CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATIONS

CC: 1C

Amend No. _____

Date prepared: May 18, 2009 **Council Meeting Date: June 2, 2009**

TO: Carl Swenson, City Manager

FROM: Wynette Reed, Human Resources Director

PREPARED BY: Bobbie Kimelton, Human Resources Manager
Steve Kemp, City Attorney

SUBJECT: Establish Self-Insured Worker's Compensation Program and Trust

RECOMMENDATION:

Discussion and possible action by Mayor and City Council to:

a. Adopt the proposed ordinance amending Chapter 2 of the Peoria City Code (1992) to establish a Board of Trustees for the City of Peoria Self-Insured Worker's Compensation Trust and to modify other provisions of Chapter 2 as required.

b. To approve and authorize the City Manager to execute the Trust Agreement for the City of Peoria, Arizona Self-Insured Worker's Compensation Trust.

SUMMARY:

For FY 2009-2010, the City is proposing to self insure its projected liability for Worker's Compensation. Under Arizona Law, this self insurance must be done pursuant to a trust agreement where the City establishes payment of worker's compensation losses and any insurance premiums for worker's compensation coverage with an independent trust board. The City will retain a third party administrator to work with its providers and excess insurance carrier on processing, payment and follow-up of claims. The Human Resources Director or her/his designee will serve as plan administrator.

In accordance with Arizona Law, the City will establish reserves and will utilize funds previously used to fund premiums to be utilized to pay claims, administrative charges and insurance premiums to insure above the aggregate and specific limits of the self-insurance.

CITY CLERK USE ONLY:

☐ **Consent Agenda**
☐ **Carry Over to Date:**_____
☐ **Approved**
☐ **Unfinished Business (Date heard previous:**_____**)**
☐ **New Business**
☐ **Public Hearing: No Action Taken**

ORD. # 09-15 **RES. #**_____
LCON#_____ **LIC. #**_____
Action Date:

REV. 07/05

For employees, these changes will be essentially seamless as they pertain to processing claims. Employees will still be sent for medical treatment and will be required to file accident reports with the Human Resources Department, where they will be reviewed and processed. Instead of the claims being managed by the State Compensation Fund, the claims will be submitted and processed for payment by the Trust's third party administrator. Appeals may be made to the third party administrator, the Trust and ultimately employees retain their right of appeal to the Arizona Industrial Commission.

The City as an employer, its residents and taxpayers will benefit as the City can implement more effective return to work, light duty and injury case management programs ultimately assisting in controlling costs and by assisting employees to return to work more promptly. By overseeing the administration of the case management and claims payment system, the City will ultimately have the ability to move employees through the process more quickly and to ensure injured employees are treated with respect.

FISCAL NOTE: The establishment of the City of Peoria's Self-Insured Worker's Compensation Trust will require the City to establish accounts and financial accounting for the funds managed by the Trust in order to cover the self-insured retention for worker's compensation. No fiscal impact in terms of increased cost is projected.

ATTACHMENT:
A. Ordinance 09-15
B. Trust Agreement

ORDINANCE NO. 09-15

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF PEORIA, ARIZONA AMENDING CHAPTER 2 OF THE PEORIA CITY CODE (1992) BY AMENDING SECTION 2-50 PERTAINING TO CLAIMS MANAGEMETN; DEFINITIONS AND BY AMENDING SECTION 2-57 PERTAINING TO CLAIMS; INSURANCE; LIABILITY; WORKER'S COMPENSATION; EMPLOYEE BENEFITS AND BY AMENDING SECTION 2-58 PERTAINING TO CLAIMS; SELF-INSURANCE; LIABILITY; WORKER'S COMPENSATION TRUST FUND; EMPLOYEE BENEFITS TRUST FUND AND BY AMENDING SECTION 2-77 PERTAINING TO CITY ATTORNEY; CLAIMS MANAGEMENT; LITIGATION; SPECIAL COUNSEL AND BY ENACTING AMENDING SECTION 2-85 PERTAINING TO FINANCE; WORKER'S COMPENSATION AND EMPLOYEE BENEFITS TRUST and BY AMENDING SECTION 2-152 PERTAINING TO BOARDS AND COMMISSIONS; UNSCHEDULED BOARDS AND COMMISSIONS AND PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

THEREFORE, it is ordained by the Mayor and Council of the City of Peoria as follows:

SECTION 1. Chapter 2 of the Peoria City Code (1992) is amended by amending Section 2-50 pertaining to Claims Management; definitions and which shall read as follows:

Sec. 2 50. Claims Management; definitions.

(a) City - The City of Peoria and all its Council Members, Mayor, appointed officers and department heads, employees, agents (when acting within the scope of their authority), boards, commissions or other City created entities.

