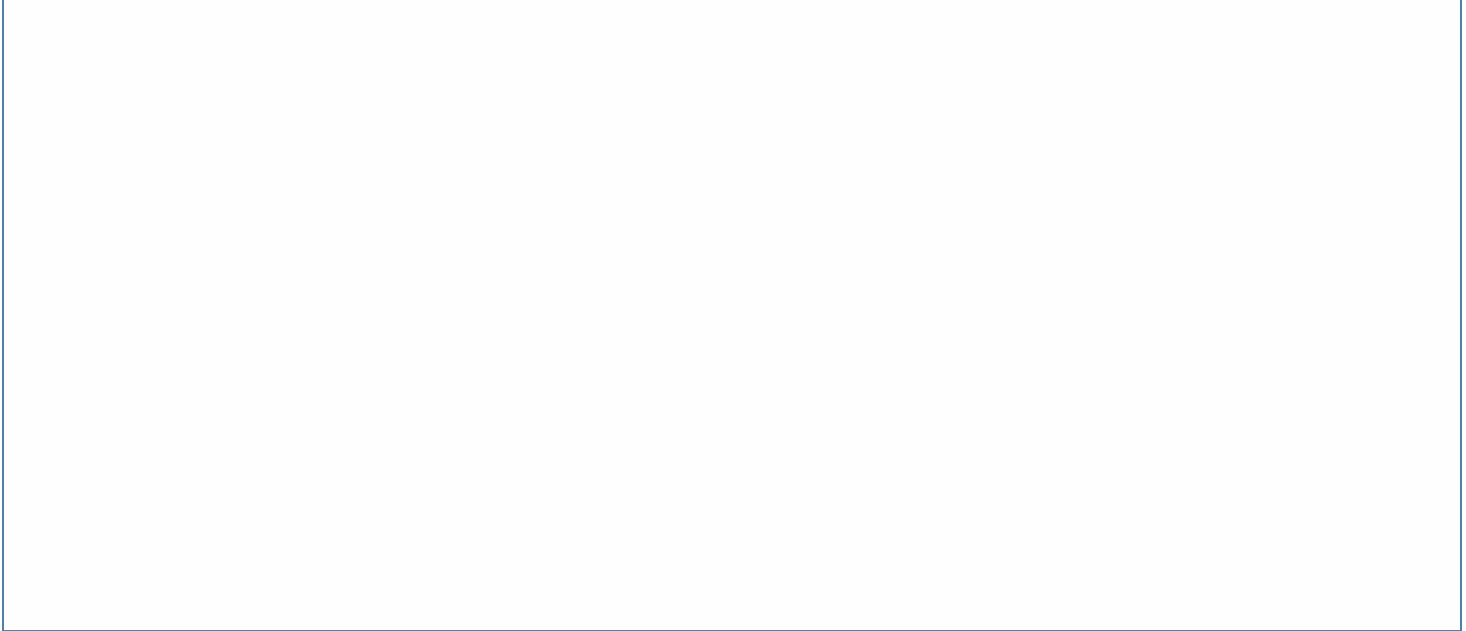
Information Call Type	1/1 - 3/31		4/1 - 6/30		7/1 - 9/30		10/1 - 12/31		1/2018 - 12/2018		1/2017 - 12/2017	
	#	%	#	%	#	%	#	%	#	%	#	%
No Data To Report	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%

UTILIZATION REPORT

**City of San Luis**

January 01, 2018 - December 31, 2018

**Account Management**



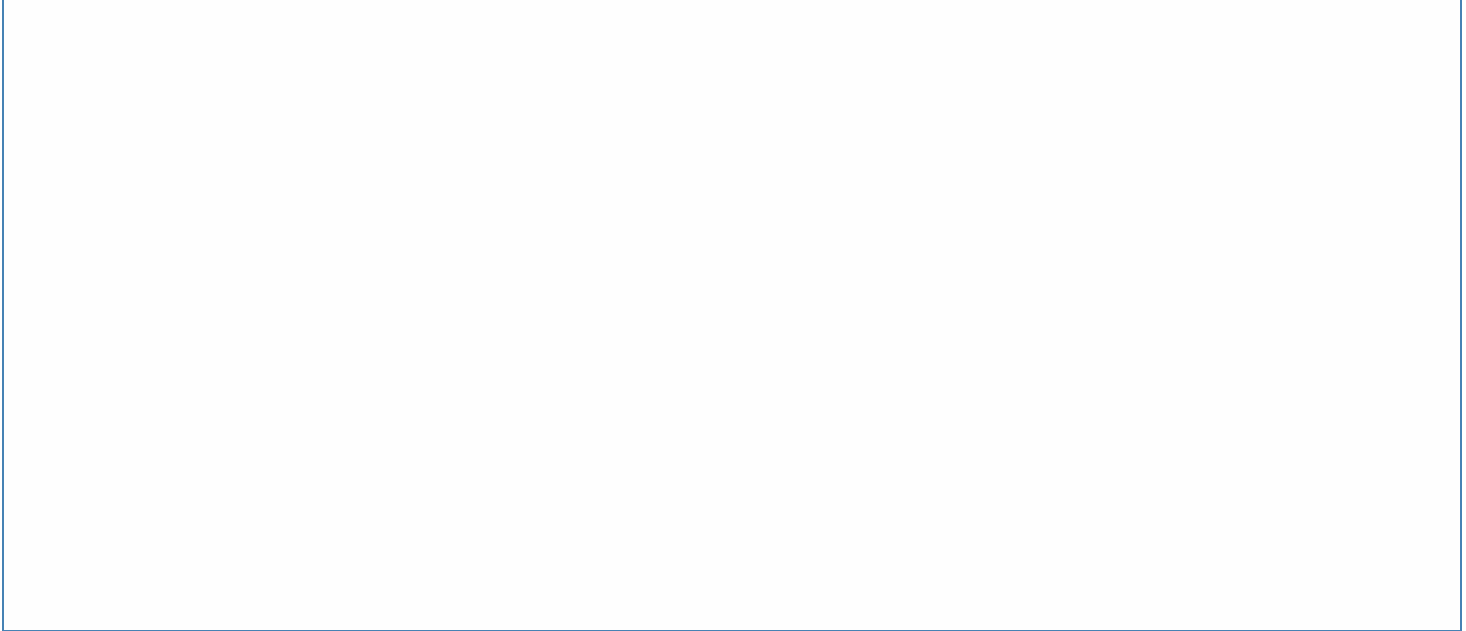
Account Management	1/1 - 3/31		4/1 - 6/30		7/1 - 9/30		10/1 - 12/31		1/2018 - 12/2018		1/2017 - 12/2017	
	#	%	#	%	#	%	#	%	#	%	#	%
Account Management	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	1	100.00%

UTILIZATION REPORT

**City of San Luis**

January 01, 2018 - December 31, 2018

**Trauma Summary**



Trauma Summary	1/1 - 3/31		4/1 - 6/30		7/1 - 9/30		10/1 - 12/31		1/2018 - 12/2018		1/2017 - 12/2017	
	#	%	#	%	#	%	#	%	#	%	#	%
No Data To Report	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%

Here are the Fire Department's statistics from January 2018 – December 2018.

**A total of Approximately 10 Fire Fighters were exposed at least one of the 18 traumatic events.**

1. Visually witnessing the death or maiming or visually witnessing the immediate aftermath of such a death or maiming of one or more human beings. **18**

2. Responding to or being directly involved in a criminal investigation of an offense involving a dangerous crime against children as defined in [§ 13-705](#). **Unknown**

3. Requiring rescue in the line of duty where one's life was endangered. **0**

4. Using deadly force or being subjected to deadly force in the line of duty, regardless of whether the peace officer or firefighter was physically injured. **0**

5. Witnessing the death of another peace officer or firefighter while engaged in the line of duty. **0**

6. Responding to or being directly involved in an investigation regarding the drowning or near drowning of a child. **0**

## Employee Benefit Trust Board Meeting

4.B.

**Meeting Date:** 02/13/2019

**Department Head:** Maria Munoz, HR Technician, Human Resources Department

**Submitted By:** Maria Munoz, HR Technician, Human Resources Department

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### ITEM:

Discussion and possible action on any and all matters regarding approval of the contract with Counseling & Family Resources, Ltd., for Employee Assistance Program Preferred (EAPP). (**Susan Posada, City of San Luis Benefits Consultant**)

### SUMMARY:

A.R.S. §38-673 (attached) mandates that cities offer up to 36 counseling sessions to police and firefighters who have been exposed to a statutory list of traumatic events. The statute also requires an extensive amount of record keeping and reporting to the Governor and State Legislature. Police and firefighters exposed to traumatic events are not required to attend counseling.

### Summary of EAPP Services for Traumatic Event Counseling

(Contract attached)

#### 1. Eligibility and Referral Process:

- a. provides the counseling sessions (up to 36 visits with psychiatrist or psychologist of the police or firefighter's choice) at the employer's cost (by statute first 12 without restriction, 13<sup>th</sup> through 36<sup>th</sup> visit as recommended by the counselor);
- b. provides a phone number and email for police and firefighters to use and determines the eligibility of the police or firefighter (for ease of reference will call police or firefighter "employee"),
- c. allows the employee to choose to use the general Employee Assistant Program sessions first before tapping into the Traumatic Event Counseling Program (however, if the employee is using the Traumatic Event Counseling benefit, the employee must use a counselor who is an Arizona licensed psychologist or psychiatrist);
- d. provides referral service of licensed psychiatrists or psychologists and will schedule appointments if the caller needs assistance with that;
- e. allows telemedicine if conducive to the counselor and participant's needs;

#### 2. Tracking and Reporting Service:

- a. employee name, employer name, and dates of sessions from counselors in compliance with HIPPA may assign ID numbers when communicating to Employer;
- b. receive from counselors coded billings – capped by amounts allowed under Arizona Workers' Compensation as required by the new statute;
- c. receive billing from counselors in or out of the EAPP network and process for appropriate billing and pay claims;
- d. invoice the employer monthly for claims under the program plus administrative fee per

- counseling session.
- e. report to the employer annually for the statutorily required report to the State :
- i. number of participants,
  - ii. average number of visits per employee,
  - iii. average number of months that an employee participated in the program,
  - iv. number of employees deemed fit for duty,
    1. fit-for-duty evaluations are not covered but must be tracked,
    2. counselors will inform the employer of if a fit-for-duty evaluation is recommended and up to the employer to follow-up,
  - v. Percentage of employees who received more than 12 visits within a year of the first visit.

WILL NOT track the required annual reporting on

- Work missed by category of leave benefit,
- Average days that participant missed work,
- Participants that filed workers' compensation claims and number approved and number denied

**Suggested Action**

Since this contract is related to a new requirement, alternative motions are suggested for the Trustees consideration

**RECOMMENDATION / SUGGESTED MOTION:**

**I MOVE TO APPROVE THE CONTRACT WITH COUNSELING & FAMILY RESOURCES AS PRESENTED IN THE AMOUNT OF A ONE-TIME FEE OF \$500 PLUS \$10 PER COUNSELLING SESSION ADMINISTRATIVE FEE.**

**OR**

**I MOVE TO DENY INCLUSION THE EAPP CONTRACT IN THE TRUST.**

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**Fiscal Impact**

**Fiscal Impact:**

A one-time set up and program enrollment fee of \$500 plus \$10 Administration Fee per unknown number of counseling sessions, dependent upon participation in program .

All direct costs incurred by EAPP to be invoiced to the Employer on a monthly basis with payment due Net 30.

Budgeted Amount: Not Budgeted

General Ledger Number: 100-181-5016X, 100-182-5016X, 340-341-516X

Remaining Balance Before Purchase: N/A

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**Attachments**

EAPP Agreement

Explanation of Services

ARS 38-673

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## **ADDENDUM B**

### **EAPP TRAUMATIC EVENT COUNSELING PROGRAM SERVICES**

THIS ADDENDUM is entered into and effective on February 1, 2019, by and between City of San Luis Employee Benefit Trust (Employer) and EAP Preferred (EAPP).

Whereas, Employer and EAPP have an existing EAP services agreement effective on January 1, 2017 and;

This Addendum is in effect only so long as the Employer maintains the EAP services agreement with EAPP. This Addendum will terminate effective the same date as the EAP services agreement terminates unless this Addendum is terminated prior to the EAP services agreement termination, and;

Now, therefore, the Employer and EAPP hereby amend the Agreement and agree as follows:

EAPP will provide and track services as outlined below in response to the requirements provisioned by House Bill (HB) 2502.

1. EAPP Traumatic Counseling Program Eligibility and Referral Process:

- A. EAPP will provide up to 36 counseling visits per incident for eligible firefighters and police officers as defined by the HB 2502 with a licensed mental health professional of their choice, paid for by the employer when the employee experiences traumatic events in the course of duty.
- B. EAPP will respond to calls received at 602-264-4600 or emails sent to EAPP's dedicated email address for this service at [firstresponders@eappreferred.com](mailto:firstresponders@eappreferred.com). Those using the Traumatic Event Counseling Program must identify themselves as an employee covered under HB 2502 and request assistance.
- C. Employees covered under the EAPP EAP who want to utilize their EAP sessions first and schedule with one of EAPP's EAP counselors, they have the option to do so.
- D. Employees utilizing the Traumatic Event Counseling Program that need assistance identifying a counselor that meets the requirements of HB 2502, EAPP will provide a list of counselors to the employee. If the employee needs support in scheduling an appointment, EAPP will provide appointment coordination.

- a. If utilizing the Traumatic Event Counseling Program, the participant must utilize a psychologist or a psychiatrist for their sessions.
  - b. The counselor being used must agree to the fee schedule (Arizona Industrial Commission fee schedule rates for Evaluation and Management CPT codes located at <https://www.azica.gov/arizona-physicians-fee-schedule-year-selector> ) outlined in HB 2502. Should the employee independently schedule an appointment with a counselor without confirming the counselor's acceptance of the fee schedule, anything above the approved fee schedule could be subject to balance billing to the participant. Should this occur, it is the Employee's responsibility to negotiate payment terms with the counselor to resolve the matter.
  - c. If an employee wants to see a counselor who has not yet been credentialed by EAPP, EAPP will do a limited scope credentialing to ensure that the counselor is in good standing with their licensing board. In the event that there are any findings, the employee may be asked to utilize a different counselor for any unused sessions.
- E. In circumstances where accessibility to a desired counselor may be problematic, such as appointment availability being several weeks or months out, the use of telemedicine may be considered and offered as an option if it is conducive to the counselor and the participant's needs.
- F. EAPP will work with the counselors to track sessions that are utilized as part of this program.
2. Tracking, Reporting, and Provider Payment:
- A. Counselors seeing participants in this program will be required to provide to EAPP information about the sessions used by program participants, including employee name and date(s) of sessions, and employer name.
  - B. Counselors will submit billings to EAPP that meet the requirements of HB 2502, including using the appropriate fee schedule and CPT codes (Arizona Industrial Commission fee schedule rates for Evaluation and Management CPT codes located at <https://www.azica.gov/arizona-physicians-fee-schedule-year-selector> ).
  - C. EAPP will review the billings, whether the counselor is in the EAPP network or not, will pull any necessary data for tracking purposes, and will pay complete and clean claims up to the amount allowed under the fee schedule provided within HB 2502 within 30 days directly to the submitting provider. A complete and clean claim will include submission of necessary paperwork such as an initial W9 and any other documents needed to set the provider up in the payment system.

- D. EAPP will submit an invoice to the Employer client initially for enrollment in the program and then monthly for the costs of this program based on the visits utilized, as well as an administrative fee for each visit or service.
  
- E. EAPP will report to the Employer annually so that Employer can submit their annual report to the State of Arizona by September of each year:
  - a. EAPP will track and report the following items:
    - i. The total number of participants in the program
    - ii. The average number of visits per employee
    - iii. The average number of months that an employee participated in the program
    - iv. The total number of employees deemed not fit for duty by a licensed mental health professional
      - 1. EAPP will not authorize any providers to perform fitness for duty evaluations, nor will EAPP approve or pay any claims submitted for expenses related to fitness for duty evaluations.
      - 2. Should a provider determine that a fitness for duty evaluation needs to be performed, the employer will be informed that a recommendation should be submitted that clearly states the recommendation for such an evaluation and the reasoning behind said recommendation. This recommendation will be provided to the Employer. The Employer is responsible for following up on any recommendations received.
    - v. Percentage of employees who received more than 12 visits within one year after the first visit
  - b. Employer will track the following items; EAPP will not be responsible for tracking these items as part of this program:
    - i. Amount of work missed by each category of persons who participated and how missed work was provided for (by the employer or through employee benefits, such as short-term disability, etc)
    - ii. The average number of days that an employee who participated in the program missed work
    - iii. Participants that subsequently filed a workers' compensation claim and number of claims approved or denied
  
- F. In order to maintain confidentiality and abide by Federal HIPAA rules, EAPP may assign unique number identifiers to each participant that could be utilized for communicating participation information with the participant's Employer.

