

**ORDINANCE NO. 1650-518**

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AMENDING THE AVONDALE CITY CODE, CHAPTER 2, ADMINISTRATION, BY ADDING A NEW ARTICLE V, WORKERS COMPENSATION INSURANCE.

**WHEREAS**, the City of Avondale, Arizona (the "City") currently provides certain welfare benefits for certain of its employees, elected officials, and their beneficiaries; and

**WHEREAS**, ARIZ. REV. STAT. § 23-962(A) requires the City to provide workers' compensation insurance for its employees and other eligible persons; and

**WHEREAS**, ARIZ. REV. STAT. § 23-961(A)(2) permits the City to establish a self-insurance program for the management and administration of workers' compensation benefits upon providing to the Arizona Industrial Commission satisfactory proof of ability to pay claims; and

**WHEREAS**, ARIZ. REV. STAT. § 11-981 law requires that the funding for such self-insurance program be deposited in a trust; and

**WHEREAS**, the City desires to establish such a self-insurance program; and

**WHEREAS**, the City intends to amend the City Code as set forth herein to establish the Trust, which together with the Trust Agreement attached hereto as Exhibit A, shall satisfy the requirements of ARIZ. REV. STAT. § 11-981; and

**WHEREAS**, the City intends the Trust to be exempt from taxation pursuant to Section 115 of the Internal Revenue Code.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVONDALE** as follows:

SECTION 1. The recitals above are hereby incorporated as if fully set forth herein.

SECTION 2. The Trust Agreement is hereby approved in substantially the form attached hereto as Exhibit A.

SECTION 3. The Avondale City Code, Chapter 2 (Administration) is hereby amended to add a new Article V (Workers Compensation Insurance) to read as follows:

## ARTICLE V – WORKER’S COMPENSATION

**2-91 Purpose.** The Worker’s Compensation Trust is established and shall provide for a Worker’s Compensation Trust Board to administer the Trust Fund for the purpose of providing for payment of the City’s Worker’s Compensation obligations as follows:

- (a) All monies received by the City for the purpose of funding the Worker’s Compensation obligations shall be deposited into the Trust Fund, including all contributions, premiums, credits, rebates, refunds, and third-party lien recoveries.
- (b) The Trust Fund shall be used for the purpose of administering, staffing, managing, and funding the City’s obligations arising pursuant to the provisions of Title 23, Chapters 5 and 6 of the Arizona Revised Statutes or any other compensation due to a former or current City employee that is in the nature of worker’s compensation.
- (c) The City shall adopt a Trust Agreement that sets forth the specific terms of the Worker’s Compensation Trust. A stop-loss provision shall be incorporated into the Trust Agreement.
- (d) An annual audit of the Trust Fund shall be conducted by an external auditor designated by the City Manager. A copy of the audit report shall be kept on file in the Office of the City Clerk for a period of not less than five years.

**2-92 Definitions.** For the purposes of this article, unless the context otherwise requires:

“Beneficiary” means an employee, former employee, or any other person entitled to receive compensation from the City pursuant to the provisions of Title 23, Chapters 5 and 6 of the Arizona Revised Statutes or any other compensation due to a former or current City employee that is in the nature of worker’s compensation.

“Board” means the City of Avondale Worker’s Compensation Trust Board.

“Plan” means the trust arrangement pursuant to which the City provides self-insurance for obligations arising under Chapters 5 and 6 of Title 23 of the Arizona Revised Statutes.

“Trust Agreement” means a separate document adopted by the City setting forth the specific terms for the administration of the City of Avondale Worker’s Compensation Trust, including any amendments or supplements to the document.

“Trust Fund” means the City of Avondale Worker’s Compensation Trust Fund.

“Trustee” means a person appointed and serving on the City of Avondale Worker’s Trust Board.

**2-93 Board; appointment; terms.** The Board shall be subject to the following:

- (a) Establishment. The Board is established to administer the Trust Agreement and Trust Fund.
- (b) Appointment. The Trustees of the Avondale Risk Management Trust, as established by Chapter 2, Article IV of the City Code, shall also serve as the Trustees of the Trust Fund to oversee management and administration of the Trust. Provided, however, in the event that a

Trustee is unable or unwilling to serve, the Mayor of Avondale shall nominate one or more individuals to serve as a Trustee in his or her stead. The Council shall consider and may appoint any individual so nominated to serve in the stead of the Trustee unable or unwilling to serve; provided, however that the number and identity of the appointed Trustees shall conform to the requirements herein.

