RESOLUTION NO. 10139

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, ADOPTING RESTATEMENT OF TRUSTS FOR THE PROPERTY AND PUBLIC LIABILITY AND EMPLOYEE BENEFITS SELF-INSURANCE TRUST FUNDS.

WHEREAS, Arizona law allows the City to establish a self-insurance program for the management and administration of claims of property and public liability or losses and health benefits; and

WHEREAS, Arizona law requires that the funding for such self-insurance programs be deposited in a trust; and

WHEREAS, Section 610 of the City Charter authorizes the City to provide self-insurance programs; and

WHEREAS, the City has established trust funds for each of its self-insurance programs; and

WHEREAS, the City intends the trust funds to satisfy the requirements of Arizona Revised Statutes § 11-981;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF MESA, ARIZONA, as follows:

Section 1. The City hereby adopts the Restatement of Trusts for the Property and Public Liability and Employee Benefits Self-Insurance Trust Funds, attached hereto as Exhibit A.

Section 2. The City Manager, Christopher J. Brady, or his designee, is hereby authorized and directed on behalf of the City of Mesa to execute the Restatement of Trusts for the Property and Public Liability and Employee Benefits Self-Insurance Trust Funds.

PASSED, ADOPTED AND APPROVED by the City Council of the City of Mesa, Maricopa County, Arizona, this 1st day of October, 2012.

APPROVED:

Mayor

ATTEST:

City Clerk

CITY OF MESA CORPORATE SEAL MARICOPA COUNTY, AZ.

EXHIBIT A

RESTATEMENT OF TRUSTS
FOR
CITY OF MESA, ARIZONA
PROPERTY AND PUBLIC LIABILITY AND EMPLOYEE BENEFITS SELF-INSURANCE TRUST FUNDS

This Restatement of Trust for the City of Mesa, Arizona, Self-Insurance Trust Funds, including the Property and Public Liability Trust Fund ("PPL Trust") and the Employee Benefits Trust Fund ("Employee Benefits Trust") (collectively referred to as "the Trusts") dated and effective this 1st day of October, 2012, is adopted by the City of Mesa, a political subdivision of the State of Arizona (the "City").

RECITALS

WHEREAS, Arizona law allows the City to establish self-insurance programs for the management and administration of claims of property and public liability or losses and health benefits;

WHEREAS, Arizona law requires that the funding for such self-insurance programs be deposited in a trust;

WHEREAS, Section 610 of the City Charter authorizes the City to provide self-insurance programs;

WHEREAS, the City has established such self-insurance programs;

WHEREAS, the City has established trust funds for each of its self-insurance programs;

WHEREAS, the City intends the trust funds to satisfy the requirements of Arizona Revised Statutes § 11-981;

NOW, THEREFORE, in consideration of the foregoing, the City declares the following Trusts:

ARTICLE I. RESTATEMENT OF TRUSTS; GENERAL PROVISIONS

1.01. The PPL Trust was created July 19, 1977, pursuant to Resolution Number 4196, from which property and public liability and loss claims are expended.

1.02. The Employee Benefits Trust Fund was created September 20, 1976, pursuant to Resolution Number 4100, from which medical and dental benefits are paid.

1.03. The PPL Trust is funded by allocation of funds from the General Fund, Enterprise Fund, Special Revenue Fund and investment earnings. The Employee Benefits Trust is funded by City contributions, employee and retiree contributions, and contributions from the Arizona State Retirement System, the Public Safety Personnel Retirement System and the federal government.

1.04. The funds in the Trusts are and shall be kept separate from all other City funds and accounts. Each fund has and shall have its own checking account. The City does not and shall not make any expenditure from the funds for any purpose other than paying the applicable self-insurance benefits and each fund's respective administrative, management and operating costs.

1.05. The funds in the Trusts are and shall be invested consistent with the City's financial policy. The funds in the Trusts are and may be commingled with other City funds only for investment purposes; however, each Trust retains and shall retain its own investment earnings.

1.06 The Trusts shall comply with all federal, state and local laws, rules, regulations, standards and executive orders, without limitation to those designated within this Restatement of Trust. The laws and regulations of the State of Arizona shall govern the rights of the parties, the performance of this Trust and the resolution of any disputes thereunder. Any action relating to this Restatement of Trust shall be brought in a Maricopa County, Arizona court, or the United States District Court in Arizona, as applicable. Any changes in the governing laws, rules and regulations applicable to this Trust during the term of this Restatement of Trust shall apply to this Restatement of Trust but such changes shall not require an amendment to this Restatement of Trust.

1.07. Nothing in this Restatement of Trust is intended to confer the status of third-party beneficiary on any person or entity.

