

**Trust for
the City of Phoenix, Arizona
Post Employment Health Plan**

Effective June 21, 2018

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TRUST AGREEMENT

The Trust for the City of Phoenix, Arizona Post Employment Health Plan

This Trust Agreement ("Agreement") is made this June 21, 2018 by and between the City of Phoenix, Arizona, a duly organized municipal corporation existing under the laws of the State of Arizona and the grantor of this Trust or its successor (the "Employer") and Nationwide Trust Company, FSB a division of Nationwide Bank (the "Trustee").

WITNESSETH:

WHEREAS, the Employer desires to establish the City of Phoenix, Arizona Post Employment Health Plan (the "Plan"), a retiree only welfare benefit plan that provides post employment health benefits for its employees, some of whom are covered by collective bargaining agreements; and

WHEREAS, those benefits are to be funded through a trust (the "Trust") which is intended to qualify as a voluntary employees' beneficiary association within the meaning of Section 501(c)(9) of the Internal Revenue Code of 1986, as amended (the "Code"); and

WHEREAS, Nationwide Retirement Solutions, Incorporated, a Delaware corporation, the "Corporation" is designated as the Administrator of the Plan, and Nationwide Trust Company, FSB a division of Nationwide Bank as Trustee; and

WHEREAS, the Trustee has agreed to hold and administer the money and property contributed to the Trust, and the earnings thereon, in accordance with the terms set forth in this Agreement; and

WHEREAS, the Employer intends that neither the contributions to the Trust, nor the earnings thereon, will be treated as unrelated business taxable income to the Trust under Sections 512(a)(3)(E) of the Code;

NOW, THEREFORE, the parties agree as follows:

ARTICLE I

DEFINITIONS

The following terms as used in this Agreement have the meanings indicated below unless the context requires otherwise:

- 1.1. "Administrator" means the person or entity designated by the Plan as possessing authority to manage the operation and administration of the Plan in accordance with the Plan document adopted by the Employer. The Administrator shall be the Corporation unless and until the Corporation resigns or is

removed by the Advisory Committee, as defined in Section 1.2, in accordance with the terms of the Plan.

- 1.2. "Advisory Committee" means the City of Phoenix, Arizona PEHP Board, which consists of representatives of the Employer and Employees, as determined by the City Code. An employee member shall not represent both the Employer and Employee groups.
- 1.3. "City Code" means the codification of the General Ordinances of the City of Phoenix, Arizona.
- 1.4. "Code" means the Internal Revenue Code of 1986, as amended and the regulations thereunder.
- 1.5. "Corporation" means Nationwide Retirement Solutions, Incorporated, its successors and assigns.
- 1.6. "Eligible Employee" means a current employee of the Employer who receives contributions under the Plan on his or her behalf.
- 1.7. "Employer" shall mean the City of Phoenix, Arizona.
- 1.8. "Former Employee" means an Eligible Employee who severed employment with the Employer and has not been rehired by such Employer.
- 1.9. "Fund" means all money and assets held by the Trust, and all earnings and profits thereon, less the payments made therefrom in accordance with the terms of the Plan.
- 1.10. "Participant" means a Former Employee, or such Former Employee's surviving spouse or dependents, as defined in Code Section 152, who has an account under the Plan or is eligible to receive reimbursements under the Plan,
- 1.11. "Plan Administration and Record-keeping Services Agreement" means an agreement between an Employer and the Administrator under which the Employer adopts the Plan on behalf of its Eligible Employees.
- 1.12. "Plan" means the City of Phoenix, Arizona Post Employment Health Plan.
- 1.13. "Trust" means the Trust for the City of Phoenix, Arizona Post Employment Health Plan, as set forth in this document.
- 1.14. "Valuation Date" means each day in which the New York Stock Exchange and the Corporation's home office are open for business.
- 1.15. "VEBA" means a voluntary employees' beneficiary association.
- 1.16. "Voting Process" means a majority vote by a quorum of the Advisory Committee as required by the City Code and reflected in the minutes of the Advisory Committee.

ARTICLE II

ESTABLISHMENT OF TRUST

- 2.1. Name. This Trust shall be known as The Trust for the City of Phoenix, Arizona Post Employment Health Plan.
- 2.2. Establishment of Trust. The Employer hereby establishes with the Trustee a Trust consisting of such monies and assets acceptable to the Trustee as shall from time to time hereafter be paid or delivered to the Trustee by or on behalf of the Employer.
- 2.3. Purpose of Trust.
 - a. The Fund shall be held by the Trustee in trust and dealt with in accordance with the provisions of this Agreement. This Trust is the funding medium of a VEBA within the meaning of Code Section 501(c)(9), and the Fund shall be used solely for, and not diverted from, the exclusive purposes of providing benefits qualifying under Code Section 501(c)(9) to Participants and defraying reasonable expenses of administering the Plan and the Fund. Although the Trust shall

fund the benefits under the Plan, the Trust may later fund other benefits which are permissible under Code Section 501(c)(9).