(b) City Manager means the City Manager of the City, or his or her designee.

(c) Claim - Any demand made for the payment of money damages from the City by any person or entity, in the nature of a tort or contract claim; excluding any demand based solely on the assertion of a claim within the jurisdiction of the personnel board, a demand relating solely to payment of wages earned and employment benefits granted to all employees; a demand arising solely out of any right or claim of superior title to property, its use or transfer, a demand based on taxes, or any solely non-monetary demand.

(d) Claim Costs- Any internal or external costs or expense incurred by the City, in response to any claim against the City, including insurance or bond policy costs, contractual services costs, legal defense costs and related consultant costs.

(e) Claims Management Program - the program administered by the Office of the City Attorney to procure insurance against claims and to pay claim costs arising out of claims based on the amounts appropriated by the City Council through the budget process.

(f) Diminution in Value Claim means a claim for just compensation, as defined in A.R.S. § 12-1136, as amended, for diminution in the fair market value of real property resulting from the enactment of a land use law that is not exempt under A.R.S. § 12-1134 (B), as amended, by the City that reduces existing rights to use, divide, sell, or possess private real property as of the date of the enactment. Such claims are permitted by A.R.S. § 12-1134, as amended.

(g) Employee Benefit Claim means a claim by an employee of the City, enrolled in an insurance benefit program provided by the City making a claim under such program for coverage of a service under the program provided by the City and for which the service is covered.

(gh) Exempt land use law means a land use law that:

(1) Limit or prohibit a use or division of real property for the protection of the public's health and safety, including rules and regulations relating to fire and building codes, health and sanitation, transportation or traffic control, solid or hazardous waste, and pollution control;

(2) Limit or prohibit the use or division of real property commonly and historically recognized as a public nuisance under common law, including and land use law that prohibits unreasonable interference with the exercise of a right common to the general public;

(3) Are required by Maricopa County, Yavapai County, the State of Arizona, other political subdivisions thereof other than the City and over which the City has no legal control, or federal law;

(4) Limit or prohibit the use or division of a property for the purpose of housing sex offenders, selling illegal drugs, liquor control, or pornography, obscenity, nude or topless dancing, and other adult oriented businesses if the land use laws are consistent with the constitution of Arizona and the United States;

(5) Establish locations for utility facilities;

(6) Do not directly regulate an owner's land;

(7) Were enacted before December 5, 2006; or

(8) Any regulation affecting real property that is not a land use law.

(hi) Insurance Reserve Fund- Any fund or account established by the City for the purposes of paying claims and claim costs.

(ij) Land use law means any statute, rule, ordinance, resolution or law enacted by the City that regulates the use or division of land or any interest in land or that regulates accepted farming or forestry practices. Land use law specifically excludes (without limitation): administrative rules of the City not adopted by the City Council; development fees levied under the authority granted by A.R.S. § 9-463.05; approval of a preliminary and/or final plat; conditions and issuance of building, utility, fire, grading, drainage and engineering permits and site plans and minor amendments of planned zoning districts under the zoning ordinance of the city.

(jk) Owner means the holder of fee title to the real property that is the subject of the claim on the date at the time that the diminution in value is alleged to have occurred. Owner does not mean persons having less than fee title ownership.

(kl) SIR - Self-Insurance Retention.

(m) Worker's Compensation: means a program of self insurance to cover injuries incurred by an employee of volunteer of the City while performing in the scope of their duties and as covered under the Arizona Worker's Compensation laws.

SECTION 2. Chapter 2 of the Peoria City Code (1992) is amended by amending Section 2-57 pertaining to Claims; insurance; liability; worker's compensation; employee benefits and which shall read as follows:

Sec. 2-57. Claims; insurance; liability; worker's compensation; employee benefits .

The City Manager is authorized to enter into on behalf of the City any,

(a) appropriate insurance and surety bonding contracts to provide insurance against claims and risks as he/she determines to be in the best interest of the City and upon the approval of the City Attorney.

(b) appropriate insurance and surety bonding contracts to provide insurance for worker's compensation and employee benefit claims.

The approval of the City Council shall be required if such contract is in excess of fifty thousand dollars ($50,000) to execute all such contracts.

SECTION 3. Chapter 2 of the Peoria City Code (1992) is amended by amending Section 2-58 pertaining to Claims; self-insurance; liability; worker's compensation trust fund; employee benefits trust fund and which shall read as follows:

Sec. 2-58. Claims; Self-Insurance; Liability; Worker's Compensation Trust Fund; Employee Benefits Trust Fund.

