

CITY OF YUMA WORKERS' COMPENSATION TRUST

WHEREAS, the City of Yuma, Arizona ("City") currently employs various persons in various positions to provide services to or on behalf of the City; and

WHEREAS, Arizona law permits the City to establish a self-insurance program for the management and administration of workers' compensation benefits; and

WHEREAS, the City has established or will establish such a self-insurance program; and

WHEREAS, the City intends the trust established by this document (this "Trust Document") to satisfy the requirements of Title 11, Chapter 7, Article 5 and Title 23, Chapter 6 of the Arizona Revised Statutes (A.R.S.); and

WHEREAS, the City intends the trust established by this Trust Document to be exempt from taxation pursuant to Section 115 of the Internal Revenue Code; and

WHEREAS, the City intends that the trustees hold and administer the Funds (defined below), in trust, pursuant to the terms of this Trust Document,

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

ARTICLE I DEFINITIONS

"Account" means the bank or investment account(s) established by the Board of Trustees to hold some or all of the Funds.

"Beneficiary" means any dependent or person authorized under Arizona law to receive benefits for an injured Employee or volunteer of Employer covered under its Plan and entitled to receive benefits.

"City" means the City of Yuma, Arizona, the Employer of all Employees and the receiving entity of all volunteers who are authorized or permitted by law to receive workers' compensation benefits and therefore will participate in the Plan.

"Commission" means the Industrial Commission of Arizona (ICA) or its successor.

"Contributions" means the payments to the Trust required of the City for the purpose of providing workers' compensation benefits.

"Eligible Participant" means any Employee of the Employer or any volunteer of the Employer permitted by laws of the State of Arizona, the City Charter, or the City Code who has incurred a valid workers' compensation claim under the law of the State of Arizona and for whom the Employer is obligated to make contributions to the Trust under any Plan established pursuant to this Trust Document.

"Employee" means an individual that Employer classifies and treats as an Employee (not as an independent contractor) for payroll purposes, regardless of whether the individual is subsequently reclassified as an Employee of Employer in a court order, in a settlement of an administrative or judicial

proceeding, or in a determination by the Internal Revenue Service, the Department of the Treasury, or the Department of Labor.

"Employer" means the City of Yuma, a municipal corporation of the State of Arizona.

"Funds" means the assets of the Trust, in whatever form or location.

"Fund Liability" means the amount needed to pay Plan claims that are incurred but not reported and also Plan claims that are incurred but not paid. Such amount will be as attested to by an actuary who has been engaged to provide services to the Trust and as approved by the Trustees.

"Governmental Trust" means a trust that is exempt from taxation pursuant to Section 115 of the Internal Revenue Code.

"Investment Manager" means the individuals or entities engaged by the City to select, manage, and invest the City's funds. The Investment Manager's investment decisions will be subject to the investment guidelines established by the City's Finance Department.

"Plan" means the arrangement under which City provides self-insurance for obligations arising pursuant to the provisions of Chapters 5 and 6 of Title 23 of the Arizona Revised Statutes and/or similar obligations arising under the City Charter, Code, or Administrative Rules.

"Plan Administrator" means the person appointed by the City Administrator who has the authority and responsibility to manage and direct the operation, administration, and/or payment of claims for the Plan and to work in conjunction with the Third-Party Administrator.

"Plan Year" means the fiscal year of the Plan.

"Third-Party Administrator" means the firm or outside consultant selected by the City, subject to the approval of the Trustees, which will not be unreasonably withheld, to work with the City and its Plan on the processing of claims under the Plan in cooperation with the Plan Administrator, Trust and City.

"Trust" means the legal entity established pursuant to this Trust Document.

"Trustees" means the Trustees described in this Trust Document, or their successors, as appointed by the City Council.

"Workers' Compensation Benefits" means the benefits provided to Eligible Participants through the terms of any Plan established pursuant to this Trust Document.

ARTICLE II ESTABLISHMENT OF TRUST

Section 2.01. Establishment.

The City hereby establishes this Trust, consisting of such funds as City may deposit from time to time in the Account, plus all other money or property as will lawfully become a part of the Trust, plus all the earnings, income, gains, appreciation and all other increments of any nature from the foregoing, and less payments made pursuant to this Trust Document.

Section 2.02. Name.

The Trust will be known as the City of Yuma Workers' Compensation Trust.

Section 2.03. Purpose.

This Trust is intended to provide a distinct legal entity into which monies may be contributed by the City of Yuma, as the participating Employer, for the exclusive purpose of creating and administering a Plan for the benefit of the Eligible Participants of the Employer, to the extent permitted by law, City Charter, or City Code. The purpose of this Trust is to fund the obligations of the City arising under the Plan as well as provide for the reasonable expenses of administering the Plan and this Trust. The Plan may consist of self-insurance and excess insurance for workers' compensation as determined by the City to be necessary and appropriate.

