

## AMENDED AND RESTATED TRUST AGREEMENT

### MUNICIPAL EMPLOYEES FEDERATION AND THE CONFIDENTIAL EMPLOYEES ORGANIZATION LOCAL 101, AFSCME, AFL-CIO LEGAL TRUST FUND

WHEREAS, the Municipal Employee Federation (MEF) and the Confidential Employees Organization (CEO) Chapters of Local 101, American Federation of State, County and Municipal Employees, AFL-CIO, hereafter known as the Union, is the exclusive bargaining representative of certain municipal and confidential employees employed by the City of San José "City" or "employer"; and

WHEREAS the Union and the City have entered into Collective Bargaining Agreements that require contributions by the City for the purpose of providing legal services benefits to eligible employees covered under such agreements;

WHEREFORE, the Union hereby establishes the MEF/CEO, Local 101, AFSCME, AFL-CIO Legal Trust Fund, hereafter called "Legal Trust Fund" or "Fund", to receive such contributions and provide such benefits as set forth in a written Plan, and to be administered by the Board of Trustees, as set forth below.

#### **ARTICLE I – OPERATION OF THE TRUST**

##### **Section 1: Name of the Trust**

The Trust shall be known as the MEF/CEO, Local 101, AFSCME, AFL-CIO Legal Trust Fund.

##### **Section 2: Tax-Exempt Status**

The Trust is and shall be operated to ensure it remains a tax-exempt organization under its benefits remain qualified under section 501(c)(9) of the Internal Revenue Code. The Trust and Plan shall be administered in a manner consistent with such tax-exempt provisions, and to ensure benefits provided by the Trust are not subject to taxation as beneficiaries' income. Should anything contained in this document or the Plan be inconsistent with the tax code, this Agreement shall be deemed amended in such fashion as will implement the purposes of the Trust Fund while continuing to comply with the requirements of the tax code.

##### **Section 3: Purpose of the Trust**

All monies contributed to, held by, or owed to the Trust are property of the Trust to be used solely for the provision of legal services benefits to Eligible Beneficiaries, and to defray the cost of providing such benefits.

##### **Section 4: Exclusive Benefit of the Beneficiaries**

Monies owed to or held by the Trust may not be encumbered or attached by the City, the Union, or any individual Trustee or Officer of the Trust, and shall be used only for the exclusive benefit of the beneficiaries of the Trust. However no Beneficiary or any other person or entity, unless expressly provided for in this Trust Agreement, has any right, title or interest in or to funds held by the Trust.

**Section 5: Definition of Beneficiary**

The term "Beneficiary" means:

- a. An employee of the City of San José who works in a classification covered by a Collective Bargaining Agreement with the Union that requires the City to make contributions to the Legal Trust Fund on the basis of such employee's employment;
- b. Upon the Trustees' written consent and acceptance, any other classification or group of employees of the City, the Union or other employer may participate in the Fund provided the City makes contributions in amounts equal to those required under the Union's current Collective Bargaining Agreements;
- c. To the extent provided for under the Plan, and subject to the definitions and limitations as may be contained in the Plan, immediate family of such employees.

**Section 6: Definition of Eligible Beneficiary**

An Eligible Beneficiary is one who meets the requirements for eligibility described in the Group Legal Services Plan.

**Section 7: Obligations of Employer**

By executing or complying with the terms of a Collective Bargaining Agreement or any other written agreement providing for contributions to the Trust, and by making contributions to the Trust, the City and such other employers shall be deemed (without further action) to have:

- a. Reviewed, understood, adopted and agreed to all provisions of this Agreement and any amendments hereto, which documents shall be deemed to have been incorporated by reference into such Collective Bargaining Agreement, Subscriber Agreement, and/or Adoption Agreement;
- b. Agreed to comply with and be bound unconditionally to the Trust established pursuant to this Agreement and any amendments thereto, to the Plan(s) in which the Employer's Employees participate and to all of the decisions of the Board of Trustees.

**Section 8: No Assignment of Benefits**

Except as may otherwise be provided in the Plan, no benefit payable at any time under the Plan and no monies, securities or other property in the Fund may be subject to alienation, assignment, sale, transfer, pledge, attachment, garnishment, mortgage, lien, or any other encumbrance of any kind, nor shall any right to benefits be in any manner subject to the debts or liabilities of the Beneficiary.