(a) There shall be established an Insurance Reserve Fund. This fund shall be funded as part of the annual budgetary and appropriation process of the City in such amounts as to provide sufficient monies to pay all reasonably anticipated lawful SIR claims and claim costs against the City for the ensuing fiscal year.

(b) The Finance and Budget Departments shall with the approval of the Chief Financial Officer allocate insurance and Insurance Reserve Fund costs consistent with appropriate risk underwriting methodology.

(c) There shall be established a Worker's Compensation Trust Fund. This fund shall be funded as part of the annual budgetary and appropriation process of the City in such amounts to pay all reasonably anticipated lawful Worker's Compensation claims and claims cost against the City for the ensuing fiscal year.

(d) The Finance, Budget and Human Resources Departments with the approval of the Chief Financial Officer allocate Worker's Compensation and Worker's Compensation Trust costs consistent with appropriate risk underwriting methodology.

(e) There shall be established an Employee Benefits Trust Fund. In the event, the City elects to self insure for Employee Benefits, the fund shall be funded as part of the annual budgetary and appropriation process of the City in such amounts to pay all reasonably anticipated lawful Employee Benefit claims and costs against the City for the ensuing fiscal year.

(f) The Finance, Budget and Human Resources Departments with the approval of the Chief Financial Officer allocate Employee Benefits Costs and Employee Benefits Trust costs consistent with appropriate risk underwriting methodology.

SECTION 4. Chapter 2 of the Peoria City Code (1992) is amended by amending Section 2-77 pertaining to City Attorney; claims management; litigation; special counsel and which shall read as follows:

Sec. 2-77. City Attorney; claims management; litigation; special counsel.

The City Attorney shall:

(a) Be responsible for the administration and operation of the City's Claims Management and Self Insured Retention Programs and to recommend to the City Manager and City Council the purchase of insurance to cover claims against the City.

(b) Have the power to adjust, settle, compromise or submit to arbitration or alternative dispute resolution any action, causes or action, accounts, debts, claims, demands, disputes and matters in favor of or against the City or in which the City is concerned as a debtor or creditor, now existing or which may hereafter arise, not involving or requiring payment to exceed Twenty Five Thousand Dollars ($25,000.00) and with the approval of the City Manager may do likewise in matters not involving or requiring payment to exceed Fifty Thousand ($50,000.00) Dollars, provided that the Council has appropriated money to settle such claims and the Chief Financial Officer of the City determines such funds are available.

(c) Have the power to use and implement binding or non-binding alternative dispute resolution methods involving any claims; the payment for insurance and the payment of claim costs and related costs, including but not limited to all claims arising out of the operation of the City's Worker's Compensation and Employee Benefit programs.

(d) Have the responsibility for management of all legal actions against the City and shall further have the responsibility for the determination of the legal liability of the City with respect to any claim, including but not limited to all claims arising out of the operation of the City's Worker's Compensation and Employee Benefit programs.

(e) Prosecute, defend and provide legal representation in all civil suits, causes, actions and proceedings where the City or any officer or employee acting in his official capacity and within the scope of their employment is a party or may become interested. The City Attorney may with the consent of the City Manager and providing that the Council has appropriated sufficient funds employ outside counsel when in the City Attorney's discretion, the best interest of the City so require. Such outside counsel shall operate under the supervision of the City Attorney.

(f) Periodically report to the Council any decision or outcome of any litigation or proceeding in which the City has an interest. Such reports are deemed a public record exempt from public disclosure to preserve attorney-client privileges unless the Council has formally waived such privilege.

(g) Conduct and prosecute appeals from orders, decisions or judgments of the municipal and justice courts affecting any interest of the City as the City Attorney may, in the exercise of discretion determine to be necessary or desirable and/or upon direction by the Council, conduct, participate in and prosecute appeals from orders, decisions or judgments of any Court of Record in this State or any Court of the United States.

SECTION 5. Chapter 2 of the Peoria City Code (1992) is amended by enacting amending Section 2-85 pertaining to Finance; worker's compensation and employee benefits trust and which shall read as follows:

Sec. 2-85. Finance; worker's compensation and employee benefits trust.

(a) The City shall designate a risk management consultant or insurance administrator licensed pursuant to title 20, chapter 2, Arizona Revised Statutes.

(b) There shall be an Employee Benefits Trust Board, which shall serve as trustees for the City's Employee Benefit Trust, if any and the Worker's Compensation Trust Fund. The Employee Benefits Trust Board shall consist of five (5) trustees, not withstanding any other provision of this code, no more than one may be an employee of the City. The City's Human Resources Director or their designee shall be an ex-officio member of the Employee Benefits Trust Board..

(c) The trustees of the Employee's Benefit Trust Board trust must be bonded. The Board shall provide for an annual audit to be performed by an external auditor and a copy of the report kept on file in the Department of the City Clerk.