The Funds shall be held, invested, reinvested, and administered by the Trustees, in accordance with the terms of the Plan and the terms of this Trust Document, solely in the interest of Eligible Participants and Beneficiaries and for the purpose of providing benefits to the Eligible Participants and Beneficiaries, and defraying the reasonable expenses of administering the Plan and this Trust.

ARTICLE III RELATIONSHIP BETWEEN TRUST AND CITY

Section 3.01. Statement of Policy.

In addition to applicable laws and this Trust Document, the following policy sets forth the responsibility of the Trustees governing the Trust to the City:

The Trustees of the City of Yuma Workers' Compensation Trust are responsible to the City to provide workers' compensation insurance as required by the State of Arizona. The Trustees are bound to do this in a manner that upholds their fiduciary responsibility. As such, the Trustees will have approval on all workers' compensation insurance benefits and Trust related financial issues within the confines of the appropriated budget, applicable laws, and governing rules. The Trustees will consider and address issues or recommendations brought forth by the Mayor, City Council, and Eligible Participants covered under the Employer's Plan. The Mayor and City Council retain ultimate authority over the Trust through their ability to limit budget appropriations and/or replace the Trustees, as allowed by this Trust Document and Yuma City Charter Article IX, Section 3(b).

Section 3.02. Responsibility to City Council.

Within the confines of the Arizona Revised Statutes (A.R.S.) § 11-981, as may be amended from time to time, the City Council established the City of Yuma Workers' Compensation Trust and appointed Trustees. The Trustees are appointed in accordance with A.R.S. § 11-981 and the Yuma City Charter Article IX, Section 1. To the extent permitted by law, the City Council is ultimately responsible for deciding the benefits it elects to offer. The City Council retains the right to provide benefits through self-insurance, purchase of insurance, or participation in pools or state funds. Based on this decision, the Trustees make budget requests to the City Council through the City's annual budget process. The City Council has sole discretion in determining the Trust's budget and appropriating approved budget amounts. Once budget funds are allocated, the Trustees are responsible for the Trust's long term financial stability, and for making decisions within the confines of the budgeted funds, the law, and the governing rules regarding the Plan design.

Section 3.03. City Staff.

City staff shall serve as a resource to the Trust by providing financial reports and other management reports as required in order to assist the Trustees in fulfilling their fiduciary responsibilities.

City staff is additionally responsible for informing Eligible Participants regarding the components of the Plan and educating Employees regarding loss prevention and light/modified duty options.

Section 3.04. Outside Consultants.

The term "Outside Consultant" is broadly defined to include the benefit or risk management consultant, Third-Party or Plan Administrator, actuary, external auditor, etc. The Trustees may assign the following responsibilities to any Outside Consultant:

- Plan Benchmarking;
- Actuarial Analysis;
- Financial Analysis;
- Renewal Analysis;
- Assist with vendor relationships, as requested;
- Assist with employee advocacy/problem resolution, as requested;
- Contract reviews, as requested;
- Attend Trust Board meetings, as requested;
- Benefit Plan Consulting;
- Employee Information Meetings; and
- Attending City Council Meetings.

ARTICLE IV APPOINTMENT, ORGANIZATION, AND OPERATION OF TRUSTEES

Section 4.01. Appointment.

A Board of Trustees is appointed in accordance with the City Charter Article IX, Section 1(b).

Section 4.02. Number and Identity.

The Board shall consist of five Trustees. No more than one Trustee may be a member of the City Council, and no more than one Trustee may be an employee of the City.

Section 4.03. Trustees.

The Trustees shall consist of:

- A. The Finance Director of the City of Yuma, as appointed by the City Administrator with the approval of the City Council, or the Finance Director's designee, who will serve for so long as he/she is so employed or so designated.
- B. Four citizens who will serve staggered terms in the manner provided for in the Yuma City Code. However, if a member of the City Council is appointed as a Trustee, only three citizens may be appointed as Trustees. A citizen Trustee must be a resident of the City of Yuma.
- C. Selection of the Trustees shall be made placing emphasis on appointing Trustees who reflect the diversity of the City as well as the City's workforce. Trustees shall also have a

background in one of the following areas with consideration given to including as many of these areas as practicable:

- Health and Employee Benefits
- Insurance
- Finance and Banking
- Pension and Trust Law
- Risk Management
- Human Resources
- Accounting

No current City employee other than the Finance Director or his designee shall be eligible for appointment to the Board of Trustees.

All initial Trustees, other than the Finance Director, will be appointed as follows: one Trustee whose term expires December 31, 2021; one Trustee whose term expires December 31, 2019; two Trustees whose term expires December 31, 2017. If a member of the City Council is appointed as a Board member, only one Trustee will have a term that expires on December 31, 2017. Thereafter the terms of Trustees will be in accordance with the City Charter Article IX, Section 1(c). The Finance Director of the City or his designee shall serve as a Trustee for the term employment and will thereafter be replaced by the successor Finance Director or his designee.