1.08. The foregoing recitals are incorporated by reference into this Restatement of Trust as though fully set forth herein.

1.09. This Restatement of Trust shall become effective only upon the approval of the City Council. This Restatement of Trust and the Trusts shall continue until terminated by a resolution of the City Council.

1.10. Conformity with Law. If any term or provision of this Restatement of Trust conflicts with or violates any state or federal law, as they now exist or are hereafter amended, this Restatement of Trust shall be automatically deemed amended to conform to such laws and statutes.

1.11. This Restatement of Trust shall constitute the entire Restatement of Trust and supersede all other understandings, oral or written. This Restatement of Trust may be

amended or modified only by the City Council, with notice to and consultation with the Trustees.

1.12. This Restatement of Trust may be executed in several counterparts, all of which together shall be considered an original.

ARTICLE II. SELF-INSURANCE PROGRAM BOARD OF TRUSTEES

2.01. The City created a Self-Insurance Program Board of Trustees on August 16, 1979, pursuant to Resolution Number 1260. Except as set forth in the paragraphs below, members are appointed and serve terms in accordance with the requirements set forth in the Mesa City Code.

2.02. Trustees shall not be entitled to receive compensation for their services, except that Trustees shall be entitled to receive reimbursement for any reasonable out-of-pocket costs and expenditures made by the Trustees in the performance of their duties.

2.03. The Trustees shall be bonded or insured. This requirement may be satisfied by the blanket performance bond or other coverage provided by the City.

2.04. The Trustees shall comply with the provisions of Title 38, Chapter 3, Article 8, Arizona Revised Statutes (A.R.S. §§ 38-501 through 511) and any other applicable law(s) regarding conflicts of interest.

2.05. In appointing the Trustees, the Mayor and the City Council shall comply with the Immigration Reform and Control Act of 1986 (IRCA) and the City Clerk shall keep appropriate records to demonstrate that all Trustees have a legal right to live and work in the United States. The City shall further comply with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214(A).

2.06. In appointing the Trustees, the Mayor and City Council shall comply with Title VII of the Civil Rights Act of 1964, as amended, section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.) and all other applicable federal, state and local laws and executive orders regarding employment.

2.07. The Trustees shall not be in violation of section 6(j) of the Federal Export Administration Act and shall not be prohibited by the State of Arizona or its political subdivisions from selling goods or services to the State or any political subdivision of this State.

2.08. The Trustees shall comply with the City of Mesa Ethics Handbook for Elected Officials and Advisory Board Members.

ARTICLE III. POWERS AND DUTIES OF THE TRUSTEES

3.01. The Board of Trustees shall meet periodically as determined by the Self-Insurance Board of Trustees Chair. Such meetings shall comply with the Arizona Open Meetings Act (A.R.S. § 38-431 *et seq.*).

3.02. The Trustees shall make recommendations to the Council regarding the financial viability of the trusts and shall perform such other duties as may be delegated by the Council from time to time.

ARTICLE IV. OPERATION OF PUBLIC AND PROPERTY LIABILITY SELF-INSURANCE PROGRAM AND TRUST.

4.01. The daily operations of the PPL self-insurance program shall be performed by the City Attorney, or her designee. In operating the PPL self-insurance program, the City Attorney shall have all powers and duties granted her in the City Charter.

4.02. The City Attorney or her designee shall have the authority to recommend procurement of any and all liability insurance. Final procurement of insurance will be pursuant to Section 609 of the City Charter.

ARTICLE V. OPERATION OF EMPLOYEE BENEFITS SELF-INSURANCE PROGRAM AND TRUST FUND.

5.01. The daily operations of the Employee Benefits Self-Insurance Program shall be performed by the Employee Benefits Plan Administrator in accordance with the Plan Document.

5.02. The duties of the Employee Benefits Plan Administrator include but are not limited to the following:

5.02.01. To determine the eligibility for self-insurance benefits in accordance with the Plan Document.

5.02.02. To process benefits claims and pay or deny benefits claims. The Employee Benefits Plan Administrator may delegate this duty to appropriate Employee Benefits staff or a third party processor.

5.02.03. To determine coverage and authorization of health care program services and Health Insurance Portability and Accountability Act (HIPAA) compliance.

5.02.04. To review benefits determinations and decide subsequent appeals.

IN WITNESS WHEREOF, the parties have executed this Restatement of Trust as of the date of October 1st, 2012

CITY OF MESA, MARICOPA COUNTY, ARIZONA

By Christopher J. Brady
City Manager

ATTEST:

Linda Crocker
City Clerk

CITY OF MESA CORPORATE SEAL MARICOPA COUNTY, AZ.