**ARTICLE II: POWER AND DUTIES OF THE BOARD OF TRUSTEES**

**Section 1: The Fund is Administered and Governed by the Board of Trustees**

The Board of Trustees is composed of five (5) Trustees consisting of three (3) trustees appointed by MEF and two (2) appointed by CEO. Each unit shall appoint its trustees in accordance with its own procedures. The Trustees shall elect from the Board a Chairperson, a Secretary, and a Treasurer (together, the "Officers") to a two year term. Each term shall begin July 1 and end two years later on June 30 of even number years, unless sooner terminated pursuant to the terms of this Agreement. These terms will automatically renew unless there is a vacancy or nominations are made.

**Section 2: Vacancies and Removal of Trustees**

If a vacancy occurs on the Board of Trustees, the appropriate Union President will appoint a new member of the Board.

- a. The Board of Trustees may remove a Trustee who is deceased, has been declared of unsound mind by a final order of court, or has been convicted of a felony or engaged in conduct unfavorable to the duties of a trustee, or in the event a Trustee has missed 3 consecutive meetings without approval by a majority of the Board.
- b. Trustees appointed as a result of vacancy or removal shall serve the remainder of the prior Trustee's term.
- c. The Officers may be removed from office by a majority vote of the Board of Trustees, and replacements shall serve the remainder of the prior Officer's term.

**Section 3: Fund Administrator**

A Fund Administrator may be appointed by the Board, and in its sole discretion may be removed or replaced by the Board.

**Section 4: Employer Contributions**

The Legal Trust Fund shall consist of the City of San José's and any other employer's, contributions, and investment earnings and income thereon, and all other contributions and receipts of every kind received by the Trustees.

**ARTICLE III – GENERAL PROVISIONS APPLICABLE TO TRUSTEES**

**Section 1: Authority Reserved to Board of Trustees**

The Trust is governed by a Board of Trustees, such that no individual, including individual Trustees or Officers, have authority to bind the Trust. No individual or entity may act on behalf of the Trust unless a written delegation of agency, or contract providing for such authority, is executed and ratified by the Board. In such cases, the authority of such individuals or entities on behalf of the Trust is strictly limited to the scope set forth in such written agreement.

**Section 2: Trustee Liability**

The Trustees shall not be liable, individually or jointly, for any action taken provided such action is within their authority and made in good faith. The Trustees may delegate their administrative duties or powers to agents, employees or third parties, and in so doing the Trustees are not liable, individually or jointly, for such delegations made in good faith.

The Fund shall indemnify the Trustees for all reasonable expenses and liabilities arising out of the performance of their duties, excepting expenses or liabilities arising out of willful misconduct or gross negligence. In addition:

- a. The Trustees shall be free to act upon any paper or document reasonably believed to be genuine, and shall be indemnified and held harmless by the Trust Fund for any liability arising from such actions.

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- b. The Trustees shall not be personally answerable for any liabilities or debts of the Trust or Plan incurred by them as Trustees, but said debts and liabilities shall be paid out of the Trust Fund.
- c. The Trustees shall not be personally liable for any error of judgment or for any claims arising out of any act or omission of such Trustee or for any acts or omissions of any other Trustee, or any agent appointed by or acting for the Trustees.
- d. The Trustees shall not be personally responsible for any liability or debt of the Trust contracted by them, or for the nonfulfillment of contracts, subject to the provisions herein which prescribe the standard of care applicable to Trustee action.
- e. The Trustees may consult legal counsel concerning any question which may arise with reference to their duties or powers, or with reference to any other matter pertaining to this Agreement, or to the Trust Fund hereby established. The opinion of such legal counsel shall be considered full and complete authorization and protection with respect to any action taken or omitted by the Trustees in good faith in accordance with the opinion of such counsel.

### **Section 3: Trustees' Written Acknowledgement**

Upon appointment as a Trustee, all Trustees and Officers must sign an acknowledgement and consent to be bound by the terms and conditions of this Trust Agreement, in the form attached hereto as Exhibit A, which form shall be submitted to the Secretary.