3. Program Fees:

Employer agrees to pay EAPP:

- A. A one-time set up and program enrollment fee of \$500 due immediately upon effective date of program.
- B. All direct costs incurred by EAPP to be invoiced to the Employer on a monthly basis with payment due Net 30. Anticipated direct costs include payment to counselors for sessions. EAPP and Employer are responsible only for the reimbursement of counseling sessions as outlined by the Arizona Industrial Commission fee schedule rates for Evaluation and Management CPT codes. Should an employee select to see a counselor that has not previously agreed to these rates, EAPP is not responsible for payment of the fees above and beyond these rates and the employee is at risk to be billed by the counselor for any unpaid balances.
- C. An administrative handling fee of \$10 per counseling session used/claim submitted to be invoiced to the Employer on a monthly basis with payment due Net 30.
- D. Services provided through the Employers EAP Services Agreement are not to be billed through the Traumatic Event Counseling Program, including but not limited to EAP sessions with an EAPP EAP counselor or CISDs.

Except as modified in Addendum B, all other terms, conditions, and provisions of the EAP Services Agreement remain in full force and effect.

In WITNESS WHEREOF, the parties hereto have signed this Addendum as of the day and year noted.

EAP Preferred

By \_\_\_\_\_  
 Traci Coleman  
 Title: Chief Operations Officer  
 Date: \_\_\_\_\_

City of San Luis Employee Benefit Trust

By \_\_\_\_\_  
 Title: Trustee  
 Date \_\_\_\_\_

## EAPP Process for Traumatic Event Counseling Related to HB 2502 Documentation of Internal Process

The EAPP Traumatic Event Counseling Program is a service offered to support Employers and Employees in response to HB 2502. **This program is separate from any employee assistance program (EAP) services that EAPP offers** and will be handled and processed separate from any existing EAP services and contracts. This program is offered only to employer groups that have an EAP service agreement with EAPP. If an Employer is interested in the EAPP Traumatic Event Counseling Program, they will need to contact EAPP to get pricing information and sign up for such services.

### Eligibility as defined by HB 2502:

Firefighters and police officers may receive up to 36 counseling visits per incident with a licensed mental health professional of their choice, paid for by the employer when the employee experiences traumatic events in the course of duty:

- Visually witnessing death or maiming or visually witnessing the immediate aftermath of such a death or maiming of one or more human beings.
- Responding to or being directly involved in a criminal investigation of an offense involving a dangerous crime against children as defined in HB 2502 Section 13-705.
- Requiring rescue in the line of duty where one's life was endangered.
- Using deadly force or being subjected to deadly force in the line of duty, regardless of whether there was physical injury.
- Witnessing the death of a co-worker while engaged in the line of duty.
- Responding to or being directly involved in an investigation regarding the drowning or near drowning of a child.

Note: EAPP should always remind Employers that have the EAPP EAP services that we may provide an on-site CISD to assist their employees collectively in coping with any of these types of events.

### Referrals:

1. Employee may call EAPP at 602-264-4600 or send an email to EAPP at [firstresponders@eapppreferred.com](mailto:firstresponders@eapppreferred.com) and identify themselves as an employee covered under HB2502 and request assistance.
2. If the employee is covered under the EAPP EAP and wants to utilize their EAP sessions first and visit one of EAPP's EAP counselors, they have the option to do so. This option may allow the employee quicker access to see a counselor due to the greater number of available licensures in the EAP counseling pool.
3. If the employee wants to utilize the Traumatic Event Counseling Program and needs assistance identifying a counselor that meets the requirements of HB 2502, EAPP will provide a list of counselors to the employee. If the employee needs support in scheduling an appointment, EAPP will provide appointment coordination.
  - a. Note: If utilizing the Traumatic Event Counseling Program, the participant MUST utilize a psychologist or a psychiatrist for their sessions.

- b. Note: The counselor being used must agree to the fee schedule (Arizona Industrial Commission fee schedule rates for Evaluation and Management CPT codes located at <https://www.azica.gov/arizona-physicians-fee-schedule-year-selector> ) outlined in HB 2502, as that is what the Employer is held to pay for their services. Anything above the approved fee schedule could be subject to balance billing to the participant.
  - c. Note: If a participant wants to see a counselor who has not yet been credentialed by EAPP, EAPP will do a limited scope credentialing to ensure that the counselor is in good standing with their licensing board. In the event that there are any findings, the participant may be asked to utilize a different counselor for any unused sessions.
4. In circumstances where accessibility to a desired counselor may be problematic, such as appointment availability being several weeks or months out, the use of telemedicine may be considered and offered as an option if it is conducive to the counselor and the participant's needs.
  5. EAPP will work with the counselors to track sessions that are utilized as part of this program.

Tracking and Payment:

1. Counselors seeing participants in this program will be required to provide to EAPP information about the sessions used by program participants, including employee name and date(s) of sessions, and employer name.
2. Counselors will submit billings to EAPP that meet the requirements of HB 2502, including using the appropriate fee schedule and CPT codes (Arizona Industrial Commission fee schedule rates for Evaluation and Management CPT codes located at <https://www.azica.gov/arizona-physicians-fee-schedule-year-selector> ).
3. EAPP will review the billings, whether in the EAPP network or not, will pull any necessary data for tracking purposes, and will pay complete and clean claims up to the amount allowed under the fee schedule provided within HB 2502 within 30 days directly to the submitting provider. A complete and clean claim will include submission of necessary paperwork such as an initial W9 and any other documents needed to set the provider up in the payment system.
4. EAPP will submit an invoice to the Employer client initially for enrollment in the program and then monthly for the costs of this program based on the visits utilized, as well as an administrative fee for each visit or service.

5. EAPP will report to the Employer annually so that Employer can submit their annual report to the State of Arizona by September of each year:
  - a. EAPP will track and report the following items:
    - i. The total number of participants in the program
    - ii. The average number of visits per employee
    - iii. The average number of months that an employee participated in the program
    - iv. The total number of employees deemed not fit for duty by a licensed mental health professional
      1. Note: EAPP will not authorize any providers to perform fitness for duty evaluations, nor will EAPP approve or pay any claims submitted for expenses related to fitness for duty evaluations.
      2. Should a provider determine that a fitness for duty evaluation needs to be performed, the provider will be informed that a recommendation should be submitted that clearly states the recommendation for such an evaluation and the reasoning behind said recommendation. The Employer is responsible for following up on any recommendations received.
    - v. Percentage of employees who received more than 12 visits within one year after the first visit
  - b. Employer will track the following items; EAPP will not be responsible for tracking these items as part of this program:
    - i. Amount of work missed by each category of persons who participated and how missed work was provided for (by the employer or through employee benefits, such as short-term disability, etc)
    - ii. The average number of days that an employee who participated in the program missed work
    - iii. Participants that subsequently filed a workers' compensation claim and number of claims approved or denied
6. In order to maintain confidentiality and abide by Federal HIPAA rules, EAPP may assign unique number identifiers to each participant that could be utilized for communicating participation information with the participant's Employer.

<a href="#">Arizona Revised Statutes Annotated</a>
<a href="#">Title 38. Public Officers and Employees (Refs &amp; Annos)</a>
<a href="#">Chapter 4. Compensation and Insurance (Refs &amp; Annos)</a>
<a href="#">Article 5. Employee Benefits (Refs &amp; Annos)</a>

A.R.S. § 38-673

§ 38-673. Traumatic event counseling for peace officers and firefighters; report; exceptions; definitions

Effective: August 3, 2018

[Currentness](#)

**A.** Notwithstanding any other law, this state or a political subdivision of this state shall establish a program to provide peace officers and firefighters who are exposed to any one of the following events while in the course of duty up to twelve visits of licensed counseling, which may be provided via telemedicine, paid for by the employer:

1. Visually witnessing the death or maiming or visually witnessing the immediate aftermath of such a death or maiming of one or more human beings.
2. Responding to or being directly involved in a criminal investigation of an offense involving a dangerous crime against children as defined in [§ 13-705](#).
3. Requiring rescue in the line of duty where one's life was endangered.
4. Using deadly force or being subjected to deadly force in the line of duty, regardless of whether the peace officer or fire fighter was physically injured.
5. Witnessing the death of another peace officer or firefighter while engaged in the line of duty.
6. Responding to or being directly involved in an investigation regarding the drowning or near drowning of a child.

**B.** If the licensed mental health professional determines that the peace officer or firefighter needs additional visits of licensed counseling beyond that which the peace officer or firefighter is entitled to under subsection A of this section and that the additional visits are likely to improve the peace officer's or firefighter's condition, the employer shall pay for up to an additional twenty-four visits, if the visits occur within one year after the first visit pursuant to this section.

**C.** An employer may not require a peace officer or firefighter who is receiving treatment pursuant to this section to use the peace officer's or firefighter's accrued paid vacation, personal leave or sick leave if the peace officer or firefighter leaves work to attend a treatment visit pursuant to this section.

**D.** If the licensed mental health professional determines that the peace officer or firefighter is not fit for duty while the peace officer or firefighter is receiving treatment pursuant to this section, the employer shall ensure that the peace officer or firefighter has no loss of pay and benefits for up to thirty calendar days per incident after the date the licensed mental health professional determines that the employee is not fit for duty if all of the following apply:

1. The peace officer or firefighter is unable to work light duty or the employer does not offer a light duty option.
2. The peace officer or firefighter has exhausted the peace officer's or firefighter's sick leave, vacation leave or other leave that is provided as part of the peace officer's or firefighter's benefits package.
3. If the employer offers short-term disability benefits, the employer offered and the peace officer or firefighter elected short-term disability benefits, but the peace officer or firefighter is not eligible to receive short-term disability benefits.
4. The employer does not have a supplemental program that provides pay and benefits after the occurrence of an injury. For the purposes of this paragraph, supplemental program that provides pay and benefits after the occurrence of an injury does not include a supplemental benefits plan established pursuant to [§ 38-961](#).

**E.** An employer shall allow a peace officer or firefighter to select the peace officer's or firefighter's own licensed mental health professional, except that if a licensed mental health professional declines to provide counseling pursuant to this section, the employer is not required to secure the services of that licensed mental health professional. The employer shall pay the licensed mental health professional pursuant to the schedule of fees that is fixed by the industrial commission of Arizona pursuant to [§ 23-908](#).

**F.** Payment by the employer for licensed counseling pursuant to this section does not create a presumption that a claim is compensable under [§ 23-1043.01, subsection B](#).

**G.** For each program established pursuant to this section, this state and each political subdivision of this state shall compile the following data for peace officers and firefighters:

1. For each category of persons, the total number of persons who have participated in the program.

2. For each category of persons, the average number of visits per person.
3. For each category of persons, the average number of months that a person participated in the program.
4. For each category of persons, the average number of days that a person who participated in the program missed work.
5. For each category of persons, the total number of persons who participated in the program and who subsequently filed a workers' compensation claim and the number of those claims that were approved and the number of those claims that were denied.
6. For each category of persons, of the total number of persons who have participated in the program, the percentage of persons who received additional visits under subsection B of this section.
7. For each category of persons, the total number of persons who were deemed not fit for duty by a licensed mental health professional pursuant to subsection D of this section.
8. For each employer, the total amount of work missed by each category of persons who participated in the program and how missed work was provided for by the employer or through employee benefits.

**H.** On or before September 1, 2019 and September 1 of each year thereafter, this state and each political subdivision of this state shall submit the data collected pursuant to subsection G of this section to the department of administration. On or before October 1, 2019 and October 1 of each year thereafter, the department of administration shall compile the data into a report and submit the report to the governor, the president of the senate, the speaker of the house of representatives, the chairperson of the senate health and human services committee, or its successor committee, the chairperson of the house of representatives health committee, or its successor committee, the chairperson of the senate commerce and public safety committee, or its successor committee, and the chairperson of the house of representatives judiciary and public safety committee, or its successor committee, and shall provide a copy of this report to the secretary of state. Subsection G of this section and this subsection do not authorize this state or a political subdivision of this state to compile and report data that is protected under the health insurance portability and accountability act of 1996 (P.L. 104-191; 110 Stat. 1936).

**I.** This section does not apply to a state employer that provides a program to its peace officers and firefighters that is characterized by all of the following:

1. The program is paid for by the employer.

2. The program provides licensed counseling for any issue. For licensed counseling related to trauma experienced while in the line of duty, the licensed counseling is provided on the request of the peace officer or firefighter and is in person.

3. The program offers at least twelve visits per year and will offer additional visits if the licensed mental health professional determines that additional visits are necessary.

**J.** For the purposes of this section:

1. “Licensed counseling” means counseling provided by a licensed mental health professional.

2. “Licensed mental health professional” means a psychiatrist or psychologist who is licensed pursuant to title 32, chapter 13, 17 or 19.1.<sup>1</sup>

#### **Credits**

Added by [Laws 2018, Ch. 259, § 2.](#)

#### Footnotes

<sup>1</sup>

Section 32-1401 et seq., 32-1800 et seq., or 32-2061 et seq.

A. R. S. § 38-673, AZ ST § 38-673

Current through the First Special and Second Regular Session of the Fifty-Third Legislature (2018), and includes Election Results from the November 6, 2018 General Election

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End of Document

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**Editor's and Revisor's Notes (3)**

**HISTORICAL AND STATUTORY NOTES**

[Laws 2018, Ch. 259, § 4](#) , provides:

**“ Sec. 4. Short title**

“This act may be cited as the “Officer Craig Tiger Act”. ”

**Citing References**

There are no Citing References for this citation.

**Bill Drafts**

There are no Bill Drafts for this citation.

**Notes of Decisions**

There are no Notes of Decisions for this citation.

**Employee Benefit Trust Board Meeting**

**4.C.**

**Meeting Date:** 02/13/2019

**Department Head:** Maria Munoz, HR Technician, Human Resources Department

**Submitted By:** Maria Munoz, HR Technician, Human Resources Department

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**ITEM:**

Discussion and possible action on any and all matters regarding the Amendment between Counseling and Family Resources, Ltd., dba EAP Preferred, and the City of San Luis Employee Benefit Trust to extend the mental health plan for police and fire fighters to June 30, 2021. **(Kay Marion Macuil, City Attorney)**

**SUMMARY:**

EAP amendment to extend contract dates from January 1, 2019 - June 30, 2021.

This contract is to administer the coverage mandated by the legislature in 2017 requiring employers to require counseling benefits for police and firefighters. This contract amendment is to extend the mental health plan called the Employees Assistance Program (EAP). It covers 63 current police and firefighters for 12 counseling sessions per incident per person per year. Counseling includes family and relationship issues, addictions including gambling, stress, anxiety, depression and grief. A fuller explanation of services is attached.

The rate for this coverage is \$6.30 per counseling session which with this amendment extends this rate to June 30, 2021.

**Suggested Action**

This contract has been paid by the City of San Luis directly and not the Trust in the past. Alternative motions are offered for the Trustees consideration.

**RECOMMENDATION / SUGGESTED MOTION:**

**I MOVE TO APPROVE THE EAP CONTRACT AMENDMENT AS PRESENTED WHICH WILL EXTEND THE RATE OF \$6.30 PER COUNSELING SESSIONS TO JUNE 30, 2021.**

**OR**

**I MOVE TO DENY INCLUSION OF THE EAP CONTRACT IN THE TRUST.**

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**Fiscal Impact**

**Fiscal Impact:**

Monthly Employee Rate: \$6.30

Estimated Employee's Number: 72

Estimated Annual Cost: \$5.443

Estimated Contrcat Cost (3 years): \$16,329

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**Attachments**

EAP Amendment

EAP Contract

Attachment A Services

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*City of San Luis Employee Benefit Trust  
Contract Renewal January 1, 2019 - June 30, 2021*

This Agreement is entered into on the 1<sup>st</sup> day of January, 2019 by and between Counseling and Family Resources, Ltd., dba EAP Preferred, an Arizona Corporation (hereafter referred to as "EAP Preferred") and City of San Luis Employee Benefit Trust (hereafter referred to as "Client").

EAP Preferred and Client are parties to that certain Employee Assistance Program Services Agreement, effective on January 1, 2017, pursuant to which EAP Preferred renders the Employee Assistance Program Services to the client's members.

The parties desire to further amend the Agreement as set forth herein to permit EAP Preferred to provide the changes outlined below.