(d) The trustees of the Employee's Benefit Trust Board shall not make any expenditure from the trust fund for any purpose not specified in this code.

(e) Expenditures during the fiscal year from the trust fund and monies in the trust fund at the close of the fiscal year shall not be subject to the provisions of title 42, chapter 17, article 3, Arizona Revised Statutes.

SECTION 6. Chapter 2 of the Peoria City Code (1992) is amended by amending Section 2-152 pertaining to Boards and Commissions; unscheduled boards and commissions and which shall read as follows:

Sec. 2-152. Boards and Commissions; unscheduled boards and commissions.

(a) The following are unscheduled boards and commissions and shall include:

(1) Building Code Board of Appeals - 7 members

(2) Citizens commission on Elected Officials Salaries – 5 members

(3) Design Standards Advisory Board B 5 members

(4) Historic Preservation Commission - 7 members

(5) Industrial Development Authority - 7 members

(6) Municipal Development Authority - 5 members

(7) Personnel Board - 3 members, 1 alternate

(8) Peoria Municipal Sports Complex Authority - 7 members

(9) Public Defender Review Board - 5 members

(10) Public Safety Review Board-Police - 5 members

(11) Public Safety Review Board-Fire - 5 members

(12) Volunteer Firefighter Pension Board - 5 members

(13) Sister Cities Board – 7 members

(14) Veteran's Memorial board – 7 members

(15) Judicial Selection Advisory Board – 5 members

(16) Employee Benefits Trust Board – 5 members

SECTION 7. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any Court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

SECTION 8. This Ordinance shall become effective in the manner provided by law.

PASSED AND ADOPTED by the Mayor and Council of the City of Peoria, Arizona, this 2nd day of June, 2009.

Dated:_____ _____

Bob Barrett, Mayor

ATTEST:

_____

Mary Jo Kief, City Clerk

APPROVED AS TO FORM:

_____

Stephen M. Kemp, City Attorney

Published in Peoria Times

Publication Dates: June 5 and June 12, 2009

Effective Date: _____

ARTICLE I DECLARATION AND CREATION OF TRUST

1. Name.

The name of the Trust is the CITY OF PEORIA WORKERS' COMPENSATION TRUST("Trust"). The Trust may sue or be sued in such name. The Trustees may conduct business and act on behalf of the Trust in such name.

2. Purpose.

The Trust is intended to provide a distinct legal entity into which monies may be contributed by the City of Peoria, Arizona as the participating Employer ("Employer") and Employees of the City of Peoria, Arizona for the exclusive purpose of creating and administering Workers' Compensation Plan for the benefit of the employees and volunteers of Employer, to the extent permitted by law, city charter or city code, and for defraying reasonable expenses of administration. These plans may consist of self insurance and excess insurance for Worker's Compensation as determined by the City to be necessary and appropriate.

3. Duration and Term.

This Trust Agreement, and the Trust, will be effective as of July 1, 2009, and will continue indefinitely until terminated. This Agreement may be terminated at any time by the City of Peoria, Arizona and, upon such termination, the trust fund shall be paid out by the Plan administrator as set forth below:

3.1. Application of Funds

In the event of termination of the Trust, the Trustees shall apply the Fund to the continuation of providing Workers' Compensation insurance to employees and volunteers to the extent permitted by law, city charter or city code and to provide for payment of reasonable and necessary expenses incurred in termination of the Fund, until the Fund is exhausted. In the event of termination, the Employer shall be used to carry out purposes of the Trust as provided in this Agreement.

3.2. Dissolution and Term

Upon termination of the Trust, the Trustees shall immediately notify the Employer and shall continue as Trustees for the purposes of dissolution and may take any action which may be appropriate or required.

ARTICLE II DEFINITIONS

The following definitions will apply whenever used in this Trust Agreement:

1. **Adoption Agreement.**

The City's Written approval of this agreement as the Participating Employer and the Trust by which the City of Peoria, Arizona as the Participating Employer agrees to contribute to the Trust and comply with the terms and provisions of this Trust Agreement.

2. **Beneficiary.**

Any dependent or person authorized under Arizona law to receive benefits for an injured employee or volunteer of Employer covered under its Worker's Compensation Plan and entitled to receive benefits.

3. **Workers' Compensation Plan.**

Any lawful Workers' Compensation Plan established and administered by the Trustees pursuant to this Trust Agreement.

4. **City.**

The City of Peoria, Arizona, the employer of all Employees and the receiving entity of all volunteers who are authorized or permitted by law to receive Worker's Compensation Benefits and therefore will participate in the Plan. For purposes of this Agreement, Participating Employer shall mean the City of Peoria, Arizona.