- b. Notwithstanding Section 2.3(a) hereof, the Trustee shall return contributions if the Plan permits the return of contributions under one of the following circumstances: (i) the contribution is made by a mistake of fact; (ii) the Internal Revenue Service (hereinafter "IRS") determines that the Trust is not tax exempt pursuant to Code Section 501(a); or (iii) the IRS determines that the Trust has unrelated business taxable income pursuant to Code Section 512(a)(3)(E).

Any contribution that is made by a mistake of fact shall be returned within one year from the date it was paid to the Trustee and not at any time thereafter. If the IRS determines that: (i) the Trust is not tax exempt pursuant to Code Section 501(a), or (ii) the Trust has unrelated business taxable income pursuant to Code Section 512(a)(3)(E), all contributions made to the Trust in the year for which such determination is made shall be returned within one year after the date that the IRS so determines, and not at any time thereafter. All contributions to the Trust are conditioned upon the contributions not being treated as unrelated business taxable income of the Trust pursuant to Code Section 512(a)(3)(E) and upon the tax exempt status of the Trust pursuant to Code Section 501(a).

- 2.4. Tax Qualification Amendments. Upon execution of this Agreement, the Trustee shall proceed to make application to the IRS for a favorable ruling as to the tax exempt status of the Trust pursuant to Code Section 501(a). Amendments may be made to this Agreement retroactively to the effective date of this Agreement, in accordance with the terms of this Agreement, if such amendments are deemed advisable in order to secure the favorable tax ruling.
- 2.5. Expenses of Trust. The Trustee shall pay expenses of the Trust directly from the Fund. It is expressly agreed that expenses of the Trust will include any and all amounts paid by the Trustee under any agreement with a bank or financial institution relating to the maintenance of a lockbox and the providing of lockbox services.
- 2.6. Compensation of Trustee. The Trustee shall receive compensation for its services as trustee in accordance with the schedule agreed upon from time to time between the Administrator and the Trustee.
- 2.7. Taxes.
 - a. All taxes that may be levied or assessed upon or in respect of the Fund shall be paid from the Fund unless they are paid by the Administrator. The Trustee shall promptly notify the Administrator of any proposed or final assessments of taxes. Within fifteen (15) days after receiving the above notice from the Trustee, the Administrator shall notify the Trustee in writing that (i) the Trustee shall contest the validity of such taxes in any manner deemed appropriate by the Administrator; or (ii) the Administrator itself will contest the validity of any such taxes, and the Trustee shall have no responsibility or liability respecting such contests; provided that whichever party to this Agreement contests any proposed levy or assessment of tax, the other party shall provide such information and cooperation as the party conducting the contest shall reasonably request. The Trustee may assume that any proposed or final assessment of taxes are lawfully levied or assessed if the Administrator fails to advise it in writing to the contrary within fifteen (15) days after the Administrator receives the above notice from the Trustee.
 - b. If upon the written request of the Administrator, the Trustee shall contest the validity of any such taxes, all costs and expenses thereof shall be deemed to be an expense of the Fund. However, notwithstanding the foregoing, the Trust shall indemnify the Trustee and hold the Trustee harmless from any liability incurred by it with respect to contesting any such taxes at the written request of the Administrator.

2.8. Consistency of Interpretation. The parties intend that this Agreement comply with Code Sections 501(c)(9) and 512(a)(3)(E) and this Agreement shall be interpreted consistently with these Code Sections.

ARTICLE III

DUTIES OF THE TRUSTEE

The Trustee shall have only those duties specifically assumed by it in this Agreement. The Trustee shall supervise the general operations of the Fund, and shall conduct the business and activities of the Trust in accordance with this Trust Agreement and applicable law. Except as otherwise provided herein, the Trustee shall hold, manage and protect the Fund and collect the income therefrom and contributions thereto. The Trustee shall be responsible only for the money and property actually received by it hereunder. The Trustee from time to time shall make payments or distributions from the Fund to such persons, in such manner, and in such amounts as the Administrator, or its agents designated in writing from time to time, shall direct. The Trustee shall have no responsibility to administer or interpret the Plan, to compute any amount to be paid to it by the Employer, to bring any action or proceeding to enforce payment of any contributions to the Fund, or to see that the Fund is adequate to meet liabilities under the Plan.