Section 4.04. Bonding.

All Trustees shall be bonded in an amount to be approved by the City Administrator. This requirement may be satisfied by a blanket performance bond or other coverage provided by City.

Section 4.05. Officers.

The Trustees shall elect a Chairman, a Vice-Chairman and a Secretary to serve for a term of two years. The Chairman, Vice-Chairman and Secretary may resign office at any time, and upon such resignation, the Trustees shall elect a successor for the remainder of the two-year term. The Chairman shall conduct the meetings of the Board of Trustees, and will carry out all other assigned duties. The Vice-Chairman shall substitute for the Chairman in his absence. The Chairman, Vice-Chairman and Secretary may propose or second any motion for consideration by the Trustees. City staff as appointed by the City Administrator shall be responsible for the taking of minutes of all meetings and other appropriate responsibilities. A copy of the minutes will be filed with the City Clerk as a record of the Trust's activities.

Section 4.06. Disqualification from Serving as Trustee.

No individual who has been convicted of any of the crimes listed in Section 411(a) of the Employee Retirement Income Security Act (ERISA) will be appointed or allowed to continue to serve, as a Trustee during the statutory period of disqualification. Further, no individual who has been convicted of an offense that under the laws of the State of Arizona is deemed to be evidence of moral turpitude will be permitted to serve as a Trustee of the Trust.

Section 4.07. Termination.

The term of any Trustee will automatically terminate upon the earliest of the following: death; resignation; removal; failure to attend three consecutive meetings, or, for a Trustee who is an employee of City, the termination of such employment. In the case of removal, failure to attend three consecutive meetings, or termination of employment, a Trustee will be notified in writing of the termination and such action will be noted in the minutes of the Board of Trustees.

Section 4.08. Resignation of a Trustee.

A Trustee may resign at any time by giving sixty (60) days' prior written notice to the Chairman. The Chairman may exercise discretion to waive or reduce the 60-day requirement, but may not waive the written-notice requirement. The notice must state the effective date of the Trustee's resignation. The resignation will take effect on its stated effective date unless a new Trustee is appointed and accepts appointment prior to the stated effective date, in which case the date of acceptance will constitute the effective date of the resignation. Upon the effective date of the resignation, the resigning Trustee will be discharged from any further duty or responsibility under the Trust, and the resigning Trustee will deliver to the Chairman (or to the Secretary, if the Chairman is resigning) any and all property in his or her possession or control which belongs to the Plan or Trust.

Section 4.09. Removal of a Trustee.

The City Council may remove and replace a Trustee at any time pursuant to City Charter Article IX, Section 1(b). Upon the effective date of the removal, the removed Trustee will be discharged from any further duty or responsibility under the Trust, and the removed Trustee will deliver to the Chairman (or to the Secretary, if the Chairman is being removed) any and all property in his or her possession or control which belongs to the Plan or Trust.

Section 4.10. Successor Trustee.

Upon the resignation, termination, or removal of a member of the Board of Trustees, the City Council shall appoint and approve a successor Trustee, who will have the same powers and duties as those conferred upon the member being replaced and serve the remainder of the unexpired term.

Section 4.11. Exculpation and Indemnification of the Trustees.

A. *Reliance.* A Trustee may act or rely upon any of the following:

1. Any instrument, application, notice, request, signed letter, telegram or other paper or document believed by him to be genuine and to contain a true statement of facts and signed or sent by the proper person; or
2. The advice, opinion, records, reports or recommendations of any accountant, actuary, administrator, attorney, consultant, co-trustee, investment agent or investment manager or any other advisor selected by the Trustees with reasonable care.

B. *Exculpation of Trustees.* No Trustee will incur any liability individually or on behalf of other individuals for any action or omission in carrying out his or her duties as a Trustee, unless such action or omission is due to the Trustee's own gross negligence, criminal conduct, willful misconduct, or lack of good faith.

C. *Indemnification of Trustees.* The Trustees shall cause any person who is serving or has served as a Trustee to be indemnified out of the Trust against all damages, liabilities and expenses incurred by or imposed on him in connection with any claim, suit, action or proceeding concerning the Trust or his acts, mistakes, errors or omissions as a Trustee, including, without limitation, legal fees and amounts paid in any compromise or settlement, unless it is adjudicated that such acts, mistakes, errors, or omissions constitute gross negligence, criminal conduct, willful misconduct or lack of good faith. Any indemnification provided herein will be limited to amounts not collected pursuant to valid and enforceable liability insurance policies.