**COVENANTS**

***EAP Preferred and Client agree as follows:***

**TERM:** In order to align EAP and health plan renewals, EAP Preferred agrees to move the contract renewal date from January to July, effective July 1, 2021.

**RATES:** EAP Preferred agrees to the following rate schedule:

<b>DATES OF SERVICE</b>	<b>RATE PEPM</b>
First Year: January 1, 2019 to December 31, 2019	\$6.30
Second Year: January 1, 2020 to June 30, 2020	\$6.30
Third Year: July 1, 2020 to June 30, 2021	\$6.30

All other terms and conditions set forth in the Agreement and its Attachments and Amendments shall remain the same. In the event any inconsistencies exist between the terms of this Amendment and terms of the underlying Agreement or any prior amendment, this Amendment shall control. This Amendment is hereby incorporated by reference into the agreement.

**IN WITNESS WHEREOF**, the parties have caused this amendment to the Agreement to be executed by their authorized representatives:

**City of San Luis Employee Benefit Trust**

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

**Counseling & Family Resources, Ltd. dba EAP Preferred**

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

Traci Coleman  
Chief Operating Officer

## EMPLOYEE ASSISTANCE PROGRAM SERVICES AGREEMENT

This Agreement is entered into on November 7, 2016, by and between Counseling & Family Resources, Ltd., dba EAP Preferred: Employee Assistance Programs, an Arizona Corporation (hereafter referred to as EAP Preferred) and the City of San Luis (hereafter referred to as "Client").

WHEREAS, EAP Preferred and Client declare and express their mutual intent to enter into this Agreement whereby EAP Preferred shall provide those services as hereafter described to Client under the terms and conditions set forth herein.

### COVENANTS

EAP Preferred and Client agree as follows:

1. **TERM AND TERMINATION:** This Agreement shall commence on January 1, 2017, for two [2] years. This Agreement shall renew automatically on a year-to-year basis unless terminated. After the second year, either EAP Preferred or the Client may give notice of their intent to modify or terminate this Agreement at least sixty days in advance.
2. **EAP PREFERRED'S RESPONSIBILITIES TO THE CLIENT:**
  - a. Shall provide those services described in **Attachment A**.
  - b. Shall have Masters or Licensed Doctoral level counselors to provide counseling services to employees and participants/dependents.
  - c. All counseling services shall remain confidential between EAP Preferred and participants/dependents unless specific authorization is received for the release of information to a third party by such participant. Exceptions are those prescribed by law. EAP Preferred counselors shall make referrals to other service providers as deemed clinically appropriate. The participants/dependents accept personal responsibility for the use of referral services through available medical/mental health plan or other fee arrangements.
3. **COMPENSATION:** Fee schedule is provided on **Attachment B**. Client agrees to pay EAP Preferred within thirty days of the dated invoice. Invoices are paid monthly in advance of service.
4. **INDEPENDENT CONTRACTOR:** All services performed by EAP Preferred and its employees under this Agreement shall be considered and are those of independent contractors. This Agreement is not intended to suggest that an

employer-employee relationship, joint venture, partnership or any other relationship of any type shall be established or understood, expressly or by implication.

5. **RIGHT OF SELECTION OF TREATING THERAPISTS:** EAP Preferred retains the right and responsibility for selection, credentialing and oversight of the professionals that it engages to treat employees and other covered persons of the Client under this Agreement.
6. **EAP PREFERRED LIABILITY:** EAP Preferred maintains policies of general and professional liability to protect itself and its employees against any claims, liabilities, damages or judgments, including malpractice or negligence that arises out of services provided or to be provided by EAP Preferred or its employees, agents and representatives in the discharge of professional services to enrollees or qualified dependents under this agreement. EAP Preferred agrees to hold client harmless and to pay any damages and costs, including expenses actually incurred in defending any action or proceeding brought against Client, relating to this Agreement or the performance of EAP Preferred in the provision of services pursuant to this contract.
7. **NOTICES:** Any and all notices to alter the terms of this Agreement must be mailed by certified and/or registered mail or delivered in person to the parties as shown:

Client  
City of San Luis

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Counseling and Family Resources, Ltd.  
dba EAP Preferred  
Attn: Carmen De Los Reyes  
99 East Virginia Avenue, Suite 275  
Phoenix, Arizona 85004  
Phone: 602-264-4600, Ext. 191  
Fax: 602-264-7325  
Email: [carmen@eappreferred.com](mailto:carmen@eappreferred.com)

8. **ENFORCEMENT:** This Agreement shall be binding upon and enforceable by the parties and their respective representatives and successors in interest. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to payment by the other party of reasonable attorney's fees, costs, and necessary disbursement and expenses in addition to any other relief to which such party may be entitled by law.

9. **SEVERABILITY:** If any provision of this Agreement is deemed invalid or unenforceable by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall not cause the invalidity or unenforceability of the remainder of this Agreement.
10. **EAP PREFERRED REPRESENTS AND WARRANTS AS FOLLOWS:**
- a. That it is an Arizona Corporation in good standing.
  - b. That it is authorized to undertake and fulfill each and every obligation hereunder, and that it has the necessary licenses and certifications required by federal, state and local governments.
  - c. To its knowledge, it is not under investigation by any government agency for violation of any applicable statute or regulation.
  - d. EAP Preferred shall be responsible for any applicable federal, state or local taxes.
11. **ENTIRE AGREEMENT:** This Agreement constitutes the entire understanding and obligations between the parties. No change, amendment or alteration shall be effective unless in writing and signed by both parties.
12. **GOVERNING LAW:** This agreement shall be governed by and construed in accordance with the laws of the State of Arizona except to the extent superseded by ERISA. Each party shall comply with all applicable state and federal statutes and regulations relating to this Agreement.
13. **COORDINATING PROVISIONS-STATE/FEDERAL LAWS AND ACCREDITATION STANDARDS**  
EAP Preferred and client will comply with the coordinating provisions-State/Federal laws, including, without limitation, the Health Insurance Portability and Accountability Act ("HIPAA") of 1996.
14. **ACCESS TO BOOKS AND RECORDS:** After providing the service stated in this agreement, EAP Preferred agrees that for a period of seven years, it shall retain and make available upon the request of the Client this agreement and documents and records which are necessary to verify that services were delivered as requested by Client or its duly authorized representatives. All subcontractors are required to do the same. All participant/dependent clinical records are the property of EAP Preferred and are confidential. Participant/dependent records are not available for review without


15. participant/dependent written consent/authorization according to the regulations set forth within EAP Preferred's Policy and Procedures. These regulations meet the current standards of "Privacy and Security" set forth within the Health Insurance Portability and Accountability Act ("HIPAA") of 1996, including, without limitation, all current and future revisions necessary.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed by their authorized representatives:

**City of San Luis**

BY:  DATE: 11/08/2016

**Counseling & Family Resources, Ltd. dba EAP Preferred**

BY:  DATE: 11/7/2016  
Carmen De Los Reyes  
Account Manager

**ATTACHMENT A**

**LIST OF SERVICES**

**EMPLOYEE ASSISTANCE PROGRAM [EAP], WORK-LIFE AND RELATED SERVICES**

**CITY OF SAN LUIS**

*Summary of Benefits Included:*

- Coverage for the **63** current employees and their household members
- Client Location- **City of San Luis** and surrounding areas
- A **twelve[12]clinical session model** [per incident per person per year]; EAP Preferred to define what constitutes a separate incident
- Work-Life Services [detailed below] and Employer benefits
- EAP Preferred estimates 5% annualized utilization
- Effective Date: January 1, 2017

Clinical Features	INCLUDED												
<b>24 hours/7 days, 365 days per year live answer</b> for crisis response. Non-emergency appointments can be scheduled through the business office Monday through Friday, 8:00 AM to 5:00 PM [Arizona time]. Clinical appointments are available in the evenings, as well as Saturdays at some locations.	YES												
<b>Up to TWELVE [12] face to face counseling sessions</b> per problem per employee and/or family member per contract year.	YES												
<b>Eligibility for EAP Services:</b> Employee, spouse or partner, and minor children. *family household members: dependent children and grandchildren up to the age of 25 years old and college student, living in the employee's home.	YES												
<b>Solution-focused/brief therapy &amp; counseling areas include</b> , but not limited to: <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td>• Family/relationship issues</td> <td>• Emotional challenges</td> </tr> <tr> <td>• Separation and divorce</td> <td>• Stress, anxiety and/or depression</td> </tr> <tr> <td>• Parenting</td> <td>• Work concerns</td> </tr> <tr> <td>• Child and adolescent problems</td> <td>• Career pressures</td> </tr> <tr> <td>• Coping with elderly parents</td> <td>• Grief and loss</td> </tr> <tr> <td>• Substance (alcohol/drug) misuse</td> <td>• Gambling</td> </tr> </table>	• Family/relationship issues	• Emotional challenges	• Separation and divorce	• Stress, anxiety and/or depression	• Parenting	• Work concerns	• Child and adolescent problems	• Career pressures	• Coping with elderly parents	• Grief and loss	• Substance (alcohol/drug) misuse	• Gambling	YES
• Family/relationship issues	• Emotional challenges												
• Separation and divorce	• Stress, anxiety and/or depression												
• Parenting	• Work concerns												
• Child and adolescent problems	• Career pressures												
• Coping with elderly parents	• Grief and loss												
• Substance (alcohol/drug) misuse	• Gambling												
<b>Face-to-Face clinical counseling provided near employees/household members live or work.</b> EAP Preferred maintains a network of credentialed therapists in each of the areas in which <b>The City of San Luis</b> operates. Further, EAP Preferred has an extensive network of licensed therapists – 1,100 across Arizona and 27,000 throughout the United States.	YES												

<p><b>Post-EAP referrals;</b> EAP Preferred will facilitate and monitor treatment of these referrals and provide where appropriate, post-treatment EAP services.</p>	<p>YES</p>
<p><b>Work-Life Features – Legal, Financial, Child Care, and many other issues</b></p>	
<p><b>24 hours/ 7 days, 365 days per year live answer and consultation with a work-life expert</b> [an unlimited service].</p>	<p>YES</p>
<p><b>Multiple service points:</b> Telephone, Internet chat or website. Professional response is available 24 hours/7 days.</p>	<p>YES</p>
<p><b>Rapid turnaround time for work-life cases</b> – 12 business hours for regular cases or six business hours for urgent cases - the fastest turnaround time in the industry.</p>	<p>YES</p>
<p><b>Work-life areas covered for consultation, resource, and referrals include,</b> but not limited to:</p> <ul style="list-style-type: none"> <li>• Adoption</li> <li>• Parenting</li> <li>• Elder/Adult care</li> <li>• Prenatal and postnatal care</li> <li>• Summer care</li> <li>• Travel Resources</li> <li>• Child care</li> <li>• Education</li> <li>• Pet care</li> <li>• Wellness</li> <li>• Special needs</li> <li>• Household services</li> </ul>	<p>YES</p>
<p><b>Educational materials to support each customized consultation include:</b></p> <ul style="list-style-type: none"> <li>• Tip sheets on specific topics</li> <li>• Checklists to help evaluate resources</li> <li>• Interactive CDs</li> <li>• Selected resources that are available in Spanish</li> <li>• Provider profiles</li> <li>• Handbooks filled with consumer information</li> </ul>	<p>YES</p>
<p><b>Customized web site</b> offering 5,000+ articles, tip sheets, interactive self-assessments, personal plans, audio files, and articles with resources available in English and Spanish.</p>	<p>YES</p>
<p><b>Legal, Financial, and ID Theft Recovery:</b></p> <ul style="list-style-type: none"> <li>• Divorce/custody issues</li> <li>• Estate planning/wills/trusts</li> <li>• Landlord/tenant issues</li> <li>• Small claims</li> <li>• Bankruptcy</li> <li>• Buying a home for the first time</li> <li>• Major life event planning</li> <li>• Retirement planning</li> <li>• Criminal</li> <li>• Real Estate</li> <li>• Personal injury/malpractice</li> <li>• Adoption</li> <li>• Budgeting</li> <li>• Foreclosure prevention</li> <li>• College fund planning</li> <li>• Will preparation</li> </ul>	<p>YES LEGAL SERVICES INCLUDE 30 MINUTE FREE APPOINTMENT WITH AN AVAILABLE LOCAL ATTORNEY AND 25% DISCOUNT ON ATTORNEY FEES</p>
<p><b>Service Features</b></p>	

<b>CareSpace<sup>SM</sup>:</b> Web-based social network connecting caregivers with one another as a means of support, encouragement, and advice; includes weekly video blogs, and an active presence on the site monitored by dependent care specialists.	YES
<b>The Savings Center<sup>SM</sup>:</b> The Saving Center, It's a free program for savings on name-brand, every day, and luxury items; plus discounts on your cellular bill. Employees and family members qualify for quality name brands at discounts of 25 to 70 percent off regular retail prices by registering for free on our employee support website.	YES
<b>ID Theft Prevention and Recovery:</b> A Free telephonic session, an advisor, will follow up by mailing supporting educational materials. Free registration to Control Your ID, an online ID monitoring program. If your identity is stolen while you are registered with Control Your ID, an ID theft professional will help you restore it.	YES
<b>TaxACT:</b> Specializes in free tax preparation software and many Web-based services are available. File your Federal & State Taxes. Review your taxes. Filing an extension. Check your E-File Status When can I expect my return?	YES
<b>Marketing and promotional support included;</b> EAP Preferred standard printed brochures/wallet cards [ <b>70</b> ], employee instruction sheets [ <b>70</b> ], and worksite posters [ <b>10</b> ]. EAP Preferred will deliver printed materials to one location for distribution to the Customer. Monthly webinar invitations and quarterly news magazines submitted in electronic format.	YES
<b>Unlimited telephonic management consultations included:</b> Onsite services available at additional fees [provided below].	YES
<b>Unlimited supervisory referrals.</b>	YES
<b>One Orientation per year.</b>	YES
<b>Training from a current inventory of topics:</b> Customer can access the training webinars from EAP Preferred's Work-Life website, and new Monthly webinars will be emailed monthly via email.	YES
<b>Annual utilization reports</b> submitted electronically.	YES
<b>Seamless transition from current vendor.</b>	GUARANTEED
<b>Additional Services</b>	<b>FEE</b>
<b>On-site Critical Incident Response [CISD].</b> EAP Preferred invoice at \$275.00 for the first hour then \$175 for any additional hours. Hours are invoiced portal-to-portal.	\$275/175
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**Network Providers and Locations**

- EAP Preferred has an extensive network of licensed therapists – 1,100 across Arizona and 27,000 throughout the United States.
- All counselors are graduate-degreed, trained and experienced in EAP issues, licensed in the state in which they practice, and fully insured.
- Callers for EAP services are assisted quickly through the intake and scheduling process; emergency situations are dealt with during the call.

### EAP and Work-Life Services Website Demo

- EAP Preferred's website – [www.eappreferred.com](http://www.eappreferred.com)
- Work-Life Services for help on many issues people face in their work and home lives; available by internet, email, instant messaging, or telephonic counseling; for the demonstration, follow these instructions:  
[www.eappreferred.com](http://www.eappreferred.com);
- For **Work-Life Services**, continue;
- Lower left side of EAP Preferred Home Page;
- Enter **username, EAPP123**, and **password, eappreferred**;
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### Potential- Certified Treatment and Mental Health

## ATTACHMENT B

### Fee Schedule

Client agrees to compensate as follows:

For a program of up to **twelve [12]** face-to-face clinical sessions, work-life services, and other additional services

**\$6.30 per employee/family per month**

Invoice paid monthly in advance of service.