5. **Contributions.**

The payments to the Trust required of a Participating Employer pursuant to the terms of an Adoption Agreement, for the purpose of providing workers compensation benefits.

6. **Eligible Participants.**

Any employee of the Employer or any volunteer of the employer permitted by Arizona law, City Charter or City Code who has incurred a valid Worker's Compensation Claim under the law of this state and for whom the employer is obligated to make contributions to the Trust pursuant to an Adoption Agreement under any Workers' Compensation Plan established pursuant to this Trust Agreement.

7. **Plan Administrator.**

The person or firm appointed by the Employer 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.

8. **Third - Party Administrator.**

The firm or outside consultant selected by the City, subject to the approval of the Trustees, which shall not be unreasaonably withheld to work with the City and its Workers' Compensation Plan on the processing of claims under the Plan in cooperation with the Plan administrator, Trust and City.

9. **Trustees.**

The Trustees of the Trust, or their successors as appointed by the City Council..

10. **Trust.**

The distinct legal entity created by this Trust Agreement, as well as all property, monetary and contract rights held by the Trustees pursuant to this Trust Agreement.

11. **Workers Compensation Benefits**

The Benefits provided to eligible participants through the terms of any Workers' Compensation Plan established pursuant to this Trust Agreement.

ARTICLE III RELATIONSHIP BETWEEN TRUST AND CITY

1. **Statement of Policy.**

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

1.1 The Trustees of the 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 Employees covered under Employer's Worker's

Compensation Plan. The Mayor and City Council retain ultimate authority over the trust through their ability to limit budget appropriation and/or replace the trustees, as allowed by the trust agreement and City Code.

2. Responsibility to City Council.

Within the confines of the law, the City Council established the City of Peoria, Arizona Workers' Compensation Trust and appointed Trustees. The Trustees are appointed in accordance with the City Code. 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 through self-insurance, purchase or insurance or participation in pools or state funds. Based on this decision, the Trustees make budget requests to the Council through the City's annual budget process. The City Council sole discretion in determining the Trust's budget and appropriating approved budget amounts. Once budget funds are allocated, the Trustees are responsible for long term financial stability; for making decisions within the confines of the budgeted funds; the law, and governing rules regarding plan design

3. City Staff.

The City Staff will serve as a resource to the Trust by providing financial reports and other management reports as required in order to assist The Trustees in fullfilling their fiduciary responsibilities.

City Staff is additionally responsible for communicating with employees the components of the Workers' Compensation plan and educating employees regarding loss prevention and light/modified duty options.

4 Outside Consultants.

The term "Outside Consultants" is broadly defined to include the benefit or risk management consultant, third party or plan administrator, actuary, external auditor, etc. The Trustees may assign responsibility to any Outside Consultant for the following:

a. Plan Benchmarking.

b. Financial Analysis.

c. Renewal Analysis.

d. Assist with vendor relationships, as requested

e. Assist with employee advocacy/problem resolution, as requested

f. Contract reviews, as requested.

g. Attend Trust Board meetings, as requested

h. Benefit Plan Consulting

i. Employee Information Meetings

j. Attending City Council Meetings

ARTICLE IV POWERS OF TRUSTEE

1. **Powers.**

1.1. The Trustees shall be responsible for recommendations to the City Council regarding the administration of the Workers' Compensation Trust Fund . The Trustees shall meet at least quarterly and shall have the following powers and authorities, which may be exercised by any third party holding property on behalf of the trust upon direction of the trustees: To purchase, or subscribe for, any securities or other property and to retain the same in Trust;

1.2. To sell, exchange, convey, transfer, grant options to purchase, or otherwise dispose of any securities or other property held by the Trustee, by private contract or at public auction, and any sale may be made for cash or upon credit, or partly for cash and partly upon credit. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity, expediency, or propriety of any such sale or other disposition;

1.3. To vote upon any stocks, bonds, or other securities. This includes the power to give general or special proxies or powers of attorney with or without power of substitution; to exercise any conversion privileges, subscription rights, or other options, and to make any payments incidental thereto; to oppose, to consent to, or otherwise participate in, corporate reorganizations or other changes affecting corporate securities, and to delegate discretionary powers, and to pay any assessments or charges in connection therewith; and generally to exercise any of the powers of an owner with respect to stock, bonds, securities or other property held as part of the Trust Fund;

1.4. To cause any securities or other property held as part of the Trust Fund to be registered in the Trustee's own name or in the name of one or more of the Trustee's nominees, and to hold any investments in bearer form, but the books and records of the Trust shall show that all such investments are part of the Trust Fund;