(c) Number and Identity. There shall be five Trustees. No more than one Trustee may be a member of the Council, and no more than one Trustee may be an employee of the City. No former member of the Council or former employee shall be a Trustee. With the exception of the employee and Council Trustees, if any, a Trustee shall have expertise in the field of finance, employee benefits, worker's compensation, or health care.

(d) Bonding. All Trustees shall be bonded in an amount to be approved by the City Manager. This requirement may be satisfied by a blanket performance bond or other coverage provided by the City. Trustees serving as a Trustee of this Trust and the Risk Management Trust may hold a single bond.

(e) Officers. At the commencement of each Plan Year, the Trustees shall elect a Chairperson, Vice-Chair, and a Secretary from among themselves. The Chairperson shall preside over the work of the Trustees pursuant to this Code and the Trust Agreement. The Vice-Chair shall preside in the Chairperson's absence. The Secretary shall cause to be maintained accurate records of all actions of the Trustees, including minutes from all Trustees' meetings. A copy of the minutes shall be retained as a record of the Trust's activities.

(f) Term. The term of the office of the Trustees shall run concurrently with the terms of office for the Trustees of the Risk Management Trust. Additionally, the term of a Trustee who is appointed by the Council shall run concurrent with the term of the Risk Management Trustee who the Trustee is appointed to replace. Each Trustee of this Trust shall accept the appointment in writing and shall confirm in writing that the Trustee agrees to hold and administer the Trust Funds, in trust, pursuant to the terms of the Trust Agreement.

(g) Termination. The term of any Trustee shall 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 the City, the termination of such employment.

(h) Resignation of a Trustee. A Trustee may resign by giving 60 days' prior, written notice to the Chairperson. The Chairperson may exercise discretion to waive or reduce the sixty-day requirement, but shall not waive the written-notice requirement. The notice shall state the effective date of resignation. The resignation shall 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 shall constitute the effective date of the resignation. Upon the effective date of the resignation, the resigning Trustee shall be discharged from any further duty or responsibility under the Trust, and the resigning Trustee shall 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 Trust.

(i) Removal of a Trustee. A Trustee may be removed the City Council according to its Rules of Procedure. Upon the effective date of the removal, the removed Trustee shall be discharged from any further duty or responsibility under the Trust, and the removed Trustee shall deliver to the Chairperson (or to the Secretary, if the Chairperson is being removed) any and all property in his or her possession or control that belongs to the Trust.

(j) Meetings. The Trustees shall meet whenever required to provide for the orderly and timely administration of the business of the Plan and the Trust at such location as may be acceptable to the Trustees, but no less than once per Plan Year. In calling, providing notice of, and holding meetings, the Trustees shall conform to applicable law.

(k) Quorum. A quorum shall consist of three Trustees.

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

#### **2-94 Powers and duties.**

(a) The Board shall:

1. Administer the Trust Fund pursuant to this Article and the Trust Agreement.
2. Provide financial oversight of the Trust Fund by evaluating claim expenses and reserve amounts.
3. Review annually the Trust Fund to ensure sufficient funds exist to pay outstanding and future benefits, to pay losses or claims or any combination of insurance and direct payment, and to pay for risk management consultation.
4. Make recommendations to the City Manager on financial issues relating to worker's compensation and employer liability.
5. Comply with all requirements of State and Federal laws relating to self-insurance programs for the management and administration of worker's compensation or other self-insured system for direct payment of benefits, losses or claims or any combination of insurance and direct payment, and including risk management consultation.
6. Meet at least once each year, or more frequently as the Chairperson of the Board deems necessary, or upon the request of the City Manager.

(b) The Board may:

1. Recommend to the Council rules or policies for the operation of the Board so long as the recommended rules or policies are not inconsistent with the City Code, the laws of the State of Arizona, the City Charter or any City ordinances or resolutions.
2. Appoint committees.
3. Request the City Manager to designate staff to perform assignments necessary for the administration of the Trust Fund.

