

**DECLARATION OF TRUST OF THE
CITY OF FLAGSTAFF SELF-INSURANCE TRUST FUND**

THIS DECLARATION OF TRUST is made this _____ day of _____, 2016, by the City of Flagstaff ("City"), a political subdivision of the state of Arizona, and by the current trustees of the Self-Insurance Trust Fund and their successors ("Trustees").

RECITALS:

WHEREAS, the Self-Insurance Trust Fund ("Fund") is authorized pursuant to A.R.S. § 11-981 and City Code, Chapter 1-24, *Insurance*, as may be amended;

NOW, THEREFORE, the City agrees as follows:

ARTICLE 1. PURPOSE

The purpose of the Self-Insurance Trust Fund is to pay benefits, losses, and claims.

ARTICLE 2. DEFINITIONS

ADMINISTRATOR: The risk management consultant or insurance administrator who shall be licensed pursuant to A.R.S. § 20-281 et. seq. (Insurance Provider Licensing) or certified as an insurance administrator under A.R.S. § 20-485 et seq. (Insurance Administrators).

CITY: The City of Flagstaff, Arizona, including public officials, boards, commissions, employees and supervised volunteers, while performing duties for the City within the scope of employment.

DECLARATION OF TRUST AGREEMENT: The Agreement entered into by the City and the trustees, setting forth the powers and duties of the Trustees and the Administrator; a stop loss provision; and other terms and conditions.

FUND or TRUST: The Self-Insurance Trust Fund.

LIABILITY LOSS: Defense and damages for losses to persons or property for which the City is liable.

PROPERTY LOSS: Damage to tangible City-owned property by an accidental event but not property of public officials, boards, commissions, employees or volunteers.

TRUSTEES: The Trustees and their successors.

UNEMPLOYMENT COMPENSATION LOSSES: Those charges imposed upon the City by federal and state unemployment compensation laws.

WORKER'S COMPENSATION LOSSES: Those losses for which the City is liable subject to title 23 of the Arizona Revised Statutes.

ARTICLE 3. SELF-INSURANCE TRUST FUND

- A. The Self-Insurance Trust Fund shall be funded in an amount determined appropriate by the City Council.
- B. The Self-Insurance Trust Fund shall provide defense and payment of losses and claims for property, liability, unemployment compensation, worker's compensation; health, accident, life, disability or other benefits for the employees and officers of the City and their dependents; insurance premiums; and risk management consultation; subject to the following exceptions:
- C. Exceptions:
 - 1. Claims or punitive damages arising, out of the willful violation of a penal statute or ordinance.
 - 2. Claims arising out of acts of bad faith and/or fraud.
 - 3. Other items deemed inappropriate by the City Manager or Administrator.

ARTICLE 4. BOARD OF TRUSTEES

- A. The City Council shall appoint five (5) trustees to serve as the Board of Trustees of the Self-Insurance Trust Fund. Each Trustee will serve a three (3) year term, except initial appointments shall be staggered as follows: three (3) trustees shall be appointed for a three (3) year term, and two (2) trustees shall be appointed for a two (2) year term.
- B. All trustees must be residents of the City. No more than one trustee may be a City Council member. No more than one trustee may be a City employee.
- C. No person shall qualify as a trustee until he or she has been bonded. The bond requirement may be satisfied by the blanket performance bond or other coverage provided by the City.
- D. Trustees are subject to removal and substitution by the City Council with or without cause. Upon expiration of his or her term, a trustee may be reappointed by City Council.

ARTICLE 5. POWERS AND DUTIES OF BOARD OF TRUSTEES

- A. The Board of Trustees shall administer the self-insurance program of the City in the manner prescribed by A.R.S. § 11-981 and in the Declaration of Trust Agreement, and shall perform such other duties as may be delegated by the City Council from time to time.

- B. The Board of Trustees shall meet at least once a year to:
 - 1. Retrospectively review all aggregated expenditures, including paid claims;
 - 2. Make recommendations to the City Council, through the City Manager, regarding the amount of funding to achieve and maintain adequate reserves in the Trust, the investment and administration of the Trust, and approval of actuarial assumptions;
 - 3. Make other recommendations to the City Council that the Trustees deem necessary and appropriate; and
 - 4. Submit an annual report to the City Council through the City Manager relating to the status of the Trust.