D. *Indemnification of Others.* To the extent permitted by law, the Trustees shall also cause any person who renders services to the Trust or Plan to defend, indemnify, and hold harmless

the Trust and Trustees against all damages, losses, liabilities, and expenses incurred by or imposed upon the Trust or Trustees in connection with any claim, suit, action or proceeding concerning the Plan or Trust or the acts, mistakes, errors, or omissions of any person who renders services to the Trust or Plan, including, without limitation, legal fees and amounts paid in any compromise or settlement.

E. *Limitation on Indemnification.* Notwithstanding the foregoing, no indemnification shall be provided unless and until it is adjudicated that the action or omission did not constitute gross negligence, criminal conduct, willful misconduct, or lack of good faith.

Section 4.12. Fees and Expenses.

The members of the Board of Trustees shall serve without compensation from the Trust, except for reimbursement of expenses properly and actually incurred in accordance with reimbursement policies adopted by the City of Yuma. In addition, the Board of Trustees will be reimbursed for any reasonable expenses, including reasonable counsel and accounting fees, incurred by the Board in the administration of the Trust Fund, provided that such services are procured in a competitive manner in accordance with the City Charter, City Code, and procurement policies and regulations. Such compensation and expenses shall be paid from the Trust Fund, to the extent not paid by the City. All taxes of any kind, including self-insured taxes, that may be levied or assessed under existing or future laws upon, or in respect of, the Trust Fund or the income of the Trust will be paid by the Trustees from the Trust Fund.

Section 4.13. Meetings and Quorum.

A. The Trustees shall meet whenever required to provide for the orderly and timely administration of the business of the Plan and the Trust at a location that is acceptable to the Trustees, but no less than four times per Plan Year. In calling, providing notice of, and holding meetings, the Trustees shall conform to applicable law.

B. All members of the Board shall be notified of Board meetings, and no meeting shall be held in the absence of such notification. A quorum of Board members shall be required to conduct business. A quorum will be reached when at least three (3) members of the Board are present. Agendas for meetings and the dates of general meetings will be determined by the Board, which may assign such determination to City staff support responsible for the day-to-day administration of the Trust. The Board Chairperson shall coordinate the activities of the Board, including setting meeting times, suggested agendas, and other administrative activities of the Trustee. The City shall provide staffing for the operation of the Board.

Section 4.14. Voting.

Each Trustee shall have one vote. All actions by and decisions of the Trustees will be the affirmative vote of a majority of the number of the Trustees attending a duly called meeting of the Trustees at which there is a quorum present.

Section 4.15. Conflicts of Interest.

Each Trustee shall comply with applicable state and federal law concerning conflicts of interest.

ARTICLE V RESPONSIBILITIES AND POWERS OF THE TRUSTEES

Section 5.01. In General.

The Trustees shall have the power to perform all acts, to take all proceedings, and to exercise all rights and privileges, although not specifically mentioned herein, as the Trustees may deem necessary or advisable to administer and manage the Trust so as to carry out the purposes of this Trust Document and the Plan. The duties and obligations of the Trustee shall be limited to those expressly imposed upon it by this Trust notwithstanding any reference in this document to the Plan, it being hereby expressly agreed that the Trustee is not a party to the Plan. The Trustees shall discharge their responsibilities under this Trust Document:

- A. Solely in the interest of Eligible Participants and for the exclusive purposes of providing applicable benefits to Eligible Participants and Beneficiaries and defraying the reasonable expenses of administering the Plan and Trust;
- B. With the care, skill, prudence, and diligence under the circumstances 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;
- C. By diversifying the investments of the Fund so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and
- D. In accordance with the provisions of the Plan and this Trust Document.

Section 5.02. Statutory Requirements.

- A. *Risk Management Consultant or Insurance Administrator.* Prior to paying Plan expenses on a self-insured basis, the Trustees shall confirm that the City Administrator has designated a risk management consultant or insurance administrator licensed pursuant to Title 20, Chapter 2, Article 3 or 9, of the Arizona Revised Statutes and that the City Council has verified that any risk management consultant or insurance administrator designated by the City Administrator is licensed as required by the laws of the State of Arizona.
- B. *Auditor.* Pursuant to A.R.S. § 11-981(B), the City shall hire an external auditor to perform an annual audit of the Trust. Each audit report will be kept on file with the City Clerk for five years or other time as may be amended by applicable law. The Trustees shall work and cooperate with such auditor.
- C. *Stop-Loss.* The Trustees shall confirm that the City has procured stop-loss insurance for the Trust from an insurer authorized to do business in Arizona.
- D. *Management.* The Trustees have the power to manage the Trust, including the acquisition and disposition of property that is in or part of the Trust, as follows:
 - 1. *General Authority.* The Trustees have exclusive authority and responsibility with respect to the custody and management of the Trust, except to the extent any such authority has been assigned elsewhere by this Trust Document or has been delegated by the Trustees pursuant to this Trust Document.