**ATTACHMENT A**

**LIST OF SERVICES**

**EMPLOYEE ASSISTANCE PROGRAM [EAP], WORK-LIFE AND RELATED SERVICES**

**CITY OF SAN LUIS**

*Summary of Benefits Included:*

- Coverage for the **63** current employees and their household members
- Client Location- **City of San Luis** and surrounding areas
- A **twelve[12]clinical session model** [per incident per person per year]; EAP Preferred to define what constitutes a separate incident
- Work-Life Services [detailed below] and Employer benefits
- EAP Preferred estimates 5% annualized utilization
- Effective Date: January 1, 2017

Clinical Features	INCLUDED												
<b>24 hours/7 days, 365 days per year live answer</b> for crisis response. Non-emergency appointments can be scheduled through the business office Monday through Friday, 8:00 AM to 5:00 PM [Arizona time]. Clinical appointments are available in the evenings, as well as Saturdays at some locations.	YES												
<b>Up to TWELVE [12] face to face counseling sessions</b> per problem per employee and/or family member per contract year.	YES												
<b>Eligibility for EAP Services:</b> Employee, spouse or partner, and minor children. <i>*family household members:</i> dependent children and grandchildren up to the age of 25 years old and college student, living in the employee's home.	YES												
<b>Solution-focused/brief therapy &amp; counseling areas include, but not limited to:</b> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td>• Family/relationship issues</td> <td>• Emotional challenges</td> </tr> <tr> <td>• Separation and divorce</td> <td>• Stress, anxiety and/or depression</td> </tr> <tr> <td>• Parenting</td> <td>• Work concerns</td> </tr> <tr> <td>• Child and adolescent problems</td> <td>• Career pressures</td> </tr> <tr> <td>• Coping with elderly parents</td> <td>• Grief and loss</td> </tr> <tr> <td>• Substance (alcohol/drug) misuse</td> <td>• Gambling</td> </tr> </table>	• Family/relationship issues	• Emotional challenges	• Separation and divorce	• Stress, anxiety and/or depression	• Parenting	• Work concerns	• Child and adolescent problems	• Career pressures	• Coping with elderly parents	• Grief and loss	• Substance (alcohol/drug) misuse	• Gambling	YES
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• Substance (alcohol/drug) misuse	• Gambling												
<b>Face-to-Face clinical counseling provided near employees/household members live or work.</b> EAP Preferred maintains a network of credentialed therapists in each of the areas in which The City of San Luis operates. Further, EAP Preferred has an extensive network of licensed therapists – 1,100 across Arizona and 27,000 throughout the United States.	YES												

<b>Post-EAP referrals;</b> EAP Preferred will facilitate and monitor treatment of these referrals and provide where appropriate, post-treatment EAP services.	YES
<b>Work-Life Features – Legal, Financial, Child Care, and many other issues</b>	<b>INCLUDED</b>
<b>24 hours/ 7 days, 365 days per year live answer and consultation with a work-life expert</b> [an unlimited service].	YES
<b>Multiple service points:</b> Telephone, Internet chat or website. Professional response is available 24 hours/7 days.	YES
<b>Rapid turnaround time for work-life cases – 12 business hours for regular cases or six business hours for urgent cases - the fastest turnaround time in the industry.</b>	YES
<b>Work-life areas covered for consultation, resource, and referrals include, but not limited to:</b> <ul style="list-style-type: none"> <li>• Adoption</li> <li>• Parenting</li> <li>• Elder/Adult care</li> <li>• Prenatal and postnatal care</li> <li>• Summer care</li> <li>• Travel Resources</li> <li>• Child care</li> <li>• Education</li> <li>• Pet care</li> <li>• Wellness</li> <li>• Special needs</li> <li>• Household services</li> </ul>	YES
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**Employee Benefit Trust Board Meeting**

**4.D.**

**Meeting Date:** 02/13/2019

**Department Head:** Maria Munoz, HR Technician, Human Resources Department

**Submitted By:** Maria Munoz, HR Technician, Human Resources Department

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**ITEM:**

Discussion and possible action on any and all matters regarding the terms of all Trust Board Members.  
**(Kay Marion Macuil, City Attorney)**

**SUMMARY:**

Under Section 3.04 of the Declaration of Trust, Trustees are allowed to serve two consecutive terms and no more. All Trustees have served since their first action on March 14, 2012, coming up on seven (7) years. The Board of Trustees is not in violation, because if a legislative body does not take action, then there is tacit approval for the current Trustees to continue to a second term.

Also Under Section 3.04, initial terms are staggered and the second and subsequent terms are for five (5) years.

One (1) Trustee to serve one (1) year, plus five (5) years equals six (6) years - expired March of 2018:

Two (2) Trustees to serve two (2) years, plus (5) years equals seven (7) years - expires March of 2019:

Two (2) Trustees to serve three (3) years, plus (5) years equals eight (8) years - expires March of 2020.

This item is for the Trustees to vote on

which two (2) Trustees have the terms ending in next month (this March 2019) and

which two (2) Trustees have the terms ending next year (March 2020).

**RECOMMENDATION / SUGGESTED MOTION:**

**A. I MOVE THAT TRUSTEES \_\_\_\_\_ AND \_\_\_\_\_ HAVE THE TERM WHICH ENDS MARCH 14, 2019.**

**B. I MOVE THAT TRUSTEES \_\_\_\_\_ AND \_\_\_\_\_ HAVE THE TERM WHICH ENDS MARCH 14, 2020.**

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**Attachments**

Trust

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**AGREEMENT AND DECLARATION OF TRUST  
FOR CITY OF SAN LUIS EMPLOYEE BENEFIT TRUST**

THIS AGREEMENT AND DECLARATION OF TRUST was made and entered into this first day of September 2011, between CITY OF SAN LUIS, a municipal corporation hereinafter referred to as the "City" and certain persons hereinafter referred to as the "Trustees" to administer the Trust in accordance with the terms and provisions of this instrument.

**WITNESSETH:**

WHEREAS, A.R.S. § 11-981 authorizes the City of San Luis to establish a self-funded insurance program for health benefits for its Employees.

WHEREAS, A.R.S. § 11-981 requires the establishment of a health benefits trust for the purposes of management and administration of this program; and

WHEREAS, A.R.S. § 11-981 also requires the establishment of the health benefits trust board to administer the health benefits trust.

WHEREAS, CITY OF SAN LUIS, hereinafter designated and referred to as "City", and certain employees of said City hereinafter designated and referred to as "Employees", desire to enter into a program of providing and maintaining health and welfare benefits for Employees of the City and certain members of their families, hereinafter designated and referred to as "Dependents", which program is to be administered by the Trustees; and

WHEREAS, to effect the aforesaid purpose it is mutually desirable by and between the parties hereto to declare and create a Trust which establishes a Trust Fund for and in the manner more particularly set forth herein; and

WHEREAS, the Trustees and City which accept this Agreement and Declaration of Trust and agree to be bound by the provisions hereof shall, upon acceptance by the parties hereto, be deemed a party to this Agreement and Declaration of Trust.

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

**ARTICLE 1  
DEFINITIONS**

It is mutually understood and agreed by and between the parties hereto that the following are and shall be the definitions:

Section 1.01 The term "Employee Benefit Trust" shall mean the program of benefits to be established by the Trustees pursuant to this Agreement and Declaration of Trust.

**Section 1.02** The term "Employee" shall mean all persons who have met the eligibility requirements as defined in the written instrument for the Employee Benefit Trust and who have properly enrolled for and made appropriate contributions for coverage under said Trust, and who are not eligible for benefits under any other health program to which the City makes contributions.

**Section 1.03** The term "Dependent" shall mean all persons who have met the eligibility requirements for being a dependent of the Employee as defined in the written instrument for the Employee Benefit Trust and who have been properly enrolled for and made appropriate contributions for coverage under the Employee Benefit Trust, and who are not eligible for benefit under any other health program which the City makes contributions.

**Section 1.04** The phrase "Trust Agreement" shall mean and refer to this Agreement and Declaration of Trust and any modification or amendments thereto.

**Section 1.05** The term "Fund" as used shall mean the Trust Fund created by this instrument, and shall mean generally the monies, property, contracts, or things of value, tangible or intangible, received and held by the Trustees for the uses, purposes, and Trust set forth therein, and those things of value which compromise the corpus and additions to the Fund.

**Section 1.06** The term "Trustees" as used herein shall mean the Trustees and their successors provided for in the Trust Agreement.

**Section 1.07** The name of the Trust is and shall be City of San Luis Employee Benefit Trust.

**Section 1.08** The phrase "City Contributions" does and shall mean the contributions made by the City of San Luis to the Fund for the Employee Benefit Trust.

**Section 1.09** The phrase "Employee Contribution" does and shall mean the contributions made by the Employees of the City of San Luis to said Fund.

**Section 1.10** The term "City" does and shall mean the City of San Luis, a municipal corporation organized and existing under the laws of the State of Arizona.

**Section 1.11** The phrase "Plan Document" does and shall mean the written instrument containing the provisions for self-funded health and welfare benefits of the Employee Benefit Trust.

**Section 1.12** The phrase "Contract Administrator" does and shall mean the person or firm employed by the Trustees who is responsible for the processing of claims and

payment of benefits, administration, accounting, reporting and other services contracted for by the Trustees.

**ARTICLE II  
PURPOSE OF TRUST AND APPLICATION OF THE FUND**

**Section 2.01 FUND** There is hereby declared and created the City of San Luis Employee Benefit Trust: To establish a Trust Fund to provide benefits for, but not limited or restricted to Life, Accidental Death and Dismemberment, Basic or Major Medical coverage's for accidents or sickness, Dental; and any other benefits as determined by the Trustees for the Employees and their Dependents; whether through self-funded or insured programs or both.

**Section 2.02 PRINCIPAL OFFICE** The Trust shall have its principal office in the City of San Luis, County of Yuma, state of Arizona and hereinafter designated and referred to as Principal Office.

**ARTICLE III  
POWERS AND DUTUES OF TRUSTEES**

**Section 3.01 APPOINTMENTS OF TRUSTEES** The Employee Benefit Trust shall be administered by the Trustees. The Mayor shall nominate individuals to serve as Trustees overseeing the management and administration of the Trust. The City Council shall consider and may appoint any individual so recommended, provided that the appointed Trustees conform to the requirements of Section 3.02.

**Section 3.02 NUMBER AND IDENTITY** The Trustees shall consist of five (5) persons, consisting of no more than one (1) member of the City Council and no more than (1) Employee of the City.

**Section 3.03 ACCEPTANCE** Each Trustee so appointed shall accept the appointment in writing and shall confirm in writing that the Trustee hereby accept the Trust and Trusteeship and declares 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.

**Section 3.04 TRUSTEES' TERM** Each Trustee shall serve a five-year term. A Trustee may be reappointed of no more than one additional consecutive term. Notwithstanding the foregoing, the initial terms for the first five (5) Trustees shall be as follows: one (1) Trustee to serve an initial term of one (1) year; two (2) Trustees to serve an initial term of two (2) years; and two (2) Trustees to serve an initial term of three (3) years. The Trustees shall determine among themselves which of the first five (5) Trustees shall serve the one year, two year, and three year terms. This shall result in Trustees rotating appointments every two (2) to three (3) years.

**Section 3.05 EXECUTIVE ADVISORS** The Board of Trustees shall include as Executive Advisors, the City's Finance Director, or their designee, and the City's Human Resource Director, or their designee, and the City Manager, or their designee. Such Executive Advisors shall attend all meetings of the Board of Trustees.

**Section 3.06 DUTIES** 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 external annual audit, accounting and reports as hereinafter mentioned. The Trustees shall employ or hire such agents, attorneys, accountants, actuaries, employees or other persons and to lease premises and equipment as may be necessary or desirable in administering the Fund and carrying out its purposes and the fees, salaries, wages emoluments or compensation of any and all such persons shall be paid from the Fund. When acting upon the advice of counsel for the Trust, the Trustees shall be relieved of all responsibility for acts done or not done. The Trustees may incur any 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. 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 accomplishments of the objects and purposes of the Fund and this Trust and Trust Agreement.

In addition, the Trustees shall establish terms and conditions for the Employee Benefit Trust including, but not limited to:

- A. Establish terms and conditions of coverage including exclusions of coverage;
- B. Establish provisions for eligibility requirements to enroll for coverage;
- C. Ensure that all claims are processed promptly;
- D. Administer the Trust Fund pursuant to this Agreement;
- E. Designate a risk management consultant or insurance administrator licensed pursuant to Title 20, Chapter 2, Articles 3 Or 9 of the Arizona Revised Statutes, and such license shall be verified by the Board of Trustees at time of the designation;
- F. Provide financial oversight of the Trust Fund by evaluating claim expenses and reserve amounts;
- G. Review the Trust Fund quarterly to insure sufficient funds exist to pay outstanding and future benefits, to pay for losses or claims or any combination of insurance and direct payment, and to pay for risk management consultation;
- H. Make recommendations to the City Manager on financial issues relating to the self-insured programs;
- I. Comply with all requirements of State and Federal laws relating to self-insurance programs;
- J. Take all necessary precautions to safeguard the assets of the Trust;
- K. Maintain minutes of its meetings.

**Section 3.07 TRUSTEES' AUTHORITY** The Trustees shall have the power to enter in contracts, procure insurance policies, or provide such benefits through self-funding, and to place into effect and maintain the desirable schedule of benefits. 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 under this Trust. The Trustees are hereby expressly authorized to pay to any insurance company as may be selected by the Trustees, the required insurance premiums in connection with such group insurance contracts issued to the Trust. Whether or not benefits are provided by means of direct or self-funding or by the procurement of group insurance, such decision shall be at the sole and exclusive discretion of the Trustees.

Should the Trustees select or provide for any policy or any program of self-funding, no claims for benefits or no claims for liabilities shall be brought against the Trustees. The sole and exclusive liability of said Trustees in the management and operation of any program of self-funding shall be limited to due care in the selection of administrators, claim representatives, actuaries, or other officials charged with the administration of such a program of self-funding. In the event that submitted claims of Employees and/or Dependents exceed the funds available, the claims shall be paid in the order received.

**Section 3.08 DEPOSITS AND INVESTMENTS** All corpus or portions of the Fund not expended under Article III may be deposited by the Trustees in the name of the Trust in such depository or depositories as the Trustees shall from time to time select, 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, shall be invested by the Trustees in reasonable secure, reasonable liquid investments.

The Fund 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, the payment of insurance premiums, or held, used or applied as herein set forth.

**Section 3.09 COMPENSATION** The Trustees shall receive no compensation for their services except for reimbursement of actual reasonable expenses incurred.

**Section 3.10 WITHDRAWALS** All checks, drafts, vouchers or other withdrawals from the Fund or depositories and the transfer or liquidating of insurance policies or

investments shall first be authorized by the Trustees and then signed by appropriate signatories as determined by the Trust, except that checks for claims payment under the self-funded benefit provision of this Trust may be signed by an authorized representative of the Contract Administrator responsible for administering the self-funded benefit.

**Section 3.11 CHAIRMAN, VICE-CHAIR, AND SECRETARY** The Trustee shall elect from among themselves at their first meeting a Chairman, Vice-Chair and Secretary of the Trustees. The Chairman 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. The Vice-Chair will preside in the Chairman's absence. The Secretary shall keep minutes of all meetings, proceedings, and acts of the Trustees, which records shall be available at the said Principal Office for inspection by all the Trustees and interested persons during usual business hours. Such records and minutes need not be verbatim.

**Section 3.12 MEETINGS** The Trustees shall hold a regular meeting as soon as practical after being appointed and regular meetings shall be held periodically at least four (4) times each year after the first regular meeting. The Trustees shall determine the time and place of the regular meeting of the Board. Special meetings of the Trustees may be called by the Chairman. At least seven (7) days written notice designating the time and place of the annual, regular or any special meeting shall be given to the Trustees. Any meeting at which all Trustees are present shall be subject to the open meeting law established by Arizona Statute.

**Section 3.13 PROXY** 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.

**Section 3.14 QUORUM** To constitute a quorum or special meeting of the Trustees, there must be present in person or by proxy at least three (3) Trustees.

**Section 3.15 VOTING** Each Trustee shall have one (1) vote. All actions by and decisions of the Trustees shall be the affirmative vote of a majority of the Trustees attending a duly called meeting of the Trustees at which there is a quorum present.

**Section 3.16 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 and similarly each and every year thereafter. Any report required by law, city, county, state or federal, or the respective subdivisions thereof, shall be made by the Trustees. The Trustees shall have an external annual audit and accounting of the Trust Fund by a Certified Public Accountant in accordance with good accounting practices, at the end of each fiscal year. The CPA shall certify to the accuracy of his audit and accounting. A statement of the results of each audit shall be available for inspection by authorized persons at the Principal Office of the Trust. 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 and a copy maintained in the City Recorder's office for a period of five (5) years.

**Section 3.17 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, obligation and duties as 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 benefit hereunder.

**Section 3.18 BONDS** The Trustees shall procure fidelity bonds for the Trustees 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 reasonable amount to reasonably aid in reimbursing bondable loss of money, and shall meet the requirements as may be required, from time to time by applicable United States or State law. Such are to be obtained from reputable fidelity or surety company or companies as the Trustees shall determine. If convenient, and in conformity with the law, such bonds may be position bonds. The cost of the premiums on such bonds shall 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 resign or be terminated.

**Section 3.19 DEFENSE** The Trustees shall institute, prosecute, maintain or defend any proceeding at law or inequity concerning the Trust Fund or the assets thereof, at the sole cost and expense of the Trust Fund, and to compromise, settle, and adjust any claims and liabilities asserted against or in favor of the Trust Fund or of the Trustees; but the Trustees shall be under no duty or obligation to institute, maintain, or defend any action, suit, or other legal proceeding unless it shall have been indemnified to its satisfaction against any and all loss, cost, expense, and liability it may sustain or anticipate by reason thereof.