4. Consult with or advise any committee, task force or working group established by the City to address worker's compensation issues or to make recommendations to the City Manager regarding such issues.

5. Delegate its duties and responsibilities in a manner consistent with its fiduciary responsibilities.

**2-95 Risk Management Consultant or Insurance Administrator.**

(a) The City Manager shall designate a Risk Management Consultant or an Insurance Administrator licensed pursuant to Arizona State law.

(b) City Council shall verify that any Risk Management Consultant or Insurance Administrator designated by the City Manager is licensed as required by Arizona State Law.

**2-96 Termination; amendment.**

(a) The City may determine that it will no longer provide the Worker's Compensation plan or any other self-insured program for the management and administration of a system for direct payment of benefits, losses or claims or any combination of insurance and direct payment, and including risk management consultation, at which time the Trust Fund will be dissolved after the payment of its outstanding liabilities. Any funds remaining will revert to the City's General Fund.

(b) The City may amend the provisions of this Code at any time.

SECTION 4. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to take all steps necessary to carry out the purpose of this Ordinance.

**PASSED AND ADOPTED** by the Council of the City of Avondale, Arizona, May 21, 2018.

  
\_\_\_\_\_  
Kenneth N. Weise, Mayor

ATTEST:

  
\_\_\_\_\_  
Carmen Martinez, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Andrew J. McGuire, City Attorney

EXHIBIT A  
TO  
ORDINANCE NO. 1650-518

[Trust Agreement]

See following pages.

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**CITY OF AVONDALE, ARIZONA  
WORKERS' COMPENSATION  
TRUST AGREEMENT**

**Adopted: May 21, 2018**

**CITY OF AVONDALE  
WORKERS' COMPENSATION TRUST AGREEMENT**

THIS WORKERS' COMPENSATION TRUST AGREEMENT (this "Trust Agreement") is made and entered into as of May 21, 2018, by and between the City of Avondale, an Arizona municipal corporation (the "Trustor" or the "City"), and the City's Risk Management Trust Board (the "Trust Board" or "Trustees").

**RECITALS**

A. The City currently provides certain welfare benefits for certain of its employees, elected officials, and their beneficiaries.

B. ARIZ. REV. STAT. § 23-962(A) requires the City to provide workers' compensation insurance for its employees and other eligible persons.

C. ARIZ. REV. STAT. § 23-961(A)(2) permits the City to establish a self-insurance program for the management and administration of workers' compensation benefits upon providing to the Arizona Industrial Commission satisfactory proof of ability to pay claims.

D. ARIZ. REV. STAT. § 11-981 requires that the funding for such self-insurance program be deposited in a trust. The City has established such a self-insurance program and intends the trust established by this document (this "Trust") to satisfy the requirements of ARIZ. REV. STAT. §11-981.

E. The City intends the Trust established by this Trust Agreement to be exempt from taxation pursuant to Section 115 of the Internal Revenue Code.

**NOW, THEREFORE**, in consideration of the foregoing introduction and recitals, which are hereby incorporated into and are deemed an integral part of this Trust Agreement, the mutual covenants set forth below and other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged by the parties hereto, the City and the Trustees to be later appointed who, by accepting their appointment hereby agree as follows:

**ARTICLE I  
DEFINITIONS**

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

"Beneficiary" means a person authorized under Arizona Law to receive benefits for an injured City employee or volunteer covered under its Workers' Compensation Plan and entitled to receive benefits.

"City" means the City of Avondale, an Arizona municipal corporation.

"Code" means the Internal Revenue Code of 1986, as amended.

“Council” means the Avondale City Council.

“Employee” means an individual that the City 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 the City 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.

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

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

“Participant” means an Employee, City elected official, or any volunteer of the City permitted by Arizona law, City Charter or City Code who has incurred a valid Workers’ Compensation Claim under Arizona law and for whom the City is obligated to make contributions to the Trust under any Workers’ Compensation Plan established pursuant to this Trust Agreement.

“Plan” means the lawful Workers’ Compensation Plan included in the City’s Policies and Procedures and administered by the Risk Manager and the Trustees pursuant to this Trust Agreement.