The parties to the Agreement acknowledge and agree that all such assets are held in the Trust on behalf of and at the risk of Plan Participants and Eligible Employees and any losses shall be borne solely by the Plan Participants and Eligible Employees thereunder. The Trustee shall have no discretion whatsoever with respect to the management, disposition or investment of the assets held in this Trust.

ARTICLE IV

ADMINISTRATION

The Administrator from time to time shall furnish the Trustee with the names and specimen signatures of its employees who are authorized to act for it as Administrator, and shall promptly notify the Trustee of any changes thereof. Until notified to the contrary, the Trustee shall be fully protected in relying upon the most recent list of names of authorized employees furnished to it by the Administrator.

ARTICLE V

FUNDING OPTIONS

With respect to the Fund maintained pursuant to this Agreement, the Employer will contribute amounts to the Trust, as set forth in the PEHP Employer Data Sheet or written funding agreement and pursuant to the terms and conditions of the Plan and Participation Agreements, in order to provide for the payment of benefits under the Plan. The Administrator and Employer may from time to time change the funding options, consistent with the objectives of the Plan and applicable law, by a mutually agreeable method (which method could include amending the Participation Agreement and/or updating the PEHP Employer Data Sheet or funding agreement). With each contribution, the Employer will provide the Administrator with a contribution report indicating the amount to be allocated on behalf of each employee for whom a contribution is made for post-employment health benefits under the Plan. The Administrator and Trustee may assume the contributions paid over to the Trustee by Employer are correct.

Employer contributions to the Trust shall be paid in accordance with procedures established by the Administrator and the Trustee. The Administrator or its designee shall record the contributions and reconcile the Employer's contribution reports. The Administrator shall instruct the Trustee to transfer the contributions received in good order to the Trust account upon completion of such recording and reconciliation. Contributions shall not accrue income or share in investment gains or losses prior to the transfer to the Trust's investment account. Good order is defined as the reconciliation of contribution data and funds

remitted by the Employer. An Employer shall have the obligation to notify its Employees if it is not making contributions as required.

ARTICLE VI INVESTMENTS

6.1. General Investment Authorization.

- a. All amounts contributed to the Fund shall be invested in the Post Employment Health Plan Group Variable Annuity Contract ("Contract") offered by Nationwide Life Insurance Company ("NLIC"). The initial amounts contributed shall be invested using the most conservative funding option of the Contract unless the Employer, for its Plan, directs the Administrator otherwise in writing. Unless otherwise directed by an Employer, the Eligible Employees or Participants shall have the opportunity to invest their account balances (and any future contributions to their accounts) in more aggressive funding options of the Contract.
- b. To the extent the current funding options are no longer used for the Trust's investments pursuant to Section 11.1 and Section 11.2 hereunder, the Fund shall be invested and reinvested, without distinction between principal and income, in such government and fixed income securities that carry a rating of A or better by any established securities rating service.
- c. The Administrator from time to time shall communicate to the Trustee the investment objectives of the Fund and the Plan's short and long run financial and liquidity needs.

6.2. Investments in Securities of the Administrator, Trustee, and Employer. No part of the Fund shall be invested directly in securities or bonds of the Administrator, the Trustee, or the Employer. Assets of the Fund may, however, be invested in savings accounts and certificates of deposit or other time deposits with any bank that bears reasonable rates of interest and in annuity products offered by licensed insurance companies.

ARTICLE VII POWERS OF TRUSTEE

- 7.1. General Administrative Responsibilities and Powers. The Trustee is authorized and empowered to take any action set forth below with respect to the Trust:
- a. to accept instructions from the Employer or Administrator regarding the allocation, distribution or other disposition of the Trust and all matters relating thereto;
 - b. to accept written instructions from the Employer or Administrator regarding the disposition of the assets of the Trust;
 - c. to cause any portion or all of the Trust to be issued, held, or registered in the individual name of the Trustee, in the name of its nominee, in an affiliated securities depository, or in such other form as may be required or permitted under applicable law or to be held in the name of another Trustee (however, the records of the Trustee shall indicate the true ownership of such property);
 - d. to employ such agents and counsel, including legal counsel, as the Trustee determines reasonably necessary in managing and protecting the assets of the Trust, in handling controversies under any section of this Agreement, or in defending itself successfully and to pay such agents and counsel compensation out of the Trust unless such compensation is otherwise paid;

- e. to commence, maintain, or defend any litigation necessary in connection with the administration of the Trust, except that the Trustee shall not be obligated to do so unless it has been indemnified to its satisfaction against all expenses and liabilities sustained or anticipated by reason thereof;
- f. to hold part or all the Trust uninvested as may be necessary or appropriate;
- g. to execute any documents necessary for the proper investment of the Trust assets into applicable funding options, including execution of the Contract, as necessary; and
- h. to do all other acts necessary or desirable for the proper administration of the Trust.