#### **ARTICLE IV TRUSTEE AND SUCCESSOR TRUSTEES**

**Section 4.01 TRUSTEE TERMINATION** The term of any Trustee shall automatically terminate upon the earliest of the following: death; resignation; removal of a Trustee by a majority vote of the City Council; or for a Trustee who is an employee of the City of San Luis, the termination of such employment.

In the event of the death, resignation, or removal of an appointed Trustee, the City Council shall designate a successor to such Trustee from recommendations from the Mayor, who, upon acceptance of his/her appointments in writing, shall succeed to the legal interest of his/her predecessor. Upon the effective date of the death, resignation or removal, the Trustee shall be discharged from any further duty or responsibility under the

Trust and any and all property in his or her possession or control which belongs to the Plan or Trust shall be delivered to the Chairman (or to the Secretary, if the Chairman is resigning, removed, or deceased.)

Section 4.02 TRUSTEE RESIGNATION A Trustee may resign by giving sixty (60) days prior written notice to the Chairman. The Chairman may exercise discretion to waive or reduce the sixty (60) day requirement, but shall not waive the written-notice requirement. The notice shall state the effective date of the resignation. The resignation shall take effect on its stated effective date unless a new Trustee is appointed and accepts the appointment prior to the stated effective date of the resignation.

Section 4.03 SUCCESSORS The Trustees, and their successors from time to time acting hereunder, shall have all the rights, powers and duties of the original Trustees named herein and the insurance company or companies and Contract Administrator shall be immediately notified of any successor.

Section 4.04 SUCCESSORS' LIABILITY No successor Trustee shall be liable or responsible for any act 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 III.

Section 4.05 SUCCESSORS' TERM The appointed successor Trustee shall complete the initial term of his predecessor.

## **ARTICLE V CONTRIBUTIONS TO THE FUND**

Section 5.01 CONTRIBUTIONS In order to effectuate the purpose hereof, the City and/or Employees shall contribute to the Fund an amount determined by the Trustees, to be necessary to pay for the benefits provided hereunder. The City and/or Employee contribution shall be due and payable as of the first day of the month as determined by the Trustees.

Section 5.02 CITY CONTRIBUTIONS ARE NOT WAGES The City contributions to 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, any Employee, nor any Dependent under the Plan shall have any rights, title, or interest in the Fund, except as otherwise specifically provided herein.

**Section 5.03 PAYMENTS IN LIEU OF BENEFITS** No Employee shall have any right to receive any part of his own or the City contributions paid to him in lieu of benefits.

**Section 5.04 PAYROLL DEDUCTIONS** All Employees' contributions shall be paid by payroll deductions. The City shall remit all monies obtained through payroll deductions in a lump sum to the Fund, at least once per month, or as otherwise determined by the Trustees.

**Section 5.05 PAYMENT** All contributions shall be payable to name of the Trust, and shall be paid in the manner and form determined by the Trustees.

**Section 5.06 REPORTS** The City shall make all reports required by the Trustees. The Trustees may at any time have an audit made by an independent Certified Public Accountant of the wage records of the City in connection with their contribution and/or reports.

**Section 5.07 IRREVOCABILITY OF CONTRIBUTIONS** Subject to the provisions providing for termination of this Trust Agreement in Article XII, 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 revocable by or payable to the City or any Employee, nor shall any of the same be used for or diverted for purposes other than for the exclusive program of benefits for Employees and beneficiaries provided hereunder.

## **ARTICLE VI PAYMENT OF BENEFITS**

**Section 6.01 METHOD OF PAYMENT** The Trustees shall arrange for the disbursement of benefits under the Employee Benefit Trust through a Contract Administrator appointed by the Trustees for any self-funded benefits or through insurance company for fully-insured benefits.

**Section 6.02 PROTECTION OF EMPLOYEES** Prior to payment to an Employee or his Dependents, 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 shall be exempt from attachment, garnishment, and levy of execution, bankruptcy proceedings, or other legal process at any time subject to the Trustee's possession and control; but in any event such assets shall be subject to such process only to the extent of such Employee's benefits hereunder as they fall due.

**Section 6.03 CLAIM TO BENEFITS** No Employee, Dependent, or other beneficiary shall have any right or claim to benefits under the Employee Benefit Trust except as specified in the policy or policies or contract or contracts or self-funded benefits procured or entered into pursuant to Article II and III. Any disputes as to eligibility time, amount,

or duration of benefits shall be resolved by the appropriate insurance carrier or Contract Administrator, under and pursuant to the policy or contract; and the Employees, Dependents, or other beneficiary shall not have a right or claim in respect thereto, against the Funds, or Trustees. Any dispute as to eligibility, type, amount, time or duration of benefits provided by the Fund as self-funded, shall be decided by the Trustees, and all disputes shall be finally settled pursuant to Article VII.

**Section 6.04 FAILURE TO PAY BENEFITS** Neither the City, nor the Trustees shall be liable for the failure or omission, for any reason, to pay any benefits under the Employee Benefit Trust. 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 shall, in all events, be limited to the extent that sufficient self-insured funds are available to the Trustees 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 further prorated in such amounts that all such claims shall be treated proportionately equal to the ratio that such total claims bear to the funds that are available for such payment. If any controversy or dispute exists concerning such matters, all disputes or controversies shall be settled by the dispute provision contained in Article VII.

## **ARTICLE VII CONTROVERSIES AND DISPUTES**

**Section 7.01 DISPUTES** The Trustees shall have the power to construe, interpret and apply the provisions of this Agreement and Declaration of the Trust or any amendments, rules or regulations adopted thereto, and the terms used herein and any construction, interpretation or application adopted in good faith shall be final and binding upon the City, beneficiaries, administrators, and/or legal representatives.

**Section 7.02 BENEFITS CLAIM SETTLEMENT** The Trustees may in their sole discretion compromise or settle any disputed benefits claim or benefits claim controversy in such manner as they deem best, and any decision made by a majority of the Trustees in compromise or settlement or a disputed benefits claim or benefits claim controversy, or any compromise or settlement agreement entered into by the Trustees shall be conclusive and binding upon all parties interested in this Fund.

**Section 7.03 DISPUTE OF POWERS** In the event there shall be any disagreement between the Trustees and the Contract Administrator over exercise of powers granted herein, the Trustees shall prevail, and the service organization 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.

**ARTICLE VIII  
RESPONSIBILITY**

**Section 8.01 RESPONSIBILITY** The Trustee shall only be responsible for monies when and only after such are received 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 Fund. The Trustees and Successors shall not be responsible for the action or omission of their Co-Trustees, Successors, nor for the actions or omissions of other agents, or 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 insurance companies for any reason. The City shall hold harmless the Trustees or Successor Trustees from all such claims except those arising from his/her own willful misconduct, bad faith or gross negligence. (No Trustee or Successor Trustee shall be entitled to any indemnification or court costs or attorney's fees for any liability arising from his/her own willful misconduct, bad faith or gross negligence.)

**Section 8.02 OTHER PERSONS AND INTERPRETATIONS** No person who is dealing with the Trustees shall be obligated to see 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 of 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

**ARTICLE IX  
AMENDMENTS**

**Section 9.01 AMENDMENTS** It is anticipated that in the administration of this Trust, conditions may arise that are not foreseen at the time of execution of this Agreement, and it is the intention of the Trustees, and each and every party or person to this 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 to the Trustees, by all parties to this Agreement, to amend this Agreement upon the consent and unanimous agreement of the Board of Trustees, and 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 the Trustees or Successor Trustee

**ARTICLE X  
NONVESTING OF RIGHTS**

**Section 10.01 RIGHTS** No Employee, Dependents, beneficiary, nor any other person or group nor their respective successors, assignees nor legal representatives shall have any right, title or interest, vested or otherwise, in or to the Fund, Trust, corpus, (income or increments thereto) insurance dividends, cash value, if any, or insurance or benefits or monies payable there from, payments from the Fund, or in or to the eligibility requirements for benefits as changed or altered. Any participating Employee who withdraws or ceases to participate in the Employee Benefit Trust does hereby and shall expressly waive and forfeit any right, title or interest in and to the Fund, its corpus and assets. No Employee, nor his Dependents, beneficiary, nor any other person or group nor their respective successors, assignees nor legal representative shall have any right in or to the Trust, Fund, corpus, insurance, interest, dividends, cash value, if any, of insurance, interest, income, benefits, or any benefits or money payable there from, or anything arising out of or in this Trust during the term of this agreement and any benefits he or they may have is forever terminated and discharged upon the Employee's loss of employment with the City (quitting, discharge, or otherwise), or when this Trust Agreement is terminated, wound up, and dissolved. No benefit, right or interest is transferrable or assignable by the Employee to another Employee or person, corporate or otherwise except to physicians, hospitals and any other person or institution furnishing medical services within the terms of this Trust Agreement. 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 of 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 XI  
PROVISIONS RELATING TO INSURANCE COMPANY**

**Section 11.01** No insurance company which 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.

**Section 11.02** An integral part of the trust will be an aggregate stop loss and specific stop loss insurance. Stop loss coverage will be provided by an authorized carrier licensed to execute contracts in the State of Arizona.

**ARTICLE XII  
TERMINATION OF TRUST**

**Section 12.01 TERMINATION BY THE TRUSTEES** This Trust may be terminated after ninety (90) days advance written notice duly executed by all the Trustees.

**Section 12.02 TERMINATION BY THE CITY** This Trust may be terminated after ninety (90) days advance written notice duly executed by the City. If the Trust is in a deficit position, including the claims lag determined by the Trustees, the City and Employees will share in the liability of the Trust.

**Section 12.03 NOTIFICATION OF TERMINATION** Upon termination of the Trust in accordance herewith, the Trustees shall forthwith notify all Employees in writing and also all other necessary parties.

**Section 12.04 CONCLUDING THE TRUST** 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; and the Trustees shall continue as Trustees for the purpose of winding up the affairs of the Trust.

**Section 12.05 FUNDS REMAINING** 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 obligation of the Trust, shall be paid or used for the continuance of one or more of the benefits of the character hereinabove contemplated, until such monies have been exhausted.

**Section 12.06 FINAL ACCOUNTING** As such time as the Trust is terminated, the Trustees shall render a final accounting of the affairs of the Trust and the Trust Fund to the City and all Employees, and thereafter there shall be no claim or action against the Trustees and they shall have no further responsibility or duties and they shall be discharged.

**ARTICLE XIII  
MISCELLANEOUS**

**Section 13.01 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 of Fund 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 counsel to represent them or one or more of them in any such suit, action or proceeding, including counsel fees and all

other costs, shall be paid from the Fund as long as the Trustees have acted in good faith and until final judgment has been rendered that the Trustees have acted in bad faith, gross negligence or willful misconduct, and in the event of such judgment, the Trust shall be entitled to recover all sums paid to or for Trustees for counsel fees and other costs. It is the intent to indemnify the Trustees against all honest mistakes in judgment and all acts of 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 suites as heretofore described in defending lawsuits.

**Section 13.02 WORKER'S COMPENSATION** The insurance coverage contemplated by this Trust Agreement shall not apply in any case which is compensable under Worker's Compensation Laws.

**Section 13.03 SITUS** The City of San Luis, County of Yuma, 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 State.

**Section 13.04 CONSTRUCTION** Wherever any words are used in the 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 in the singular form in all situations where they would also apply.

**Section 13.05 SEVERABILITY** Should any provision or term in this Trust Agreement be deemed or held 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, and in such case the appropriate parties shall immediately adopt a new provision to take the place of the illegal or invalid provision.

**Section 13.06 INTERNAL REVENUE** 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 for 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 such Trust non-exempt from taxation, the necessary steps to remedy such non-deductibility or taxability shall be taken immediately.

Section 13.07 CAPTIONS It is understood and agreed that the captions 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 items, obligations or conditions hereof.

**ACCEPTANCE**

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

**BOARD OF TRUSTEES**

<u><i>Victoria H. Lynch</i></u>	<u>3/14/2012</u>
Trustee	Date
<u><i>Garcia Duhaime</i></u>	<u>3/14/12</u>
Trustee	Date
<u><i>[Signature]</i></u>	<u>3/14/12</u>
Trustee	Date
<u><i>[Signature]</i></u>	<u>3/14/12</u>
Trustee	Date
<u><i>[Signature]</i></u>	<u>3/14/12</u>
Trustee	Date

**ACCEPTANCE**

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

**CITY OF SAN LUIS**

<u><i>Juan Escamilla</i></u>	<u>3/15/12</u>
Mayor	Date

**Employee Benefit Trust Board Meeting**

**4.E.**

**Meeting Date:** 02/13/2019

**Department Head:** Maria Munoz, HR Technician, Human Resources Department

**Submitted By:** Maria Munoz, HR Technician, Human Resources Department

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**ITEM:**

Discussion and possible action on any and all matters regarding the replacements of Trustee Jose Andrade, and the two Trustee terms expiring on March 14, 2019. **(Kay Marion Macuil, City Attorney)**

**SUMMARY:**

Mr. Jose Andrade resigned as Board Member on July 16, 2018, and his term had expired on March 14, 2018.

Two (2) Trustee terms will expire March 14, 2019.

Under Section 4.01 of the Declaration of Trust, the City Council designates successors from recommendations from the Mayor. The successors must accept in writing the position of Trustee. None of the current Trustees are eligible for reappointment.

Since the Mayor is also the Chair of the Board of Trustees, this Agenda Item is for the Trustees and the Executive Advisors to offer any suggestions to the Mayor for recommended successors. This item is also for the Mayor to instruct the HR Executive Advisor Maria Muñoz to reach out to possible successor Trustees to inquire as to their interest in the position (if he so chooses at this time).

**RECOMMENDATION / SUGGESTED MOTION:**

**I MOVE TO DIRECT HR EXECUTIVE ADVISOR MARIA MUÑOZ TO \_\_\_\_\_**

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**Attachments**

Confirmation of Jose Andrade's resignation as Board Member  
Trust

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**Maria Munoz**

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**From:** Olivia Jenkins  
**Sent:** Monday, July 16, 2018 12:23 PM  
**To:** Jose Andrade  
**Cc:** Kay Maculi; Maria Munoz  
**Subject:** Employee Trust Board Member

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

Mr. Andrade,

This is email is to acknowledge and confirm our phone conversation regarding your interest in resigning from the board. On behalf of the city, we greatly appreciate your support, time, and commitment to Employees Benefit Trust Board. I will inform Chairman Sanchez and board members during our next meeting.

Thank you for your service.

Olivia Jenkins, Manager



Human Resources Department  
San Luis, AZ 85349  
P: (928)341-8579/F: (928)722-6773  
[ojenkins@cityofsanluis.org](mailto:ojenkins@cityofsanluis.org)  
[www.cityofsanluis.org](http://www.cityofsanluis.org)

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**AGREEMENT AND DECLARATION OF TRUST  
FOR CITY OF SAN LUIS EMPLOYEE BENEFIT TRUST**

THIS AGREEMENT AND DECLARATION OF TRUST was made and entered into this first day of September 2011, between CITY OF SAN LUIS, a municipal corporation hereinafter referred to as the "City" and certain persons hereinafter referred to as the "Trustees" to administer the Trust in accordance with the terms and provisions of this instrument.

**WITNESSETH:**

WHEREAS, A.R.S. § 11-981 authorizes the City of San Luis to establish a self-funded insurance program for health benefits for its Employees.

WHEREAS, A.R.S. § 11-981 requires the establishment of a health benefits trust for the purposes of management and administration of this program; and

WHEREAS, A.R.S. § 11-981 also requires the establishment of the health benefits trust board to administer the health benefits trust.

WHEREAS, CITY OF SAN LUIS, hereinafter designated and referred to as "City", and certain employees of said City hereinafter designated and referred to as "Employees", desire to enter into a program of providing and maintaining health and welfare benefits for Employees of the City and certain members of their families, hereinafter designated and referred to as "Dependents", which program is to be administered by the Trustees; and

WHEREAS, to effect the aforesaid purpose it is mutually desirable by and between the parties hereto to declare and create a Trust which establishes a Trust Fund for and in the manner more particularly set forth herein; and

WHEREAS, the Trustees and City which accept this Agreement and Declaration of Trust and agree to be bound by the provisions hereof shall, upon acceptance by the parties hereto, be deemed a party to this Agreement and Declaration of Trust.

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

**ARTICLE 1  
DEFINITIONS**

It is mutually understood and agreed by and between the parties hereto that the following are and shall be the definitions:

Section 1.01 The term "Employee Benefit Trust" shall mean the program of benefits to be established by the Trustees pursuant to this Agreement and Declaration of Trust.