“Plan Administrator” means the City’s Risk Manager or entity appointed by the City Manager as the Plan Administrator of the Plan.

“Plan Year” means the fiscal year of the Plan.

“Reserve” 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 shall be as attested to by an actuary who has been engaged to provide services to the Trust.

“Trust” means the legal entity established pursuant to this Trust Agreement. “Trustees” means the Trustees described in this Trust Agreement.

“Workers’ Compensation Benefits” means the benefits provided to eligible participants as required by the State of Arizona.

## **ARTICLE II ESTABLISHMENT OF TRUST**

**Section 2.01. Establishment.** The City hereby establishes the Trust, consisting of such monies as the City may deposit from time to time in the Account; plus all other money or assets as shall 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 Agreement. The Trust shall become effective only upon the determination of the City Attorney that this document is in proper form and is within the power and authority of the Council, and upon the approval of the Council.

**Section 2.02. Name.** The Trust shall be known as the City of Avondale Workers' Compensation Trust.

**Section 2.03. Purpose.**

The purpose of the Trust is to fund workers' compensation benefit programs administered by the City in accordance with the provisions of Arizona law and to authorize the management, funding and administration of the fund for direct payment of benefits, losses, claims, or any combination of insurance direct payments for the benefit of Participants and Beneficiaries, in accordance with the Plan.

The Funds shall be held, invested, reinvested, and administered by the Trustees (in coordination with the City's Risk Manager) in accordance with the terms of the Plan and the terms of this Trust Agreement, solely in the interest of Participants and Beneficiaries and for the purpose of providing benefits to the Participants and their Beneficiaries and defraying the reasonable expenses of administering the Plan and the Trust.

The successful operation and administration of the trust requires communication and cooperation among the Trustees, the Council, City Management, City Staff, employees, employee associations and other designated third parties. Decisions or recommendations made by the Trustees with regard to operation and administration of the trust should take into account input from designated stakeholders.

**ARTICLE III  
ORGANIZATION AND OPERATION OF TRUSTEES**

**Section 3.01. Appointment.** The Council shall appoint individuals to serve as Trustees who shall act in an advisory capacity to the Council and at the sole pleasure of the Council. The Council may appoint any individual, provided that the number and identity of the appointed Trustees shall conform to the requirements of this Article and applicable City ordinances. Each Trustee so appointed shall accept the appointment in writing and shall confirm in writing that the Trustee agrees to hold and administer the Funds, in trust, pursuant to the terms of this Trust Agreement.

**Section 3.02. Number and Identity.** There shall be five Trustees. No more than one Trustee may be a member of the Council, and no more than one Trustee may be an employee of the City. With the exception of the Council member Trustee, if any, a Trustee shall have expertise in the field of finance, employee benefits, health care, human resources and/or risk management.

**Section 3.03. Bonding.** All Trustees shall be bonded in an amount to be approved by the City Manager. This requirement may be satisfied by a blanket performance bond or other

coverage provided by the City.

**Section 3.04. Officers.** At the commencement of each Plan Year, the Trustees shall elect a Chairperson and a Secretary from among themselves. The Chairperson shall preside over the work of the Trustees pursuant to this Trust Agreement. The Secretary shall preside in the Chairperson's absence. The Secretary shall cause to be maintained accurate records of all actions of the Trustees, including minutes from all Trustees' meetings. A copy of the minutes shall be retained as a record of the Trust's activities.

**Section 3.05. Term.** Each Trustee shall serve a four-year term, unless terminated as described in this Article. Notwithstanding the foregoing, the initial terms for the first five Trustees shall be as follows: one Trustee to serve an initial term of two years; two Trustees to serve an initial term of three years; and two Trustees to serve a term of four years. The Council shall determine which of the first five Trustees shall serve the two-year, three-year and four-year terms.

**Section 3.06. Termination.** The term of any Trustee shall 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 Avondale, the termination of such employment.