2. *Separate Account; Delegation of Custody.* The Trustees have the exclusive responsibility and authority to maintain the Funds in the Trust separate from all other City funds and accounts. The Funds in the Trust may be maintained in a separate account within the City's financial system. If the City selects one or more independent financial institutions to maintain the Funds, the Trustees shall maintain the Funds at such financial institutions. Consistent with the City's selections, the Trustees may delegate custody of all or any portion of the Funds to a custodian; any such custodian shall hold the Funds in the Trust as directed in writing by the Trustees. Records shall be kept in accordance with Generally Accepted Accounting Principles (GAAP) as applied to governmental bodies.

3. *Contributions and Distributions.* The Trustees have the exclusive authority and responsibility to determine the appropriate distributions from the Trust, as more fully described in Article VII of this Trust Document.

4. *Fund Liabilities.* The Trustees have the authority and responsibility to determine the appropriate amount of Funds that the Trust should hold as Fund Liabilities, *provided that* the Fund Liabilities will be no less than the minimum amount recommended and attested by the actuary hired by the City to provide services to the Trust.

E. *Service Providers.*

1. *For the Trust.* The Trustees have the authority to request that appropriate City employees provide services to the Trust. In addition, the Trustees have the authority to employ suitable third parties as necessary to provide services for the Trust, with the consent of the City, which approval will not be unreasonably withheld. Such authority is exclusive to the Trustees, with the following exceptions: the City has the authority to select and engage the Investment Manager, an actuary, and an external auditor for the Trust; and the City has the authority to select and purchase stop-loss insurance coverage for the Trust.

2. *For the Plan.* Per Section 5.04 of this Trust, the Trustees do not have the authority to engage third parties to provide services for the Plan.

3. *Payment.* The Trustees have the authority to pay reasonable compensation and expenses for any parties engaged to provide services for the Trust or for the Plan as set forth above.

4. *Compliance.* All engagements and payments pursuant to this Section 5.02(E) shall comply with applicable State and City procurement laws, policies, and procedures.

Section 5.03. Investments.

A. *Control.* The Trustees have the authority and responsibility to determine the portion of the Funds that will be invested. The Trustees have the authority and responsibility to invest and reinvest all or part of Funds, without distinction between principal and income as the Trustees determine, in such securities or in such property, real or personal, or share or part thereof, or part interest therein, wherever situated. All such investment decisions shall conform and be subject to the investment guidelines established by City's Finance Department.

B. *Delegation.* The Trustees retain the authority and responsibility to determine the portion of the Funds that will be invested. The Trustees may delegate to the Investment Manager, if any, all other authority and responsibility described in Section 5.03(A), *provided that* the Investment Manager agrees:

1. to act in the same manner and with the obligations and limitations as would apply to the Trustees under this Trust Document and
2. to provide investment reports to the Trustees no less than quarterly and, in addition, as may be reasonably requested by the Chairperson.

Section 5.04. Responsibilities Not Assigned to the Trustees.

Authority and responsibility for the following items in this Section 5.04 are reserved to the City, which may delegate this authority and responsibility to a third party. The Trustees have no authority or responsibility for:

- A. Designing, adopting, amending, or terminating the Plan;
- B. Ensuring that the Plan complies with state or federal laws mandating the terms of the Plan;
- C. Selecting or engaging service providers for the Plan; or
- D. Prosecuting or defending actions, claims, or proceedings necessary or advisable for the protection of the Trust.

Section 5.05. Service of Claims and Process.

The Trust is declared to be a public entity for purposes of service of claims and process pursuant to Title 12 of the Arizona Revised Statutes. All claims and legal process must be served on the City Clerk of the City of Yuma in person, together with any other requirements of Title 12 of the Arizona Revised Statutes.

Section 5.06. Specific Authority.

The provisions of this Trust Document authorizing the Trustees to exercise certain powers, duties and actions by the Trustees will not be interpreted as requiring the Trustees to exercise such authority. The exercise of specific authority is discretionary with the Trustees.

Section 5.07. Method of Providing Benefits.

The Trustees have authority to provide benefits, in whole or in part, directly from the Trust or contract with an insurance carrier to underwrite or provide such benefits, with the approval of the City in accordance with the laws of the State of Arizona.

Section 5.08. Payment of Benefits.

The Trustees have authority to determine the means of payment of benefits to Eligible Participants. This authority includes the power to adopt rules by which payments owing to a minor or incompetent person may be made to other persons or institutions on behalf of such minor or incompetent person. Payments made under any such rule will fully satisfy the Trust's obligation to such minor or incompetent person.

Section 5.09. Consultation and Indemnification.

The Trustees may consult with legal counsel and the Trustees will not be deemed imprudent by reason of taking or refraining from taking any action in accordance with the opinion of counsel. The City agrees, to the extent permitted by law, to indemnify and hold the Trustees harmless from and against

any liability that the Trustees may incur in the administration of the Trust Fund, unless arising from the Trustee's negligent, willful or intentional breach of the provisions of this Trust. The Trustees shall not be required to give any bond or any other security for the faithful performance of their duties under this Trust, except such as may be required by a law which prohibits the waiver of such bond or security.