### **Section 4: Trustees Leaving Office**

Any Trustee whose term expires, resigns from office or is removed from office must immediately return to the remaining Trustees or the Union Presidents any and all records, books, documents, or other property in his/her possession belonging to or pertaining to the Legal Trust Fund, and must also relinquish permission to sign on accounts (if applicable).

### **Section 5: Board Meetings**

Regular meetings of the Board of Trustees shall be held. Reasonable notice of at least three (3) working days will be provided to all Trustees. Regular meetings shall be held no more than once a month but at least every four months. Special meetings may be held upon request of the Chair, or by a written petition signed by three (3) Trustees and filed with the Chair.

- a. A majority of the Trustees in office shall constitute a quorum of the Board for the transaction of Fund Business;
- b. With the exceptions of matters related to appointment or removal of Trustees, decisions of the Trustees shall be made by a majority vote of a quorum of Trustees present at any meeting. No business shall be transacted without a quorum being present. At all regular or special meetings, the Secretary, a Trustee, or some person appointed by the Chair shall keep written or recorded Minutes, or both. The Minutes of such meeting, once approved, shall be evidence of all action recorded therein. Otherwise, each act of the Trustees must be evidenced by an instrument in writing signed by a majority of them. Notwithstanding the above, agreements to actions may be made by email vote of the majority of the Trustees.

**Section 6: Compensation of Officers**

The Fund Administrator, the Chair, the Secretary and the Treasurer, for the performance of his/her duties hereunder, shall be entitled to reasonable compensation as agreed upon by the Trustees and said compensation shall be paid out of the Legal Trust Fund and will be reviewed by the board every year.

**Section 7: Bonding**

It is recommended the Trustees provide fidelity bonds with such companies in such amounts as they may determine, for the Trustees or other person who shall be authorized to receive or withdraw money from or for this Legal Trust Fund. The cost of such bond shall be borne by the Legal Trust Fund.

**Section 8: Withdrawal of Funds**

All checks, draft or vouchers, or other withdrawals of moneys from this Legal Trust Fund shall be signed by two (2) officers of the Legal Trust Fund. Whenever the signature of the Trustees is required on any certificate or instrument, the signature of the Chair and one other Trustee shall be sufficient and shall evidence the action of the entire Board of Trustees.

**Section 9: Books and Record**

The Trustees shall maintain suitable and adequate records for the administration of the Legal Trust Fund, and monies expended from the Trust. Fund records and reports shall be available for review at the office of the Union or other suitable place by any Beneficiary during regular business hours.

**Section 10: Annual Audit**

The books and records of the Fund shall be audited annually by an independent certified public accountant or certified public accountant selected by the Trustees. Unless delegated to a third party service provider, the Treasurer will be responsible for ensuring the taxes and all other reports required by law are filed. A statement of the result of the audit and any report required by law shall be available for inspection by Beneficiaries at the principal office of this Legal Trust Fund. The Fund may also provide a copy, if requested, at the beneficiary's expense.

**ARTICLE IV – FUNCTIONS AND POWERS OF TRUSTEES**

**Section 1: Authority of the Board of Trustees**

The Trustees shall have the power to carry out the purpose of this Trust and administer the legal services benefits. The Trustees have sole and exclusive discretion to interpret and apply this trust agreement and the legal services plan of benefits provided hereunder, and to resolve any ambiguities or questions of fact that may arise. The Trustees shall have all general and incidental powers and duties appropriate to the performance of their duties, which shall include, but are not limited to the following:

- a. To claim, demand, collect, receive, sue for and hold all payments of money due the Fund whether by the City, service providers or beneficiaries, and to resolve or settle any such claims.
- b. To deposit all payments collected or received by the Fund in account, in an insured financial institution as the Trustees shall choose.