**Section 3.07. Resignation of a Trustee.** A Trustee may resign by giving 60 days' prior written notice to the Chairperson. The Chairperson may exercise discretion to waive or reduce the 60-day requirement, but shall not waive the written-notice requirement. The notice shall state the effective date of resignation. The resignation shall 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 shall constitute the effective date of the resignation. Upon the effective date of the resignation, the resigning Trustee shall be discharged from any further duty or responsibility under the Trust, and the resigning Trustee shall deliver to the Chairperson (or to the Secretary, if the Chairperson is resigning) any and all property in his or her possession or control which belongs to the Plan or Trust.

**Section 3.08. Removal of a Trustee.** The Council may remove any Trustee for cause at any time by written notice thereof delivered to the Trustee. Upon the effective date of the removal, the removed Trustee shall be discharged from any further duty or responsibility under the Trust, and the removed Trustee shall deliver to the Chairperson (or to the Secretary, if the Chairperson is being removed) any and all property in his or her possession or control which belongs to the Plan or Trust.

**Section 3.09. Meetings.** The Trustees shall meet whenever required to provide for the orderly and timely administration of the business of the Plan and the Trust at such location as may be acceptable to the Trustees, but no less than once per Plan Year. In calling, providing notice of, and holding meetings, the Trustees shall conform to applicable law.

**Section 3.10. Quorum.** A quorum shall consist of three Trustees.

**Section 3.11. Voting.** Each Trustee shall have one vote. All actions by and decisions of the Trustees shall 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 3.12. Exculpation and Indemnification of the Trustees.**

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

(i) Any instrument, application, notice, request, signed letter, telegram or other paper or document believed to be genuine and to contain a true statement of facts and to be signed or sent by the proper person; or

(ii) 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 City and/or Trustees with reasonable care.

(b) **Exculpation of Trustees.** No Trustee shall incur any liability individually or on behalf of other individuals for any action or omission, 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 or has served as a Trustee to be indemnified 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 or omissions as a Trustee, including, without limitation, legal fees and amounts paid in any compromise or settlement, unless such acts or omissions constitute gross negligence, criminal conduct, willful misconduct or lack of good faith. Any indemnification provided herein shall 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, in their discretion, may also cause the Trust to indemnify any person who is rendering services to the Trust or Plan against all damages, liabilities and expenses incurred by or imposed upon such a person in connection with any claim, suit, action or proceeding concerning the Plan or Trust or the acts or omissions of such a person, including, without limitation, legal fees and amounts paid in any compromise or settlement, unless such act or omission constitutes gross negligence, criminal conduct, willful misconduct or lack of good faith.

(e) **Limitation on Indemnification.** Notwithstanding the foregoing, no indemnification shall be provided unless and until:

(i) It is adjudicated that the action or omission did not constitute gross negligence, criminal conduct, willful misconduct, or lack of good faith; or

(ii) The Trust receives a written opinion from Legal counsel for the Trust that any such adjudication would have determined that the action or omission did not

constitute gross negligence, criminal conduct, willful misconduct, or lack of good faith.

**Section 3.13. Compensation of Individual Trustees.** An individual Trustee shall not be paid any compensation or reimbursement from the Trust for services provided to the Trust.

**Section 3.14. Conflicts of Interest.** Each Trustee shall comply with applicable state and federal law concerning conflicts of interest.

**Section 3.15. Service in More Than One Fiduciary Capacity.** Any individual, entity or group of persons may serve in more than one fiduciary capacity with respect to the Plan, the Trust or both to the extent such is permitted by law.

#### **ARTICLE IV RESPONSIBILITIES AND POWERS OF THE TRUSTEES**

**Section 4.01. In General.** The Trustees will establish necessary policies, rules and procedures to enable the Trust to perform all lawful acts permitted by statute, ordinance and by this Trust Agreement. The Trustees may without limitation do all of the following:

(a) Recommend to the Council policies, rules and procedures for the administration of the Trust; provided, however, that these policies, rules and procedures may not be inconsistent with the provisions of this Trust Agreement or applicable City, state and federal law and regulations.

(b) Authorize the Plan Administrator or designee on behalf of the Trust to retain the services of actuaries, auditors, engineers, private consultants, administrators and advisors as the Trustees consider necessary in order to carry out the business and purposes of the Trust. The Trustees may seek private outside legal counsel when legal advice is considered necessary. For routine matters associated with administration of the trust, the Trustees may utilize the City Attorney or legal counsel designated to serve in his or her place.

