

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PFLUGERVILLE, TEXAS, AUTHORIZING CREATION OF AN EMPLOYEE BENEFITS TRUST; DESIGNATING ALL MEMBERS OF THE CITY COUNCIL TO BE TRUSTEES OF SAID TRUST; AND AUTHORIZING THE TRUST TO PURCHASE VARIOUS FORMS OF INSURANCE FOR THE BENEFIT OF CITY OFFICERS, EMPLOYEES, QUALIFIED RETIREES, AND THEIR DEPENDENTS.

* * * *

WHEREAS, the City of Pflugerville, Texas (the "City") provides or offers various employee benefits to its employees, including health, dental, and life insurance, and disability benefits; and

WHEREAS, state law imposes a tax upon the receipt of gross premiums and revenues associated with such benefits; and

WHEREAS, state law also authorizes the exemption of such premiums and revenues from state law, provided that the City establishes and maintains the funds under the ownership and control of a single, nonprofit trust; and

WHEREAS, the City Council of the City finds it in the public interest to authorize the creation of an Employee Benefits Trust for the reasons provided above; now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PFLUGERVILLE, TEXAS:

Section 1. The City Council hereby authorizes creation of an Employee Benefits Trust, designating all members of the City Council to be Trustees of said Trust, and authorizing the Trust to purchase various forms of insurance for the benefit of City officers, employees, qualified retirees, and their dependents, all of which is pursuant to the Declaration of Trust attached as Exhibit "A."

PASSED, APPROVED, AND RESOLVED this ____th day of _____, 2020.

Victor Gonzales, Mayor

ATTEST:

Karen Thompson, City Secretary

**EXHIBIT “A”
DECLARATION OF TRUST**

I.

CREATION OF TRUST

The City of Pflugerville (“City”), as Settlor or creator of the trust, designates the members of the City of Pflugerville City Council to be Trustees and declares that the City holds in trust the funds described in Schedule A attached hereto and incorporated herein by reference, which is the property of the City, and all substitutions and additions to such funds, for the purpose of providing or offering, whether now or possibly in the future, life, disability, sick, accident, and other health benefits to the City’s officers, employees, and qualified retirees and their dependents.

II.

PURPOSE

This is a nonprofit trust created for the purpose of providing or offering, whether now or possibly in the future, City officers, employees, and qualified retirees and their dependents with life, disability, sickness, accident, and other health benefits either directly or through the purchase of insurance and to perform operations in furtherance thereof. The Trust is intended to qualify as a tax-exempt trust performing an essential governmental function within the meaning of Section 115 of the Internal Revenue Code (the “Code”).

III.

DURATION

The Trust shall continue until terminated by operation of law or by majority vote of the Trustees.

IV.

TRUSTEES: COMPOSITION, OFFICERS, COMPENSATION, AND MEETINGS

A. Composition. The Trustees are the members of the City Council, and each Trustee’s term is contemporaneous with his or her term of office as a Member of the City Council. Whenever a Trustee ceases to be a member of the City Council, the person succeeding him or her in office will automatically be appointed to serve as a successor Trustee of the Trust.

B. Officers. The Mayor shall serve as Chairman and shall preside at meetings of the Trustees and shall have all such other powers as are conferred herein or by majority vote of the Trustees at a duly called meeting at which a quorum is present. The Mayor Pro Tem shall serve as Vice Chairman and shall preside at meetings of the Trustees whenever the Chairman is absent. The Secretary shall rotate, coinciding with the City’s Fiscal Year, between the Council members

based upon their designated places, skipping the Mayor Pro Tem and beginning with the Councilmember for Place 1. The Secretary will oversee the preparation of meeting agendas, giving notice of meetings to the Trustees, and the minutes of the meetings of the Trustees.

C. Compensation. The Trustees shall be reimbursed for all reasonable and necessary expenses incurred by them in the performance of their duties and will otherwise receive no compensation for their service as Trustees.

D. Meetings. A meeting of the Trustees may be called by the Chairman or on written request to the Chairman by two or more Trustees. Trustees shall have at least three days written notice of any meeting. For purposes of this section, electronic mail notice is written notice.

V.

RIGHTS, POWERS, AND DUTIES OF TRUSTEES; QUORUM AND VOTING

A. Rights, Powers, and Duties. In addition to all other powers and duties conferred on them by this Trust document and imposed or authorized by law, the Trustees shall have the following powers and duties, but only to the extent permissible for a single purpose non-profit trust under Section 222.002(c)(5) of the Texas Insurance Code:

1. The Trustees shall carry out all of the duties necessary for the proper operation and administration of the Trust on behalf of the covered persons and shall have all the powers necessary and desirable for the effective administration of the affairs of the Trust.

2. The Trustees have the general power to make and enter into all contracts, leases, and agreements necessary or convenient to carry out any of the powers granted by this Trust document or by law or to effectuate the purpose of the Trust. All such contracts, leases, and agreements or any other legal documents herein authorized shall be approved by the Trustees by majority vote at a duly called meeting at which a quorum is present and signed by the Chairman on behalf of the Trust. The Trustees may also designate another Trustee to sign such documents.