1.5. To keep such portion of the Trust Fund in cash or cash balances as the Trustee may, from time to time, deem to be in the best interests of the Trust created hereby, without liability for interest;

1.6. To accept and retain for such time as it may deem advisable any securities or other property received or acquired by it as Trustee hereunder, whether or not such securities or other property would normally be purchased as investments of the Trust;

1.8. To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;.

1.9 To settle, compromise, or submit to arbitration any claims, debts, or damages to or owing to or from the Trust Fund, to commence or defend suits or legal or administrative proceedings, and to determine the position of the Trust Fund in all suits and legal and administrative proceedings;

1.10 To employ suitable third parties as necessary with the consent of the City, which shall not be unreasonbly withheld and to pay their reasonable expenses and compensation in accordance with the provisions of the City of Peoria, Arizona, City Charter, City Code and procurement procedures and policies.

1.11 In the event of claims or issues pertaining to coverage of beneficiaries under this Agreement, such agents or counsel may or may not be agents or counsel for the City.

1.12 To invest funds of the Trust Fund in night deposits or savings accounts bearing a reasonable rate of interest;

1.13 To invest in Treasury Bills and other forms of United States government obligations;

1.14 To deposit monies in federally insured savings accounts or certificates of deposit in banks or savings and loan associations; and

1.15 To do all such acts, take all such proceedings, and exercise all such rights and privileges, although not specifically mentioned herein, as the Trustee may deem necessary to administer the Trust Fund, and to carry out the purposes of this Trust.

2. **Majority Rules.**

The Board shall act by a majority of its members present and voting. The chairperson and secretary may be authorized to sign papers and instruments on the Board's behalf.

3. **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 Peoria, Arizona. In addition, the Board of Trustees shall be reimbursed for any reasonable expenses, including reasonable counsel and accounting fees, incurred by the Board in the administration of the Trust Fund, provided such services are procured in a competitive manner in accordance with the City of Peoria, Arizona 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 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 shall be paid by the Trustee from the Trust Fund.

4. **Meetings and Quorum.**

All members of the Board shall be notified of meetings, and no meeting shall be held in the absence of such notification. A quorum shall be reached when at least three (3) members of the Board, not counting the Human Resources Director or their designee, are present. Agendas for meetings and the dates of general meetings shall be determined by the Board, which may assign such determination to staff support responsible for the day to-day administration of the Trust. The City of Peoria, Arizona Human Resources Department shall provide such staffing as requested by the Board. The Board shall elect a chairperson to coordinate the activities of the Board, including setting meeting times, suggested agendas, and other administrative activities of the Trustee.

5. **Officers.**

The Trustees shall elect a chairman and secretary to serve for a term of two years. The chairman and secretary may resign office at any time, and upon such resignation, the Trustees shall elect a successor for the remainder of the term. The chairman shall conduct the meetings of the Board of Trustees, and will carry out all other assigned duties. The secretary will substitute for the chairman in his absence. The Human Resources Department will be responsible for the taking of minutes of all meetings and other appropriate responsibilities. The chairman and secretary may propose or second any motion for consideration by the Trustees.

6. 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, Arizona Revised Statutes. All Claims and Legal Process must be served on the City Clerk of the City of Peoria in Person, together with any other requirements of Title 12, Arizona Revised Statues.

7. Specific Authority.

The provisions of this Trust Agreement providing specific authority for 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.

ARTICLE V TRUSTEE'S DUTIES

1. General.

The Trustee shall discharge its duties under this Trust solely in the interest of employees and volunteers of the City that are covered under City's workers compensation plan pursuant to state law, city charter and city codeand for the exclusive purpose of providing applicable benefits to such persons and defraying reasonable expenses of administering the Trust, with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man 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, and by diversifying the investments of the trust so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so, all in accordance with the provisions of this Trust. The duties and obligations of the Trustee as such 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.

2. Benefit Plan Implementation.

The Trustees have authority and discretion to implement, interpret and administer the City of Peoria, Arizona Workers' Compensation Plan including the amounts of said benefits.

3. 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 consent of the City in accordance with state law.

4. Payment of Benefits.

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

5. Consultation and Indemnification.

The Trustee may consult with counsel and the Trustee shall not be deemed imprudent by reason of its 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 Trustee harmless from and against any liability that the Trustee 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 Trustee shall not be required to give any bond or any other security for the faithful performance of its duties under this Trust, except such as may be required by a law which prohibits the waiver of such bond or security.