(c) Recommend modifications of the terms and conditions of this Trust Agreement to the City Council.

(d) Authorize the Plan Administrator or designee to administer the day to day affairs of this Trust.

(e) Maintain minutes of their meetings.

(f) Delineate in the written minutes of its meetings the areas of authority it delegates to the Plan Administrator or designee.

(g) The Trustees will, through the City's Budget and Finance Director and in accordance with the reasonably prudent investment standard for Trustees, provide for the investment of Trust monies in a manner consistent with the provisions of ARIZ. REV. STAT. § 35-321 *et seq.*

#### **Section 4.02. 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 Manager has designated a risk management consultant or insurance administrator licensed pursuant to Title 20, Chapter 2 of the Arizona Statutes, and the Trustees shall further confirm that such license was verified by the Council prior to such designation.

(b) **Auditor.** The Council shall engage an external auditor to perform an annual audit of the Trust. Each audit report shall be kept on file for five years with the City Clerk. The Trustees shall work and cooperate with such auditor.

(c) **Stop-Loss.** Prior to paying any Plan claims on a self-insured basis, the Trustees shall procure or cause to have procured stop-loss insurance for the Trust from an insurer authorized to do business in Arizona.

**Section 4.03 Management.** The Trustees shall make recommendations regarding the management of the Trust, including the acquisition and disposition of property that is in or part of the Trust, as follows:

(a) **General Responsibilities.** The Trustees shall have responsibility to make recommendations with respect to the custody and management of the Trust, except to the extent any such responsibility has been assigned elsewhere by this Trust Agreement or has been delegated by the Trustees pursuant to this Trust Agreement.

(b) **Separate Account; Delegation of Custody.** The Trustees have the responsibility and authority to maintain the Funds in Trust. The Trustees shall maintain the Funds at a financial institution approved by the City.

(c) **Contributions and Distributions.** The Trustees shall advise, as needed, the City Manager or designee regarding the required contributions to and distributions from the Trust. Any claims and self-insured retention amounts for workers' compensation shall be paid consistent with the provisions of Avondale City Code, as amended from time to time.

(d) **Required Reserves.** The Trustees have the responsibility to make recommendations regarding the appropriate amount of Funds that the Trust should hold as required Reserves based on accepted actuarial standards and consistent with accounting principles generally accepted in the United States.

(e) **Service Providers.**

(i) **For the Trust.** The Trustees have the authority to request that appropriate City staff provide services to the Trust. In addition, the Trustees may recommend the engagement of suitable third parties to provide services for the Trust such as external auditor for the Trust; to select an agent/broker consultant, third party administrator for

claims administration, bill review, specific and aggregate coverage, actuarial services and other services determined necessary for the operation and administration of the Trust.

(ii) **Payment.** The Trustees may authorize the payment of reasonable compensation and expenses for any parties engaged to provide services for the Trust as set forth above.

(iii) **Compliance.** All engagements and payments pursuant to this Section shall comply with applicable procurement laws, policies, and procedures.

(f) **Accounts, Books, and Records.** The Trustees have the authority and responsibility to ensure that full and accurate accounts, books, and records concerning the Fund are maintained. All such accounts, books, and records shall be open to inspection in accordance with applicable law.

(i) **Valuation.** The Trustees shall cause the Fund to be valued no less than annually and shall forward notice of such value to Council and the Plan Administrator.

(ii) **Accounting.** Within a reasonable time after the end of each Plan Year, the Trustees shall provide the Plan Administrator an accounting of the administration of the Trust since the previous accounting. The accounting shall include all transactions of the Trust during the relevant period, as well as all property in the Trust and its fair market value at the end of the relevant period.

**Section 4.04. No Authority to Modify or Terminate.** The Trustees shall have no authority or responsibility for terminating the Plan; such authority and responsibility is reserved to Council.