7.2. Investment Responsibility of Trustee. The Trustee shall have no investment management responsibility with respect to the Trust or any other assets held under the Trust, including, but not limited to, the selection of the investment options for the Fund. Payments made by the Employer to the Trustee or received by the Trustee from any other source shall be allocated in accordance with written instructions received from the Employer or Administrator.

The Advisory Committee or the Employer shall have all power over and responsibility for the selection of investment vehicles and the management, disposition, and investment of assets of the Trust, including, but not limited to, the selection of investment options. The Trustee shall comply with written instructions concerning those assets, subject to restrictions, if any, imposed by the investment options and the operation of any securities markets. No party shall issue, and the Trustee shall have no obligation to comply with, directions that violate the terms of the Plan or this Agreement. Except as provided in this Agreement, the Trustee shall have no duty or responsibility to review, initiate action, or make recommendations regarding the Trust and shall retain assets until directed in written instructions to dispose of them.

The Trustee shall not be liable for any loss which results from exercise of investment decisions made by the Advisory Committee, the Employer, or Eligible Employees or Participants. If a Participant or Eligible Employee who has investment authority under the terms of the Plan fails to provide directions, the Employer, or its designee, shall direct the investment of the Participant or Eligible Employee's account.

The Trustee shall have no duty or responsibility to review or make recommendations regarding investments made at the direction of the Advisory Committee, the Employer, Plan Participant or Eligible Employee and shall be required to act only upon receipt of proper written instructions or the direction of the Participant or Eligible Employee in the manner designated by the Trustee.

No one providing investment advice to the Plan, the Employer, Participant, Eligible Employee or other party is acting as an agent of the Trustee for such purpose. Any party who is an agent of the Trustee in any other capacity will be treated as the agent of the Plan, the Employer, Participant, Eligible Employee or other party to whom such investment advice is provided, when providing such advisory services.

7.3. Rights of Trustee in Investment Options of the Fund. The Trustee shall exercise all rights and privileges granted under the investment options of the Fund, as directed by the Advisory Committee, Administrator, or other party designated under the Plan. The Trustee shall have no discretion in the exercise of such rights and privileges and, consequently, shall have no responsibility for any action taken by it under the investment options for its failure to take such action.

Any decisions concerning the purchase, retention, or termination of a Plan's investment in the investment options shall be made only by the Advisory Committee or other party designated under the Plan. In no case will the Trustee have any responsibility for such decisions. The Trustee, upon receipt of written instructions from the Advisory Committee or Administrator, will process requests for disbursements and withdrawals. Any notice of termination of participation under an investment option shall require the written instructions to the Trustee.

The foregoing authority of the Advisory Committee or the Administrator to act and to direct the Trustee to act under the investment options shall neither preclude nor interfere with the exercise by the Trustee of its rights and responsibilities under this Agreement. Accordingly, the Trustee shall be entitled at all times, without limitation, to deduct from the assets of the Trust any amount which becomes payable pursuant to Section 2.5, Section 2.6, Section 2.7, Section 10.3 or Section 12.2(b) of this Agreement, as specified in such sections.