ARTICLE VI ADMINISTRATION OF TRUST

Section 6.01. Plan Administrator's Administration.

The Plan Administrator shall administer the Plan as provided therein pursuant to the direction of the Trust. The Plan Administrator will be entitled conclusively to rely upon any notice, instruction, direction or other communication of the Trust. The Plan Administrator will be the City of Yuma Human Resources Director, or other person as appointed by the City Administrator.

Section 6.02. Accounts and Records.

The Plan Administrator shall keep accurate and detailed accounts of all investments, receipts, disbursements, and other transactions in the Trust Fund as may be required by 29 C.F.R. § 1.501(c)(9)-5, and all such accounts and records relating to the Trust Fund shall be open to inspection and audit at all reasonable times by any person designated by the Trustees or the City. The Plan Administrator shall furnish to the Trustees a written statement of account within sixty (60) days after the end of the Trust's year-end setting forth all receipts and disbursements. The Trustees shall acknowledge receipt of this statement in writing and advise the Plan Administration of its approval or disapproval of the statement. The City Finance Director shall audit such statement. Failure by the Trustees to disapprove any such statement of account within thirty (30) days after its receipt will be deemed approval of the statement. The approval by the Trustees of the statement of account will serve to release and discharge the Plan Administrator from any liability or accountability to the City with respect to the propriety of the Plan Administrator's acts or transactions shown in the statement of account, except with respect to any acts or transactions that the Trustees have filed written objections with the Plan Administration within the thirty (30) day time period prescribed.

Section 6.03. Trust Liability.

The Trust Fund shall be legally liable for payment of all applicable benefits stated in the statement or schedule of benefits in effect at the time a claim thereunder arises and has been determined by the Plan Administrator to be a covered claim under the plans entered into by the Trust. Funds in the Trust are fiduciary funds and are not liable for any obligation of any Eligible Participant in the Plan nor subject to garnishment or levy for the obligation of any Beneficiary. For purposes of Arizona community property laws, no Beneficiary is deemed to have any vested ownership interest in any funds in the Trust until such time as a claim by such Beneficiary arises and has been paid, and only to the extent of such payment made by the Trust.

Section 6.04. Interest.

The Trust shall not be required to pay interest on Employer contributions to the Fund. Interest accrued on Trust Funds will remain in Trust in accordance with the provisions of this Trust Document.

Section 6.05. Spendthrift Clause.

Notwithstanding any state law to the contrary, no Trust Funds shall be:

- A. Assigned or encumbered by any Eligible Participant or Beneficiary;
- B. Attached by or subjected to the interference or control of any creditor of any Eligible Participant or Beneficiary or the Employer;
- C. Reached by any legal or equitable process in satisfaction of any debt or liability of any Eligible Participant or Beneficiary prior to its actual receipt by such Eligible Participant or Beneficiary; or
- D. Attributed as income to any Eligible Participant or Beneficiary for purposes of Arizona community property law, prior to its actual receipt by such Eligible Participant or Beneficiary.

Section 6.06. Benefit Plan Document and Description.

The Trustees shall prepare and file with appropriate governmental agencies to the extent required by law, a Plan description, a summary plan description, and appropriate modifications. The Trustees shall authorize the Plan Administrator to prepare a booklet containing the provisions of the Plan and the summary Plan description for distribution to Eligible Participants covered by the Arizona workers' compensation requirements pursuant to state law, the City Charter, or the City Code.

Section 6.07. Production of Documents for Inspection.

The Trustees shall make available to Eligible Participants to examine the Trust document, the Plan document, the summary plan description and the most recent annual report to Eligible Participants to examine, or, upon written request, copies of said documents.

Section 6.08. Review of Denied Benefit Claims.

All denied claims will be processed in accordance with the workers' compensation laws of the State of Arizona. Said procedures will constitute the sole and exclusive procedures available through the benefit Plan to an Eligible Participant, or a Beneficiary, who is covered under Arizona's workers' compensation laws, the City Charter, or the City Code and who is dissatisfied with the disposition of his claim.

Section 6.09. Other Claims.

- A. Notwithstanding any other provisions of this Trust Document, for purposes of claims arising under Title 23, Chapter 6, Arizona Revised Statutes, once a claim has been denied, the Eligible Participant or Beneficiary may file a claim with the Commission in the manner provided by A.R.S. § 23-947.
- B. For purpose of claims arising under the workers' compensation laws of Arizona, in the event of a conflict between this Trust Document and the laws of Arizona, Arizona law will govern.

Section 6.10. Eligible Participants and Employer Rights.