## ARTICLE V CONTRIBUTIONS TO AND DISTRIBUTIONS FROM THE TRUST

### Section 5.01. Contributions

(a) **Premiums.**

(i) **Amount.** The Trustees shall review the City's determination of the total premium contribution that shall be required for the Plan. Determination of appropriate premiums shall occur in consultation with the insurance consultant, Plan Administrator, and Budget and Finance Director. The Trustees shall also consult with an actuary familiar with the Trust and the Plan. In determining the total premium, consideration of all reasonable factors, including but not limited to the amount of reserves in the Trust, the claims experience of the Plan and Trust, market conditions, cost trends and plan design should be undertaken. Determination of the total premium shall occur at least annually, but the Trustees may recommend an increase in premiums more frequently if reasonably necessary to protect the financial stability of the Trust.

(ii) **Administration.** At their discretion, the Trustees may recommend a contribution schedule, adoption of a funding policy, or the use of any similar mechanism to arrange for the orderly contribution of funds to the Trust. If required, the City shall forward the premiums to the Trust no less frequently than monthly, in accordance with the arrangement adopted by the Trustees. Upon the Trustees' knowledge that the City is delinquent in its contributions, the Trustees shall promptly provide written notice of the delinquency to the Council, the City Manager, and the City Attorney.

(b) **Other Funding.** The Trustees may recommend the receipt by the Trust of additional funding, 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 5.02. Distributions.** Distributions from the Trust may be made for any of the following:

(a) Paying for or providing benefits to Participants or Beneficiaries, in accordance with the terms, provisions and conditions of the Plan, as determined and directed by the Plan Administrator; the Trustees shall have no obligation to evaluate whether the Plan Administrator's directions are correct; however, the actions of the Plan Administrator must be consistent with the Avondale City Code.

(b) Paying all reasonable expenses of operating, administering, or managing the Plan or Trust, including but not limited to:

(i) Where third parties are engaged to provide services to the Plan or Trust, as described above, compensating such third parties;

(ii) Where City staff render services to the Trust or Plan, compensating the City for such services;

(iii) Where taxes or assessments are levied or imposed upon the Trust or the Plan, paying such taxes or assessments.

(c) Upon termination, pursuant to Section 6.03.

**Section 5.03. No Inurement to Private Interests.** Except as specified in Section 5.02, 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 VI AMENDMENT AND TERMINATION

**Section 6.01. Amendment of Trust.** This Trust Agreement may be amended in writing at any time by the Council. The Trustees may recommend amendments to the Council. Notwithstanding the foregoing, no amendment shall be adopted that 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 6.02. Termination of Trust.** The Trust shall continue until terminated by the Council in writing. The Council shall supply a copy of the writing to all the Trustees and to the Plan Administrator.

**Section 6.03. 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 the City's general fund.

**Section 6.04. Amendment and Termination of Plan.** Nothing in this Trust Agreement shall affect the City's ability to amend or terminate the Plan.

**ARTICLE VII  
GENERAL PROVISIONS**

**Section 7.01. No Right, Title, or Interest.** No Employee, 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 Agreement or the Plan, and then only to the extent of the benefits payable to such person under the Plan.

**Section 7.02. No 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 that 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 person entitled to it. 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 7.03. 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 the City as the result of a mistake may be returned to the City if the Trustees so direct; *provided that* the repayment is not prohibited by applicable law.

**Section 7.04. 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 shall operate to discharge the payor 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 7.05. Notice and Delivery of Documents.** Any notice required to be given under this Trust Agreement may be given in person or by first-class mail. When notice is given by mail, it shall be deemed to have been given as of the date of posting to the last-known address of the addressee available from the Trust records.

**Section 7.06. Headings.** Titles of articles and headings of sections and subsections are inserted for convenience of reference. They constitute no part of this Trust Agreement and are not to be considered in the construction hereof.

**Section 7.07. Construction.** This Trust Agreement is created and accepted in the State of Arizona. All questions pertaining to its validity or construction not otherwise preempted by federal law shall be determined in accordance with the laws of the State of Arizona. If any provision contained in this Trust Agreement should be held unlawful, such provision shall be of no force and effect and this Trust Agreement shall be treated as if such provision had not been contained therein.

**IN WITNESS WHEREOF**, the City of Avondale hereby establishes the Avondale Workers' Compensation Trust.

**CITY OF AVONDALE, an**  
Arizona Municipal Corporation

\_\_\_\_\_  
Mayor

**ATTEST:**

\_\_\_\_\_  
City Clerk