6. 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 Treasury Regulation Section 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 Trustee or the City. The Plan Administrator shall furnish to the Trustee 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 Trustee shall acknowledge receipt of this statement in writing and advise the Plan Administrator of its approval or disapproval of the statement. The Finance Director of the City shall audit such statement. Failure by the Trustee to disapprove any such statement of account within thirty (30) days after its receipt shall be deemed approval of the statement. The approval by the Trustee of the statement of account shall serve to release and discharge the Plan Administrator from any liability or accountability to the City as respects the propriety of the Plan Administrator's acts or transactions shown in the statement of account, except with respect to any acts or transactions as to which the Trustee shall file written objections with the Plan Administrator within the thirty (30) day time period prescribed.

7. **Plan Administrator's Administration.**

The Plan Administrator shall administer the Plan as provided therein pursuant to the direction of the Trust. The Plan Administrator shall be entitled conclusively to rely upon any notice, instruction, direction or other communication of the Trustee.

ARTICLE VI ADMINISTRATION OF TRUST

1. **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 employer participant in the plan nor subject to garnishment or levy for the obligation of any beneficiary. For purposes of Arizona Community Property law, no beneficiary is deemed to have any vested ownership interest in any funds in the trust until such time as claim by such beneficiary arises and has been been paid and only to the extent of such payment made by the trust.

2. **Interest.**

The Trust shall not be required to pay interest on Employer contributions to the Fund. Interest accrued on Trust funds shall remain in Trust not inconsistent with the provisions of this Agreement.

3. **Spendthrift Clause.**

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

3.1. Assigned or encumbered by any Participant;

3.2. Attached by or subjected to the interference or control of any creditor of any Participant or the Employer; or

3.3. Reached by any legal or equitable process in satisfaction of any debt or liability of any Participant prior to its actual receipt by such Participant.

3.4. Attributed as income to any participant for purposes of Arizona Community Property Law prior to its actual receipt by such Participant.

4. Trustees.

Notwithstanding any provision of the Peoria City Code (1992), The initial trustees shall be appointed by the Mayor and confirmed by Council. Other than the Chief Financial Officer,, the initial trustees need not meet any qualifications. All initial trustees other than the Chief Financial Officer shall be appointed for a term commencing on July 1, 2009 and ending on July 1, 2010. Thereafter the terms of trustees shall be staggered in accordance with the City Code.

The Trustees shall consist of:

4.1 The Chief Financial Officer or his designee as appointed by the Mayor with the Consent of the Council, who shall serve for so long as they are so employed or so designated.

4.2 Four Citizens who shall serve staggered terms in the manner provided for in the Peoria City Code. A citizen trustee shall be a resident of Maricopa County, Arizona, however, need not be a resident of the City of Peoria.

4.3 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. Additionally, trustees shall have a background in one of the following areas with consideration given to including as many of these areas as practicable:

a. Health and Employee Benefits
b. Insurance
c. Finance and Banking
d. Pension and Trust Law
e. Risk Management
f. Human Resources
g. Accounting

No current city employee other than the City's Chief Financial Officer or his designee shall be eligible for appointment to the Board of Trustees.

5. Disqualification from Serving as Trustee.

No individual who has been convicted of any of the crimes listed in Section 411 (a) of 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 shall be permitted to serve as a Trustee of the Trust.

6. Benefit Plan Document and Description.

The Trustees will 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 will authorize the Human Resources Department to prepare a booklet containing the provisions of the plan and the summary plan description for distribution to Employees and Volunteers covered by the Arizona Worker's compensation requirements pursuant to state law, city charter or city code.

7. Production of Documents for Inspection.

The Trustees will provide Employees the right to examine, or furnish them upon written request, copies of the Trust Agreement, the plan document, the summary plan description and the most recent annual report.

8 Review of Denied Benefit Claims.

The Trustees have delegated the review of denied benefit claims to the third-party administrator. All denied claims shall be processed in accordance with the Worker's compensation laws of the State of Arizona. . Said procedures will constitute the sole and exclusive procedures available through the benefit plan to an employee or volunteer that is covered under Workers Compensation pursuant to state law, city charter or city code and who is dissatisfied with the disposition of a claim.

9 Other Claims.

9.1 Notwithstanding any other provisions of this Agreement, for purposes of claims arising under Title 27, Chapter 6, Arizona Revised Statutes. Once a claim has been denied by the Third Party Administrator on behalf of the Trust, the employee shall file a claim with the commission in the manner provided by A.R.S. § 23-947.

9.2 The claim shall be deemed denied as of the date of the action of the third party administrator. The third party administrator shall render a decision within ninety days from the date of filing of the claim

9.3 For purpose of claims arising under the worker's compensation laws of this state, in the event of a conflict between this agreement and the laws of this state, the statute shall govern.