ARTICLE VIII

LIABILITY AND IMMUNITIES OF THE TRUSTEE

- 8.1. Contributions. The Trustee shall not be responsible for computing or collecting contributions due under the Plan.
- 8.2. Claims Limited to the Fund. The Trustee in its corporate capacity shall not be liable for claims of any persons in any matter regarding the Plan; such claims shall be limited to the Fund. The Trustee shall not be liable to make distributions or payments of any kind unless sufficient funds are available in the Fund. The Trustee shall be responsible only for such money and other assets as are received by it as Trustee under this Agreement.
- 8.3. Retention of Advisors. The Trustee may consult with legal counsel and other professional advisors with respect to the meaning and construction of this Agreement or its powers, obligations, and conduct hereunder. The Trustee shall not be liable for the consequences of, and shall be fully protected in reasonably acting pursuant to or reasonably relying upon, the advice of such legal counsel or advisors.
- 8.4. Qualification of Trust. The Trustee shall be fully protected in assuming that the Trust is tax exempt pursuant to Code Section 501(a), unless it is advised to the contrary in writing by a governmental agency.
- 8.5. General Immunities of Trustee. Except for its own negligence, willful misconduct, or breach of fiduciary duty, neither the Trustee nor any of its officers, directors, or employees, nor any agent or counsel for any of the foregoing, shall be liable to anyone at any time interested in the Plan, the Trust, or the Fund, for any act or omission in the administration of this Agreement.
- 8.6. Reliance on Instructions. The Trustee shall not be liable for any action reasonably taken or omitted in compliance with any written instruction, certification or other instrument purported to have been executed by or on behalf of the Administrator. The Trust will indemnify the Trustee and hold it harmless from any liability incurred by it with respect to any such action or omission. At any time the Trustee is in doubt concerning the course it should follow under this Agreement, it may request the Administrator to advise it, may withhold any action or omission until receiving advice in writing from the Administrator, and may rely upon any such advice or instructions from the Administrator in such matter. The Trustee may rely upon any written instrument purporting to be genuine and to have been presented and signed by the proper party or parties.
- 8.7. Written Communications. All notices, requests, certifications and other communications hereunder shall be in writing (which under Section 8.8 may include an electronic communication) and shall be deemed to have been duly given when delivered by hand or mailed, certified or registered mail, with first-class postage paid, return receipt requested (a) if to the Trustee, to Nationwide Trust Company, 10 West Nationwide Blvd. (05-02-101A), Columbus, Ohio 43215 or to such other person or address as the Trustee shall specify in writing to the Association; and (b) if to the Administrator, to Nationwide Retirement Solutions, Attention: PEHP Administration, 10 West Nationwide Blvd. (05-04- 101A), Columbus, OH 43215 or to such other address as the Administrator shall specify in writing to the Trustee.

- 8.8. Form of Written Communications. Written communications may take the form of a letter, electronic communication through an on-line communication system or a facsimile transmission, in a format acceptable to Nationwide and to the extent that the written communication format is permissible under the Code.
- 8.9. Proof of Matters. Whenever the Trustee shall deem it desirable for matter to be proved or established before taking, permitting, or omitting any act, the matter (unless other evidence in respect thereof is specifically prescribed in this Agreement) may be deemed to be conclusively established by a certification of the Administrator delivered to the Trustee, and the Trustee shall be fully protected in relying on such an instrument.
- 8.10. Disputes. If a dispute arises as to the payment of any funds or delivery of any assets by the Trustee, the Trustee may withhold such payment or delivery until the dispute is finally settled consistent with the terms of Section 14.8.

ARTICLE IX

ACCOUNTING OF THE TRUSTEE

- 9.1. Keeping of Accounts. The Trustee, or its designee, shall keep accurate and detailed records of all its transactions under this Agreement. These records shall be open to inspection during regular business hours of the Trustee by any person or persons designated by the Administrator in a written instrument filed with the Trustee.
- 9.2. Rendering of Accounts. Within ninety (90) days after (a) the close of each calendar year, (b) the Trustee's removal or resignation as trustee hereunder, or (c) the termination in whole or in part of the Plan or this Agreement, the Trustee, or its designee, shall file with the Administrator an account setting forth all its transactions (including all receipts and disbursements) under this Agreement during such year, or during the period from the close of the last preceding fiscal year of the Trust to the effective date of its removal or resignation or the termination of the Plan or this Agreement, and showing all assets held by it hereunder at the end of such accounting period. The fiscal year of the Trust shall be a calendar year. The Trustee shall certify in writing that the information in the accounting is accurate. The Administrator and the Trustee may agree in writing that similar accounts will be prepared by the Trustee and filed with the Employer at more frequent intervals.
- 9.3. Discharge of Trustee. Ninety (90) days after the filing of any account with the Administrator under Section 9.2 hereof, the Trustee shall be forever released and discharged from any liability or accountability to anyone with respect to the transactions shown or reflected on the account, except with respect to any acts or transactions as to which the Administrator files written objections with the Trustee within such 90-day period. The written approval of the Administrator of any account filed by the Trustee, or the Administrator's failure to file written objections within ninety (90) days, shall be a settlement of such account as against the Administrator and Employer and shall forever release and discharge the Trustee from any liability or accountability to such entities with respect to the transactions shown or reflected on such account.

If a statement of objections is filed by the Administrator, and if the Administrator is satisfied that its objections should be withdrawn or the account is adjusted to its satisfaction, the Administrator shall indicate its approval of the account in a written statement filed with the Trustee, and the Trustee shall be forever released and discharged from all liability and accountability to the Administrator and Employer in accordance with the immediately preceding sentence. If an objection is not settled by the Administrator and the Trustee, the Trustee may start a proceeding for judicial settlement of the account in any court of competent jurisdiction, and the only parties that need be joined in such a proceeding are the Trustee, the Administrator, the Employer and such other parties whose participation is required by law.