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- c. To Amend this Trust Agreement or the Plan of Benefits provided by the Fund.
- d. To determine the type, amount and method of providing benefits, and to decide all questions of eligibility.
- e. To hire employees, or engage professionals and other competent third parties to advise the Trustees, perform administrative functions or other tasks necessary to the operation of the Plan and Fund.
- f. To establish or accumulate reserve funds as may be adequate to provide for the maintenance and operation of the Fund.
- g. To determine the providers of legal services to beneficiaries and engage such providers.
- h. To compromise, settle or release claims or demands in favor of or against the Fund on such terms and conditions as the Trustees may deem desirable.
- i. To adopt policies, rules and regulations, that are consistent with the terms of this Trust Agreement.
- j. To pay or cause to be paid from the Trust any expenses necessarily incurred in connection with the administration of the Trust and Plans.
- k. To terminate and wind-up the affairs of the Fund.

### **Section 2: Investment of Assets**

The Trustees shall have power to invest and reinvest funds not required for current expenditures. In doing so the Trustees shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the Trust. In satisfying this standard, the Trustees shall exercise reasonable care, skill, and caution, and may consider the following factors in determining appropriate investments: (1) General economic conditions; (2) The possible effect of inflation or deflation; (3) The expected tax consequences of investment decisions or strategies; (4) The role that each investment or course of action plays within the overall trust portfolio; (5) The expected total return from income and the appreciation of capital; (6) Needs for liquidity, regularity of income, and preservation or appreciation of capital. The Trustees may invest in any kind of property or type of investment or engage in any course of action or investment strategy consistent with these standards.

### **Section 3: Standard of Care**

In exercising their powers and duties, the Board of Trustees shall discharge its responsibilities with reasonable care, skill, and caution under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. The Trustees shall be deemed to have properly exercised their authority as described in this Article unless they have been deemed by a court of competent jurisdiction (individually or collectively) to have abused their discretion by acting arbitrarily or capriciously.

**Section 4: Conflicts of Interest, Recusal**

A "conflict of interest" is any interest, direct or indirect, with any person or entity with which the Trust does business and which, as a result, any Trustee, or agent or officer of the Trust, of his or her family may stand to personally benefit as a result of such business. A conflict of interest is not implicated with respect to arrangements between the Trust and the Union.

Prior to engaging in any transaction or business on behalf of the Trust, any Trustee who believes there may be a conflict of interest with respect to her or another Trustee shall disclose such belief to the Board. The Board shall then consider whether a conflict of interest exists with respect to the proposed transaction, and may obtain the advice of counsel or, if the Board does not have sufficient facts to reach a conclusion, investigate the issue. The potentially-conflicted Trustee shall recuse herself from this process.

Should the Board determine a conflict of interest exists, the Board, excepting any conflicted Trustee shall determine whether to (1) abandon the proposed business or transaction or (2) determine that, notwithstanding the conflict, the terms of the proposed transaction or business are favorable and that proceeding is in the best interest of the Trust.

When a potential conflict is either apparent or brought to the attention of the Board, the Trustees shall document their compliance with this policy.

**ARTICLE V – GENERAL PROVISIONS**

**Section 1: Rights and Duties**

The right and duties of all the parties to this Agreement shall be governed by the provisions of this Agreement, the acts of the Trustees, any applicable Collective Bargaining Agreement, and the provisions of any applicable contracts entered into on behalf of the Legal Trust Fund.

**Section 2: Governing Law**

This Agreement and the Trust Fund shall be determined in accordance with the laws of the State of California, and with any pertinent applicable laws of the United States of America.

**Section 3: Severability**

If any one or more of the provisions of this Agreement (or any amendment hereto) is held contrary to any provision of law, or is determined to be invalid, then such provisions shall: (a) Be enforced only to the extent not contrary to law or invalid; (b) Be deemed severable from the remaining provisions of this Agreement; and (c) Shall not affect the validity or enforceability of the other provisions of this Agreement or the rights of the parties hereto.

**Section 4: Trustee Deadlock**

Any dispute among the Trustees that can not be resolved by majority vote, *i.e.* a deadlock among the Trustees, shall be reduced to writing and the issue submitted to a mutually agreed upon arbitrator who shall have authority to issue a final and binding resolution of the issue. Prior to submission to an Arbitrator the parties shall engage a mediator to attempt to resolve the dispute. In the event the conflicting Trustees can not agree on an arbitrator, they shall request a panel of seven members of the National Academy of Arbitrators from the Federal Mediation and Conciliation Service, and alternatively

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strike names until one arbitrator remains, who shall be engaged to arbitrate the issue. Costs of dispute resolution shall be paid from the Legal Trust Fund.