**Section 1.02** The term "Employee" shall mean all persons who have met the eligibility requirements as defined in the written instrument for the Employee Benefit Trust and who have properly enrolled for and made appropriate contributions for coverage under said Trust, and who are not eligible for benefits under any other health program to which the City makes contributions.

**Section 1.03** The term "Dependent" shall mean all persons who have met the eligibility requirements for being a dependent of the Employee as defined in the written instrument for the Employee Benefit Trust and who have been properly enrolled for and made appropriate contributions for coverage under the Employee Benefit Trust, and who are not eligible for benefit under any other health program which the City makes contributions.

**Section 1.04** The phrase "Trust Agreement" shall mean and refer to this Agreement and Declaration of Trust and any modification or amendments thereto.

**Section 1.05** The term "Fund" as used shall mean the Trust Fund created by this instrument, and shall mean generally the monies, property, contracts, or things of value, tangible or intangible, received and held by the Trustees for the uses, purposes, and Trust set forth therein, and those things of value which compromise the corpus and additions to the Fund.

**Section 1.06** The term "Trustees" as used herein shall mean the Trustees and their successors provided for in the Trust Agreement.

**Section 1.07** The name of the Trust is and shall be City of San Luis Employee Benefit Trust.

**Section 1.08** The phrase "City Contributions" does and shall mean the contributions made by the City of San Luis to the Fund for the Employee Benefit Trust.

**Section 1.09** The phrase "Employee Contribution" does and shall mean the contributions made by the Employees of the City of San Luis to said Fund.

**Section 1.10** The term "City" does and shall mean the City of San Luis, a municipal corporation organized and existing under the laws of the State of Arizona.

**Section 1.11** The phrase "Plan Document" does and shall mean the written instrument containing the provisions for self-funded health and welfare benefits of the Employee Benefit Trust.

**Section 1.12** The phrase "Contract Administrator" does and shall mean the person or firm employed by the Trustees who is responsible for the processing of claims and

payment of benefits, administration, accounting, reporting and other services contracted for by the Trustees.

**ARTICLE II  
PURPOSE OF TRUST AND APPLICATION OF THE FUND**

**Section 2.01 FUND** There is hereby declared and created the City of San Luis Employee Benefit Trust: To establish a Trust Fund to provide benefits for, but not limited or restricted to Life, Accidental Death and Dismemberment, Basic or Major Medical coverage's for accidents or sickness, Dental; and any other benefits as determined by the Trustees for the Employees and their Dependents; whether through self-funded or insured programs or both.

**Section 2.02 PRINCIPAL OFFICE** The Trust shall have its principal office in the City of San Luis, County of Yuma, state of Arizona and hereinafter designated and referred to as Principal Office.

**ARTICLE III  
POWERS AND DUTUES OF TRUSTEES**

**Section 3.01 APPOINTMENTS OF TRUSTEES** The Employee Benefit Trust shall be administered by the Trustees. The Mayor shall nominate individuals to serve as Trustees overseeing the management and administration of the Trust. The City Council shall consider and may appoint any individual so recommended, provided that the appointed Trustees conform to the requirements of Section 3.02.

**Section 3.02 NUMBER AND IDENTITY** The Trustees shall consist of five (5) persons, consisting of no more than one (1) member of the City Council and no more than (1) Employee of the City.

**Section 3.03 ACCEPTANCE** Each Trustee so appointed shall accept the appointment in writing and shall confirm in writing that the Trustee hereby accept the Trust and Trusteeship and declares 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.

**Section 3.04 TRUSTEES' TERM** Each Trustee shall serve a five-year term. A Trustee may be reappointed of no more than one additional consecutive term. Notwithstanding the foregoing, the initial terms for the first five (5) Trustees shall be as follows: one (1) Trustee to serve an initial term of one (1) year; two (2) Trustees to serve an initial term of two (2) years; and two (2) Trustees to serve an initial term of three (3) years. The Trustees shall determine among themselves which of the first five (5) Trustees shall serve the one year, two year, and three year terms. This shall result in Trustees rotating appointments every two (2) to three (3) years.

**Section 3.05 EXECUTIVE ADVISORS** The Board of Trustees shall include as Executive Advisors, the City's Finance Director, or their designee, and the City's Human Resource Director, or their designee, and the City Manager, or their designee. Such Executive Advisors shall attend all meetings of the Board of Trustees.

**Section 3.06 DUTIES** 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 external annual audit, accounting and reports as hereinafter mentioned. The Trustees shall employ or hire such agents, attorneys, accountants, actuaries, employees or other persons and to lease premises and equipment as may be necessary or desirable in administering the Fund and carrying out its purposes and the fees, salaries, wages emoluments or compensation of any and all such persons shall be paid from the Fund. When acting upon the advice of counsel for the Trust, the Trustees shall be relieved of all responsibility for acts done or not done. The Trustees may incur any 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. 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 accomplishments of the objects and purposes of the Fund and this Trust and Trust Agreement.

In addition, the Trustees shall establish terms and conditions for the Employee Benefit Trust including, but not limited to:

- A. Establish terms and conditions of coverage including exclusions of coverage;
- B. Establish provisions for eligibility requirements to enroll for coverage;
- C. Ensure that all claims are processed promptly;
- D. Administer the Trust Fund pursuant to this Agreement;
- E. Designate a risk management consultant or insurance administrator licensed pursuant to Title 20, Chapter 2, Articles 3 Or 9 of the Arizona Revised Statutes, and such license shall be verified by the Board of Trustees at time of the designation;
- F. Provide financial oversight of the Trust Fund by evaluating claim expenses and reserve amounts;
- G. Review the Trust Fund quarterly to insure sufficient funds exist to pay outstanding and future benefits, to pay for losses or claims or any combination of insurance and direct payment, and to pay for risk management consultation;
- H. Make recommendations to the City Manager on financial issues relating to the self-insured programs;
- I. Comply with all requirements of State and Federal laws relating to self-insurance programs;
- J. Take all necessary precautions to safeguard the assets of the Trust;
- K. Maintain minutes of its meetings.

**Section 3.07 TRUSTEES' AUTHORITY** The Trustees shall have the power to enter in contracts, procure insurance policies, or provide such benefits through self-funding, and to place into effect and maintain the desirable schedule of benefits. 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 under this Trust. The Trustees are hereby expressly authorized to pay to any insurance company as may be selected by the Trustees, the required insurance premiums in connection with such group insurance contracts issued to the Trust. Whether or not benefits are provided by means of direct or self-funding or by the procurement of group insurance, such decision shall be at the sole and exclusive discretion of the Trustees.

Should the Trustees select or provide for any policy or any program of self-funding, no claims for benefits or no claims for liabilities shall be brought against the Trustees. The sole and exclusive liability of said Trustees in the management and operation of any program of self-funding shall be limited to due care in the selection of administrators, claim representatives, actuaries, or other officials charged with the administration of such a program of self-funding. In the event that submitted claims of Employees and/or Dependents exceed the funds available, the claims shall be paid in the order received.

**Section 3.08 DEPOSITS AND INVESTMENTS** All corpus or portions of the Fund not expended under Article III may be deposited by the Trustees in the name of the Trust in such depository or depositories as the Trustees shall from time to time select, 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, shall be invested by the Trustees in reasonable secure, reasonable liquid investments.

The Fund 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, the payment of insurance premiums, or held, used or applied as herein set forth.

**Section 3.09 COMPENSATION** The Trustees shall receive no compensation for their services except for reimbursement of actual reasonable expenses incurred.

**Section 3.10 WITHDRAWALS** All checks, drafts, vouchers or other withdrawals from the Fund or depositories and the transfer or liquidating of insurance policies or

investments shall first be authorized by the Trustees and then signed by appropriate signatories as determined by the Trust, except that checks for claims payment under the self-funded benefit provision of this Trust may be signed by an authorized representative of the Contract Administrator responsible for administering the self-funded benefit.

**Section 3.11 CHAIRMAN, VICE-CHAIR, AND SECRETARY** The Trustee shall elect from among themselves at their first meeting a Chairman, Vice-Chair and Secretary of the Trustees. The Chairman 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. The Vice-Chair will preside in the Chairman's absence. The Secretary shall keep minutes of all meetings, proceedings, and acts of the Trustees, which records shall be available at the said Principal Office for inspection by all the Trustees and interested persons during usual business hours. Such records and minutes need not be verbatim.

**Section 3.12 MEETINGS** The Trustees shall hold a regular meeting as soon as practical after being appointed and regular meetings shall be held periodically at least four (4) times each year after the first regular meeting. The Trustees shall determine the time and place of the regular meeting of the Board. Special meetings of the Trustees may be called by the Chairman. At least seven (7) days written notice designating the time and place of the annual, regular or any special meeting shall be given to the Trustees. Any meeting at which all Trustees are present shall be subject to the open meeting law established by Arizona Statute.

**Section 3.13 PROXY** 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.

**Section 3.14 QUORUM** To constitute a quorum or special meeting of the Trustees, there must be present in person or by proxy at least three (3) Trustees.

**Section 3.15 VOTING** Each Trustee shall have one (1) vote. All actions by and decisions of the Trustees shall be the affirmative vote of a majority of the Trustees attending a duly called meeting of the Trustees at which there is a quorum present.

**Section 3.16 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 and similarly each and every year thereafter. Any report required by law, city, county, state or federal, or the respective subdivisions thereof, shall be made by the Trustees. The Trustees shall have an external annual audit and accounting of the Trust Fund by a Certified Public Accountant in accordance with good accounting practices, at the end of each fiscal year. The CPA shall certify to the accuracy of his audit and accounting. A statement of the results of each audit shall be available for inspection by authorized persons at the Principal Office of the Trust. 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 and a copy maintained in the City Recorder's office for a period of five (5) years.

**Section 3.17 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, obligation and duties as 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 benefit hereunder.

**Section 3.18 BONDS** The Trustees shall procure fidelity bonds for the Trustees 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 reasonable amount to reasonably aid in reimbursing bondable loss of money, and shall meet the requirements as may be required, from time to time by applicable United States or State law. Such are to be obtained from reputable fidelity or surety company or companies as the Trustees shall determine. If convenient, and in conformity with the law, such bonds may be position bonds. The cost of the premiums on such bonds shall 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 resign or be terminated.

**Section 3.19 DEFENSE** The Trustees shall institute, prosecute, maintain or defend any proceeding at law or inequity concerning the Trust Fund or the assets thereof, at the sole cost and expense of the Trust Fund, and to compromise, settle, and adjust any claims and liabilities asserted against or in favor of the Trust Fund or of the Trustees; but the Trustees shall be under no duty or obligation to institute, maintain, or defend any action, suit, or other legal proceeding unless it shall have been indemnified to its satisfaction against any and all loss, cost, expense, and liability it may sustain or anticipate by reason thereof.

#### **ARTICLE IV TRUSTEE AND SUCCESSOR TRUSTEES**

**Section 4.01 TRUSTEE TERMINATION** The term of any Trustee shall automatically terminate upon the earliest of the following: death; resignation; removal of a Trustee by a majority vote of the City Council; or for a Trustee who is an employee of the City of San Luis, the termination of such employment.

In the event of the death, resignation, or removal of an appointed Trustee, the City Council shall designate a successor to such Trustee from recommendations from the Mayor, who, upon acceptance of his/her appointments in writing, shall succeed to the legal interest of his/her predecessor. Upon the effective date of the death, resignation or removal, the Trustee shall be discharged from any further duty or responsibility under the

Trust and any and all property in his or her possession or control which belongs to the Plan or Trust shall be delivered to the Chairman (or to the Secretary, if the Chairman is resigning, removed, or deceased.)

Section 4.02 TRUSTEE RESIGNATION A Trustee may resign by giving sixty (60) days prior written notice to the Chairman. The Chairman may exercise discretion to waive or reduce the sixty (60) day requirement, but shall not waive the written-notice requirement. The notice shall state the effective date of the resignation. The resignation shall take effect on its stated effective date unless a new Trustee is appointed and accepts the appointment prior to the stated effective date of the resignation.

Section 4.03 SUCCESSORS The Trustees, and their successors from time to time acting hereunder, shall have all the rights, powers and duties of the original Trustees named herein and the insurance company or companies and Contract Administrator shall be immediately notified of any successor.

Section 4.04 SUCCESSORS' LIABILITY No successor Trustee shall be liable or responsible for any act 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 III.

Section 4.05 SUCCESSORS' TERM The appointed successor Trustee shall complete the initial term of his predecessor.

## **ARTICLE V CONTRIBUTIONS TO THE FUND**

Section 5.01 CONTRIBUTIONS In order to effectuate the purpose hereof, the City and/or Employees shall contribute to the Fund an amount determined by the Trustees, to be necessary to pay for the benefits provided hereunder. The City and/or Employee contribution shall be due and payable as of the first day of the month as determined by the Trustees.

Section 5.02 CITY CONTRIBUTIONS ARE NOT WAGES The City contributions to 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, any Employee, nor any Dependent under the Plan shall have any rights, title, or interest in the Fund, except as otherwise specifically provided herein.

**Section 5.03 PAYMENTS IN LIEU OF BENEFITS** No Employee shall have any right to receive any part of his own or the City contributions paid to him in lieu of benefits.

**Section 5.04 PAYROLL DEDUCTIONS** All Employees' contributions shall be paid by payroll deductions. The City shall remit all monies obtained through payroll deductions in a lump sum to the Fund, at least once per month, or as otherwise determined by the Trustees.

**Section 5.05 PAYMENT** All contributions shall be payable to name of the Trust, and shall be paid in the manner and form determined by the Trustees.

**Section 5.06 REPORTS** The City shall make all reports required by the Trustees. The Trustees may at any time have an audit made by an independent Certified Public Accountant of the wage records of the City in connection with their contribution and/or reports.

**Section 5.07 IRREVOCABILITY OF CONTRIBUTIONS** Subject to the provisions providing for termination of this Trust Agreement in Article XII, 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 revocable by or payable to the City or any Employee, nor shall any of the same be used for or diverted for purposes other than for the exclusive program of benefits for Employees and beneficiaries provided hereunder.

## **ARTICLE VI PAYMENT OF BENEFITS**

**Section 6.01 METHOD OF PAYMENT** The Trustees shall arrange for the disbursement of benefits under the Employee Benefit Trust through a Contract Administrator appointed by the Trustees for any self-funded benefits or through insurance company for fully-insured benefits.

**Section 6.02 PROTECTION OF EMPLOYEES** Prior to payment to an Employee or his Dependents, 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 shall be exempt from attachment, garnishment, and levy of execution, bankruptcy proceedings, or other legal process at any time subject to the Trustee's possession and control; but in any event such assets shall be subject to such process only to the extent of such Employee's benefits hereunder as they fall due.

**Section 6.03 CLAIM TO BENEFITS** No Employee, Dependent, or other beneficiary shall have any right or claim to benefits under the Employee Benefit Trust except as specified in the policy or policies or contract or contracts or self-funded benefits procured or entered into pursuant to Article II and III. Any disputes as to eligibility time, amount,

or duration of benefits shall be resolved by the appropriate insurance carrier or Contract Administrator, under and pursuant to the policy or contract; and the Employees, Dependents, or other beneficiary shall not have a right or claim in respect thereto, against the Funds, or Trustees. Any dispute as to eligibility, type, amount, time or duration of benefits provided by the Fund as self-funded, shall be decided by the Trustees, and all disputes shall be finally settled pursuant to Article VII.

**Section 6.04 FAILURE TO PAY BENEFITS** Neither the City, nor the Trustees shall be liable for the failure or omission, for any reason, to pay any benefits under the Employee Benefit Trust. 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 shall, in all events, be limited to the extent that sufficient self-insured funds are available to the Trustees 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 further prorated in such amounts that all such claims shall be treated proportionately equal to the ratio that such total claims bear to the funds that are available for such payment. If any controversy or dispute exists concerning such matters, all disputes or controversies shall be settled by the dispute provision contained in Article VII.

## **ARTICLE VII CONTROVERSIES AND DISPUTES**

**Section 7.01 DISPUTES** The Trustees shall have the power to construe, interpret and apply the provisions of this Agreement and Declaration of the Trust or any amendments, rules or regulations adopted thereto, and the terms used herein and any construction, interpretation or application adopted in good faith shall be final and binding upon the City, beneficiaries, administrators, and/or legal representatives.

**Section 7.02 BENEFITS CLAIM SETTLEMENT** The Trustees may in their sole discretion compromise or settle any disputed benefits claim or benefits claim controversy in such manner as they deem best, and any decision made by a majority of the Trustees in compromise or settlement or a disputed benefits claim or benefits claim controversy, or any compromise or settlement agreement entered into by the Trustees shall be conclusive and binding upon all parties interested in this Fund.