- A. No Eligible Participant covered under the City's Plan pursuant to state law, the City Charter, or the City Code will have any right, title, or interest in or to the Trust, or the Contributions, or in the benefits provided. No Eligible Participant covered under City's Plan

pursuant to state law, City Charter, or City Code is entitled to receive any part of the Contributions in lieu of benefits provided through this Trust Document.

B. No Eligible Participant covered under City's Plan, pursuant to state law, the City Charter, or the City Code, who is not eligible for benefits, will have any claim to the Contributions which may have been paid by or on his behalf.

C. No Eligible Participant covered under City's Plan, pursuant to state law, the City Charter, or the City Code is entitled to receive any benefits from the Trust other than those specified under the terms of this Trust Document.

Section 6.11. Subrogation.

The Plan Administrator shall subrogate against third-party tortfeasors in accordance with Arizona Revised Statutes Title 12, Chapter 11, Article 9.

ARTICLE VII CONTRIBUTIONS TO AND DISTRIBUTIONS FROM THE TRUST

Section 7.01. Contributions.

A. *City Funding Amount.* The primary source of funding for the Trust will be through contributions from the City of Yuma. No later than January 1 of each year, the Trustees shall submit to the City Council a budget for the following fiscal year to fulfill the needs and purposes of this Trust. The City Council shall appropriate funds to the Trust as part of the annual City budget. The Trust may also make interim funding recommendations to the City Council as may be necessary to insure that the Trust has adequate funding.

B. *Other Funding.* The Trustees may permit the Trust to receive additional funding from, including but not limited to, any one or more of the following: interest; dividends; rebates; gifts; grants; special taxes levied to satisfy judgments; recovery from insurers; subrogation, or reimbursement.

Section 7.02. Distributions.

Distributions from the Trust may be made for any of the following:

A. Paying for or providing benefits to Eligible Participant and Beneficiaries, and in accordance with the terms, provisions and conditions of the Plan, as determined and directed by the Plan Administrator. The Trustees will have no obligation to evaluate whether the Plan Administrator's directions are correct.

B. Paying all reasonable expenses of operating, administering, or managing the Plan or Trust as set forth in Section 4.11 of this Trust document.

C. Upon termination, pursuant to Section 8.03 of this Trust Document.

Section 7.03. No Inurement to Private Interests.

Except as specified in Section 7.02 of this Trust Document, at no time shall any part of the principal or income of the Trust inure to the benefit of a private individual or entity.

ARTICLE VIII AMENDMENT AND TERMINATION

Section 8.01. Amendment of Trust.

This Trust Document may be amended in writing at any time by the City Council. The Trustees may recommend amendments to the City Council. Notwithstanding the foregoing, the City Council shall not adopt an amendment which alters the basic purpose of the Trust, causes the Trust to lose its status as a Governmental Trust, conflicts with any applicable law or government regulation, causes the use or diversion of any part of the Trust for purposes other than those authorized herein, or retroactively deprives anyone of a vested right or interest.

Section 8.02. Termination of Trust.

The Trust shall continue until terminated by a majority vote of the City Council. The City Council shall notify each Trustee and the Plan Administrator in writing of such termination.

Section 8.03. Distribution Upon Termination.

A. Upon termination of the Trust, the Trustees shall use the Funds to pay or to provide for the payment of any and all obligations of the Trust and the Plan, and the Trustees shall distribute and allocate the Funds in accordance with the then-current provisions of the Trust and the Plan; *provided that*, notwithstanding any Plan provision to the contrary, the Funds shall be allocated and distributed in the priorities and according to the categories required by applicable law.

B. Upon termination of the Trust, after all obligations of the Trust and Plan have been satisfied, any remaining Funds shall revert and be distributed to City's General Fund.

Section 8.04. Amendment and Termination of Plan.

Nothing in this Trust Document shall affect City's ability to amend or terminate the Plan.

ARTICLE IX GENERAL PROVISIONS

Section 9.01. No Right, Title, or Interest.

No Employer, Eligible Participant, or Beneficiary shall have any right, title or interest in the Trust or any right to Contributions to be made thereto, or any claim against the Trust on account thereof, except as may be provided from time to time by this Trust Document or the Plan, and then only to the extent of the benefits payable to such person under the Plan.

Section 9.02. Non-alienation of Benefits.

The Trust shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution or levy of any kind, either voluntary or involuntary, including any such liability which is for alimony or other payments for the support of a spouse, former spouse or any relative, until such payment has been actually received by the Eligible Participant or Beneficiary. Any attempt to anticipate, alienate, settle, transfer, assign, pledge, encumber, charge or otherwise dispose of the same shall be void. The Trust shall not in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to benefits under the Plan.

Section 9.03. Prohibition of Diversion.