10. Covered Employee and Employer Rights.

10.1 No Employee or volunteer covered under City's Worker's Compensation Plan pursuant to state law, city charter or city code shall have any right, title, or interest in or to the Trust, or the Contributions, or in the benefits provided. No Employee or volunteer covered under City's Worker's Compensation 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 Workers' Compensation Trust

10.2. No employee or volunteer covered under City's Workers Compensation Plan, pursuant to state law, city charter or city code, , who is not eligible for benefits, will not have any claim to the Contributions which may have been paid by or on his behalf.

10.3 No employee or volunteer covered under City's worker's compensation Plan, pursuant to state law, city charter or city code is entitled to receive any benefits from the Trust other than those specified under the terms of the Workers' Compensation Trust.

ARTICLE VII RESIGNATION, REMOVAL AND SUCCESSION OF TRUSTEE

1. Resignation.

A member of the Board of Trustees may resign at any time by giving written notice to the City Clerk of the City of Peoria, Arizona.

2. Removal.

The City Council of the City of Peoria, Arizona may remove and replace a member of the Board of Trustees at any time in the manner provided in Section 2-158 of the Peoria City Code (1992) as amended.

3. Successor Trustee.

Upon the resignation or removal of a member of the Board of Trustees, the Mayor shall appoint with the approval of the City Council of the City of Peoria, Arizona a successor Trustee, who shall have the same powers and duties as those conferred upon the member being replaced.

4. Report by Trustee.

Within sixty (60) days after the resignation or removal of the Trustee, the predecessor Trustee may furnish to the successor Trustee a written statement of account with respect to the portion of the year for which the predecessor Trustee served. Failure by the successor Trustee to disapprove any such statement of account within thirty (30) days after its receipt shall be deemed approval of the statement. The approval by the successor Trustee of the statement of account shall serve to release and discharge the predecessor Trustee from any liability or accountability to the City with respect to the propriety of the predecessor Trustee's acts or transactions shown in the statement of account, except with respect to any acts or transactions as to which the successor Trustee shall file written objections with the predecessor Trustee within the thirty (30) day time period prescribed.

5. Liability.

Successor Trustee shall not be liable for any act or failure to act on the part of a predecessor, nor shall the successor be required to inquire into or take notice of the prior Trustee's actions or omissions to act regarding this Trust. The predecessor Trustee shall not be liable for appointment of its successor, or any act of a successor under this Trust.

6. Waiver of Notice.

In the event of any resignation or removal of the Trustee, the Board may waive any notice of resignation or removal as may be provided in this document.

ARTICLE VIII AMENDMENT OF TRUST AGREEMENT

1. Amendment.

Any or all of the provisions of this Trust as amended, may again be amended at any time and from time to time, in whole or in part, by an instrument in writing from the Employer and signed by the Trust. No such amendment shall authorize or permit any part of the Trust Fund (other than such part as is required to pay taxes and administration expenses) to be used for or diverted to purposes other than for the exclusive benefit of the Employees and volunteers covered by City's Worker's Compensation Plan pursuant to state law, city charter and city code.

ARTICLE IX GENERAL PROVISIONS

1. Payroll Information.

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

2. Source of Funds.

This Trust shall constitute the sole source of funds which may be used to pay the Worker's Compensation Expenses payable under the Plan, and the City of Peoria, Arizona, 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.

3. Limited Effect of Plan and Trust, No Third Parties.

3.1 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, the City of Peoria, Arizona, except as may otherwise be provided in the Plan or in the Trust.

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

4. Protective Clause.

Neither the City, the Plan Administrator nor the Trustees shall 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.

5. Construction of Trust.

This Trust shall be construed and enforced according to the laws of Arizona.

6. Severability.

If any provision of this Trust shall be held illegal or invalid for any reason, such determination shall not affect the remaining provisions of the Trust.

7. Gender and Number.

Wherever any words are used in this document in the masculine, feminine or neuter, they shall 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 shall be construed as though they were also used in the other form in all cases where they would so apply.

8. Headings.

The headings and sub-headings of this Trust have been inserted for convenience of reference and are to be ignored in any construction of the Trust's provisions.

9. Entire Agreement.

This Trust Agreement 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 Agreement.

10. Venue.

Venue of an claim arising under this Agreement or out of any actions of the Trustees pursuant to this Agreement shall be in the Superior Court of Maricopa 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.

Dated this _____day of _____, 2009

EMPLOYER
City of Peoria, Arizona

By:_____
Carl Swenson
Its: City Manager

ATTEST:

_____
Mary Jo Kief, City Clerk

APPROVED AS TO FORM

_____
Stephen M. Kemp, City Attorney

TRUST
City of Peoria, Arizona, Employees
Benefit Trust

By:_____
_____
Its: Chairman of the Board of Trustees

ATTEST:

_____
Secretary of the Board of Trustees

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