**Section 7.03 DISPUTE OF POWERS** In the event there shall be any disagreement between the Trustees and the Contract Administrator over exercise of powers granted herein, the Trustees shall prevail, and the service organization 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.

**ARTICLE VIII  
RESPONSIBILITY**

**Section 8.01 RESPONSIBILITY** The Trustee shall only be responsible for monies when and only after such are received 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 Fund. The Trustees and Successors shall not be responsible for the action or omission of their Co-Trustees, Successors, nor for the actions or omissions of other agents, or 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 insurance companies for any reason. The City shall hold harmless the Trustees or Successor Trustees from all such claims except those arising from his/her own willful misconduct, bad faith or gross negligence. (No Trustee or Successor Trustee shall be entitled to any indemnification or court costs or attorney's fees for any liability arising from his/her own willful misconduct, bad faith or gross negligence.)

**Section 8.02 OTHER PERSONS AND INTERPRETATIONS** No person who is dealing with the Trustees shall be obligated to see 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 of 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

**ARTICLE IX  
AMENDMENTS**

**Section 9.01 AMENDMENTS** It is anticipated that in the administration of this Trust, conditions may arise that are not foreseen at the time of execution of this Agreement, and it is the intention of the Trustees, and each and every party or person to this 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 to the Trustees, by all parties to this Agreement, to amend this Agreement upon the consent and unanimous agreement of the Board of Trustees, and 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 the Trustees or Successor Trustee

**ARTICLE X  
NONVESTING OF RIGHTS**

**Section 10.01 RIGHTS** No Employee, Dependents, beneficiary, nor any other person or group nor their respective successors, assignees nor legal representatives shall have any right, title or interest, vested or otherwise, in or to the Fund, Trust, corpus, (income or increments thereto) insurance dividends, cash value, if any, or insurance or benefits or monies payable there from, payments from the Fund, or in or to the eligibility requirements for benefits as changed or altered. Any participating Employee who withdraws or ceases to participate in the Employee Benefit Trust does hereby and shall expressly waive and forfeit any right, title or interest in and to the Fund, its corpus and assets. No Employee, nor his Dependents, beneficiary, nor any other person or group nor their respective successors, assignees nor legal representative shall have any right in or to the Trust, Fund, corpus, insurance, interest, dividends, cash value, if any, of insurance, interest, income, benefits, or any benefits or money payable there from, or anything arising out of or in this Trust during the term of this agreement and any benefits he or they may have is forever terminated and discharged upon the Employee's loss of employment with the City (quitting, discharge, or otherwise), or when this Trust Agreement is terminated, wound up, and dissolved. No benefit, right or interest is transferrable or assignable by the Employee to another Employee or person, corporate or otherwise except to physicians, hospitals and any other person or institution furnishing medical services within the terms of this Trust Agreement. 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 of 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 XI  
PROVISIONS RELATING TO INSURANCE COMPANY**

**Section 11.01** No insurance company which 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.

**Section 11.02** An integral part of the trust will be an aggregate stop loss and specific stop loss insurance. Stop loss coverage will be provided by an authorized carrier licensed to execute contracts in the State of Arizona.

**ARTICLE XII  
TERMINATION OF TRUST**

**Section 12.01 TERMINATION BY THE TRUSTEES** This Trust may be terminated after ninety (90) days advance written notice duly executed by all the Trustees.

**Section 12.02 TERMINATION BY THE CITY** This Trust may be terminated after ninety (90) days advance written notice duly executed by the City. If the Trust is in a deficit position, including the claims lag determined by the Trustees, the City and Employees will share in the liability of the Trust.

**Section 12.03 NOTIFICATION OF TERMINATION** Upon termination of the Trust in accordance herewith, the Trustees shall forthwith notify all Employees in writing and also all other necessary parties.

**Section 12.04 CONCLUDING THE TRUST** 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; and the Trustees shall continue as Trustees for the purpose of winding up the affairs of the Trust.

**Section 12.05 FUNDS REMAINING** 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 obligation of the Trust, shall be paid or used for the continuance of one or more of the benefits of the character hereinabove contemplated, until such monies have been exhausted.

**Section 12.06 FINAL ACCOUNTING** As such time as the Trust is terminated, the Trustees shall render a final accounting of the affairs of the Trust and the Trust Fund to the City and all Employees, and thereafter there shall be no claim or action against the Trustees and they shall have no further responsibility or duties and they shall be discharged.

**ARTICLE XIII  
MISCELLANEOUS**

**Section 13.01 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 of Fund 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 counsel to represent them or one or more of them in any such suit, action or proceeding, including counsel fees and all

other costs, shall be paid from the Fund as long as the Trustees have acted in good faith and until final judgment has been rendered that the Trustees have acted in bad faith, gross negligence or willful misconduct, and in the event of such judgment, the Trust shall be entitled to recover all sums paid to or for Trustees for counsel fees and other costs. It is the intent to indemnify the Trustees against all honest mistakes in judgment and all acts of 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 suites as heretofore described in defending lawsuits.

**Section 13.02 WORKER'S COMPENSATION** The insurance coverage contemplated by this Trust Agreement shall not apply in any case which is compensable under Worker's Compensation Laws.

**Section 13.03 SITUS** The City of San Luis, County of Yuma, 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 State.

**Section 13.04 CONSTRUCTION** Wherever any words are used in the 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 in the singular form in all situations where they would also apply.

**Section 13.05 SEVERABILITY** Should any provision or term in this Trust Agreement be deemed or held 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, and in such case the appropriate parties shall immediately adopt a new provision to take the place of the illegal or invalid provision.

**Section 13.06 INTERNAL REVENUE** 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 for 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 such Trust non-exempt from taxation, the necessary steps to remedy such non-deductibility or taxability shall be taken immediately.

Section 13.07 CAPTIONS It is understood and agreed that the captions 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 items, obligations or conditions hereof.

**ACCEPTANCE**

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

**BOARD OF TRUSTEES**

<u><i>Victoria H. Lynch</i></u>	<u>3/14/2012</u>
Trustee	Date
<u><i>Garcia</i></u>	<u>3/14/12</u>
Trustee	Date
<u><i>[Signature]</i></u>	<u>3/14/12</u>
Trustee	Date
<u><i>[Signature]</i></u>	<u>3/14/12</u>
Trustee	Date
<u><i>[Signature]</i></u>	<u>3/14/12</u>
Trustee	Date

**ACCEPTANCE**

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

**CITY OF SAN LUIS**

<u><i>Juan Escamilla</i></u>	<u>3/15/12</u>
Mayor	Date

**Employee Benefit Trust Board Meeting**

**4.F.**

**Meeting Date:** 02/13/2019

**Department Head:** Maria Munoz, HR Technician, Human Resources Department

**Submitted By:** Maria Munoz, HR Technician, Human Resources Department

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**ITEM:**

Discussion and possible action on any and all matters regarding establishing regular meetings four (4) times per year. **(Kay Marion Macuil, City Attorney)**

**SUMMARY:**

Under Section 3.06(G) of the Declaration of Trust, one of the duties of the Trustees is to review the Trust Fund quarterly to ensure "sufficient funds exist to pay outstanding and future benefits, to pay for losses or claims or any combination of insurance and direct payment, and to pay for risk management consultation."

Under Section 3.12 of the Declaration of Trust, regular meetings four (4) times per year should be established.

To comport with both sections, it is recommended that the Trustees establish quarterly days for the Board of Trustees' four (4) regular meetings. One meeting should be either at the end of March or the first part of April to have recommendations for annual funding the Trust for City Council's first budget meeting in April also called the Budget Retreat.

To meet in chambers for proper Open Meeting recording of the meetings, it is suggested that the day of the week be a day City Hall is open, a Monday, Tuesday or Thursday. For easy reference here is a chart of the months in each quarter.

First Quarter: January, February and March;

Second Quarter: April, May and June;

Third Quarter: July August and September;

Fourth Quarter: October, November and December.

**RECOMMENDATION / SUGGESTED MOTION:**

**I MOVE TO ESTABLISH REGULAR MEETINGS ON THE**

**\_\_\_\_\_ , of \_\_\_\_\_**  
**(1st, 2nd, 3rd, 4th) (Mon, Tue, Wed, Thur) (4 months of the year)**

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**Attachments**

Trust

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**AGREEMENT AND DECLARATION OF TRUST  
FOR CITY OF SAN LUIS EMPLOYEE BENEFIT TRUST**

THIS AGREEMENT AND DECLARATION OF TRUST was made and entered into this first day of September 2011, between CITY OF SAN LUIS, a municipal corporation hereinafter referred to as the "City" and certain persons hereinafter referred to as the "Trustees" to administer the Trust in accordance with the terms and provisions of this instrument.

**WITNESSETH:**

WHEREAS, A.R.S. § 11-981 authorizes the City of San Luis to establish a self-funded insurance program for health benefits for its Employees.

WHEREAS, A.R.S. § 11-981 requires the establishment of a health benefits trust for the purposes of management and administration of this program; and

WHEREAS, A.R.S. § 11-981 also requires the establishment of the health benefits trust board to administer the health benefits trust.

WHEREAS, CITY OF SAN LUIS, hereinafter designated and referred to as "City", and certain employees of said City hereinafter designated and referred to as "Employees", desire to enter into a program of providing and maintaining health and welfare benefits for Employees of the City and certain members of their families, hereinafter designated and referred to as "Dependents", which program is to be administered by the Trustees; and

WHEREAS, to effect the aforesaid purpose it is mutually desirable by and between the parties hereto to declare and create a Trust which establishes a Trust Fund for and in the manner more particularly set forth herein; and

WHEREAS, the Trustees and City which accept this Agreement and Declaration of Trust and agree to be bound by the provisions hereof shall, upon acceptance by the parties hereto, be deemed a party to this Agreement and Declaration of Trust.

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

**ARTICLE 1  
DEFINITIONS**

It is mutually understood and agreed by and between the parties hereto that the following are and shall be the definitions:

Section 1.01 The term "Employee Benefit Trust" shall mean the program of benefits to be established by the Trustees pursuant to this Agreement and Declaration of Trust.

**Section 1.02** The term "Employee" shall mean all persons who have met the eligibility requirements as defined in the written instrument for the Employee Benefit Trust and who have properly enrolled for and made appropriate contributions for coverage under said Trust, and who are not eligible for benefits under any other health program to which the City makes contributions.

**Section 1.03** The term "Dependent" shall mean all persons who have met the eligibility requirements for being a dependent of the Employee as defined in the written instrument for the Employee Benefit Trust and who have been properly enrolled for and made appropriate contributions for coverage under the Employee Benefit Trust, and who are not eligible for benefit under any other health program which the City makes contributions.

**Section 1.04** The phrase "Trust Agreement" shall mean and refer to this Agreement and Declaration of Trust and any modification or amendments thereto.

**Section 1.05** The term "Fund" as used shall mean the Trust Fund created by this instrument, and shall mean generally the monies, property, contracts, or things of value, tangible or intangible, received and held by the Trustees for the uses, purposes, and Trust set forth therein, and those things of value which compromise the corpus and additions to the Fund.

**Section 1.06** The term "Trustees" as used herein shall mean the Trustees and their successors provided for in the Trust Agreement.

**Section 1.07** The name of the Trust is and shall be City of San Luis Employee Benefit Trust.

**Section 1.08** The phrase "City Contributions" does and shall mean the contributions made by the City of San Luis to the Fund for the Employee Benefit Trust.

**Section 1.09** The phrase "Employee Contribution" does and shall mean the contributions made by the Employees of the City of San Luis to said Fund.

**Section 1.10** The term "City" does and shall mean the City of San Luis, a municipal corporation organized and existing under the laws of the State of Arizona.

**Section 1.11** The phrase "Plan Document" does and shall mean the written instrument containing the provisions for self-funded health and welfare benefits of the Employee Benefit Trust.

**Section 1.12** The phrase "Contract Administrator" does and shall mean the person or firm employed by the Trustees who is responsible for the processing of claims and

payment of benefits, administration, accounting, reporting and other services contracted for by the Trustees.

**ARTICLE II  
PURPOSE OF TRUST AND APPLICATION OF THE FUND**

**Section 2.01 FUND** There is hereby declared and created the City of San Luis Employee Benefit Trust: To establish a Trust Fund to provide benefits for, but not limited or restricted to Life, Accidental Death and Dismemberment, Basic or Major Medical coverage's for accidents or sickness, Dental; and any other benefits as determined by the Trustees for the Employees and their Dependents; whether through self-funded or insured programs or both.

**Section 2.02 PRINCIPAL OFFICE** The Trust shall have its principal office in the City of San Luis, County of Yuma, state of Arizona and hereinafter designated and referred to as Principal Office.

**ARTICLE III  
POWERS AND DUTUES OF TRUSTEES**

**Section 3.01 APPOINTMENTS OF TRUSTEES** The Employee Benefit Trust shall be administered by the Trustees. The Mayor shall nominate individuals to serve as Trustees overseeing the management and administration of the Trust. The City Council shall consider and may appoint any individual so recommended, provided that the appointed Trustees conform to the requirements of Section 3.02.

**Section 3.02 NUMBER AND IDENTITY** The Trustees shall consist of five (5) persons, consisting of no more than one (1) member of the City Council and no more than (1) Employee of the City.

**Section 3.03 ACCEPTANCE** Each Trustee so appointed shall accept the appointment in writing and shall confirm in writing that the Trustee hereby accept the Trust and Trusteeship and declares 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.

**Section 3.04 TRUSTEES' TERM** Each Trustee shall serve a five-year term. A Trustee may be reappointed of no more than one additional consecutive term. Notwithstanding the foregoing, the initial terms for the first five (5) Trustees shall be as follows: one (1) Trustee to serve an initial term of one (1) year; two (2) Trustees to serve an initial term of two (2) years; and two (2) Trustees to serve an initial term of three (3) years. The Trustees shall determine among themselves which of the first five (5) Trustees shall serve the one year, two year, and three year terms. This shall result in Trustees rotating appointments every two (2) to three (3) years.

**Section 3.05 EXECUTIVE ADVISORS** The Board of Trustees shall include as Executive Advisors, the City's Finance Director, or their designee, and the City's Human Resource Director, or their designee, and the City Manager, or their designee. Such Executive Advisors shall attend all meetings of the Board of Trustees.

**Section 3.06 DUTIES** 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 external annual audit, accounting and reports as hereinafter mentioned. The Trustees shall employ or hire such agents, attorneys, accountants, actuaries, employees or other persons and to lease premises and equipment as may be necessary or desirable in administering the Fund and carrying out its purposes and the fees, salaries, wages emoluments or compensation of any and all such persons shall be paid from the Fund. When acting upon the advice of counsel for the Trust, the Trustees shall be relieved of all responsibility for acts done or not done. The Trustees may incur any 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. 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 accomplishments of the objects and purposes of the Fund and this Trust and Trust Agreement.

In addition, the Trustees shall establish terms and conditions for the Employee Benefit Trust including, but not limited to:

- A. Establish terms and conditions of coverage including exclusions of coverage;
- B. Establish provisions for eligibility requirements to enroll for coverage;
- C. Ensure that all claims are processed promptly;
- D. Administer the Trust Fund pursuant to this Agreement;
- E. Designate a risk management consultant or insurance administrator licensed pursuant to Title 20, Chapter 2, Articles 3 Or 9 of the Arizona Revised Statutes, and such license shall be verified by the Board of Trustees at time of the designation;
- F. Provide financial oversight of the Trust Fund by evaluating claim expenses and reserve amounts;
- G. Review the Trust Fund quarterly to insure sufficient funds exist to pay outstanding and future benefits, to pay for losses or claims or any combination of insurance and direct payment, and to pay for risk management consultation;
- H. Make recommendations to the City Manager on financial issues relating to the self-insured programs;
- I. Comply with all requirements of State and Federal laws relating to self-insurance programs;
- J. Take all necessary precautions to safeguard the assets of the Trust;
- K. Maintain minutes of its meetings.

**Section 3.07 TRUSTEES' AUTHORITY** The Trustees shall have the power to enter in contracts, procure insurance policies, or provide such benefits through self-funding, and to place into effect and maintain the desirable schedule of benefits. 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 under this Trust. The Trustees are hereby expressly authorized to pay to any insurance company as may be selected by the Trustees, the required insurance premiums in connection with such group insurance contracts issued to the Trust. Whether or not benefits are provided by means of direct or self-funding or by the procurement of group insurance, such decision shall be at the sole and exclusive discretion of the Trustees.