A. It shall be impossible by operation of the Trust or by its natural termination, by power of revocation or amendment, by the happening of any contingency, by collateral arrangement, or by any other means for any part of the corpus or income of the Trust or any funds contributed thereto to be used for or diverted to purposes other than as described herein.

B. Notwithstanding the foregoing, a Contribution made by City as the result of a mistake may be returned to City if the Trustees so direct, *provided that* the repayment is not prohibited by applicable law.

Section 9.04. Incompetency.

In the event it is determined that any person entitled to receive benefits is unable to care for his or her affairs because of mental or physical incapacity, the benefits due such person may be paid to his or her legal guardian or conservator, or to any relative by blood or by marriage to be used and applied for the benefit of such person. Payment to such legal representative or relative of the person on whose account benefits are payable will operate to discharge the payer from any liability to such person or to anyone representing him or her (or his or her interest), and the Trustees shall have no duty or obligation to see that the funds are used or applied for the benefit of such person.

Section 9.05. Notice and Delivery of Documents.

Any notice required under this Trust Document shall be in writing and may be given in person or by first-class mail. When notice is given by mail, it will be deemed to have been given and received as of the date of posting to the last-known address of the addressee available from the Trust records.

Section 9.06. Headings.

Titles of articles and headings of sections and subsections are inserted for convenience of reference. They constitute no part of this Trust Document and are not to be considered in the construction hereof.

Section 9.07. Construction.

This Trust Document is created and accepted in the State of Arizona. This Trust Document shall be construed and enforced according to the laws of the State of Arizona.

Section 9.08. Payroll information.

The City shall promptly furnish to the Trust on request such pertinent payroll information and data with respect to the individual Eligible Participants covered under the City's Plan pursuant to state law, the City Charter, and the City Code that are benefiting from this Trust and that the Trustees may require in connection with the administration of the Trust and the Plan. Payroll information and data will be limited in nature to matters such as name, classification, amount of wages paid and hours worked and other information as may be necessary. The Trust, or its authorized representatives, may examine the pertinent records of the Employer with respect to an individual Eligible Participant covered under City's Worker's Compensation Plan pursuant to state law, the City Charter, and the City Code and benefiting from this Trust Document whenever an examination is deemed necessary or advisable by the Trustees in connection with the proper administration of the Trust and the Plan.

Section 9.09. Source of Funds.

This Trust shall constitute the sole source of funds which may be used to pay the workers' compensation expenses payable under the Plan; the City, the Trustees, and the Plan Administrator shall not be liable in any way or in any manner for any payments other than those funds which have been contributed to this Trust.

Section 9.10. Limited Effect of Plan and Trust, No Third Parties.

A. Neither the establishment of the Plan nor the Trust nor any modification thereof, nor the creation of any fund or account, nor the payment of any medical expenses or other benefit expenses, shall be construed as giving to any person covered under the Plan or other person any legal or equitable right against the Trustee, the Plan Administrator, or the City except as may otherwise be provided in the Plan or in the Trust.

B. No person or entity other than the Trustees or their lawful successors and the Employer shall be considered a party to this Trust Document.

Section 9.11. Protective Clause.

Neither the City, the Plan Administrator, nor the Trustees will be responsible for the validity of any contract of insurance issued in connection with the Plan or Trust or for the failure on the part of the insurer to make payments provided by such contract, or for the action of any person which may delay payment or render a contract null and void or unenforceable in whole or in part.

Section 9.12. Gender and Number.

Wherever any words are used in this document in the masculine, feminine or neuter, they will be construed as though they were also used in another gender in all cases where they would so apply, and whenever any words are used in the singular or plural form, they will be construed as though they were also used in the other form in all cases where they would so apply.

Section 9.13. Entire Agreement.

This Trust Document constitutes the entire agreement between the undersigned Employer and the Trust and shall not be deemed to be varied, altered or amended by any other statement, representation or agreement by or between any person or persons whomsoever, whether written, oral or implied in any way, except as provided in this Trust.

Section 9.14. Venue.

Venue of any claim arising under this Trust Agreement or out of any actions of the Trustees pursuant to this Trust Agreement will be in the Superior Court of Yuma County, Arizona or in the United States District Court for the District of Arizona, if a claim under the laws of the United States is involved, regardless of the residence of any party.

IN WITNESS HEREOF, the City of Yuma hereby establishes the City of Yuma Workers' Compensation Trust.

DATED this ____ day of _____, 2016.

CITY OF YUMA, ARIZONA
A Municipal Corporation

Gregory K. Wilkinson
City Administrator

ATTESTED:

Lynda L. Bushong
City Clerk

APPROVED AS TO FORM:

Steven W. Moore
City Attorney

STATE OF ARIZONA)
) ss.
COUNTY OF YUMA)

The foregoing instrument was acknowledged before me this ____ day of _____ 2016,
by _____ the _____ of the CITY OF YUMA,
ARIZONA, a municipal corporation, on its behalf.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public