- 9.4. Right to Judicial Settlement. Nothing in this Agreement shall prevent the Trustee from having its accounts settled by a court of competent jurisdiction at any time. The only parties that need be joined in any such proceeding are the Trustee, the Administrator, the Employer, and such parties whose participation is required by law.

ARTICLE X

REMOVAL AND RESIGNATION OF THE TRUSTEE

- 10.1. Removal or Resignation. The Trustee may resign as trustee under this Agreement at any time by a written instrument delivered to the Advisory Committee and to the Administrator giving a ninety (90) day advance notice of such resignation, and may be removed at any time by the Advisory Committee or Administrator upon thirty (30) days advance written notice to the Trustee. Nationwide Trust Company, FSB a division of Nationwide Bank shall automatically resign as Trustee immediately upon termination of Nationwide Retirement Solutions as Administrator. If within ninety (90) days after notice of resignation or removal of the Trustee, the Administrator has not designated a successor Trustee, the Trustee may apply to any court of competent jurisdiction for the appointment of a successor Trustee.
- 10.2. Successor Trustee. If a vacancy in the office of trustee of the Trust occurs, the Administrator, subject to the veto right described below, shall appoint a successor Trustee which shall be a bank as defined in Section 3(a)(2) of the Securities Act of 1933. The Administrator shall provide thirty (30) days advance notice to the Advisory Committee that it has designated a successor Trustee. If, pursuant to the Voting Process, the Advisory Committee objects to the designated successor in writing to the Administrator within thirty (30) days after the date of the Administrator's notification mailing, then the designation shall not become effective. The Administrator shall then seek a different successor. If there is no sufficient objection, the Administrator shall deliver to the Trustee copies of (a) a written instrument executed by the Administrator appointing such successor, and (b) written instrument executed by the successor in which it accepts such appointment. Such instruments shall indicate their effective date. Any such successor trustee shall have all the powers and duties of the original trustee.
- 10.3. Delivery of Fund. If the Trustee resigns or is removed, it shall deliver any assets of the Fund in its possession to a successor trustee as soon as is reasonably practicable after the settlement of its account or at such earlier time as shall be agreed on by the Administrator, the Trustee, and the successor trustee. The Trustee may, however, reserve such sum of money as it deems advisable for payment of its fees and expenses in connection with its administration of the Trust or the settlement of its account or for payment of all taxes that may be assessed on or in respect of the Fund or the income thereof for the period before its removal or resignation. The Administrator may require the Trustee to bill the Administrator, rather than withdraw funds from the Trust to satisfy the Trustee's obligations. The Trustee shall pay over to the successor trustee any balance of such reserve remaining after the payment of such fees, expenses, and taxes. The delivery of assets of the Fund to the successor trustee shall not be deemed a waiver by the Trustee of any lien or claim it may have on the Fund for its fees or expenses. When the Fund has been transferred and delivered to the successor trustee and the accounts of the Trustee have been settled as provided in Article IX hereof, the Trustee shall be released and discharged as to the Participant, and the Employer from all further accountability or liability for the Fund as set forth in this Agreement and shall not be responsible in any way for the further disposition of the Fund or any part thereof.

ARTICLE XI

CHANGE IN INVESTMENT OPTIONS

- 11.1. Request for Different Investment Option, Change Proposed by Administrator. Subject to the approval of the Advisory Committee as described below, the Administrator may propose investment options different than those currently selected. The Administrator shall provide thirty (30) days advance notice to the Advisory Committee that it proposes a change in the investment option utilized by the Trust.

If the Advisory Committee, pursuant to the Voting Process, objects to the proposed change in investment option in writing to the Administrator within thirty (30) days after the date of the Administrator's notification mailing, then the change in investment option shall not become effective. If there is not sufficient objection, the Advisory Committee has thereby approved the change; the Administrator shall direct the assets to be invested in the new investment option.

- 11.2. Request for Different Investment Option, Change Proposed by Advisory Committee. If the Advisory Committee requests in writing to the Administrator a change in the investment option utilized by the Trust, the Administrator, or its designee, shall conduct an evaluation of the proposed investment option(s). If determined acceptable and pending agreement by the relevant mutual fund house to have the fund added to the Trust as an investment option, the Administrator shall notify the Employer of such request. If the Advisory Committee provides its written agreement to the Administrator within thirty (30) days that the change in investment options be made, the Administrator and Trustee shall cause such change to be made within a reasonable time period after receiving the majority's approval.