### **Section 5: Appeal of Eligibility/Benefits Determination**

Any determination made by the Trustees or their duly appointed delegee regarding a beneficiary's eligibility or entitlement to benefits shall be appealable to the Board of Trustees for reconsideration. The Beneficiary may provide any additional information she or he deems relevant, and may be represented by a personal representative. The Trustees shall deliberate and provide a written determination of the appeal. Any disputes regarding the Trustees' decision on appeal must be resolved through Arbitration, which arbitrator shall review the Trustees' decision and determine whether the Trustees' decision was arbitrary or capricious or otherwise the result of an abuse of discretion. Costs of conducting the arbitration, excluding the fees of a personal representative, shall be paid by the Fund.

## **ARTICLE VI – EFFECTIVE DATE – AMENDMENT AND TERMINATION**

### **Section 1: Effective Date**

This Amended and Restated Trust Agreement shall become effective immediately upon its execution and shall supersede all prior agreements.

### **Section 2: Amendment of Trust Agreement**

This Trust Agreement may be amended at any time by written agreement by a majority of the Trustees.

### **Section 3: Termination of Trust**

In the event that the obligation of the City to make contributions shall terminate, or upon any liquidation of the Legal Trust Fund, the Trustees shall apply the funds in their possession to the purposes of the Amended Trust Agreement stated herein, until the Legal Trust Fund is fully depleted. Upon the disbursement of all funds in the possession of the Trustees, the Legal Trust Fund shall terminate and the Trustees shall be discharged from their duties relative to this Trust Agreement.

### **Section 4: Distribution and Liquidation of Funds**

In lieu of the distribution and liquidation upon termination set forth above, the Trustees may, after all obligations of the Legal Trust Fund have been adequately provided for, turn over any remaining moneys and property of the Legal Trust Fund to any future employees' legal trust fund that may be created by and between the Union and the City on behalf of the employees whom the Union represents, or any similar organization which provides similar benefits for a substantial number of the Beneficiaries.

## **ARTICLE VII – CONTRIBUTIONS TO FUND AND NON-REVERSION OF TRUST FUNDS**

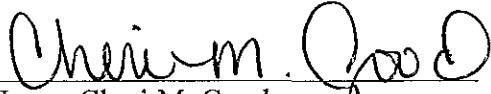
No part of the Fund may revert to the City or be recovered by the City or be used for or diverted to the purposes other than the exclusive benefit of the Beneficiaries, or for the payment of the expenses of the Fund and Plan. No monies held by the Fund may escheat to the State or any of its subdivisions.

Payments from the City are due by the 31<sup>st</sup> of the following month (example: November payment is due by December 31<sup>st</sup>); interest can be charged on late contributions; audits of employer payroll should be done yearly; liquidated damages and attorney fees can be sought in the event contributions are not paid within the specified timeline.

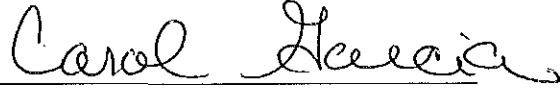


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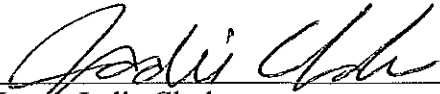
IN WITNESS WHEREOF, the parties have executed this Trust Agreement the day and year written below.



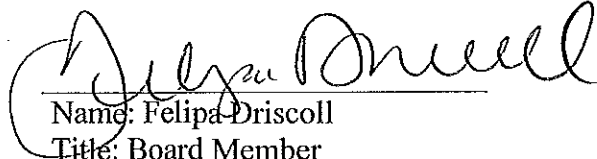
Name: Cheri M. Good  
Title: Secretary / Acting Chair  
Date: June 3, 2010



Name: Carol Garcia  
Title: Treasurer  
Date: June 3, 2010



Name: Jodie Clark  
Title: Board Member  
Date: June 3, 2010



Name: Felipa Driscoll  
Title: Board Member  
Date: June 3, 2010