3. The Trustees shall use the Trust's funds to accomplish the purpose of the Trust, as described in Section II herein, and to operate and administer the Trust solely in the interest of the covered City officers, employees, and qualified retirees and dependents thereof and for the exclusive purpose of providing or offering benefits to such persons and defraying the reasonable expenses of administration of the Trust. To this end, the Trustees may purchase life, disability, or accident and health insurance to provide or offer coverage for participating City officers, employees, and qualified retirees and their dependents. The Trustees may also adopt a health benefits plan that covers eligible City officers, employees, and qualified retirees, and their dependents.

4. The Trustees may accept contributions to the Trust funds from any source including contributions from covered persons receiving benefits from the Trust.

5. The Trustees shall be authorized to contract with any qualified organization to perform any of the functions necessary for providing or offering life, disability, sick, accident,

and other health benefits, including but not limited to excess loss insurance, stop loss insurance, claims administration, administrative services, and any other services that the Trustees shall deem expedient for the proper operation of the Trust. When required by law or desired by the Trustees, the Trustees shall seek sealed competitive bids or sealed competitive proposals with respect to contracts required to carry out the operations of the Trust and to affect the purpose of the Trust.

6. The Trustees shall arrange for the investing of the funds of the Trust so as to keep the same invested according to law and at the best interest rates obtainable for the benefit of the covered persons. The Trustees may hire money managers and shall adopt an investment policy for its own use and that of its agents in making investments. The Trustees shall select a depository for the Trust's funds and provide for the proper security of any and all investments. The Trustees shall designate signatories for the Trust's depository accounts.

7. The Trustees may purchase insurance for the Trustees and any other fiduciaries appointed by the Trustees and for the Trust itself to cover liability or losses occurring by reason of the act or omission of any one or more of the Trustees or any other fiduciary appointed by them. Any insurance purchased by the Trustees must give the insurer recourse against the Trustees or other fiduciaries concerned for breach of any fiduciary obligation or fiduciary duty owed to the Trust.

8. The Trustees shall arrange for proper accounting and reporting procedures for the Trust's funds and shall also provide for an annual audit of the Trust's financial affairs by a certified public accountant.

9. The Trustees may retain legal counsel to represent the Trust and the Trustees in all legal proceedings as well as to advise the Trust and the Trustees on all matters pertaining to the operation and administration of the Trust.

10. The Trustees have the authority to terminate the Trust at any time.

11. Upon termination of the Trust, the Trustees shall provide for the payment of Trust obligations, debts, losses, and other liabilities and shall provide for the disposition of the remaining Trust funds in accordance with Section IX herein.

B. Quorum and Voting. A majority of the Trustees shall constitute a quorum for the transaction of business at any meeting of the Trustees and the vote of a majority of the Trustees present shall be required for approval of any action at such meeting. The vote of such majority of the Trustees at such meeting shall constitute action of the Trustees as a group.

VI.

BENEFICIARIES

The beneficiaries of the Trust are the City officers, employees, and qualified retirees and their dependents who are covered by a life, disability, sick, accident, or other health benefits plan purchased or adopted by the Trust (also called “covered persons” herein). Beneficiaries may make contributions to the Trust for use by the Trustees in fulfilling the purposes of the Trust. No beneficiary shall have any claim against the funds or any other property of the Trust. The rights and interests of the beneficiaries are limited to the insurance or health benefits specified in any policy purchased or plan adopted by the Trustees.

VII.

TRUST FUNDS

The Trust funds consist of the funds described in Schedule A hereto as provided by the Settlor to institute this Trust, future contributions by the Settlor, beneficiary contributions, investment income, and any other money or property which shall come into the hands of the Trustees in connection with the administration of the Trust. The funds of the Trust shall not inure to the benefit of, or be distributed to, any private person, except for the payment of necessary costs and benefits described below. The Trustees may use the Trust’s funds as follows:

1. to pay premiums on group health, accident and life policies or contracts;
2. to make authorized investments and paying fund management fees from the proceeds of the investment.

VIII.

LIABILITY OF TRUSTEES AND OFFICERS

The Trustees shall use ordinary care and reasonable diligence in the exercise of their powers and the performance of their duties hereunder; and they shall not be liable for any mistake of judgment or other action made, taken or omitted by them in good faith, nor for any action taken or omitted by any agent, employee or independent contractor selected with reasonable care; nor for loss incurred through investment of the Trust funds or failure to invest. No Trustee shall be liable for any action taken or omitted by any other Trustee. No Trustee shall be required to give a bond or other security to guarantee the faithful performance of his or her duties hereunder. To the fullest extent permitted by law: (a) the City shall indemnify each Trustee who was, is, or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding (“Proceeding”), any appeal therein, or any inquiry or investigation preliminary thereto, by reason of the fact that the Trustee is or was a Trustee; (b) the City shall pay or reimburse a Trustee for expenses incurred (i) in advance of the final disposition of a

Proceeding to which such Trustee was, is or is threatened to be made a party, and (ii) in connection with such Trustee's appearance as a witness or other participation in any Proceeding.

