

RESOLUTION NO. 10140

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESA,
MARICOPA COUNTY, ARIZONA, ADOPTING RESTATEMENT OF
TRUST FOR THE WORKERS' COMPENSATION TRUST FUND.**

WHEREAS, Arizona law allows the City to establish a self-insurance program for the management and administration of industrial injury benefits (i.e. workers' compensation); 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 such self-insurance program; and

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

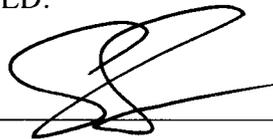
NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF MESA, ARIZONA, as follows:

Section 1. The City hereby adopts the Restatement of Trust for the Workers' Compensation Trust Fund, 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 Workers' Compensation Trust Fund.

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



EXHIBIT A

**RESTATEMENT OF TRUST
FOR
CITY OF MESA, ARIZONA
WORKERS' COMPENSATION TRUST FUND**

This Restatement of Trust for the City of Mesa, Arizona, Workers' Compensation Trust Fund ("Workers' Compensation Trust"), dated and effective this 15th 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 a self-insurance program for the management and administration of industrial injury benefits (i.e. workers' compensation);

WHEREAS, Arizona law requires that the funding for such self-insurance program 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 program;

WHEREAS, the City has established a trust fund for this self-insurance program;

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

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

ARTICLE I. RESTATEMENT OF TRUST; GENERAL PROVISIONS

1.01. The Workers' Compensation Trust was created June 21, 1982, pursuant to Resolution Number 5076, from which industrial injury claims are expended.

1.02. The Workers' Compensation Trust is funded by allocation of funds from the General Fund, Enterprise Fund, Special Revenue Fund and investment earnings.

1.03. The funds in the Trust are and shall be kept separate from all other City funds

and accounts. The fund has and shall have its own checking account. The City does not and shall not make any expenditure from the fund for any purpose other than paying the applicable self-insurance benefits and the administrative, management and operating costs, including loss control costs in the interest of the program.

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

1.05 The Trust 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.

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

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

1.08. 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.

1.09. 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.

1.10. This Restatement of Trust including attached exhibits shall constitute the entire Restatement of Trust and supersede all other understanding, 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.

1.11. 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 shall be 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 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 WORKERS' COMPENSATION SELF-INSURANCE PROGRAM AND TRUST.

4.01. The daily operations of the Workers' Compensation self-insurance program shall be performed by the Safety Services/Workers' Compensation Administrator in compliance with Title 23, Chapter 6, Arizona Revised Statutes, and under the direction of the Human Resources Director.

4.02. The Safety Services/Workers' Compensation Administrator, with the authority of the City Manager or his 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.

4.03. The Safety Services/Workers' Compensation Administrator shall have the authority to utilize the Trust to pay workers' compensation claims and expenses/costs relating to such claims as set forth in City Charter.

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 _____

City Manager

ATTEST:

City Clerk