Should the Trustees select or provide for any policy or any program of self-funding, no claims for benefits or no claims for liabilities shall be brought against the Trustees. The sole and exclusive liability of said Trustees in the management and operation of any program of self-funding shall be limited to due care in the selection of administrators, claim representatives, actuaries, or other officials charged with the administration of such a program of self-funding. In the event that submitted claims of Employees and/or Dependents exceed the funds available, the claims shall be paid in the order received.

**Section 3.08 DEPOSITS AND INVESTMENTS** All corpus or portions of the Fund not expended under Article III may be deposited by the Trustees in the name of the Trust in such depository or depositories as the Trustees shall from time to time select, 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, shall be invested by the Trustees in reasonable secure, reasonable liquid investments.

The Fund 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, the payment of insurance premiums, or held, used or applied as herein set forth.

**Section 3.09 COMPENSATION** The Trustees shall receive no compensation for their services except for reimbursement of actual reasonable expenses incurred.

**Section 3.10 WITHDRAWALS** All checks, drafts, vouchers or other withdrawals from the Fund or depositories and the transfer or liquidating of insurance policies or

investments shall first be authorized by the Trustees and then signed by appropriate signatories as determined by the Trust, except that checks for claims payment under the self-funded benefit provision of this Trust may be signed by an authorized representative of the Contract Administrator responsible for administering the self-funded benefit.

**Section 3.11 CHAIRMAN, VICE-CHAIR, AND SECRETARY** The Trustee shall elect from among themselves at their first meeting a Chairman, Vice-Chair and Secretary of the Trustees. The Chairman 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. The Vice-Chair will preside in the Chairman's absence. The Secretary shall keep minutes of all meetings, proceedings, and acts of the Trustees, which records shall be available at the said Principal Office for inspection by all the Trustees and interested persons during usual business hours. Such records and minutes need not be verbatim.

**Section 3.12 MEETINGS** The Trustees shall hold a regular meeting as soon as practical after being appointed and regular meetings shall be held periodically at least four (4) times each year after the first regular meeting. The Trustees shall determine the time and place of the regular meeting of the Board. Special meetings of the Trustees may be called by the Chairman. At least seven (7) days written notice designating the time and place of the annual, regular or any special meeting shall be given to the Trustees. Any meeting at which all Trustees are present shall be subject to the open meeting law established by Arizona Statute.

**Section 3.13 PROXY** 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.

**Section 3.14 QUORUM** To constitute a quorum or special meeting of the Trustees, there must be present in person or by proxy at least three (3) Trustees.

**Section 3.15 VOTING** Each Trustee shall have one (1) vote. All actions by and decisions of the Trustees shall be the affirmative vote of a majority of the Trustees attending a duly called meeting of the Trustees at which there is a quorum present.

**Section 3.16 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 and similarly each and every year thereafter. Any report required by law, city, county, state or federal, or the respective subdivisions thereof, shall be made by the Trustees. The Trustees shall have an external annual audit and accounting of the Trust Fund by a Certified Public Accountant in accordance with good accounting practices, at the end of each fiscal year. The CPA shall certify to the accuracy of his audit and accounting. A statement of the results of each audit shall be available for inspection by authorized persons at the Principal Office of the Trust. 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 and a copy maintained in the City Recorder's office for a period of five (5) years.

**Section 3.17 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, obligation and duties as 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 benefit hereunder.

**Section 3.18 BONDS** The Trustees shall procure fidelity bonds for the Trustees 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 reasonable amount to reasonably aid in reimbursing bondable loss of money, and shall meet the requirements as may be required, from time to time by applicable United States or State law. Such are to be obtained from reputable fidelity or surety company or companies as the Trustees shall determine. If convenient, and in conformity with the law, such bonds may be position bonds. The cost of the premiums on such bonds shall 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 resign or be terminated.

**Section 3.19 DEFENSE** The Trustees shall institute, prosecute, maintain or defend any proceeding at law or inequity concerning the Trust Fund or the assets thereof, at the sole cost and expense of the Trust Fund, and to compromise, settle, and adjust any claims and liabilities asserted against or in favor of the Trust Fund or of the Trustees; but the Trustees shall be under no duty or obligation to institute, maintain, or defend any action, suit, or other legal proceeding unless it shall have been indemnified to its satisfaction against any and all loss, cost, expense, and liability it may sustain or anticipate by reason thereof.

#### **ARTICLE IV TRUSTEE AND SUCCESSOR TRUSTEES**

**Section 4.01 TRUSTEE TERMINATION** The term of any Trustee shall automatically terminate upon the earliest of the following: death; resignation; removal of a Trustee by a majority vote of the City Council; or for a Trustee who is an employee of the City of San Luis, the termination of such employment.

In the event of the death, resignation, or removal of an appointed Trustee, the City Council shall designate a successor to such Trustee from recommendations from the Mayor, who, upon acceptance of his/her appointments in writing, shall succeed to the legal interest of his/her predecessor. Upon the effective date of the death, resignation or removal, the Trustee shall be discharged from any further duty or responsibility under the

Trust and any and all property in his or her possession or control which belongs to the Plan or Trust shall be delivered to the Chairman (or to the Secretary, if the Chairman is resigning, removed, or deceased.)

Section 4.02 TRUSTEE RESIGNATION A Trustee may resign by giving sixty (60) days prior written notice to the Chairman. The Chairman may exercise discretion to waive or reduce the sixty (60) day requirement, but shall not waive the written-notice requirement. The notice shall state the effective date of the resignation. The resignation shall take effect on its stated effective date unless a new Trustee is appointed and accepts the appointment prior to the stated effective date of the resignation.

Section 4.03 SUCCESSORS The Trustees, and their successors from time to time acting hereunder, shall have all the rights, powers and duties of the original Trustees named herein and the insurance company or companies and Contract Administrator shall be immediately notified of any successor.

Section 4.04 SUCCESSORS' LIABILITY No successor Trustee shall be liable or responsible for any act 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 III.

Section 4.05 SUCCESSORS' TERM The appointed successor Trustee shall complete the initial term of his predecessor.

## **ARTICLE V CONTRIBUTIONS TO THE FUND**

Section 5.01 CONTRIBUTIONS In order to effectuate the purpose hereof, the City and/or Employees shall contribute to the Fund an amount determined by the Trustees, to be necessary to pay for the benefits provided hereunder. The City and/or Employee contribution shall be due and payable as of the first day of the month as determined by the Trustees.

Section 5.02 CITY CONTRIBUTIONS ARE NOT WAGES The City contributions to 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, any Employee, nor any Dependent under the Plan shall have any rights, title, or interest in the Fund, except as otherwise specifically provided herein.

**Section 5.03 PAYMENTS IN LIEU OF BENEFITS** No Employee shall have any right to receive any part of his own or the City contributions paid to him in lieu of benefits.

**Section 5.04 PAYROLL DEDUCTIONS** All Employees' contributions shall be paid by payroll deductions. The City shall remit all monies obtained through payroll deductions in a lump sum to the Fund, at least once per month, or as otherwise determined by the Trustees.

**Section 5.05 PAYMENT** All contributions shall be payable to name of the Trust, and shall be paid in the manner and form determined by the Trustees.

**Section 5.06 REPORTS** The City shall make all reports required by the Trustees. The Trustees may at any time have an audit made by an independent Certified Public Accountant of the wage records of the City in connection with their contribution and/or reports.

**Section 5.07 IRREVOCABILITY OF CONTRIBUTIONS** Subject to the provisions providing for termination of this Trust Agreement in Article XII, 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 revocable by or payable to the City or any Employee, nor shall any of the same be used for or diverted for purposes other than for the exclusive program of benefits for Employees and beneficiaries provided hereunder.

## **ARTICLE VI PAYMENT OF BENEFITS**

**Section 6.01 METHOD OF PAYMENT** The Trustees shall arrange for the disbursement of benefits under the Employee Benefit Trust through a Contract Administrator appointed by the Trustees for any self-funded benefits or through insurance company for fully-insured benefits.

**Section 6.02 PROTECTION OF EMPLOYEES** Prior to payment to an Employee or his Dependents, 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 shall be exempt from attachment, garnishment, and levy of execution, bankruptcy proceedings, or other legal process at any time subject to the Trustee's possession and control; but in any event such assets shall be subject to such process only to the extent of such Employee's benefits hereunder as they fall due.

**Section 6.03 CLAIM TO BENEFITS** No Employee, Dependent, or other beneficiary shall have any right or claim to benefits under the Employee Benefit Trust except as specified in the policy or policies or contract or contracts or self-funded benefits procured or entered into pursuant to Article II and III. Any disputes as to eligibility time, amount,

or duration of benefits shall be resolved by the appropriate insurance carrier or Contract Administrator, under and pursuant to the policy or contract; and the Employees, Dependents, or other beneficiary shall not have a right or claim in respect thereto, against the Funds, or Trustees. Any dispute as to eligibility, type, amount, time or duration of benefits provided by the Fund as self-funded, shall be decided by the Trustees, and all disputes shall be finally settled pursuant to Article VII.

**Section 6.04 FAILURE TO PAY BENEFITS** Neither the City, nor the Trustees shall be liable for the failure or omission, for any reason, to pay any benefits under the Employee Benefit Trust. 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 shall, in all events, be limited to the extent that sufficient self-insured funds are available to the Trustees 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 further prorated in such amounts that all such claims shall be treated proportionately equal to the ratio that such total claims bear to the funds that are available for such payment. If any controversy or dispute exists concerning such matters, all disputes or controversies shall be settled by the dispute provision contained in Article VII.

## **ARTICLE VII CONTROVERSIES AND DISPUTES**

**Section 7.01 DISPUTES** The Trustees shall have the power to construe, interpret and apply the provisions of this Agreement and Declaration of the Trust or any amendments, rules or regulations adopted thereto, and the terms used herein and any construction, interpretation or application adopted in good faith shall be final and binding upon the City, beneficiaries, administrators, and/or legal representatives.

**Section 7.02 BENEFITS CLAIM SETTLEMENT** The Trustees may in their sole discretion compromise or settle any disputed benefits claim or benefits claim controversy in such manner as they deem best, and any decision made by a majority of the Trustees in compromise or settlement or a disputed benefits claim or benefits claim controversy, or any compromise or settlement agreement entered into by the Trustees shall be conclusive and binding upon all parties interested in this Fund.

**Section 7.03 DISPUTE OF POWERS** In the event there shall be any disagreement between the Trustees and the Contract Administrator over exercise of powers granted herein, the Trustees shall prevail, and the service organization 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.

**ARTICLE VIII  
RESPONSIBILITY**

**Section 8.01 RESPONSIBILITY** The Trustee shall only be responsible for monies when and only after such are received 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 Fund. The Trustees and Successors shall not be responsible for the action or omission of their Co-Trustees, Successors, nor for the actions or omissions of other agents, or 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 insurance companies for any reason. The City shall hold harmless the Trustees or Successor Trustees from all such claims except those arising from his/her own willful misconduct, bad faith or gross negligence. (No Trustee or Successor Trustee shall be entitled to any indemnification or court costs or attorney's fees for any liability arising from his/her own willful misconduct, bad faith or gross negligence.)

**Section 8.02 OTHER PERSONS AND INTERPRETATIONS** No person who is dealing with the Trustees shall be obligated to see 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 of 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

**ARTICLE IX  
AMENDMENTS**

**Section 9.01 AMENDMENTS** It is anticipated that in the administration of this Trust, conditions may arise that are not foreseen at the time of execution of this Agreement, and it is the intention of the Trustees, and each and every party or person to this 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 to the Trustees, by all parties to this Agreement, to amend this Agreement upon the consent and unanimous agreement of the Board of Trustees, and 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 the Trustees or Successor Trustee

**ARTICLE X  
NONVESTING OF RIGHTS**

**Section 10.01 RIGHTS** No Employee, Dependents, beneficiary, nor any other person or group nor their respective successors, assignees nor legal representatives shall have any right, title or interest, vested or otherwise, in or to the Fund, Trust, corpus, (income or increments thereto) insurance dividends, cash value, if any, or insurance or benefits or monies payable there from, payments from the Fund, or in or to the eligibility requirements for benefits as changed or altered. Any participating Employee who withdraws or ceases to participate in the Employee Benefit Trust does hereby and shall expressly waive and forfeit any right, title or interest in and to the Fund, its corpus and assets. No Employee, nor his Dependents, beneficiary, nor any other person or group nor their respective successors, assignees nor legal representative shall have any right in or to the Trust, Fund, corpus, insurance, interest, dividends, cash value, if any, of insurance, interest, income, benefits, or any benefits or money payable there from, or anything arising out of or in this Trust during the term of this agreement and any benefits he or they may have is forever terminated and discharged upon the Employee's loss of employment with the City (quitting, discharge, or otherwise), or when this Trust Agreement is terminated, wound up, and dissolved. No benefit, right or interest is transferrable or assignable by the Employee to another Employee or person, corporate or otherwise except to physicians, hospitals and any other person or institution furnishing medical services within the terms of this Trust Agreement. 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 of 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 XI  
PROVISIONS RELATING TO INSURANCE COMPANY**

**Section 11.01** No insurance company which 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.

**Section 11.02** An integral part of the trust will be an aggregate stop loss and specific stop loss insurance. Stop loss coverage will be provided by an authorized carrier licensed to execute contracts in the State of Arizona.

**ARTICLE XII  
TERMINATION OF TRUST**

**Section 12.01 TERMINATION BY THE TRUSTEES** This Trust may be terminated after ninety (90) days advance written notice duly executed by all the Trustees.

**Section 12.02 TERMINATION BY THE CITY** This Trust may be terminated after ninety (90) days advance written notice duly executed by the City. If the Trust is in a deficit position, including the claims lag determined by the Trustees, the City and Employees will share in the liability of the Trust.

**Section 12.03 NOTIFICATION OF TERMINATION** Upon termination of the Trust in accordance herewith, the Trustees shall forthwith notify all Employees in writing and also all other necessary parties.

**Section 12.04 CONCLUDING THE TRUST** 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; and the Trustees shall continue as Trustees for the purpose of winding up the affairs of the Trust.

**Section 12.05 FUNDS REMAINING** 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 obligation of the Trust, shall be paid or used for the continuance of one or more of the benefits of the character hereinabove contemplated, until such monies have been exhausted.

**Section 12.06 FINAL ACCOUNTING** As such time as the Trust is terminated, the Trustees shall render a final accounting of the affairs of the Trust and the Trust Fund to the City and all Employees, and thereafter there shall be no claim or action against the Trustees and they shall have no further responsibility or duties and they shall be discharged.

**ARTICLE XIII  
MISCELLANEOUS**

**Section 13.01 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 of Fund 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 counsel to represent them or one or more of them in any such suit, action or proceeding, including counsel fees and all

other costs, shall be paid from the Fund as long as the Trustees have acted in good faith and until final judgment has been rendered that the Trustees have acted in bad faith, gross negligence or willful misconduct, and in the event of such judgment, the Trust shall be entitled to recover all sums paid to or for Trustees for counsel fees and other costs. It is the intent to indemnify the Trustees against all honest mistakes in judgment and all acts of 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 suites as heretofore described in defending lawsuits.

**Section 13.02 WORKER'S COMPENSATION** The insurance coverage contemplated by this Trust Agreement shall not apply in any case which is compensable under Worker's Compensation Laws.

**Section 13.03 SITUS** The City of San Luis, County of Yuma, 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 State.

**Section 13.04 CONSTRUCTION** Wherever any words are used in the 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 in the singular form in all situations where they would also apply.

**Section 13.05 SEVERABILITY** Should any provision or term in this Trust Agreement be deemed or held 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, and in such case the appropriate parties shall immediately adopt a new provision to take the place of the illegal or invalid provision.

**Section 13.06 INTERNAL REVENUE** 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 for 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 such Trust non-exempt from taxation, the necessary steps to remedy such non-deductibility or taxability shall be taken immediately.

Section 13.07 CAPTIONS It is understood and agreed that the captions 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 items, obligations or conditions hereof.

**ACCEPTANCE**

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

**BOARD OF TRUSTEES**

<u><i>Victoria H. Lynch</i></u>	<u>3/14/2012</u>
Trustee	Date
<u><i>Garcia Duhaime</i></u>	<u>3/14/12</u>
Trustee	Date
<u><i>Hubert</i></u>	<u>3/14/12</u>
Trustee	Date
<u><i>LM Salas</i></u>	<u>3/14/12</u>
Trustee	Date
<u><i>[Signature]</i></u>	<u>3/14/12</u>
Trustee	Date

**ACCEPTANCE**

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

**CITY OF SAN LUIS**

<u><i>Juan Escamilla</i></u>	<u>3/15/12</u>
Mayor	Date