ARTICLE 6. ADMINISTRATOR

- A. The City shall designate a qualified Administrator for the Self-Insurance Trust Fund to provide such advice and assistance as the City Manager shall request.
- B. The financial activities, management and business affairs of the Self-Insurance Trust fund shall be managed effectively and efficiently by the Administrator in consultation with the Management Services Director and the Finance Director.
- C. The Administrator shall submit a report on the status of the Trust to the Board of Trustees at least annually.

ARTICLE 7. CITY ATTORNEY SALARY EXPENSE

The direct cost of salary expense for the City Attorney in matters of litigation shall be an eligible charge to the Fund.

ARTICLE 8. SETTLEMENT OF CLAIMS

The City Manager or designee shall have the authority to settle and authorize payment of claims against the City up to the amount of fifty thousand dollars (\$50,000). Any settlement in excess of this amount shall require approval of the City Council.

ARTICLE 9. EXCESS INSURANCE

The City shall purchase excess insurance above the risk retention limit approved by the City Council.

ARTICLE 10. TRUST FUND NOT SUBJECT TO BUDGET LAW

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 local government budgeting provisions of A.R.S. § 42-17101 et seq. the Self-Insurance Trust Fund shall be audited annually as required by the City Charter, Article VI, Section 5, said report shall be kept on file with the city clerk for a minimum of five (5) years.

ARTICLE 11. STOP LOSS PROVISION

For each City-insured liability (including without limitation employee benefits and casualty loss liabilities) the stop loss terms and amount will be the same for each individual for which this Trust exists as the source for payment of the self-insured liabilities allowed under A.R.S. § 11-981. The stop loss will apply equally in terms and amount to each such individual, subject to the type of coverage involved, for which this Trust exists as the source for payment of self-insured liabilities.

ARTICLE 12. FIDUCIARY INSURANCE POLICY

The City shall purchase a fiduciary insurance policy to cover the Trustees when acting within the scope of their duties pursuant to this Declaration of Trust Agreement. Cost for the fiduciary insurance policy shall be paid by the City or the Trust.

ARTICLE 13. INDEMNIFICATION

The Trust will indemnify, defend and hold harmless each Trustee from and against all claims and liabilities, whether they proceed to judgment or are settled, to which the Trustee may become subject, by reason of his or her being or having been a Trustee, or by reason of any action alleged to have been taken or omitted by him or her, as Trustee, and will reimburse him or her for all legal and other expenses reasonably incurred by him or her in connection with any claim or liability; provided, however, that no Trustee will be indemnified or reimbursed under the foregoing provisions in relation to any matter, unless it will have been adjudicated that his or her action or omission did not constitute bad faith, gross negligence, or willful and wanton misconduct in the conduct of his or her duties, or, unless, in the absence of such an adjudication, the Trust will have received a written opinion from the City Attorney, or in case of conflict a private outside counsel to the effect that if the matter of bad faith, gross negligence or willful and wanton misconduct in the conduct of duties had been adjudicated, it would have been adjudicated in favor of the Trustee. The rights accruing to a Trustee under these provisions will not exclude any other right to which he or she may be lawfully entitled, nor will anything contained in this Trust restrict the right of the Trust to indemnity or reimbursement granted in this Trust, or to which he or she may be otherwise entitled, except as provided by law.

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

ARTICLE 14. NON-LIABILITY OF TRUSTEES

Except as otherwise provided by law, no Trustee shall be liable individually for any act or omission of any Trustee or agent or representative of the Trust, including but not limited to the Administrator, nor for negligence, error in judgment or any act or omission, except the Trustee's own bad faith, gross negligence, and/or willful and wanton misconduct in the conduct of his or her duties.

ARTICLE 15. RULES AND PROCEDURES

The Board of Trustees may follow rules and procedures set forth in the City's Board and Commission Members' Rules and Operations Manual, or may adopt its own written rules and procedures, subject to review and consent of the City Clerk.

APPROVED by the City Council and Mayor of the City of Flagstaff this _____ day of _____, 2016

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

The undersigned hereby accept the foregoing Declaration of Trust Agreement and agree to be bound by the provisions thereof.

TRUSTEES