- 11.3. Mutual Funds Service Fee Payment Disclosure. Nationwide Financial Services, Inc.'s life insurance and trust company subsidiaries (collectively referred to as the "Nationwide companies") offer various product menu platforms to group retirement plan customers depending on a variety of quantitative and qualitative factors relating to the Mutual Funds through the Nationwide Group Retirement Series, which include the group annuity product offered in connection with PEHP.

Certain mutual funds or their affiliates make payments to the Nationwide companies (the "payments"). The amount of these payments is typically based on an agreed-upon percentage of assets times the amount of the assets that the Accounts invest in the mutual funds, but in some cases may involve a per participant fee or a combination of asset-based fee and per participant fee. These payments may be used for any corporate purpose, which includes reducing the price of the retirement products, paying expenses that the Nationwide companies incur in promoting, marketing, and administering the retirement products, and achieving a profit. As a result, changes in investment options, directed by the Advisory Committee may impact the pricing of this offering.

ARTICLE XII

AMENDMENT AND TERMINATION

- 12.1. Amendment. This Agreement may be amended in such manner as may be necessary or advisable in order to qualify or retain the Trust as a VEBA in accordance with Code Section 501(c)(9) and by a written instrument signed by the Trustee and the Administrator. Any such amendment may, by its terms, be retroactive. Subject to a veto right described below, this Agreement may be amended in any other manner at any time by a written instrument signed by the Trustee and the Administrator provided the Administrator gives thirty (30) days' notice to the Advisory Committee and the Employer. If the Advisory Committee objects to such amendment in writing to the Administrator within thirty (30) days after the date of the Administrator's notification mailing, then the amendment shall not become effective. If there is not sufficient objection, the amendment shall take effect as set forth in the amendment. The Administrator shall certify to the Trustee that the amendment does not permit any part of the Fund to be used for or diverted to purposes other than the exclusive benefit of Participants

and Eligible Employees or the payment of reasonable expenses of administering the Plan and Trust. The instrument of amendment shall specify its effective date and amendments may be made effective retroactively.

- 12.2. Termination. The Trust shall continue until all liabilities under the Plan to Participants have been satisfied or the Administrator certifies to the Trustee that Plan benefits will no longer be provided through this Trust (e.g. the Administrator reasonably determines that it is no longer administratively cost effective for the Trust to continue).
- a. Termination Before All Liabilities Are Satisfied. If the Administrator certifies to the Trustee that Plan benefits will no longer be provided through this Trust, the Trustee shall dispose of the Fund in accordance with the Administrator's written instructions, subject to the Trustee's right to receive a written or judicial settlement of its account. Such instruction shall be in writing and shall state that the disposition directed (i) does not, prior to the satisfaction of all liabilities under the Plan to Participants, result in any part of the Fund being used for or diverted to purposes other than the exclusive benefit of Participants and the payment of reasonable expenses of administering the Trust, and (ii) is in accordance with Code Section 501(c)(9) and other applicable laws.
 - b. Termination After All Liabilities Are Satisfied and Assets Remain in Trust. If there is an amount remaining in the Fund and the Administrator certifies to the Trustee that the Plan is terminated and all Plan liabilities have been satisfied, the Trustee shall then, upon the written instructions of the Administrator, distribute such amounts to one or more trusts or other entities established or maintained by the Employer in proportion to the accounts (as defined in the Plan) of Participants and Eligible Employees as of the date twelve (12) months prior to the date all liabilities had been satisfied. The Administrator shall certify to the Trustee that such trust or entity shall provide life, sick, accident, or other benefits that are properly payable from a trust that is established for the purposes of Code Section 501(c)(9). No amounts shall revert to the Employer in contravention of Code Section 501(c)(9). The Trustee may, however, subject to the approval of the Administrator, reserve such sum of money as it deems is necessary for payment of its fees and expenses in connection with its administration of the Trust or the settlement of its account or for payment of taxes that may be assessed on or in respect of the Fund or the income thereof.

ARTICLE XIII

ADVISORY COMMITTEE

- 13.1. Appointment of Advisory Committee. The Advisory Committee shall be comprised in accordance with §1503 of the City Code. Each Advisory Committee member shall serve from the effective date of appointment until the earlier of his or her death, incapacity, disqualification by law, resignation or removal. Removal and appointment of a successor Advisory Committee member shall be made in accordance with the City Code. An appointment to the Advisory Committee shall become effective by filing a written appointment signed by the appointing entity with the Administrator.

