

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

Article III, Section 3.04 shall be amended and read as follows:

Section 3.04 TRUSTEES' TERM

(A) Initial Terms. 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.

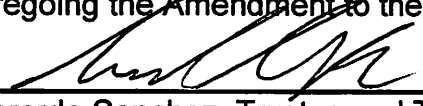
The Trustees shall determine among themselves which of the first five (5) Trustees shall serve the one year, two year and three years terms. This shall result in the Trustees rotating appointment every two (2) to three (3) years.

(B) Duration of Terms after Initial Term. After the initial term, each Trustee shall serve for five (5) years.

(C) Appointment. A Trustee may be appointed for no more than three (3) consecutive terms.

ACCEPTANCE

The undersigned Trustees hereby accept and agree to be bound by the foregoing the Amendment to the Agreement and Declaration of Trust:

 3/13/19

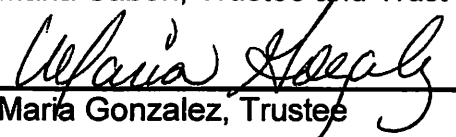
Gerardo Sanchez, Trustee and Trust Chair Date

 3/21/19

Emma Torres, Trustee and Trust Vice Chair Date

 3/13/19

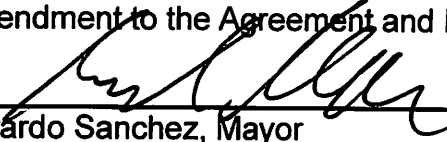
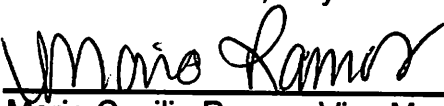
Maria Sabori, Trustee and Trust Secretary Date

 3/13/19

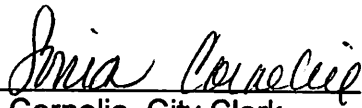
Maria Gonzalez, Trustee Date

ACCEPTANCE

The undersigned City hereby accept and agree to be bound by the foregoing Amendment to the Agreement and Declaration of Trust:

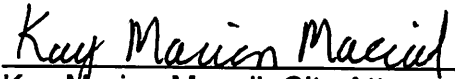
 _____ Gerardo Sanchez, Mayor	_____ Date
 _____ Maria Cecilia Ramos, Vice Mayor	<u>3/12/19</u> Date

ATTEST:



Sonia Cornelio, City Clerk

APPROVED AS TO FORM:



Kay Marion Macuil, City Attorney

**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 1.12 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

Benefit Trust.

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

corporation organized and existing under the laws of the State of Arizona.

Section 1.10 The term "City" does and shall mean the City of San Luis, a municipal

contributions made by the Employees of the City of San Luis to said Fund.

Section 1.09 The phrase "Employee Contribution" does and shall mean the

made by the City of San Luis to the Fund for the Employee Benefit Trust.

Section 1.08 The phrase "City Contributions" does and shall mean the contributions

Trust.

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

successors provided for in the Trust Agreement.

Section 1.06 The term "Trustees" as used herein shall mean the Trustees and their

the Fund.

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 comprise the corpus and additions to

and Declaration of Trust and any modification or amendments hereto.

Section 1.04 The phrase "Trust Agreement" shall mean and refer to this Agreement

contributors.

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

the City makes contributions.

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

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.

Section 12.01 LAWSUITS In the event any suit, action or proceeding is brought against the Trust, Trustees, one or more of the Trustees or the Fund, in connection with any matter arising out of the administration of the Trust or Fund 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

**ARTICLE XIII
MISCELLANEOUS**

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.

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 12.04 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 12.03 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 12.02 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 12.01 TERMINATION BY THE TRUSTEES This Trust may be terminated after ninety (90) days advance written notice duly executed by all the Trustees.

**ARTICLE XII
TERMINATION OF TRUST**

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>Victoria H. Hargale</u>	<u>3/14/2012</u>
Trustee	Date
<u>Jose A. Sanchez</u>	<u>3/14/12</u>
Trustee	Date
<u>Paul Cook</u>	<u>3/14/12</u>
Trustee	Date
<u>Umsaloppi</u>	<u>3/14/12</u>
Trustee	Date
<u>[Signature]</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>Juan Escamilla</u>	<u>3/15/12</u>
Mayor	Date