IX.

AMENDMENT, REVOCATION AND TERMINATION

This Declaration of Trust and the Trust created herein shall terminate when and if required by operation of law. The Trustees shall have the power to amend, modify, terminate or revoke, in whole or in part, this Declaration of Trust and the Trust created herein by majority vote at a duly called meeting at which a quorum is present. Notwithstanding the foregoing, the Trustees shall have no power to amend Section II of this Declaration of Trust. Beneficiaries of the Trust shall have no right to amend this Declaration of Trust, and their approval shall not be a condition or requirement for an authorized amendment by the Trustees. Upon termination of the Trust, the Trustees shall pay all obligations, debts, losses, and other liabilities of the Trust. Thereafter, the Trustees shall first use the remaining trust funds to pay covered claims of persons covered under the City's health benefits plan that may be in effect at the time of termination of the Trust and then, either apply any remaining balance of the funds to provide the benefits described herein or transfer such funds to a successor whose income is excluded under Section 115(1) of the Code. Notwithstanding the foregoing, the Trustees, upon termination of the Trust and payment of all Trust obligations may, by vote of a majority of the Trustees, transfer the remaining funds or any portion thereof to the trustees of any trust or trusts established by the City for a substantially similar purpose to be applied for uses substantially similar to those set forth in Section II herein.

X.

GOVERNING LAW

This Declaration of Trust and the Trust created herein shall be construed and governed by the laws of the State of Texas in force from time to time.

XI.

MISCELLANEOUS

Whenever the context so admits and such treatment is necessary to interpret this Declaration of Trust in accordance with its apparent intent, the use herein of the singular shall include the plural, and vice versa, and the use of the feminine, masculine, or neuter gender shall be deemed to include the other genders.

The captions or headings above the various Sections of this Declaration of Trust have been included only to facilitate the location of the subjects covered by each Section but shall not be used in construing this Declaration Trust.

If any clause or provision of this Declaration of Trust proves to be or is adjudged invalid or void for any reason, such invalid or void clause, provision, or portion shall not affect the whole, but the balance of the provisions hereof shall remain operative and shall be carried into effect insofar as is legally possible.

[REMAINDER OF PAGE INTENTIONALLY BLANK; SIGNATURE PAGE FOLLOWS.]

IN WITNESS HEREOF, the undersigned parties have executed this Declaration of Trust, consisting of ten (10) pages and Schedule A attached hereto, on the dates of their respective acknowledgments below. By joining in the execution of this Declaration of Trust, the Trustees acknowledge receipt of the property described in Schedule A, signify acceptance of the Trust created hereunder, and covenant that the Trust will be executed with all due fidelity. This Trust is effective as of the last date of signature below.

_____ Victor Gonzales, Mayor, Settlor	_____ Date
_____ Doug Weiss, Councilmember Place 1, Trustee	_____ Date
_____ Ceasar Ruiz, Councilmember Place 2, Trustee	_____ Date
_____ Omar Peña, Mayor Pro Tem, Councilmember Place 3, Trustee	_____ Date
_____ Rudy Metayer, Councilmember Place 4, Trustee	_____ Date
_____ Mike Heath, Councilmember Place 5, Trustee	_____ Date
_____ David Rogers, Councilmember Place 6, Trustee	_____ Date

ACKNOWLEDGMENTS

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this ____ day of _____
2020, by Victor Gonzales, Mayor of the City of Pflugerville on behalf of the City.

Notary Public In and For the State of Texas

(SEAL)

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this ____ day of _____
2020, by Doug Weiss.

Notary Public In and For the State of Texas

(SEAL)

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this ____ day of _____
2020, by Ceasar Ruiz.

Notary Public In and For the State of Texas

(SEAL)

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

 This instrument was acknowledged before me on this _____ day of _____
2020, by Omar Peña.

Notary Public In and For the State of Texas

(SEAL)

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

 This instrument was acknowledged before me on this _____ day of _____
2020, by Rudy Metayer.

Notary Public In and For the State of Texas

(SEAL)

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

 This instrument was acknowledged before me on this _____ day of _____
2020, by Mike Heath.

Notary Public In and For the State of Texas

(SEAL)

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

 This instrument was acknowledged before me on this _____ day of _____
2020, by David Rogers.

Notary Public In and For the State of Texas

(SEAL)

SCHEDULE A

The following is a list of the assets initially transferred by the City of Pflugerville, Texas, to the Trust:

City of Pflugerville's first month (_____ **2020**) contributions for Employee and Dependents Medical/Pharmacy Benefits, Dental Benefits, Life Insurance Benefits, and Long-Term Disability Benefits.

City of Pflugerville's Employee and Dependents first month (_____ **2020**) of Plan Year's payroll deductions or contributions for Medical/Pharmacy Benefits, Dental Benefits, Life Insurance Benefits, and Long-Term Disability Insurance Benefits.