The purpose of the Advisory Committee is to serve as a representative of the participating or affected groups for purposes of communications concerning the Administrator and Trustee on the Trust's operations and administration. Where the Trust or Plan provides for notifications to the Advisory Committee representatives participating under the Trust, notification to the Advisory Committee members shall constitute such notification. In addition, any approval or veto rights which employee representatives or Employer may have concerning Plan or Trust changes or operations may be exercised by the Advisory Committee.

- 13.2. Authority of Advisory Committee to Remove the Administrator. A majority of the Advisory Committee, acting jointly through the Voting Process, may remove the Administrator without cause during the last month of each Plan Year. If, within sixty (60) days after notice of resignation or removal of the

Administrator, the Advisory Committee representatives have not designated a successor Administrator, the Administrator may apply to any court of competent jurisdiction for the appointment of a successor Administrator.

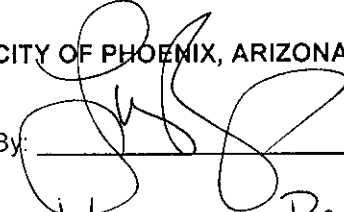
ARTICLE XIV MISCELLANEOUS

- 14.1. Merger of Trustee. Any corporation into which the Trustee is merged or with which it is consolidated, or any corporation resulting from a merger, reorganization, or consolidation to which the Trustee is a party, or any corporation to which all or substantially all of the Trust business or the Trustee is transferred shall become the successor trustee under this Agreement without the execution or filing of any further instrument or the performance of any further act.
- 14.2. Employer. The Employer shall be bound by all the terms and conditions of the Plan and of this Agreement, as then in effect and as it may thereafter be amended. The Administrator shall have the sole authority to enforce this Agreement on behalf of the Employer, and the Trustee need not deal with the Employer, except by dealing with the Administrator as the agent of the Employer for the purposes of giving or receiving notices, instructions, directions and other communications to or from the Trustee and approving the accounts of the Trustee. The Trustee shall invest and administer the Fund as a single fund for investment and accounting purposes without identification or allocation to any Participants or Eligible Employees, unless the Trustee and the Administrator agree in writing to segregate funds.
- 14.3. Alienation of Fund. No right or claim in or to the Fund or any assets thereof shall be assignable or subject to garnishment, attachment, execution, or levy of any kind; any attempt to transfer, assign, or pledge the same shall be void and shall not be recognized by the Trustee except to such extent as may be legally required.
- 14.4. Applicable Law. The Trust will be administered in the State of Ohio, and its validity, construction, and all rights hereunder shall be governed by the Code, the Home Owners' Loan Act of 1933 and, to the extent not pre-empted, by the laws of Arizona. Any suits pertaining to this Trust will be brought only in Federal or State courts in Maricopa County, State of Arizona. All contributions to the Trust shall be deemed to occur in Ohio.
- 14.5. Headings Not Part of the Agreement. Headings of Articles and Sections are inserted for convenience of reference. They are not part of this Agreement and shall not be considered in construing it.
- 14.6. Multiple Copies. This Agreement may be executed in any number of counterparts, each of which shall be considered an original even though no others are produced.
- 14.7. No Third Party Benefit. This Agreement is intended for the exclusive benefit of the parties to this Agreement, the Plan, the Participants and Eligible Employees in the Plan, and their respective successors and assigns, and nothing contained in this Agreement shall be construed as creating any rights or benefits in or to any other party.
- 14.8. Dispute Resolution and Arbitration. Any controversy or claim arising out of or relating to this Agreement, or the breach of the same, shall be settled through consultation and negotiation in good faith and a spirit of mutual cooperation. However, if those attempts fail, the parties agree that any misunderstandings or disputes arising from this Agreement shall be decided by arbitration in Maricopa County, Arizona which shall be conducted, upon request by either party, before three (3) arbitrators (unless both parties agree on one (1) arbitrator) designated by the American Arbitration

Association (the "AAA"), in accordance with the terms of the Commercial Arbitration Rules of the AAA and, to the maximum extent applicable, the United States Arbitration Act (Title 9 of the United States Code), or if such act is not applicable, any substantially equivalent state law. The parties further agree that the arbitrator(s) will decide which party must bear the expense of the arbitration proceedings.

IN WITNESS WHEREOF, the Employer and the Trustee have caused this Agreement to be executed by their duly authorized officers and their respective seals to be hereunto affixed and attested, effective as of the day and year first above written.

CITY OF PHOENIX, ARIZONA

By:  _____
Title: Human Resources Director

NATIONWIDE TRUST COMPANY, FSB a division of NATIONWIDE BANK

By: Paula Miller _____
Title: Chief Trust Officer